

NORTH KOREAN TIME BOMB: CAN SANCTIONS DEFUSE IT? A REVIEW OF INTERNATIONAL ECONOMIC SANCTIONS AS AN OPTION*

North Korea, with its major nuclear weapons program,¹ is posing its greatest threat to world peace since the attack on South Korea in 1950.² For more than two years, North Korea has played games with the West over its nuclear program by promising access to International Atomic Energy Agency (IAEA) inspectors as is required under the Nuclear Non-Proliferation Treaty (NPT),³ and then delaying and dismissing such inspections as attempted

* The author would like to express gratitude to Christian Pitschas for his guidance and constructive criticism.

¹ See William Perry, U.S. Security Policy in Korea, Address to the Asia Society (May 3, 1994), in U.S. DEP'T ST. DISPATCH, May 9, 1994, at 275-79.

² Korea was a Japanese colony from 1910 until 1945 when Japan surrendered to the United States. The northern region became occupied by the communists, and the U.N. Temporary Commission which was established to monitor free elections in Korea was unable to secure access into North Korea. The Commission observed elections in the area south of the 38th parallel of latitude, and the Government of the Republic of Korea [hereinafter South Korea] was declared lawful and the only Government in Korea by the General Assembly in its resolution 195 (III), adopted on December 12, 1948. RESOLUTIONS AND STATEMENTS OF THE UNITED NATIONS SECURITY COUNCIL (1946-1992)—A THEMATIC GUIDE 323 (Karel C. Wellens ed., 1993).

North Korean forces invaded the territory of South Korea on June 25, 1950, which the Security Council declared a breach of peace. S.C. Res. 82, U.N. SCOR, 5th Sess., 473rd mtg., U.N. Doc. S/INF/4/Rev. 1 (1950). The Security Council Called upon all Member States to render every assistance necessary, including military forces, to repel the armed attack and to restore international peace and security in the area. S.C. Res. 83, U.N. SCOR, 5th Sess., 474th mtg., U.N. Doc. S/INF/4/Rev. 1 (1950).

³ Treaty on the Non-Proliferation of Nuclear weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 [hereinafter NPT]. The Nuclear Non-Proliferation Treaty represents an agreement between five nuclear weapons powers (Britain, China, France, Russia, and the United States) and 160 other parties which do not have nuclear weapons. The parties agree to pursue cessation of the nuclear arms race and allow monitoring of nuclear programs by the International Atomic Energy Agency [hereinafter IAEA], which monitors compliance with the NPT: "Each non-nuclear weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency. . . ." *Id.* at art. III(1). The NPT purports to slow the spread of nuclear weapons. Although North Korea joined the NPT in 1985, it was not until April 1992 that it formally authorized the IAEA to undertake inspection of its three declared nuclear facilities. Nayan Chanda, *Atomic Shock Waves*, FAR E. ECON. REV., Mar. 25, 1993, at 10-11. See also Nayan Chanda, *Point-Counterpoint*, FAR E. ECON. REV., June 2, 1994, at 16

violations of national sovereignty.⁴ When the IAEA became suspicious that North Korea was attempting to disguise its nuclear reprocessing history, North Korea threatened to withdraw from the NPT.⁵ Even through periods of seemingly conciliatory diplomatic talks,⁶ North Korea has continued to refuse access to the waste sites in question, which seems to confirm suspicions of illegal nuclear reprocessing.⁷

The danger presented by the North Korean nuclear program is not limited to the Asian community. The threat extends to the rest of the world because of North Korea's history of exporting weapons technology, especially to regions of instability around the world.⁸ If North Korea develops a nuclear arsenal, there is a danger that other hostile, rogue states around the world will soon follow.⁹ It may also drive others in the Pacific basin, notably Japan, Taiwan, and South Korea, to follow suit in self-defense.¹⁰ This trend would frustrate the stated purpose of the NPT, to achieve "the cessation of

(describing the suspicions and doubts that arose from the inspections); Nayan Chanda, *Bomb and Bombast*, FAR E. ECON. REV., Feb. 10, 1994, at 16-18. For more information on the NPT, see generally William Epstein & Paul C. Szasz, *Extension of the Nuclear Non-Proliferation Treaty: A Means of Strengthening the Treaty*, 33 VA. J. INT'L L. 735.

⁴ See *Time to Play Tough*, S. CHINA MORNING POST, Aug. 22, 1994, at 20.

⁵ See, e.g., Robert Greenberger, *North Korea Has New Threat in Nuclear Issue; Nation Says It Will Quit IAEA, Expel Officials; U.S. Pursues Sanctions*, WALL ST. J., June 14, 1994, at A11.

⁶ After periods of unsuccessful negotiations, North Korea's tone turned conciliatory following mediation by former U.S. President Jimmy Carter in June 1994. See, e.g., Art Pine, *N. Korea, in Abrupt Shift, Offers Plan to Restart U.S. Talks; Diplomacy: Pyongyang Delivers Compromise through Ex-President Carter*, L.A. TIMES, June 17, 1994, at A1; *U.S. Tentatively Moving Back to Talks with North Korea*, JAPAN ECON. NEWSWIRE, June 17, 1994, available in LEXIS, News Library, Wires File.

⁷ Philippe Naughton, *U.S., N. Korea Take Break from Nuclear Talks*, REUTER LIBR. REP., Sept. 29, 1994, available in LEXIS, News Library, Treuwl File; Peter Nordahl, *N. Korea Rejects Call to Open A-Plants*, CHRISTIAN SCI. MONITOR, Sept. 26, 1994, at 20. The NPT prohibits "the diversion of nuclear energy from uses to nuclear weapons or other nuclear explosive devices." NPT, *supra* note 3, at pmbl.

⁸ North Korea has sold Scud missiles to Syria and Iran, and is actively marketing its next generation of ballistic missiles. See Perry, *supra* note 1, at 276, for a more detailed summary of North Korea's weapons program.

⁹ *Id.* See also John T. Correll, *Rehearsal for Crises to Come*, AIR FORCE MAG., Aug. 1994, at 2 (suggesting that Iran, Algeria, Iraq, Libya, and Syria will eventually possess nuclear weapons).

¹⁰ Perry, *supra* note 1, at 277. See also Lloyd R. Vasey, *Act Now and Build a Coalition to Bring North Korea in Line*, CHRISTIAN SCI. MONITOR, Sept. 20, 1994, at 18.

the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament.”¹¹

There is a general consensus that the North Koreans must be stopped from developing nuclear weapons if the anti-proliferation policy is to work.¹² Otherwise, the world faces the dangerous prospect that many aggressive political leaders will possess nuclear weapons.¹³ Further, permitting North Korea to continue its defiant dismissal of international order may send a message to other potential violators of international law that blackmail works.¹⁴

There are basically three ways that the United States and its allies can deal with this crisis: first, do nothing; second, take military action; and third, pursue a diplomatic strategy to persuade North Korea to give up its nuclear weapons program.¹⁵ Doing nothing and acquiescing now to an active North Korean nuclear program would invite a future nuclear crisis; taking military action now would invite an immediate crisis and would not be legally justified.¹⁶ Therefore, a diplomatic strategy with incentives for North Korea may be the most plausible middle ground approach to bring North Korea to the negotiation table and persuade it to comply with the NPT.¹⁷ The threat

¹¹ NPT, pmbl., para. 9.

¹² See, e.g., Perry, *supra* note 1, at 276-77; Vasey, *supra* note 10, at 18; Michael Remez, *State Residents Perceive Increased Korea Threat*, HARTFORD COURANT, June 25, 1994, at A1; David Kay, *Analyst Says U.S. Must Push for Sanctions for N. Korea*, CNN, June 2, 1994, Transcript # 784-4, available in LEXIS, News Library, CNN File.

¹³ The NPT anticipated that the five permanent members of the U.N. Security Council—the United States, Russia (former Soviet Union), Britain, France, and China—would be the world's only nuclear powers. However, Israel, Pakistan, and India are assumed to already have nuclear status. In addition, North Korea, Iraq, Brazil, Argentina, and Algeria have nuclear programs that have triggered concern. See John Kampfner & Roger Highfield, *List Grows of Regimes Linked to Smuggling*, DAILY TELEGRAPH, Aug. 19, 1994, at 8. German authorities recently arrested four black market brokers of Russian-made plutonium. Iraq, Pakistan, and North Korea are suspected to have been among the prospective buyers. *Id.*

¹⁴ See generally Bruce W. Nelan, *Cooling-Off Period*, TIME, Aug. 22, 1994, at 42; *America and North Korea; Progress, Perhaps*, ECONOMIST, Aug. 13, 1994, at 32.

¹⁵ Perry, *supra* note 1, at 277.

¹⁶ *Id.*

¹⁷ Richard D. Fisher, Jr., a senior policy analyst at the Heritage Foundation, made the following suggestions regarding the diplomatic approach to take in dealing with North Korea: (1) require North Korea not only to “freeze” its nuclear weapons program but also to dismantle its plutonium producing nuclear reactors and spent nuclear fuel reprocessing plants; (2) coordinate U.S.-North Korean negotiations as well as the North-South summit; (3) make

of universal economic sanctions is a part of the U.S. diplomatic strategy for the North Korean crisis.

This Note will review the legal background for the imposition of universal economic sanctions against a state and discuss the special circumstances which will affect the outcome of the economic sanctions currently being considered. The effects of recent U.N. economic sanctions against the former Yugoslavia and Haiti will be analyzed to better predict a probable outcome of economic sanctions against North Korea. A look at the past history of economic sanctions may suggest an insightful method of insuring positive results from the international economic sanctions.

I. LEGAL BACKGROUND FOR ECONOMIC SANCTIONS

A. Definition

Economic sanctions can be defined as deliberate government actions to inflict economic deprivation on a target country of "customary" trade or financial relations.¹⁸ Economic sanctions can include embargoes on

clear to North Korea that full diplomatic relations and trade will follow the verified termination of its nuclear weapons program; (4) prepare to resume seeking international economic sanctions by seeking agreement with other nations if North Korea refuses; and (5) strengthen American military forces in South Korea and Japan to deter any surprise attack from North Korea. Richard D. Fisher, Jr., *Fixing Jimmy Carter's Mistakes: Regaining the Initiative against North Korea*, HERITAGE FOUND. REP., July 8, 1994.

¹⁸ GARY C. HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY* 2 (1985); DAVID LEYTON-BROWN, *THE UTILITY OF INTERNATIONAL ECONOMIC SANCTIONS* 1 (1987). Cf. Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1159, 1166 (1987) (defining economic sanctions as "coercive" economic measures taken against one or more countries to attempt to force a change in policies).

The terms "economic boycott" and "embargo" are often used interchangeably with "economic sanctions." Differences exist, however, between these terms. An "economic boycott" implies no force of law and carries no coercive tone, and is a retaliatory action involving suspension of trade. An "economic boycott" is weaker in force than "embargo". The term "embargo" is a legal prohibition of trade or commerce by government order and carries the force of law. Embargoes have been undertaken to force countries to cease assertedly illegal or undesirable activities. M. S. DAOUDI & M. S. DAJANI, *ECONOMIC SANCTIONS: IDEALS AND EXPERIENCE* 2-9 (1983).

A "sanction" is a "collective action against a state considered to be violating international law taken to compel that state to conform." A sanction may entail breaking diplomatic and economic relations, or taking military action. It uses retaliatory and deprivatory effects to

financial and commercial dealings, restriction or severance of communications of all kinds, and restrictions or prohibitions on the use of all kinds of transport.¹⁹ Economic sanctions may take one or more of the following forms:

A ban on imports from the target state is intended to produce a shortage of foreign exchange and unemployment in export industries; a ban on exports to the target state is intended to deprive it of essential commodities. Financial sanctions can deprive the target of access to foreign capital and money markets. Interference with communication can have serious economic effects, as well as producing a psychological feeling of isolation.²⁰

These measures can be imposed unilaterally by one country against another or multilaterally by a group of countries or by an international organization. This Note will concentrate on the international economic sanctions that have been adopted by either the League of Nations or the United Nations.

B. League of Nations and Economic Sanctions

The modern use of economic sanctions was pioneered largely by the League of Nations, which was created after World War I.²¹ Member states of the League of Nations agreed that a non-military deterrent was needed in the Covenant of the League to enforce the peace. Thus, the concept of collective security guaranteed by collective sanctions became embedded in

encourage and secure conformity to international law. Sanctions contain the element of threat, and the sender countries have two major purposes: to punish the target country by depriving it of something of value and/or to make it comply with certain norms the senders deem important. *Id.* See also WEBSTER'S THIRD NEW INT'L DICTIONARY 2008-09 ("sanction"), 264 ("boycott"), 738-39 ("embargo") (1981).

¹⁹ MARGARET P. DOXEY, ECONOMIC SANCTIONS AND INTERNATIONAL ENFORCEMENT 97 (1971).

²⁰ *Id.*

²¹ WILLIAM H. KAEMPFER & ANTON D. LOWENBERG, INTERNATIONAL ECONOMIC SANCTIONS 1 (1992).

the Covenant of the League of Nations.²² The objective of the economic sanctions was to cause economic isolation of a target state by denying it all commercial, financial, and trade facilities.²³

The League of Nations has used economic sanctions on only four occasions: against Yugoslavia (1921), Greece (1925), Paraguay and Bolivia (1932-1935), and Italy (1936).²⁴ Economic sanctions against Italy, which were imposed in response to the Italian invasion of Abyssinia (now Ethiopia), fell into disarray mainly because several League members refused to participate.²⁵ The League of Nations was relatively powerless to enforce participation by members who chose not to apply the sanctions,²⁶ and sanctions were no longer used by the League after the Italian episode.

C. *The United Nations and Economic Sanctions*

Due to the failure of the League of Nations' sanctions, the Charter of the United Nations does not contain the term "sanctions," but instead refers to "effective collective measures"²⁷ and "preventive or enforcement mea-

²² The Covenant of the League of Nations was adopted in April 1916. Article XVI of the Covenant describes the member states' obligation to impose economic measures against a member state which violated the Covenant: "severance of all trade or financial relations, the prohibition of all intercourse . . . and the prevention of all financial, commercial or personal intercourse of any other State, whether a Member of the League or not." LEAGUE OF NATIONS COVENANT art. 16. DAOUDI & DAJANI, *supra* note 18, at 57 (citing F. P. WALTERS, A HISTORY OF THE LEAGUE OF NATIONS 51 (1965)).

²³ *Id.* at 58 (citing ALBERT E. HINDMARSH, FORCE IN PEACE 152 (1933)). These economic sanctions were compulsory, while the military sanctions were of facultative character. ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS 700-01 (1985).

²⁴ The League of Nations imposed sanctions (1) against Yugoslavia in 1921 over a border dispute (the threat of economic sanctions was enough to compel Yugoslavia to withdraw its troops from Albania); (2) against Greece in 1925 for a border skirmish between Greece and Bulgaria (the threat alone was sufficient to persuade Greece to evacuate Bulgarian territory); (3) against Paraguay and Bolivia in 1932-35 for skirmishes between Paraguay and Bolivia over Chaco (sanctions had little effect on the outcome); and (4) against Italy in 1935-36 for the invasion of Abyssinia (ultimate failure was due to numerous member states refusing to apply sanctions). See HUFBAUER ET AL., *supra* note 18, at 128-36, 142-49.

²⁵ See DOXEY, *supra* note 19, at 103.

²⁶ *Id.* For a more detailed assessment of Italian sanctions, see DAOUDI & DAJANI, *supra* note 18, at 60-72; Taubenfeld & Taubenfeld, *The "Economic Weapon": The League and the United Nations*, 58 AM. SOC'Y INT'L L. PROC. 183 (1964).

²⁷ U.N. CHARTER art. 1, para. 1.

tures"²⁸ in which "all members shall give every assistance."²⁹

1. *Economic Sanctions By Member States*

Economic sanctions are often used by one state against another as a means of pressuring the target country to change its policies. Although economic sanctions have characteristics of coercion, they do not appear to be "the threat or use of force," which is prohibited by Article 2(4) of the U.N. Charter.³⁰ It appears generally accepted that Article 2(4) should not be extended to cover the use of economic force,³¹ and that the use of economic force should be regulated by the duty of non-intervention.³² However, international agreements concerning international trade relations normally contain provisions, such as the most-favored-nation clauses in GATT (The General Agreement on Tariffs and Trade), aimed at prohibiting coercive economic measures.³³

Prior to the twentieth century, states solved disputes among themselves primarily through the use of force—by waging war against one another.³⁴ The U.N. Charter has prohibited the use of force, however, and customary

²⁸ *Id.* at art. 2, para. 5.

²⁹ *Id.*

³⁰ This prohibition belongs to the field of customary international law. See *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 4 (June 27) ¶ 188, 202.

³¹ It was decided at the San Francisco Conference, which led to the final version of the U.N. Charter, that economic sanctions are not a "use of force" under Article 2(4). U.N. CONFERENCE ON INTERNATIONAL ORGANIZATION, SAN FRANCISCO, 334, 609 (1945). See generally *Restraints on the Unilateral Use of Force: A Colloquy*, 10 YALE J. INT'L L. 261 (1985); Louis Henkin, *The Reports of the Death of Article 2(4) are Greatly Exaggerated*, 65 AM. J. INT'L L. 544 (1971). See also FREDERICK L. SCHUMAN, *INTERNATIONAL POLITICS, THE WESTERN STATE SYSTEM AND THE WORLD COMMUNITY* 145 (6th ed. 1958) (asserting that economic measures such as sanctions are "always within the bounds of customary international law").

³² MAKIO MIYAGAWA, *DO ECONOMIC SANCTIONS WORK?* 78 (1992).

³³ *Id.* at 78-79. An argument exists that Article XXI of the GATT seems to authorize the coercive economic measures by a state against another in certain situations. See Clinton E. Cameron, Note, *Developing a Standard for Politically Related State Economic Action*, 13 MICH. J. INT'L L. 218 (1991). Article XXI provides that the GATT should not be construed to "prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests . . . taken in time of war or other emergency in international relations." General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, art. XXI(b)(iii), 61 Stat. A3, 55 U.N.T.S. 187.

³⁴ Cameron, *supra* note 33.

law has developed around the prohibition.³⁵ Member states of the United Nations are now obligated to submit all disputes to peaceful modes of settlement,³⁶ and with the exception of the right of self-defense, the use of force is outlawed for individual states.³⁷ Because nations lack other effective legal means to force violators of international law to change their policies,³⁸ economic sanctions have been utilized with increasing frequency in the second half of the twentieth century.³⁹ These economic sanctions have supported a broad variety of goals, e.g., to improve the observance of human rights,⁴⁰ to inhibit the spread of nuclear weapons,⁴¹ and to discourage terrorism⁴² and drug smuggling⁴³ around the world.

³⁵ *Id.*

³⁶ U.N. CHARTER art. 33, para. 1. Article 33(1) states, "The parties to any dispute . . . shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." *Id.*

³⁷ DOXEY, *supra* note 19, at 11.

³⁸ See IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 362 (1963); DEREK W. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 148 (1958).

³⁹ The United States has been the dominant user of sanctions, followed by the United Kingdom. Kimberly A. Elliott, *Annual Meeting of the American Society of International Law*, 85 AM. SOC'Y INT'L L. PROC. 169 (1991). Elliott states that the effectiveness of U.S. sanctions against other countries has sharply declined because of the U.S. decline in the world economy. *Id.*

⁴⁰ The United States imposed economic sanctions in the form of substantial cutbacks in economic and military aid to South Korea in order to improve human rights following President Park's declaration of martial law in 1972. GARY C. HUFBAUER & JEFFREY J. SCHOTT, ECONOMIC SANCTIONS IN SUPPORT OF FOREIGN POLICY GOALS 64 (1983).

⁴¹ In 1975-76, the United States and Canada threatened financial and export sanctions to persuade South Korea not to buy a French reprocessing plant that could produce weapons-grade nuclear materials. HUFBAUER ET AL., *supra* note 18, at 505-07. In another case, Canada suspended uranium shipments to Japan and the European Community to force them to accept Canadian safeguards against using nuclear material for explosive purposes. See GARY C. HUFBAUER ET AL., ECONOMIC SANCTIONS RECONSIDERED, SUPPLEMENTAL CASE HISTORIES 449-51 (2d ed. 1990) [hereinafter HUFBAUER ET AL., CASE HISTORIES].

⁴² The United States imposed economic sanctions against Iraq in 1980-82 for its terrorist activities. HUFBAUER ET AL., CASE HISTORIES, *supra* note 41, at 524-31.

⁴³ The United States imposed economic sanctions against Bolivia in 1979-82 to condemn Colonel Busch's military coup and the Bolivian government's lack of cooperation with the U.S. Drug Enforcement Administration. *Id.* at 518-23.

2. *Universal Economic Sanctions By the U.N. Security Council*

The United Nations may impose economic sanctions under the Charter to pursue its peacekeeping responsibilities outlined in Article 1, but Article 2(7) prohibits intervention in matters which are "essentially within the domestic jurisdiction" of any state.⁴⁴

Pursuant to Chapter VII of the Charter, the U.N. Security Council may institute an enforcement action against a particular state to maintain or restore international peace and security.⁴⁵ Such actions against offending states, however, require a unanimous affirmative vote from all permanent members of the Security Council.⁴⁶

⁴⁴ The principle of non-intervention in Article 2(7) does not prejudice enforcement measures under Chapter VII. The United Nations has intervened in cases where essentially domestic conflicts resulted in gross violations of human rights. The U.N. sanctions against Somalia in 1992 and against Haiti in 1993 indicate a trend toward "humanitarian intervention" by the United Nations. Richard B. Lillich, *Humanitarian Intervention of the UN: Towards the Development of Criteria*, 53 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 558, 564-67 (1993) (describing cases, e.g., Rhodesia (1968), Iraq (1991), and Somalia (1992), where human rights violations within a state constituted a "threat to peace" or "threat to international peace and security" sufficient to invoke the Security Council's authority to authorize coercive measures). For more discussion of the principle of interdiction, see Owen D. Jones, *The Box H Problem: A Justification for Unilateral International Coercion*, 15 YALE J. INT'L L. 207, 250 (1990).

⁴⁵ U.N. CHARTER art. 39.

⁴⁶ A decision by the Security Council requires an affirmative vote of at least nine of the 15 members, including unanimous vote from the five permanent members. The five permanent members are China, France, Great Britain, Russia, and the United States. See Kim R. Nossal, *Economic Sanctions in the League of Nations and the United Nations*, in THE UTILITY OF INTERNATIONAL ECONOMIC SANCTIONS 19 (David Leyton-Brown ed., 1987) (contending that universal sanctions are likely to founder because of the nature of inter-state relations).

The Security Council's difficulty with the unanimity requirement was clearly demonstrated during the Korean conflict in 1950. Due to the Soviet Union's voluntary absenteeism, the Council was able to take military action against North Korea for its surprise attack on South Korea on June 25, 1950. However, when the Council attempted an arms embargo against China for providing military support for North Korea, the Council's proposal was vetoed by the Soviet Union. The General Assembly, then, acting under the Uniting for Peace Resolution, recommended an arms embargo against China as an additional economic measure. DOXEY, *supra* note 19, at 12-13, 59-60. The General Assembly's Uniting for Peace Resolution reads in part:

[The General Assembly] [r]esolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its

a. Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures will be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.⁴⁷

Article 39 of the Charter gives the Security Council broad discretion to determine whether any "threat to the peace," "breach of the peace," or "act of aggression" has occurred.⁴⁸ The Charter does not define these terms; rather, the existence of such threats has been determined by the Security Council on an ad hoc basis.⁴⁹

Once the decision is made, the door is opened to the various measures the Council may take under Articles 41 and 42. The Council may implement not only the measures enumerated under Article 41, but also other non-military measures.⁵⁰ Sanctions often escalate from "selective optional sanctions" through an intermediate stage of "selective mandatory sanctions" and finally reaching "comprehensive mandatory sanctions."⁵¹ This process may take a long time.

b. Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give

primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression.

G.A. Res. 377(V), U.N. GAOR, Supp. No. 20, at 1, U.N. Doc. A/1775 (1950).

⁴⁷ U.N. CHARTER art. 39.

⁴⁸ See, e.g., Myers S. McDougal & W. Michael Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 AM. J. INT'L L. 1 (1968).

⁴⁹ See LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS 295 (3d rev. ed. 1969). For a discussion of international efforts to define these terms in relation to economic measures taken by an individual state against another, see Cameron, *supra* note 33.

⁵⁰ DOXEY, *supra* note 19, at 9.

⁵¹ RALPH ZACKLIN, THE UNITED NATIONS AND RHODESIA 45 (1974).

effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. 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.⁵²

This provision gives the Security Council great flexibility in the choice of means to pursue its ends, in contrast to the automatic boycott prescribed by League of Nations Article XVI.⁵³ While Article XVI of the Covenant placed upon all members of the League the binding obligation to apply the enumerated sanctions immediately, Article 41 of the Charter gives the Council the freedom to decide whether such measures shall be used, and if so, what specifically these measures are to be.⁵⁴

c. Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.⁵⁵

Article 42 provides for harsher measures than those of Article 41 and is implemented when necessary due to the urgency of the situation (as in the case of the Korean War in 1950) or when the measures under Article 41 are inadequate (as is the case of Haiti). Demonstrations of force and military blockades used to increase the effectiveness of economic measures fall under

⁵² U.N. CHARTER art. 41.

⁵³ ZACKLIN, *supra* note 51, at 91.

⁵⁴ DAOUDI & DAJANI, *supra* note 18, at 77.

⁵⁵ U.N. CHARTER art. 42. On the question of whether the International Court of Justice (ICJ) can review the decisions of the Security Council, see Thomas M. Franck, *The "Powers of Appreciation": Who is the Ultimate Guardian of U.N. Legality?*, 86 AM. J. INT'L L. 519 (1992). See also W. Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 AM. J. INT'L L. 83 (1993) (discussing the boundary between the competence of the Security Council and the ICJ).

the scope of Article 42. Military measures can be organized by the Security Council (but only on an ad hoc and voluntary basis because agreements to make military contingents available to the Security Council have never been concluded).

The Security Council derives leverage from the influence its members can exercise in pursuit of its objectives. The strength of Council action lies especially where the combined influence of Council members is enforced by the influence of other general member states cooperating with the Council to support the Council's objective.⁵⁶

Until recently, however, this system of collective action was not utilized often.⁵⁷ Before the current economic sanctions against Haiti and the former Yugoslavia, the Security Council applied mandatory economic sanctions only three times: against Rhodesia (1966-79),⁵⁸ South Africa (1977-91, arms only),⁵⁹ and Iraq (1990).⁶⁰

⁵⁶ V.A. Kremenuk, *The Ways and Means for the International Community to Prevent and Solve Local Regional Conflicts*, in *THE FUTURE OF THE UNITED NATIONS IN AN INTERDEPENDENT WORLD* 93 (John P. Renninger ed., 1989).

⁵⁷ Relations among the states during the Cold War, especially among the permanent members of the Security Council, posed an obstacle to utilization of collective actions. See *supra* note 44 (providing an example of the General Assembly's function in the event that inter-state relations prevent unanimity of the permanent members).

⁵⁸ S.C. Res. 253, U.N. SCOR, 23rd Sess., 1428th mtg., U.N. Doc. S/INF/23/Rev. 1 (1968). Mandatory sanctions against Rhodesia in 1965 were the most celebrated, as they marked an important step in international affairs. The sanctions were imposed against the regime of Rhodesian prime minister Ian Smith, who declared Rhodesia's independence from the British government before the British design to grant independence took place (the British design would have resulted in black majority rule). For the first time, the major powers had not only agreed to accept sanctions but had pushed for their adoption. Despite high expectations, economic sanctions against Rhodesia were "not as debilitating as expected," and it took 14 years before the Rhodesian government acceded to black majority rule in December 1979. See HUFBAUER ET AL., *supra* note 18, at 409-17.

⁵⁹ S.C. Res. 418, U.N. SCOR, 32nd Sess., 2046th mtg., U.N. Doc. S/INF/33 (1977). For a detailed history of the economic sanctions against South Africa, see HUFBAUER ET AL., *supra* note 18, at 346-60.

⁶⁰ S.C. Res. 661, U.N. SCOR, 45th Sess., 2933rd mtg., U.N. Doc. S/INF/46 (1990). See BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW* 1305-18 (1991). See also *The Gulf War: The Law of International Sanctions*, 85 AM. SOC'Y INT'L L. PROC. 169 (1991). Cf. Shaw J. Dallal, *International Law and the United Nations' Role in the Gulf Crisis*, 18 SYRACUSE J. INT'L L. & COM. 111 (1992) (arguing that the Security Council's decision to use armed force in Iraq was illegal and premature).

3. Binding Nature of Security Council Decisions

The decisions of the Security Council on matters of international peace and security are binding upon the member states.⁶¹ Nonmembers, as well as member states, are required to act consistently with the principles contained in the opening articles of the Charter.⁶²

Though there are still some conflicting opinions about whether non-member states are bound by the U.N. sanctions resolutions,⁶³ it is generally accepted that measures taken by the Security Council to maintain or restore international peace and security under Article 39 are binding and carry the force of law.⁶⁴ The United Nations has no permanent organized force for securing obedience to the law similar to that which exists in a modern state.⁶⁵ The obligatory character of the rules of international law comes instead from "the empirical facts that states will insist on their rights under such rules against states which they consider should observe them, and that states recognize international law as binding upon them."⁶⁶ The binding nature of the Council's decisions is important because participation of every state, both member and nonmember, is a crucial factor in the success of economic sanctions.

⁶¹ U.N. CHARTER art. 25. Under Article 25, member states agree to accept and carry out the decisions of the Security Council in accordance with the Charter. The Council can make two types of decisions: voluntary and mandatory. Based on the authority of the Charter resolutions, measures adopted under Article 39 are binding in nature and carry the force of law. DOXEY, *supra* note 19, at 74. See also ALF ROSS, *THE CONSTITUTIONS OF THE UNITED NATIONS* (1950).

⁶² Nossal, *supra* note 46.

⁶³ A number of international lawyers, including D. von Schenck and Rudolf Bindschedler, have argued that nonmembers have no obligation to abide by sanctions resolutions; others, such as Hans Kelsen, have argued that an obligation for non-members to participate in the United Nations measures does exist. D. von Schenck, *The Problem of the Participation of the Federal Republic of Germany in Sanctions of the United Nations, with Special Regard for the Case of Rhodesia*, (Summary in English), ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT AND VÖLKERRECHT 29, 2 (May 1969); Rudolf Bindschedler, *The Problem of the Participation of Switzerland in Sanctions of the United Nations, with Special Regard for the Case of Rhodesia*, (Summary in English), ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT AND VÖLKERRECHT 28, 1 (March 1968).

⁶⁴ LELAND M. GOODRICH ET AL., *CHARTER OF THE UNITED NATIONS* 161 (3d rev. ed. 1969).

⁶⁵ JOSEPH G. STARKE, *INTRODUCTION TO INTERNATIONAL LAW* 30-31 (10th ed. 1989).

⁶⁶ *Id.* at 31.

II. DEVELOPMENT OF THE CRISIS IN THE KOREAN PENINSULA

A. North Korea's Game with the International Community

The present crisis in the Korean peninsula came into sharp focus when North Korea threatened to withdraw from the International Atomic Energy Agency in March 1994. The threat came in response to IAEA demands for North Korea to open its two suspected nuclear waste sites for inspection and a U.S. plan to seek economic sanctions.⁶⁷ North Korea, as a party to the Nuclear Non-Proliferation Treaty, is obligated to follow all safeguards in the non-military use of nuclear power and to allow the IAEA to take samples to verify official declarations regarding the fissile material.⁶⁸

In the course of six previous inspections in 1993,⁶⁹ North Korea admitted to the IAEA that it had reprocessed nuclear fuel from a research reactor to produce a "tiny" amount of plutonium—the raw material of atomic weapons—for research purposes.⁷⁰ However, the term "research purposes" is not likely to describe the full truth. As Secretary of Defense William Perry explained:

⁶⁷ See, e.g., Ed Paisley, *Prepared for the Worst: Neither Carrots Nor Sticks Could Budge Pyongyang*, FAR E. ECON. REV., Feb. 10, 1994, at 22; *U.S. Seeks Sanction against North Korea*, CHICAGO TRIB., Mar. 20, 1994, § 1, at 5; *Why Prioritize Pyongyang?*, L.A. TIMES, Mar. 22, 1994, at B6.

⁶⁸ See *supra* note 3; Nayan Chanda, *Forgive and Forget?*, FAR E. ECON. REV., May 12, 1994, at 14.

⁶⁹ Although North Korea joined the NPT in 1985, it was not until April 1992 that it formally authorized the IAEA to undertake inspection of its three declared nuclear facilities. For detailed circumstances surrounding the inspection request, see generally Chanda, *Bomb and Bombast*, *supra* note 3; Nayan Chanda, *Seal of Disapproval*, FAR E. ECON. REV., Mar. 31, 1994, at 14-15.

⁷⁰ John Hughes, *North Korea: What We Don't Know Could Be Dangerous*, CHRISTIAN SCI. MONITOR, Aug. 18, 1994, at 18. A load of spent fuel from the nuclear reactors, if processed after being removed from the reactor, would provide plutonium, a raw material necessary for building a nuclear bomb. The operating nuclear reactor in North Korea was shut down for reprocessing of its core units in 1989 and at least three times since then. Each reprocessing of the North Korean reactor produced enough plutonium to build a nuclear bomb. Theoretically, the North Koreans could have built one bomb per year since 1989. *Id.*

[W]e do know with certainty that the North Koreans have an operational 25-megawatt nuclear reactor;⁷¹ they have under construction a second, 200-megawatt reactor; they have a large reprocessing plant for separating plutonium from reactor spent fuel; they have radio-chemistry laboratories; and they have a high explosive testing facility, all located in Yongbyon. We also know that when the 200-megawatt reactor is completed in a few years, it will have the potential to produce enough material for 10-12 nuclear bombs a year. The most reasonable explanation for this known collection of facilities is a nuclear weapons program.⁷²

According to military experts, North Korea may already have one or two bombs⁷³ and be able to produce a half dozen more with the plutonium from the 8,000 fuel rods presently stored in the cooling pond.⁷⁴ The fate of these fuel rods has been the most urgent topic of the diplomatic talks because they will start to corrode and leak dangerous radioactivity if not dealt with in the immediate future.⁷⁵

If the rods were reprocessed, which the North Koreans have said is necessary for safety reasons, the yield would be more than 20 pounds of plutonium, which could be used to create a nuclear explosion.⁷⁶ The IAEA and the United States insisted that such a step had to be resisted vigorously, and Washington pushed for U.N. trade sanctions.⁷⁷ North Korea responded

⁷¹ Megawatt measurements refer to thermal output. The 25-megawatt reactor is also referred to as 5-megawatt reactor which indicates electrical output.

⁷² Perry, *supra* note 1, at 276.

⁷³ The Director of the Central Intelligence Agency, James Woolsey, has estimated that at least one nuclear device may have been built. Perry, *supra* note 1, at 276. The former KGB Chief, Vladimir Kryuchkov, has also been quoted in Russia's IZVESTIA as stating that "the [North Korean] development of the first nuclear explosive device had been completed at the nuclear research center in the town of Yongbyon." *And That Was in 1990*, AIR FORCE MAG., Aug., 1994, at 79; *On the North Korean Beat*, ECONOMIST, July 2, 1994, at 23.

⁷⁴ Correll, *supra* note 9, at 2; James Sterngold, *The Key Issue on North Korea*, N.Y. TIMES, July 24, 1994, § 1, at 14; Naughton, *supra* note 7.

⁷⁵ See, e.g., R. Jeffrey Smith, *North Korea Says It May Start Reactor; U.S. Still Optimistic Agreement Will Hold*, WASH. POST, Aug. 16, 1994, at A13.

⁷⁶ The North Korean reactor requires refueling very soon, and the spent fuel can be reprocessed into weapons-grade plutonium. Perry, *supra* note 1, at 276.

⁷⁷ *U.S. Seeks Sanction against N. Korea*, *supra* note 67, at 5; Michael R. Gordon, *U.S. Goes to U.N. to Increase the Pressure on North Korea*, N.Y. TIMES, Mar. 22, 1994, at A1.

by vowing to interpret economic sanctions as an "act of war".⁷⁸

However, after mediation by former-President Jimmy Carter, North Korea's hard-line leader, Kim Il Sung, suddenly took a sharp conciliatory turn and agreed to freeze North Korea's nuclear plans if the United States would hold high-level talks.⁷⁹ The United States has suggested the rods could be sent to a third country, perhaps China, for safe-keeping, but the North Koreans have rejected this idea, arguing that the rods belong to them and they see no reason to give them up.⁸⁰ A compromise of encasing the rods in concrete is being considered.⁸¹

At a summit in Geneva in August 1994, the North Koreans asked for diplomatic recognition from the United States and a \$2 billion light-water nuclear reactor,⁸² a state-of-the-art model which produces little plutonium, in return for suspending its alleged scheme to build nuclear weapons.⁸³ However, North Korea has repeatedly and publicly stated that it will not allow inspections of two suspected waste sites which would give clues to past nuclear activities, saying that any agreement with Washington will apply only to future nuclear developments.⁸⁴ The United States and South Korea have been equally adamant that they cannot be expected to rebuild North Korea's nuclear infrastructure without establishing what has been done

⁷⁸ *War or Peace for Korea?*, ECONOMIST, June 18, 1994, at 37.

⁷⁹ Robert S. Greenberger & Steve Glain, *Carter Briefs White House on North Korea*, WALL ST. J., June 20, 1994, at A6; R. Jeffrey Smith, *Promising Signs Seen in N. Korea*, WASH. POST, June 17, 1994, at A20.

⁸⁰ *America and North Korea; Progress, Perhaps*, *supra* note 14, at 32.

⁸¹ Paul Greenberg, *A Familiar Ring to Korean Promises*, SAN DIEGO UNION-TRIB., Aug. 19, 1994, at B6.

⁸² Russia and Japan are prepared to help North Korea with the light-water reactor. Nicolai Geronin, *Russia Ready to Help North Korea with Light-Water Reactor*, ITAR-TASS, Aug. 23, 1994; *Japan Ready to Help North Korea Build Light Water Reactors*, Agence France Presse, Aug. 24, 1994, available in LEXIS, News Library, AFP File. In addition, South Korea has agreed to help North Korea, but "only if complete inspections ensure that the North has not developed any bombs." *N. Korea Repeats Vow to Refuse Inspections of Key Nuclear Sites*, L.A. TIMES, Aug. 21, 1994, at A11.

The North Koreans, at a summit on September 23, 1994, increased their demand to an additional \$2 billion in compensation for lost power from two graphite reactors that are almost completed, which the United States rejected. Naughton, *supra* note 7.

⁸³ Naughton, *supra* note 7.

⁸⁴ Jack R. Payton, *Some Optimistic Signs Emerge in Korea Crisis*, ST. PETERSBURG TIMES, Aug. 18, 1994, at 2A; *N. Korea Again Rejects Special Inspections*, UPI, Aug. 23, 1994, available in LEXIS, Nexis Library, UPI File.

already.⁸⁵ If the United States and South Korea stand by their demand, and if North Korea continues to reject it—as both sides give all indications of doing—the broad Geneva agreement is not likely to be implemented smoothly.

Critics contend that the Clinton administration's accommodating approach⁸⁶ allows North Korea to keep rewriting the rules, and that the U.S. government is basing its hopes of capping North Korea's nuclear program on the "very weak" assumption that the IAEA will be allowed to monitor the irradiated fuel from Yongbyon.⁸⁷ North Korea's promise to keep its obligations under the NPT has generally been met with skepticism due to the government's reputation for unpredictable rescission and brinkmanship.⁸⁸ The skeptics believe that the North Koreans are simply stalling, and that the U.N. Security Council will have to impose sanctions in the end.⁸⁹

B. Scope of Proposed Economic Sanctions Against North Korea

The U.S. proposal to other U.N. Security Council members on June 15, 1994, was far less punitive than the measures first advocated by the U.S. government. Because of opposition from China, the resolution would not yet impose a trade embargo on North Korea.⁹⁰ Instead, it would "halt North Korea's export and import of arms, end U.N. technical assistance, ban technical and scientific assistance, reduce the number of diplomats at North Korean embassies around the world, and curtail cultural, scientific, and educational exchange programs."⁹¹ These sanctions would be phased in after a 30-day grace period following adoption by the Council.⁹² A ban on

⁸⁵ Steven Greenhouse, *Clinton Demanding North Korean Inspections*, N.Y. TIMES, Aug. 18, 1994, at A6.

⁸⁶ See Fisher, *supra* note 17 (asserting that President Clinton briefly lost control over his foreign policy by sending former-President Carter to North Korea and reversing his policy).

⁸⁷ Chanda, *Forgive and Forget?*, *supra* note 68, at 14-15.

⁸⁸ The Defense Intelligence Agency has said that North Korea will continue its nuclear weapons program despite any agreements it signs. James R. Asker, *Going Ballistic*, AVIATION WK. & SPACE TECH., Aug. 15, 1994, at 19.

⁸⁹ See, e.g., *America and North Korea; Progress, Perhaps*, *supra* note 14, at 32; Fisher, *supra* note 17.

⁹⁰ China's position is important because it wields a veto in the U.N. Security Council, supplies oil and food to North Korea, and has a long border with North Korea.

⁹¹ Stanley Meisler, *U.S. Urges U.N. to Impose Mild N. Korean Curbs*, L.A. TIMES, June 16, 1994, at A1.

⁹² *Id.*

transfers of money from North Koreans living in Japan to relatives and friends in North Korea has been postponed but remains an option even in the event of a Chinese veto.

III. ECONOMIC SANCTIONS AGAINST NORTH KOREA?

A. *Legitimacy of Universal Economic Sanctions*

North Korea's alleged plan to develop nuclear arms is a serious threat to nonproliferation, and the international community has reached a general consensus that the North Koreans need to be stopped.⁹³ The diplomatic talks have so far been unsuccessful and there is a growing sense that sanctions may be necessary.⁹⁴ Pursuant to the purposes of the United Nations articulated in the Charter, i.e., "[t]o maintain international peace and security . . . [and] the prevention and removal of threats to the peace,"⁹⁵ the U.N. Security Council will first consider whether there is a "threat to the peace", "breach of the peace", or an "act of aggression" under Article 39. Since the Charter does not provide definitions of these terms, the existence of such a condition is entirely within the Council's discretion, and the decision is made on an ad hoc basis.⁹⁶

The General Assembly defined "act of aggression" as "the use of armed force by a State against the sovereignty . . . of another State, or in any other manner inconsistent with the Charter of the United Nations".⁹⁷ While it is not clear from the language of this definition whether a "breach of peace" should be distinguished from an "act of aggression", the term "breach of peace" has nonetheless been used to describe violations involving armed

⁹³ See Statement at Confirmation Hearing, Lynn E. Davis, Under Secretary-Designate for International Security Affairs, March 17, 1993, U.S. DEP'T ST. DISPATCH, Mar. 21, 1994.

⁹⁴ Alan Riding, *U.S. and North Korea Announce Pause in Talks, but No Progress*, N.Y. TIMES, Sept. 30, 1994, at A3; *U.S. Says Talks with North Korea Deadlocked*, GAZETTE (MONTREAL), Oct. 2, 1994, at B7; *U.S. Cautious about Talks with North Korea*, CHRISTIAN SCI. MONITOR, Sept. 15, 1994, at 5.

⁹⁵ U.N. CHARTER art. 1, para. 1.

⁹⁶ See, e.g., *International Court of Justice: Order with Regard to Request for the indication of provisional Measures in the Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United States)*, April 1992, 31 I.L.M. 662.

⁹⁷ G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31, at 142, U.N. Doc. A/9631 (1974). See Article 3 of the Annex to that document for examples of the acts of aggression.

attacks which fell within the definition of "act of aggression." For instance, the North Korean armed attack on South Korea was termed a "breach of peace,"⁹⁸ and likewise, the invasion of Kuwait by military forces of Iraq constituted a "breach of international peace and security."⁹⁹

On the other hand, the term "threat to international peace and security" was used to condemn violations that were outside the scope of the definition of "act of aggression." For example, the proclamation of independence by the illegal authorities in Southern Rhodesia¹⁰⁰ and the large-scale killing of peaceful demonstrators protesting discriminatory racial policies in South Africa¹⁰¹ were "threats to international peace and security." Likewise, the Haitian humanitarian crises, which included mass displacement of the population, also qualified as a "threat to international peace and security."¹⁰²

The current state of the North Korean nuclear weapons program, without further violations, does not appear to be an "act of aggression" or a "breach of the peace", since it has not yet reached the stage of "use [of] armed force . . . against the territorial integrity or political independence" of another sovereign state.¹⁰³ The potential threat of the North Korean nuclear weapons program, however, may be considered similar to the racial conflict in South Africa, where the Security Council found the existence of a "*potential* threat to international peace and security" (emphasis added).¹⁰⁴ The issue in South Africa was racial conflict resulting from the continued application of Apartheid and the constant build-up of the South African military and police forces. The extensive build-up of the armed forces was said to pose a "real threat to the security and sovereignty of . . . the neighboring states,"¹⁰⁵ and this threat was the basis for strengthening the already existing arms embargo.

North Korea's suspected nuclear weapons program, coupled with its history of illegal arms exportation, presents a significant threat to the international community's efforts to prevent the spread of global nuclear weapons. It represents a dangerous precedent of challenging the international

⁹⁸ S.C. Res. 82, U.N. SCOR, 5th Sess., 473rd mtg., U.N. Doc. S/INF/4/Rev.1 (1950).

⁹⁹ S.C. Res. 660, U.N. SCOR, 45th Sess., 2932d mtg., U.N. Doc. S/INF/46 (1990).

¹⁰⁰ S.C. Res. 219, U.N. SCOR, 20th Sess., 1270th mtg., U.N. Doc. S/INF/20/Rev.1 (1965).

¹⁰¹ S.C. Res. 134, U.N. SCOR, 15th Sess., 856th mtg., U.N. Doc. S/INF/15/Rev.1 (1960).

¹⁰² S.C. Res. 841, U.N. SCOR, 48th Sess., 3238th mtg., ST/LIB/SER.B/5.30 (1993).

¹⁰³ U.N. CHARTER art. 2, para. 4.

¹⁰⁴ S.C. Res. 282, U.N. SCOR, 25th Sess., 1549th mtg., U.N. Doc. S/INF/25 (1970).

¹⁰⁵ *Id.*

non-proliferation regime and also threatens peace and security in the Korean Peninsula and Asia.¹⁰⁶ The Security Council acknowledged the importance of the situation by passing a resolution calling on North Korea to remain in the NPT and to cooperate with the IAEA.¹⁰⁷ The resolution also called on all member states to "encourage" North Korea to honor its non-proliferation obligations.¹⁰⁸ The stage seems set for further necessary measures in the event that North Korea ignores the consensus of the international community and continues to develop nuclear weapons. Thus, it is likely that the Security Council will find the existence of a "threat to peace and security," as required under Article 39, which would then enable the Council to take necessary measures under Articles 41 and 42.

In deciding the scope of the "necessary measures," the Council would consider in general: (1) the possibility of general application of the measures chosen and the willingness of the member states to enforce them; (2) the estimated effectiveness of the measures in relation to North Korea's economy, its sensitivity to external pressure, and the goals of the sanctions policy; and (3) the minimization of cost and damage to the economies of the sender countries.¹⁰⁹ These considerations will affect the form and scope of non-military sanctions imposed under Article 41.

B. Goals Furthered by Economic Sanctions

Most scholars agree that economic sanctions serve several analytically distinct but not mutually exclusive goals.¹¹⁰ The major purposes of economic sanctions includes compelling a change in behavior, showing disapproval and deterring future actions of others, and limiting economic and military capabilities.

¹⁰⁶ See Robert L. Gallucci, Statement by the Assistant Secretary for Political-Military Affairs before the House Foreign Affairs Committee, June 9, 1994, U.S. DEP'T STATE DISPATCH, June 27, 1994.

¹⁰⁷ S.C. Res. 825, U.N. SCOR, May 11, 1994.

¹⁰⁸ *Id.*

¹⁰⁹ See DOXEY, *supra* note 19, at 97-110.

¹¹⁰ See DAUDI & DAJANI, *supra* note 18, at 161-66. See also David Leyton-Brown, *Lessons and Policy Considerations about Economic Sanctions*, in *THE UTILITY OF INTERNATIONAL ECONOMIC SANCTIONS* 303 (David Leyton-Brown ed., 1987).

1. *Compelling Changes of Behavior*

Though "[t]he history of sanctions has led some observers to conclude that sanctions are 'ineffective'," ¹¹¹ such criticism may be overly generalized and consider only one purpose that sanctions serve: to change the target country's policy. From the traditional viewpoint, ¹¹² where sanctions are means to "coerce target governments into particular avenues of response," ¹¹³ success is measured by changes in the target's behavior that analysts can attribute to the economic sanctions. ¹¹⁴ Sanctions work by creating economic hardship in the target country, inducing the target's governing regime to capitulate to foreign pressure and abandon its objectionable policy. ¹¹⁵ Consequently, sanctions are considered ineffective when they do not cause significant economic damage in the target nation.

In the situation in the Korean peninsula, the international community is ultimately seeking North Korean abandonment of its nuclear ambition. ¹¹⁶

¹¹¹ Jones, *supra* note 44, at 246. See, e.g., MIYAGAWA, *supra* note 32, at 203.

¹¹² There are different views about how to measure the success of economic sanctions. David Baldwin, for example, asserts that economic sanctions have multiple objectives, such as responding to domestic demands for action or sending disapproval signals to third countries. Measuring success solely by policy change is misleading, he argues, and the success of sanctions will be underestimated. DAVID BALDWIN, *ECONOMIC STATECRAFT* 130-34 (1985).

¹¹³ HUFBAUER ET AL., *supra* note 18, at 9.

¹¹⁴ See generally, HUFBAUER ET AL., *CASE HISTORIES*, *supra* note 41. The authors evaluated each economic sanction by observing the "response of target country" and "economic impact." The success of sanctions was determined by considering the extent to which the policy outcome sought by the sender country was in fact achieved and the extent to which the sanctions (as opposed to other measures, such as military action) contributed to the positive outcome.

¹¹⁵ WILLIAM H. KAEMPFER & ANTON D. LOWENBERG, *INTERNATIONAL ECONOMIC SANCTIONS: A PUBLIC CHOICE PERSPECTIVE* 161 (1992).

¹¹⁶ Robert L. Gallucci, the Assistant Secretary for Political-Military Affairs, stated that the objectives of the U.S. policy are a "nuclear-free Korean Peninsula and a strong non-proliferation regime":

- We must ensure that North Korea does not possess nuclear weapons and will not build them in the future. That means North Korea must agree to:
- Full membership in the NPT;
- Full cooperation with the IAEA in implementing full scope safeguards, including special inspections and other measures to clear up the discrepancies in the N.P.R.K.(North Korea)'s past declaration; and,
- Full implementation of the South-North Denuclearization Accord,

A more immediate goal to be achieved by economic sanctions would be to induce the North Koreans to cooperate with the IAEA in implementing full-scope safeguards. Achieving these goals would require the participation of every nation and a sanctions package that is comprehensive in coverage.¹¹⁷

a. Compliance By Other States

In order for sanctions to be most effective in changing the target country's objectionable policy, every state must comply. Widespread compliance minimizes the target country's opportunities to redirect trade. Unless all existing or potential trade partners cooperate with the sanctions resolutions, the availability of alternate goods and capital markets lessens the effect of the sanctions on the target.

Past experiences with economic sanctions demonstrate this point clearly. As discussed earlier, the sanctions against Italy in 1935-36 are a good example of a failure due to a lack of cohesion.¹¹⁸ A more recent example of such a problem is the former Yugoslavia. Since the fall of the Soviet Union, many Eastern European countries have been experiencing difficulties in their transition to independence and autonomy.¹¹⁹ Since the day the citizens of Bosnia-Herzegovina voted for independence from the Yugoslav Federation on March 1, 1992, there has been non-stop fighting among the ethnically divided forces.¹²⁰ The situation led the U.N. Security Council to impose economic sanctions against the remaining members of the Yugoslav Federation, Serbia and Montenegro.¹²¹ Serbia in particular was singled out due to suspicion that it had assisted the Bosnian Serbs in carrying

which bans uranium enrichment and reprocessing facilities and provides for a bilateral inspection regime.

Hearing of the Asia and Pacific Subcommittee of the House Foreign Affairs Committee, Fed. News, June 9, 1994, available in LEXIS, Legis Library, Fednew File.

¹¹⁷ HUFBAUER ET AL., *supra* note 18, at 3.

¹¹⁸ See *supra* note 24.

¹¹⁹ See Yoshiko Inoue, Comment, *United Nations' Peace-Keeping Role in the Post-Cold War Era: The Conflict in Bosnia-Herzegovina*, 16 LOY. L.A. INT'L & COMP. L.J. 245 (1993) (describing the development of the conflict in Yugoslavia and the involvement of the United Nations).

¹²⁰ *Id.*

¹²¹ S.C. Res. 757, U.N. SCOR, 46th Sess., 3082nd mtg. (1992); S.C. Res. 820, U.N. SCOR, 47th Sess., 320th mtg. (1993).

out acts of aggression.¹²² The purpose of the sanctions was to force Serbia to cut off supplies and support for the Bosnian Serbs, who have seized seventy percent of Bosnia and Herzegovina.¹²³ The sanctions have been tightened gradually to allow only essential food and medicine into Serbia and Montenegro. However, neighboring countries, especially the former Yugoslav republic of Macedonia, have continued to trade with the target states in violation of the sanctions,¹²⁴ and shops are reportedly still full of smuggled goods. Though it appears that economic sanctions did eventually cripple the Serbian economy and persuade Serbia to cut ties with Bosnian Serbs,¹²⁵ alternative sources of trade have diminished the effectiveness of the sanctions and extended the length of time necessary to realize the goals.

China and Japan will play a crucial role in implementing sanctions against North Korea. Historically and geographically, these countries have been North Korea's closest allies and trading partners.¹²⁶ China has been and

¹²² *Id.*

¹²³ *The Big Leak in Serbia Embargo: Nervous, Needy Macedonia*, N.Y. TIMES, July 18, 1993, § 1, at 12.

¹²⁴ Gary Hufbauer, *The Futility of Sanctions*, WALL ST. J., June 1, 1994, at A14; *The Big Leak in Serbia Embargo: Nervous, Needy Macedonia*, *supra* note 123, at 12. See also Roger Thurow, *Embargo Busting*, WALL ST. J., June 7, 1994, at A1; Louis J. Salome & Bob Deans, *Survival Comes First: Macedonia Winks at Smuggling into Yugoslavia*, ATLANTA CONST., June 12, 1994, at G5.

¹²⁵ Yugoslav Foreign Minister Vladislav Jovanovic said on September 4, 1994, that the federal government is strictly implementing its decision to sever all relations with Bosnian Serbs. *Foreign Minister: Sanctions Are Greatest Obstacle to Peace*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 6, 1994, available in LEXIS, News Library, Non-US File.

¹²⁶ China was North Korea's biggest trading partner in 1993, accounting for \$932.8 million of the \$2.75 billion in transactions; next was Japan with \$471 million. Trading with Russia was \$457.7 million; and with South Korea (via third countries) was \$171.2 million. The North Korean trade deficit last year was \$790 million. The major import item was crude oil, while most export items were raw materials. *North Korea's 1993 Global Trade Falls, While Trade with China Rises 27 Percent*, INT'L TRADE REP., Aug. 24, 1994, available in LEXIS, World Library, Intrad File. China supplies 72% of North Korea's food, 75% of its oil, and 88% of the coking coal needed for steel production. Holger Jensen, *Sanctions against N. Korea Simply Won't Work*, HOUSTON CHRON., Mar. 24, 1994, at 29. For information on North Korea's 1992 trading, see *North Korea-Trade Overview*, MARKET REP., Aug. 17, 1993, available in LEXIS, World Library, Mktprt File. See also *The Youngbyon Test*, ECONOMIST, June 4, 1994, at 14.

remains North Korea's single most important ally¹²⁷ and played an important role in bringing North Korea to the negotiating table in June 1994.¹²⁸ Though China has so far opposed the sanctions option, it began showing signs of cooperation with the United States on this issue in early October 1994.¹²⁹ At the time of this Note, it is still not clear what course of action China will pursue in the event that an unsuccessful conclusion of the U.S.-North Korea talks forces a Security Council vote.

China's opposition would be a critical obstacle to implementation of the economic sanctions against North Korea because of its veto power as a permanent member of the U.N. Security Council. China's concern is that economic sanctions would trigger the premature fall of the North Korean government, resulting in a massive exodus of refugees to its border.¹³⁰ More importantly, China does not want North Korea to collapse because a divided Korean Peninsula serves Beijing's long-term strategic interests.¹³¹ A unified Korea under Southern hegemony—an inevitability, given the economic disparity between the two regions—would place a close U.S. ally right on the Chinese border.¹³² Therefore, the United States tailored the proposed sanctions to obtain China's approval and limited the scope of sanctions to the export and import of arms and technical assistance.¹³³

Japan will also play an important role, since it is the second largest trading partner of North Korea.¹³⁴ More importantly, the hard currency remittances sent by Japanese Koreans to Pyongyang are a very important source of

¹²⁷ North Korea's relationship with China was tested and strengthened through the Korean War and the fall of the Soviet Union. Chinese President Jiang Zemin recently said that ties between the two countries remained "as close as lips and teeth." Mirrill Goozner, *In Asia, Lack of Coherent Strategy May Prove Costly*, CHICAGO TRIB., July 3, 1994, at 1C.

¹²⁸ *Id.*

¹²⁹ *U.S. and China Form United Front on North Korea*, ORLANDO SENTINEL, Oct. 4, 1994, at A5.

¹³⁰ Goozner, *supra* note 127, at 1C. Such a refugee problem developed after Haiti's repeated political crises following the overthrow of the Duvalier regime in 1986. See, e.g., *No Good Reason to Invade Haiti*, N.Y. TIMES, July 13, 1994, at A18.

¹³¹ Goozner, *supra* note 127, at 1C.

¹³² *Id.*

¹³³ See *China Holds the Key*, S. CHINA MORNING POST, June 13, 1994, available in LEXIS, News Library, Curnws file (Washington knows that without China's support, its plans for sanctions will be fruitless); Stanley Meisler, *U.S. Urges U.N. to Impose Mild N. Korean Curbs*, L.A. TIMES, June 16, 1994, at A1.

¹³⁴ *North Korea-Trade Review*, *supra* note 127.

hard currency for North Korea.¹³⁵ Initially hesitant, Japan has cooperated so far with the U.S. drive for the sanctions.¹³⁶ Even if China vetoed the U.N. sanctions, Japan could still agree to ban the remittances to North Korea, thereby causing serious currency problems in North Korea.

b. Severity and Comprehensiveness of Sanctions

Sanctions must be painful enough to force the North Koreans to reconsider proceeding with their nuclear weapons program, yet delicate enough to leave open the possibility of a diplomatic solution.¹³⁷ The condition of the target's economy is one of the best indicators of potential success of sanctions and determines the severity and comprehensiveness necessary to induce the purported change of policy.¹³⁸ A study of all the major economic sanctions reveals a direct correlation between the political and economic health of the target country and its susceptibility to economic pressure.¹³⁹ Economic sanctions are most likely to be successful if they are targeted against a relatively weak and unstable country.¹⁴⁰ Countries with extensive internal economic resources are not likely to feel sufficiently pressured by external sanctions to make changes; likewise, economic pressure alone would probably not affect a strong, stable government.¹⁴¹

The bankrupt North Korean economy may seem an easy target for economic sanctions.¹⁴² External trade has fallen sharply while the trade deficit has risen,¹⁴³ and hardly any foreign currency is available.¹⁴⁴ Full-

¹³⁵ Quentin Hardy, *Pressure Builds on a Japanese Bank That Funnels Money to North Korea*, WALL ST. J., June 9, 1994, at A10. Much of foreign currency in North Korea is sent by the North Koreans who live in Japan. Since some currency is sent through travelers, the exact amount of remittances is unknown, but estimates run as high as \$1 billion a year. *Id.*

¹³⁶ *Japan to Act within Constitution on N. Korean Nuke Issue*, JAPAN ECON. NEWS WIRE, July 8, 1994, available in LEXIS, News Library, Non-US File.

¹³⁷ Michael R. Gordon, *White House Asks Global Sanctions on North Koreans*, N. Y. TIMES, June 3, 1994, at A1.

¹³⁸ HUFBAUER ET AL., *supra* note 18, at 82.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 36-37.

¹⁴¹ *Id.*

¹⁴² Nicholas Eberstadt, *The Coming Collapse of North Korea*, ASIAN WALL ST. J., July 2, 1990, at 13.

¹⁴³ North Korea's volume of export was \$1.85 billion in 1990; \$1 billion in 1992; and \$980 million in 1993. Japanese sources believe that the North Korean economy contracted by five percent in 1992, and by 2.4 percent in 1993—its fifth consecutive year of decline.

scale trade sanctions, including a ban on oil shipments, would be most effective, since North Korea depends on imported oil for its energy needs.¹⁴⁵ However, China may not be willing to accept such sanctions at this point, and the oil ban has consequently not been included in the proposed plan of economic sanctions. In addition, North Korea is an isolated country whose trading is conducted primarily with China and Japan. Economic sanctions may not bring the expected effect when further isolating a country which is already accustomed to isolation, especially if China refuses to cooperate with the sanctions and continues its friendly relations with North Korea.

The timetable is another important factor in the success of the international economic sanctions. Economic sanctions applied in a gradual progression lose their effect.¹⁴⁶ A gradual process allows the target country time to reorganize its markets and sources of supply.¹⁴⁷ This theory appears to be supported by the recent experiences with Yugoslavia. Sanctions hurt the Serbian economy until January 1994, when the government introduced new currency¹⁴⁸ that stopped hyperinflation and started bringing investment back into the market.¹⁴⁹ Since the proposed sanctions against North Korea are mild and designed to be implemented gradually so as not to provoke China's veto power, sanctions may not have the desired effect within a short time frame and may allow North Korea to adjust to the situation.

Shim Jae Hoon, *The Last Bunker*, FAR E. ECON. REV., Mar. 11, 1993, at 10; *Balance of Trade: North Korea's 1993 Global Trade Falls, While Trade with China Rises 27 Percent*, 11 INT'L TRADE REP. (BNA) 34, at 1304 (Aug. 24, 1994).

¹⁴⁴ South Korean data indicates that North Korea has been defaulting on foreign debt repayment of about \$6.7 billion since the late 1980s. It has been reported that both China and Russia, North Korea's principal trading partners, now insist on being paid in hard currency for their exports because of this reputation. Shim Jae Hoon, *supra* note 143, at 10.

¹⁴⁵ *Id.*

¹⁴⁶ DAOUDI & DAJANI, *supra* note 18, at 167.

¹⁴⁷ *Id.*

¹⁴⁸ This currency is widely known as the "Avram," named after the economist Dragoslav Avramovic, who introduced the currency to the Serbian market. He worked for 24 years at the World Bank in Washington. Roger Cohen, *Embargo Leaves Serbia Thriving*, N.Y. TIMES, May 30, 1994, § 1, at 3.

¹⁴⁹ *Id.*; James Rupert, *Yugoslavia's Inflation Ebbs, but Stability Remains Precarious: New Currency Helps Re-Stock Shelves, But Budget Cuts and Layoffs Possible*, WASH. POST, Feb. 19, 1994, at A22; Laura Silber, *Serbs Learn to Come to Terms with Sanctions: The United Nations Trade Ban Has Hurt But Not Changed Many Minds*, FIN. TIMES, June 3, 1994, § 3, at 1.

2. *Disapproval and Deterrence*

Even if a particular exercise of sanctions is not successful in bringing about the desired policy changes,¹⁵⁰ the imposition of sanctions plays an important role as a signal of disapproval which may cause alterations in political behaviors of other countries.¹⁵¹ Conversely, a lack of any action may be perceived as acquiescence to the illegal behavior of the violator country. In that sense, the North Korea problem sets a very important precedent. The world's response to North Korea's violation of international law will affect how other nations behave in the future. A unified front against proliferation of nuclear arms will reduce the temptation to develop nuclear weapons, while sending a warning to other rogue nations with similar nuclear ambitions.¹⁵² It is imperative, therefore, for the world community to display united resolve in support of non-proliferation policy.

International economic sanctions also signal foreign support for the political opposition within the target country, often helping opposition groups to rally citizens against the ruling regime and thereby reducing the effectiveness of government policy.¹⁵³ For example, the black resistance fighters in Rhodesia, anti-communists in Nicaragua, and the African National Congress in South Africa benefited from the sanctions in their struggles against sanctioned regimes.

The late dictator Kim Il-Sung's heavy-handed leadership was never challenged, due in part to his heroic nationalist credentials dating back to the country's struggle against Japanese colonialism.¹⁵⁴ His heir, Kim Jong Il, lacks such a heroic past and does not share his father's charisma.¹⁵⁵ Even if Kim has a firm grip on power, he faces a policy dilemma that carries the

¹⁵⁰ "Despite the expectation that sanctions normally will not be designed with effectiveness as a primary consideration, there is clearly a link between sanctions . . . and political responses in the target nations. Worldwide sanctions against white-ruled Rhodesia were eventually rewarded with the fall of the white regime. . . . Sanctions against South Africa . . . were followed a few years later by significant reforms of apartheid." DAOUDI & DAJANI, *supra* note 18, at 164-65.

¹⁵¹ *Id.* See also BALDWIN, *supra* note 112, at 87.

¹⁵² See Vasey, *supra* note 10.

¹⁵³ See generally KAEMPFER & LOWENBERG, *supra* note 21, at 117-35.

¹⁵⁴ *Kim Jong Il's Inheritance*, *ECONOMIST*, July 16, 1994, at 19.

¹⁵⁵ *Id.*

seeds of his destruction.¹⁵⁶ Keeping the country isolated and politically rigid will result in widespread starvation and economic collapse, whereas serious efforts at reform will either topple the regime or lead to a coup by hard-liners.¹⁵⁷ The country is starving, and it is getting poorer. When international economic sanctions take effect, Kim will be a much easier target for an angry populace.¹⁵⁸ The existence of international disapproval of the governing regime may further encourage dissenters within the country.

3. Preventing War Through Incapacitation of a Target Country

Economic sanctions may also serve the purpose of preventing war:

The concept of sanctions developed originally out of a fear of war, and in our times especially, all-out nuclear war, with its suicidal impact on both sides. . . . [T]he real questions are not whether economic sanctions have been successful in the past, nor to what extent they have been successful in forcing target nation or nations to comply, but rather whether they prevent the outbreak of wars, and if so, how and to what extent, and whether in the event of a conventional war, they can accelerate the termination of hostilities.¹⁵⁹

¹⁵⁶ Bruce W. Nelan, *Lies and Whispers: Is Kim The Successor in Charge? Amid Mixed Signals and Ambiguous Evidence, Only the Question is Clear*, TIME, Sept. 5, 1994, at 51.

¹⁵⁷ *Id.* See also Nikolaus Prede, *Kim Jong Il Inherits His Father's Mantle, Ending Speculations*, DEUTSCHE PRESSE-AGENTUR, Oct. 6, 1994, available in LEXIS, News Library, Wires File (reporting the South Korean President's warning that Kim Jong Il's power is not stable and that South Korea must be prepared for the collapse of the Communist regime in the North).

¹⁵⁸ There has already been talk of opposition to Kim Jung Il. See Nelan, *supra* note 156, at 56. One rival center could be the million-troop armed forces, commanded by Defense Minister O Jin U. Other potential rebels might be ambitious members of Kim's own family: his stepmother, Kim Song Ae; his uncle, Vice President Kim Yong Ju; or his half-brother, Kim Pyong Il.

¹⁵⁹ DAOUDI & DAJANI, *supra* note 18, at 161. But see Leo Gross & Victor E. Fitzmaurice, *Economic Sanctions: Ideals and Experience*. By M. S. Daoudi and M. S. Dajani, 79 AM. J. INT'L L. 227 (1985) (book review) (if economic sanctions really do prevent or hasten the conclusion of armed conflict, argument concerning "effectiveness" is meaningless).

The ultimate fear about the proliferation of nuclear weapons is that they may be actually put to use. Considering the extensive military buildup and suspected nuclear weapons program in North Korea, it is reasonable to surmise that North Korea may be preparing for a nuclear war.¹⁶⁰ The desire of the international community to prevent such a disastrous event as a full-blown nuclear war may lead to premature military action. Sanctions may delay the military action by absorbing the initial need to "do something," while providing for a transitional period during which a compromise solution may be attempted.¹⁶¹

It is possible that the threat of international sanctions caused North Korea to agree to talks with the United States, despite its appearance of defiance. Former U.S. President Jimmy Carter's diplomatic visit seems to have influenced the North Korean decision to talk, but the impending threat of sanctions could have added weight to Carter's role as a mediator.¹⁶²

C. The Problems of Economic Sanctions

1. Cost to Sender States

Sanctions are costly to the states that impose them, because they must

¹⁶⁰ The position represented by the Republican right points to two main dangers: inevitable war once North Korea gets the bomb and the destruction of U.S. alliances with South Korea and Japan. David C. Hendrickson, *Recovery of Internationalism; United States Foreign Policy*, FOREIGN AFF., Sept. 1994, at 26. Hendrickson argues that the error in this position is the interpretation of North Korea's motive as nihilistic aggression rather than fear. He contends that the pursuit of nuclear weapons plausibly offered North Korea protection it could not obtain elsewhere, even if it risked inviting attack. *Id.*

¹⁶¹ DAOUDI & DAJANI, *supra* note 18, at 161. North Koreans responded to the threat of economic sanctions with a counter threat that they would consider economic sanctions an "act of war" and that they would turn Seoul into a "sea of fire." Perry, *supra* note 1, at 276. Though such an act would be suicidal and is not likely to materialize, a similar situation—an oil embargo against Japan—was partially responsible for triggering the Japanese attack on Pearl Harbor. *Kim Defiant*, ECONOMIST, June 18, 1994, at 16.

¹⁶² See *supra* note 6 and accompanying text. For a brief analysis of Carter's "citizen diplomacy," see Elaine Sciolino, *Diplomatic Subcontracting's Fine If You Get Good Help*, N.Y. TIMES, Sept. 25, 1994, § 4, at 6; Fisher, *supra* note 17; *Jimmy Carter's Contribution*, N.Y. TIMES, Sept. 18, 1994, § 4, at 16.

forgo gains from trade.¹⁶³ In fact, many authors have argued that one of the primary reasons sanctions fail is that they often are more costly to the sender nations than to the target.¹⁶⁴ Participating countries may suffer loss of trading opportunities, suspended contracts, and other economic hardships that vary according to the sender's size and its relationship to the target state.¹⁶⁵

The sanctions against Yugoslavia bring this problem to sharp focus.¹⁶⁶ In the two years since the imposition of sanctions against Yugoslavia, the economies of the nearby nations—particularly Hungary, Macedonia, Romania, and Bulgaria—have been strained. The loss of Yugoslavia as an export market has cost those countries billions of dollars in lost trade.¹⁶⁷

In the North Korean situation, however, this may be less of a problem, since North Korea's major trading is limited to a few countries. Again, China will be affected the most, and a plan to compensate the Chinese for the trade loss through increased trading with other participating states, favorable trade regulations, monetary compensation, etc.,¹⁶⁸ may be

¹⁶³ For example, Hungary, Romania, and Bulgaria have suffered greatly as a result of international economic sanctions against neighboring Yugoslavia. Justin Burke, *Who's Bit by Serbia's Sanctions?*, CHRISTIAN SCI. MONITOR, May 18, 1994, at 24.

¹⁶⁴ See, e.g., DAOUDI & DAJANI, *supra* note 18, at 139-42. The U.S. grain embargo against the Soviet Union is a classic example of economic sanctions in which the cost to the target country was much less than the cost to the sanctioner. *Id.*

¹⁶⁵ A suggestion is made that "the more effective a sanctions policy, the higher its probable cost to the sender." Leopold Lovelace, *Economic Sanctions Reconsidered* (2d Ed.), 87 AM. J. INT'L L. 178, 179 (1993) (book review).

¹⁶⁶ For background of the Yugoslavian crisis, see Kelly A. Childers, Comment, *United Nations Peacekeeping Forces in the Balkan Wars and the Changing Role of Peacekeeping Forces in the Post-Cold War World*, 8 TEMP. INT'L & COMP. L.J. 117 (1994).

¹⁶⁷ Burke, *supra* note 163, at 24; *The Big Leak in Serbia Embargo: Nervous, Needy Macedonia*, *supra* note 123, at 12.

¹⁶⁸ Article 50 of the U.N. Charter provides:

If preventive or enforcement measures against any state are taken by the Security Council, any state . . . which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

See also U.N. Official Says Countries Suffering Indirectly from Sanctions Need Assistance, 8 INT'L TRADE REP. (BNA) 5, at 173 (Jan. 30, 1991) (quoting Carl-August Fleishchhauer, Undersecretary-General for legal affairs and legal counsel to the United Nations, who suggested that international vehicles for assisting countries that have suffered indirect financial harm from the use of economic sanctions must be developed if sanctions are to retain any

necessary to encourage Chinese cooperation.

2. Human Price

Sanctions also carry a human price;¹⁶⁹ the poor and the unemployed are the most seriously affected.¹⁷⁰ While the leaders of the target country are responsible for the actions that led to the sanctions, the common citizens suffer the most. Opponents of economic sanctions argue that sanctions are "intrinsically wicked"¹⁷¹ because they lead to the foreseeable deprivation of civilians of food and medicine, and concern is rising at the United Nations over the human cost of the embargoes the Security Council has imposed on Yugoslavia, Iraq, and Haiti.¹⁷²

The Haitian situation clearly demonstrates the problem of human costs. Three years after the military coup overthrew the first democratically elected government of Haiti, international economic sanctions to "restore democracy in Haiti and the prompt return of the legitimately elected President, Jean-Bertrand Aristide"¹⁷³ have resulted in extreme human suffering among the poorest. For example, Haiti has one of the highest mortality rates in Latin America and the Caribbean: in 1990, the crude death rate was estimated at thirteen per 1,000, almost double the Latin American average.¹⁷⁴ Econom-

global validity in the future).

¹⁶⁹ Marynell DeVaughn, *Effects and Effectiveness of Economic Sanctions*, 84 AM. SOC'Y INT'L L. PROC. 203, 211 (1990).

¹⁷⁰ Currently in Haiti, garbage collection has been suspended and electricity is unavailable. In addition, the unemployment rate is higher than 50%. *Id.* However, the elite in Haiti have managed to smuggle goods and fuel from the Dominican Republic, which shares the Caribbean Island of Hispaniola with Haiti. Cesar Chelala, *Haiti: Fighting for Survival*, SWISS REV. WORLD AFF., Sept. 1, 1994.

¹⁷¹ Hendrickson, *supra* note 160, at 26.

¹⁷² See generally Larry Everest, *The Trouble with Economic Sanctions*, L.A. DAILY J., Feb. 4, 1992, at 6. Sanctions can be a far less discriminating weapon than bombs. Today an estimated one million Iraqi children are malnourished as a result of both sanctions and wartime destruction. Though food and medicine may officially be exempted from the sanctions, without export earnings, the target country may not have money to buy them. Paul Lewis, *U.N. Is Worried by Human Cost of Embargoes*, N.Y. TIMES, Dec. 19, 1993, § 1, at 21.

¹⁷³ S.C. Res. 841, U.N. SCOR, 48th Sess., 3238th mtg., U.N. Doc. ST/LIB/SER.B/S.30 (1993).

¹⁷⁴ The current crisis has reportedly hurt mainly the middle and lower classes of the population, while economically benefiting the upper bourgeoisie and higher military ranks. Chelala, *supra* note 170.

ic sanctions against North Korea may result in similar suffering of innocent people. A food crisis has already begun developing in North Korea where children are stunted for lack of vitamins.¹⁷⁵ Even without sanctions, the factories are idle for lack of fuel and raw materials.¹⁷⁶

3. *Cost of Reconstruction*

Another problem with sanctions is the cost of reconstruction after sanctions cripple economic activities in the target country.¹⁷⁷ For example, the task of directing Haiti on the road to recovery is staggering: Haiti's problems include a heavily armed and deeply polarized society, nonfunctioning institutions, decayed infrastructure, severely denuded land, and a lack of democratic tradition.¹⁷⁸ An international trade embargo could cause the North Korean economy to collapse along with the government of Kim Jong Il—a prospect that scares South Korea almost as much as a military conflict. A premature reunification of Korea would force South Korea to spend anywhere from \$200 billion to more than \$1 trillion over approximately a decade on reconstruction costs to absorb the North.¹⁷⁹ Additionally, the fifty-year separation of ideology caused by the North Korean hard-line government may cause significant adjustment problems.¹⁸⁰

¹⁷⁵ Chanda, *Point-Counterpoint*, *supra* note 3, at 16 (reporting that North Korea already faces a rice shortage of an estimated two million tons this fall).

¹⁷⁶ *Kim Jong Il's Inheritance*, *supra* note 154, at 19. See also Susan V. Lawrence, *Inside the Hermit Kingdom*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 53.

¹⁷⁷ Larry Rohter, *Mission in Haiti: The Obstacles; Grim Shadow of Economic Reality*, N.Y. TIMES, Sept. 25, 1994, § 1, at 16.

¹⁷⁸ Linda Robinson & Hannah Taylor, *No Quick Fix for Haiti*, U.S. NEWS & WORLD REP., Aug. 29, 1994, at 36. According to one estimate, \$200 million will be immediately required for emergency aid, government spending, and restarting business; an additional \$5 billion is needed to rebuild infrastructure and resume production. *Id.* Haiti was already in shambles when a military coup ousted President Aristide in September 1991. In the 1980s, the economy contracted 15%; by the end of 1994, it will have shrunk another 30%. *Id.*

¹⁷⁹ Andrew Pollack, *The World: Unifying? Not Now, Please*, N.Y. TIMES, July 24, 1994, § 4, at 3 (reporting that the collapse of Kim Jong Il's government would force a sudden reunification, which could destroy South Korea's prosperity). See also *S. Korea Wants Quiet Change*, CHRISTIAN SCI. MONITOR, Sept. 2, 1994, at 19.

¹⁸⁰ North Koreans have been taught to worship Kim Il Sung as the Great Leader, the Beloved Leader, and the Greatest Genius Mankind Has Ever Had. *Kim Jong Il's Inheritance*, *supra* note 154, at 19. They have also been taught that South Korea is a "Puppet for the Beast" (i.e. the United States), and that South Koreans are starving. To prepare for the

D. Possible Alternatives

1. Do Nothing

One option is to do nothing and wait for the present North Korean regime to collapse, which is the preferred course of China and a number of Japanese political leaders.¹⁸¹ This belief in an impending implosion of the present regime is thought to be one reason for South Korea's and Japan's earlier position of "patience" and "timidity" about imposing sanctions.¹⁸² Some also argue that North Korea may be deterred from actual use of its nuclear weapons, as the Soviet Union was during the Cold War.¹⁸³

However, North Korea's unchecked nuclear capability could put North Korea in a position to subject South Korea to extortion in establishing its terms for unification.¹⁸⁴ If the United States appears weak or irresolute, the Asians will conclude that they have two choices: accept North Korea's nuclear advantage and accommodate it, or acquire their own nuclear weapons.¹⁸⁵ Therefore, other countries in the region may seek their own nuclear weapons in self-defense.¹⁸⁶

differences in culture, value system, and political ideology, the South Korean Department of Education has already begun developing "educational materials to be used after reunification" as well as plans to train teachers. KOREAN S.E. NEWS, Aug. 23, 1994, at 45.

¹⁸¹ Some Japanese leaders fear that an aggressive approach to the North Korean problem in the form of sanctions might lead to a war with South Korea, which would have serious ramifications for Japan and the region as a whole. *Mainichi Survey*, MAINICHI DAILY NEWS, May 2, 1994, available in LEXIS, News Library, Curnws file. Earlier in 1994, a majority of Koreans also supported a policy of patience and inter-Korean dialogue as a means to resolve the nuclear problem, but the Korean public later took an increasingly tough position that the Clinton Administration should "stiffen its position in pressing Pyongyang." James Sterngold, *South Korean President Lashes Out at U.S.*, N.Y. TIMES, Oct. 8, 1994, § 1, at 3.

¹⁸² *Kim Jong Il's Inheritance*, *supra* note 154, at 19. Officials of the South's National Unification Board would prefer to see reconciliation with the North move through three stages. In the first stage, diplomatic contacts would build mutual trusts. The South would invest in special zones in the North, creating pockets of industry that will survive reunification. During the second stage, the border would stay closed to prevent a flood of southbound North Korean workers. Only when the South's investment in the North has narrowed the economic gap between North and South will the two regions move for the final stage of full unification. *Id.*

¹⁸³ Perry, *supra* note 1, at 277.

¹⁸⁴ Correll, *supra* note 9, at 2.

¹⁸⁵ *Id.*

¹⁸⁶ Perry, *supra* note 1, at 276-77.

Moreover, as mentioned earlier, this option carries with it the risk of allowing North Korea to export nuclear technology to other aggressive nations, which is the main concern of the United States.¹⁸⁷ As a result, counter-proliferation of nuclear weapons may occur not only in Asia but also all over the world through North Korea's arms trade, which will seriously undermine the future of the NPT.

In addition, the "do-nothing" policy would be contrary to American public opinion. The public believes that the situation on the Korean Peninsula poses a threat to American allies and that the United States should stop North Korea from obtaining nuclear weapons.¹⁸⁸ Though this does not necessarily mean that the United States must be ready to strike anytime its interests are threatened, the public wants the U.S. government to demonstrate strength, decision, and leadership.¹⁸⁹

2. Military Action

Another option, advocated by several senior officials from the administration of former-President George Bush, is to use military force to destroy North Korea's nuclear facilities.¹⁹⁰ However, this pre-emptive military action carries with it the possibility of provoking a counter-attack on South Korea, if not a full-blown second Korean War.¹⁹¹ North Korea is "the most militarized nation on the globe"¹⁹² and has an intimidating conven-

¹⁸⁷ *Id.*

¹⁸⁸ For example, nearly 70% of Connecticut residents believe that the United States should stop North Korea from obtaining nuclear weapons. Michael Remez, *State Residents Perceive Increased Korea Threat; Courant-Isi Connecticut Poll; Foreign Policy*, HARTFORD COURANT, June 25, 1994, available in LEXIS, News Library, Wires File. Cf. David Lauter, *The Times Poll; 51% Would Back Force over N. Korea A-Arms*, L.A. TIMES, Dec. 10, 1993, at A1 (78% of Americans consider the current North Korean situation a serious threat); *North Korean Nuclear Threat*, L.A. TIMES, Dec. 21, 1993, at B6 (51% of Americans feel so strongly about nuclear weapons that they would support the use of force against North Korea to eliminate them).

¹⁸⁹ See Correll, *supra* note 9. For criticism that Clinton's approach is too naive and accommodating, see Fisher, *supra* note 17; Sterngold, *supra* note 181.

¹⁹⁰ See Correll, *supra* note 9.

¹⁹¹ *Clinton's Team Breathes Easy at North Korea Accord: Agreement Emerges to Freeze Nuclear Plans and Hold Talks*, FIN. TIMES, June 24, 1994, at 8.

¹⁹² *War or Peace for Korea?*, *supra* note 78, at 37. North Korea has an active force of 1.3 million soldiers, 3,700 tanks and more than 500 units of self-propelled artillery, compared to 237,700 soldiers in Japan and S. Korean forces of 633,000. *Id.*

tional military force (fifth largest in the world).¹⁹³ North Korea is presently developing ballistic missiles of increasing range which are powerful enough to be launched against virtually any target in South Korea, Japan, China, Russia, and other countries in the region.¹⁹⁴ A military conflict could cost several million civilian lives and destroy Seoul, the South Korean capital, which lies only thirty-five miles from the demilitarized zone separating the two Koreas.¹⁹⁵

More importantly, there is a legitimacy problem. The U.N. Charter prohibits "force against the territorial integrity" of a state.¹⁹⁶ Without North Korea's "act of aggression" or "armed attack",¹⁹⁷ the invocation of the "self-defense" exception embodied in Article 51 of the U.N. charter will not be justified. Though "self-defense" in anticipation of an attack may be argued, there is no firm consensus on that doctrine, and justification of such a pre-emptive strike against North Korean nuclear sites would be difficult.

Moreover, the inevitably unilateral character of the action would destroy the confidence of Asian states in American leadership.¹⁹⁸ It would trigger an intense conventional conflict for which no public support or allied consensus has been developed.¹⁹⁹ The American public does not support the military option because it involves the loss of lives, including American troops.²⁰⁰ Though the U.S. government has not ruled out the option of

¹⁹³ Perry, *supra* note 1. North Korea invests about 25% of its gross domestic product in its military, compared to 3% by the United States, South Korea, and Eastern European countries, and 1% by Japan. *Id.* at 275. Total North Korean forces equal 1.1 million; S. Korean forces, 633,000; U.S. troops in South Korea, 36,500; Japanese forces, 237,700; U.S. troops in Japan, 1,900. *War or Peace for Korea?*, *supra* note 78, at 37.

¹⁹⁴ Perry, *supra* note 1 at 275.

¹⁹⁵ John Burton, *Seoul on Hook of Unattractive Options: There Are Risks in Both War and Sanctions*, FIN. TIMES, June 6, 1994, at 6.

¹⁹⁶ U.N. CHARTER art. 2, para. 4.

¹⁹⁷ G.A. Res. 3314, *supra* note 97.

¹⁹⁸ Hendrickson, *supra* note 160, at 26.

¹⁹⁹ *Id.*

²⁰⁰ In a poll taken in June 1994, only 35% of Connecticut residents favored the use of force, while 74% supported the use of trade or other economic sanctions to stop the North Koreans from developing nuclear weapons. Remez, *supra* note 188. Interestingly, in another poll, 56% of men and 35% of women favored sending U.S. troops to help South Korea if it was invaded by North Korea, signifying a split opinion. *Split Decision on Korea*, USA TODAY, May 18, 1994, at 1A. *But see* Lauter, *supra* note 188, at A1 (reporting that majority of conservatives and Republicans would support the use of force in Korea). The public also opposed the military action against Haiti. *No Good Reason to Invade Haiti*, N.Y. TIMES, July

military action, it concedes that it should only be considered when all other possibilities have been exhausted.²⁰¹

3. "Carrot and Stick" Diplomacy

The next option is one currently pursued by the U.S. government. It is a diplomatic strategy that provides incentives for North Korea to give up its nuclear ambition and open its doors to the rest of the world.²⁰² It also includes the threat of economic sanctions if the incentives are not enough to persuade North Koreans that a non-nuclear Korean Peninsula is in their best interest.²⁰³

This option, though more acceptable than others, is not without problems. The incentives offered by the United States for North Korea include a very expensive light-water nuclear reactor which will be used for electric power generation, replacing its outmoded graphite-core models.²⁰⁴ It could ultimately cost over \$10 billion, take a decade or more to complete, and require the upgrading of North Korea's entire power transmission system.²⁰⁵ The question of who would pay for and manage the modernization of North Korea's antiquated coal-fired power plants, which would be needed to sustain the economy until the new nuclear plant was built, would be a tough hurdle to overcome.²⁰⁶ The U.S. government is presently attempting to recruit other countries such as Japan and South Korea in case this deal is

13, 1994, § A, at 18.

²⁰¹ Perry, *supra* note 1, at 277.

²⁰² Payton, *supra* note 84, at 2A.

²⁰³ This type of strategy is commonly called "carrot and stick" diplomacy. Douglas Jehl, *U.S. and North Koreans Discuss Nuclear Dispute*, N.Y. TIMES, June 3, 1994, at A9; William J. Taylor & Michael Mazarr, *Defusing North Korea's Nuclear Notions*, N.Y. TIMES, April 13, 1992, at A19.

²⁰⁴ However, the new light-water reactors still give North Korea continued access to fuel rods that could be used to make plutonium, even though they are less suited to plutonium production than the graphite-moderated reactors that North Korea is now building. R. Jeffrey Smith, *North Korea Says It May Start Reactor; U.S. Still Optimistic Agreement Will Hold*, WASH. POST, Aug. 16, 1994, at A13. *But see* Nelan, *supra* note 14, at 32. It is suspected that the North Koreans lack the complex facilities to harvest plutonium from a light-water reactor. *Id.*

²⁰⁵ James Sterngold, *The Key Issue on North Korea*, N.Y. TIMES, July 24, 1994, § 1, at 14.

²⁰⁶ *Id.*

finalized.²⁰⁷

Additionally, this option of buying out North Korea has been criticized because North Korea would be rewarded undeservedly. Critics argue that it might tempt other states to withdraw from the non-proliferation treaty and seek rewards for rejoining it.²⁰⁸

The credibility of the North Korean promise is another problem. Diplomatic efforts by the U.S. and South Korean governments have long been manipulated by Kim Il-Sung's continuing brinkmanship and have achieved little.²⁰⁹ North Korea's duplicity and prevarication in recent months hardly provide a basis for good faith in agreements that may result from diplomatic talks. The North Koreans may not be serious at all about keeping promises; they may be just trying to buy time. Besides, the North Koreans are not promising to destroy the nuclear weapons they are suspected of possessing; they are merely promising to halt any further development.

Though it is hoped that the new leader, Kim Jong Il,²¹⁰ will have a more pragmatic attitude than Kim Il Sung, the uncertainty about North Korean leadership²¹¹ since the death of Kim Il Sung²¹² seems to add another reason to proceed with caution.²¹³ Any power struggle in Pyongyang could hamper North Korea's ability to carry out agreements to terminate its nuclear

²⁰⁷ See *supra* note 82.

²⁰⁸ Nelan, *supra* note 14, at 42; *America and North Korea; Progress, Perhaps*, *supra* note 14, at 32.

²⁰⁹ Sterngold, *supra* note 181, at 3.

²¹⁰ Scott Plummer, *Tame Kim the Younger or Face a Perilous Fall-Out*, DAILY TELEGRAPH, Aug. 2, 1994, available in LEXIS, News Library, Telegr File.

²¹¹ Kim Jong Il is widely regarded as "unstable." Alice H. Amsden, *U.S. Mustn't Tread Too Quickly in Asia*, NEWSDAY, Aug. 24, 1994, at A31.

²¹² Kim Il Sung died on July 8, 1994. He was the only leader in North Korea's 46-year history and his regime was known to be "the world's most isolated dictatorship." Shim Jae Hoon, *Lethal Legacy*, FAR E. ECON. REV., July 21, 1994, at 14-15. See M. Lee, *North Korea and the Western Notion of Human Rights*, in HUMAN RIGHTS IN EAST ASIA: A CULTURAL PERSPECTIVE 129, 131-37 (J. Hsiung ed. 1985) (reprinted in BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW at 883-87 (1991) (explaining the phenomenon of Kim Il Sung's "super-father" role in terms of the traditional Korean sense of loyalty).

²¹³ See, e.g., James Sterngold, *New Wrinkle in Korea Issue: Who Is in Charge in North?*, N.Y. TIMES, Aug. 25, 1994, at A1; Gwen Robinson, *Korean 'Dear Leader' Faces Power Struggle*, THE TIMES (London), Aug. 25, 1994 (delayed official confirmation of Kim Jong Il's leadership and news of anti-Kim Jong Il pamphlets as well as Kim's ill health indicate the possibility of obstacles to the smooth transition of power).

weapons program.²¹⁴

Despite cost and other problems, lack of other viable options may force the West to agree to North Korea's terms in order to curb the present threat of nuclear development. However, if North Korea's history of hostility and defiance is any indication, any deal with North Korea is still precarious, and the world may have to retreat to the starting point, the threat of universal economic sanctions.

IV. CONCLUSION

International economic sanctions are an increasingly important tool of foreign policy, and current social science tends to suggest that "sanctions constitute an effective coercive weapon."²¹⁵

Though economic sanctions are almost never solely responsible for the resolution of an international conflict, they are an important factor. When applied effectively, they often contribute to change in the target's behavior. Even when sanctions fail to change the target country's behavior, they demonstrate unified disapproval, resolution, and even determination by those applying the sanctions to undergo certain sacrifices to make a point—short of the use of force. Sanctions may also deter other countries which would otherwise similarly misbehave. They may increase pressure within the target country against the governing regime which is responsible for the condemned behavior. Sanctions may also prevent war by restricting further advancement of the target country's illegal ambitions by denying access to technology and assistance.

Economic sanctions do not come without cost, however. They hurt the sender countries' economies, sometimes as much as they damage the target country, which is a major reason for noncompliance. They also involve great human cost in the target nation: poor living conditions, increasing suicide and death rates, and even worsening human rights violations. The primary victims are innocent people rather than the parties responsible for the undesirable policy.

²¹⁴ Jim Mann, *Doubts Arise over N. Korea Nuclear Accord*, HOUSTON CHRON., Aug. 19, 1994, at 26. South Korean president Kim Young Sam seems to believe that there may be "abnormal development" in North Korea's power transition and warned his officials to prepare for "unexpected events." Kim Chang Kee, *Abnormal Movements in North Korea*, CHOSUN IL-BO, Aug. 25, 1994, at 4.

²¹⁵ KAEMPFER & LOWENBERG, *supra* note 21, at 161.

However, economic sanctions are often imposed because something needs to be done, short of military action. The North Korean nuclear program presents a real danger of proliferation of nuclear arms to the rest of the world. If the North Koreans are not stopped now, other aggressive nations may not be far behind in acquiring weapons of mass destruction. Iran could be next, and sooner or later, such states as Algeria, Iraq, Libya, and Syria will either learn to make nuclear weapons or purchase them on the shadowy arms market.²¹⁶ Such a wide diffusion of nuclear weapons in the hands of many states and probably some non-state actors would place before the international community the perpetual and ever more complex task of constructing multiple nuclear deterrence relationships.

Because of the terrible human cost of reliance upon military force,²¹⁷ many believe that any alternative that avoids warfare should be taken seriously.²¹⁸ The economic and political effects of economic sanctions depend on the conditions under which they are introduced,²¹⁹ and they may work neither quickly nor without cost. They always involve economic losses to the senders as well as the target, and the most severely affected are the innocent. Because of these limitations and various costs, economic sanctions should not be imposed without clear objectives and unified resolve.

The Korean crisis of 1994 is a rehearsal for crises to come. Containing this problem will require nothing less than an urgent commitment to the development of a broad international consensus.²²⁰ For lack of better alternatives in situations like the North Korean crisis, the use of economic measures is likely to be repeated. Now may be the time to re-evaluate economic sanctions as a means of collective response to threats to interna-

²¹⁶ Correll, *supra* note 9, at 2.

²¹⁷ For example, while the United States' use of laser-guided munitions and general avoidance of population centers during its air campaign against Iraq may have minimized immediate civilian casualties during the Persian Gulf War, reports indicate that tens of thousands of civilians have become secondary casualties, facing disease and death from the combined results of damage to infrastructure, the embargo, and the civil strife that followed the war. Edwin M. Smith, *The Need for Effective Multilateral Sanctions*, in *The United Nations Response to a Changing World: International Law Implications*, 86 AM. SOC'Y INT'L L. PROC 303 (1992).

²¹⁸ *Id.* at 308. But see the commentary by Oscar Schachter in the same panel discussion, suggesting that economic sanctions are not always preferable because military action may be decisive with a far less destructive impact on the people. *Id.*

²¹⁹ DAOUDI & DAJANI, *supra* note 18, at 162.

²²⁰ Roger C. Molander & Peter A. Wilson, *On Dealing with the Prospect of Nuclear Chaos*, WASH. Q., Summer 1994, at 16.

tional peace and security. Much could be gained from developing a means for systematically capitalizing on previously gained experience, e.g., from Yugoslavia, Haiti, and Iraq. It will be unfortunate if future responses are left to ad hoc procedures that do not benefit from the preservation of institutional memory. Such ad hoc measures may easily be discarded as ineffective, leading to force as the only viable option.²²¹

Jeong Hwa Pires

²²¹ Smith, *supra* note 217, at 303.