

There is no statutory power that would permit the Government to prohibit Canadian enterprises from making financial, engineering or other services available to another country.

With regard to transportation, there is only very limited authority for the Government to selectively ban traffic at air or sea ports for political reasons or to order ships or aircrafts registered in Canada not to call at certain destinations.

Another good example of the difficulty of applying current legislation is the Trading with the Enemy (Transitional Powers) Act of 1947. This Act might appear to be available to apply certain economic sanctions, such as freezing and sequestering state assets; however, the Act is not clear on the circumstances in which it may be applied. Moreover, some provisions of the Act might not meet the test of the Canadian Charter of Rights and Freedoms.

As for reliance on the Security Council, it is important to keep in mind that it has been rare for the UN to agree on the imposition of sanctions. Prior to the occupation of Kuwait by Iraq, the only instances were the prohibition of arms sales to South Africa and the trade embargo against former Rhodesia. Crises relating to Afghanistan, the Falkland Islands, Iran and Poland, in which the Security Council was unable to take binding measures, have demonstrated the difficulties that may arise. In those cases, the Government found that existing statutory authority restricted the range of options available to respond to the crises.

Past experience has shown that the enactment of special legislation to deal with a crisis takes time. The opportunity to influence a favourable resolution of the crisis may pass, or the assets of a legitimate government be dissipated by the time the special legislation is adopted. This kind of process also presents particular problems for crisis management if Parliament is not sitting.

The proposed Legislation

The Act to Provide for the Imposition of Special Economic Measures will enable the Government to apply a broad range of economic sanctions in situations where the UN Security Council does not take binding measures, where existing legislation is inappropriate or where there is currently no legal authority.

The Bill provides two alternative thresholds for the application of sanctions. Sanctions may be applied:

- following a determination that, in the opinion of the Government, a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis; or