A COMPARATIVE STUDY OF NON-UNITED STATES RESPONSES TO THE ARAB BOYCOTT

Nancy Turck*

I. INTRODUCTION

Last year's congressional debates over antiboycott provisions of the Export Administration Act¹ (EAA) evoked the interest not only of the American business community but also of foreign governments who believed that successful passage of the United States legislation might lead to similar laws in their own countries. To this date, however, only one country other than the United States—France—has passed an antiboycott law;² however, the French Government subsequently nullified the law's effect on most French trade with the Middle East. Private bills (bills without government support) have been proposed in Sweden, Great Britain, and Canada but are unlikely to pass. Only the British proposal has proceeded as far as being referred to a committee. Practically speaking, in parliamentary systems private bills almost always die with the close of session. In every case, the government has opposed enactment of any boycott legislation. Even Canada, which has instituted a detailed program to limit compliance with boycott-related requirements, officially opposes any antiboycott action in the form of legislation.

Many governments have been reticent to support legislation partially because their economies are much more dependent on foreign trade than the United States. As a German diplomat interviewed for this Article stated, "[f]or us foreign trade is a matter of life or die. You [the United States] are an island where trade is complementary. Protectionism isn't possible with us." These countries


² These findings are based on the author's study of secondary source materials as well as interviews with the United States State Department, representatives of foreign embassies in Washington, D.C., and written communication with government officials and Chambers of Commerce in Europe and Canada.
have actively encouraged rather than restricted Middle East trade. Between 1974 and 1976, for example, Canadian exports tripled to the United Arab Emirates and sextupled to Saudi Arabia.³

Great Britain, France, and Canada each have interest groups which in varying degrees have pressed for legislation. In Great Britain it is the Anti-Boycott Coordinating Committee of the Anglo-Israeli Chamber of Commerce, in France the Movement for the Liberty of Commerce, and in Canada the Commission on Economic Coercion and Discrimination. These groups, however, do not lobby in the same sense as American lobbyists. Such pressure groups are neither as cohesive and powerful nor as much a permanent factor in the legislative processes abroad as they are in the United States. In particular, the pro-Israeli lobby does not appear to be as active in other countries as in the United States.

In contrast to the United States, several of the European "antiboycott" policies are actually directed against racial, religious, and ethnic discrimination. With the exception of the Canadian policy and the proposed bill in Great Britain, no country has attempted to deal with the commercial practices proscribed by the Arab boycott in the same comprehensive manner as the United States. The European Economic Community (EEC) was pressured to include an antiboycott clause in each of its trade agreements with the Eastern and Mediterranean Arab countries, but the final clause, identical in each agreement, is directed against traditional forms of discrimination: "the trading arrangements applied by the [Arab country signatory] to products originating in the Community shall not give rise to any discrimination between the Member States, their nationals or their companies or firms."⁴ A tertiary boycott request prohibiting, for example, a German company from doing business on an Iraqi project with a blacklisted Japanese concern would not be covered by this EEC clause, the French law or the proposed Swedish law—especially if it is unclear why the Japanese firm is blacklisted.

The Chambers of Commerce in some European countries, though not in Great Britain, do not notarize negative certificates of origin, that is, documents certifying the goods for export are neither made in Israel nor contain Israeli components. While it is true commercial entities must belong to these Chambers by law, the Chamber poli-

⁴ Trade and Financial Assistance Agreement between the European Economic Community and Egypt, Jan. 18, 1977, art. 7; Lebanon, May 3, 1977, art. 7; Morocco, Apr. 26, 1976, art. 39; Algeria, Apr. 26, 1976, art. 37; and Tunisia, Apr. 26, 1976, art. 38.
cies are usually enacted independent of government intervention. In the debates over the French boycott law, there was never even discussion of the role of the French Chambers of Commerce in notarizing commercial documents containing boycott clauses.

II. CANADA

Canada is the only country other than the United States which has a government-supported program designed to deter certain forms of compliance with the Arab boycott. The program is not mandatory and is not meant to penalize across the board those individuals or corporations which comply with boycott-related requests. It is a policy designed to insure that the Canadian government through its institutions does not support a boycott; the Government, therefore, denies export assistance to companies complying with certain discriminatory and trade limiting practices emanating from the Arab boycott. Canada has no law on the matter, however, and is unlikely to pass such legislation.5

Prior to the October 21, 1976 announcement of these policy directives, Prime Minister Trudeau stated on May 8, 1975 that the "boycott is alien to everything the government stands for and indeed to what Canadian ethics stands for."6 A year later, on August 6, 1976, the Toronto Globe and Mail published a secret Canadian cabinet memorandum which outlined policy options in dealing with the Arab boycott. According to the report, "the effect on Canadian companies of the Arab boycott against Israel appears to have been exaggerated by pro-Israel lobbyists . . . and the boycott also does not appear to discriminate against the Jewish race or religion."7 The memo acknowledged, however, that the boycott was an emotional issue and many Canadians found repugnant the inclusion in commercial contracts of "non-commercial and particularly political undertakings."8

The government memo proposed four policy options:

---

5 It should be noted, however, that Canadian subsidiaries of United States firms and United States-based branches of Canadian firms are within the jurisdiction of the EAA and the Ribicoff amendment to the 1976 Tax Reform Act. Tax Reform Act of 1976, Pub. L. No. 94-455, §§ 1061-1064, I.R.C. § 908, 952(a), 995(b)(1) and 999 [hereinafter cited as TRAJ.

6 THE COMMISSION ON ECONOMIC COERCION AND DISCRIMINATION, THE ARAB BOYCOTT IN CANADA: FINDINGS AND RECOMMENDATIONS 2 (Jan. 11, 1977) [hereinafter cited as COTLER COMMISSION].


8 Id.
GA. J. INT'L & COMP. L. [Vol. 8:711

(1) prohibition of Canadian firms from adhering to boycotts imposed by foreign countries against third countries,

(2) denial of Canadian Government support to any project requiring Canadians to comply with a foreign country's boycott of a third country and the requirement that Canadian firms report boycott-related requests to the Government,

(3) denial of Canadian Government support to projects requiring compliance with the boycott, condemnation of boycotts and the requirement that Canadian firms report boycott-related requests which discriminate against Canadian companies or citizens on the basis of race, color, religion, sex, or national origin, and

(4) forbidding government support of contracts containing provisions discriminating on the basis of race, religion, or ethnic group and the issuance of a government statement reaffirming Canada's (a) opposition to discrimination, (b) policy of trading in peaceful goods with all nations, and (c) view that private firms have the responsibility to choose their own trading partners and contract terms.9

The Government had reservations about an antiboycott policy ranging from fear of Arab retaliation to anticipation of long run unemployment and energy effects of losing Arab markets and oil sources as Canadian oil supplies diminisn.10 The Cabinet memo noted that the United States, which was currently debating an anti-boycott amendment to the Export Administration Act, was concerned because Arabs were already diverting banking business and contracts to Canadian companies in anticipation of new United States legislation.11

The Government's policy, as enunciated in the House of Commons on October 21, 1976 by Donald Jamieson, Secretary of State for External Affairs, seems to combine all but the first option in the Cabinet memo.12 The policy actually took effect January 21, 1977

---

9 Id., at 10-12.
10 Id.
11 In an interview with this author February 1, 1978, an official of the Department of Industry, Trade and Commerce noted that Arab deposits totaled approximately one-half billion dollars in each of Canada's top four or five banks. The official also noted that Canadian exports to boycotting countries totaled $387 million in 1977 with consulting services accounting for another $60-90 million in export value in 1977 [hereinafter cited as Trade Official Interview].
12 COMMONS DEBATES, Oct. 21, 1976, at 302:
The Government has clarified its position in relation to international boycotts and has strongly affirmed its opposition to discrimination and boycotts based on race, national or ethnic origin or religion. Accordingly, the Government will take measures to deny its support of facilities for various kinds of trade transactions in order
when the Department of Industry, Trade and Commerce issued a directive to regional offices and foreign embassies to implement the Government's policy. The regional offices and foreign posts were instructed to "withhold all Departmental support and services in connection with any specific transaction where it is found that, in connection with that transaction, a Canadian company, agency or individual has made undertakings that are in contravention of this policy." Each time a commercial officer receives a request for serv-

to combat any discriminatory effects which such boycotts may have on Canadian firms and individuals. These measures will not, of course, apply to any boycott accepted by Canada but will clearly apply to such discriminatory aspects as there may be to any other international boycott.

The type of transactions against which the Government will take action are those which would, in accordance with the provisions of any boycott, require a Canadian firm to: engage in discrimination based on the race, national or ethnic origin or religion of any Canadian or other individual; refuse to sell Canadian goods to any country; or refrain from purchases from any country.

While Canada seeks friendly relations with Arab states and with Israel, Canada also reserves the right to respond to commercial policies of other nations according to its own practices and values. Consequently, the Canadian Government will deny its support or facilities, including the support of trade missions abroad, in the case of any transaction involving boycott undertakings of the type described above.

Given that in many parts of the world, including the Middle East, denial of Canadian Government support for a particular transaction imposes very serious handicaps, such as those relating to contact with foreign officials, marketing information and Canadian Government financing, it is considered that denial of such support will be an effective deterrent to cooperation with discriminatory provisions of an international boycott.

Canadian firms may decide nonetheless to agree to certain boycott clauses and to forego Canadian Government support for the projects concerned. All Canadian firms, however, whether they accept boycott clauses or not, will be required to report all instances of their complying with boycott provisions. Information obtained from such reports will be made available to the public.

The Government recognizes that Arab countries consider their boycott of Israel to be a legitimate economic weapon in view of the continuing state of war between Arab countries and Israel. Canada, however, seeks to improve its relations and to develop its trade in peaceful goods with all nations. Any discrimination against Canadian firms or individuals is contrary to Canadian concepts of fairness and the Government is determined to ensure that any such discriminatory aspects are not in any way supported by Government programmes.


14 Id. As part of its Program for Export Development (Pemd), the Department of Industry's Office of Export Programs and Services pays one half of a corporate executive's round-trip airfare abroad if he is seeking new export markets, developing a capital project, or participating in a trade fair. PEMD also provides a $70 per diem for Canadian corporate employees carrying out PEMD-approved projects abroad and pays part of ancillary services such as legal, translation, and consulting fees. In addition to PEMD, the Government's General Adjustment Assistance Program insures bid and performance bonds and the Export
ices or information, he must inquire whether the corporation has received any boycott-related requests and obtain assurances that the transaction does not contravene the government's stated policy.15

In compliance with a directive that semiannual reports outline the progress of the Government's policy, the Department of Industry, Trade and Commerce and the Export Development Corporation issued reports in early February covering the period October 21, 1976 through July 31, 1977.16 Of the 80 specific and identifiable Middle East transactions for which Departmental assistance was sought, 23 involved boycott-related restrictions, the most common of which prohibited the use of blacklisted carriers or sought information about the Canadian company's relationship with Israel. Government financing was denied to one firm which, rather than alter the boycott clause to the Government's satisfaction, filled the contract order from an offshore subsidiary. The remaining firms amended or removed the offending clause or refused the business.17 In some cases, the Government suggested alternative acceptable language.

Although the blacklisted ship clause was initially considered a violation of government policy, the Government reversed itself late last year on grounds that, because no Canadian vessels ship to the Middle East, there is no way a Canadian company, in selecting a carrier, can discriminate against another Canadian company.18 Despite this modification in policy, Canadian firms which comply with the blacklisted ship clause and desire Government assistance must provide a "unilateral declaration" to the Canadian government which states

that in meeting the terms of this contract, the sellers are not required to discriminate against any person on the basis of race, religion or national or ethnic origin, and are not required to refuse to purchase from or sell goods and/or services to any other Cana-

Development Corporation (EDC), a Crown Agency provides export financing and insurance comparable to the United States Export-Import Bank—all services which can be denied for violation of the government policy. For further discussion of trade support see DEPARTMENT OF INDUSTRY, TRADE AND COMMERCE, PROGRAM FOR EXPORT MARKET DEVELOPMENT (1977).

15 Id.
17 Id. at 5.
18 Id. at 4.
idian company, agency or individual, sell Canadian goods and/or services to any country or purchase goods and/or services from any country, except that it would be the right of the purchaser to refuse to accept goods, components and/or services of specified non-Canadian origin that would be prohibited entry if imported directly. . . .19

The Canadian Government thus recognizes the right of an Arab state to conduct a primary boycott against Israeli products and services.

As a condition of receiving Government support, Canadian firms must attach a similarly worded addendum to any contract which requires the Canadian company to abide by the general or boycott laws of the host country. Several Arab countries have accepted this addendum in Canadian contracts.20 The company is not prohibited from signing the clause.21

In order to receive government approval, a Canadian firm must also make the unilateral declaration to the Canadian Government in cases where the boycott requires a statement of fact, such as that the firm has no plant or branch office in Israel.22 The Government reasoned that providing that statement could limit a company’s future ability to establish such a facility in Israel and thereby cause the very refusal to do business which the policy is designed to thwart. In the United States, persons covered by the EAA cannot make such statements of fact about their relationship with Israel.23

Both positive and negative certificates of origin are acceptable to the Canadian Government because they implement the primary rather than secondary or tertiary boycott. In contrast, United States persons are prohibited by the EAA from providing negative certificates of origin after June 21, 1978.24

While section 999 of the Internal Revenue Code and the EAA prohibit banks incorporated in the United States and branch banks abroad from processing letters of credit which contain boycott

19 Id.
20 Trade Official Interview, supra note 11.
21 In contrast, the EAA and Internal Revenue Code § 999 guidelines prevent a United States company from agreeing to abide by the boycott laws of the host country, Export Administration Regulation (EAR) § 369.2(a) Agreements to Refuse to do Business (v), 43 Fed. Reg. 3519 (1978); Treasury Department Boycott Guidelines, H-4, 43 Fed. Reg. 3454, 3463 (1978) [hereinafter cited as TRA Guidelines].
22 Trade Memo, supra note 13.
clauses which otherwise violate the law, in Canada the processing of letters of credit or notarizing of trade documents with offensive clauses does not violate the policy. The Government reasoned that the processing of such documents is not discrimination on the part of the bank or the Chamber of Commerce and in no way limits a Canadian firm's ability to deal with another firm. Government officials, however, point out that where the beneficiary of a letter of credit desires trade support, it will have already amended any offensive clauses prior to the bank's implementation of the letter of credit.

The Department of Industry, Trade and Commerce's semiannual report does distinguish these service functions from those transactions in which the bank itself is involved, for example, as the lender. If offensive boycott clauses are involved in these type transactions, the bank's activity might violate the Government's policy. On the other hand, banks do not normally seek the type of government assistance which would be denied in event of violation.

Although it would appear that corporate compliance with boycott requests has diminished as a result of the Government's program, some individuals and groups still wish the policy stiffened or explicit legislation introduced. Mr. Jamieson, for example, stated on October 21, 1976, that all Canadian companies would have to report receipt of boycott-related requests; in fact, the government requires reports only from those companies which seek government trade assistance. Presumably some companies receiving objectionable boycott-related requests may simply choose not to seek governmental services in order to avoid reporting compliance. To these criticisms, government officials maintain that because most Canadian firms have a limited degree of foreign experience, the percentage of firms utilizing government assistance is high and, therefore, the Government would learn of most boycott experiences. Furthermore, the aim of the policy is not to prohibit all compliance but to assure that the Government itself does not support, through financial and other aid, the Arab boycott.

---

26 Trade Memo, supra note 13.
27 SEMIANNUAL REPORT, supra note 16.
28 COMMONS DEBATES, supra note 12.
29 Trade Official Interview, supra note 11.
30 COMMONS DEBATES, supra note 12.
William Kempling, a Conservative member of Parliament from Ontario, introduced a private member bill, on October 31, 1977; the bill only stated his intention to introduce antiboycott legislation. As of March 1, 1978, Kempling had not written a detailed bill and appears to have lost interest in doing so.\textsuperscript{31}

On December 16, 1977, Ontario Premier W.G. Davis introduced a provincial bill, the Discriminatory Business Practices Act of 1977.\textsuperscript{32} Because the Ontario legislature adjourned that same day, the bill died. Premier Davis intends to reintroduce the bill in late spring to fulfill a commitment to the Jewish community, but it is too soon to predict if the bill will be amended.\textsuperscript{33} Davis had asked for public comments on the bill; the federal government, aside from its stated intention not to introduce legislation of its own,\textsuperscript{34} had reservations about a province’s ability to regulate interstate and foreign commerce—reservations similarly expressed when several states in the United States passed boycott laws.\textsuperscript{35}

The Discriminatory Business Practice Act as proposed last December would apply only to actions of natural and legal Ontario persons. It would prohibit those persons from refusing or agreeing to refuse to sell or buy goods or services or otherwise engage in business with another based on that other person’s race, creed, color, nationality, ancestry, place of origin, geographical location, or business relationship with another firm or a government (such as Israel) based on any of the above attributes of that firm or government’s employees, management, or nationals.\textsuperscript{36}

The bill would also prohibit an Ontario person from firing, refusing to hire or refusing to promote someone on the basis of his race,
creed, color, nationality, ancestry, place of origin, or geographical location. No Ontario person could solicit or provide any information about the memberships or charitable contributions, race, creed, color and the like of its employees, directors, management, or those of another company, as a condition of doing business with a second company or foreign government.  

The proposed Ontario legislation would also prohibit oral or written negative certificates of origin of goods or services—a prohibition which parallels United States prohibitions after June 21, 1978 but which does not comport with Canadian federal policy. Persons receiving boycott-related requests, whether oral or written, would be required to report them to a newly established Ontario government office. Firms which fail to comply with certain parts of the act or are convicted of certain offenses under the Act would be prohibited from bidding on any Crown agency contracts for five years. The Act also includes the right to punitive damages and fines for offenses.

In the area of federal legislation, a private citizen Commission on Economic Coercion and Discrimination issued a report on January 11, 1977 calling for antiboycott legislation and citing examples of what the Commission viewed as government and corporate compliance with the Arab boycott. The report claimed, for example, that in requiring as condition of payment proof of compliance by Canadian exporters with boycott clauses in letters of credit, several Canadian banks were acting as enforcers of the boycott; the Commission recommended that the Government prohibit banks from participat-

---

[37] Id. at § 5(5).
[38] Id. at § 5(4).
[39] Id. at § 5(8).
[40] Id. at § 10.
[41] Id. at §§ 9 and 16.
[42] The Commission was chaired by Professor Irwin Cotler of McGill University. Also, on the Commission were Professor Leo Barry, former Minister of Mines and Energy, Newfoundland, and currently a professor of political science at Memorial University; Professor Yves Caron, McGill University law faculty; Professor Harry Crowe, Department of History, York University; Yves Fortier, President, Quebec section, Canadian Bar Assc.; the Honorable Herbert Gray, MP, Windsor West and former Minister of Consumer and Corporate Affairs; the Honorable Emmett Hall, former Justice of the Canadian Supreme Court; the Honorable Judy Lamarsh, former Secretary of State and currently Chairperson, Commission on Violence in the Media; and David Lewis, C.C., Q.C., former federal leader of the New Democratic Party and currently at the Institute of Canadian Studies, Carleton University.
[44] Id. at 16.
ing in letters of credit containing boycott conditions.\textsuperscript{45} Responding to the report, Prime Minister Trudeau said the government has gone as far as it is prepared to go and will not interfere with the operations of banks.\textsuperscript{46}

Several of the Commission's recommendations were already being incorporated in the Department of Industry, Trade and Commerce's directive which was issued ten days after the Commission report. The Commission's recommendations included:

(1) that the Government policy also apply to export intermediaries and service organizations such as shippers, insurers, freight forwarders, and banks.\textsuperscript{47} (The Canadian policy does not cover these services but to the extent that the exporter is covered, the less likelihood, if the exporter comports with the policy, that the service organization will be faced with boycott-related requirements.)
(2) that government agencies and officials not provide instruction or advice on how to comply with boycott undertakings.\textsuperscript{48} (As previously noted, the Canadian Government does help firms negotiate out objectionable clauses or suggest acceptable ones.)
(3) that government officials not convey or circulate tender documents containing boycott undertakings.\textsuperscript{49} (Commercial officers, unlike those representing the United States, continue to disseminate these tenders but inform all recipients of the Government's policy. Furthermore, the Secretary of State for External Affairs instructed all embassy personnel to refuse to certify religious documents for visa applications or legalize signatures on forms which contravene government policy.)
(4) that the Canadian Chamber of Commerce recommend that its members and the Boards of Trade refuse to certify negative certificates of origin or similar boycott questionnaires.
(5) amending the Export Development Corporation Act to authorize suspension of export privileges (as in the EAA) for any company complying with the boycott.\textsuperscript{50}

The Commission is continuing to monitor the Government's policy. The Government, meanwhile, has not adopted any of the Commission suggestions which were not already incorporated in the Department directive of January 21, 1977.\textsuperscript{51} The federal policy ap-

\textsuperscript{45} Id. at 19.
\textsuperscript{46} Statement by Prime Minister Trudeau, supra note 34.
\textsuperscript{47} Cotler Commission, supra note 6, at 52.
\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Id. at 54.
\textsuperscript{51} Trade Memo, supra note 13.
pears to have deterred Canadian compliance with boycott measures; indeed, the Canadian Government, unlike the United States Government, assists companies in negotiating objectionable clauses out of contracts or suggests acceptable language which does not contravene government policy and additionally does not cause the company to lose a trade opportunity.

III. GREAT BRITAIN

Great Britain has no legislation concerning the Arab boycott and is not likely to have any in the near future, despite the fact that a private member's bill on the subject was introduced last year, given two readings in the House of Lords, and is currently in committee hearings. Shortly after several Kuwaiti investment firms refused to syndicate a loan with some British investment houses, the Anglo-Israeli Chamber of Commerce established an Anti-Boycott Coordinating Committee to follow the boycott and propose curbs against it. In May, 1977 supporters of antiboycott legislation sent a ten-point, 12 page program to Prime Minister Callahan to prohibit negative certificates of origin and application of the secondary and tertiary boycott.

That same month an all-parliamentary committee was formed to write antiboycott legislation. The resultant bill, the Foreign Boycott Bill of 1977, was introduced in the House of Lords on July 12, 1977 by Lord Byers, the Liberal Party Leader of the House of Lords. The bill died when Parliament adjourned but Lord Byers reintroduced it on November 22, 1977. The bill was given a second reading on January 30, 1978, and has been referred to a select committee. Unlike directives and policies of some other countries, Lord Byers' bill goes beyond human rights legislation against racial and religious discrimination. The detailed bill closely parallels the United States legislation with respect to prohibited commercial practices.

The Foreign Boycott Bill of 1977 defines a foreign boycott as "any policy adopted by or action taken by a foreign government or agency

33 The memorandum was signed by Frank S. Worms, Honorary President of B'nai B'rith; Eric Moonman, MP, and Chairman of the Zionist Federation of Great Britain and Ireland; and Lord Fisher of Camden, President of the Board of Deputies of British Jews.
34 The Committee members include Arthur Bottomley of the Labour Party, Conservative MP Hugh Frazer, Lord Byers, the Liberal leader of the House of Lords, and the Duke of Devonshire.
thereof to discriminate against any other nation or citizen of other
nation or a religious, ethnic or political group in the course of trade
or business."56 Like United States legislation in the area, Lord
Byers' bill is broad in scope. It too covers the processing of letters
of credit, refusals to deal with blacklisted companies, certificates of
origin, and the furnishing of boycott-related information.56 Any Bri-
tish company which receives a request to do anything prohibited by
the Act would be required to report that receipt within 28 days to
the Secretary of State.57 The Secretary of State would be required
to file quarterly reports based on these corporate submissions, but
any information which would prejudice the company or the British
Government by publication could be kept confidential.58

The British bill, like United States legislation, contains strict
penalties. Failure to report to the Secretary of State can incur a fine
of up to £5,000;59 conviction of an actual offense under the Act
would subject an individual or the corporate executive officer to a
fine of up to £5,000 and a second or subsequent offense would
incur a fine up to £10,000, up to two years in prison, or both.60 A
company convicted of an offense could be fined up to £100,000 and

56 An Act to prevent foreign boycotts; and for connected purposes, § 1(a) (1977).
57 Id. at § 2. The bill would prohibit persons:
(1) by themselves, or through persons controlled by them, from discriminating
against or refusing to do business with any other person in furtherance of a foreign
boycott request or condition. The bill defines such a request or condition as one
made or imposed directly or indirectly to implement or further a foreign boycott,
(2) from altering their normal course of business for the purpose of furthering a
foreign boycott or complying with a boycott request or condition,
(3) from adopting or continuing any course of business or practice to further a
foreign boycott or comply with a boycott request or condition and which course of
business would not be adopted or continued save for the boycott condition,
(4) from seeking or providing any information concerning another person's religion,
racial or national origin, business connections or memberships if that information
is sought or provided to further a foreign boycott or in consequence of a foreign
boycott request or condition,
(5) from providing or demanding a certificate of origin of goods which excludes a
specific country, or
(6) from paying, confirming or processing a letter of credit or shipping documents
which contain a condition or requirement whose fulfillment or performance is an
offense under the Act.
58 Id. at § 3(1).
59 Id. at § 3(2).
60 Id. at § 3(3).
61 Id. at § 7(1).
every agent or officer of the company who knowingly or willingly authorized or permitted an offense would be guilty of the offense and subject to imprisonment for up to two years.\textsuperscript{61} There is no definition of corporate person and no inference that the Byers' proposal would extend to British citizens abroad or to foreign subsidiaries in Great Britain in the same way the EAA applies to foreign companies in the United States or United States overseas subsidiaries.

Lord Byers' bill, as a private bill without government support, is unlikely to pass. The Government has consistently asserted it has no intention of introducing antiboycott legislation and is on the record opposing Lord Byers' bill.\textsuperscript{62} Addressing the House of Lords during the bill's second reading January 30, 1978, Baroness Stedman, a government spokesperson, said that while the British Government deplores any trade boycott which lacks international support or authority, the Government opposed any legislation which would no longer permit companies to make their own commercial choices about whether or not to comply with boycott requirements. Baroness Stedman claimed

\begin{quote}
[t]he justification for this legislation is said to be the protection of individuals, companies, and businesses from the direct and indirect consequences and pressures of the foreign boycott. There is, however, no way in which passage of legislation will prevent these pressures and consequences from causing inquiries. Requests for information will still be sent to companies. If they cannot respond to inquiries, the result may simply be that they are prevented from arguing their case or even from representing the true facts in a case involving mistaken or misleading information.\textsuperscript{63}
\end{quote}

British Government officials also have attempted to dispel the notion among some Parliament members and supporters of boycott legislation that because the United States effort at legislation has been successful, other countries should follow.\textsuperscript{64}

\begin{footnotesize}
\textsuperscript{61} Id. at § 7(2).
\textsuperscript{62} Response of Michael Meacher, Parliamentary Underscretary of Trade to Hugh Frazer, MP (Stafford and Stone) and Anthony Steen, MP (Liverpool, Wavertree), House of Commons, Parliamentary Question 1213, July 13, 1977 and statement by Baroness Stedman, House of Lords, Jan. 30, 1978.
\textsuperscript{64} Id. Baroness Stedman reported:

[t]he circumstances of our two countries differ in two very major respects. First, the U.K. economy is much more dependent on exports than the U.S. economy. In 1976 U.S. exports were only ten percent of their GNP compared with twice as much—23 percent—for the U.K. Secondly, as a market for exports, the Arab countries are significantly less important to the U.S. than they are to the U.K. . . .
\end{footnotesize}
The government's policy is in fact to assist companies in mitigating the effects of the boycott by providing the companies confidential advice and helping them find solutions to particular problems. To this end, the Foreign and Commonwealth Office issues a circular to companies doing business in the Middle East which states that the Government does not recognize the boycott and encourages sales to both the Arab and Israeli market. The circular explains what the boycott is and dispels myths about it, by stating, for example, that not all Organization of Petroleum Exporting Countries (OPEC) members implement the boycott and that the boycott does not interfere with direct sales to Israel.  

Supporters of boycott legislation have been especially critical of one government policy—the practice of authenticating negative or discriminatory certificates of origin. According to Malcolm Rifkind, Member of Parliament (MP) for Edinburgh, Pentlands, the Foreign and Commonwealth Office authenticates such documents at the same time that the British Chamber of Commerce refuses to do so, even though the Chamber authenticates "normal" trading documents. Rifkind cited a random sample of 2,000 export documents which passed through the Foreign and Commonwealth Office in 1976; 286 or five percent involved Iraq and all had negative or discriminatory requirements in his view. Rifkind then assumed from the random sample that a total of 5,000 to 6,000 export documents would contain such objectionable clauses.

In response to Rifkind in the House of Commons, the Foreign and Commonwealth Office asserted that its authentication service consisted solely of determining that the proper signatures are on the certificates.

There is no escaping the conclusion that tens of thousands, probably hundreds of thousands of jobs in this country, depend on the maintenance and growth of our exports to the Arab world.

Baroness Stedman also stated that Britain exported a provisional total of £2.67 billion in goods and services to the Arab world in 1977, an increase of 32% over 1976 and 452% over 1973. British exports to Israel totaled £274 million in 1977, an increase of 10% over 1976 and 46% over 1973. The 1977 share of British exports going to the Arab market was eight percent contrasted with four percent in 1973.

*See also* Statement of F. Judd, *Parl. Deb.*, H.C. (5th ser.) 1083 (July 4, 1977). Concerning British duplication of United States antiboycott legislation, Minister Judd stated:

To be realistic about it, they [the United States] do not necessarily provide a model for us. It is important to bear in mind that the U.S. economy is far less dependent on our own or that of any Western European country . . . . [T]o refuse certification [to documents] in certain cases would simply make life more difficult for [British firms] in dealing with important markets.

Department of Trade, *Arab Boycott of Israel: Note for Firms* (London, undated).

documents; the Office does not look into the background of the document. Citing a letter from the Foreign Office which stated that the Government will look beyond a signature if it suspects fraud or illegality, Rifkind then said that if the Government is prepared to take this action, it should also look to see if the export document "pursues an objectionable policy."\textsuperscript{7} Frank Judd, Minister of State for the Foreign and Commonwealth Office, responded to Rifkind's remarks by asserting that the Government does not keep records of the contents of trade documents it certifies, introducing evidence that the British Chamber of Commerce does in fact authenticate trading documents with Arab boycott-related clauses, and stating that even the Netherlands Foreign Ministry still authenticates signatures on Dutch Chamber of Commerce boycott documents.\textsuperscript{8}

Without government support, neither Lord Byers' nor any other similar bill has a substantial likelihood of passage. According to one commentator, the bill's chances could, however, be bolstered by the fact that passage of United States legislation makes passage easier in Britain, that the Byers' proposal was written by a committee representing all political parties, and that visiting American congressmen have pressed for European action against the boycott.\textsuperscript{9}

The Government on the other hand remains firmly committed to not introducing its own antiboycott legislation, to expanding British trade, to permitting British companies to make their own decisions concerning boycott compliance and to helping British companies where necessary to surmount boycott problems . . . including continuation of the practice of the Foreign and Commonwealth Office of authenticating trade documents.

IV. FRANCE

France is the only country other than the United States which has passed an antiboycott law. Within a month after passage, however, a ministerial decree nullified the law's application to government guaranteed contracts in the Middle East.

Pierre-Charles Krieg, a Gaullist deputy from Paris, first proposed an antiboycott bill in the National Assembly's constitutional law

\textsuperscript{7} Id. at 1078.

\textsuperscript{8} Statement of Frank Judd, Minister of State for the Foreign Commonwealth Office, \textit{Parl. Deb.}, H.C. (5th ser.) 1084-85 (July 4, 1977). The Hon. Mr. Judd may not have known that even if the Netherlands Foreign Ministry notarizes Chamber of Commerce Documents, the Chamber itself reportedly does not notarize negative certificates of origin, \textit{infra} note 114.

\textsuperscript{9} Teslik, \textit{supra} note 52, at 252.
committee on November 27, 1976. Krieg introduced his bill as an amendment to an omnibus bill entitled "giving various provisions of an economic and financial nature." The bill proposed that the penalties for discrimination found in articles 187-1 and 416 of the French penal code be extended to discrimination in economic relations. Without new legislation, Krieg argued, the penal code was not sufficient to repress racial discrimination in international economic relations as a result of an international boycott. Specifically, Krieg's amendment would punish, through fines and imprisonment, any action by government officials or citizens which contributed to making it more difficult for any organization or individual to carry out normal economic activities because of the race, religion, nationality, or ethnic affiliation of the individual or of the organization's members or directors.

Several deputies objected to prohibiting discrimination based on nationality, a concept Krieg expressed in his bill as boycotting based on "belonging to a nation." Such a provision, according to Socialist deputy Jean-Pierre Cot, might prevent France from participating in internationally sanctioned boycotts such as the United Nations boycott against Rhodesia and South Africa. After minimal debate, the Assembly on November 30, 1976, by voice vote, passed the Krieg amendment, with the reference "belonging to a nation" deleted. The amendment became article 23A of the proposed omnibus bill.

The French Senate then considered the legislation. Its constitutional law committee in April 1977 recommended passage of article 23A with two modifications: (1) that discrimination based on belonging to or having to do with a nation be reinstated and (2) that the criminal sanctions not apply to any discriminatory measures based on government directives issued in application of France's economic and commercial policy.

The Senate finance committee, however, with government support, moved to suppress the Krieg amendment. Speaking to the

---

70 Bill No. 28 (1976). See C. PEN. arts. 187-1 and 416 (1972). These articles were amended to cover sex discrimination on July 11, 1975.


72 Id. at 8807.


74 Id. at 8808.

Senate April 13, 1977, Robert Boulin, Acting Minister of Economy and Finance, warned that, should the amendment pass, government guarantees under *Compagnie Francaise d'Assurance pour le Commerce Exterieur* (COFACE) of Middle East contracts could result in penal responsibilities—the implication being that the agency-guaranteed commercial contracts contained boycott-related clauses. With little debate, the Senate killed the Krieg amendment altogether.

The omnibus bill was returned to the National Assembly for a second reading. This time, the Assembly's finance committee recommended that the Assembly sustain the Senate's veto of the Krieg amendment. According to the committee chairman, Augustin Chauvet, adoption of article 23A might expose French companies to an even stricter boycott by Arab States which, because no other Common Market countries had similar legislation, would put French firms at a competitive disadvantage.

Former Minister of Justice Jean Foyer, acting on behalf of the Assembly's constitutional law committee, and Jean-Pierre Cot each introduced amendments to reinstate article 23A. Foyer's amendment paralleled the one initially passed by the Assembly the previous November, that is, without reference to the words “belonging to a nation.” Cot's amendment paralleled the original Krieg proposal by reinstating the words “belonging to a nation” as a prohibited form of boycotting. Cot had supported omission of any reference to nationality when the bill was debated in November; in this second reading, he included the reference but balanced it by the addition of the Senate law committee's language to the effect that 23A would not apply to government-directed actions issued within the framework of economic policy or international commitments. This compromise, asserted Cot, permitted the Government to use discretion in applying the penal provisions of article 23A.

Assembly supporters of an amendment against the Arab boycott attacked government arguments for suppressing the amendment. Foyer asserted that

---


76 *Assemblée Nationale, 1ère Séance du 3 mai 1977,* at 2371.

77 *Id.* at 2370-71.
there is a certain hypocrisy in having subscribed to the international convention against racial discrimination and in telling us today it is impossible to vote for these provisions aimed at ending certain absolutely inadmissible practices . . . . The suppression of this amendment is a disgraceful capitulation; it is not in the national interest to lie down and submit to blackmail.\footnote{80}

Krieg, author of the original amendment, observed that France’s trade with Arab countries had increased less than that of three other states which were, in his opinion, stricter on the Arab boycott than France. Therefore, Krieg deduced, the Arabs give in when dealing with people firmly determined to respect principles of racial, political, and religious non-discrimination.\footnote{81}

On May 4, 1977, the National Assembly voted 476 to 1 to reinstate an antiboycott amendment in the omnibus bill. What emerged however was a greatly vitiated version of either the Foyer or Cot proposals. The government objected to the latter because it would have prohibited discrimination based on a person’s nationality; in response, Cot withdrew the amendment.\footnote{82} The amendment as passed excluded, therefore, any reference to belonging to a nation as a prohibited reason for boycotting but it added a third paragraph, as had Cot, that the penalties would not apply to government-directed actions under certain circumstances. In effect, the Assembly not only deleted the language to which the Government objected but added an “escape clause” which the Government later used to limit the bill’s effect.

When the legislation was returned to the Senate for a second reading, the Senate finance committee, probably recognizing the law would pass in some form, recommended on May 12 the adoption of the weakened amendment passed by the Assembly. The committee decided that the new paragraph essentially left the Government free to apply internationally sponsored sanctions such as those against Rhodesia.\footnote{83}

On May 17, Jacques Thyraud, representing the Senate’s constitutional law committee, proposed another amendment paralleling

\footnote{80} Id. at 2370.
\footnote{81} Id. at 2372. It is debatable whether the Netherlands and West Germany, two of Krieg’s examples, have stricter policies than France since neither has national legislation. The third example, the United States, had a law and was considering stricter legislation at the time of Krieg’s remarks.
that introduced by Cot in the Assembly two weeks earlier; Thyraud wanted to include the concept of belonging to a nation as a reason for prohibited discrimination. Without including this concept, Thyraud argued, the French would not be faithful to the republic's own 1972 law against discrimination.\footnote{Sénat, Séance du 17 mai 1977, at 970.}

The Government opposed Thyraud's amendment on the same grounds it had opposed Cot's in the National Assembly. According to Secretary of State Bernard Reymond, by adopting such language, France would be forced to oppose any boycott based on nationality or citizenship—even internationally sanctioned ones such as against Rhodesia.\footnote{Id.}

After a lengthy debate, the Senate adopted a government-suggested compromise: in lieu of the words "belonging to a nation," the Senate added "belonging to a [particular] national origin" as a prohibited basis for boycotting. A bipartisan committee of the National Assembly agreed to the changes;\footnote{ASSEMBLÉE NATIONALE, Seconde Session Ordinaire de 1976-77. Rapport No. 2925 fait au Nom de la Commission Mixte Paritaire, 26 mai 1977, at 9-10.} the National Assembly approved the compromise version June 2 and it became law five days later.

Article 23A, which became article 32 when enacted, reads as follows [author's translation]:

I There is inserted after article 187-1 of the penal code a new article 187-2 as follows:

Art. 187-2 The penalties stated in article 187-1 are equally applied to all civil servants or any government appointee who, by their action or inaction, would have contributed to making more difficult the normal carrying out of economic activities:

1 By all natural persons because of their national origin, or because of their belonging or not belonging, true or assumed, to an ethnic group, race or particular religion.

2 By any organization because of the national origin, racial, religious or ethnic affiliation of its members or directors.

II There is inserted after article 416 of the penal code a new article 416-1 as follows:

Art. 416-1 The penalties stated in article 416 of the penal code apply equally to whoever, by his action or inaction...
and without legitimate reason, would have contributed to making more difficult the normal carrying out of economic activities:

1. By all natural persons because of their national origin, or because of their belonging or not belonging, true or assumed, to an ethnic group, race or particular religion.

2. By any organization because of the national origin, racial, religious or ethnic affiliation of its members or certain among them.

III. The provisions of articles 187-2 and 416-1 of the penal code do not apply when the acts described in these articles conform with government directives issued within the framework of its [the Government's] economic and commercial policy or in application of its international commitments.87

On the final day of deliberation in the National Assembly, delegate Alain Savary, approving the compromise on behalf of the Socialist Party and Radical Left, expressed one reservation. He observed that paragraph III led one to conclude that if there were objectionable clauses in documents such as COFACE guaranteed contracts, they could only result from a directive effectively given or condoned by the French Government.88

The new law resulted in blocking any COFACE guarantees or services to exporters for seven weeks. Claiming it had no guidance from the Government on application of the law, COFACE simply refused to handle any Middle East business.89

On July 24, the French Government utilized the power in paragraph III to nullify the application of article 32 to COFACE and the Arab countries. Prime Minister Raymond Barre decreed that French commercial initiatives in oil-producing and developing countries in the Middle East, Southeast Asia, Latin America, and certain parts of Africa were within the framework of the Government's economic and commercial policies; therefore, the penalties in paragraphs I and II of article 32 would not apply to COFACE guarantees of contracts in these countries.90

88 Assemblée Nationale, 1ère Séance du 2 juin 1977, at 1130.
89 Middle East Economic Digest, June 24, 1977, at 10 and July 1, 1977, at 6.

Because of the need to reestablish a balance in foreign trade and to alleviate the employment situation in France by searching for new markets, the development of
The Israeli government issued a formal protest over the decree, claiming it was an "unfriendly act, contrary to the principles usually acknowledged in democratic states." Furthermore, Israel claimed that the decree contradicted the General Agreement on Tariffs and Trade, European Community policy, and understandings reached between Israel and France during a visit to Israel earlier in 1977 by Foreign Minister Louis de Guiringaud. The French Government refused to comment on the Israeli protest.91

In October, the Movement for the Liberty of Commerce, the same organization which initially backed antiboycott legislation, asked the Conseil d'État, the court with jurisdiction over government officials, to overturn the decree on grounds that it was not signed by the President or countersigned by any minister.92 French Government officials told the author that the decree was endorsed by the Ministry of Foreign Commerce and sanctioned by the provisions of paragraph III. Because it takes 18 to 24 months for a case to be heard in the Conseil d'État, nothing has yet resulted from the challenge.93

The French law from its inception was a law against religious, racial, and ethnic discrimination. The debates in the National Assembly and Senate, unlike the United States congressional debates, were relatively brief and offered no examples either of religious discrimination or of Arab boycott practices. Had no prime ministerial decree been issued in July 1977, COFACE might nonetheless have guaranteed a contract requiring shipment on a carrier not stopping in Israel enroute to an Arab port or a contract requiring the vendor

French exports is an objective that has higher priority than ever.
This line is in agreement with the guidelines of the law of July 21, 1976 approving Plan VII of Economic and Social Development, which provides that it is appropriate "to promote penetration by exporting countries and countries in the process of industrialization in the Mid-East, Southeast Asia, Latin America and certain countries of Africa."
The rapid development of exports into these markets is a fundamental goal of the economic and commercial policy of the Government.
It is therefore specified, in application of Paragraph III of Article 32 of Law No. 77-574 of June 7, 1977, that commercial operations performed for these markets enter within the framework of the economic and commercial policy of the Government and are therefore in agreement with Government directives.
In particular, it therefore follows that Paragraphs I and II of Article 32 referred to above are not applicable to decisions granting COFACE guarantees with regard to contracts [agreements] corresponding to the aforesaid commercial operations.94
91 Middle East Economic Digest, Aug. 5, 1977, at 15.
93 Information obtained by the author from a foreign embassy in Paris.
to certify it is not blacklisted. Neither certificate is a result of a French citizen or official discriminating against another company on the basis of race, religion, ethnicity, or national origin. Article 32 prohibits discrimination on the part of French persons but would not appear to prohibit French companies from unilaterally complying with certain boycott-related requests which are imposed on them, not by other French persons, but by Arab states or individuals implementing the boycott. Neither common commercial documents nor the concept of the primary, secondary, or tertiary boycott was discussed in the legislative debates.

The only debate centered on inclusion of one's belonging to a "nation" as a reason for boycotting. Not as explicit was a concern among opponents of the legislation that enactment would endanger French exports, almost ten percent of which go to the Middle East. Until the closing days of the debate, the finance committees of both the National Assembly and Senate opposed article 32 while the constitutional law committees in each chamber supported it in varying forms. Only when passage appeared inevitable did the Senate finance committee approve a compromise that gave the Government the greatest flexibility. Practically, because of the ambiguity of the law and because of the Prime Minister's decree, the law appears to have had little if any effect on French-Mideast trade.

V. SWEDEN

No antiboycott law has been passed in Sweden although Gabriel Romanus, a Liberal party representative from the county of Stockholm, introduced in the Riksdag (Parliament) a private bill on January 21, 1976. The bill does not detail specific prohibitions or directives; in fact, it actually is a request for the Swedish Government in turn to introduce legislation "to counteract economic discrimination of Jews and Israeli companies and to seek international agree-
ments to protect the [Swedish] trade with Israel." The recommendation has never been acted upon and, without government support, a private bill is unlikely to succeed.

In introducing his recommendation to the Riksdag, Romanus stated that while it was possible that boycott compliance might violate antitrust laws or existing international agreements, more stringent legislation would make it more difficult for Arabs to pressure those Swedish companies doing business with Israel. Romanus noted, "[t]he important to protect all Swedish companies which are doing business or are considering to do business with Israel, against economic blackmail which is designed to make them give up such business." 97

According to the Swedish Embassy in Washington, only a few Swedish firms are blacklisted, and those that are, are not major companies. 98 Swedish construction companies and consultants are quite active in the Middle East, some having worked in the area since the 1930's. L.M. Ericsson, together with Philips (Netherlands) and Bell Canada recently won a $3.1 billion contract to install the world's first fully computerized telephone system in Saudi Arabia. Skanska Cementgjuteriet, Europe's biggest construction company, has a $310 million contract to expand the harbor of Jeddah in Saudi Arabia; half of the contract value will be in direct exports of Swedish goods and services. Svenska Flakt, a pollution control firm, is planning and supplying equipment for grain silos in Iraq while Saab-Scania operates and provides parts for a truck assembly plant near Baghdad. 99

Swedish exports to the Arab Middle East are a small but growing percentage of total trade, constituting two percent of total exports in 1974, almost five percent in 1975 and four percent in the first nine months of last year. 100 In all three years, Swedish exports have been

---

96 Based on an unofficial translation of the bill, Protection of Swedish Trade with Israel, provided by the Swedish Embassy in Washington, D.C. (Jan. 21, 1976).
97 Id.
98 W. Nelson & T. Prettie, The Economic War Against the Jews 141 (1977). These authors claim that 79 Swedish firms are blacklisted including Pripps, because it distributes Coca Cola in Sweden and Saab because it sells trucks in Israel. But theoretically firms are not blacklisted simply for sales of goods to Israel; further Saab operates and supplies parts for a factory in Iraq, one of the strictest adherents of the boycott.
the greatest in kroner volume to Saudi Arabia, Iraq (because of the Saab factory), and Algeria; in the same three years Sweden has had a deficit balance of payments with Saudi Arabia, the United Arab Emirates, and Qatar, the three largest Arab suppliers of crude oil to Sweden.\textsuperscript{101}

Sweden's oil costs particularly have forced the country to encourage trade to the Middle East; exports to Kuwait sextupled between 1975-1976 and doubled that same year to Saudi Arabia and Syria.\textsuperscript{102}

The Swedish Export Council, half financed through the Government, has arranged several trade missions to the area and has offices in four Middle East countries.\textsuperscript{103} A royal commission recently recommended a special fund to provide long term export credits and several private Swedish banks are opening Middle East branches.\textsuperscript{104}

There appears to be little pressure from business or other groups to enact any antiboycott legislation and, if anything, the trend seems to be to provide every incentive to expand trade with the area.

VI. NORWAY

Norway has no antiboycott legislation but an incident late last year indicates that the Oslo Government may halt assistance to projects with certain objectionable boycott requirements. In the past, the Norwegian Government's position has been that commercial contracts are a private business matter over which the Government has no control. In August 1977, however, two Norwegian shipbuilders agreed to build six luxury hotel ships for the Arab World Egyptair Hotels Company at a cost of between $33-37 million. The cost was to be covered by a $129 million shipbuilding credit extended to Egypt by Norway. The contracts stipulated that the two shipyards, Smedvik Mek Verksted and Kleven Mek Versted, were not to engage in any economic relationships with Israel during the period of the contract with Egypt.\textsuperscript{105}

Following newspaper reports about the contracts and a demarche by the Israeli ambassador to Norway about government guaranteed contracts, the Norwegian Government in October reviewed the con-

\textsuperscript{101} Saudi Arabia supplies 21.1% of Swedish total crude oil imports, the United Arab Emirates 14.2%, and Qatar 10.8%. Middle East Economic Digest, Special Report, Scandinavia, Oct. 14, 1977, app. xv.

\textsuperscript{102} Id.

\textsuperscript{103} Id.

\textsuperscript{104} Swedish Trade Statistics, supra note 100.

\textsuperscript{105} Middle East Economic Digest, Feb. 17, 1978, at 12.

\textsuperscript{106} Middle East Economic Digest, Aug. 19, 1977, at 21 and Nov. 11, 1977, at 20.
tracts. Minister of Trade Hallvard Bakke ordered the objectionable clauses be renegotiated on grounds that they contravened the General Agreement on Tariffs and Trade to which Norway is a signatory and discriminated against a country with which Norway has friendly relations. The restrictive clauses were renegotiated by the end of the year and the contracts went forward. Norway, despite this incident, maintains there is no need for legislation since other boycott requirements, such as the primary boycott request that products not contain Israeli components, are acceptable to the Oslo Government.

VII. OTHER COUNTRIES

The Netherlands has no antiboycott legislation. The country appears to have experienced few major boycott-related problems; however, instances of religious discrimination have been countered by several government directives. In 1955, Arab importers queried some Dutch firms about the number of Jewish employees. As a result, the Netherlands Association of Employers (Verbond van Nederlands Werkgevers) advised its members to ignore such questionnaires and in addition to decide for themselves whether or not to respond to inquiries about their relationships with Israel.

During a parliamentary question period in 1975, the Minister of Justice was asked the Government's position on the requirements for evidence of religious affiliation to obtain an Arab visa. As a follow-up, the Ministries of Justice and Interior advised their officials that provision of such documents violated the International Convention Against Racial Discrimination, promulgated by the United Nations and ratified by the Dutch Parliament on December 10, 1971.

Each Dutch town contains civil registries. Although the registration cards in these files do not state a citizen's religion, separate personal cards (persoonskaarten) in the registry do. In a letter to all municipal authorities dated July 4, 1975, the Ministry of Interior advised that issuance of persoonskaarten would be at the discretion

104 Bakke did not specify the GATT provisions he had in mind but the European Community has in the past studied the utilization of Articles 85 and 86 of the Treaty of Rome with respect to the Arab boycott. See Le Monde, Feb. 7, 1978, at 26, col. 3.
of the individual municipality. If, however, local authorities had reason to believe the citizen was requesting the information so as to apply for an Arab visa, the Ministry viewed compliance with the request as a violation of the International Convention.\textsuperscript{110}

Earlier that year, on March 7, 1975, the semi-governmental Netherlands Brotherhood of Notaries notified its members to cease notarizing any certificates of religious affiliation for any persons applying for a visa to an Arab country.\textsuperscript{111} In other actions related to visa applications, the Roman Catholic Church of the Netherlands and the Netherlands Reformed Church each no longer issue baptismal certificates for visa purposes.\textsuperscript{112} Dutch policies, therefore, have been directed against instances of religious discrimination rather than boycott-related commercial practices.\textsuperscript{113}

However, Dutch Chambers of Commerce for at least a decade have refused to issue negative certificates of origin.\textsuperscript{114} The Chambers routinely issue certificates of origin which contain only the following information: the names and addresses of the shipper and consignee, the means of transport, name of the ship, identifying marks on the package, country of origin, description of the article, its net and gross weight, and the name and signature of the Chamber of Commerce branch issuing the certificate.\textsuperscript{115}

In addition to the Netherlands, Chambers of Commerce in Italy, Germany, and Denmark reportedly also refuse to authenticate negative certificates of origin, that is, certificates that the goods being exported are not of Israeli origin and do not contain Israeli materials.\textsuperscript{116} The Copenhagen Chamber of Commerce additionally advised its members that it would not confirm declarations that the carrier

\textsuperscript{110} Ministry of the Interior Letter No. B75/1549 of July 4, 1975, to Burgemeester en Wethouders der gemeenten.


\textsuperscript{112} Information supplied by the Ministry of Justice via the Royal Netherlands Embassy, Washington, D.C. (Dec., 1977).

\textsuperscript{113} For a description of the distinction, see Turck, \textit{The Arab Boycott of Israel}, 55 FOREIGN AFF. 472, 479 (1977).

\textsuperscript{114} B. Buenk, F. Eenhorst & C. Marks, \textit{De Kamers van Koophandel in de Praktijk} (Chambers of Commerce in Practice), \textit{Serie Recht en Praktijk} 9, at 144-53 (1969). This is as far back as the author could find stated evidence of the policy but the policy does apply to all countries which require negative certificates, not just Arab States.

The Chambers, to which all businesses by law must belong, will legalize the signature of an exporter. One exporter told the author that one can simply obtain the authentication from the Chamber of Commerce and then, on one's own business stationary, write a separate negative certificate of origin.

\textsuperscript{115} Id.

\textsuperscript{116} Bahti, \textit{supra} note 108, at 61.
would not stop at Israeli ports enroute to the Arab destination or declarations that the exporter had no economic investments in "certain countries." In all three countries, the actions by the Chambers of Commerce were taken in 1965; although no specific reason could be determined for the timing, it should be noted that beginning in January 1965, the Israeli Government began to require import licenses for about a dozen European and American companies which the Israeli Government found were trading in Israel but under other than their own names, presumably for fear of being blacklisted. While not calling this practice a counter-boycott, in fact, the Israeli Government's action, which was well-publicized, had many characteristics of a boycott. The Israelis presumably were disturbed by the indirect method with which these companies traded with Israel more than the fact that the companies were also selling to Arab countries. The actions by the various European Chambers of Commerce may have followed the Israeli Government directives.

The Netherlands, Denmark, and Germany will assist their firms in solving boycott-related problems. One of the more publicized instances involved the German firm, Volkswagen (VW), which had licensed production of the Wankel engine in Israel. Between 1973 and 1976 VW received warnings from the Central Boycott Office in Damascus to terminate its licensing arrangement in Israel. VW has never been blacklisted, however, largely because the German Government intervened on the company's behalf.

Although the German Government will assist firms, it does not intend to introduce any antiboycott legislation. Speaking during parliamentary question periods in the Bundestag (Parliament) on February 28, March 14, and September 4, 1975, Parliamentary Secretary of State Gruener said that West German companies had to decide on their own how to react to boycott pressures and requirements. According to embassy officials, the Government still maintains that position.

VIII. SUMMARY

Despite efforts abroad to legislate against compliance with the

\[\text{\textsuperscript{117}} \text{Id.}\]
\[\text{\textsuperscript{118}} \text{Id. at 62-63.}\]
\[\text{\textsuperscript{119}} \text{W. Nelson & T. Prettie, supra note 98, at 138; and discussions with embassy officials.}\]
\[\text{\textsuperscript{120}} \text{Id.}\]
\[\text{\textsuperscript{121}} \text{Id.}\]
Arab boycott, the United States remains the only country with actively enforced antiboycott laws. It is unlikely that other countries in the foreseeable future will initiate or enact legislation. Canada, Europe and Japan are far more dependent on Middle East trade and oil than the United States. In addition, the European countries are acutely aware of Common Market competition for Middle East trade. It is unlikely one of the nine would adopt and enforce antiboycott laws without some assurance the remaining members would do likewise; otherwise, as some French parliamentary members feared, countries with antiboycott restrictions could lose Middle East business to their EEC competitors.

None of these governments, any more than the United States government in 1976-1977, will introduce antiboycott legislation. Without government support, the simple fact is that private bills have little or no chance of passage in a parliamentary system. Also, unlike the United States, there is not in the parliamentary systems the same tradition of organized, active lobbying by citizens groups on behalf of certain laws. Interest groups, even when created for a specific measure, would not appear to have the significant role in continental decision-making that they do in the United States.

All these non-United States governments officially oppose unsanctioned foreign boycotts but only one—Canada—has implemented the policy through a series of guidelines to discourage compliance with certain boycott-related requirements in commercial transactions. The policy is designed not to prohibit Canadian companies from complying with the boycott across the board but rather to assure that the Government itself, directly or indirectly, is not involved in supporting the Arab boycott. The policy appears to be achieving the Government's purpose without the need for legislation.

Thus, nowhere—even in Canada—does there exist or is there contemplated as extensive or complex a public policy, law or regulations as found in the United States. Where the United States reaction to the problem has been to legislate, the reaction of other nations has been to continue to permit the private sector to make its own decision but, where feasible and where it is in the government's economic and/or political interest, to assist companies in removing objectionable boycott requirements and in being removed from the Arab League's blacklist. In doing so, these governments seem to be successful both in maintaining trade and in reducing the boycott's impact on many companies without publicity or legal restrictions.