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For Effective and Appropriate Sanctions

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(March 1993)

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Canada

FOR EFFECTIVE AND APPROPRIATE SANCTIONS

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SUMMARY

The effectiveness of economic sanctions imposed by Canada has thus far received little attention. The purpose of this paper is to address this neglected issue. We will present a brief survey of economic and non-military sanctions and attempt to assess the consequences of Canadian moves against countries guilty of misconduct in the eyes of the international community.

After reviewing specific cases of sanctions imposed in the past, including several involving Canada, we conclude that sanctions are far from being the most appropriate tool in all cases. They often fail to achieve their purpose due to their limitations and problems of implementation.

This being said, there remain cases in which sanctions are the most reasonable practical way to send a signal, not only to the offending country but also to other countries, which may conclude that they could also be the target of coordinated international sanctions if they imitate the conduct or policies of the target country. Sometimes, the mere threat of sanctions is enough to prompt a country to mend its ways, provided its leaders are given time to weigh the advantages and disadvantages of standing up to international pressure.

The few cases in which sanctions have succeeded in altering the behaviour of the target suggest some prior conditions for success.

In most cases, it is important to accurately gauge the target country's ability to withstand the pressure we mean to apply. The reaction of its elites, the level of internal solidarity, possibly reinforced by nationalism, race and religion, the hardships that will result for the population, and the target's sensitivity to international public opinion are also important factors. The target's economic or trade dependence upon other countries and geographic factors (area, landlocked position, etc.) must be considered.

Moreover, the international community's cohesion has been an important factor in all cases in which sanctions have been successful. This is particularly significant given the fact that there is little means by which a country can be compelled to apply sanctions, or prevented from violating sanctions with impunity should political, economic or strategic considerations lead it to defy the sanctioning countries. Consensus on the wrongdoing and on the means to be taken to modify it is essential. The resulting paradox is that the measures are generally reduced to the lowest common denominator — i.e. the wider the agreement on adopting sanctions, the weaker the sanctions tend to be and the less

likely they are to have a significant effect on the target state. In many cases, the stigma is more effective than the real economic impact.

Sanctions are more likely to be successful when the objectives are clearly defined and realistic. Incidentally, it is usually unrealistic to expect that sanctions will do more than exert a modest influence on changes in the target country. We should note the danger of imposing sanctions primarily to satisfy domestic interest groups, which may only raise expectations that cannot be realized.

As any signal may be misinterpreted, it is important to keep some manoeuvring room and also to allow the target nation some manoeuvring room, so it can alter its conduct or policies without losing face to too great a degree. Sanctions can be lifted in stages (or, if the country's behaviour worsens, stiffened) depending on progress towards the objectives. This document includes an extensive structured list of possible sanctions (pp. 31-33).

We recommend that appropriate attention be paid to instituting the requisite controls and authority when sanctions are imposed, clearly defining objectives, and assessing the costs to our own economy of imposing sanctions against another country.

In conclusion, Canada has thus far supported the imposition of economic or other sanctions in reaction to international events primarily when there has been a broad international consensus. There are various reasons for this: we do not have the economic power to be effective acting alone; Canadian law, notably the Export and Import Permits Act, does not authorize the imposition of controls except under a multilateral agreement; economic sanctions should not be considered an ordinary instrument of diplomacy; unless there are overriding imperatives, the efforts of Canadian businesses on international markets should not be undermined.

I. INTRODUCTION

There have been few studies of the economic sanctions imposed by Canada, or rather their impact on our economy and their effect on the target country.¹ Without claiming to be exhaustive, this paper aims to help fill the gap and attempts to offer an overview of the subject.

Since Parliament passed the Special Economic Measures Act (SEMA) in June 1992, sanctions have been a hot topic if only because of the controversy about their effectiveness in achieving political objectives in countries such as Yugoslavia, Haiti and Iraq. There also seems to be a greater likelihood that the United Nations will impose sanctions on countries deemed guilty of human rights violations, or that individual countries, including the United States, will introduce their own sanctions against other nations and seek the support of the international community.

The United Nations Act (UNA) is potentially the most powerful instrument available to the government, given Canada's undertaking to implement Security Council orders, but the addition of the SEMA to our legal arsenal will allow a more flexible Canadian government response to calls for sanctions from bodies other than the UN Security Council, or pending a binding Security Council decision. For example, the SEMA could be used to satisfy public pressure for Canada to take a leading role in defending certain basic international principles, notably democracy, the protection of human rights, the inviolability of borders, opposition to terrorism and perhaps, in the future, the protection of the environment.

Sanctions are liable to have economic consequences for Canada. It is therefore important to refine the existing criteria guiding our actions in this area so the government can make informed decisions. We believed it would be useful to present a brief survey of the field and to draw some conclusions for consideration before special measures are taken against a target country.

We will review the instruments available to the Canadian government; present an overview of specific cases of sanctions imposed by the international

¹ In their book *Economic Sanctions Reconsidered* (Washington: Institute for International Economics, 1990), G.C. Hufbauer, J.J. Schott and K.A. Elliott survey many instances of sanctions applied by a large number of countries, including Canada in a number of cases. However, they mention only 5 specific cases in which Canada was alone or almost alone as a sanctioning country, having acted either unilaterally or with the US. These sanctions imposed against a variety of countries, including India, Pakistan, South Korea, the European Community and Japan, all related to nuclear safeguards. They also mention the threat of Arab sanctions in 1979 over the question of the site for Canada's embassy in Israel.

community, including Canada, over the past few years; identify general principles which should be considered when evaluating the probable costs and effects of specific sanctions; and draw conclusions applicable to future actions.

II LEGAL INSTRUMENTS AND CANADIAN PRACTICE

The main legal instruments available to the Canadian government with respect to sanctions are the following:

- the Special Economic Measures Act (SEMA);
- the Immigration Act;²
- the United Nations Act (UNA);
- the Export and Import Permits Act (EIPA);
- the Customs Tariff.

The scope of these laws varies. The following is a summary of their provisions:

- **SEMA:** authorizes the government to impose a wide range of economic sanctions against another nation in response to a serious threat to international peace or security, or in response to a call by an organization of which Canada is a member, should such an organization determine that a country's behaviour violates international standards and recommend sanctions. These measures may relate to the import or export of goods and services (including financial services), the seizure or freezing of the target country's assets, technology transfers, or air and sea links.³ The Act allows for applications for compensation by affected parties in Canada to be considered without imposing any legal requirement on the government to act upon such applications.

² It should be noted, however, that the objectives of the Canadian Immigration Act do not allow for our immigration policy to be used to impose or promote international sanctions. In some cases, however, administrative decisions made under the Act can bolster sanctions imposed by Canada. For example, the range of services offered in a given country can be restricted and that country's nationals can be asked to go to a Canadian mission located in another country; however, their visa applications will still be judged on the same legal criteria. Similarly, extending authorized stays in Canada or suspending deportations to a given country can serve to indirectly support sanctions, as long as the reasons are based on immigration policy. The requirement that all applications to enter Canada be judged on criteria which do not infringe the anti-discrimination provisions of the Canadian Charter of Rights and Freedoms further restricts the use of the Immigration Act to support sanctions.

³ In some cases, these measures would be taken under laws governing specific sectors or activities, such as the Bank Act, Financial Institutions Act, Insurance Companies Act, Transport Act, etc.

- **UNA:** authorizes the government to issue necessary orders-in-council and regulations to implement measures recommended or ordered by the United Nations Security Council to give effect to a Security Council decision.⁴
- **EIPA:** authorizes the government to issue an Export Control List, an Import Control List and an Area Control List; to issue to any resident of Canada a permit to export controlled goods or to import controlled goods; and to ban trade in such goods without a permit.⁵ This Act relates primarily to trade and does not concern services⁶ or the seizure or freezing of assets. It will most probably be used in the future primarily for purposes of trade policy (e.g. quotas on textiles) and also to exercise quiet control over the sale of military equipment to other countries, whether or not they are subject to sanctions.
- **Immigration Act:** authorizes the government to withdraw the visa requirement exemption from the nationals of another country.
- **Customs Tariff:⁷** authorizes the Minister of Finance to recommend to the Governor in Council that the General Preferential Tariff be extended to or withdrawn from a developing country's goods.

Since 1979, Canada has implemented measures against the following countries: Afghanistan, Argentina, China, Cuba, El Salvador, Fiji, Guatemala, Haiti, Indonesia, Iran, Iraq, Kenya, Kuwait, Libya, Myanmar, Poland, South Africa, Soviet Union, Sri Lanka, Yugoslavia and Zaire.

⁴ It should be noted that Article 41 of the UN Charter is "open" with respect to the measures which the Security Council may recommend or order, and these measures may be binding upon member countries.

⁵ In practice, aside from cases related to trade policy, the EIPA has been used primarily against four major categories of countries: countries targeted by the Coordinating Committee for Multilateral Strategic Export Controls (COCOM); countries at war or close to war; countries with poor human rights records; and countries considered unstable. Each case is judged individually. The response to a permit application will depend on the situation and on the military application or dangerous nature of the goods and equipment which would be exported. An export permit may be refused in some cases, even when there is no official policy concerning a country or situation. A refusal of this type does not necessarily constitute sanctions for the purposes of this discussion, insofar as it sends no signal and is very discreet.

⁶ EIPA does not cover technology unless it is in a "physical" form, such as a book or diskette.

⁷ This Act has rarely been used for the purpose of sanctions. The only example is the recent case of Yugoslavia, which was removed from the list of countries to which the General Preferential Tariff (GPT) is extended following UN Security Council decisions.

These measures vary greatly in scope. They include sanctions such as:

- suspending or reducing bilateral aid (Haiti, Kenya, Guatemala, Zaire...);
- recalling our ambassador for consultations (Iraq, China);
- closing consulates general (Capetown, Johannesburg);
- suspending diplomatic relations (Iraq and Iran);
- not participating in the Moscow Olympics;
- curtailing Canadian diplomatic representation (South Africa and Iran) or restricting official contacts with some countries (Fiji...);
- restricting air or sea transport, freezing assets, refusing to allow financial transactions (Iraq, Yugoslavia);
- restricting foreign visa-holders' access to certain areas in Canada (Libyan students);⁸
- suspending official assistance for trade (e.g. South Africa) and/or official credit and insurance support provided through the Export Development Corporation (Iran, Iraq, Libya...);
- controlling the export of goods and technologies in physical form to target nations (through the EIPA's Export Control List), or controlling all exports to a country by placing the country on the Area Control List and requiring a permit for all exports (South Africa, Libya, Haiti, Yugoslavia...);
- controlling imports from target countries (Haiti, South Africa, Argentina...);

⁸ In this case, however, national security considerations may be invoked, not only the need for sanctions.

- withdrawing the General Preferential Tariff from the target country's goods,⁹ or withdrawing the country's eligibility of the Most-Favoured-Nation Tariff by "derecognizing" its GATT membership (Yugoslavia);
- voluntary sanctions, under which Canadian citizens are encouraged to reconsider investment plans or trade with some countries (South Africa);
- restricting tourism in Canada by banning flights from some countries (Afghanistan), reducing them (Poland), removing the visa exemption for the citizens of another country, or advising Canadian citizens to avoid travel to another country.¹⁰

III EXAMINATION OF REPRESENTATIVE CASES

1. Sanctions Defined

We must distinguish first of all between military, economic and political sanctions. For the purposes of this study, sanctions will be defined as non-violent measures aimed at bringing a country to "mend its ways,"¹¹ i.e. various economic or political measures intended to convince the target country to reconsider and modify its political conduct or even its form of government (in the case of Rhodesia and South Africa) so as to bring it more in line with internationally recognized customs, norms and conventions.

Canada has not participated in all such initiatives, for it has not always been in agreement with the sanctioning countries or convinced of the appropriateness or usefulness of applying sanctions against foreign "wrongdoers"; in some cases, the Canadian view has been that pursuing a dialogue would be more likely to yield results.

⁹ For example Korea, which claims to have been threatened with economic sanctions by Canada in early February 1993 due to what was seen as its uncooperative attitude with respect to the Newfoundland off-shore fishery. Questioned on the subject on February 12, the Secretary of State for External Affairs did not confirm Canada's intention to act against Korea (but did not rule it out), expressing confidence in a diplomatic solution to the conflict.

¹⁰ It must be borne in mind that Canada, unlike the US, cannot ban travel by its citizens to a country against which sanctions have been imposed.

¹¹ Sanctions of this type are similar to the measures described in Article 41 of the UN Charter, i.e. "measures not involving the use of armed force" to be employed to give effect to Security Council decisions. "These 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."

We must also define the nature of sanctions, for the scholarly literature on the subject is, if not abundant, at least substantial, and the concept of sanctions varies from one writer to another. In her book *International Sanctions in Contemporary Perspective*,¹² Margaret P. Doxey defines sanctions as penalties (non-violent by convention, although the occasional use of military force with UN Security Council authorization demonstrates that this option is not ruled out in extreme cases) threatened or imposed as a declared consequence of the target's failure to observe international standards or international obligations. In other words, sanctions include virtually all possible measures short of military force, which itself cannot entirely be ruled out, if only to increase the credibility of the sanctioning countries. Sanctions can be used in support of a country which is close to war, or in a state of declared war with another, allowing it to make a last attempt to persuade its adversary to change course before confronting it militarily, on the theory that it is better to convince than to conquer.

This definition excludes coercive measures adopted by countries for the sole purpose of obtaining a national advantage of some kind (in terms of trade, borders, etc.). We may add that retaliation under the GATT against other member states that fail to observe their commitments are not sanctions for the purposes of this study.

It would however be interesting to consider what might happen in the not-so-distant future should a country be suspected of failure to observe environmental standards in its manufacturing processes, agriculture or waste management. We simply note this possibility here without further elaboration, for there is already extensive discussion on the question by environmental and trade policy experts, and it may be several years before there is agreement on the advisability of retaliation against countries deemed guilty of harmful practices (and on whether nations would be entitled to adopt such measures).¹³

2. International Survey

We will first look at 10 cases of sanctions not covered by the UN and then at 7 cases more specifically involved the UN Security Council.

¹² Margaret P. Doxey, *International Sanctions in Contemporary Perspective* (Basingstoke: Macmillan, 1987).

¹³ For more details on the central questions and measures at issue in the debate on trade and the environment, see two recent Policy Planning Staff papers: M. Hart and S. Gera, "Trade and the Environment: Dialogue of the Deaf or Scope for Cooperation" (paper #92/11); K. Christie, "Globalization and Public Policy in Canada: in Search of a Paradigm" (paper #93/01, January 1993, pp. 60-68).

a) Italy (the Ethiopia affair)

The sanctions automatically imposed by the League of Nations against Italy following Italy's invasion of Ethiopia in October 1935 met with little success because of limited support. Some 50 nations did apply the sanctions, but the US was not a member of the League of Nations at the time and Great Britain and France, worried about Germany, were inclined to appease Italy. The speed with which the invasion of Ethiopia was completed led the League of Nations to lift the sanctions in May 1936, as they were not serving any useful purpose.

The US, Germany and Switzerland, three of Italy's major trading partners, remained neutral during the conflict, undermining the efforts of the other members of the League and allowing Italy to pursue its war effort without experiencing too many shortages on account of the sanctions. Italy did suffer in some respects, however, notably in its export trade, losing a significant segment of its foreign markets after three or four months. Italy's introduction of exchange controls and nationalization of banks and some sectors of industry in 1936 bear witness to the impact of the sanctions; these moves did however enable the Italian government to successfully pursue its war effort. As *The Economist* had anticipated, the sanctions were "highly inconvenient but not crippling." Two factors working against the success of sanctions were the lack of consensus on the appropriateness of collective sanctions to oppose the act of aggression and the lack of consistency in the objectives, which were never clearly defined or perceived by the sanctioning countries. Moreover, the popularity of Mussolini's aggression against Ethiopia in Italy strengthened his ability to withstand the sanctions; the Italian public paid little heed to the objections of the sanctioners, whose message was unclear and unconvincing.

b) COCOM

In the post-war years, Communist regimes were installed throughout eastern Europe. The West, which already had differences of opinion with the Soviet Union during the war concerning both the end and the means, adopted the policy of "containment" to restrain Communist expansion and limit the strength of the emerging Soviet bloc. One of the non-military means employed for this purpose was the Coordinating Committee for Multilateral Strategic Export Controls (COCOM),¹⁴ which was set up in 1949 and grouped on a voluntary basis the NATO countries (except Iceland) plus Japan and Australia. COCOM aims to

¹⁴ COCOM differs from the other cases of sanctions in that it is also a preventive and defensive measure and was not introduced to counteract a direct or immediate threat.

monitor and control the export of strategic goods and technology to Communist countries¹⁵ so as to limit their military-industrial potential. Over the years, other countries which did not belong to NATO collaborated with COCOM members towards those objectives.

COCOM therefore created detailed lists, which were periodically updated, of products and equipment for which the sale had to be submitted first to the granting in advance of an export permit. Those lists encompassed military supplies, equipment and supplies necessary to produce atomic energy, some telecommunication and computer equipment as well as everything which could be used to enhance the military potential of communist countries. The US proved to be one of the most active members of COCOM, partly because it was long the leading source of high-tech and also because of the volume of its military spending on NATO, which was greater than the military spending of all western European countries combined. However, the Europeans did not always share the views of the US; they felt more vulnerable to Soviet expansionism and therefore felt a greater need to placate the Communist countries by forging closer trade ties and increasing their dependence on the West. There were thus two major tendencies within COCOM, one of which advocated limits or bans on the longest possible list of goods (including equipment with civilian or military uses) while the other sought to keep the list as short as possible, under the circumstances.

The numerous restrictions imposed under the aegis of COCOM apparently had a modest effect on the growth and modernization of the Soviet bloc. Those restrictions were due to the cooperation and consensus among the technologically advanced G-7 nations and the other western countries. Some analysts believe that the Communist countries' growing economic lag behind the West was one of the factors that led to the collapse of Communist regimes in the region and consequently to the end of the Cold War. On the other hand, Hufbauer, Schott and Elliott¹⁶ argue that while the West succeeded in inflicting some added costs on the socialist bloc, it also had to bear considerable costs in lost opportunities for its exporters and missed chances to make the socialist countries dependent on the West. There were many attempts by western firms to circumvent COCOM rules by exporting to socialist countries through third countries

¹⁵ As of the time of writing, these include Albania, Bulgaria, the People's Republic of China, the Czech and Slovak republics, Mongolia, North Korea, Poland, Romania, the republics of the former Soviet Union and Viet-Nam. The governments of most of these countries have changed over the past few years and their continued inclusion on the list is under review.

¹⁶ G.C. Hufbauer, J.J. Schott, K.A. Elliott, *Economic Sanctions Reconsidered*, 2nd edition (Washington: Institute for International Economics, 1990) pp. 211-20.

or falsifying documents. In the final analysis, the sanctions probably played a relatively modest role; the collapse of these regimes and the reduction of the threat they posed to the West were caused primarily by poor economic management.

c) Cuba

There have been a variety of sanctions against Havana since 1960, when the US retaliated against the expropriation of American property on the island and the imposition of what were deemed to be discriminatory tariffs on US goods. The first measures were a total embargo on US exports (except food and medicine), an embargo on the import of Cuban sugar into the US, and the severance of diplomatic relations (1961), followed by a total two-way trade embargo in 1962 (except food and medicine) accompanied by restrictions on the charter of ships and on sea and air links.

Until 1962, attempts to obtain Organization of American States (OAS) backing for these measures failed to win automatic agreement from member states. Then, Castro openly declared himself a Marxist-Leninist, alarming a number of Latin American member states and leading to an arms embargo. The naval blockade of October 1962, during the Cuban Missile Crisis, lasted one month and was supported by a number of countries in the region. In 1964, the discovery of a cache of arms of Cuban origin in Venezuela led the OAS to impose the following mandatory measures: the severance of diplomatic ties; a ban on all trade (except foodstuffs and medicine); a ban on all sea transport (except of a humanitarian nature). Some countries dissented (Chile, Uruguay, Bolivia, Mexico). In 1963, Cuban assets in the US were frozen. US attempts to convince other western countries to join in the sanctions were futile, except for bans on arms and military supplies. The OAS sanctions were lifted in 1975, after they had clearly become inoperative. The US did however maintain its embargo, and its resolve stiffened in the wake of Cuban adventures in Africa, Grenada, El Salvador and Nicaragua.

It is difficult to assess the impact of the sanctions on Cuba, for the Soviet Union quickly replaced the US as Cuba's leading trading partner and the volume and nature of Cuban trade were altered by new economic and social policies. The deep current of anti-Yankee nationalism in Cuba, added to wide-ranging reforms in health and education, long played in Castro's favour, and he was able to attribute some of his regime's economic setbacks to his US adversaries. The US, which had accounted for two-thirds of Cuba's trade in 1959, saw its role reduced to almost nothing two years later, while the socialist countries, with which Cuban trade had been negligible, accounted for 85% of its total trade after 1962. Despite its often-stated desire to diversify its economy,

Cuba had to further increase its dependence on sugar production in order to supply the Soviet Union with sugar in exchange for extensive technological assistance and low-cost Russian oil. It could be argued that it was in the US interest for the Cuban economy to suffer as many failures as possible, insofar as Cuba was a practical symbol of all the ills afflicting Communist countries and could serve as an example to the other countries of the region, and furthermore was a net drain on the struggling Soviet economy. These last points may explain the adamant attitude of the US for the past 30 years; they may represent unofficial objectives as important as the declared objectives.

In 1992, the US passed a law "to ease the transition to democracy in Cuba," which provoked negative reactions even from US allies due to its extraterritorial application of US law.¹⁷ The UN passed a Cuban resolution calling for revocation of the US law by a vote of 59-3 (with the US opposed, of course). This resolution does not have the force of law, however, for the General Assembly does not have the powers of the Security Council. Under the US law, foreign subsidiaries of US companies could be charged for doing business with Cuba. Vessels carrying freight to Cuba would also be banned from US ports for 6 months. While most other countries in the region have dropped their restrictions against Cuba, their trade volume remains limited, for the Cuban economy has been crippled by years of authoritarian management and neglect of market forces, not to mention the loss of Russian aid, which had become too costly.

Some believe that Cuba is on the brink of major changes. We may ask whether the US would not be more likely to achieve its goals (a return to democracy, economic reforms) by discontinuing its measures and relying on economic forces to effect a renewal of Cuba's elites. The Cuban paradox is that Castro is still in power, in the absence of a genuine international consensus on the appropriateness of sanctions in the past and despite his government's blunders. But the regime is now unsteadier than it has ever been. It has, for all practical purposes lost almost all its allies, and its human rights record is attracting increasing criticism. It may for the first time be faced with a de facto consensus which could be fatal and would likely influence the post-Castro transition.

¹⁷ Canada had to adopt its own regulations to offset the effect of this US legislation on the Canadian subsidiaries of US companies. It should be noted that we have not followed the lead of the US on Cuba, being in basic disagreement with their objectives as well as their methods.

d) Dominican Republic

In 1960, the OAS imposed economic sanctions (essentially at US instigation) to protest against the Trujillo regime's intervention in Venezuela (the attempted assassination of the Venezuelan president). Diplomatic relations were severed, economic ties were partly interrupted, and all trade in arms and ammunition was suspended. In 1961, the OAS voted for an embargo on oil and vehicles. Tariff sanctions on Dominican sugar were also adopted. While the embargo was short-lived and applied half-heartedly by a number of Latin-American member states of the OAS, it was effective because the target was a country which was highly dependent on foreign markets, which relied on sugar for 50% of its exports, and which had few alternative markets. A number of countries, including Canada, did not apply the sanctions and continued to purchase Dominican goods, diminishing the impact of the sanctions somewhat. However, opposition to Trujillo was bolstered and he was assassinated in 1961. Sanctions were lifted shortly after his death.

e) Yugoslavia I

Soviet sanctions were adopted against Yugoslavia in 1948, on the grounds that Yugoslav policy was too independent of the USSR. Diplomatic and economic ties were severed; a propaganda war was launched against Yugoslavia, which was expelled from the Cominform; trade was discontinued, debt payments suspended and the border sealed. It was a hard blow for Yugoslavia, which depended on the socialist bloc for more than half of its trade and whose economy was already in a shambles in the wake of the war. Nevertheless, Yugoslavia did succeed in diversifying its trade and greatly increasing trade with the West, which was delighted with having an opportunity to try to "neutralize" a Soviet ally. Yugoslavia was thus able to compensate for its lost markets in the East and obtain rapid and massive assistance, which allowed it to circumvent the sanctions. Relations were normalized in 1955, although Yugoslavia did not join the Warsaw Pact and remained non-aligned. The sanctions enabled Marshall Tito to strengthen his hold on the country, if not to boost his popularity. Rapid and massive assistance by the West was therefore crucial in counteracting the sanctions.

f) Albania

Similarly, when Albania defected to the Chinese camp in 1961, Soviet credits were suspended, imports from the Soviet Union plummeted, and there was an overall reduction in trade, although there was no boycott. China compensated by offering its aid, breaking the consensus in the Soviet bloc. This proved to be

enough to fill the gap. The situation lasted until the 1970s, when Albania fell out with Beijing. In the meantime, Albania had withdrawn from Comecon in 1962. Albania hardly changed its relatively independent foreign policy, due in part to the totalitarian rule practised by its government, which was able to control communications with the rest of the world. Albania remained the poorest country in Europe; it achieved little industrialization, much less the transition to the post-industrial era.

g) Nicaragua

Concerned about seeing Nicaragua align itself with the Soviet Union and support guerrilla movements in Central America, the US supported the Contras fighting against the Sandinista government in Managua (which itself had taken power through a guerrilla struggle). This position found little support in the OAS and in the UN, whose members maintained their trading relations with and aid to Nicaragua. The US also applied a series of measures between 1981 and 1990 including notably the suspension of bilateral aid, opposition to financial assistance to Nicaragua by international development agencies, the closing of Nicaraguan consulates in the US and the expulsion of some of their officers, and the cancellation of Nicaragua's sugar export quota, doing considerable damage to Nicaragua's sugar trade, which had traditionally been dependent on the US market. The US also authorized covert military operations by the CIA. Already sapped by the long civil war against the Somoza regime, Nicaragua was now undermined by this assault on its economy and by the fact that it had to wage a new guerrilla war on its territory. The USSR dared intervene only discreetly, preferring to avoid another battle with the US, especially in view of the already high cost of supporting Cuba. It was therefore not surprising that the governing Sandinistas finally decided to hold free elections, which they lost. The sanctions, which had been only one of the means used, were then lifted by the US, which felt it had achieved its objectives.

h) Haiti

The coup d'état which overthrew the democratically-elected president in the fall of 1991 provoked an international outcry, especially in the Western Hemisphere. The OAS recommended a trade embargo,¹⁸ which some member states, including the US and Canada, are applying. The US believes it is important not to worsen Haiti's endemic unemployment and has allowed the import of goods produced by some US-owned assembly plants (consumer goods, electronic

¹⁸ This embargo was therefore not binding upon member states, and of course still less so for non-members.

components). It has also authorized the sale of staple foodstuffs. Non-member states (including the majority of EEC countries,¹⁹ the former socialist countries, Japan, and the countries of Asia, Africa and the Middle East) are not bound by this recommendation. Some neighbouring countries are suspected of turning a blind eye to trade with Haiti, or of being simply incapable of properly controlling it, even when they have amended their laws and regulations in order to implement the OAS embargo. President Aristide has yet to regain power and the junta has shown a surprising ability to maintain its hold as time passes. Development aid has been limited to food aid and emergency medical assistance, primarily through multilateral channels. All project funding has been suspended by the World Bank and the Caribbean Development Bank. Thus far, the ruling junta seems to be adapting to life under sanctions. It is clear, however, that the economy is starting to suffer from the measures, even though the embargo is partial. Over 25,000 jobs have reportedly been lost in export manufacturing industries, swelling the numbers of the unemployed in a country where under-employment is already endemic. A stronger international consensus on sanctions combined with the discontinuation of oil deliveries could force the junta, which clearly does not enjoy popular support, to surrender power.

i) China

China faced an outcry after the Tiananmen Square massacre in 1989, primarily from western countries appalled by the government's crack-down on pro-liberalization forces. While the announced measures were relatively mild, they did keep China in the spotlight of public opinion and the media, and they are believed to have had some effect, especially at the political level. China proceeded to deal with the dissidents more quietly, and it is generally believed that they were treated less harshly than might otherwise have been the case. The Chinese leadership was probably surprised by the international ostracism it faced, and it was important for them not to lose face.

The sanctioning countries had to satisfy the demands of the organizations and numerous individuals who were calling for sanctions without jeopardizing their own extensive interests in China, whose economy has been developing rapidly over the past 15 years and therefore offers attractive business opportunities. The need to secure Chinese support in the UN Security Council was also an important factor given current attempts to enhance the UN's role in

¹⁹ The European Community invoked its obligations under the Lomé Convention, which it concluded with a large number of African, Caribbean and Pacific states, and did not follow the lead of the OAS, although it did indicate it would go further if the UN Security Council so decided. It also left its member states free to adopt individual sanctions.

international conflict resolution. Most OECD countries froze or suspended budgets for concessionary financing until 1991. They generally opted for relatively quiet pressure and high-level visits were suspended for a few years. It is too early to speak of full normalization of relations, but we may contemplate a return to the status quo within a few years. In summary and conclusion, there was no international consensus on China, the pressure could have been stronger, the country was in a position to withstand this relatively weak pressure quite easily, and despite the indignation generated by media coverage of the Tiananmen Square events, support for the cause remained limited.

j) Arab Oil Embargo

In 1967, in the wake of the Six Day War, the Arab League first recommended an oil embargo against the US, France and Great Britain. This proposal came to nought. In October 1973, shortly after the outbreak of the Yom Kippur War, the League decided on partial cuts in oil production until Israel withdrew from the territories it occupied in 1967 and the legitimate rights of Palestinians were restored; the League also declared an oil embargo against countries "unfriendly" to its cause, while continuing to supply friendly countries. In late October 1973, an embargo was declared against the US in particular when it confirmed additional military aid to Israel. This embargo was quickly extended to the Netherlands due to its staunch pro-Israel stance. Japan and the European Community were however excluded from the embargo due to their "less biased attitude" and to the perceived progress towards a peaceful resolution of the conflict. In late November, the embargo was again expanded, this time to South Africa, Rhodesia and Portugal. In March 1974, the embargo against the US was lifted, and in July 1974 the embargo against the Netherlands was finally lifted as well. In the meantime, the production cuts adopted in the fall of 1973 in order to pressure the West, curtail supplies and exert upward pressure on prices had gradually been abandoned. The Arab oil-producing countries had achieved a very partial success with these measures, insofar as Israel had not yielded to their demands. However, as regards the efforts of the Organization of Petroleum Exporting Countries (OPEC) to obtain better prices for its members, 1973 marked a turning point; continued uncertainty about supplies throughout the rest of the 1970s was one of the factors which led to a ten-fold increase in prices by the early 1980s and increased earnings for Arab OPEC members. In November 1974, the industrialized oil-consuming countries agreed to set up the International Energy Agency, with a mandate to develop supply-sharing arrangements in case of future embargoes. The US and the Netherlands registered declines in oil imports in the order of 9% to 14%, but these reductions were similar to those registered by the other European Community countries. In the short and medium term, the

sanctions did have an impact on trade and were even profitable for the Arab oil exporters; moreover, they enhanced the Arab League's cohesion. On the other hand, the sanctions failed to achieve their political objective, due in large part to the existence of alternative sources of energy and to the fact that the hike in oil prices made petroleum exploration and development in areas considered more secure for western countries cost-effective. This contributed to the slow decline of OPEC.

United Nations Sanctions

There have been few major cases of mandatory UN-ordered sanctions since the UN was founded over 40 years ago: Rhodesia, South Africa, Iraq and Yugoslavia. There have been a number of cases of voluntary sanctions: restrictions on arms sales to Portugal (which was denying independence to its colonies) from 1961 to 1974, restrictions on arms sales to Rhodesia up to 1980 (prior to the imposition of mandatory sanctions), economic sanctions against South Africa. The new activism displayed by the UN in the past three or four years could lead to profound changes if the trend towards more frequent intervention in civil and international conflicts continues. We will look here at some of the episodes in which sanctions have been applied under the aegis of the UN.

k) Portugal (1961-74)

Due to Portugal's colonial policy, the UN recommended (but did not impose) the severance of diplomatic relations, the closing of ports to Portuguese vessels and a trade boycott. Later, recommendations concerning arms sales and the sale of industrial goods with military applications were issued (1963-65). These recommendations were not acted upon because the NATO countries considered it more important to avoid alienating Portugal than to respect the will of UN members. After Salazar was overthrown (1974) and Portugal's colonies became independent (1975), the sanctions were lifted. On the whole, the sanctions had little effect because too few countries applied them.

l) Rhodesia

Great Britain refused to recognize the Unilateral Declaration of Independence of 1965 and applied military sanctions. Subsequently, it gradually applied economic sanctions, which quickly became an almost total embargo on import and export trade with Rhodesia. Financial measures affecting development aid were also announced. The Commonwealth and the Organization of African Unity (OAU) joined the embargo, as did the US (for oil deliveries and imports from

Rhodesia) and France (some imports). These measures were unsuccessful and in December 1966 the UN Security Council decided to adopt mandatory — albeit narrower — sanctions (on the export of oil, arms, military equipment and ammunition, vehicles and aircraft; on the import of sugar, tobacco, meat, asbestos, copper, chromium, iron, pelts). In 1968, a total embargo on imports and exports (excluding medical and educational products), a total ban on capital transfers, non-recognition of Rhodesian passports for purposes of travel, the severance of air links and the withdrawal of diplomatic and consular representatives were adopted and enforced by a very large number of countries. South Africa and Portugal did not fully apply the sanctions, however, reducing their effectiveness.

In 1972, a guerrilla movement sprang up in Rhodesia, which caused growing damage and finally convinced the Rhodesian authorities to agree in 1978 to a gradual transfer of power to the black majority in the short term. 1979 was a transitional year which also saw the end of sanctions.

The effect of sanctions on Rhodesia: although the result sought (Rhodesian independence and majority rule) was achieved in the end, it must be acknowledged that it was primarily due to other pressures, including the insurrection movement for majority rule. The country was able to gradually diversify its export markets for agricultural produce (tobacco, sugar and beef, as well as non-traditional crops such as corn and wheat) and gradually found takers for its mineral products (chromium, gold, etc.). An industrial strategy based on import substitutions limited the injury caused by the embargo. Rhodesia found alternative sources of oil, which was vital for transportation and energy. The country's abundant available hydroelectric resources also allowed it to avoid being entirely at the mercy of the sanctioning countries. Goods of Rhodesian origin or bound for Rhodesia could be camouflaged as goods of South African origin or bound for South Africa, making it relatively easy to evade or compensate for the sanctions. The US and Great Britain were sufficiently concerned about enforcing the embargo to prosecute violators. Insofar as the sanctions led Rhodesia to diversify its economy and made it less vulnerable to international pressure, they may have been counterproductive. But though the sanctions did not yield immediate results, they did contribute to the process which undermined the ruling white regime. The guerrilla struggle, the independence of Mozambique and Angola, and South African pressure for a settlement were probably decisive.

m) Republic of South Africa (RSA)

Official sanctions against South Africa were first imposed by the Organization of African Unity (OAU). These had little impact due to the slight importance of African countries as a whole for South Africa's economy, and also the fact that bordering countries, which were landlocked and dependent on South Africa, ignored the African embargo. Additional measures were adopted by the UN General Assembly and the Security Council. Apartheid and the Namibia issue (Namibia was under South African administration and its independence had been long delayed) were the two major reasons for the sanctions.

Faced with Commonwealth and UN sanctions, South Africa withdrew from the Commonwealth in 1961 and withdrew or was expelled from other regional and international organizations, including the United Nations Economic Commission for Africa, UNESCO, the Food and Agriculture Organization (FAO) and the International Labour Organization. The UN General Assembly began passing motions of censure and recommendations for sanctions in the early 1960s. In 1963, the Security Council called for an embargo on the sale of arms, ammunition and military materiel. In the same year, the newly-formed OAU called on its members to sever diplomatic ties, apply a trade boycott and deny overflight rights to South African aircraft. The pressure was stepped up in the following years, and in 1977 the Security Council passed a resolution ordering member states to adopt a universal, but partial, embargo on arms sales to South Africa. This measure had a real impact, but it also led South Africa to develop its own military industry and find customers for its products (Israel, Iran, Iraq).

In 1985, the anti-apartheid resistance won increased attention from western countries. In the same year, the UN Security Council recommended voluntary and selective measures to its members. The US, which had long been reluctant to adopt sanctions against South Africa,²⁰ did finally introduce some measures related to the export of computers destined for the security forces and to loans and nuclear technology, and restricted access to government export support programs for US companies with investments in South Africa. The US also placed import restrictions on the Krugerrand. The EEC adopted similar measures and also suspended sporting, cultural and scientific ties, banned oil exports and developed

²⁰ For largely philosophic reasons, the US preferred a policy of "constructive engagement" which would allow the South African economy to expand and lead automatically to the hiring of blacks and the lifting of racial restrictions in employment. The US was also worried about losing South African support for its policies to counter the Soviet camp in the region.

ties with anti-apartheid groups.²¹ The financial restrictions had a very significant effect on the Pretoria regime, for South Africa was heavily dependent on western financial institutions and could not easily replace them with other sources of credit. Canadian leadership within the Commonwealth resulted in the adoption and application of stronger measures by member countries. One of the effects of the sanctions was to undermine confidence in South Africa's economy, leading to a major devaluation of the Rand. The objectives agreed upon by the Commonwealth were the dismantling of apartheid and the creation of democratic structures in South Africa. (It is important to note the extent to which the UK was reduced to a marginal role in the Commonwealth due to its opposition to any significant expansion of sanctions.)

Over the past three years, South Africa has introduced some reforms and is moving slowly towards greater equality before the law for all South African citizens. There is still a long way to go, however, and while some sanctions have been lifted in order to encourage South Africa to continue in this direction, the South African government is hesitating about how to proceed. The sanctioning countries are therefore keeping some economic and trade measures in force.²² In the case of South Africa, sanctions have had an undeniable impact, thanks to the international consensus patiently built up over the years, the lack of national consensus within South Africa's own population, which has been split along racial lines by official policy, and the clear and convincing definition of objectives, which certainly contributed to making the authorities reflect and perhaps to relent. They were effective as part of a global strategy comprising broad and numerous sanctions. It is too early to say where the process will lead, but the direction in which the policies of the South African government are moving is encouraging.

n) Libya

The sanctions imposed against Libya (dating back to 1978 in the case of the first US sanctions) were essentially motivated by Libya's support for international terrorism. New sanctions were adopted in 1986, when Libya was suspected of being behind terrorist attacks in Germany. They were stiffened in 1992 after investigations into the Lockerbie air disaster and the UTA crash in Niger

²¹ The psychological impact of the sports ban should not be underestimated. It drove home to white South Africans the extent to which the policy of apartheid was rejected by western countries with which they had close historic and cultural ties.

²² The consensus is however eroding, with some industrialized countries gradually lifting their sanctions (including those of a "personal" nature) in response to the progress made to date. Canada remains among the more activist countries, although it has lifted some sanctions.

turned up links implicating the Libyan regime and Libya refused to extradite the main suspects. The UN Security Council passed a resolution calling for sanctions. Their essential purpose is to hurt the regime by placing an embargo on air links with Libya, so as to ostracize it and make it more difficult for it to communicate with the rest of the world. Given the country's size and the vital nature of air links, it is believed that the sanctions will be effective in the long term, especially as there is also a ban on supplying aviation-related parts and technical service. However, the crash of a Boeing 727 in late December, 1992²³ illustrates that measures of this type can have deadly consequences, if indeed the disaster was caused by a lack of vital parts and equipment, which were under embargo. On the other hand, insofar as neighbouring countries are not necessarily convinced of the need to punish Libya, and Libya is able to maintain its links with the outside world in spite of the sanctions, there is a breach in the international consensus. Moreover, Libya remains a relatively prosperous country; it continues to be an oil producer and exporter and its leaders are believed to be fairly firmly in control, as they are still able to provide the population with the consumer goods it demands. The sanctions may therefore be maintained for some time yet.

o) Argentina

When Argentina invaded the Falkland Islands in April 1982, in the wake of fruitless (from the Argentine point of view) negotiations with Great Britain, the Security Council passed a resolution condemning the invasion as a breach of peace in the region and calling for an immediate cessation of hostilities, the withdrawal of Argentine forces and the resumption of diplomatic negotiations.

Great Britain applied financial and trade sanctions, but it was some time before other countries adopted sanctions in support of Great Britain. On April 7, Canada, France, Belgium, Italy, West Germany and the Netherlands declared an arms embargo. The EEC was somewhat slow to react due to the difficulty of coordinating reprisals among the 10 member states of the time; on April 16, it finally adopted a temporary embargo on arms sales and on imports from Argentina. This embargo was subsequently extended indefinitely. However, Ireland and Italy broke with the other EEC members. Argentina banned imports of non-essential goods from the EEC.

In late April, the US, which had been slow to join in imposing sanctions (because it was trying to mediate between the belligerents) did bring in sanctions, suspending arms sales to Argentina and export credits. Meanwhile,

²³ See "Libyan Jet Crash Kills 157" in the *Globe and Mail*, December 23, 1992.

Argentina failed in an attempt to win backing for its claims from the Organization of American States, despite the sympathy of many Latin American states for the Argentine cause.

While talks were in progress, Great Britain mounted a counter-offensive and reconquered the Falklands in late May. The Argentine military command surrendered in mid June, and the government was replaced by a civilian government in late June. Most countries quickly lifted their sanctions. Great Britain finally lifted some of its sanctions in July and the fall, anxious not to overly weaken the debt-burdened Argentine economy. The British embargo on Argentine goods was lifted in 1985. The question of sovereignty over the Falklands was placed on the back burner.

The sanctions were therefore short-lived, but were adopted by a large enough number of countries (albeit not always in a coherent way) to represent an important precedent for the European Community. The sanctions had relatively little effect on the Argentine military, which was able to equip itself with imported materiel up to the last minute. The military force deployed by Great Britain was the decisive factor. On the other hand, the precarious state of the Argentine economy, which suffered from chronic mismanagement and enormous debt, was aggravated by the sanctions. The moral authority provided by the Security Council resolution overcame the misgivings of the countries of the region about the British military escalation.

p) Iraq

Iraq's invasion of Kuwait in the summer of 1990 triggered a rapid mobilization by most UN member states. With friendlier east-west relations, none of the countries with the right of veto used its veto and the Security Council was able to quickly pass various resolutions relating to Iraqi withdrawal, refusal to recognize the annexation of Kuwait, respect for diplomatic immunity, sanctions, the air embargo, the foreign hostages, etc. Sanctions were in place by August, including a blockade of all goods (except food and humanitarian supplies) and of Iraqi and Kuwaiti oil exports. When these sanctions failed to produce the desired results, the coalition launched a military offensive in January 1991, which resulted in the withdrawal of Iraq from Kuwait.

However, the fact that Iraq has not recognized Kuwait's independence augurs ill for the future. The suffering of the Kurds in northern Iraq and the Shiites in the south have cast some discredit on the sanctions, even though they have

been quite effectively applied by the coalition.²⁴ Iraq has been able to take advantage of porous borders, relatively easy recourse to the black market — as witnessed by the trade in gasoline, currency, provisions and consumer goods with Turkey and Jordan — and propaganda portraying Saddam Hussein as a leader capable of standing up to the West. The UN did set up a trust account in which some 30% of the value of UN-authorized Iraqi oil exports was to be placed and then used to compensate the victims of the conflict; however, the victims have seen little of this money, as Iraq has preferred not to export oil rather than pay compensation. The country seems to be recovering from the damage (which it must be admitted was relatively limited) inflicted on it by the coalition during the Gulf War,²⁵ and uncertainty about the future combined with weariness on the coalition side may further weaken the existing sanctions.

q) Yugoslavia II

A variety of sanctions were adopted against Yugoslavia in 1991 and 1992, following the disintegration of the country under the wave of rising nationalism and increased freedom which has been sweeping across eastern Europe since 1989.

In late 1991, the EEC attempted to organize sanctions in order to bring the parties (Croatia, Slovenia, the rest of Yugoslavia) to negotiate in good faith and respect the cease-fires arranged by the EEC. There were difficulties in reaching agreement on what measures to adopt due to the fact that they were unlikely to be immediately effective, would be difficult to enforce and would cause deprivation to non-targeted groups. These measures were therefore held in reserve, in case talks were broken off. The sanctions contemplated at the time were suspension or abrogation of the EEC-Yugoslavia agreement on trade and cooperation, a general or selective trade embargo, a freeze on Yugoslav assets abroad, suspension of export credits and an oil embargo. It was also felt that a UN resolution was needed to make the trade and oil embargoes mandatory and universal. (Subsequently, in May 1992, the Security Council adopted resolutions 757 and 787 to this effect.)

²⁴ Security Council resolution 688 calling for an end to the repression of Kurds and Shiites within Iraq's borders set an interesting precedent, for it takes a stand which would previously have been considered interference in the internal affairs of a member state. There are some who are less than enthusiastic about this precedent, fearing that it may serve as a pretext for similar interventions elsewhere in the future.

²⁵ The flaws in coalition propaganda during the War, which led people to believe that Iraq had suffered greater damage than it actually had, have been skilfully used by Iraq to mislead people and lead them to believe now in a recovery more fictional than real.

Impact on Serbia and Montenegro: it is likely that, had the Federal Republic of Yugoslavia been able to remain united, it would have experienced some economic decline during the inevitable transitional period, as did the other countries of eastern Europe. In addition, the republics that emerged from the disintegration of Yugoslavia suffered from the resulting loss of economic activity. They also suffered from the reallocation of factors of production to the war effort and, with the independence of Slovenia and Croatia, the loss of the most dynamic parts of the former Yugoslavia. It is probable that the two republics which remain in the former Yugoslavia, Serbia and Montenegro, are being adversely affected by the embargo. A population which is called upon to support a war effort (albeit a non-declared war being waged in the neighbouring theatres of Bosnia and Croatia) will suffer deprivation, and this is indeed the case in Serbia and Montenegro, to say nothing of Bosnia, where the bulk of the military operations are being conducted. There is reason to fear, however, that the Serb government will be able to lay the blame for the hardship on the sanctioning countries, even though it is unlikely that the sanctions account for more than one third of the economic decline of the past year. There has already been a major rise in unemployment and underemployment due to unreliable supplies. It may be hoped that as the weight of the sanctions is increasingly felt in the medium and long term (it should be noted that a number of countries, including Canada, are calling for tougher sanctions), the population will realize that only if the Belgrade government agrees to negotiate in good faith with non-Serbs can it hope for an improvement in its lot. The outcome of the Serbian elections in late December must give us cause for pause, however, for the Serbian president was returned to power with a strong majority for openly nationalist and authoritarian right-wing parties.

At the military level, we may conclude that the Serbian forces, which had already taken control of most of the former Yugoslavia's military equipment and will most likely be able to continue obtaining supplies from other formerly socialist countries, are not suffering greatly from the sanctions, judging by their military initiatives on the ground. As for the impact on the Serb leadership, it is too early to draw conclusions. It would appear to be trying mainly to buy time in order to consolidate its gains on the ground and place pressure on its enemies to accept a cease-fire confirming the new territorial status quo. In conclusion, the impact of the sanctions is likely to be felt only in the medium term and cannot be expected to yield the desired results as long as the Serbs have the initiative on the ground, as long as neighbouring countries are willing to circumvent the sanctions (and the economically troubled countries of eastern Europe and Greece seem hard-

pressed to resist the temptation²⁶), as long as the Serb population can be manipulated by its government with appeals to nationalist and ethnic sentiments, and as long as the sanctions remain partial and the objectives vague.

3. Observations on Cases Involving Canada

In general, Canada has supported the imposition of economic sanctions in response to international political events primarily when there has been a broad consensus. We rarely impose sanctions unilaterally, preferring to seek the widest possible support among like-minded nations, especially OECD countries. The reasons are easy to understand: under some of our laws, we can impose economic sanctions only as part of an international action; Canada does not have the economic importance to produce a sufficient impact acting alone; economic sanctions ought not be considered an ordinary instrument of diplomacy, to be used unilaterally; we should not be overly ready to interfere in the business relationships of Canadian firms. We might also add that, as we have seen, even the superpowers are not always able to achieve their objectives without first obtaining the cooperation of other countries. We often favour the introduction of an effective sanctions package, even if this means waiting and working to build the widest possible consensus. This approach is well-advised, given past experience and our clearly limited influence when acting alone.²⁷ (Initiatives related to nuclear non-proliferation make up the bulk of our "unilateral" moves. The countries affected have included Pakistan, India, South Korea, the EEC and Japan. It should be mentioned that these actions were part of our broader international commitments in this respect.)

In addition to the effectiveness of the sanctions, it would appear that we also consider (and rightly so) the cost to our own economy of sanctions against another country. In some cases, such as the restrictions on imports from South Africa, it was relatively easy to adopt sanctions because we produce the same types of goods, foodstuffs or equipment, or can find alternative sources of supply elsewhere, notably for agricultural produce. Other cases are more delicate because it is more difficult to balance our foreign policy, trade and human rights objectives

²⁶ Frustration caused by repeated violations of the sanctions against the Federal Republic of Yugoslavia by some neighbouring countries is prompting some countries to study the creation of more effective mechanisms of monitoring and/or control to ensure that the sanctions have maximum impact.

²⁷ There was an interesting case in 1968, when Canada temporarily suspended relations with Gabon, which had committed a faux pas by inviting Québec but not Canada to a conference of education ministers in Libreville. Subsequent conferences were held elsewhere and the slight was not repeated.

when the country in question represents a much more important market for us in the medium or long term, or when the Canadian government and the private sector have invested enormous resources and effort there in recent years.

It is of fundamental importance to establish clear objectives to motivate our government and like-minded nations. In general, the objectives should be plain and convincing, so as to win the support of other countries for the cause and rally the majority of public opinion in Canada.

Finally, it seems we have also considered the target country's ability to withstand the sanctions and adapt to them, making objectives more difficult to achieve. Be it by realism or resignation, our country must recognize, if only implicitly, that sanctions can only rarely be effective and the use of behind-the-scenes (and patient) diplomacy sometimes has advantages (the example of China is relevant here).

4. Economic Impact on Sanctioning Countries

A number of groups in the sanctioning countries are usually affected. First among these, in the case of trade restrictions, are exporters and importers, as well as industries that use inputs of foreign origin²⁸ or rely on foreign markets to sell their products, to say nothing of those that sell or use services related directly or indirectly to trade.

We may make a rough estimate of the benefits from international trade by using an indicator similar to the one used by the Export Development Corporation to assess spin-offs from foreign equipment sales. One million dollars in sales is assumed to represent about 15 direct jobs per year, plus indirect jobs which can equal or surpass this figure by a factor of two or three. This is however only a very approximate measure of impact in terms of jobs, given that Canadian firms may well lose contracts which they are pursuing if target countries resent these firms' participation in sanctions against them.²⁹ Bids submitted by Canadian companies may be rejected on false pretexts by civil servants acting of

²⁸ For example, in the case of South Africa, we abstained for a time from banning the import of some minerals which were either "strategic" or for which South Africa was the only supplier, for Canadian industry had made representations to the government asking for time to find other deposits, build up reserves and develop mines (such as the ones in Madagascar) in order to secure non-Soviet sources of supply for all western countries, for the Soviet Union would otherwise have become the world's only supplier of some of these products.

²⁹ Some Canadian companies have expressed their concerns, and in some cases their conviction, of being discriminated against by target countries following the imposition of sanctions by Canada. They feel their reputation of reliability was tainted.

their own accord, even after relations between Canada and the target nation have been normalized. There is therefore a real possibility of long-term injury to our firms³⁰, especially if the target country is relatively self-sufficient, or if Canada was one of a small number of sanctioning countries. This can lead to the sanctioning country's goods being replaced by goods from countries that have ignored the sanctions. (For example, Rhodesia switched away from Canadian farm machinery.) Other factors to be considered include the perishability of the restricted goods. For example, restrictions on agricultural produce for which there may be few alternative markets or sources can cause far more harm than restrictions on non-perishable goods such as equipment, which can be stored for a long time without deteriorating.

The sanctioning nations' banks and financial institutions may suffer damage to their reputation for reliability if they are persuaded or compelled to cooperate with the sanctions, and here again it is difficult to accurately assess the fallout from financial sanctions for financial institutions (probably more difficult than it is in the case of industry). In the past, the Canadian Bankers' Association has expressed concern about the risks of extra-territorial enforcement of Canadian laws imposing sanctions,³¹ and has pointed to the parallel with the Canadian government's own reservations when other countries try to pass laws which could affect our companies. On the other hand, the opposite can sometimes occur; the financial institutions of sanctioning countries can benefit from the situation, especially if the countries in question are industrialized and if individuals in the target nations conclude that, in the final analysis, the political risk is less than the risk of poor management by their own country's government. It is a safe bet that, despite the sanctions imposed following the invasion of the Falklands, few investments by individual Argentine citizens were brought home after 1982, given poor economic management by the military and subsequently by civilian governments in Argentina.

To the extent that capital markets depend on the target country for the purpose of investing or loaning assets or borrowing funds, some problems may be anticipated if they have to find other sources or markets in short order. If the sanctions are maintained for a long period, the sanctioning country's companies may have to diversify their sources of capital if they have investments in the target country or if their parent company is based there.

³⁰ The Canadian Exporters Association made representations to this effect to the Department of External Affairs and International Trade in March 1992.

³¹ In various communications with the Department of External Affairs and International Trade, notably when the Special Economic Measures Act was being drafted.

As there is no lack of tourist destinations and tourists are usually anxious to steer clear of regions considered unstable, the governments of sanctioning nations are not hard put to curb tourist traffic to a target nation (assuming that the country was an attractive destination to begin with), for the country's reputation will suffer from the news coverage of its misdeeds. One of the unwanted consequences of the crisis in the Gulf in 1990-91 was the catastrophic impact on tourism, not only in neighbouring countries (Iraq was not a popular destination; Jordan, Egypt and Israel were) but even and perhaps mainly in relatively distant countries such as Tunisia and Morocco (which experienced a 60% - 80% drop in income from tourism at the height of the crisis), and indeed a huge drop in transatlantic and Asia-bound traffic, even though these destinations were thousands of kilometres from the battlefield.³² Air carriers are having difficulty recovering from this drop in business. In the worst case, tourists will stay home. For a country like Canada, which runs a chronic tourism deficit, this may be a blessing in disguise!

The providers of air and sea services, starting with air and sea carriers, can also be adversely affected in the case of specific sanctions in these sectors of economic activity. The sanctioners sometimes allow exceptions to their air or sea restrictions, selectively barring access to their airports and/or ports only to aircraft or vessels registered in or owned by the target nation so as to cause financial damage to the target's companies without injuring their own firms, which are sometimes allowed to continue providing service to the target's nationals or to its ports and airports (Haiti is an example of sanctions of this type). Obviously, when measures are not universally applied, it is to be expected that our companies' competitors registered in countries which are not party to the sanctions, or which turn a blind eye to violations by their nationals, will be able to take advantage of their edge over companies which are more closely monitored.

The image the sanctioning countries project in international bodies such as the UN and the OAS will depend in part on the severity of the crisis and also on the support they are able to muster from bordering states, other countries in the region and other developing countries, which can be expected to subject the reasons cited and the consistency displayed by the sanctioners to close

³² This drop in air traffic may be attributable primarily to Iraqi calls for a Holy War, which prompted fear of terrorist attacks similar to the one in Lockerbie. This counter-sanction, or rather threat of a counter-sanction, illustrates how effective mere threats can be, when skilfully used (in this case, by Iraq against the coalition).

scrutiny.³³ Will they see racial, religious, economic or other overtones behind the actions (or inaction) of the sanctioning states? Will the sanctioners invoke the gravity of the misconduct to justify precedents concerning membership in an organization or the privileges and duties it entails?

As can be seen, any measure taken by sanctioning countries can lead to unwanted consequences for these same countries.³⁴ It is therefore important to minimize the costs of these consequences as far as possible, and to ensure that the selected measures have the slightest possible effect on the sanctioners themselves. Otherwise, public support for maintaining the sanctions may well decline over time.

IV DEVELOPING A SCALE OF SANCTIONS: CRITERIA FOR IMPOSING SANCTIONS

1. SSEA's Responsibility to Assess Economic Consequences of Sanctions Under Consideration

The Special Economic Measures Act passed in June 1992 charges the Secretary of State for External Affairs (SSEA) with responsibility for implementing the Act. The SSEA may expect to be asked for an estimate of the economic costs to Canada of any sanctions he or she recommends to the government. While the United Nations Act does not specifically prescribe such a responsibility, we may assume that it is in the government's interest to have as accurate an idea as possible of the consequences of any measure adopted pursuant to the Act.

2. List of Possible Sanctions (scale)

Sanctions may be classified in a number of ways. The following scale, based on M.P. Doxey, is not an exhaustive list of non-violent measures and could be elaborated upon.

³³ The question of double standards is constantly raised, especially in the Middle East where the Security Council's treatment of Israel is generally seen by Arab countries as different from the treatment meted out to countries such as Libya and Iraq. The most recent instance is the Security Council's treatment of Israel following the expulsion of about 400 Palestinians alleged to be Islamic fundamentalists.

³⁴ For example, in the case of the sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro), the initial ban on transfers of funds by Yugoslavia's JAT airlines hurt many tourists who had made reservations with JAT. Their deposits were frozen and JAT declared it could not meet its obligations and reimburse them due to the restrictions imposed by the Canadian government.

● Diplomatic and political measures

- a) protest, censure, condemnation;
- b) postponing or cancelling official visits, meetings, negotiations for treaties and agreements;
- c) reducing or limiting the scale of diplomatic representation:
 - status of the post,
 - diplomatic personnel,
 - consular offices;
- d) severing or suspending diplomatic relations;
- e) withholding recognition of new governments or new states;
- f) within international bodies: voting against admission or against accepting credentials; voting for the suspension or expulsion of the target country; voting to move headquarters or regional offices from the target country.

● Cultural and communications measures

- a) curtailing or cancelling cultural exchanges, scientific cooperation, educational ties, sports contacts, entertainment;
- b) imposing more stringent visa conditions for nationals of the target;
- c) restricting or cancelling telephone, cable and postal links;³⁵
- d) restricting, suspending or cancelling landing and overflight privileges,³⁶ water transit, docking and port privileges, land transit privileges.

³⁵ It should be noted that measures of this type, as well as measures related to land, air and sea links, also carry a significant economic cost, especially when freight traffic is affected.

³⁶ To the extent that international agreements such as the Chicago Convention allow it.

● Economic measures

i) Financial

- a) reducing, suspending or cancelling public development aid or military assistance;
- b) reducing, suspending or cancelling lines of credit at concessionary or market rates;
- c) freezing or confiscating bank assets of the target government;
- d) confiscating or expropriating other assets belonging to the target country;
- e) freezing interest payments;
- f) freezing other transfer payments;
- g) refusing to refinance or reschedule debt repayments (interest and principal);
- h) controlling or freezing capital movements;
- i) voting against loans, subsidies, technical assistance or other assistance in international organizations;
- j) upholding the principle that the government of the target country must be held responsible for its actions and will be subject to legal action if given conditions are violated.

ii) Commercial and technical

- a) quotas on imports;
- b) quotas on exports;
- c) restrictive import permits;
- d) restrictive export permits;

- e) limited or total embargo on imports;
- f) limited or total embargo on exports;
- g) discriminatory tariff policy (including denial of Most-Favoured-Nation Tariff or access to the General Preferential Tariff for goods from developing countries);
- h) restricting, cancelling or suspending fishing rights;
- i) suspending or cancelling joint projects;
- j) cancelling trade agreements;
- k) banning the export of technology;
- l) voluntary listing of individuals and firms doing business with the target country;
- m) curtailing, suspending or cancelling technical assistance or training programs;
- n) prohibiting insurance services;
- o) levying a special tax on exports from the target country to be used to compensate the victims of its actions.

3. Advantages and Disadvantages of sanctions

Before looking at the advantages and disadvantages to sanctions, we should caution that the impact will generally depend on the target nation (notably its level of national cohesion, the size of its economy and its level of self-sufficiency), the type and duration of complementary sanctions, the number of sanctioning countries and the relations between the sanctioners and the target. Any hypothetical assessment of sanctions must take these factors into account. We have examined specific cases of sanctions and their consequences in Chapter II; we will limit ourselves here to a brief discussion of the ensuing advantages and disadvantages in each case, primarily for the sanctioning country.

One of M.P. Doxey's conclusions is that the failure of international sanctions to produce decisive results (although some believe that sanctions are in fact effective) has undermined confidence in their efficacy as a means of exerting pressure. She suggests that it may be more productive to frame more modest objectives, to create long-term economic irritants or to use publicity to draw attention to the target country's misdeeds than to engage in costly retaliation which is unlikely to yield the desired results.

- diplomatic and political measures

On the whole, measures of this type (see list above) carry little or no financial cost. Their impact is felt primarily in the public and political sphere, which can have advantages when attempting to influence public opinion in a country with a democratic tradition. Obviously, as there are no adverse economic effects, the target nation's leaders may interpret the signals to mean that the sanctioning countries do not want to go further and will eventually be prepared to normalize relations even if the policies or conduct they condemn continue unchanged.

At the same time, it is important to maintain official channels of communication, which breaking off diplomatic relations makes more difficult. It is theoretically possible to withhold recognition from a regime which has taken power by force without severing diplomatic relations with the state. Insofar as some embassy activities (such as public affairs, immigration and trade) are likely to fall off in the event of a crisis, recalling or reducing the staff assigned to these functions may be an option. Votes and motions of censure in international forums (the UN, regional bodies) against an offending country can be a relatively cheap and easy way to condemn certain practices, not only of the target country but also of other countries which act in similar ways but which, due to various considerations, we are reluctant to condemn directly.

There are advantages to working multilaterally. If we are seeking essentially symbolic measures, this approach is very suitable. A small sanctioning country working in concert with others can also enhance its image by taking the initiative on given measures which are then adopted by the other members. Moreover, some countries may not wish to be seen standing alone against the target country; working together with other states allows them to keep a lower profile, while sending various messages to their citizens, the target country, and other countries which could be drawn into the sanctions plan. In the worst-case scenario, if other countries do not follow suit and refuse to adopt tougher sanctions, to suspend the target state from an international body of which it is a

member, or to withdraw rights and privileges associated with its membership, we will then have clear evidence to offer domestic groups calling for sanctions that the international consensus needed for sanctions to succeed does not exist.

- cultural and communications measures

Cultural and communications-related measures can have a greater economic impact if the sanctioning countries have close ties to the target country. Mild measures, such as restraints on cultural and sports contacts, are relatively innocuous; a ballet troupe or sports team can simply reschedule its tour.³⁷

On the other hand, restrictions on air, sea, rail or land transport or on communications are much more likely to have a significant impact. They can hamper traffic in goods and services and therefore have effects that reach well beyond the cost of transport or communications services. However, if the sanctioning nations fail to properly define the types of links they wish to preserve, or to consider the importance of their links with the target nation, they may suffer directly or indirectly from their own sanctions.

If the target country is highly dependent on the sanctioning countries, it may reconsider the appropriateness of changing the objectionable behaviour, and may agree to modify it enough to save face while allowing the sanctioners to claim victory. On the other hand, the target may harden its position if it does not believe that relatively innocuous measures will be followed by other more restrictive and harmful measures.

- economic measures

Obviously, economic measures are the most likely to do real damage to the target country, as well as to neighbouring or dependent countries and the sanctioning countries themselves. Clearly, the use of economic sanctions must be proportionate and take into account the seriousness of the offense. There is a risk of creating dangerous precedents by too readily resorting to economic sanctions (be they financial or trade or communications-related), especially if the countries against which they are used are in a poor position to withstand them or to develop alternatives. The widest possible consensus is therefore vital if we are to have a reasonable chance of success. Such a consensus will also discourage third parties which are not participating in the sanctions from attempting to profit by the

³⁷ Although in the case of South Africa, restrictions of this type did serve to make the white minority aware of the depth of international disagreement with the policy of apartheid.

measures at the expense of the sanctioning countries' firms. From the point of view of consistency, it is not certain that the sanctioning countries will have the resolve to apply sanctions in every similar case if these sanctions are liable to hurt their own interests.

Moreover, not all countries react to sanctions in the same way. It has been generally observed that it is usually difficult to build consensus on economic sanctions,³⁸ for nations' basic and indeed vital interests are more likely to be affected.³⁹ And this consensus can easily be eroded if some countries participate in the sanctions half-heartedly or not at all, or if the target country seems to be adapting to the sanctions without undue difficulty and tries to buy off some of the sanctioning countries, tempting them with unique opportunities in exchange for relaxing their vigilance. There is rarely — indeed practically never — any way to keep some countries from circumventing the sanctions. We should also note that the principle of "good government" can become an increasingly important factor in determining aid levels to some countries.

Some developing countries rely heavily on international financing to carry out development plans and support their economies. Suspending, postponing or cancelling bilateral or multilateral aid can be a useful measure in these circumstances, if the sanctioning country has no other cards to play, if domestic groups are urging action against the target country, or if we do not wish to jeopardize the rest of our relations with the country in question.

4. Some Practical Considerations

Countries can be brought to adopt sanctions for a wide variety of reasons. In some cases, the need to make an urgent decision may take priority over the advisability of properly evaluating the consequences. However, a number of questions must be considered sooner or later in order to ensure effective application of the measures. To the extent that time permits, a consensus must be achieved within the government on coordinating the introduction of sanctions; otherwise, a country's policies are liable to appear incoherent. The Foreign Affairs

³⁸ According to a US General Accounting Office report to the Senate Foreign Relations Committee entitled "Economic Sanctions: Effectiveness as Tools of Foreign Policy" (GAO/NSIAD-92-106, February 1992), "it is often easier for the sanctioning country to obtain international cooperation when imposing a ban on both imports from the target nation and the flow of financial capital to the target nation than when it is imposing an embargo on the export of goods to that nation."

³⁹ It has been observed that states are more reluctant to edopt meaningful sanctions against countries such as China (the Tien-An-Mien affair), Indonesia (East Timor, harsh repression of opponents) or Turkey (a member of NATO which nevertheless is occupying the northern part of Cyprus), due to the numerous interests linking these countries with the potantial sanctioning countries.

Ministry is usually in the best position to take the initiative and provide leadership on legislation, decrees and regulations. Depending on the nature of the sanctions being adopted, the Foreign Affairs Ministry may play a coordinating role with other government bodies. Relatively symbolic measures such as recalling an ambassador or diplomatic staff, boycotting international meetings, or coordination with other countries are primarily the purview of M.F.A.

On the other hand, more complicated measures such as reprisals related to trade, technology, development, customs, transport or communications will require the support of the relevant departments or agencies. We cannot stress too greatly the importance of the coordination and control mechanism within the sanctioning country's government, for any weakness in this respect could compromise the effectiveness of sanctions implementation.

There is no "ready-made" scale of sanctions which a country can consult to determine the seriousness of a situation or "offense" and automatically find an appropriate retaliatory response. Aside from specific clauses related to membership in international bodies, which may provide for suspension or expulsion procedures, or for the suspension of some services or privileges to members that have violated the organization's statutes or guiding principles, we can generally state that there should be prior agreement on sanctions within the government planning to adopt them and with as many countries as we can find that share our indignation. The search for the widest possible consensus often leads to the measures being reduced to the lowest common denominator, for a sanction which is acceptable to some countries (such as a total embargo on trade with countries that blatantly violate human rights) will be far less so to others, such as the target nation's leading trading partners. This makes it probable that success will be more difficult to achieve, for the target will clearly see how difficult it is to bring organized pressure to bear against it and will continue its objectionable conduct or policies. Regional security considerations can also take precedence over indignation about a neighbouring country's actions or policies. For example, it is understandable that some countries bordering on Iraq should have been reluctant to impose sanctions following the invasion of Kuwait if we consider their apprehensions with respect to Iran, which was liable to emerge strengthened from any weakening of Iraq, or their concern with avoiding an Iraqi humiliation, given Iraq's ability to cause problems for its neighbours in the future. It is therefore unlikely that we will be able to obtain a broad consensus on sanctions except in the most utterly appalling cases, given the need to develop the most coherent and credible stand possible, not only towards the target country but also towards other countries whose behaviour could be influenced by the resolve of the sanctioning countries.

In addition, the sanctioning country's government must always bear in mind its other policies (foreign and domestic) when assessing the appropriateness of introducing measures against a wrongdoer. The sanctions adopted must be as "defensible" as possible against the criticisms which are sure to arise, and must be able to withstand comparison with other similar cases, if any should occur; otherwise, the sanctioning country will be accused of inconsistency by a segment of public opinion. According to Doxey, "the simultaneous or overlapping pursuit of conflicting objectives is quite common and undermines the impact of sanctions." She cites the example of France and Great Britain vis-a-vis Italy in 1935, when these countries sought to support the League of Nations without overly alienating Mussolini, who they wanted to conciliate so as to contain Germany. An example closer to us is China, which has a veto in the UN Security Council and whose support is required for any Security Council sanctions; this sometimes serves to prevent too much interference in internal Chinese affairs.

Doxey suggests that "all cases of sanctions will probably exhibit a mixture of goals and objectives related not only to ostensible targets but also to domestic constituencies and third parties." The lack of a general organizational framework for sanctions and the tendency to adopt ad hoc measures make it more likely that the great powers' specific foreign policy and domestic policy goals will play an important — if not decisive — role, casting some discredit on claims to be acting in the defence of principle or international law. It may therefore happen that sanctions are imposed primarily to satisfy the demands of the ethnic groups urging the sanctions, or on the contrary that we limit our actions against some countries in order not to displease other groups.

5. Considerations Related to the Target Country

The reasons invoked by the sanctioners to justify their measures against the targets may vary greatly, but they generally fall into one of the following categories:

- a real or apprehended breach of peace or international security: e.g. the Iraqi invasion of Kuwait in 1990 and Yugoslavia;
- support for international terrorism: e.g. Libya (since 1986) and Iran (after the Islamic revolution);
- support for international drug trafficking: e.g. the US reprisals against Panama, which did considerable harm to Panama's economy;

- human rights violations: e.g. Myanmar, to which practically all bilateral and multilateral aid has been suspended, some Central American countries in the 1980s (Guatemala, El Salvador), Haiti.

It is clear that the sanctioning countries' response must depend on the nature and seriousness of the wrongdoing with which the target country is charged. Furthermore, in an ideal world, the same type of objectionable behaviour would always bring down the same penalty. This is not always the case, however, because the sanctioning countries are sometimes faster to adopt sanctions against countries with which they do not have extensive economic relations (as in the case of Haiti) and more willing to turn a blind eye to misconduct by the governments of countries which are more important in their view (such as China), or which are the suppliers or purchasers of strategic goods (such as Iraq, which was committing atrocities against the Kurds well before its invasion of Kuwait, or Indonesia, which is occupying East Timor).

One of the factors to be considered in the decision-making process with respect to sanctions is the objectives one hopes to achieve. To this must be added the target nation's vulnerability, especially in the case of small, landlocked countries with relatively staunch borders, or countries which are heavily dependent on trade, tourism or foreign inputs, for obviously a country which can easily circumvent the sanctions or adapt to them will be better able to withstand them. We must also mention the target country's sensitivity to domestic or international public opinion, which may prompt some countries to reconsider their behaviour even if the proposed sanctions are weak. The reaction of the elites is important here, especially if there is a gulf between the elites and the population in the target nation. On the other hand, a country in which there is a strong sense of common cause binding the population to its leaders can resist sanctions for a longer time. It is often difficult to assess in advance the target's reaction to the imposition of measures against it or its capacity to adapt to them. Some countries will react more negatively to sanctions than to behind-the-scenes diplomacy which allows them to save face.

At the political level, the nature of the existing relationship between the two countries, which can have a significant influence on one country's determination to penalize the other, must be analyzed. Long-standing relations among the leaders, the populations, the business communities and other organized groups represent channels through which a message of disapproval can be sent and influence the target nation to make positive changes in its behaviour. The absence of such relations can prompt a more radical response, due to the fact that there is less potential opposition to the measures within the sanctioning country

and perhaps only a vague understanding of their possible impact on the target. When two countries have common interests, this will generally discourage the use of sanctions by one against the other, for any worsening of their bilateral relations may be perceived as conflicting with the pursuit of constructive dialogue aimed at strengthening their existing interests. For example, there were few sanctions against Turkey, which has been criticized for its treatment of its Kurdish minority and its inflexibility on the question of Cyprus, for it is a member of NATO and borders on Iraq and other Moslem countries (not to mention the former Soviet Union).

We must bear in mind that most sanctioning countries will seek to minimize the costs and injury to themselves (assuming that the sanctioner has performed at least an implicit cost-benefit analysis of the operation).⁴⁰ During hard economic times, the parties that will be adversely affected in the sanctioning countries if the sanctions should be too long maintained are likely to form lobbies, for it is very likely that the target nation will be able to adapt and find new sources of goods and services or new markets, causing potential long-term losses to suppliers or customers in the sanctioning countries.⁴¹ We must however assume that there are lobbies within the target nation as well, representing interests which consider themselves to be adversely affected (or which, by contrast, may profit by the sanctions and benefit if they are maintained).

Bilateral or multilateral cooperation can be used as an arena for pressing one's arguments, or the suspension of such cooperation can be used as a threat if necessary. Foreign experts, their access to decision makers and their knowledge of specific issues are instruments which should not be overlooked.

The presence of a community with origins in the target country can work for or against the country in question, depending on this community's status in the sanctioning country, its ability to influence the policies of the sanctioner's leaders, and the closeness of its own ties to the country of origin. One relevant example is Serb expatriates, who have transferred an estimated \$1 billion US to Serbia and Montenegro since the beginning of 1992. The leaders of the sanctioning countries cannot but bear them in mind.

⁴⁰ According to Hufbauer, Schott and Elliott, the lack of precise data generally makes it difficult to estimate the cost of sanctions for the domestic economy in advance. Moreover, "many costs will only appear years later as a result of lost sales opportunities which befall firms branded with the tag of 'unreliable supplier'."

⁴¹ Hufbauer, Schott and Elliott argue that the costs are often borne by actors other than those who make the decisions regarding sanctions (i.e. the government). "Sanctions are paid for by the industries whose trade is most deeply affected. By contrast, most other foreign and defense policies are financed out of general treasury revenues." It can therefore be tempting for governments to consider trade sanctions as a practical means for achieving political ends at little or no cost to themselves.

6. Considerations Related to the Sanctioning Country

The sanctioning countries differ amongst themselves just as the target nations do and may have different reasons for applying sanctions against some countries.

The question of cost is crucial, for it is impossible to have a situation in which each sanctioning country will have to bear the same economic, financial or trade burden with respect to the target. Aside from cases in which there is an obligation to apply sanctions under international law (as when mandatory sanctions have been ordered by the Security Council), the countries calling for sanctions against the target nation will have to bear the burden of proof — i.e. demonstrate that the wrongdoing is serious enough to deserve punishment and identify measures capable of sending a sufficiently strong and clear message, which could be supported by as many countries as possible without doing undue harm to general economic activity. The problem of exemptions is bound to arise sooner or later, for it is inevitable that some countries will have interests to protect, will experience economic hardship or will argue that they must not alienate the target state more than necessary in view of strategic, political, trade-related or other reasons.

Doxey cites cases in which it was very difficult to win approval for measures against target states even in NATO or at the United Nations, despite the fact that a certain consensus on basic principles or policies prevailed in these bodies, due precisely to disagreements among member states. An example is the difficulty the US experienced in convincing the other NATO countries to ban oil equipment sales to the USSR in the early 1980s (due to the events in Poland and Afghanistan).

It is not certain that there will be prior agreement among the countries contemplating sanctions in every case. As Doxey notes, cost-benefit analysis will differ "if the chief purpose of sanctions is to satisfy a domestic pressure group rather than to placate an ally, defend an international norm, or signal commitment to a position." It is also possible to underestimate the target country's ability to withstand sanctions, or the significance of disagreements among the sanctioning countries, which could weaken some organizations in the long run.

Therefore, there is always a danger of "shooting oneself in the foot" and this must be taken into account. In case of doubt, it may be preferable to keep to more symbolic measures, which are less likely to cause problems between

long-standing allies in the long term.

The scope of the sanctions is an important question given the general difficulty of obtaining broad international support for measures of this type.

Aside from the UN, to which almost all countries now belong, there are few organizations that can decide on and effectively apply reprisals against a target nation. And we must forthwith qualify the UN's ability to do so in view precisely of the fact that there is no coercive mechanism available to it by which member states that wish to distance themselves from a Security Council decision or a General Assembly recommendation could be compelled to comply. There are hardly any penalties for non-compliance, which certainly diminishes the effectiveness of the sanctions.

Sanctions adopted by regional organizations are still less likely to yield convincing results. We need only think of the embargo against Cuba imposed by the US in the 1960s with the consent of the Organization of American States, the Soviet reprisals against some socialist countries (Yugoslavia in 1948, Albania), or the clearly ineffective measures against South Africa, as long as they were applied only by the Organization of African Unity.

Monitoring of the implementation of sanctions by the organizations that recommended or ordered them remains problematic, despite attempts to improve it.⁴² In general, there is no permanent structure for monitoring enforcement of the measures that the member states are supposed to apply, and given the fact that international bodies have no executive powers, there are serious problems with follow-up. While the United Nations has set up ad hoc committees in the past to supervise implementation of the measures ordered against Rhodesia and South Africa, these committees had no real power to control member states and in the final analysis their chief tool, aside from occasional questionnaires sent to member states (which were under no obligation to respond), was the publicity they were sometimes able to generate by their meetings and the publication of their reports.

⁴² We should note here the efforts of some countries to beef up customs controls along the borders of Serbia and Montenegro, as well as the efforts of the Conference on Security and Cooperation in Europe (CSCE) to designate a central coordinator to better manage existing and planned measures against the two former Yugoslav republics.

V CONCLUSIONS AND RECOMMENDATIONS

Canada has thus far supported the imposition of economic and other sanctions in reaction to international political events primarily when there has been a broad international consensus. The main reasons are our country's limited economic importance, which means we are unlikely to produce a sufficient economic impact acting alone; our view that economic and other sanctions ought not be considered an ordinary diplomatic instrument, to be used lightly; and a desire to avoid harming our businesses' market promotion efforts, so as not to place them at a disadvantage in relation to their competitors.

The Special Economic Measures Act can be invoked under the following circumstances:

- when a serious breach of peace or international security, which has sparked or could spark a grave international crisis, has occurred;
- when an international organization or association of states to which Canada belongs recommends, calls for or orders sanctions in the context of a grave international crisis.

As a member of the United Nations, we are also obliged to faithfully apply any Security Council decision ordering measures against another country.

Notwithstanding any pressure which may be exerted to adopt measures against a country, we must always estimate the costs of proceeding beforehand. We cannot overemphasize the importance of consulting all interested parties, beginning with the private sector, when the sanctions under consideration are liable to adversely affect their interests.⁴³ This may help avoid undue adverse effects to our own economy, the innocent civilian population of the target country, neighbouring countries dependent on their ties with the target (in the case of landlocked countries, these ties cannot easily be loosened or substantially modified), or the potentially harmful consequences of retaliatory measures that affect the international financial system (given that banks are vulnerable and rumours can easily rock financial markets).

⁴³ While making clear at the outset that the decision to adopt sanctions has been made and is irrevocable, it is still possible to discuss their implementation, their scope and the choice of sanctions among the available options.

Some Basic Principles

A number of general principles should be kept in mind when sanctions are considered:

- given that Canada's international clout is limited, it must avoid unilateral action;
- the widest possible international consensus must be achieved among like-minded nations. It may be assumed that countries will generally agree more readily on relatively mild sanctions; hence the lure of the "lowest common denominator";
- the burden of sanctions should be equitably shared to avoid unduly affecting our companies;
- the selected retaliatory instruments must be appropriate in view of the nature of the wrongdoing and our objectives;
- it is usually easier to introduce sanctions than to lift them. The right moment never comes, for the target state rarely does exactly as we would like. When sanctions are imposed, we should already know (without necessarily announcing publicly) when and how they will be lifted, for we may otherwise feel enormous pressure to maintain them;
- it is always important to consider the target country's internal and external dynamics, which will often dictate the most appropriate measures under the circumstances;
- we must bear in mind that the measures taken against one country can sometimes serve as an example to other countries, which we are prevented by circumstances from sanctioning immediately but which may be expected to take heed;
- it is generally unlikely that sanctions alone will be sufficient to achieve our objectives.

As we have seen, all problems caused by countries whose behaviour is unacceptable in the eyes of the international community cannot necessarily be

solved through sanctions, although sanctions can sometimes be a valuable tool.⁴⁴ We must therefore attempt to more clearly define the circumstances under which sanctions can be effective and bear in mind certain general principles.

We should not forget that while the UN can provide moral authority for a sanctions package, it lacks the authority and monitoring capabilities to enforce sanctions.⁴⁵ The record of the past few decades seems to indicate some progress on the human rights front. On the other hand, not all human rights violations have been reported, and reported cases have not always led to formal condemnations or calls for sanctions by the Security Council. (We might mention as examples Uganda under Idi Amin, El Salvador, Nicaragua, and some Arab countries temporarily allied with one bloc or the other during the period of East-West rivalry.)

The status of the country deemed guilty of unacceptable behaviour is often more significant than the wrongdoing itself. A country with a veto on the Security Council (such as China) will generally get off more lightly than one which does not, even if it is guilty of misconduct for which a less important country would be vigorously condemned. International political considerations often argue for relative inaction. On the other hand, in regional organizations dominated by one of the superpowers, a sanctions package will often be adopted (at the urging of that power) with little debate as to the appropriateness of the sanctions or the objectives (e.g. the OAS embargo against Cuba, the retaliation by socialist countries against dissident states in the 1950s and 1960s). In a number of cases, sanctions have been adopted outside any organizational framework, on an ad hoc basis. This means that it is increasingly difficult to say in advance if a given behaviour is liable to bring down sanctions on a given country, or if countries are morally or politically obliged to adopt sanctions in response to the slightest offense.

⁴⁴ Hufbauer, Schott and Elliott conclude from their study that sanctions are losing their effectiveness as a political instrument because there are more and more ways to circumvent them. Potential targets tend to develop a certain "immunity" to sanctions in the long term. Sometimes, they are able to quickly reduce their dependence on the sanctioning countries (and the US has been one of the leading users of such measures over the past couple of decades); often, other countries are willing to take the place of the sanctioning countries so as to secure new markets or new sources of supply. They do not however rule out sanctions as a useful tool against countries that are small, weak or vulnerable to international pressure.

⁴⁵ We do not deal here with the question of countries profiting at the expense of the sanctioning countries, because they are not compelled by the international community to impose sanctions (e.g. the European Community in the case of Haiti), or of countries which are obliged by their previous commitments to certain bodies (such as the UN) to apply sanctions but which nevertheless violate them with impunity. The problem of "free-riders" has always existed and apparently could be resolved only by multilateral action — through international agreements or even the creation of effective monitoring mechanisms by an international body.

Any assessment of the effectiveness of sanctions must be based on their objectives, whether these are publicly declared or not. If sanctions are imposed primarily for public relations purposes — to show unity with other countries or to satisfy a segment of domestic public opinion — and without any illusion of being able to modify the target country's behaviour, the goals can be achieved simply by adopting measures of some kind, regardless of whether they are effective or whether they have any real effect on the target.

The favoured argument of many diplomats and politicians, that it is best to work behind the scenes to convince recalcitrant countries to change their ways, has some merit, for some leaders are too weak to be seen to be giving in to pressure from the sanctioning countries (and thereby "lose face"). The conduct for which they are criticized is not always absolutely abhorrent, and some may have domestic reasons for temporarily adopting policies that run counter to international standards. (We might cite the example of Peru, a country at grips with guerrilla warfare and the drug trade, where President Fujimori has suspended the democratically-elected Congress, apparently to the relief of the majority of the population.)

While countries subject to sanctions will generally adopt more rigid behaviour before yielding, there is also a possibility that the sanctions, once applied, will prompt too great rigidity in the target country and make the problem the sanctions were intended to address still more difficult to solve. Signals can sometimes be misinterpreted, especially when the sanctioning countries are large in number and the pressure for sanctions comes from a number of sources, which are receiving (or sending) different and sometimes contradictory messages. Once the sanctions are in place, it can be difficult to adjust them or to backtrack.

On the whole (and obviously exceptions are possible), we can say that it is important to cause greater injury to the target nation than to the sanctioning nations,⁴⁸ unless there are special countervailing arguments. The cost-benefit factor must therefore be analyzed in advance, as far as possible.

It is also important to send the right signals and avoid hardening the target's behaviour, when the aim is to modify it. Moderate measures, which can be beefed up but leave the target some flexibility, are generally preferable. A sanctions package which encourages the target nation to improve its conduct by

⁴⁸ We must distinguish here between the damage caused by the sanctions and their success in achieving their objective. The US government G.A.O. report "Economic Sanctions: Effectiveness as Tools of Foreign Policy" notes in its conclusions that "the extent of the economic damage suffered by the target country does not often determine the success of the sanctions; the threat of damage from additional sanctions is often more effective."

rewarding movement in the right direction with the gradual and progressive lifting of the measures should be considered.

Sanctions are and probably always will be a controversial tool, given the large number of factors which must be considered before they are used. The more frequent recourse to the United Nations in the past three years is encouraging, but we cannot ignore the difficulties inherent to the UN, notably the many divisions within it (North/South, Islamic countries, regional divergences, etc.). The need for consistency must therefore be borne in mind if we wish to give the process greater credibility.⁴⁷

We cannot dismiss out of hand political and diplomatic efforts to resolve problems before they degenerate and require recourse to sanctions. It is therefore important to persevere and create institutions to foster dialogue and resolve problems by peaceful means.

⁴⁷ Our actions should be guided by the dictum "Let the punishment fit the crime," although our overall relations with the target country must as always be taken into account.

APPENDIX I

Notes on specific cases of sanctions involving Canada:

Canada has imposed total or near-total economic sanctions on at least 5 occasions since the late 1960s: against Rhodesia (1968), South Africa (1986), Iraq (1990), Haiti (1991) and Yugoslavia (1991). We have also applied or provided for limited sanctions against Iran (1980), the USSR (1980), Poland (1982), Argentina (1982) and Libya (1982). There have also been a number of instances in which bilateral aid programs were suspended or cancelled due to human rights violations.

A. Following the imposition of sanctions by the United Nations Security Council:

- Rhodesia: trade restraints under the EIPA, with exemptions for food, medicine and other humanitarian goods, and then a general embargo pursuant to United Nations regulations on Rhodesia;
- South Africa: the EIPA was used to restrict arms shipments in 1977, following the imposition of sanctions by the United Nations Security Council (see below for more details);
- Iraq: general embargo (pursuant to the UNA), with clauses excluding foodstuffs from the measures (see below for more details);
- Yugoslavia: general embargo on goods shipments from or to Yugoslavia, except for foodstuffs and medicines. In addition, a series of financial, economic, diplomatic and other measures were imposed against Yugoslavia (see below for details);
- Libya: in April 1992, Canada announced measures in response to a binding United Nations Security Council resolution requiring member states to restrict assistance to the aeronautical sector and impose an embargo on arms and related materiel (see below);
- Somalia: in January 1992, the Security Council imposed a total embargo on the shipment of arms and military equipment to Somalia (which Canada applied) in order to help restore peace and security in the country.

- B. When the Organization of American States recommended the suspension of economic, financial and trading ties with Haiti (see below) and the freezing of Haitian government assets.
- C. Among cases in which development aid was reviewed, suspended or cancelled as a retaliatory measure, we can cite Afghanistan (1979), Cuba, Fiji (1987), Guatemala (to which aid is being channelled through NGOs and multilateral agencies), El Salvador (ditto), Haiti (for bilateral government-to-government aid), Indonesia (due to the East Timor issue, which has prompted the government to suspend approval for new aid projects since 1991), Kenya (aid programs reviewed), Myanmar, Sri Lanka, Zaire (bilateral program suspended in 1991 but some humanitarian aid maintained).
- D. Other cases and comments
- In the case of Poland, Canada temporarily blocked the granting of new credits except for foodstuffs in 1982, temporarily delayed negotiations on the rescheduling of Polish debt, and cut landing rights for Polish airlines to 2 flights per week.
 - In the case of Argentina (following the invasion of the Falkland Islands in 1982), Canada imposed a temporary embargo on sales of arms, ammunition and military equipment, as well as all items on the list of controlled goods destined for the Argentine military; imposed under the EIPA, a ban on all imports of Argentine goods; recommended to the EDC the suspension of all new credits for new transactions with Argentina. Existing contracts for the import of Argentine goods were however honoured, reducing the impact of the measures on importers.
 - The Iranian Economic Sanctions Act, passed in 1980, was in force for one year, but the government did not invoke it since the hostage crisis ended with the liberation of the hostages.
 - In the cases of Afghanistan, Iran and Poland, there were some legal complications to applying sanctions in the absence of any binding Security Council resolutions, which made it impossible to act under the UNA. It was therefore necessary to reach bilateral or multilateral agreements with other countries in order to be able to take action under then-existing legislation.

- In the cases of Argentina, Libya and South Africa, Canada allowed affected importers and exporters to honour contracts signed before the export restraints took effect. Iraq presented a problem of a different order given the seriousness and extreme urgency of the crisis, and the maintenance of existing contractual relationships was not permitted. No provision was made for a mechanism to receive applications for compensation.
- Libya: Canada has adopted various measures since 1982 in retaliation for Libyan support for terrorism; these measures were stiffened in 1984, 1986 and 1992. Canada cut off financial support for Canadian firms doing business in Libya, stopped insuring new activities by Canadian firms in Libya through the Export Development Corporation, and banned the export of military equipment, strategic goods (such as civil aircraft) and oil equipment containing "exclusive Western technology" by refusing to grant export permits, which had become necessary due to Libya's inclusion on the Area Control List. There was no provision for compensation. It seems that already-existing contracts for oil equipment were honoured.

As there are few direct links between Canada and Libya and little air traffic, even indirectly (the bulk of the passenger traffic probably consisted of Libyan students studying in Canada and Canadian workers and their dependents, numbering about 2,500, living temporarily in Libya, most of whom are involved in the oil sector), the impact has been negligible. These travellers can still travel to Libya through Malta or neighbouring Tunisia. There are hardly any Canadian-made aircraft in Libya, and in any event they could always be serviced later, assuming that the other countries that have provided aircraft to Libya also observe the embargo.

- South Africa: Over the years, Canada has adopted a variety of measures to indicate its opposition to apartheid and pressure the South African government to abandon that policy and negotiate with black leaders to establish a non-racial democracy. A number of measures have been introduced since 1985, including a UN embargo on the export of arms and sensitive technology, a voluntary UN embargo on arms imports, abrogation of the reciprocal agreement on double taxation, cancellation of official financial support for Canadian exports; restrictions on sports contacts, a ban on the sale of South African gold coins in Canada, rigorous control over official contacts

with South African government representatives, a ban on new bank loans and oil sales, an embargo on direct air transport and then on all air links, creation of a special fund to help political prisoners in South Africa, creation of a Group of Eminent Persons by the Commonwealth to recommend ways to fight apartheid, strengthening links with South African trade unions, a ban on promoting South African tourism in Canada, revoking the accreditation of some South African attachés then based in Washington, a ban on new Canadian investment in South Africa, a ban on imports of South African foodstuffs, coal, uranium, iron and steel, curtailing consular services in South Africa, creation of a Commonwealth Committee of Foreign Ministers (CFM) on southern Africa, review of scholarships and educational programs for South African students, strengthening international cooperation and calling for joint action and improved monitoring to increase the impact of the sanctions. In May 1989, South Africa was placed on the Area Control List pursuant to the EIPA so as to restrict exports of goods which could help maintain the apartheid regime.

In February 1991, the CFM decided to link any relaxation of sanctions to real movement towards the dismantling of apartheid. Sanctions limiting "personal" contacts were gradually lifted in view of the progress made on political prisoners, the return of exiles and the repeal of apartheid laws. Economic and trade-related sanctions remain in place pending an agreement among the parties on transitional mechanisms, which would open the door to political talks. Financial sanctions remain in place pending agreement on the text of a new democratic constitution. The arms embargo will not be lifted until a new post-apartheid regime is in place and seen to be stable.

Export permits were issued to allow exporters with existing contracts to honour those contracts. There was no provision for compensation to adversely affected parties in Canada or abroad. We should note Canada's leadership role within the Commonwealth on the South African sanctions issue. Canada's influence in this case was a significant success for Canadian foreign policy, which diverged substantially from US and British policy, the US and Great Britain having been much less convinced of the appropriateness of adopting sanctions.

- Yugoslavia: Canada's objective in joining the EEC sanctions was initially to make a political statement and encourage the parties to reconsider their positions. In the course of 1991 and 1992, Canada gradually introduced the following measures:
 - support for EEC measures and sanctions;
 - striking Yugoslavia from the list of countries to which the General Preferential Tariff is extended and entering it on the Area Control List, which means that Canadian exporters must first obtain an export permit;
 - suspending market promotion and all trade assistance (refusing support under the Program for Export Market Development and the Renaissance Eastern Europe program to the Federal Republic of Yugoslavia — i.e. Serbia and Montenegro);
 - providing emergency relief to the affected populations;
 - calling for a meeting of the UN Security Council to impose economic, trade and oil sanctions on Belgrade;
 - suspending Canadian landing rights for Yugoslav JAT airlines;
 - recalling the ambassador for consultation;
 - reducing the number of accreditations for Yugoslav diplomats in Canada;
 - following adoption of UN Security Council resolution 757: total embargo on exports to and imports from Yugoslavia (Serbia and Montenegro), except for foodstuffs and medicine;
 - identifying Federal Republic of Yugoslavia (Serbia and Montenegro) funds and financial and economic resources in Canada in order to bar access to these resources by the Yugoslav government;
 - additional sanctions in the fields of sport, culture, science and technology.

The effect of the sanctions on Canada has been relatively slight, although some exporters and importers have been more affected than others. The volume of our trade with the former Yugoslavia (sales of \$45 million and purchases of \$71 million in 1991, a drop of 22% and 23% respectively from 1990) was modest, and it is likely that almost all imports from the region were replaced without great difficulty or additional cost. It should be noted that our exports had already declined in the late 1980s to barely over half of what they had been at the beginning of the decade, while our imports had almost doubled to \$74 million, which probably reflected the economic difficulties faced by the former Yugoslavia as it struggled to service a huge foreign debt. At the same time, given the additional economic difficulties caused by the war and the delicate political situation in these republics, our trade volume would have fallen in any event. It is therefore difficult to try to calculate the adverse effects of the sanctions on our economy. The EDC's commitments were also modest — slightly over \$100 million — as was its insurance exposure — under \$10 million. Moreover, these amounts may well be recovered later, when peace has been restored. Lost opportunities are more difficult to estimate and do not represent losses in the same sense as firmly signed contracts. There was no bilateral aid program. Yugoslavia is neither a significant source nor a major user of Canadian technology. In short, the losses were minimal and therefore acceptable — not of a nature to prompt Canada to change its policy on the existing sanctions package.

- Iraq: This is a shining example of a sanctions episode. Sanctions were imposed quickly and on a massive scale. The UN's member states quickly reached near-unanimous agreement on Iraqi wrongdoing and it occurred at a highly opportune time, in the midst of the honeymoon between the USSR and the US. Acting on a Security Council resolution, member states gradually put in place a series of measures intended to isolate Iraq and prevent it from beefing up its military potential, while at the same time preparing for military action to liberate Kuwait if necessary. Canada immediately cut off trade with Iraq and with occupied Kuwait, froze the assets of both governments in Canada, and terminated special business promotion arrangements with Iraq as well as other exchanges. However, as the Secretary of State for External Affairs stated in mid December, 1990, sanctions are, all things considered, necessary but not sufficient to achieve our declared objectives: Iraqi withdrawal from Kuwait and the

restoration of Kuwait's sovereignty and legitimate government.⁴⁸ In the end, it was necessary to use substantial military force (in which Canada participated) and it must unfortunately be admitted that, two years after the cessation of military hostilities, tension remains high in the region.

- In the case of the USSR in 1980, Canada did not interrupt grain shipments under then-existing contractual commitments, so as not to violate the bilateral Canadian-Soviet trade agreement of 1956. On a number of occasions, however, we did restrict or block lines of credit to the Soviet Union, cancel cultural or scientific exchanges, and cancel or postpone visits by ministers or senior officials. We also asked the Canadian Olympic Committee not to participate in the Moscow Olympics in 1980, to which the Committee agreed.
- Our trade volume with Haiti was very small (exports of \$15 million, imports of \$11 million in 1991) to begin with. This already scanty trade plummeted and would be almost nothing were it not for donations of foodstuffs and humanitarian goods. The number of Canadian tourists heading for Haiti fell off after the events surrounding the fall of President Duvalier and has never recovered. We issue few visas but immigration programs continue to operate for humanitarian reasons. People with known ties to the new regime are refused visas. Canadian investment in Haiti is negligible. The sanctions therefore caused little harm to our economy. It might be argued that the withdrawal of Canadian aid, limited as it was, did cause some additional hardship to the population, although this harm was partly compensated for by the maintenance and indeed increase in our assistance through NGOs and multilateral organizations.
- In the case of China, a number of countries, including Canada, reacted vigorously in 1989 following the Tiananmen Square events. Although we were careful not to call the measures sanctions, the Chinese did. In a speech delivered in late June 1989, Secretary of State for External Affairs Joe Clark listed three major criteria which would guide the Canadian government's actions with respect to China. While EDC export financing remained available, sales of equipment destined for

⁴⁸ "Speech by the Right Honourable Joe Clark, Secretary of State for External Affairs, on the Effect of the Sanctions Against Iraq, before the House of Commons Committee on External Affairs and International Trade," (90-73), Ottawa, December 10, 1990.

the state's security or propaganda branches did not qualify. High-level visits between the two governments were restricted. China was not to be isolated from the rest of the world. Canada generally supported a more restrictive policy on the approval of project financing by international financing institutions, especially within the G-7, so as to send a message to Beijing, but we kept concessionary financing available for projects that qualified.

The economic impact on Canada can be considered modest, as there were few projects or real commercial opportunities in the fields of security or propaganda. The linkage of Canadian assistance to "good government" may have had an influence on the type of assistance offered to China. Aid is increasingly oriented towards human resource development and basic economic reforms, and tends to minimize direct government-to-government contacts.

- In the mid 1970s, India, which had received Canadian technical assistance in the field of nuclear energy for peaceful purposes, exploded a nuclear device. Canada consequently cancelled its nuclear cooperation agreement with India. India's traditional enemy Pakistan, which has well-known nuclear ambitions, did not explode a bomb but refused to guarantee compliance with Canada's non-proliferation requirements. In view of its known attempts to obtain nuclear technology, Canada limited nuclear assistance to Pakistan in 1974 and then banned it entirely in 1976. Westinghouse Canada was one of the firms most directly involved, having built a CANDU nuclear fuel production facility for Pakistan. This does not however seem to have entirely prevented Pakistani progress towards acquiring atomic technology.
- Indonesia's repression of human rights in East Timor (to which many countries do not recognize its claim to sovereignty) is a special case in that, despite extensive criticism, primarily from Western countries, no sanctions package has been officially adopted, although a number of countries have suspended aid programs, not renewed projects, or restricted exports of military or security-related equipment. Canada has been one of the most vigorous critics, condemning Indonesia's policies more severely than most other nations and provoking protests from the Indonesian authorities. Some Canadian firms have already indicated to the Canadian government that they believe they have suffered injury partly on account of the Canadian policy. They have

been unable to provide evidence, but they claim this has been confirmed to them in private by Indonesian officials. Some also feel they have been adversely affected in third countries, where their reputation as a "reliable supplier" has been harmed by Canada's protests.

APPENDIX II

COMPENSATION: A THORNY ISSUE

Unfortunately, there are no standard practices or clear guidelines on the question of compensation.

The knotty question of who should assume the cost of sanctions when they are applied arises. The question of constitutional property rights remains to be settled, but the Canadian Charter of Rights and Freedoms does not appear to safeguard property rights. The government is entitled to pass enabling legislation for economic sanctions, based on its legislative authority with respect to international trade, banking, navigation, air transport, and peace, order and good government. On the other hand, the Canadian Bill of Rights recognizes an individual's right to the enjoyment of property, and the right not to be deprived of it except by due process of law. Will the courts recognize a right to compensation by virtue of the Bill of Rights? The question will have to be dealt with sooner or later.

Acquired rights may be affected by the application of economic sanctions. It is sometimes possible to protect oneself against political risks through export insurance, which can be obtained at a reasonable cost. The Emergency Measures Act provides for compulsory compensation for persons who suffer injury from regulations adopted pursuant to this Act. Neither the Export and Import Permits Act, nor the Iranian Economic Sanctions Act, nor the United Nations Act contains a clause allowing for compensation. The Special Economic Measures Act does not make compensation mandatory. In the case of the sanctions adopted over the past 25 years, only those against Rhodesia (1968) provided for the possibility of compensation, and we have found no evidence of claims for compensation having been submitted to the government following the imposition of sanctions. In 1980, Canada undertook not to replace US wheat exports to the USSR and to abstain from making grain sales to the USSR above "normal and traditional levels." The government undertook to compensate Canadian grain producers for any lost income which could legitimately be attributed to measures taken by the Canadian government or to the impact of the US measures on third parties. \$81 million was reportedly paid out at that time to grain and oilseed producers under various assistance programs to compensate for lost earnings due to lower prices resulting from the fact that US grain which would normally have been sold to the USSR was diverted onto the world market.

It appears that there was some correspondence from the private sector inquiring about the possibility of obtaining settlement for alleged losses incurred by firms or individuals following the imposition of sanctions. However, few formal applications for compensation seem to have been submitted to the government in other cases. No case of compensation by the government was found aside from the one mentioned above.

When a country is entered on the Area Control List (ACL), individual exporters do not necessarily feel the effect immediately, for the measure may initially be political. The effects can however become comparable to the ones felt from economic sanctions, for goods on the ACL require an export permit, and the Secretary of State for External Affairs has full discretion to approve or refuse authorization for such a permit.⁴⁹ It seems likely, however, that the government avoids committing itself in advance to providing compensation for possible losses resulting from the application of the EIPA, for the Act contains no clause providing for compensation for lost sales resulting from the cancellation or suspension of permits issued pursuant to the EIPA.

Who should take responsibility for the unwanted and inevitable adverse effects of economic sanctions? This question should be considered on a case-by-case basis. Among the factors to be considered are the following:

- a) the number and category of people who could be adversely affected:
- persons directly subject to the sanctions (because they are located in the target country or have close relations with it);
 - persons directly affected by the sanctions or indirectly affected (those in the second category will, with few exceptions, probably be excluded from any compensation program);
 - persons whose acquired rights are affected by the sanctions (current exporters) and those whose potential rights or opportunities may be diminished (such as exporters who are merely interested in the target market);

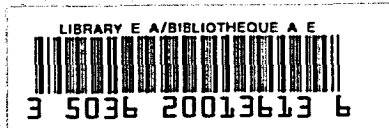
⁴⁹ While a permit becomes necessary as soon as a country is entered on the ACL, initially negative decisions are sometimes revised to avoid undue injury to exporters who had operative contracts when the entry was made, especially if it can be shown that the goods being sold do not violate the spirit of the sanctions.

- persons active in economic sectors (agriculture, banking, transportation, etc.) who will be otherwise affected. Some may be able to sell their goods or services elsewhere — others may not;
 - adversely affected persons who are Canadian residents, Canadian citizens or companies incorporated in Canada, and those who are not, given that the law imposes obligations only on Canadian residents, citizens and corporations.
- b) the opportunity these people have to avoid or mitigate the injury (e.g. through insurance). The Export Development Corporation allows exporters to insure themselves against the risk of export permit cancellation and the imposition of new export restraints, while importers cannot obtain insurance. The potential losses to the EDC and to other bodies which may be forced to compensate companies they have insured against political risk must also be considered in any assessment of the economic impact on Canada.

The Secretary of State for External Affairs must presumably consult the other ministers when drafting recommendations, so as to assess the economic consequences that imposing economic sanctions may have for Canada. This does not appear to entail any obligation for the government to pay compensation, but does allow for the possibility of compensation, depending on circumstances.

There are arguments for and against the use of public funds to provide compensation. It would appear to be difficult if not impossible to establish unvarying criteria to determine the payment of compensation in all cases of sanctions imposed by the Canadian government. A flexible approach which does not bind the government but allows it to examine each request for compensation would therefore appear advisable. There may not be time to analyze the appropriateness or the cost of providing compensation before sanctions are imposed. Acting under the state's prerogative to make ex gratia payment is probably the best course of action, if the affected persons can easily take advantage of it.

Under the provisions of the SEMA, a minister (it is not specified which one) may be charged with receiving and assessing applications for compensation from Canadian citizens, companies incorporated in Canada, and other persons in Canada who suffer injury following the application of sanctions pursuant to legislation, and with making recommendations on such applications. This provision does not necessarily create a right to compensation; any payment made would apparently be on an ex gratia basis.



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