

ECONOMIC SANCTIONS: ARE THEY ACTUALLY ENFORCING INTERNATIONAL LAW IN SERBIA-MONTENEGRO?

M. JENNIFER MACKAY

I.	INTRODUCTION	204
II.	THE LEGAL FRAMEWORK: THE UN CHARTER	205
	A. <i>The UN Mandate</i>	205
	B. <i>The UN's Institutional Structures and Their Respective Powers</i>	206
III.	IMPEDIMENTS TO EFFECTIVE IMPLEMENTATION OF UN RESOLUTIONS	207
	A. <i>Legitimacy</i>	207
	1. Legal Hierarchy of UN Actions	208
	2. Collective Action	209
	B. <i>Costs of Sanctions to Sender Country</i>	210
IV.	A LOOK AT THE PAST: RHODESIA AND IRAQ	211
	A. <i>The First Sanctions: Rhodesia</i>	212
	B. <i>Lessons from the First Use of Sanctions</i>	215
	C. <i>The Crisis in Iraq</i>	217
	D. <i>Modern Lessons</i>	220
V.	THE BOSNIA-HERCEGOVINA QUESTION	221
	A. <i>The First Wave of Sanctions</i>	222
	B. <i>The Effectiveness of the First Mandatory Economic Sanctions</i>	223
	C. <i>The Second Wave of Sanctions and Their Effects</i>	224
	D. <i>Sanctions Were Perhaps Not the Right Choice</i>	227
	E. <i>The Sanctions' Role in the Peace Plan</i>	228
	F. <i>Serbia Abandons Her Bosnian Brothers</i>	229
VI.	THE CRISIS IN BOSNIA IN LIGHT OF PAST EXPERIENCE	231
	A. <i>Sanctions May Have Been Effective, but at What Price?</i>	232
	B. <i>International Preference for Sanctions</i>	233
VII.	CONCLUSION	235

I. INTRODUCTION

International economic sanctions are generally negative economic or commercial measures imposed by prime actors in the international arena to force a target state into compliance with international law.¹ Economic sanctions are one of the tools most widely used by nation-states to influence each other's behavior in the international arena.² More specifically, they are an effective means of indicating to a target state that its behavior has crossed the line of permissible conduct accepted by the rest of the actors in the international arena. Economic sanctions can be used to punish "wrongdoers," to deter future similar acts by other states, to deter repeated unacceptable behavior by the same state, or merely to serve as a warning that the international community does not approve of the state's conduct.³ Sanctions can be imposed unilaterally, where one state specifically targets another without soliciting the participation of other states.⁴ Sanctions can also be imposed by regional organizations, in order to compel one of the member states to comply with behavioral norms adopted by the other members.⁵ However, the specific focus of this comment is on the legitimacy and effects of United Nations (UN) sanctions, on states that have violated accepted norms of international law or have violated specific provisions of the UN Charter. This analysis will be the foundation for the evaluation of the effectiveness of economic sanctions in resolving the current crisis in Bosnia.⁶

This Comment discusses the realistic role of international economic sanctions⁷ as a means of enforcing international law. Part II will describe the legal framework as embodied in the UN Charter through which international economic sanctions are implemented. Part III will detail the impediments to effective international economic sanctions, including the legitimacy of sanctions as well as the costs incurred by

1. MARGARET P. DOXEY, *INTERNATIONAL SANCTIONS IN CONTEMPORARY PERSPECTIVE* 4 (1987).

2. *See generally id.* at 4.

3. Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1159, 1170 (1987).

4. *Cf.* DOXEY, *supra* note 1, at 4.

5. *Id.*

6. The sources used in this Comment are current up to October 10, 1994.

7. The sanctions referred to in this Comment are generally economic in nature. Many other types of sanctions exist, such as military and diplomatic, but these are beyond the scope of this Comment.

countries that impose sanctions. Part IV will use the Rhodesia and Iraq experiences to illustrate how the UN Charter's legal framework has been used to impose international economic sanctions and will also explore the enforceability and effectiveness of such sanctions. Part V will continue to examine the UN's legal framework but will instead focus on a more contemporary context, analyzing the UN's desperate attempt to end the fighting in Bosnia-Herzegovina and to control Serbia's aggressive behavior. Finally, Part VI will use the Bosnian example to ascertain the effectiveness and the shortcomings of international economic sanctions as a means of compelling international actors to conform to international law.

II. THE LEGAL FRAMEWORK: THE UN CHARTER

A. *The UN Mandate*

After World War II, the allied countries convened at Bretton Woods to fashion an institutional framework designed to supervise the orderly conduct of international relations.⁸ The framework took the form of the UN Charter (or Charter). All the Member States, by signing the Charter, agreed to be bound by the provisions contained therein.⁹ Article 25 binds Member States to mandatory decisions of the Security Council¹⁰ while Article 33 mandates the peaceful resolution of disputes among Member States.¹¹ Accordingly, Article 2(4) of the Charter provides that Members must refrain from the use of force in their relations with other states.¹² Pursuant to Article 51, however, Members reserve the right to self-defense against armed attack until further measures have been taken by the UN.¹³

Chapter VII of the Charter grants the Security Council its authority to categorize dangerous situations as threats to the peace, and to correspondingly determine preventive and enforcement measures "to

8. Carl-August Fleischhauer, *Enforcement and Inducing Compliance under the United Nations Charter*, AM. SOC'Y INT'L L. 428, 429 (April 1991).

9. U.N. CHARTER art. 4, ¶1.

10. *Id.* art. 25. Decisions of the Security Council under this article do not include recommendations to the General Assembly made under Chapter VI. LELAND M. GOODRICH, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 208 (3d ed. 1969).

11. U.N. CHARTER art. 33.

12. *Id.* art. 2, ¶4.

13. *Id.* art. 51.

maintain or restore international peace and security.”¹⁴ In order to carry out this mandate,¹⁵ the Security Council is to act in accordance with Articles 41 and 42. Article 41 precludes the use of armed force to restore peace and security but empowers the Security Council to petition the Member States to apply such measures including “the severance of diplomatic relations . . . [and the] complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication.”¹⁶ Article 42 allows the Security Council, once it has deemed the measures under Article 41 to be ineffective at restoring peace, to take further action “by air, sea, or land forces”¹⁷ as may be necessary to fulfill the mandate in Article 39. Such action may include “demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations.”¹⁸

B. The UN's Institutional Structures and Their Respective Powers

The UN is organized into six main governing bodies, the most important of which are the General Assembly and the Security Council.¹⁹ The Security Council consists of both Permanent and Nonpermanent Members. The Permanent Members are the Republic of China, Russia, the United Kingdom, the United States, and France; the ten Nonpermanent Members are elected by the General Assembly for a term of two years.²⁰ Article 25 of the UN Charter provides that in order for Security Council decisions concerning international peace and security to be binding on the entire UN membership, they must be reached by “an affirmative vote of nine members, including the concurring votes of the permanent members” in accordance with Article 27.²¹ Article 25 has been negatively construed to mean that Permanent Members have the power to veto Security Council Orders and Resolutions. This veto power

14. *Id.* art. 39. The article reads: “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.” *Id.*

15. *Id.*

16. U.N. CHARTER art. 41.

17. *Id.* art. 42. This also permits the Security Council to order the use of armed forces to achieve its goal of restoring peace. GOODRICH, *supra* note 10, at 314-15.

18. U.N. CHARTER art. 42.

19. *Id.* art. 7, ¶ 1. The other four include an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat. *Id.*

20. *Id.* art. 23, ¶¶ 1-2.

21. *Id.* art. 27, ¶¶ 2-3.

sometimes hampers the international organization from fulfilling its peacekeeping duties.²² Nevertheless, it is the accepted rule that “UN sanctions ordered by a Security Council Resolution with at least nine affirmative votes and no veto by a permanent member are unquestionably obligatory for [all] members.”²³

As a result of a mandatory order issued by the Security Council, the General Assembly—consisting of a maximum of five representatives from all the Members of the United Nations²⁴—may pass resolutions which in essence show its support for the Security Council decision.²⁵ In the absence of a Security Council Order, the General Assembly has no binding authority on UN membership.²⁶ In addition, the General Assembly has no preemptive powers over the Security Council, when the Council is exercising its Article 39, 41, and 42 powers over a certain dispute.²⁷

III. IMPEDIMENTS TO EFFECTIVE IMPLEMENTATION OF UN RESOLUTIONS

A. *Legitimacy*

The Charter’s decision-making processes give international economic sanctions not only their validity, but also their legality vis-à-vis the global community.²⁸ The degree to which states in the international community adhere to international economic sanctions depends to a large

22. GOODRICH, *supra* note 10, at 215. Article 27, ¶ 3 also states that Permanent Members who are a party to a dispute must abstain from voting. “The requirement of a specific number of affirmative votes, instead of a majority or two-thirds majority of those present and voting, has made it possible for members to defeat a proposal by abstaining.” *Id.* at 221.

23. DOXEY, *supra* note 1, at 8. Although a veto defeats a substantive proposal from turning into a mandatory order, the General Assembly can still pass a resolution or the Security Council can still issue a recommendation. *Id.* at 18-19.

24. U.N. CHARTER art. 9, ¶ 2.

25. Without a Security Council Order, there can be no mandatory U.N. sanctions. DOXEY, *supra* note 1, at 17. All that is needed to pass a resolution in the Assembly is a two-thirds majority of the Members present and voting. U.N. CHARTER art. 18, ¶ 2.

26. The General Assembly can still issue recommendations in the form of resolutions, which basically represent majority opinion on the issue. LELAND M. GOODRICH & ANNE P. SIMONS, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 210-11 (1955).

27. U.N. CHARTER art. 12, ¶ 1.

28. *See generally id.*

extent on the legitimacy of the sanctions themselves.²⁹ Factors which determine the legitimacy of sanctions include the validity of the legal framework that imposed them, the number of states actively implementing them, and the clarity of the breach of international law that has been committed.

1. Legal Hierarchy of UN Actions

A mandatory order (or resolution) issued by the Security Council not only binds all UN Member States³⁰ but also represents maximum legitimization by the international community.³¹ Because resolutions that are imposed by the UN Security Council are binding on all the Members of the UN, they are accredited more international legitimacy and legality than any other type of UN action. Arguably next in the legal hierarchy are Security Council recommendations that Member States voluntarily adopt certain sanctions.³² The General Assembly can then adopt the Security Council-sponsored recommendation³³ by passing their own resolution on the matter which impliedly indicates general approval of the sanctions and thereby legitimizes them.³⁴ Security Council Condemnations have even less legitimacy than recommendations, because they are mere moral reprimands and are not accompanied by any suggestion of action.³⁵ The least legitimate are General Assembly resolutions, which are not backed by any type of Security Council action.

29. See David D. Caron, *The Legitimacy of the Collective Authority of the Security Council*, 87 AM. J. INT'L L. 552, 554 (Oct. 1993).

30. See *id.* art. 25; see also DOXEY *supra* note 1, at 16-17.

31. DOXEY, *supra* note 1, at 17.

32. *Id.*

33. General Assembly recommendations have a less significant procedural voting requirement than do Security Council decisions. DOXEY, *supra*, note 1, at 18-9. See *infra* note 35. The legitimacy or legality of the economic sanctions against South Africa were given much more weight once the U.N. Security Council passed Resolution 181 of 7 August 1963, making binding on the Member States the General Assembly Recommendation embodied in Resolution 134. *Id.* at 47-48. This analysis extends to regional and unilateral action. The imposition of economic sanctions by one state has far less legitimacy in the eyes of the international community than does one imposed by a regional organization. For example, the economic sanctions imposed against Rhodesia by the United Kingdom became much more effective once the Organization for African Unity decided to impose a full economic boycott in 1965. See *id.* at 35-39.

34. See *id.*

35. Cf. DOXEY, *supra* note 1, at 18.

2. Collective Action

At least one authority has pointed out that “the UN is no more able to regulate state conduct than any other international organisation unless member states are willing that it should do so.”³⁶ In other words, it is of utmost importance that UN action be collective³⁷ because UN actions are more likely to be perceived as legitimate when they are a product of collective action and decision-making.³⁸ Accordingly, the spirit and the mandate of the Charter to maintain international peace legitimizes the actions of the UN because that body is authorized to undertake those actions on behalf of its membership.³⁹

In order to act collectively, the international community must first decide that a threat to international peace and security exists and that the situation requires collective action.⁴⁰ Once the General Assembly or a certain group of states decides collective action is needed, they must request that the Security Council evaluate the situation.⁴¹ If the Security Council decides that action is warranted, it may issue a resolution ordering economic sanctions against a target state, thereby providing the needed legitimization which the international community requires.⁴²

Even after a collective decision is reached, other factors involved in that decision surface to either supplement or weaken the legitimacy of that decision. It has been noted that “the significance of membership and voting procedures in international organizations depends directly on the powers of the body and the importance of the issues that will come before it.”⁴³

There are two major challenges to the legitimacy of the Security Council’s use of its authority. First, many question the Security Council’s legitimacy because of their belief that the Security Council is dominated by a few states, either because of the overall power of those states in

36. DOXEY, *supra* note 1, at 16.

37. See GOODRICH & SIMONS, *supra* note 26, at 344; see also Caron, *supra* note 29, at 554.

38. GOODRICH & SIMONS, *supra* note 26, at 344.

39. Caron, *supra* note 29, at 552, 555; see GOODRICH, *supra* note 10, at 36.

40. Caron, *supra* note 29, at 552 n.3.

41. GOODRICH & SIMONS, *supra* note 26, at 345-46. The General Assembly may share in the Security Council’s function of determining that a threat to the peace exists, but the Security Council has the last word on whether to take action, unless it is deadlocked in which case the Assembly must decide. *Id.* at 345.

42. DOXEY, *supra* note 1, at 17.

43. Caron, *supra* note 29, at 567.

international affairs, the capabilities of those states within the Council, or the disproportionate representation of those states on the Council.⁴⁴ Second, a threat to legitimacy originates from perceptions of unfairness surrounding the veto power, especially because of the “disabling effect of the veto on the sense of participatory governance.”⁴⁵ When the international community perceives dominance by a few states or abuse of the veto, it mitigates the legitimacy of the UN action undertaken.⁴⁶ However, when all states participate in the deliberating process and reach a consensus, the UN action is more likely to be perceived as genuine, legitimate, and legal in a democratic sense because it was chosen by the community.⁴⁷

Legitimacy of a Security Council decision to impose sanctions is important. Although measures under Article 41 are binding on all Member States and therefore not optional, a Member State may nevertheless fail to comply if the decision does not further its national interest.⁴⁸ Obviously, there is international pressure to comply with and uphold international law, but each state generally will weigh its own private interests, political and economic, against the interests served from implementing the UN mandate.⁴⁹

B. *Costs of Sanctions to Sender Country*

The implementation of economic sanctions against a state usually involves costs to the sender country. The effects on the sender state's economy varies according to the type of economic sanction imposed, including export and import controls.⁵⁰ Many commentators have noted

44. *Id.* at 566.

45. *Id.*

46. *See id.*

47. *See id.*

48. *See* DOXEY, *supra* note 1, at 16.

49. *Cf., id., supra* note 1, at 88, 100-01. Often a state will decide to comply because it does not want to struggle with its international peers and then will essentially “cheat” by not really enforcing any of the sanctions. A panel discussion on the Compliance and Enforcement in the United Nations System given by the American Society of International Law provides some excellent insight into the methods available to the Security Council to have its resolutions implemented by the Member States. Such means range from military enforcement to suspension of membership. Symposium, *Compliance and Enforcement in the United Nations System*, 85 AM. SOC'Y INT'L L. 428 (1991).

50. The types of sanctions imposed by the United States can be divided into five categories: (1) U.S. government programs, (2) exports, (3) imports, (4) private financial transactions, and (5) international financial institutions. Carter, *supra* note 3, at 1183.

that export control imposes substantially more costs to the sender country than do import controls.⁵¹ According to one authority, “[E]xport sanctions directly cause lost sales and lost jobs.”⁵² For example, while the United States can find alternate buyers, complete substitutability cannot be assured;⁵³ the substitute buyer may not have as significant and regular a demand as the sanctioned country.⁵⁴ In addition, export restrictions may damage the reputation of American suppliers abroad;⁵⁵ the target country will be forced to find a new supplier and will not likely renegotiate a contract with the United States, if and when the sanctions are lifted.⁵⁶ Finally, imposing economic sanctions on a target country may give the impression to neighboring countries that the United States is an unreliable trade partner.⁵⁷ Those countries may decide to change suppliers, resulting in a large export trade loss to the American economy.⁵⁸

IV. A LOOK AT THE PAST: RHODESIA AND IRAQ

The text of the UN Charter dictates orderly procedures and institutionalized behaviors,⁵⁹ which has allowed the UN to develop a wide range of enforceable international standards of acceptable conduct, applicable to all the Member States. A review of the Rhodesian and Iraqi experiences elucidates the functionability of the UN procedural framework, the enforceability and effectiveness of international economic sanctions, and the diversity of responses from UN Member States such as the United States. The Rhodesian situation was unique; it was the first time the UN Security Council issued a wide range of mandatory

51. *See, e.g., id.* at 1181.

52. *Id.*

53. *Id.*

54. *Id.*

55. Carter, *supra* note 3, at 1181.

56. Import controls, on the other hand, involve smaller costs because usually only one or two countries are being targeted at the same time. The U.S. purchaser need not go without the good; he faces only the costs of finding and buying from a higher-priced seller. *Id.* at 1181-82. The recuperation after the sanctions are lifted is also more rapid. Either the new seller will lower his prices or the United States can revert back to the previous seller, who, despite any political feelings of resentment from having been sanctioned, will likely welcome the renewed export revenue. *See generally* DOXEY, *ECONOMIC SANCTIONS AND INTERNATIONAL ENFORCEMENT* 90 (1980).

57. DOXEY, *supra* note 1, at 101-02.

58. *Id.* at 90.

59. *See* IAN CLARK, *REFORM AND RESISTANCE IN THE INTERNATIONAL ORDER* 367 (1989).

economic sanctions under Chapter VII of the UN Charter to deal with a situation that constituted a threat to the peace. The Iraqi situation, a precursor to the Gulf War, provides a useful counter-example to the experience in Rhodesia, not only because it is more recent but also because it shows what the international community has and has not learned over the past twenty-five years concerning the effectiveness of international economic sanctions. Hence, the Iraqi experience provides an excellent backdrop to the focus of this comment—the crisis in Bosnia.

A. *The First Sanctions: Rhodesia*

At a time when most European countries were granting freedom to their respective colonies, the United Kingdom refused to grant the southern part of the old Federation of Rhodesia formal independence until it took steps to further African participation in the government.⁶⁰ However, on November 11, 1965, Prime Minister Ian Douglas Smith issued an Unilateral Declaration of Independence (UDI) of the Southern Rhodesian government from the United Kingdom.⁶¹ UDI was immediately perceived by the United Kingdom as a breach of the peace and an act of rebellion against the Crown.⁶² In response, the United Kingdom initiated progressive economic sanctions over the three months following UDI.⁶³ By February 1966, these responses included a total ban on imports of Rhodesian tobacco and sugar, and a total ban on exports except those products of a humanitarian nature.⁶⁴

Despite these efforts,⁶⁵ the government of Rhodesia remained in full administrative control. External pressure increased on the United

60. DOXEY, *supra* note 1, at 35.

61. MICHAEL P. MALLOY, ECONOMIC SANCTIONS AND U.S. TRADE 200 (1990). UDI was intended to put a stop to “the process of self-determination for the indigenous population of Southern Rhodesia, largely non-white, originally called for in U.N. General Assembly Resolution 1747 in June 1962.” *Id.*

62. DOXEY, *supra* note 1, at 36.

63. *Id.* at 37. Great Britain chose to label the declaration of independence illegal and without effect. It wanted a return to the status quo and was still willing to grant independence once progress towards ending racial discrimination had been made and oppression of the African population by the white minority government had been eliminated. *Id.* at 37-38.

64. *Id.* at 37. This also marked the end of British financial aid and capital investment in Rhodesia, and the Rhodesian sterling could no longer be exchanged for foreign currency in Great Britain. *Id.*

65. Any other sanctions were imposed by regional or individual states voluntarily. The Organization for African Unity imposed a total economic boycott on Rhodesia in 1965 and

Kingdom to take the matter to the United Nations.⁶⁶ The grounds for collective action solidified under the United Kingdom's earlier decision that the rebellion was not only an illegal act but that it also had international ramifications that could pose serious threats to international peace and security.⁶⁷ Following a request by the U.K. government in April of 1966, the Security Council, acting under Article 39 of the Charter, authorized British ships to intercept ships suspected of carrying oil destined for Rhodesia and prevent them from discharging their cargo.⁶⁸

Despite such actions taken by the UN⁶⁹ and the United Kingdom, the administration in Southern Rhodesia and UDI did not falter. As a result, on December 16, 1966, the Security Council adopted Resolution No. 232, invoking the mandatory sanctions provisions under Article 41 of the Charter, and imposing selective prohibitions on import, export, transport, shipment, and related transactions.⁷⁰ These actions were the "first real test of U.N. 'enforcement' using economic weapons."⁷¹ In response to this Resolution, countries such as France, the United

placed a ban on communication and denied overhead flight patterns. DOXEY, *supra* note 1, at 37. The United States and France imposed full oil embargoes in 1965 as well. *Id.*

66. *Id.* at 38. Rhodesia had been a topic of concern at the Security Council since 1962, but as it was technically under the umbrella of the Crown, the United Nations waited for the United Kingdom to come forth on her own. Until UDI, the United Kingdom had used its veto power over a proposed Security Council Resolution inviting the United Kingdom not to grant independence to the white minority government of the colony. MALLOY, *supra* note 61, at 200. Once the United Kingdom approached the U.N. with the UDI crisis, the Security Council then had to establish that UDI represented a threat to the peace before its authority to impose sanctions could be invoked. *See supra* text accompanying notes 40-42.

67. DOXEY, *supra* note 1, at 38-9. These concerns had already been sufficient to persuade the Security Council to issue Security Council Resolution 202, adopted May 6, 1965, "which called on the United Kingdom to take 'all necessary action to prevent' UDI." MALLOY, *supra* note 61, at 201 (quoting S.C. Res. 202, 20 U.N. SCOR, 1194th mtg. at 6-7 (1965)).

68. DOXEY, *supra* note 1, at 38; *see* S.C. Res. 221.

69. On November 12, 1965, the Security Council adopted Resolution 216, condemning the UDI and calling upon other states to not recognize the Smith Regime. This was supported by sanction programs instituted by the United States and by the United Kingdom, but to no avail. MALLOY, *supra* note 61, at 201.

70. MALLOY, *supra* note 61, at 208 (citing S.C. Res. 232, 21 U.N. SCOR at 7-9 (1966)). Bans were placed on the export of petroleum, arms, ammunition and military equipment, vehicles, and aircraft, to Southern Rhodesia. Bans were also placed on the imports of tobacco, sugar, meat, asbestos, copper, chrome ore, iron ore, hides, and skins by the Member States. DOXEY, *supra* note 1, at 39.

71. DOXEY, *supra* note 1, at 38.

Kingdom, and the United States implemented the UN-mandated sanctions.⁷²

Prime Minister Smith's regime continued to ignore the international community's condemnation of its behavior and slowly managed to refashion its economy to cope with the sanctions.⁷³ Rhodesia's export trade was primarily concentrated on tobacco and sugar, with Britain as its main trading partner.⁷⁴ Given the situation, import sanctions were expected to be very effective. The Rhodesian economy

72. Accordingly, in the United States, President Johnson authorized economic sanctions against Southern Rhodesia under Executive Order No. 11, 322 (32 Fed. Reg. 119 (1967)) invoking section 5 of the United Nations Participation Act of 1945 (UNPA) (22 U.S.C. § 287(c) (1994)) and implementing the sanctions called for by Resolution 232 (MALLOY, *supra* note 61, at 201).

The domestic statutory authorization for U.S. economic sanctions are embodied in the Export Administration Act (EAA) (50 U.S.C. app. §§ 2401-2420 (1994)), the UNPA, and the International Emergency Economic Powers Act (IEEPA)(50 U.S.C. §§ 1701-1706). The EAA provides the principal statutory framework for the control of U.S. exports of goods. MALLOY, *supra* note 61, at 34. There are myriad statutes that deal with import control which are beyond the scope of this Comment. For an excellent discussion of import controls, see MICHAEL P. MALLOY, *ECONOMIC SANCTIONS AND U.S. TRADE* (1990). The provisions of the EEA give the President significant discretion to implement his foreign policy goals by controlling exports. However, the President's ability to control exports does not go unchecked. For instance, the President is entitled to cut off exports as long as the export control has been certified by the President to Congress as having a remedial effect on a breach of the peace situation that poses a direct threat to the strategic interests of the United States. *Id.* at 88 n.71 (citing 50 U.S.C. app. § 2405(m)(2) (A)-(C)).

Under the UNPA of 1945, the President is authorized to "apply economic and other sanctions against a target country or national thereof in accordance with any mandatory decision by the U.N. Security Council under Article 41 of the U.N. Charter." MALLOY, *supra* note 61, at 148-49 (citing 22 U.S.C. § 287(c)). This statutory authority has remained dormant since sanctions were imposed against Rhodesia, but was recently invoked during the Iraqi crisis. Christopher C. Joyner, *Sanctions, Compliance And International Law: Reflections On The United Nations' Experience Against Iraq*, 32 VA. J. INT'L L. 1, 19 (1991).

As a complement to the UNPA, the IEEPA grants the President the power to "investigate, regulate or prohibit transactions with a particular country if a situation exists which threatens American national interests." *Id.* To invoke these powers, the President must declare a national emergency through the issuance of an Executive Order in accordance with the National Emergencies Act. *Id.* Section 202 of the IEEPA defines a national emergency as any "unusual and extraordinary threat which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." MALLOY, *supra* note 61, at 165 (quoting 50 U.S.C. § 1701(a)). Under the IEEPA, the President is required to comply with a range of "procedural safeguards" before invoking these powers, including consulting with Congress "in every possible instance." *Id.* (quoting 50 U.S.C. § 1703 (a)). The President must submit a report to the Congress "outlining in detail the circumstances surrounding the emergency, the nature of the threat involved, the authorities to be exercised, the reasons for the[ir] exercise and the countries involved." *Id.* (citing 50 U.S.C. § 1703(b)).

73. DOXEY, *supra* note 1, at 43.

74. *Id.* at 42.

was weakened at first but the government quickly responded, helping farmers diversify their crops by growing maize and wheat, and by reaching out into new markets to sell their beef and beef products.⁷⁵ In the end, the Rhodesian economy benefited as it transformed its subsistence-level agricultural sector into one which was able to export.⁷⁶ In addition, although the country was landlocked and depended heavily on export trade routes,⁷⁷ it continued to satisfy its petroleum needs, by illegally transporting emergency supplies of oil into Southern Rhodesia through Mozambique and South Africa.⁷⁸

As the humanitarian and political situation in Rhodesia worsened, the Security Council adopted Resolution 253.⁷⁹ Under this Resolution, the UN Member States were required to ban all imports from and exports to Southern Rhodesia.⁸⁰ However, as the crisis and the sanctions dragged on, many countries failed to comply entirely with the sanctions; for example, from 1971 through 1977, the United States continued to import Rhodesian chrome.⁸¹ UN sanctions were not lifted until December 1979, when diplomatic efforts led to majority rule in Southern Rhodesia, since renamed Zimbabwe.⁸²

B. Lessons from the First Use of Sanctions

As the first experiment with UN-mandated economic sanctions, there is much to be learned from the Rhodesian experience. Universal compliance with the sanctions quickly became a problem; the longer sanctions of such horizontal magnitude stay in place, the more difficult it becomes to maintain compliance. As discussed earlier, international economic sanctions involve costs not only to the sanctioned country, but

75. *Id.*

76. *Id.* at 41. Rhodesia also had considerable mineral resources including chrome ore and gold. It had plenty of hydroelectric power and an industrial base with ample room for expansion to make use of nonutilized capacity. *Id.*

77. *Id.*

78. DOXEY, *supra* note 1, at 44.

79. S.C. Res. 253, 23 U.N. SCOR at 5 (1970).

80. *Id.* This prohibition did not include supplies intended strictly for medical purposes or educational equipment. MALLOY, *supra* note 61, at 202 n.18. Pursuant to this Resolution, the United States implemented Resolution 253 by the issuance of Executive Order 11,419 in July 1968. Exec. Order No. 11,419, 33 Fed. Reg. 10,837 (1968), *amended*, Exec. Order No. 11,978, 42 Fed. Reg. 15,403 (1977).

81. MALLOY, *supra* note 61, at 202.

82. *Id.*

to the sender country as well.⁸³ As such, Members often fail to comply if they have to compromise their own national interests;⁸⁴ examples include not only the U.S. import of Rhodesian chrome but also South Africa's and Mozambique's continued export of oil to Rhodesia.⁸⁵

Hedging, however, is a post-implementation effect; sanction-implementing states have already made the commitment to enforce international law, but simply cannot pursue that commitment any further without compromising their own welfare. Nevertheless, a pre-implementation lesson can be learned from the Rhodesian experience. Drastic action by the Security Council is crucial to motivate Member States to make the initial sacrifice of national interests necessary to enforce international law. In the Rhodesian context, the Security Council passed two Resolutions, 202 and 232, calling on Member States to enforce international law by implementing economic sanctions against Southern Rhodesia.⁸⁶ However, only the United States, France, and the United Kingdom responded to these resolutions.⁸⁷ To trigger active implementation from the rest of the UN membership, the Security Council had to pass Resolution 253, which made compliance mandatory.⁸⁸

The Rhodesian experience foreshadowed the major problems that would face the UN in the future—that is, when the Members of the Security Council, who in order to avoid the political ramifications attached to the veto power, choose to abstain from voting, thereby threatening the legitimacy of the UN sanction imposed by the UN. With respect to the sanctions imposed on Southern Rhodesia, the Security Council achieved the requisite nine votes to pass Resolution 232, with Great Britain concurring, and France and the Soviet Union abstaining.⁸⁹ As previously mentioned, abstentions do not prevent the passing of a resolution. Nevertheless, they do harm to the legitimacy of the action taken. As has been noted, with respect to Southern Rhodesia,

83. For a full discussion on the costs to countries which impose economic sanctions, see *supra* part III.B.

84. Carter, *supra* note 3, at 1180.

85. See *supra* text accompanying notes 78 and 81.

86. See generally DOXEY, *supra* note 1, at 38 (discussing Resolution 232); MALLOY, *supra* note 61, at 201 (discussing Resolution 202, which called on the United Kingdom to take "all actions necessary" to prevent UDI).

87. Caron, *supra* note 29, at 579.

88. DOXEY, *supra* note 1, at 39.

89. *Id.*

“[P]olitically, no permanent member had an interest in using the veto.”⁹⁰ However, were a target country politically important to a Permanent Member, that Permanent Member might disagree with the imposition of sanctions against that target country and therefore choose to veto the Security Council’s proposal for a resolution. Much of the perceived inaction of the UN over the past twenty-five years has been a result of this political importance/veto dynamic in the Security Council.

C. *The Crisis in Iraq*

On August 1, 1990, Iraq invaded and quickly conquered Kuwait, its small, oil-rich neighbor.⁹¹ At Kuwait’s request, the Security Council convened on August 2, 1990 to consider and evaluate this invasion.⁹² During the Iraqi crisis, the Security Council fully implemented its Chapter VII powers and strictly complied with all the procedural mechanisms contained therein. After making an Article 39 determination of a breach of the peace, the Council imposed an Article 41 based economic embargo, followed by an Article 39 recommendation to effect a sea blockade.⁹³

Iraq’s actions clearly violated the Charter’s Article 2 mandate to refrain “from the threat or use of force against the territorial integrity or political independence of any state.”⁹⁴ Iraq’s aggression also violated Article 2’s mandate to settle disputes by peaceful means.⁹⁵ Both transgressions of the Charter also violated accepted norms of international law and thus legitimized the Security Council’s adoption of Resolution 660 on August 2, 1990. Resolution 660 announced that the Security Council had determined that a breach of international peace and security had occurred pursuant to Article 39 and called for Iraq to halt all military activities in Kuwait and withdraw peacefully.⁹⁶

90. *Id.*

91. Joyner, *supra* note 72, at 8.

92. *Id.*

93. Joseph Murphy, *De Jure War in the Gulf: Lex Specialis Of Chapter VII Actions Prior To, During, and in the Aftermath of the United Nations War Against Iraq*, 5 N.Y. INT’L L. REV. 71, 80 (1992).

94. U.N. CHARTER art. 2, ¶ 4. *See also* Joyner, *supra* note 72, at 8.

95. U.N. CHARTER art. 2, ¶ 3.

96. Murphy, *supra* note 93, at 77; *see also* S.C. Res. 660 (Aug. 2, 1990), *reprinted in* 29 I.L.M. 1325 (1990). The initial goal of the proceeding onslaught of resolutions was to compel the Iraqi government to cease, desist and amend its transgression against Kuwait and withdraw peacefully from that country. Joyner, *supra* note 72, at 8.

Iraq, however, refused to comply with Resolution 660's demand to "cease, desist and amend its transgression against Kuwait."⁹⁷ Iraq's noncompliance with Resolution 660 prompted the Security Council to adopt Resolution 661 on August 6, 1990.⁹⁸ Iraq's refusal to comply with the Resolution 660 was in itself a violation of international law, which arguably increased the threat to international peace and security, thereby substantiating the legitimacy of the subsequent international economic sanctions against it.⁹⁹ Resolution 661 imposed comprehensive economic sanctions against Iraq and Kuwait under Chapter VII.¹⁰⁰ More specifically, Resolution 661 imposed a complete prohibition on the import of "all commodities and products originating in Iraq or Kuwait."¹⁰¹ This prohibition obviously included petroleum and all petroleum-related products, the sale of which accounted for approximately ninety-five percent of Iraq's export earnings before the conflict began.¹⁰² The import ban was supplemented by a full embargo against the "sale or supply . . . of any commodities or products . . . to any person or body in Iraq or Kuwait."¹⁰³ The UN sanctions under Resolution 661 also included a complete ban on financial transactions and

The United States responded quickly to U.N. actions. On August 2, 1990, the United States issued two Executive Orders, Nos. 12,722 and 12,723, declaring a national emergency and calling for action under the authority of IEEPA. *Id.* at 19. Taken together, these Executive Orders "imposed an immediate embargo on Iraq and an asset freeze in funds both from Iraq and Kuwait." Murphy, *supra* note 93, at 19-20.

97. Joyner, *supra* note 72, at 8. It is important to note here that even before Security Council Resolution 661 imposed economic sanctions based on articles 41 and 42, the Security Council first made an article 40 request for Iraq to comply with Resolution 660 and to withdraw from Kuwait. Murphy, *supra* note 93, at 79.

98. Security Council Resolution 661 was the most comprehensive commercial, trade, military, and financial embargo in the organization's history. Murphy, *supra* note 93, at 79.

Following the adoption of Resolution 661 by the Security Council, Executive Order Nos. 12,724 and 12,725 were issued under the authority of the IEEPA to "synchronize U.S. measures" with those required by the Resolution. Murphy, *supra* note 93, at 20.

99. Joyner, *supra* note 72, at 12.

100. *Id.* at 8. Since Kuwait was under Iraqi control, the sanctions also had to be imposed against it in order for them to have any effect against the aggressor state. *Id.* at 12. Resolution 661 also established the "Security Council Committee . . . concerning the situation between Iraq and Kuwait" [hereinafter Sanctions Committee] to monitor the implementation and compliance with the resolution's mandatory provisions. *Id.* at 8-9; S.C. Res. 661 (Aug. 6, 1990), *reprinted in* 29 I.L.M. 1325 (1990).

101. Joyner, *supra* note 72, at 12 (quoting S.C. Res. 661, *supra* note 100, at ¶ 3(a)).

102. *Id.*

103. The import as well as the export ban extended to any associated activities by nationals or Member States intending either to promote the import of the prohibited goods or facilitate the sale or supply of the prohibited exports. *Id.* at 13 (quoting S.C. Res. 661, *supra* note 100, at ¶ 3(c)).

transfers of funds to the Iraqi government, or to any other entity in Iraq or Kuwait.¹⁰⁴ As such, the effort to further isolate Iraq economically translated practically into “asset freezes and blocking mechanisms.”¹⁰⁵

The Security Council then passed Resolution 665, which imposed a multinational naval interdiction plan to prosecute the sanctions program.¹⁰⁶ The Security Council subsequently made a decision based on Article 41 to strengthen the economic embargo by authorizing a blockade on air traffic.¹⁰⁷ Resolution 670 complemented the naval interdiction program, by requiring Member States not to permit the takeoff of any aircraft from their territory carrying cargo to Iraq or Kuwait, except in the case of humanitarian supplies.¹⁰⁸ In addition, Resolution 670 denied overflight permission to any aircraft bound for Iraq or Kuwait.¹⁰⁹ Finally, the Security Council authorized under Article 39 the detention of Iraqi vessels violating the embargo and any other provisions of Resolution 661.¹¹⁰

After determining that the economic sanctions were not adequate to restore international peace and security, the Security Council adopted Resolution 678 on November 29, 1990, authorizing all Member States “to use all necessary means to uphold and implement Security Council Resolution 660.”¹¹¹ Iraq was given until January 15, 1991 to comply fully with the Council’s decisions; when it did not, the UN Coalition attacked Iraq on January 16, 1991.¹¹²

104. Joyner, *supra* note 72, at 13 (citing S.C. Res. 661, *supra* note 100, at ¶ 4).

105. *Id.* (citing *U.S. Renews Iraq Curbs, Frees Kuwaiti Assets*, L.A. TIMES, July 27, 1991, at A14).

106. *Id.* Measures were to be taken to “halt all inward and outward maritime shipping” and to verify cargoes and destinations to ensure “strict implementation of the provisions related to such shipping laid down in Resolution 661.” S.C. Res. 665 (Aug. 25, 1990), *reprinted in* 29 I.L.M. 1329 (1990).

107. Murphy, *supra* note 93, at 80.

108. *Id.* at 80 (citing S.C. Res. 670 ¶ 3 (Sept. 25, 1990), *reprinted in* 29 I.L.M. 1334 (1990)).

109. *Id.* (citing S.C. Res. 670, *supra* note 108, at ¶ 4, 29 I.L.M. at 1335).

110. *Id.* at 80 n.125.

111. *Id.* at 81 n.135 (quoting S.C. Res. 678 (Nov. 29, 1990), *reprinted in* 29 I.L.M. 1565 (1990)). Joseph Murphy comments that Resolution 678 was technically authorization of a *de jure* war. *Id.*

112. Murphy, *supra* note 93, at 81-2.

D. *Modern Lessons*

The Security Council's resolution to impose mandatory economic sanctions against Iraq for its unlawful invasion of Kuwait is only the third time since the Charter's inception in 1945 that the Security Council has resorted to this enforcement mechanism under Chapter VII.¹¹³ From the outset, there were marked differences between the U.S. handling of the Iraqi crisis and the United Kingdom's handling of the Rhodesian situation. UN sanctions against Rhodesia were given more than a decade to bring about change, but it only took four months (not including the pause of good will period) for the UN to abandon the sanctions program against Iraq in favor of military intervention. Many commentators have stated that the UN did not wait long enough for the Iraqi sanctions to become effective.¹¹⁴ One such commentator, Edwin Smith, "ha[s] criticized the speed with which sanctions were abandoned in favor of the option of force."¹¹⁵ Smith admits that "[w]hether sanctions could ever have succeeded will remain a matter of contention, although both civilian and military experts argued for more time for sanctions to work."¹¹⁶ Sanctions arguably should have worked in the Iraqi crisis, because the type of sanction—an oil embargo—was targeted at the heart of Iraq's economy. At the time, oil represented ninety-five percent of its export earnings.¹¹⁷

The Iraqi situation provides a useful comparison to the Rhodesian situation, regarding the connection between the political significance of the target state and the imposition of international economic sanctions. Rhodesia presented no "political threat" and therefore the sanctions continued. However, in the case of Iraq, "Security Council Resolution 678 marked the second time that the United Nations authorized a *de jure* war."¹¹⁸ Such quick and decisive action indicates that the international community clearly perceived Iraq as more of a political problem than Rhodesia. Oil is a vital world resource, and therefore the Iraqi crisis was

113. The other two times were Rhodesia and South Africa. Joyner, *supra* note 72, at 7.

114. See generally Edwin M. Smith, *The Need for Effective Multilateral Sanctions*, Address Before the American Society for International Law 86th Meeting (April 3, 1992), 86 AM. SOC'Y INT'L L. 303 (1992).

115. *Id.* at 304-05.

116. *Id.* (citing B. WOODWARD, *THE COMMANDERS* 34-42 (1991)).

117. Joyner, *supra* note 72, at 12. The sanctions against Rhodesia could have been expected to be less effective given that no one industry targeted was of such heightened importance to the state's survival as oil. See DOXEY, *supra* note 1, at 37-41.

118. Murphy, *supra* note 93, at 80.

more politically significant than any other previous international situation addressed by the UN where sanctions were involved.

There is no simple formula to determine whether a situation deserves the enormous international reaction that resulted from Iraq's invasion of Kuwait. However, Smith negatively observed that "[o]ne may doubt whether peaceful measures can ever be given full opportunity to function when the dominant member of the Security Council determines that exercise of force serves its national interests."¹¹⁹ The lesson of the Iraqi experience is that sanctions require time, and the international community will wait for sanctions to achieve results only when the target country is a politically insignificant interest.¹²⁰

V. THE BOSNIA-HERCEGOVINA QUESTION

The disintegration of the Former Yugoslavia in June of 1991, and the violence that ensued sparked a strong international response. The media reported daily of "abuse of women, inhumane detention facilities, indiscriminate targeting of defenseless civilians, [and] forced expulsions and deportations."¹²¹ In 1991, the Security Council seized upon these public outrages and encouraged regional groups, such as the UN Human Rights Commission, the Conference on Security and Co-operation in Europe (CSCE), the European Community, and the International Conference on the Former Yugoslavia to resolve the conflict or at least reduce the fighting.¹²²

119. Smith, *supra* note 114, at 304. Smith continues to explain that "purportedly, administration officials conceived of Resolution 678 as providing a virtually unassailable political justification for offensive military action" in order to destroy the Saddam Hussein military machine. *Id.* at 305. He goes on to state that "the United States, now the pre-eminent international power, initiated coercive measures against Iraq that preserved vital American interests as they also responded to the multilateral consensus. . . . Little balance of power politics remained to limit American action . . . [thus] some have claimed that the United States 'hijacked' the Security Council." *Id.* at 306.

120. Edwin Smith's comments are very telling here. According to Smith, whether the state represents a significant political interest is determined by a mere handful of states—Russia, China, the United Kingdom, France, and the United States. *Id.* at 304, 306.

121. James C. O'Brien, *The International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia*, 87 AM. J. INT'L L. 639 (1993).

122. *Id.* at 640.

A. *The First Wave of Sanctions*

On April 27, 1992, "Serbia and Montenegro proclaim[ed] the dissolution of the Socialist Federated Republic of Yugoslavia and the establishment of a new state, the Federal Republic of Yugoslavia." The United States did not recognize this declaration.¹²³ At the CSCE meeting in Helsinki on May 6, 1992, the United States condemned the "perpetrators of violence in Bosnia-Herzegovina and urge[d] that Serbian representatives be excluded from all CSCE activities."¹²⁴ On May 20, 1992, the United States suspended landing rights for Yugoslav National Airlines, and two days later Secretary of State Baker announced diplomatic sanctions against Serbia-Montenegro because of the "humanitarian nightmare."¹²⁵ Meanwhile, with U.S. support, the former Yugoslav republics of Slovenia, Croatia, and Bosnia-Herzegovina became Members of the UN.¹²⁶

On May 30, 1992, the UN Security Council adopted Resolution 757,¹²⁷ "imposing immediate sanctions against Serbia-Montenegro, including a trade embargo, the freezing of assets abroad, the prohibition of services related to aircraft and weapons, the prohibition of air traffic, the reduction of diplomatic staff, a ban on participation in official cultural and sporting events, and suspension of scientific and technical cooperation."¹²⁸ This resolution was universal and binding on all the Members of the UN, and showed a significant consensus that action in the form of economic sanctions was an appropriate response to Serbia-Montenegro's violation of international humanitarian norms.¹²⁹

123. *Chronology: Developments Related to the Crisis in Bosnia, March 10-September 22, 1992*, 3 DEP'T ST. DISPATCH 35, Aug. 30, 1992, at 676 [hereinafter *Chronology*].

124. *Id.*

125. *Id.*

126. *Id.* Later, Resolution 777 on September 22, 1992, officially denied a U.N. seat to Serbia-Montenegro. *Id.* at 21. According to commentators, it was the recognition of these states as independent that triggered the explosion of war in Bosnia-Herzegovina. Susan L. Woodward, *Yugoslavia: Divide And Fail*, BULLETIN OF THE ATOMIC SCIENTIST, Nov. 1993, at 25.

127. S.C. Res. 757 (May 30, 1992), reprinted in 31 I.L.M. 1453 (1992).

128. *Chronology*, *supra* note 123, at 636.

129. Because of the strong concerns for humanitarian assistance, the UNSC issued Resolutions 761, 770, and 776, to provide humanitarian relief to the victims of the fighting and to provide assured transportation of needed goods into Bosnia. The U.N. Protection Force (UNPROFOR) was established and many regional organizations such as NATO, the Western European Union (WEU), and the European Community (EC) set up humanitarian missions to monitor the implementation of these resolutions. *Id.*; see also Woodward, *supra* note 126, at 24-25. Again, these efforts serve to legitimize any future action taken by the U.N.

Furthermore, this international movement against Serbia-Montenegro placed a high degree of peer pressure not only on the UN Member States, but also on non-Member States,¹³⁰ to either comply or run the risk of appearing unsympathetic and unsupportive of international law.¹³¹

On August 24-25, the UN General Assembly began discussion of the Bosnian situation and adopted a resolution calling for the Security Council to take "further appropriate measures" to end the war in Bosnia.¹³² In late November, 1992, the UN Security Council approved plans to bar all shipments of strategic goods through Serbia and Montenegro, including fuel, steel, and chemicals.¹³³

B. The Effectiveness of the First Mandatory Economic Sanctions

The effectiveness of sanctions on a state like Serbia-Montenegro, given its location at the heart of central Europe, is questionable. First, Serbia and Montenegro are bordered by the Former Yugoslavian Republic of Bosnia-Herzegovina. Because these countries were formerly related, it is difficult to isolate Serbia commercially and to enforce embargoes, without also cutting off Bosnia. There still remain large import and export ties that economically link Bosnia-Herzegovina and Serbia-Montenegro; to isolate Serbia is in effect to isolate Bosnia-Herzegovina, the country the UN is supposedly trying to help. Second, Serbia shares not only a Soviet-influenced communist history with Bulgaria, but also a common border. Bulgarian officials estimate that 100,000 tons of crude oil passed into Serbia only seven months after the

Many countries responded to Resolution 757. For example, on May 30, 1992, President Bush issued Executive Order No. 12808, 3 C.F.R. 305 (1992), and declared that Serbia's seizing of territories in Bosnia constituted a threat to U.S. national security. Marian Nash (Leich), *Contemporary Practice of the United States Relating to International Law*, 87 AM. J. INT'L L. 595, 614-15 (1993). On June 5, 1992, President Bush issued Executive Order No. 12810 imposing a trade embargo on Serbia-Montenegro, in compliance with Security Council Resolution 757. *Id.* at 615. Regionally, NATO and the WEU agreed on a maritime operation to monitor the enforcement of sanctions. *Chronology*, *supra* note 123, at 637. Many of the regional organizations had already posted monitoring missions to enforce the economic sanctions imposed voluntarily by the EC and the United States *Id.*

130. The Resolution also called upon nonmember states to implement the measures outlined in the Resolution. S.C. Res. 757 (May 30, 1992).

131. See Joyner, *supra* note 72, at 30-31.

132. *Id.* at 19-20.

133. In addition, NATO and WEU authorized a naval blockade to intercept sanction-violating vessels in the Adriatic. James L. Graff, *Leaky Sanctions*, TIME, Nov. 30, 1992, at 47.

embargo was imposed in May, 1992.¹³⁴ One custom official said: ““We are following the sanctions to the letter, but considering the amount of traffic through here, the Serbs are going to get through the winter just fine.””¹³⁵ Many Serbian gangs made a living from profiteering and sanction busting, creating a Mafia-style Belgrade night life and a criminal culture that the Director of Belgrade’s Criminological Institute has compared to prohibition in the United States.¹³⁶ For the rest of the Serbian and Bosnian population, this illicit trade meant black market prices that many people could not afford. Yugoslav Prime Minister Milan Panic implored that ““the sanctions . . . be lifted, because they are hurting the innocent and enriching the warmongers who support Milosevic.””¹³⁷ Perhaps worse, the Milosevic regime in Serbia was using the sanctions to its advantage by claiming that Serbia was being victimized by the world and that he, Milosevic, was the only President the people can trust.¹³⁸ One politician noted “the people don’t understand what they can do to end the sanctions. . . . The West has to tell the people the conditions. Milosevic is the problem—the West must point to him now.”¹³⁹

C. *The Second Wave of Sanctions and Their Effects*

In April, 1993, due to the still widespread violations of the sanctions by land, river, and sea routes, the UN embargo on Serbia-Montenegro was tightened, adding a maritime exclusion zone and a freeze on all financial assets and overseas property, including transportation.¹⁴⁰ The international community’s reaction to the Bosnian crisis indicated that the international community had concluded that the generally accepted norms of international behavior had been violated, and therefore any action to redress these violations is legitimate. Flagrant violations of the international economic sanctions led to the Security

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* Milosevic is the nationalistic President with the goal of creating “a greater Serbia.” *Id.*

138. Graff, *supra* note 133, at 47.

139. *Id.*

140. James C. O’Brien, *The International Tribunal for Violations of International Law in the Former Yugoslavia*, 87 AM. J. INT’L L. 639, 640 n.6 (1993) (citing S.C. Res. 820 (April 17, 1993)).

Council's adoption on May 25, 1993 of Resolution 827¹⁴¹ which determined that the on-going violations of international humanitarian law in Bosnia constituted a threat to international peace and security.¹⁴²

Despite the tightening of economic sanctions, the war in Bosnia did not stop. In addition, there has been no resolution to the issue of the right of self-determination, the issue that keeps the Bosnian Serbs, Bosnian Croats, and Bosnian Muslims fighting.¹⁴³ Although the economic sanctions imposed by the UN have had effects, the sanctions' primary goal of ending the fighting and senseless killing in Bosnia was not one of them.¹⁴⁴ The combination of trade embargo and war has wreaked havoc on the Serbian economy. One news reporter stated that "Serbia is in the grip of hyper-inflation that sees its money change value three times each day. Pay packets given in the morning must be spent by lunch time before the afternoon fix, and a later evening fix chops twenty per cent off their value."¹⁴⁵ In September, the Serbian government began rationing food for the first time since 1948.¹⁴⁶ In January 1994, inflation reached a rate of 313 million percent.¹⁴⁷ Sanctions have crippled the Yugoslav economy, but their practical effect has been to devastate the middle class, while "making the men who control the war very rich."¹⁴⁸ The people most hurt by the sanctions are not those fueling the conflict, but are instead ordinary people, "whose wages are about one-fifteenth what they were worth in 1991."¹⁴⁹ In addition, the economic sanctions have lost popularity with the countries surrounding Serbia. Hungary already lost \$1.3 billion in commerce due to the sanctions.¹⁵⁰ Bulgaria and Romania have lost \$3 billion and \$7 billion in commerce,

141. S.C. Res. 827 (May 25, 1993), reprinted in 32 I.L.M. 203 (1993).

142. O'Brien, *supra* note 140, at 640.

143. See David B. Ottaway, *Hungary May Normalize Its Ties With Belgrade*, WASH. POST, Feb. 6, 1994, at A26.

144. Woodward, *supra* note 126, at 26.

145. Chris Stephen, *Win Likely For Milosevic*, NEW STATESMAN & SOCIETY, Dec. 17, 1993, at 12.

146. John Pomfret, *Neighbors Enforce Yugoslav Embargo*, WASH. POST, Sept. 14, 1993, at A8.

147. James Rupert, *Yugoslavia's Inflation Ebbs But Stability Remains Precarious*, WASH. POST, Feb. 19, 1994, at A22.

148. Neely Tucker, *Splintered Serbia Stays Off Course Blaming Sanctions And Seeing No Choice, Voters Will Stand Pat*, Detroit Free Press, Dec. 19, 1993, at 1F.

149. *After 2 Years, Serbs Thumb Noses at UN Sanctions to End Bosnia War*, CHIC. TRIB., May 30, 1994, at 4.

150. Ottaway, *supra* note 143, at A26; see also Rupert, *supra* note 147, at A22.

respectively.¹⁵¹ Vladimir Zhirinovskiy, the leader of Russia's ultra-nationalist opposition, has stated that "the West should be punished for the economic sanctions it has imposed on Serbia."¹⁵²

Meanwhile, Diesel fashion apparel as well as Italian designer swimwear reach Belgrade via Macedonia "through a sanctions barrier that is less a wall than a sieve."¹⁵³ Despite the fact that Serbia was the first to issue a 50,000,000,000 bank note in December of 1993, the Republic continued to survive as did huge black marketeering rackets, drugs and gun running, currency speculation, and car theft rings.¹⁵⁴ Serbia was said to be self-sufficient in food because porous borders allowed fuel and other vital supplies to enter the country.¹⁵⁵ In January of 1994, Serbia's hyperinflation was stabilized by the implementation of an emergency economic program that paired the Yugoslav dinar with the German mark.¹⁵⁶ The economist who devised the program, Avramovic, said "Yugoslavia can no longer be blackmailed by sanctions."¹⁵⁷

The fact that Serbia itself did not give up despite the incredible hardships the sanctions caused seems to indicate that UN-imposed economic sanctions had the opposite effect of bringing the Serbs to the bargaining table. The goal of sanctions is to bring about peace, not destroy a country's well being so that it will take years for it to recover.¹⁵⁸ When Milosevic won the elections in December 1993,¹⁵⁹ the isolation of Serbia by the sanctions and the international community only reinforced the strength and credibility of his message to his countrymen, that "[Serbia is] surrounded by enemies. Like all our foes in the past, they want to destroy us. To survive, I am the only option."¹⁶⁰ A Serbian economist, Bajec, commented that most people blame the West for their country's predicament instead of the government and its economic

151. Rupert, *supra* note 147, at A22.

152. Zhirinovskiy Warns NATO, WASH. POST, Jan. 31, 1994, at A12.

153. Stephen, *supra* note 145, at 12.

154. John Pomfret, *Serbs Survive Sanctions With Pride, Genius—And Scams*, WASH. POST, Dec. 28, 1993, at A9.

155. *After 2 Years, Serbs Thumb Noses at UN Sanctions to End Bosnian War*, *supra* note 149, at 4.

156. Rupert, *supra* note 147, at A22.

157. *After 2 years, Serbs Thumb Noses at UN Sanctions to End Bosnian War*, *supra* note 149, at 4.

158. Rupert, *supra* note 147, at A22.

159. Pomfret, *Serbs Survive Sanctions*, *supra* note 154, at A9.

160. *Id.*

policies.¹⁶¹ He noted that Milosevic found “the sanctions [to be] a convenient excuse for all of the country’s economic woes.”¹⁶² The editor of the independent weekly newspaper, Petar Lukovic, summed up the Serbian resolve nicely when he said that “in Serbia, the national blindness and warlike madness are much stronger than hunger or death.”¹⁶³

D. *Sanctions Were Perhaps Not the Right Choice*

Economic sanctions were perhaps not the right choice for international law enforcement in this type of situation. One commentator has noted that “the use of sanctions assumed there would be democratic pressure from below to change the regime or its policies.”¹⁶⁴ Instead, greater economic hardship requires people to focus more on survival rather than on political activity.¹⁶⁵ The Serbian media is controlled by the Milosevic regime because the sanctions forbade any external assistance to maintain an independent media. As a result, it had the power to interpret the sanctions in a light most favorable to the government and its goals of a “Greater Serbia.”¹⁶⁶ Clearly, the UN did not intend these results when it imposed its international economic sanctions on Serbia.

Further evidence of the ill-advisedness of sanctions as applied to the Former Yugoslavia is the success of the “military” operations by the UN and NATO in Serbia. NATO adopted in early February 1994 “a new two-track policy: an ultimatum to the Serbs and Bosnians to withdraw their artillery from Sarajevo, and an American agreement to join Britain and France in pressuring the Bosnians to sign the Owen-Stoltenberg peace plan.”¹⁶⁷ Nothing much ever came of the Owen-Stoltenberg peace

161. Pomfret, *Neighbors Enforce Yugoslav Embargo*, *supra* note 146, at A8.

162. *Id.*

163. *After 2 Years Serbs Thumb Noses at UN Sanctions to End Bosnian War*, *supra* note 149, at 4.

164. Woodward, *supra* note 126, at 27.

165. *Id.* at 26-27.

166. *Id.* at 27.

167. Charles H. Fairbanks Jr., *Formula For Future War, The Owen-Stoltenberg Map Is The Most Unworkable Territorial Arrangement In Modern History*, WASH. POST, Feb. 16, 1994, at A19. The Owen-Stoltenberg peace plan attempted to partition Bosnia amongst Serbia, Croatia and a prospective Muslim majority state. Isolated areas would have been linked to the main countries by tunnels or corridors that will purportedly be guaranteed by U.N. forces, that are supposed to “manage” Sarajevo for two years. Fairbanks and other commentators criticize this plan as being the West’s way of getting out of a problem it made worse by the way of economic sanctions. *Id.*

plan because the Serbs kept on fighting.¹⁶⁸ However, the ultimatum proved to be much more successful. The Bosnian Serbs were allowed ten days to remove all of their heavy weapons from a twenty kilometer zone surrounding Sarajevo or be subject to bombing attacks by U.S. and NATO planes and other peacekeeping troops.¹⁶⁹ The drafting of the ultimatum was largely in response to an exaggerated display of brutality on the part of the Bosnian Serbs. It is unfortunate that it required a brutal attack on Sarajevo, which killed sixty-eight people in a central marketplace,¹⁷⁰ to get the international community to actually do something with force. However, the Sarajevo ultimatum did produce results. Since February 1994, over 300 Bosnian Serb heavy weapons have been removed from the no-weapon zone or placed under UN control.¹⁷¹ Furthermore, the Sarajevo ultimatum led to the creation of the Bosnian Muslim-Bosnian Croat federation, an agreement signed March 18, 1994 at the White House by Muslim and Croatian leaders.¹⁷²

E. The Sanctions' Role in the Peace Plan

Credit must be given to the use of force as an accelerator towards finding a solution to the crisis in Bosnia. The Muslim-Croat federation is a product of that force and has significantly changed Serbian leverage at the bargaining table. The U.S. State Department has said that the agreement is "of strategic importance" because it "changes the power equation in the area and places greater pressure on the Serbs to join negotiations."¹⁷³ Spurred by the shelling of Gorazde in April in contravention of a previous cease-fire,¹⁷⁴ the international community

168. See John Pomfret, *President of Serbia Tells Allies in Bosnia to Accept Peace Pact*, WASH. POST, Aug. 1, 1994, at A16.

169. President William J. Clinton, *Ending the Conflict in Bosnia*, Radio Address to the Nation, (Feb. 19, 1994), in 5 DEP'T ST. DISPATCH 9, Feb. 28, 1994, at 101.

170. Stephen S. Rosenfield, *Lucking Out in Bosnia*, WASH. POST, Mar. 4, 1994, at A23.

171. Anthony Lake, *Renewing The Momentum Toward Peace In Bosnia*, Address at Johns Hopkins University (April 7, 1994), in 5 DEP'T ST. DISPATCH 17, April 25, 1994, at 226, 228.

172. *Id.*

173. *Id.*

174. In April 1994, the Muslim town of Gorazde was shelled, when it had been declared a "safe haven" only a year earlier by the U.N. The U.N. called in two air strikes but the Bosnian Serbs attacked without mercy, killing forty-four people and wounding 137 in one day. After losing one plane, the U.N. convinced the Bosnian Serbs to agree to a cease-fire which they promptly violated. See Ruth Marcus, *U.S. Backs NATO Shift In Bosnia*, WASH POST, April 21, 1994, at A1. Neither the U.N., NATO, nor the United States acted to punish the Serb rebels for what was effectively a slap in the face to every recognized international law norm. These groups

had lost patience with the twenty-seven-month-old war in Bosnia and decidedly made a good faith effort to impose a peace plan on Bosnia's Serbs, Croats, and Muslims since they could not work out an agreement on their own.¹⁷⁵

During the summer months of 1994, the United States, France, Germany, Russia, and the United Kingdom (Contact Group) authored a peace plan that would partition Bosnia into two halves: forty-nine percent going to the Bosnian Serbs and fifty-one percent going to the Muslim-Croat federation.¹⁷⁶ However, the Serbs now control over seventy percent of the Bosnian Republic and did not seem likely to vote for the plan.¹⁷⁷ Drazenko Djukanovic, the editor of a Sarajevan newspaper, stated that according to a poll he commissioned, he "would have to force someone to vote for it."¹⁷⁸ However, the peace plan was full of "'carrots and sticks' to reward those who accept the plan, and punish those who reject it."¹⁷⁹ Although the Bosnian government accepted the plan unconditionally, the Bosnian Serbs rejected it twice within the ten days after which the major powers demanded a response.¹⁸⁰ The foreign ministers of the major powers threatened that punishment would come in the form of much tougher international economic sanctions, and possibly in a lifting of the international arms embargo on Bosnia.¹⁸¹

F. *Serbia Abandons Her Bosnian Brothers*

Milosevic, the head of the Federal Republic of Yugoslavia, took this threat very seriously. One day after the five powers threatened to tighten global economic sanctions, Milosevic decided that he would rather abandon his Bosnian Serb brethren and the dream of a "Greater

finally did respond by issuing another ultimatum, which followed the same format as the Sarajevo ultimatum issued two months earlier. Editorial, *The Bosnia Disaster*, WASH. POST, April 19, 1994, at A14.

175. William Drozdiak, *Big Powers Give Final Endorsement To Partition Plan For Bosnia*, WASH. POST, July 6, 1994, at A21.

176. *Id.*

177. *Id.*

178. Jonathan C. Randal, *Defiant Bosnian Serbs Begin Vote On Peace Plan*, WASH. POST, Aug. 28, 1994, at A17.

179. Drozdiak, *supra* note 175, at A21.

180. Pomfret, *President of Serbia*, *supra* note 168, at A16.

181. Drozdiak, *supra* note 175, at A21. As of October 26, 1994, Congress was pressuring President Clinton to get a firm date from the U.N. to lift the international arms embargo on Bosnia within six months. Daniel Williams, *Clinton's Defiant Policy on Bosnian Serbs Withers Away*, WASH. POST, Oct. 26, 1994, at A1.

Serbia” in order to protect Yugoslavia as well as his position from another round of tougher sanctions.¹⁸² In Belgrade on July 31, 1994, Milosevic stated that “[c]ommitment to peace is in the interest of the entire Serb nation . . . [t]his means the proposal of the international community must be accepted.”¹⁸³ Despite the fact that Milosevic was the man who fueled the crisis in Bosnia and created the strident Serb nationalist movement, he was now the man nominally calling for peace and demanding that the Bosnian Serbs give up everything he told them to fight for—200,000 lives later.

The international community was obviously very wary of Milosevic’s new attitude and was not about to trust him blindly. On August 4, 1994, Milosevic issued an order banning everything except humanitarian aid from reaching the Bosnian Serbs.¹⁸⁴ However, black market fuel, cigarettes, light weapons, and even watermelons managed to reach the Bosnian Serbs.¹⁸⁵ Starting August 27, 1994, Milosevic denied entry to Bosnian Serb leaders into Serbia, froze their banking transactions, cut their postal and telephone communication lines, and supposedly banned vital fuel imports into Bosnia.¹⁸⁶ However, the Bosnian Serbs are holding their ground. Bosnian Serb officials expressed “confidence in their ability to withstand their growing international isolation” and the additional sanctions imposed on them by their former patron.¹⁸⁷

On September 8, 1994, Serbia accepted a compromise plan for monitoring the trade embargo imposed by it on the Bosnian Serbs.¹⁸⁸ However, Milosevic did not make this concession for nothing. In return for allowing international observers to monitor the borders between the two countries, the Contact Group agreed to recommend to the Security Council that the global economic sanctions against Serbia be relaxed progressively.¹⁸⁹ The UN viewed this compromise as a sincere effort on Milosevic’s part to enforce the Serbian trade embargo and force the Bosnian Serbs to accept the peace plan, which they had already rejected

182. Pomfret, *President of Serbia*, *supra* note 168, at A16.

183. *Id.*

184. John Pomfret, *Bosnian Serbs Still Get Supplies Despite Belgrade’s Blockade*, WASH. POST, Aug. 14, 1994, at A31.

185. *Id.*

186. Randal, *supra* note 178, at A17.

187. *Id.*

188. *Serbia Leader OKs Trade Monitoring Under Deal, UN Set To Ease Sanctions*, CHIC. TRIB., Sept. 9, 1994, at 7.

189. *Id.*

numerous times.¹⁹⁰ On September 23, 1994, the UN Security Council adopted Resolution 943, which suspended several of the sanctions embodied in Resolution 757 for 100 days pending the Security Council's receipt of a report from the Secretary-General that the Steering Committee certifying that the Federal Republic of Yugoslavia has in fact effectively closed its borders to the Bosnian Serbs.¹⁹¹ Resolution 943 allowed the reopening of Yugoslav airports to international flights, the lifting of the ban on ferry service between Serbia and Italy, and the lifting of the ban on participation in international sporting and cultural events.¹⁹² The good news of the confirmation arrived on October 5, 1994, as Serbia and Montenegro rejoiced in its "readmission into the circle of civilized nations."¹⁹³ The Security Council also adopted Resolution 942, which ordered a halt to all trade with the Bosnian Serbs, a blockage of payment of dividends to them, a freezing of their assets in other countries, a ban on boats trying to reach Bosnian Serb-controlled towns by river, and a prohibition against any Bosnian Serb official or prominent supporter entering another country.¹⁹⁴

However, despite the toughening of sanctions by the UN, the Bosnian Serbs still have not accepted the fifty-one/forty-nine percent partition peace plan presented to them by the Contact Group.¹⁹⁵ Perhaps, the Bosnian Serbs are not eager to accept forty-nine percent when there has been talk by a group of international negotiators about allowing "the Bosnian Serbs [to] take their territorial winnings and link up neighboring Serbia."¹⁹⁶

VI. THE CRISIS IN BOSNIA IN LIGHT OF PAST EXPERIENCE

The international community's reaction to the atrocities of this crisis has been disappointing. Despite the fact that women are being raped, people including children are being murdered senselessly, and whole towns are being ethnically cleansed, the UN's best solution was to

190. Stanley Meisler, *UN Moves To Ease Yugoslavia Sanctions*, L.A. TIMES, Sept. 24, 1994, at A8.

191. S.C. Res. 943, 3428th mtg. (Sept. 23, 1994).

192. *Id.* at ¶ 1.

193. Laura Silber & Carol J. Williams, *UN Begins Trial Lifting Of Yugoslavia Sanctions*, L.A. TIMES, Oct. 6, 1994, at A8.

194. Meisler, *supra* note 190, at A8.

195. Williams, *supra* note 181, at A1. This Article is dated October 26, 1994, and does not mention a Bosnian acceptance of the peace plan.

196. *Id.*

impose economic sanctions on Serbia in the hopes that the devastated economy would no longer be able to fund the Bosnian Serbs. However, in the final analysis, the UN-imposed economic sanctions may have worked. Sanctions deserve credit for exhausting Serbia financially and psychologically to the extent that it will no longer support the Bosnian Serb rebels in their endeavors to create a "Greater Serbia." However, the sanctions took more than two years to achieve that goal, and judging from its reaction, the international community did not seem to mind that it cost Bosnia 200,000 lives. Economists and politicians predict that the Bosnian Serb rebels will not be able to carry on fighting without Serbia's help and vital resources.¹⁹⁷ At first glance, the economic sanctions have definitely brought peace in Bosnia one step closer.

A. *Sanctions May Have Been Effective, but at What Price?*

The international community and especially the UN should learn from this situation that not only is the target country hurt by the sanctions, but other countries in the surrounding area are impacted as well.¹⁹⁸ Membership in the UN is both a privilege and a commitment, but Members cannot be expected to remain steadfast in their commitment when they are losing billions of dollars in needed commerce. The economies of Bulgaria, Romania, Macedonia, and Hungary have been hurt by the sanctions, and it seems unfair that the former Eastern Bloc countries which are in greater need of economic stability should bear the brunt of the economic sanctions instituted by the more economically solid West.¹⁹⁹

On balance, economic sanctions have had more of a negative than a positive effect with respect to the crisis in Bosnia. Despite the fact that Serbia abandoned its support for the Bosnian Serbs largely due to the sanctions, the Bosnian Serbs continue to fight. There is no guarantee that Serbia will be able to influence them. Given the Bosnian Serbs' late September attack and shut down of the Sarajevo Airport in response to the Serbian embargo, their acceptance of the peace plan does not appear on the horizon.²⁰⁰ The Yugoslav economy has been badly damaged,

197. See Pomfret, *Bosnian Serbs Still Get Supplies*, *supra* note 184, at A31.

198. Ottaway, *supra* note 143, at A26.

199. *Id.*

200. *UN Steps Up Sanctions on Bosnian Serbs, Rewards Serbia*, CHRISTIAN SCIENCE MONITOR, Sept. 26, 1994, at 2.

making rapid economic growth more difficult to achieve. Even if economic sanctions do eventually bring peace, the Bosnian economy will take a long time to rebuild; the time required for sanctions to produce results have allowed the Bosnian territory to be decimated and the national morale to be leveled. Economic sanctions have bred such intense hatred and resentment in Bosnia and Serbia, that if these countries ever do agree to peace, one cannot imagine that it would endure.²⁰¹ In taking a close look at the effectiveness of economic sanctions in the Bosnian crisis, one would be hard pressed to say they were worth it. On the other hand, a significant use of force like the one used in Iraq might have saved lives by ending ethnic cleansing. With that in mind, it becomes difficult to see the point of economic sanctions as a tool for enforcing international law.

B. International Preference for Sanctions

It is important to recognize that the UN mission is to preserve peace among nations. The UN prefers economic sanctions as a tool to enforce international law for pragmatic reasons—they are less expensive. Secretary-General Boutros-Ghali wrote in a letter to the Security Council that “the United Nations would be overwhelmed by the task of raising and running a 60,000 troop operation to keep the peace if the Bosnian Serbs agree to the plan.”²⁰² If the UN does not have the funds, this places the responsibility on countries like the United States. The United States would then have to make a determination as to where the crisis in Bosnia fits on the sliding scale of U.S. interests located abroad. Anthony Lake explained that the U.S. interests in Bosnia “justif[y] only a limited use of force, and generally under international auspices.”²⁰³ Implicit in this categorization is that the U.S. interests in Iraq, since they warranted a use of force, were more important than the U.S. interests in Bosnia, which do not. If one looks closely, this means that the U.S. interests in oil are more important than the U.S. interests in saving some 200,000 lives.

The right to self-determination for the Bosnian Serbs, the Bosnian Croats, and the Bosnian Muslims is no different from that of the Kuwaiti people. However, Kuwait was valiantly rescued from its enemy

201. See generally Fairbanks Jr., *supra* note 167, at A19.

202. Julia Preston, *Boutros-Ghali Recommends Pullout of All UN Forces From Balkans*, WASH. POST, July 26, 1994, at A12.

203. Lake, *supra* note 171, at 229.

by UN troops and air force, whereas the warring factions in Bosnia have been presented with peace plans and ultimatums. It took the international community at least three years since the fighting began in Croatia to take decisive action and come up with a viable peace plan that the Bosnian Serbs still have not accepted. In contrast, it took the UN only three months to decide that economic sanctions were not working in Iraq and that the use of force was a better alternative. Is the world community to assume that Kuwaiti lives are worth more than Sarajevo lives? With respect to the crisis in Bosnia, one commentator has stated that “[t]he United Nations has applied a contradictory double standard in deciding when and how to use force to carry out its peacemaking or peacekeeping mandates, a double standard that makes diminishing sense and indeed almost a mockery of its intent.”²⁰⁴ Implicit in this double standard is the disturbing reality that the UN and the major powers perceived the Iraqi crisis as more significant than the crisis in Bosnia.

The international community needs to take a hard look at its economic sanctions policy and admit that sanctions are not suited for every crisis.²⁰⁵ It should reconsider why it prefers sanctions to other potential alternatives, such as the use of force. Gary Hufbauer has stated that the preference for economic sanctions lies in the fact that “most Americans don’t have their heart in police actions and because press and public criticism is fierce, U.S. policy-makers keep coming back to [economic] sanctions, mainly because they want to be seen to be doing something.”²⁰⁶ A use of force in Bosnia might have been more effective than sanctions, and probably would have caused fewer long-term damaging effects. The few times air strikes were used to enforce ultimatums in Bosnia, they were used primarily to save face. It has been noted that the UN did not even contemplate the use of force in Bosnia because it was “trigger shy” after the Iraqi crisis²⁰⁷ because the United States was perceived to have “hijacked the Security Council” for its own national interests.²⁰⁸ If this is true, then the UN has no backbone. As a

204. Editorial, *UN Double Standard Means Double Trouble For Hot Spots*, NAT’L CATH. REP., July 16, 1993, at 28.

205. Oscar Schacter, Address Before the American Society of International Law 86th Annual Meeting (April 3, 1992), in 86 AM. SOC’Y INT’L J. 320 (1992).

206. Robin Wright & Norman Kempster, *Sanctions Likely To Remain As US Policy Of Choice*, L.A. TIMES, Feb. 7, 1994, at A1.

207. Charles William Maynes, *Containing Ethnic Conflict*, FOREIGN POL’Y, Spring, 1993, at 4.

208. Smith, *supra* note 114, at 306.

consequence, the UN must realize that its peacekeeping policy appears inconsistent to the rest of the world. Kuwait was thus implicitly defended by the UN,²⁰⁹ whereas it would appear that Bosnia has been left alone in the arena without a champion.²¹⁰ As a result, the international credibility of the UN as well as the legitimacy of its actions suffer tremendously.

VII. CONCLUSION

In the fabled days of King Arthur's Court, even the poor and unkempt found a champion. However, today's UN may have forsaken that tradition. The Member States undertake a commitment to enforce international law under the leadership of the UN Security Council. By the same token, the UN, as an organization, undertakes a commitment to peacekeeping, including an implied commitment to impartiality—to be every nation's champion, if need be. However, the UN has not always successfully met its commitments.

Economic sanctions do not necessarily provide the miracle solution to every international problem. Although the imposition of sanctions are a means of providing notice to a state that it is violating international law, to achieve higher goals such as peaceful resolution of conflict, a detailed analysis of the problem as well as realistic goal-setting is required. Economic sanctions must be considered carefully and tailored to each situation, so that they will not hurt the parties they were intended to help, such as the Bosnians.²¹¹ If the UN is to remain a legitimate governing body of international law, it must be consistent because inconsistency breeds contempt. As a result, states that feel overlooked are more likely to refuse to comply with UN action. This is counter-productive because unity is necessary among the member states not only in the form of the sanctions imposed, but also in the dedication

209. Wright & Kempster, *supra* note 206, at A1. "Operation Desert Storm is the exception and Bosnia the rule in responding to aggression in the post-Cold War period." *Id.*

210. Furthermore, President Clinton has said that if the Bosnian Serbs do not accept the latest peace plan, that the United States will urge the U.N. to lift the international arms embargo on the Bosnian Muslim-Croat federation. *UN Steps Up Sanctions On Bosnian Serbs, Rewards Serbia*, *supra* note 200, at 2. The Bosnians will thus be abandoned to fend for themselves after over two years of being disadvantaged as to the Serbs with inferior quality weapons.

211. These conclusions were also reached by Mr. Oscar Schacter, Mr. Scheffer, and Mr. Edwin Smith during the panel discussion organized by the American Society of International Law. See *The United Nations Response To A Changing World: International Law Implications*, Panel Discussion Before the 86th Annual Meeting of the American Society of International Law (April 3, 1992), in 86 AM. SOC'Y INT'L L. 303 (1992).

necessary to comply with them. Without unity, tragedies such as Bosnia result: black markets created by ineffective trade barriers, and devastation and senseless killings by rebels likely dressed in the latest fashion wear imported from Italy.