Defining Economic Aggression in International Law: The Possibility of Regional Action by the Organization of American States

Martin Domb
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The U.N. General Assembly’s adoption of Resolution 3314 in December 1974 was the culmination of several decades of international efforts to define aggression. Many countries view this accomplishment as a major step in the codification of international law, while others are dissatisfied with the limited scope of the definition. One of the objections to the General Assembly’s definition is its failure to deal with ideological, political, economic, and other forms of indirect aggression. Throughout the United Nations debates many Latin American countries called for an extension of the definition to include indirect coercion, especially economic aggression. The failure to include economic aggression in the U.N. definition and the position of several Latin American countries during the deliberations raise the question whether it is legally possible, politically feasible, and desirable from the standpoint of world order to define economic aggression within the Organization of American States.

This Note will focus on defining economic aggression within the O.A.S. The elements of the definition, the appropriate international body to enforce it, and the implications of such a codification on other traditional norms of international law will be explored.

4. For a more complete description of the Latin American countries’ position at the U.N., see notes 12-17 infra and accompanying text. This position is not held by Latin American countries alone. For example, in a letter addressed to the U.N. Secretary-General, the permanent representative of Afghanistan to the U.N. requested the inclusion in the agenda of the 30th Session of the General Assembly of an item entitled “Need to extend the definition of aggression in the light of the present international situation.” 30 U.N. GAOR, U.N. Doc. A/10193, at 1 (1975). The explanatory memorandum stated that “the definition of aggression should be expanded to include all methods of force and coercion, direct or indirect, including economic and political pressures.” Id., Annex at 2.
I

LATIN AMERICA AND THE LIMITED U.N. DEFINITION

The road to defining aggression in international law was a long and arduous one. Throughout this process, numerous proposals were made to add economic and other indirect forms of coercion to the definition of armed aggression. Draft resolutions were submitted to conferences and committees of the League of Nations and the United Nations, as well as to regional and sub-regional conferences. Within the U.N., it soon became clear that these proposals would not gain general acceptance. The Chairman of the last U.N. Special Committee reported that most of its members felt that the definition of aggression should concentrate on armed aggression. But the issue remained; the Chairman was compelled to note that some dissatisfaction had been expressed because the draft definition did not cover economic aggression. The delegates of the Latin American states expressed much of this dissatisfaction.

5. See E. Aroneanu, supra note 2, at 75-84; B. Supervielle, supra note 2, at 62-67.

6. For example, the Soviet Union in 1931 proposed a protocol of Economic Non-Aggression to the Commission of Enquiry for European Union. The Protocol sought to eliminate discriminatory practices in economic relations among the signatory countries. A translation of the preamble to the draft treaty can be found in A.J. Thomas, A.V.W. Thomas, & O. Salas, The International Law of Indirect Aggression and Subversion 71 (Annex 1966) [hereinafter cited as Thomas].

7. In 1952 Bolivia submitted a draft resolution to the U.N. General Assembly Sixth Committee which was, for the first time, considering the definition of aggression. The draft defined as aggression any "unilateral action to deprive a state of the economic resources derived from the fair practice of international trade, or to endanger its basic economy, thus jeopardising [sic] the security of that State." Report of the International Law Commission Covering the Work of its Third Session, Question of Defining Aggression 83, 6 U.N. GAOR, C.6, U.N. Doc. A/C.6/L.211 (1952); cf. 7 U.N. GAOR, Special Committee on the Question of Defining Aggression, U.N. Doc. A/AC.66/L.2/Rev.1 (1953) (U.S.S.R. draft resolution).

8. At the eighth international American Conference, held in Lima in 1938, Colombia proposed a Treaty on Inter-American Trade and Economic Aggression. Article V of that treaty condemned the use of coercive economic measures intended to influence relations among signatory nations. Speech by Mr. Dihigo, Cuban delegate, Ninth International Conference of American States, Comisión de Iniciativas (April 23, 1948), reprinted in 2 NOVENA CONFERENCIA INTERNACIONAL AMERICANA, ACTAS Y DOCUMENTOS 346, 348-49 (1953). A translation of the preamble to the draft treaty can be found in A.J. Thomas, A.V.W. Thomas, & O. Salas, The International Law of Indirect Aggression and Subversion 71 (Annex 1966) [hereinafter cited as Thomas].


11. Id.

12. When the draft definition which was eventually adopted by the General Assembly
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This dissenting position may be better understood in light of the Latin American countries' long-standing concern with nonintervention and their broad conception of aggression. Although the principle of nonintervention first appeared as part of an official instrument of the inter-American system at the Montevideo Conference in 1933, the origin of this principle in the Americas may be traced back to the declaration of the Monroe Doctrine in 1823. Since then many international jurists and diplomats have contributed to and altered the concept of nonintervention—surely one of the cornerstones of the inter-American system. In 1948 nonintervention became linked with economic aggression in the writings of Cuban scholars. This Cuban position was expressed at the Ninth

was discussed in 1974 by the Sixth Committee, 19 of the 26 Latin American delegations presented their views. Eleven delegations did not perceive a need to expand the definition of aggression in economic terms (they were Brazil, Colombia, Ecuador, Jamaica, Nicaragua, Panama, Costa Rica, Paraguay, Venezuela, Guatemala and Honduras). The remaining eight delegations (Chile, Peru, Argentina, Bolivia, Uruguay, El Salvador, Cuba and the Dominican Republic) were all in agreement that the definition as proposed was incomplete, lacking one of the most common and dangerous forms of aggression—economic aggression. See Summary Report of the Sixth Committee, 29 U.N. GAOR, C.6 (1474th mtg.-1489th mtg.) 53, U.N. Docs. A/C.6/SR.1471 to 1489 (1974). For example, the Peruvian delegate stated that the Special Committee "had ignored the form of aggression which was most common at the present time, namely, economic aggression." Id. (1474th mtg.) at 54, para. 7, U.N. Doc. A/C.6/SR.1474.

The views of some Latin American delegations at the Twenty-ninth Session were not entirely consistent with those expressed by the same delegations at earlier sessions. For example, the representative of Guatemala at the Twenty-ninth Session referred to "the use of armed force" as "the cornerstone of the definition." Id. (1479th mtg.) at 82, para. 18, U.N. Doc. A/C.6/SR.1479. However, at the Twelfth Session in 1957 the Guatemalan delegate had stated that "in modern times it was indisputable that economic or ideological aggression was capable of constituting . . . a threat [to the peace]." 12 U.N. GAOR, C.6 (520th mtg.) 49, para. 4, U.N. Doc. A/C.6/SR.520 (1957). Moreover, a few Latin American delegations that did not speak on the question of defining aggression at the Twenty-ninth Session had commented on the importance of economic aggression at earlier sessions. Of all the Latin American countries, Mexico most consistently supported a definition limited to armed aggression, while El Salvador and Bolivia were among the most vocal delegations calling for a definition which included economic aggression. The overall pattern which emerges is that the Latin American countries provided much of the impetus within the U.N. for addressing the issue of economic aggression. For a list of the summary records of all the meetings of the Special Committees on the Question of Defining Aggression since 1953, see 1 B. FErENCz, supra note 2, at xvi-xx.

13. Article 8 of the Convention on Rights and Duties of States reads: "No State has the right to intervene in the internal or external affairs of another." Quoted in INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, THE INTER-AMERICAN SYSTEM, at xxvi (1966) [hereinafter cited as INTER-AMERICAN SYSTEM].

14. Some of the well-known figures from Latin America who have lent their names to the noninterventionist doctrine are Carlos Calvo, Luis María Drago, and José María Yepes. See I. FABELA, INTERVENCIÓN 100, 108-12, 114-15 (1961); INTERVENTION IN LATIN AMERICA 142 (C. Ronning ed. 1970); A.V.W. THOMAS & A.J. THOMAS, NON-INTERVENTION 56-57 (1956).

15. "Intervention is intimately related to the problem of economic aggression, since the former may consist of economic activities which pressure or coerce a nation into accepting given demands." R. GONZÁLEz MUNÓz, DOCTRINA GRAU 76 (1948) (translation by the author).
International American Conference held in Bogotá in 1948,¹⁶ and became the basis for Article 16 of the O.A.S. Charter, which condemned the use of "coercive measures of an economic or political character."¹⁷ The vague principle of international law contained in that provision was adopted almost verbatim by the General Assembly seventeen years later.¹⁸ Although the notion that a state may not use economic force to coerce another state has recently gained wide recognition, the concept of economic aggression remains vague and undefined.¹⁹ The inter-American system thus presents an ideal testing ground for defining economic aggression in international law.

II

IS THERE A NEED TO DEFINE ECONOMIC AGGRESSION?

In recent years allegations of economic aggression have not been uncommon. When the United States reduced Cuba’s sugar import quota in 1960, the Cuban government charged that this measure constituted an act of aggression.²⁰ More recently, Iceland has complained of "fishing aggression" by Great Britain;²¹ Chile has accused the United States of economic aggression leading to the downfall of the Allende government;²²

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¹⁶. See the text of the speech by Mr. Dihigo, supra note 8, at 346-51.
¹⁹. See notes 38-39 infra and accompanying text.
²¹. Iceland’s claim is based on the danger to its economy caused by the depletion of fishing stocks. Iceland has asserted this danger in an effort to escape the provisions of a 1961 agreement with Great Britain which gives British vessels the right to fish at designated times and places within Iceland’s 12 mile fishing zone. When Iceland attempted to extend its fishing zone to 50 nautical miles, it raised the issue of whether alleged acts of economic aggression trigger the right to self-defense. Katz, Issues Arising in the Icelandic Fisheries Case, 22 INT’L & COMP. L.Q. 83, 83-84, 98-104 (1973). On February 19, 1976, Iceland broke off diplomatic relations with Great Britain because of this dispute. This break followed Iceland’s attempt to keep British trawlers out of its newly declared 200 mile fishing limit. N.Y. Times, Feb. 20, 1976, at 3, col. 7.

Despite the frequency of such claims, the legal grounds for a claim of economic aggression remain unclear. Much of the debate has centered on the question of whether the prohibition against “the threat or use of force” in Article 2(4) of the U.N. Charter extends to acts not involving the use of armed force. Some commentators have construed this provision broadly,\footnote{Professor Brosche, for example, has argued that current trends in international law point toward a more liberal reading of Article 2(4); he concludes that both the oil embargo by the Arab states and the economic and political pressures exerted by the United States against Chile before the overthrow of Allende were violative of Article 2(4). Brosche, supra note 22, at 34. He concedes, however, that the rejection of a Brazilian proposal at the San Francisco Conference to amend Article 2(4) to expressly cover economic coercion suggests that the delegates opposed a broad construction of the word “force.” Id. at 22.}

while others, reading the words strictly, have stated that Article 2(4) does not encompass economic coercion.\footnote{Professor Brownlie has stated that while the term “force” may have a wider meaning than armed force, “it is very doubtful if it applies to economic measures of a coercive nature.” I. BROWNIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 362 (1963) (footnote omitted).}

This split of opinion suggests that the U.N. Charter is not a satisfactory legal basis for the claim of economic aggression.

In certain cases bilateral or multilateral treaties may provide grounds for allegations of economic aggression.\footnote{Only 14 members of the O.A.S., including the United States, have subscribed to the General Agreement on Tariffs and Trade, \textit{opened for signature} Oct. 30, 1947, 61 Stat. A11, T.I.A.S. No. 1700, 55 U.N.T.S. 266 [hereinafter cited as the GATT]. Bolivia, Ecuador, Venezuela and Mexico are among those O.A.S. members who have not subscribed. Colombia has provisionally subscribed. The agreement is being applied de facto to one American state, Grenada. Treaty Affairs Staff, Office of the Legal Advisor, U.S. Dep’t of State, \textit{[1977] TREATIES IN FORCE} 298.}

However, the usefulness of such treaties in policing against economic misconduct is limited. Bilateral treaties, though numerous, are not universal, and not all states are signatories to multilateral treaties.\footnote{Self-defense and reprisal actions are subject to limitations imposed by Chapter VI of the U.N. Charter (Pacific Settlement of Disputes), by any applicable treaty provisions for the settlement of disputes, and by traditional requirements of necessity and proportionality. See Bowett, \textit{Economic Coercion and Reprisals by States}, 13 VA. J. INT’L L. 1, 7, 10-11 (1972).}

In addition, under a bilateral treaty the only effective remedy available to an aggrieved state may be unilateral action in the form of self-defense or reprisal.\footnote{Bowott, \textit{International Law and Economic Coercion}, 16 VA. J. INT’L L. 245, 247-48 (1976); Muir, \textit{The Boycott in International Law}, 9 J. INT’L L. & ECON. 187, 200-02 (1974).}

Multilateral treaties, such
as the General Agreement on Tariffs and Trade,\textsuperscript{29} often establish specific procedures for the settlement of disputes. However, the exhaustion of such enforcement measures is usually a precondition to any other remedy.\textsuperscript{30}

In addition to treaties and the U.N. Charter, several recent General Assembly resolutions have dealt with the question of undue economic pressure. The nonintervention resolution\textsuperscript{31} adopted in 1965 provided:

\begin{quote}
No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.\textsuperscript{32}
\end{quote}

In a 1973 resolution the General Assembly deplored "acts of States which use force, armed aggression, economic coercion or any other illegal or improper means in resolving disputes concerning the exercise of . . . sovereign rights."\textsuperscript{33} Among the General Assembly's most recent declarations touching on this question is the Charter of Economic Rights and Duties of States,\textsuperscript{34} which condemns the use of economic or other measures of coercion.\textsuperscript{35} While these declarations may evidence a current trend against the use of economic pressure,\textsuperscript{36} their practical effect is limited. General Assembly resolutions are not binding. Furthermore, lack of support from a substantial number of members, and the requirement of practice through time before a rule of customary international law is established, limit the legal effect of General Assembly resolutions.\textsuperscript{37}

Finally, the condemnations contained in these resolutions, as well as

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\item \textsuperscript{29} GATT, supra note 27.
\item \textsuperscript{30} The GATT provides for the referral of disputes to meetings of the representatives of the contracting parties acting jointly, and limits enforcement measures under the GATT to the suspension of its application in appropriate cases. \textit{Id.} art. XXIII, para. 2; \textit{id.} art. XXV, para. 1.
\item \textsuperscript{32} \textit{Id.} at 12, para. 2. This paragraph was reproduced almost verbatim in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) 121, 123, U.N. Doc. A/8082 (1970).
\item \textsuperscript{35} \textit{But see} Tiewul, \textit{The United Nations Charter of Economic Rights and Duties of States}, 10 J. Int'L. L. & Econ. 645, 675 (1975) (pointing out that the Charter disposes of the phenomenon of economic coercion rather sparingly).
\item \textsuperscript{36} On the weight of General Assembly resolutions, see Boorman, \textit{supra} note 23, at 213; Falk, \textit{On the Quasi-Legislative Competence of the General Assembly}, 60 AM. J. INT'L L. 782 (1966).
\end{itemize}
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those in other international documents, are too general to have any practical significance. Specific criteria must be developed to guide international deliberative bodies presented with allegations of economic aggression.

III

THE INTER-AMERICAN SECURITY SYSTEM

Chapter VIII of the U.N. Charter permits the establishment of regional arrangements which may deal with matters of "international peace and security . . . appropriate for regional action." The inclusion of this provision was a concession by the draftsmen at the San Francisco Conference to the American states, which had already been loosely organized for over a century and formally united since 1890, and which forcefully pressed for the existence of regional groupings within the universalist framework of the United Nations. The present inter-American system of security was shaped soon after the formation of the U.N. with the conclusion of two treaties: the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) in 1947, and the Charter of the O.A.S. in 1948.

The Charter of the O.A.S. states that it is a regional agency of the United Nations. Its concept of what constitutes illegal use of force, however, is much more expansive than that embodied in Article 2(4) of the U.N. Charter. In language that closely foreshadowed future General Assembly resolutions, Article 19 of the O.A.S. Charter provides:

No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

39. As one author has commented, "such guidelines as the U.N. has provided are so general that they are not likely to be useful to authoritative decision makers who control municipal and international bases of power." Boorman, supra note 23, at 230; Bowett, supra note 26, at 248.
40. U.N. CHARTER art. 52, para. 1.
41. INTER-AMERICAN SYSTEM, supra note 13, at xx-xxxvii.
42. A. GÓMEZ ROBLEDO, LAS NACIONES UNIDAS Y EL SISTEMA INTERAMERICANO 8 (1974).
44. O.A.S. CHARTER, supra note 17.
45. Id. art. 1.
46. Sée notes 24 & 25 supra and accompanying text.
47. See notes 31-35 supra and accompanying text.
48. O.A.S. CHARTER, supra note 17, art. 19.
Chapter V, dealing with collective security, refers to the threat to the sovereignty or political independence of an American state caused "by an armed attack or by an act of aggression that is not an armed attack." 49

The O.A.S. Charter does not specifically provide an enforcement mechanism; rather, it incorporates by reference the procedures established by the Rio Treaty and other special agreements on inter-American security. 50 Unfortunately, reference to the text of the Rio Treaty does not clarify the meaning of "an act of aggression that is not an armed attack." Article 6 of the Treaty provides:

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression . . . . 51

Based on a literal interpretation of this provision, it is possible for the Organ of Consultation 52 to find a purely economic act to be an act of aggression. Therefore, it may, under Article 8 of the Rio Treaty, 53 authorize nonmilitary measures to assist the victim of the economic aggression or to maintain continental peace and security.

This construction of Article 6, however, would be inconsistent with the original purpose of the Rio Treaty and its subsequent applications. The flexible language of Article 6 was principally intended to protect the Western Hemisphere from the spread of Communism. The phrase "aggression that is not an armed attack" probably referred to activities such as aid to mercenaries or guerrillas operating in the territory of a third state. 54 The intent of the draftsmen is reflected in the history of the

49. Id. art. 28 (emphasis added).
50. Although the O.A.S. Charter does not mention the Rio Treaty by name, the incorporation of "special treaties on the subject" is an obvious reference to the Rio Treaty, concluded the year prior to the adoption of the Charter. O.A.S. CHARTER, supra note 17, art. 28.
52. The Organ of Consultation is composed of the ministers of foreign affairs of the American states. Id. art. 11.
53. For the purposes of this Treaty, the measures on which the Organ of Consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force. Id. art. 8.
54. "[S]ubversive action directed, aided or abetted by extracontinental powers (and today also by American countries dominated by them) constitutes a special category of act, fact or situation of the type foreseen in the OAS Charter and the Rio Treaty, particularly
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applications of the Rio Treaty, which is pervaded by the theme of anti-Communism.55

Nevertheless, it is not inconceivable that the peacekeeping apparatus originally established in the late 1940's to fight Communism might provide the basis for an expansion of the concept of aggression. Most Latin American countries have normalized their economic relations with Cuba; even the United States has now begun to move in that direction.56 Moreover, the policy of detente pursued by the United States suggests that the anti-Communist aspect of the Rio Treaty may be in the process of being outgrown, at least with respect to collective action. Finally, the long-standing concern of the Latin American countries over economic coercion in international relations,57 and the desire of several Latin American states to extend the U.N. definition of aggression,58 further suggest the possibility of applying the security mechanism of the Rio Treaty to economic aggression.59

'aggression which is not an armed attack.'" INTER-AMERICAN SYSTEM, supra note 13, at 115. Schwebel was puzzled by the seeming contradiction between the Rio Treaty's recognition of "aggression which is not an armed attack" and the support by certain Latin American countries of definitions of aggression equating the latter concept with armed attack. He suggested that this contradiction disappears if the Rio Treaty formulation were read as meaning the use of force by indirect means, such as the use of mercenaries. Schwebel, Aggression, Intervention and Self-Defense in Modern International Law, 136 RECUEIL DES COURS 411, 460-61 (1972). In this context Article 3(g) of the U.N. definition of aggression characterizes as an act of aggression "[t]he sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the [armed] acts listed above . . . ." G.A. Res. 3314, 29 GAOR, Supp. (No. 31) 142, 143, U.N. Doc. A/9631 (1974).

55. While Article 6 has never been applied against an economic aggressor, it has been held to justify the exclusion of the Cuban government from the inter-American system in 1962, 2 INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE APPLICATIONS 1960-1964, at 65, 72, 75-76 (1972) (Request of the Government of Colombia, 1961-1962) [hereinafter cited as Rio Treaty Applications], the use of force to block Soviet weapons from reaching Cuba during the Missile Crisis, id. at 107, 111-12 (Request of the Government of the United States of America, 1962), and the later imposition of a total embargo on trade with Cuba, id. at 179, 183-86 (Request of the Government of Venezuela, 1963-1964).


57. See notes 12-17 supra and accompanying text.

58. See note 12 supra.

59. When the Inter-American Juridical Committee recommended a list of violations of the principle of nonintervention and discussed possible ways of enforcing the principle, it considered but rejected the possibility of relying on the existing enforcement mechanism of the Rio Treaty. The Committee thought that expansion of the Treaty might have the dangerous effect of jeopardizing the prestige of the O.A.S. which is necessary to carry out the Organization's more important task—that of preventing armed attack or aggression. INTER-AMERICAN JURIDICAL COMMITTEE, ORGANIZATION OF AMERICAN STATES, INSTRUMENT RELATING TO VIOLATIONS OF THE PRINCIPLE OF NONINTERVENTION 13-14 (1959). Similar objections might be made with regard to expanding the Treaty explicitly to cover acts of economic aggression.
Assuming the Latin American states were to interpret the Rio Treaty as encompassing acts of economic aggression, there remains the problem of how far a regional group can go in enforcing its peacekeeping treaties without the approval of the U.N. Security Council. Although the U.N. Charter contemplates the existence of regional groups and authorizes "regional action" for the maintenance of international peace and security,\(^6\) regional action is limited by Article 53, which provides that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council . . . ."\(^6\) The controversy over the scope of Article 53's prohibition centers on the words "enforcement action." Applying a broad construction to these words, any regional action in connection with peacekeeping efforts requires prior authorization by the Security Council. In practical terms, the imposition of any measures under Article 8 of the Rio Treaty,\(^6\) even nonmilitary sanctions, would require not only a vote of two-thirds of the states that have ratified the Treaty,\(^6\) but also the approval of nine members of the Security Council, including the acquiescence of all five permanent members.\(^6\) Thus, regional action could be paralyzed by the negative vote of one of the permanent members of the Security Council. Under a narrow interpretation of Article 53, Security Council approval would be required only when the measures contemplated by the regional agency included the use of armed force.\(^6\)

The prevalent view among international jurists is that the delegates at San Francisco intended to retain within the U.N. the exclusive power to authorize any enforcement measures, whether or not they involve the use of force.\(^6\) Cogent arguments have been made that the text of the U.N.

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\(^6\) U.N. Charter art. 52; see notes 40-42 supra and accompanying text.  
\(^6\) U.N. Charter art. 53, para. 1.  
\(^6\) For the text of Article 8 of the Rio Treaty, see note 53 supra.  
\(^6\) U.N. Charter art. 27, para. 3.  
\(^6\) The U.N. Charter distinguishes between enforcement measures that entail the use of armed force and those that do not. Compare id. art. 42 with id. art. 41. In either case, the Security Council must be fully informed of any action taken. Id. art. 54.  
\(^6\) See, e.g., M. Etzioni, supra note 20, at 70-74; H. Kelsen, The Law of the United Nations 786-87 (1950); A. Gómez Robledo, supra note 42, at 61-62. The International Court of Justice has declared that enforcement action, within the meaning of Chapter VII of the U.N. Charter (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression), "is solely within the province of the Security Council." Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151, 165. Quaere whether this finding resolves the ambiguity in the words "enforcement action" in Chapter VIII (Regional Arrangements). Muir, supra note 26, at 201-02, notes that the GATT, supra note 27, art. XXI, which was concluded in 1947, allows an exception to its antidiscriminatory provisions for a state's participation in sanctions authorized by the U.N., but not for participation in sanctions authorized by the O.A.S. or other regional agencies. This may be further indirect evidence of a general intention at that time to give the U.N. the exclusive power to authorize any enforcement action.
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Charter reflects this view. There is considerable opinion to the contrary, however, and experience has shown that the universalist approach to this question has little basis in fact. The Security Council has expressly approved of independent O.A.S. action in at least two instances; it has in other cases tolerated O.A.S. enforcement action ranging from nonmilitary sanctions to the use of force. Thus the O.A.S. has effectively usurped at least some of the Security Council's exclusive authority under Article 53 of the U.N. Charter. According to this "amended" reading of Article 53, prior Security Council authorization is required only when the enforcement actions by regional organizations entail the use of armed force. Therefore, at least pragmatically, if not technically, the O.A.S. may impose nonmilitary sanctions without prior Security Council authorization.

67. See A. GÓMEZ ROBLEDO, supra note 42, at 78-84.
68. The most compelling statement in this respect remains that of Dr. Lleras Camargo, then Director General of the Pan American Union and chairman of the committee which dealt with regional arrangements at the San Francisco Conference:
   There is a clear distinction for the reader of the Charter between the measures of Article 41 (enforcement action) which are not coercive, in the sense that they lack the element of physical violence that is closely identified with military action, and those of Article 42. Enforcement action, with the use of physical force, is obviously the prerogative of the Security Council, with a single exception: individual or collective self-defense. But the other measures, those of Article 41, are not ....

INTER-AMERICAN SYSTEM, supra note 13, at 190.


71. Proponents of the "amendment"-theory, including the United States, argue that the paralyzing effect of the veto on Security Council action has created a need for alternative peacekeeping institutions, and that regional organizations can and should fill this gap. Halderman, Regional Enforcement Measures and the United Nations, 52 GEO. L.J. 89, 107 (1963).

72. The right of individual or collective self-defense under Article 51 of the U.N. Charter in case of an armed attack is not affected by Article 53; therefore, prior Security Council authorization is not required where O.A.S. action is undertaken in self-defense. Comment, supra note 70, at 859-68.

73. The political implications of this conclusion in the context of traditional O.A.S. enforcement measures are vastly different from those suggested by an expanded application of the Rio Treaty which would include acts of economic aggression. In the first situation, the small states, such as Cuba, sought the protection of the Security Council in the face of adverse collective action spearheaded by the United States. By contrast, should the Latin American countries press forward with a regional definition of economic aggression, the United States—strongly opposed to such a definition—may find it difficult to challenge the
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Given the possibility of enforcing a regional definition of economic aggression consistent with the provisions of the U.N. Charter, and assuming political forces are such that a majority of O.A.S. states would actively pursue or accept such a codification, the problem becomes one of draftsmanship. In short, how should economic aggression be defined?

A. THE ACT MUST BE ILLEGAL

Before a state’s action may be characterized as aggressive, it must first be found to be illegal under international law. This requirement is essential to safeguard the right of all states to pursue actions in accordance with their best interests as long as those actions do not violate international law. A state’s economic actions may be viewed as illegal if they violate treaties, general principles of international law, or the principle of nonintervention. The latter doctrine contains vague notions of undue coercion; this vagueness may be reduced by including the elements of purpose or intent.

Unlawful intent need not be proved in cases of armed aggression. Thus the General Assembly’s definition of aggression does not mention this element. However, with other forms of aggression the line between legality and illegality is not so easily drawn. Many economic measures taken by one state are likely to have some effect, perhaps harmful, on another state. In applying the test of intent, only those measures undertaken primarily for the purpose of damaging the economy of another nation or as a means of coercing another nation should be acts of unlawful definition's legality in light of the United States earlier narrow reading of Article 53. Furthermore, the United States veto in the Security Council could not block O.A.S. action short of armed force. See Lillich, Economic Coercion and the International Legal Order, 51 INT'L AFF. 358 (1975).

74. See notes 60-73 supra and accompanying text.
75. See notes 54-59 supra and accompanying text.
76. See notes 107-114 infra and accompanying text.
77. The present discussion is limited to economic acts; this limitation will later be replaced with a less restrictive requirement. See notes 91-96 infra and accompanying text.
78. See notes 26-30 supra and accompanying text.
79. Bowett, supra note 28, at 2-3. One possible fourth ground is the U.N. Charter itself. Bowett’s view, however, is that Article 2(4)’s prohibition on the “use or threat of force” does not encompass economic coercion. Bowett, supra note 26, at 245. But see Brosche, supra note 22, at 34.
80. Bowett, supra note 28, at 5.
81. The word “primarily” rather than “solely” is used so that where a combination of purposes is evident, the existence of some legitimate purposes, if minor in comparison with the illegitimate purposes, will not save the measures in question from being characterized as illegal.
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intervention. One scholar rejects the requirement of illicit intent, focusing instead on the consequences of states' actions, thus imposing a form of absolute liability on interventionist states. Although this view simplifies the difficult problems of proof, its infringement on state sovereignty is politically unacceptable.

B. THE ACT MUST BE AGGRESSIVE

Virtually all writers agree that the intensity or degree of harm that one state's actions have on the economy of another state is an important element in the definition of aggression. The injury may range, for example, from a minor fluctuation in export prices due to a slight tariff increase, to a major disruption of domestic industry caused by the suspension of shipments of essential products. While some authors regard intensity as a necessary element in defining illegality, others view it as an element which transforms an act of "simple illegality" into an act of "aggravated illegality" such as economic aggression. Under the latter view, it is not enough that the act complained of be violative of international law; it must also affect the victim country's economy to such a degree as to endanger its collective peace and security. "Unless this danger is perceived, the act may be unlawful, it may be interventionist or coercive, but it is not aggression."

This distinction between illegality and aggression is important, since a simple illegality gives rise only to unilateral measures of retaliation or self-defense, whereas an act of economic aggression opens up the possibility of sanctions by a collectivity of states. Of course, incorporat-

82. See A.V.W. Thomas & A.J. Thomas, supra note 14, at 410-11; Bowett, supra note 28, at 5. Bowett notes that although the test of intent may be difficult to apply, "[t]he only answer may lie in the States themselves and such review organs as the Security Council, the General Assembly, and the Councils of regional organizations which are confronted with economic disputes." Id. at 5 n.18 (emphasis added).

83. B. Supervieille, supra note 2, at 74.

84. See notes 97-98 infra and accompanying text.

85. See notes 107-114 infra and accompanying text.

86. E.g., Muir, supra note 26, at 203; see, e.g., Tiewul, supra note 35, at 676-77; Schwebel, supra note 54, at 451-52.

87. See, e.g., B. Supervieille, supra note 2, at 78-81; Thomas, supra note 8, at 17-18. The authors combine the notions that intensity is a required element of aggression, and that illegality is a precondition of aggression:

Aggression should not therefore be understood as every action which affects adversely the interests of another state in a significant way. Conduct to be aggression must seriously affect the security of a state, its existence and independence, but in affecting that security it must be a delictual act at international law.

Id. at 17 (footnote omitted).

88. B. Supervieille, supra note 2, at 78 (translation by the author).

89. See D. Bowett, SELF DEFENSE IN INTERNATIONAL LAW 106-14 (1958).

90. See notes 50-59 supra and accompanying text (enforcement mechanisms of the Rio Treaty).
ing a definition of economic aggression into the security system of the Rio Treaty contemplates its enforcement through collective action. The requirement that an unlawful act must have a serious effect on the economy of the victim state would limit the imposition of collective enforcement measures to those cases in which such measures are reasonably warranted.

C. THE ACT NEED NOT BE ECONOMIC

It has often been assumed that the term "economic aggression" derives its name from the means used to apply pressure on a victim state.91 This construction emphasizes the economic nature of the measures used to coerce, for example, the manipulation of tariffs, the imposition of embargoes and boycotts, the dumping of goods, and the freezing of funds. Thus one author has suggested that the concept of economic coercion ought to be replaced by a code of conduct regulating trading practices.92

Others have focused on the purpose of the measures taken rather than the means used in achieving that purpose. According to this view, it does not matter what means are used to coerce—be they economic or diplomatic measures, or even the use of armed force—so long as the purpose is to disrupt a state's economy.93 A blockade, for example, depends on the use of force to prevent cargo from reaching its destination and would constitute an act of aggression under the U.N. definition of aggression.94 But insofar as the purpose of the blockade is to deprive a state of its economic resources, it would also constitute an act of economic aggression.95 One consequence of this distinction is that a regional agency which had outlawed acts of economic aggression would be able to move collectively against the alleged aggressor without having to wait for Security Council authorization.96

D. PROBLEMS OF PROOF

The requirement of illegal intent presents ticklish problems of proof. For example, it is almost impossible to prove that a tariff is intervention-

91. For example, Tiewul broadly describes economic coercion as "an attempt to constrain state conduct through the use [or] withholding of economic resources." Tiewul, supra note 35, at 670.
93. Thomas, supra note 8, at 24; see, e.g., B. Supervielle, supra note 2, at 75-84.
95. While Supervielle recognizes that in practice economic measures are generally used to achieve economic objectives, his list of illustrative examples reminds us that a threat to a state's economy may be posed through various means. B. Supervielle, supra note 2, at 83-87.
96. See notes 60-73 supra and accompanying text.
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ist, "for nations usually cite a long series of legitimate reasons in connection with the imposition of new duties." Similar problems are raised by the requirement of intensity—that aggressive acts must have a serious effect on the victim state's economy. One author has contended that these problems are compounded by the lack of a suitable international body to evaluate claims of economic aggression.

While these problems of proof are considerable, they do not pose an insurmountable barrier to a workable definition of economic aggression. An international deliberative body such as the Organ of Consultation of the O.A.S. may evaluate all the evidence presented to it, as well as that uncovered on its own, in reaching its final findings of fact. As in any adjudicative process the outcome will depend on the ability of the parties to meet their respective burdens of proof. Although problems of proof may prevent many nations from establishing their allegations of economic aggression, from the standpoint of world order, perhaps this is not an undesirable result. The decisions of international tribunals would contribute to the development of much-needed case law in this area. There is little justification for delaying the ongoing process of codification of international law merely because the adoption of a particular definition—that of economic aggression—would pose difficult questions for the trier of fact.

E. ARRIVING AT A DEFINITION

Incorporating the various elements already discussed, it is possible to propose the following general definition of economic aggression:

*Any unilateral act by a state directed against another state or group of states which is intended to and which does in fact deprive such state or states of essential resources or which seriously impairs its normal economic activities, thereby threatening the state's sovereign right to make its own political decisions, is an act of economic aggression.*

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97. A.V.W. Thomas & A.J. Thomas, supra note 14, at 410. See also Muir, supra note 26, at 203 (noting the difficulty of defining illegal purpose).
98. Bowett, supra note 26, at 255.
100. Although actors in international law traditionally are states, where measures otherwise violative of this definition are taken by entities other than states, such as individuals or corporations, it is arguable that the state may nonetheless be held responsible for those actions if those measures may reasonably be traced to the state's governmental purpose or policy. Cf. Tiewul, supra note 35, at 670 (individuals, corporations, and international organizations may engage in economic coercion).
101. This definition is borrowed from Supervielle, with certain modifications. Supervielle, supra note 2, at 82. The italicized words refer to the elements discussed in notes 76-96 supra and accompanying text. The last phrase, dealing with sovereignty, is consistent
This general definition should be complemented by a list of illustrative examples. Such a list would provide that it is not exhaustive so that the deliberative body may add to the list as case law develops. This definitional structure—combining a general definition with an enumerative list—was adopted by the Special Committee of the U.N. which defined aggression.

Reference should be made to possible justifications for acts which might otherwise constitute economic aggression. Where measures are undertaken pursuant to the authorization of a competent international organ, such measures naturally fall outside the ambit of the definition. The issue here is one of competence; while the power of the Security Council and of designated organs under certain treaty arrangements to authorize sanctions is well established, similar assertions of competence by regional or nonregional associations of states have been challenged.

Principles of self-defense and reprisal may also justify otherwise unlawful action. Traditionally, the state seeking to justify its conduct on these grounds must show: that the action was elicited by a wrong on the part of the state against which such conduct is directed; that there were no other available means of redress; and that the measures taken in retaliation or in self-defense were necessary and proportional to the eliciting act.

V
WORLD ORDER CONSIDERATIONS
A. ECONOMIC AGGRESSION AND STATE SOVEREIGNTY

Every treaty, resolution, or convention contributes to the ongoing erosion of the concept of state sovereignty. The system of independent and equal nation states which forms the basis of the concept of sovereign-
ty may be traced back to 1648, when the Peace of Westphalia ended the Thirty Years War.\footnote{Gross, *The Peace of Westphalia, 1648-1948*, 42 AM. J. INT'L L. 20, 21, 26 (1948).} Although the idea had surfaced before, it was not until the 20th century that states began voluntarily to renounce their absolute right to wage war,\footnote{Coplin, *International Law and Assumptions about the State System*, 17 WORLD POL. 615, 629-30 (1965); see 1 B. FERENCZ, supra note 2, at 5-25.} thus striking the first serious blow against the notion of sovereignty. But old concepts die hard, and whenever states meet to sign a treaty, adopt a resolution, or attend a convention, great consideration is apt to be given to state sovereignty.

Under traditional international law, one of the attributes of sovereignty is the right of states to conduct foreign economic policy according to their best interests.\footnote{Muir, supra note 26, at 188-92.} In trade as in war, the absolute exercise of this right has partially given way to multilateral treaties\footnote{E.g., GATT, supra note 27.} and General Assembly resolutions\footnote{G.A. Res. 3281, 29 U.N. GAOR, Supp. (No. 31) 50, U.N. Doc. A/9631 (1974).} protecting states from unjustified discriminatory treatment in the world market. This relinquishment of rights has been cautious, however, since the same documents which limit states' freedom to act as they please in foreign trade also proclaim the inviolability of state sovereignty in matters of economic policy.\footnote{Compare id. arts. 10, 14 with id. arts. 1, 2. One author has commented: "It will be noted that Paragraph 1 [of G.A. Res. 3281], dealing with 'full permanent sovereignty' now covers not only all of a State's 'natural resources' and all of its 'wealth' but also all of its 'economic activities.' " Haight, *The New International Economic Order and the Charter of Economic Rights and Duties of States*, 9 INT'L L. AW. 591, 598 (1975). See also G.A. Res. 3171, 28 U.N. GAOR, Supp. (No. 30) 52, U.N. Doc. A/9030 (1973).} It seems that those states which support a definition of economic aggression are largely the same states which vociferously defend the notion of state sovereignty. This position, while apparently inconsistent, may be understood if viewed from the perspective of smaller and weaker states seeking to protect themselves against the dominating influence of the world powers. Moreover, the economically powerful countries are not likely to tolerate significant limitations on their right to pursue foreign economic policy according to internal interests.\footnote{Muir rightly points out that the United States has asserted this incidental right of state sovereignty through various laws authorizing the regulation of trade practices in accordance with national security interests. Muir, supra note 26, at 192-94.} Therefore, in defining economic aggression, the attributes of state sovereignty must not be significantly impaired.

The definitional elements discussed in the previous section ensure that the freedom of states to pursue lawful economic policies will not be compromised. Indeed, by requiring a pervasive harmful effect before an unlawful measure may be classified as aggressive,\footnote{See notes 86-90 supra and accompanying text.} the definition provides more leeway to nations than does general international law. It is not
the purpose of such a codification to become a catch-all provision directed against the slightest transgression of international law. Rather, it is to provide an international forum where allegations of economic aggression may be heard by competent organs guided by a specific and accepted legal definition. To oppose such a codification for fear of losing certain incidents of national sovereignty is to ignore the changes that have taken place in international law since the Peace of Westphalia in 1648.

B. THREAT TO WORLD PEACE?

It has frequently been argued in the U.N. that extending the definition of aggression to include economic and other forms of indirect aggression would threaten world peace by increasing the number of incidents purportedly giving rise to the right of self-defense. Article 51 of the U.N. Charter provides that only an armed attack triggers the inherent right of self-defense. Yet this limited application of Article 51 is not universally recognized.

In view of this difference of opinion over the scope of Article 51, the fear that defining economic aggression may promote the use of armed force may well be justified. The Rio Treaty in Article 10 expressly protects member states’ rights and obligations under the U.N. Charter, and Article 7 specifically states that peacekeeping measures under the

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115. For example, Mexico’s representative to the Sixth Committee of the U.N. General Assembly argued that if acts not involving the use of force were included in the definition of aggression, there would be an increased possibility of a state’s resort to armed force in the exercise of its right of self-defense. 23 U.N. GAOR, C.6 (1075th mtg.) 4, para. 27, U.N. Doc. A/C.6/SR.1075 (1968).

116. U.N. CHARTER art. 51 states: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . . .” In the U.N. General Assembly Sixth Committee debates on the U.N. definition of aggression, Mr. Alcivar of Ecuador urged that a state could exercise its right of self-defense to repel not any form of aggression but solely armed attack. 23 U.N. GAOR, C.6 (1078th mtg.) 6, para. 36, U.N. Doc. A/C.6/SR.1078 (1968).

117. Bowett’s view is that:

[S]ince no absolute distinction between economic and military delicts seems justifiable or accepted, it must follow that the right to use force in self-defense against an economic delict cannot be excluded. Obviously, the economic delict would have to be of such a kind as to pose a threat to the security of a State, and the requirement of proportionality would involve the necessity of proving that there was no other effective means of protection.


Brownlie, on the other hand, opposes resort to force by states which have been the victims of economic pressure, even where the protective force is proportional to the economic pressure exerted against them, and where the threat is of such a serious character as to endanger the political independence or territorial integrity of the victim country. I. BROWNLIE, supra note 25, at 434-35.
Treaty shall be applied "without prejudice to the right of self-defense in conformity with Article 51 of the Charter of the United Nations." Nevertheless, there is no reason why in adopting a definition of economic aggression the O.A.S. could not in the same document expressly prescribe the use of armed force in self-defense against an alleged economic aggressor. Certainly such a definition could not expand states' rights under Article 51 of the U.N. Charter. Moreover, contracting parties that bind themselves under an international agreement ought not complain that their rights are being abridged. Far from posing a threat to world peace, defining economic aggression should discourage resort to armed force by providing a further mechanism for the settlement of disputes and by clarifying the impropriety of resorting to armed force in response to economic coercion.

C. VALUE OF A DEFINITION

Despite the great efforts that were made to arrive at a consensus definition of aggression in the U.N., there is much skepticism as to its legal and practical effect. This skepticism stems from the fact that the definition leaves full discretion in the Security Council to determine in each case, in light of the facts and surrounding circumstances, whether there has been an act of aggression. Indeed, the intention of the Special Committee members was never otherwise.

The same criticism may of course be directed against adopting a definition of economic aggression within the security system of the O.A.S. The Organ of Consultation, as the deliberative body under the Rio Treaty, would necessarily exercise great discretion in determining whether a state is guilty of economic aggression. It does not seem likely, however, that the Organ of Consultation would routinely ignore the specific guidelines of a definition. At the very least, the Organ of Consultation would feel compelled to explain its decisions in light of the definitional guidelines, particularly where the definition formed the basis of the complaint leading to the convocation of the Organ of Consultation.

More troublesome is the question whether a definition of economic aggression will reduce interventionist action. In the setting of the O.A.S., as in a larger world context, this question is complicated by the uneven political and economic strength among states. As one commentator has pointed out: "Regional forums . . . do not guarantee the effective and

119. See Schwebel, supra note 54, at 426-28, 448.
equal participation of all members in the organization’s activities. Indeed, more often than not, one power clearly dominates the actions of all the others.”122 It is not surprising, therefore, that much of Latin America perceives United States economic aid policy as the major foreign influence in the region. That this influence is often unlawful is doubted by few. That it has in some cases resulted in violence and the overthrow of legally instituted governments is at least arguable.123 In attempting to protect themselves from interventionist measures by a world power, the smaller and weaker states may need to choose between the more militant path of adopting a definition of economic aggression and the more conciliatory path of seeking informal understandings and diplomatic concessions. Even assuming the existence of a definition supported by an enforcement mechanism such as that of the Rio Treaty, the definition’s effectiveness in protecting smaller and weaker states against the alleged economic aggression of a powerful state must be suspect. Therefore the wiser course may be that of conciliation rather than confrontation.

But economic aggression may also occur at the regional level between more evenly matched states. In this context, the weight of collective action may serve to quickly end the dispute. The questionable effectiveness of a definition of economic aggression may rightfully influence the political choice of whether to actively pursue such a codification. But given a general perceived need for such a definition, its questionable effectiveness should not be an obstacle to its adoption. As with the definition of aggression, there would be considerable value in the mere fact of codification.124 There is a danger in evaluating the need for a specific code of international law on the basis of its probable effectiveness—to do so is to place in doubt the value of much of our present international legal system.

CONCLUSION

Economic coercion has been condemned in numerous international legal documents; yet the concept remains vague and undefined. The American states have traditionally given a broad construction to the concept of aggression, and as a group they have provided much of the

122. M. ETZIONI, supra note 20, at 211.
123. See Brosche, supra note 22, at 11-15; Francis, La ayuda económica de Estados Unidos a América Latina como instrumento de control político, 12 FORO INTERNACIONAL 433 (1972); Scott, Economic Aid and Imperialism in Bolivia, MONTHLY REV., May 1972, at 48.

124. The importance of the 1974 consensus definition of aggression—quite apart from any impact it may have on reducing resort to armed force by states—lies largely in the mere fact of codification, that is, the development of a specific legal definition of a long recognized and admittedly important principle of international law. Ferencz, The United Nations Consensus Definition of Aggression: Sieve or Substance?, 10 J. INT’L L. & ECON. 701, 716-17 (1975).
impetus for addressing the issue of economic aggression at the U.N. The O.A.S. thus presents an ideal testing ground for developing a definition of economic aggression in international law. Given the necessary political attitudes, the Rio Treaty’s sophisticated system of security may easily be adapted to include such a definition. The definition may be enforced through nonmilitary sanctions consistent with the limitations imposed by the U.N. Charter. The adoption of a definition would not pose a threat to world peace or to the concept of state sovereignty. Rather, it would further the process of codification, clarify the concept of economic aggression, provide an additional forum for the settlement of disputes, and reduce the resort to force.

Martin Domb