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LEGALITY OF ECONOMIC SANCTIONS UNDER INTERNATIONAL LAW: THE CASE OF NICARAGUA

International law consists of a body of rules that govern the relations among nations ("states").1 These rules of conduct for the international community of states have evolved primarily through international custom and international agreements.2 International custom and international agreements, therefore, are the principal means by which to determine the legality of a state's conduct vis-a-vis one or more other nations.3 One of the most significant aspects of any state's transnational conduct involves the state's

1. See generally L. OPPENHEIM, INTERNATIONAL LAW (H. Lauterpacht 8th ed. 1955) (discussing traditional bases of international law); M. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW (5th ed. 1984) (elements of international law with emphasis on contemporary application).

2. See OPPENHEIM, supra note 1, at 13. The need and desire for orderly interaction among states necessitated some rules of international conduct. Id. at 17. As states reacted to particular situations in the same or similar manner, single usages grew into customary practice. Id. For example, with but a few exceptions, belligerent states historically refrained from seizing the fishing vessels of one another during times of war. See The Paquete Habana, 175 U.S. 677, 686-700 (1900) (discussing historical evolution of private fishing vessels' exemption from capture). The practice of refraining from capturing fishing vessels gradually evolved into a rule of conduct, the violation of which constituted a breach of international law. Id. Custom, however, was not always sufficiently clear; therefore, states gradually began to conclude international agreements in order to codify rules for future conduct. OPPENHEIM, supra note 1, at 17-18. The first stage of the codification process, from the 1860s to the end of World War I, consisted of attempts to codify the rules of conduct of nations relating to the settlement of disputes and the regulation of warfare. See D.W. GRIEG, INTERNATIONAL LAW 10-14 (2d ed. 1976) (summarizing evolution of codification and law-making process of international law); Declaration Respecting Maritime Law, April 6, 1856, 115 C.T.S. 1 (international regulations for naval warfare); Convention With Respect to Law and Customs of War on Land, July 29, 1899, 32 Stat. 1803 (codifying international rules of land warfare); Convention for the Pacific Settlement of International Disputes, July 29, 1899, 32 Stat. 1779, T.S. No. 392 (codification of international dispute resolution procedures); Convention Respecting Neutral Powers and Persons in War on Land, Oct. 18, 1907, 36 Stat. 2310, T.S. No. 540 (rights and duties of neutrals in land warfare); Convention Respecting Neutral Powers in Maritime War, Oct. 18, 1907, 36 Stat. 2415, T.S. No. 545 (rights and duties of neutral states in sea warfare). The Conference for the Codification of International Law, held at the Hague in 1930, exemplified a concern for peacetime law in the second phase of the codification process. See Conference for the Codification of International Law, March-April 1930, reprinted in 24 AM. J. INT'L L. 169-191 (1930) (convention addressing issues of nationality, legal status of territorial sea, and responsibility of states); OPPENHEIM, supra note 1, at 62-63 (discussing Conference for Codification of International Law). The third and most recent stage of the codification process involves the efforts of the United Nations to codify international law with assistance from the International Law Commission (ILC). See U.N. CHARTER art. 13, para. 1(a) (General Assembly of United Nations shall encourage development and codification of international law).

3. See Statute of the International Court of Justice, art. 38(1) (list of traditional sources of international law); infra notes 23-49 and accompanying text (discussing traditional sources of international law).
economic interaction with other nations. While every state normally attempts to facilitate its own economic prosperity through advantageous trade policies, many nations, including the United States, have employed economic sanctions to attain political objectives. The United States termination of trade with Nicaragua is an example of an economic policy designed to influence the political behavior of a target state. The continued use of economic sanctions, such as the measures the United States has imposed upon Nicaragua, raises serious questions concerning the legality of certain economic sanctions under international law.

Before embarking upon an analysis of the legality of any specific economic measures, a brief discussion of the nature of international law is helpful and necessary. The concept of an existing system of law that obliges adherence from states of the international community admittedly is a cum-

4. See L. Henkin, How Nations Behave 200 (2d ed. 1979) (economic relations between states are basis of international relations).
5. See H. Moyer & L. Mabry, Export Controls as Instruments of Foreign Policy: The History, Legal Issues, and Policy Lessons of Three Recent Cases, 15 Law & Pol'y Int'l Bus. 1 (1983) (discussing use of economic sanctions, including case studies of sanctions imposed upon Iran, Afghanistan, and Poland). An economic sanction is an action taken by a state or international organization to prevent, regulate, or otherwise hinder economic intercourse with another state for the purpose of condemning or influencing the target state's action or policies. Id. at 2 n.1.
7. See infra notes 56-61 and accompanying text (discussing sanctions imposed against Nicaragua); notes 167-68 and accompanying text (objectives of U.S. sanctions against Nicaragua).
bersome idea.\textsuperscript{8} The decentralized structure of the international legal system fuels skepticism as to the efficacy of international law.\textsuperscript{9} No international legislature having the authority to promulgate binding rules of law exists.\textsuperscript{10} International law also does not provide for an executive institution to enforce rules for state conduct,\textsuperscript{11} nor for a judiciary body that can exercise compulsory jurisdiction over the international community of states.\textsuperscript{12}

8. See \textit{infra} notes 9-10 and accompanying text (lack of traditional demarcated divisions of government enhance ephemeral quality of international law).

9. See \textsc{Oppenheim}, \textit{supra} note 1, at 7 (lack of sovereign political authority to enforce body of international rules is historical source of skepticism); \textsc{Akehurst}, \textit{supra} note 1, at 5 (absence of international legislature prompted denial of legal force international law). Modern cynicism toward international law continues to focus on the lack of a centralized executive body to enforce the law, as well as the absence of obligatory judicial settlement. \textsc{Akehurst}, \textit{supra} note 1, at 5. Critics argue that since rules fetter the freedom of sovereign nations, governments will not adhere to obligations under international law unless some external authority can enforce compliance with international obligations. See \textsc{Henkin}, \textit{supra} note 4, at 49 (discussing critics' argument of reasons why states violate international law). Professor Henkin posits that the assumption that nations violate international law because of an absence of any enforcement mechanism is erroneous. \textit{Id.}

10. See \textsc{Brownlie}, \textsc{Principles of Public International Law} 1-2 (3d ed. 1979) (international system of law lacks legislative machinery common to domestic legal systems). While the General Assembly of the United Nations (General Assembly) certainly impacts upon the development of international law, the General Assembly lacks the authority to legislate in the commonly understood sense of the word. \textsc{R. Higgins, The Development of International Law Through the Political Organs of the United Nations} 5 (1963). Resolutions of the General Assembly often embody principles of general international law. \textit{Id.} Principles of international law, however, would be binding upon member states to the United Nations regardless of a resolution. \textit{Id.} The only \textit{per se} binding effect over member states that the General Assembly maintains is with regard to internal administrative matters. See \textsc{L. Goodrich, The United Nations in a Changing World} 15 (1974) (General Assembly only intended to be legislative with regard to internal ministerial matters).

11. See \textsc{J.L. Briely, The Law of Nations} 100-02 (6th ed. 1963) (international community has no organ that can compel compliance with rules of international law). But see \textsc{Henkin}, \textit{supra} note 4, at 24, 49 (preoccupation with absence of enforcement mechanism with which to punish states in violation of international law is misplaced). The United Nations Security Council (Security Council) has limited executive power to enforce provisions of the United Nations Charter and to maintain international peace and security. See \textsc{U.N. Charter} arts. 33-54 (specific powers granted to Security Council to perform Security Council's duty of carrying out provisions of U.N. Charter and maintaining international peace and security); see generally \textsc{L. Goodrich, E. Hambro, P. Simons, Charter of the United Nations: Commentary and Documents} 192-369 (3d ed. 1969) (discussing the role of Security Council under United Nations Charter) [hereinafter cited as \textsc{Goodrich & Hambro}]. While the Security Council has the power to make binding decisions in situations that directly threaten peace and security, the decisions only can bind members of the United Nations. See \textsc{Goodrich & Hambro, supra}, at 209, 311-17 (U.N. Charter obligates members of U.N. to carry out decisions by Security Council calling for collective sanctions under articles 41 & 42 of U.N. Charter). In addition, each of the five permanent members of the Security Council (United States, U.S.S.R., Great Britain, China, and France) has the power to veto any proposal that the Security Council might otherwise pass. \textsc{U.N. Charter}, art. 27. The divergence of interests among the permanent members of the Security Council renders a decision calling for sanctions virtually impossible. See \textsc{Goodrich & Hambro, supra}, at 227-28 (discussing use of veto power in Security Council).

12. See \textsc{Akehurst, supra} note 1, at 5 (states need not submit to jurisdiction of international tribunal). The International Court of Justice (ICJ) is the principal judicial organ of the
In the absence of a sovereign political authority to promulgate and enforce the rules of international law effectively, the common interest of states emerges as the primary inducement for adherence to international law. Nations share an interest in maintaining orderly interaction in their transnational relations. As states are largely interdependent in many ways, including international trade, a set of rules to govern matters such as trade enhances international cooperation and benefits all states. The fact that adherence to international law generally is in the best interests of states does not imply that all states consistently comply with the rules of international law. Contrary to popular belief, however, adherence to international law in daily relations is much more common than noncompliance. The rules of international law have evolved through the common consent of states, and a proposed rule of international law binds no nation that has not consented to a rule, either expressly or impliedly. A state explicitly may

United Nations U.N. Charter arts. 7(1), 92. The consent of the parties to a dispute forms the basis of the ICJ’s jurisdiction. See O. Lissitzyn, The International Court of Justice 61-68 (1951) (discussing ICJ’s jurisdiction); Goodrich & Hambro, supra note 11, at 550-52 (jurisdictional base of ICJ under United Nations Charter). Under article 36(1) of the Statute of the ICJ, parties may agree to submit a specific dispute to the ICJ for resolution. Statute of the International Court of Justice, art. 36(1). States often manifest consent to jurisdiction under article 36(1) by means of bilateral or multilateral agreements that provide for the submission of a particular type of dispute to the ICJ. Goodrich & Hambro, supra note 11, at 551. Article 36(2) of the Statute of the ICJ permits a state to accept as compulsory the jurisdiction of the ICJ through unilateral declarations. Statute of the International Court of Justice, art. 36(2). As of 1984, 47 unilateral declarations accepting as compulsory the jurisdiction of the ICJ were in force. See 38 International Court of Justice Yearbook 57-91 (1983-1984) (texts of unilateral declarations).

13. See Akehurst, supra note 1, at 8 (interests of states are to agree to international rules).
14. Id.
15. See id. (established rule of interaction serves states' interests more favorably than do spontaneous tests of strength on case-by-case basis). Commonality of interest that states share is not the only inducement for states to comply with international law. Id. at 6. A state that commits an illegal act against a target state faces the possibility that the target state will resort to measures of self-help against the state that originally took illegal action. Id.; see also infra notes 182-83, 186-90 and accompanying text (discussing self-help measures of self-defense, retorsion and reprisal). Foreign policy considerations, such as the preservation of international credibility, also may deter a state from violating international law. See Henkin, supra note 4, at 50-56 (foreign policy reasons for observing international law).
16. See Henkin, supra note 4, at 48 (reality may not warrant broad assertion of compliance with international law).
17. See id. at 47. While violations of international norms of conduct receive much publicity, the daily observance by states of principles of international law go largely unnoticed. Id.
18. See id. at 33 (consent of state necessary for proposed rule to bind that state).
19. See id. (discussing formation of international law through principle of unanimity). If a state desires not to be bound by a rule of customary international law, the state must manifest its intention not to follow the rule at an early stage in the rule’s development, and thereafter
manifest its consent to a rule through a treaty or other form of declaration, or a nation may act in such a manner as to imply its tacit consent to a rule of international conduct. Therefore, if a state neither supports nor protests against an international rule, the state tacitly has consented to comply with the rule.

The most common sources of international law appear in article 38 of the Statute of the International Court of Justice (ICJ). The article 38 sources of international law are international conventions (treaties), international custom that evinces a general practice accepted as law, general principles of law acknowledged by civilized states, judicial decisions and the writings of internationally respected commentators. Although the function of article 38 of the Statute of the ICJ is to set forth the categories of legal rules that the ICJ will apply in settling disputes, most courts and commentators regard article 38 of the Statute of the ICJ as an adequate declaration of the sources of international law.

20. See infra notes 29-31 and accompanying text (states may undertake obligations under international law through treaties).

21. See Akehurst, supra note 19, at 24 (rule of international law may bind state that does not object to such rule).

22. See id. (inaction by state will connote willingness to obey rule).


24. See Statute of the ICJ, supra note 23, at art. 38(1) (list of traditional sources of international law); see also infra notes 28-31 and accompanying text (discussing treaties as source of international law); infra notes 32-40 and accompanying text (discussing custom as source of international law); infra notes 41-44 and accompanying text (discussing general principles of law as source of international law); infra notes 45-49 and accompanying text (discussing judicial decisions and writings of scholars as source of international law).

25. See GRIEG, supra note 2, at 6-7. Article 38(1) of the Statute of the ICJ instructs the ICJ on where to look for international law. Id.; Statute of the ICJ, supra note 23, at art. 38(1). Article 38(1) of the Statute of the ICJ directs not only the ICJ in the application of international law, but any judicial body that must apply international law. See BRIERLY, supra note 11, at 56 (article 38(1) of the Statute of the ICJ applies to any judicial body that administers international law).

26. See AKEHURST, supra note 1, at 23 (article 38(1) of Statute of ICJ constitutes most widely accepted list of sources of international law); E. MCWHINNEY, THE WORLD COURT AND THE CONTEMPORARY INTERNATIONAL LAW-MAKING PROCESS 2-3 (1979) (discussing sources of international law); C. PARRY, THE SOURCES AND EVIDENCES OF INTERNATIONAL LAW 5-27 (1965) (concluding that article 38(1) of Statute of ICJ reflects crux of sources of international law and discussing efficacy of article 38(1)). But see A. ROSS, A TEXTBOOK OF INTERNATIONAL LAW 83
The first source of international law listed in the Statute of the ICJ is international conventions. An international convention is synonymous with the term "treaty" in the parlance of international law. A treaty is an agreement concluded between two or more states or international organizations that creates a relationship within the context of international law. Treaties play a major role in helping to facilitate orderly interaction among states by setting forth general norms of conduct for the parties to the treaties and constituting evidence of customary rules of international law. Most importantly, treaties provide a legal framework within which states are able to conduct relations with one another in particular areas of interaction.

The second source of international law listed in article 38 of the Statute (1947) (article 38(1) of Statute of ICJ does not constitute foundation of sources of international law); GRgEg, supra note 2, at 7 (article 38(1) of Statute of ICJ is outdated and incomplete as enumeration of sources of international law). In addition to treaties, custom, general principles of law, judicial decisions and scholarly opinion, acts of international organizations are a potential source of modern international law that is not listed in article 38(1) of the Statute of the ICJ. See GRgEg, supra note 2, at 7 (proliferation of international organizations has prompted growth of specialized field of "international administrative law").
of the ICJ is custom that evinces a general practice accepted as law. The actual practice of states creates rules of customary international law, but the issue of what actually constitutes state practice in the determination of custom has generated a significant amount of debate. In order for state practice to become binding custom, the practice will necessitate a certain degree of repetitiveness and consistency. The amount of practice necessary to establish custom largely is dependent upon how well-established a prior practice is and the amount of existing practice that conflicts with the proposed rule. Generally, the more solidified an existing rule is in terms of duration and widespread acceptance, the greater difficulty states will have in overturning the existing rule. Custom involves not only following a practice with a requisite amount of regularity, but also adhering to the practice out of a sense of legal obligation. Opinio juris is the term for a state's psychological conviction that international law obligates that state to adhere to a rule of international law. Although the opinio juris is a necessary

33. See Akehurst, supra note 19, at 1-10 (claims or assertions of states constitutes practice that can formulate custom). But see D'Amato, The Concept of Custom in International Law 88 (1971) (only physical, overt acts can constitute material element of custom). The generally accepted view of customary international law is that state practice can create custom not only through overt acts, but through claims and assertions of the state as well. See Akehurst, supra note 19, at 2 (proposition that only physical acts make up state practice is minority view); Brownlie, supra note 10, at 5 (evidences of custom include diplomatic correspondence, opinions of official legal advisers, executive pronouncements, international and national judicial decisions, treaties, and resolutions from United Nations General Assembly). The continuous process of interaction between states, by which one state unilaterally declares a position to which other states react, plays an integral role in the formation of customary law. See Akehurst, supra note 19, at 37 (if state asserts a position as in accordance with international law and other states acquiesce, then new rule of customary law emerges); see also M. McDougal, The Hydrogen Bomb Tests and the International Law of the Sea, 49 AM. J. INT'L L. 356, 356-57 (1955) (states carry out process of international lawmaking by interacting constantly with one another).
34. See Brownlie, supra note 10, at 6-7 (discussing requisite elements of custom); Akehurst, supra note 19, at 12-31 (discussing quantity and consistency of practice needed to form custom).
35. See Akehurst, supra note 19, at 19 (amount of practice required to overturn established rule of custom is greater than amount of practice necessary to change more tenuous custom).
36. Id.; see Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116. In the Fisheries Case, the United Kingdom sought, inter alia, to establish a customary rule of international law out of certain states' practice of limiting fishing lines across bays to 10 miles. Id. at 131. The International Court of Justice (ICJ) held that the 10 mile delimitation was not uniform among states, and therefore could not bind Norway. Id. As an alternative basis for its holding, the ICJ held that the 10 mile rule could not bind Norway because Norway consistently had opposed all efforts to apply the 10 mile rule to the Norwegian coast. Id.; see also supra note 19 and accompanying text (state may opt out of rule of custom if state expresses opposition at an early stage of rule's development).
37. See Brownlie, supra note 10, at 8-10 (discussing psychological element of state practice necessary to establish custom); Akehurst, supra note 19, at 31-42 (discussing custom's requirement of opinio juris); Parry, supra note 26, at 61-62 (significant part of customary rule of international law is that states believe the rule to bind).
38. Parry, supra note 26, at 61.
element of a rule of custom, the determination of whether a state follows a course of conduct out of a sense of legal duty, or simply because that particular course of conduct is politically expedient, is seldom unequivocal.

Third among the sources of international law in article 38 of the Statute of the ICJ are general principles of law recognized by civilized nations. The general principles of law to which article 38 refers are fundamental legal principles common to the jurisprudence of civilized legal systems. The examination of the well developed legal systems of independent states assists the ICJ and other international tribunals in formulating homogenous international juridical principles. The function of article 38(1)(c) of the Statute of the ICJ is to provide the ICJ with a source of legal principles upon which

39. See The Case of the S.S. "Lotus" (Fr. v. Turk.), 1927 P.C.I.J., ser. A, no. 9, at 4 [hereinafter cited as Lotus]. In Lotus, France argued the existence of a customary rule of international law that granted exclusive criminal jurisdiction in ship collision cases to the state whose flag the ship flew (flag state). Id. at 27-28. As evidence of a custom granting exclusive jurisdiction to flag states, France proffered that in previous collision cases, criminal prosecutions had come before only the courts of flag states. Id. at 28. The abstention of nonflag states from prosecuting collision cases, France argued, manifested an international custom that only flag states could prosecute collision cases. Id. The Permanent Court of International Justice (PCIJ), however, refused to find prima facie existence of opinio juris through abstention. Id. The Lotus court held that the paucity of decisions by criminal courts on collision cases might denote abstention on the part of nonflag states, but such rarity of decisions could not show that nonflag states based their inaction on a conscious belief in a legal duty to abstain. Id. But see Lauterpacht, The Development of International Law as Developed By the International Court 384-86 (1958) (consistent practice of states, whether positive conduct or continuous abstention, is prima facie evidence of opinio juris).

40. See Akehurst, supra note 1, at 29-30 (assessment of opinio juris). Attempting to determine the psychology of a nation to ascertain whether a state follows a certain course of conduct out of a sense of legal duty (opinion juris) involves inherent artificiality. Id. at 29. The better method is to infer opinio juris from not only the physical acts of states, but official statements as well. Id. at 30. Therefore, if a state claims to be acting because of a legal obligation, yet in reality it is political self-interest that drives the state, international law will disregard the actual motivating reasons behind the state's action and look to the state's expression of legal obligation to find opinio juris. Id.


42. See Ross, supra note 26, at 90 (discussing general principles of law as listed in article 38 of Statute of ICJ). Examples of general principles of law in article 38 of the Statute of the ICJ include prescription, estoppel, and res judicata. Brierly, supra note 11, at 63.

43. See Brownlie, supra note 10, at 16 (international tribunals have drawn concepts from principles of domestic law in order to make application of international law more practicable in judicial process). Professor Ross posits that custom and treaties, as sources of international law, differ from general principles of law. See Ross, supra note 26, at 90-91. Through custom and treaties, objective rules of international law may develop without regard to particular legal questions. Id. Such an abstract development of international rules from general principles of law is unlikely because states formulate general principles of law in response to particular legal questions, thus giving article 38(1)(c) principles a subjective character. Id.
to draw in the event that no treaties or customs exist that are relevant to a particular dispute.\textsuperscript{44}

As a fourth source of international law, article 38 of the Statute of the ICJ lists judicial decisions and the writings of international publicists.\textsuperscript{45} Judicial decisions, as referred to in article 38, represent decisions from international tribunals and domestic courts.\textsuperscript{46} Although listed as a subsidiary means for ascertaining the rules of international law,\textsuperscript{47} judicial decisions have had a significant effect on the determination and development of the body of international rules.\textsuperscript{48} To a lesser degree, the writings of respected publicists also may influence the rubric of international law by stating the current content of the law and opining what the law should be.\textsuperscript{49}

Although the Statute of the ICJ lists four sources of international law, treaties and international custom constitute the two principal sources of international law and thus are the primary means of ascertaining the legality of state conduct under international law and, in particular, the legality of economic sanctions.\textsuperscript{50} Economic sanctions are a historical means by which states influence the domestic and foreign policies of other states.\textsuperscript{51} Since World War II, the practice of economic coercion increasingly has permeated international economic relations among states.\textsuperscript{52} The United States has chosen

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\textsuperscript{44} See Akhursta, \textit{supra} note 1, at 34 (purpose of general principles of law in article 38 of Statute of ICJ is to provide assistance for cases in which treaties and custom are not available).

\textsuperscript{45} Statute of the ICJ, \textit{supra} note 23, at art. 38(1)(d).

\textsuperscript{46} See BROWNLIE, \textit{supra} note 10, at 20-25 (discussing judicial decisions as source of international law). Examples of the tribunals from which article 38 judicial decisions may emanate include the International Court of Justice (ICJ), international arbitral tribunals, the Court of Justice of the European Communities, national courts, and ad hoc international military tribunals. \textit{Id}.

\textsuperscript{47} Statute of the ICJ, \textit{supra} note 23, at art. 38(1)(d).

\textsuperscript{48} See, e.g., \textit{The Paquete Habana}, 175 U.S. 677, 686-700 (1900) (United States Supreme Court decision evidencing customary international law); \textit{Fisheries Case} (U.K. v. Nor.), 1951 I.C.J. 116, 428-29 (opinion of ICJ that effectively created new rule of international law for demarcation of fishing boundaries in areas of atypical geography); \textit{Reparation for Injuries Suffered in the Service of the United Nations}, 1949 I.C.J. 174, 187-88 (advisory opinion of ICJ on capacity of United Nations to assert rights as organization in international claims) [hereinafter cited as \textit{Reparation Case}]; \textit{see also GRIEG, \textit{supra} note 2, at 41-42 (discussing Reparation Case and \textit{Fisheries Case})}.

\textsuperscript{49} See BRIERLY, \textit{supra} note 11, at 65-66 (publicist's influence on rules of international law depends upon prestige of publicist and persuasiveness of argument). Examples of historically influential writers on international law include Grotius, Hall, Oppenheim, Hyde, Guggenheim, and Verdross. BROWNLIE, \textit{supra} note 10, at 25; \textit{cf. PARRY, \textit{supra} note 26, at 104 (relevance of publicists as source of international law decreases as number of judicial decisions grows)}.

\textsuperscript{50} See OPPENHEIM, \textit{supra} note 1, at §§ 16-18 (treaties and custom are two fundamental sources of international law); D. Bowett, \textit{International Law and Economic Coercion}, 16 VA. J. INT'L L. 245, 245-49 (1976) (discussing criteria for examining legality of economic conduct by states).

\textsuperscript{51} See \textit{supra} note 6 (historical development of economic sanctions); \textit{supra} note 5 (defining economic sanctions).

\textsuperscript{52} See M. NINCHIC & P. WALLENSTEEN, \textit{DILEMMAS OF ECONOMIC COERCION} 1-5 (1983) (discussing growth of economic coercion). Economic coercion is the infliction by one state of
not to exclude itself from the proliferation of coercive economic practice.\textsuperscript{53} In fact, the willingness of the United States to employ economic sanctions is a salient aspect of post-1945 international economic relations.\textsuperscript{54} As of May 1985, the United States was maintaining at least seven programs of economic sanctions against twelve nations as responses to various actions or patterns of behavior engaged in by the target states.\textsuperscript{55}

A cogent example of economic sanctions imposed by the United States to attain political goals is the comprehensive trade embargo levied against the government of Nicaragua on May 1, 1985.\textsuperscript{56} Acting pursuant to the International Economic Emergency Powers Act of 1977 (IEEPA)\textsuperscript{57} and the punitive economic measures upon another state for the purpose of achieving a political goal. \textit{Id.} Insofar as economic coercion and economic sanctions denote adverse economic action that seeks to alter another state’s behavior, this article will use the terms “economic coercion” and “economic sanction” interchangeably. See \textit{supra} note 5 (definition of economic sanction). Examples of post-World War II programs of economic sanctions include the Soviet Union’s termination of trade with Yugoslavia in 1948, the Arab oil embargo imposed upon the United States another industrial nations in 1973, and the prohibition of Argentina imports and freezing of Argentina assets conducted by Great Britain in 1982. See M.S. DOUQID & M.S. DAJANI, \textit{ECONOMIC SANCTIONS: IDEALS AND EXPERIENCE} 104-08, 112-24 (1983) (discussing Arab oil embargo, and sanctions levied against Argentina and Yugoslavia).

53. See Williams, \textit{The Coming of Economic Sanctions into American Practice}, \textit{37} \textit{AM. J. INT’L L.} 386 (1943) (discussing origins of twentieth century American sanctions); see also \textit{infra} note 54 (examples of economic sanctions implemented by United States).


55. See C. Joyner, \textit{The Transnational Boycott as Economic Coercion in International Law: Policy, Place, and Practice}, \textit{17} \textit{VAND. J. TRANSNAT’L L.} 205, 222-23 (1984). The nations against which the United States maintained economic restrictions as of May 1, 1985, include North Korea, Vietnam, Cambodia, Czechoslovakia, East Germany, the Soviet Union (Latvia, Estonia and Lithuania), Cuba, Iran, and Nicaragua. \textit{Id.} at 222-23; \textit{infra} note 59 (sanctions against Nicaragua).


National Emergencies Act of 1976 (NEA), President Reagan placed a total embargo on all trade with Nicaragua and suspended service to the United States by Nicaraguan airlines and flag vessels. President Reagan's sanctions also included notification to the Nicaraguan government of the United States intention to terminate a 1956 bilateral Treaty of Friendship, Commerce, and Navigation (FCN Treaty) between the United States and Nicaragua.

The termination by the Reagan Administration of all economic intercourse with the Sandinista government of Nicaragua in May 1985 reflects the general deterioration of relations between the United States and Nicaragua since 1979. In July 1979, the Frente Sandinista Liberacion Nacional (FSLN or Sandinista) led a revolution in Nicaragua that ended the dictatorship of General Anastacio Samoza Debayle and eventually led to a FSLN-dominated government in Nicaragua. Initially, the Carter Administration

58. 50 U.S.C. §§ 1601-1651 (1982). The National Emergencies Act of 1976 (NEA) terminates, as of September 14, 1978, any statutory authority that the President possessed as a result of declared states of emergency, and delimits the authority of the President to declare future national emergencies. See id. at § 1601 (cancelling power of Executive that resulted from existing states of emergency); id. at § 1621 (authorizing President to declare future national emergencies in accordance with procedures of NEA). The NEA also provides for congressional oversight and review of Executive actions taken pursuant to the declaration of a national emergency. See id. at § 1622 (providing for congressional review of presidentially-declared emergencies and termination of states of emergencies by concurrent resolution); id. at § 1631 (requiring President to specify statutory authority under which Executive Branch acts pursuant to national emergency); id. at § 1641 (requiring reporting and accountability procedures of President); see also 1976 U.S. CODE CONG. & AD. News 2288-314 (legislative history and purpose of NEA).

59. Exec. Order No. 12,513, supra note 56; see also 50 Fed. Reg. 19,890-95 (1985) (Treasury regulations concerning trade with Nicaragua). Executive Order No. 12,513 bans all Nicaraguan imports to the United States and all exports from the United States to Nicaragua. 50 Fed. Reg. 19,890-91 (1985) (to be codified at 31 C.F.R. §§ 540.204, 540.205). President Reagan's executive order also forbids flights to and from the United States by Nicaraguan aircraft, and precludes Nicaraguan flag vessels from entering United States ports. Id. at 19,891 (to be codified at 31 C.F.R. §§ 540.206, 540.207). The trade embargo against Nicaragua, however, does not apply to donated articles such as food, clothing, and medicine for humanitarian purposes, nor to supplies for the antigovernment guerrillas ("contras"). Id. (to be codified at 31 C.F.R. § 540.205).


61. See Statement By the Principal Deputy Press Secretary to the President, 21 WEEKLY COMP. PRES. DOC. 568 (May 1, 1985) (announcement of United States sanctions against Nicaragua and intent to terminate FCN treaty); U.S. Diplomatic Note concerning Termination of FCN Treaty, May 1, 1985, 24 INT'L LEG. MAT. 815-16 (1985) (note from United States Embassy in Nicaragua to Nicaraguan Ministry of External Relations notifying Nicaraguan government of United States intention to terminate FCN Treaty pursuant to article 25(3) of FCN Treaty); FCN Treaty, supra note 60, at art. 25(3). Article 25(3) of the FCN Treaty allows either the United States or Nicaragua to terminate the FCN Treaty by giving one year's written notice to the other party. Id. See also infra notes 142-44 and accompanying text (discussing notification provision of FCN Treaty).


63. See id. at 173 (Samoza regime collapsed on July 17, 1979); see also infra note 65 and
adopted a policy of economic assistance and cooperation with the revolutionary government of Nicaragua. As the Sandinista leaders began to consolidate their power within the new government, however, evidence mounted that Nicaragua was assisting insurgents in El Salvador who were attempting to overthrow the United States-supported Salvadoran government. In response, the Reagan Administration terminated all economic assistance to Nicaragua in April 1981 and embarked upon a policy toward Nicaragua that included covert support for the anti-Sandinista guerrillas or "contras" in Nicaragua. The Reagan Administration consistently justified a policy of support for the contras as necessary to counter Nicaragua's military escalation and subversive activities against neighboring Central American states. Congressional authorization for continued aid to the contras, however, abruptly ceased in April 1984 in the wake of revelations that the Central Intelligence Agency had supervised the mining of several Nicaraguan harbors. Not wanting to give the perception that the United States was deserting a democratic struggle in the Western Hemisphere,
President Reagan vehemently sought resumption of military aid to the contra guerrillas.71 Congress rejected Reagan's request on April 23, 1984.72 Nine days later, deeming the policies of Nicaragua an unusual and extraordinary threat to the security of the United States, President Reagan announced a comprehensive trade embargo against the government of Nicaragua.73

In analyzing the legality of the economic sanctions imposed by the United States against Nicaragua, the termination of trade by the Reagan Administration raises serious questions under international law.74 The right of a state to determine that state's own trading partners is a well-established principle of international coexistence.75 A state's ability independently to formulate policies of trade is a derivative of the principle of sovereignty, which reflects the right of a state to determine that state's own destiny free from the interference of other nations.76 Foreign trade by its very nature, however, affects other nations of the international community.77 The principle of sovereignty does not allow a state to conduct external relations with impunity.78 Rather, a natural consequence of the equal and sovereign existence of independent states is that international legal obligations are binding upon states.79 The foreign economic policies of a state, therefore, are subject to the limitations of international law.80

Treaty commitments can constitute significant limitations upon the economic conduct of states that have entered into agreements pertaining to

71. See 43 CONG. Q. at 707-09 (discussing President Reagan's request for aid to Nicaraguan contras).

72. See id. at 779-84 (examining President Reagan's defeat by Congress on issue of contra aid).

73. See Exec. Order 12,513, supra note 56 (declaring national emergency in response to Nicaragua's aggressive activities in Central America); see also supra notes 59-61 and accompanying text (discussing economic sanctions imposed upon Nicaragua).

74. See infra notes 81-91 and accompanying text (discussing United States potential violation of treaties and customary principle of nonintervention by applying sanctions against Nicaragua).

75. See E. VATTEL, LAW OF NATIONS 39 (Chitty ed. 1883) (law of nations imposes no obligation on any state to trade with any other state); C. EAGLETON, INTERNATIONAL GOVERNMENT, 86-87 (3d ed. 1957) (state may prohibit trade with some or all states).

76. See G. Fitzmaurice, The General Principles of International Law Considered From the Standpoint of the Rule of Law, 92 RECUEIL DES COURS 48-50 (1957) (discussing principle of sovereignty in international law). To say that a state is "sovereign" is to say that the state is equal to and independent from other states. Id. at 49.

77. See A. THOMAS & A.J. THOMAS, NON-INTERVENTION 409 (1956) (state's external economic policies concern others and are subject to international law).

78. See AXEHURST, supra note 1, at 15-16 (principle of sovereignty does not place states above international law).

79. See BROWN, supra note 10, at 287-88 (general discussion of sovereignty and equality of states). A state can claim sovereign rights only if that state is ready to concede concomitant rights to other states and assume obligations under international law. Fitzmaurice, supra note 76, at 49.

80. See Bowett, supra note 50, at 245-59 (enumerating criteria with which to analyze international economic conduct).
transnational economic relations.\textsuperscript{81} The United States and Nicaragua are parties to the Charter of the United Nations (U.N. Charter).\textsuperscript{82} Signed in San Francisco on June 6, 1945, the U.N. Charter is the legal instrument that created the United Nations, an international organization formed to maintain international peace and security.\textsuperscript{83} Although the U.N. Charter does not expressly address the area of economic coercion, several commentators have interpreted article 2(4) of the U.N. Charter implicitly to include economic and political conduct.\textsuperscript{84} Article 2(4) of the U.N. Charter forbids the threat or use of force against any nation in any manner that is not consistent with the purposes of the U.N. Charter.\textsuperscript{85} The scope of "force" in article 2(4) has created much debate.\textsuperscript{86} The debate centers on the issue of whether or not article 2(4) "force" encompasses nonmilitary types of force, including economic coercion.\textsuperscript{87} If article 2(4) prohibited economic and political coercion as well as military force, then arguably the United States sanctions against Nicaragua would violate the prohibition against force enunciated in article 2(4).\textsuperscript{88} Although no decisive consensus has emerged, the majority view is that article 2(4) force does not include economic coercion.\textsuperscript{89} The failure of various

\textsuperscript{81.} See id. at 247 (treaty obligations provide sound basis for assessing legality of economic conduct); see also infra notes 82-155 (discussing treaty commitments between United States and Nicaragua).

\textsuperscript{82.} 1 YEARBOOK OF INTERNATIONAL ORGANIZATIONS A3399 (1984-1985).

\textsuperscript{83.} U.N. CHARTER. See generally Goodrich & Hambro, supra note 11, at 1-17 (discussing early development of United Nations); see also Oppenheim, supra note 1, at 400-05 (purpose of U.N. Charter is to promote international peace and security). As of 1985, 158 states were signatories to the U.N. Charter. 1 YEARBOOK OF INTERNATIONAL ORGANIZATIONS A3399 (1984-1985).

\textsuperscript{84.} See U.N. CHARTER art. 2, para. 4 (prohibiting threat or use of force); McDougal & Feliciano, LAW AND MINIMUM WORLD PUBLIC ORDER 124-26 (1961) (view that article 2(4) does not prohibit nonmilitary forms of coercion is suspect); H. Brosche, The Arab Oil Embargo and United States Pressure Against Chile: Economic and Political Coercion and the Charter of the United Nations, 7 CASE W. RES. J. INT'L L. 3, 18-30 (1974) (discussing different interpretations of article 2(4) and concluding that current trends require broad interpretation that includes economic current and political coercion); Paust & Blaustein, The Arab Oil Weapon—A Threat to International Peace, 68 AM. J. INT'L L. 410, 417 (Supp. 1974) (armed force is not only form of coercion that can violate article 2(4)).

\textsuperscript{85.} U.N. CHARTER art. 2, para. 4.

\textsuperscript{86.} See infra note 87 (disagreement over meaning of force in article 2(4) of U.N. Charter); U.N. CHARTER art. 2, para. 4.

\textsuperscript{87.} See Goodrich & Hambro, supra note 11, at 49 (prohibition of force in article 2(4) does not encompass economic or political coercion); Bowett, supra note 50, at 245 (pertinence of article 2(4) in prohibiting economic coercion is doubtful); R. Lillich, The Status of Economic Coercion Under International Law: United Nations Norms, 12 TEX. INT'L L. J. 17, 18-19 (1977) (only small number of U.N. members considered article 2(4) to prohibit economic coercion). See also McDougald & Feliciano, supra note 84, at 125 (suggesting that article 2(4) "force" should include nonmilitary forms of coercion); Paust & Blaustein, supra note 84, at 417 (arguing for interpretation of article 2(4) that includes economic coercion); Brosche, supra note 84, at 30 (suggesting that modern interpretation of article 2(4) should include economic coercion).

\textsuperscript{88.} See Paust & Blaustein, supra note 84, at 439 (Arab oil embargo was of such intensity as to violate article 2(4) of U.N. Charter).

\textsuperscript{89.} See Lillich, supra note 87, at 19 (no evidence exists that more than few member states of U.N. consider article 2(4) to embody economic coercion); But see Comment, The Use of Nonviolent Coercion: A Study in Legality Under Article 2(4) of the Charter of the United
attempts to include economic measures in the text of article 2(4) supports a narrow reading of article 2(4).90 Furthermore, an expansive interpretation of article 2(4) including prohibition of certain economic measures would render article 2(4) inconsistent with article 51 of the U.N. Charter.91 Since article 51 justifies acts of self-defense only in response to armed attacks,92 target state could not take action under article 51 against an aggressor state that illegally instigated economic force.93 Such a compromise of a state's inherent right to recourse in response to illegal action is inconsistent with the basic principles of sovereignty and self-defense embodied in Article 51.94 Thus the prohibition of force under article 2(4) should not subsume the United States trade embargo against Nicaragua.95

The fact that Article 2(4) "force" does not appear to apply to acts of economic coercion, however, does not render the U.N. Charter void of any relevance in analyzing the United States trade embargo against Nicaragua.96 Articles 2(3) and 33 of the U.N. Charter require member states to resolve their disputes through peaceful means.97 The United States implementation

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90. See U.N. Doc. 784, 1/1/27, 6 U.N.C.I.O. Doc. 331, 334-35 (1945) (text of Brazil's proposed amendment to article 2(4) that included "economic measures"). The Drafting Subcommittee of Committee 1/1 at the 1945 United Nations Conference on International Organization rejected Brazil's amendment to article 2(4) that would have included economic forms of coercion by a vote of 26-2. Id. at 549. But see McDougall & Feliciano, supra note 84, at 124 n.8 (discussing inconclusiveness of article 2(4)'s preparatory work).

91. See U.N. Charter art. 2, para. 4 (prohibiting threat or use of force in manner inconsistent with U.N. Charter); U.N. Charter art. 51 (recognizing inherent right of self-defense against armed attacks); Joyner, supra note 55, at 241 (examining textual inconsistency between article 2(4) and article 51 right to self-defense if article 2(4) interpreted to encompass economic force); infra notes 93-95 and accompanying text (discussing potential inconsistency between articles 2(4) and 51).

92. U.N. Charter art. 51.

93. See Joyner, supra note 55, at 246 (target state would be left without legal recourse under article 51 if interpretation of article 2(4) included economic coercion).

94. U.N. Charter art. 51. Article 51 of the U.N. Charter recognizes a state's inherent right to self-defense. Id. Article 51 allows for an individual member state to exercise the right of self-defense until the Security Council of the United Nations takes appropriate measures to maintain international peace and security. Id. See also Goodrich & Hambro, supra note 11, at 342-53 (discussing article 51 of U.N. Charter).

95. See Goodrich & Hambro, supra note 11, at 49 (concluding that article 2(4) does not include economic or political coercion); supra notes 84-94 and accompanying text (discussing interpretation of article 2(4) "force").

96. See U.N. Charter arts. 2(3), 33 (imposing duty on U.N. member states to settle disputes peacefully); infra notes 97-105 and accompanying text (discussing potential violation of U.N. Charter articles 2(3) and 33).

97. U.N. Charter arts. 2(3), 33. Article 2(3) obligates members of the U.N. to resolve international disputes peacefully and without jeopardizing international peace, security and justice. U.N. Charter art. 2, para. 3. Under article 33, members of the U.N. have agreed initially to seek a peaceful solution to any dispute that, if continued, might jeopardize the
of unilateral economic sanctions does not constitute procedures of pacific settlement as envisaged by articles 2(3) and 33 of the U.N. Charter. Although the United States officially has supported regional dialogue on the strife in Central America and has engaged in bilateral talks with the government of Nicaragua, efforts at reconciliation of the tension between Nicaragua and the United States have been sporadic. The United States is not solely to blame for the lack of progress in dialogue with Nicaragua. What is important in the context of examining obligations under the U.N. Charter, however, is whether the United States made a good faith effort to resolve peacefully the dispute with Nicaragua prior to the Reagan Adminis-

maintenance of international peace and security. U.N. Charter art. 33. Article 33 circumscribes more specifically the general obligations of members of the U.N. under article 2(3). Id. Articles 2(3) and 33 apply only to “disputes.” Id. at arts. 2(3), 33. Although neither article 2(3) nor 33 defines “dispute,” the Permanent Court of International Justice (PCIJ) has held that a dispute is a legal disagreement on an issue of law or fact. See Mavrommatis Palestine Concessions Case [1924] P.C.I.J., ser. A., No. 2, at 11 (defining dispute), quoted in Y. Blum, Economic Boycotts in International Law, 12 Tex. J. Int’l L. 5, 13 (1977). The present conflict between the Sandinista government and the United States falls within the meaning of dispute as espoused by the PCIJ in the Mavrommatis Palestine Concession Case. See Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1984 I.C.J. 392 (Order on Request for the Indication of Provisional Measures, May 10, 1984), reprinted in 23 Int’l Leg. Mat. 468 (1984) (Nicaragua alleging violations of international law by United States); infra note 153 (discussing Nicaraguan threat to Central America and United States).

98. See Brosche, supra note 84, at 32 (trade embargoes and other forms of economic coercion are not pacific measures of dispute resolution); Blum, supra note 97, at 13 (economic pressure is not appropriate means of settling disputes); U.N. Charter art. 2, para. 3 (general obligation of members to peacefully settle disputes); U.N. Charter art. 33 (listing peaceful procedures for dispute resolution). While article 2(3) imposes a general obligation upon members of the U.N. to peacefully settle disputes, article 33 specifically enumerates procedures of peaceful settlement that states may employ. U.N. Charter art. 33. The means by which parties to a dispute are to seek a solution under article 33 of the U.N. Charter include negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, use of regional apparatus, or other peaceful means of the the parties’ own choice. Id.; see Goodrich & Hambro, supra note 11, at 261-63 (discussing article 33 procedures for pacific settlement).

99. See Dep’t St. Bull. 59 (Jan. 1985) (statement of United States Ambassador Soronzo advocating regional peace process in Central America). The primary mechanism for regional dialogue in Central America is the Contadora Group. See Crawley, supra note 62, at 182-83 (beginning of Contadora process). The Contadora Group consists of four Latin American states that have resolved jointly to promote peace in Central America. Id. The members of the Contadora Group are Mexico, Venezuela, Columbia, and Panama. Id.

100. See Dep’t St. Bull. 84 (July 1984) (discussing United States Secretary of State Shultz’s visit to Nicaragua in June 1984); 43 Cong. Q. 713 (1985) (Secretary Shultz met briefly with Nicaragua’s President Daniel Ortega in June 1984, but suspended dialogue due to lack of progress).


102. See Dep’t St. Bull. 67-74 (June 1984) (State Department report on United States efforts to achieve peace in Central America alleging Nicaraguan intransigence to be major impediment to elimination of strife in Central America).
tration's prohibition of trade with Nicaragua. Economic coercion in itself is not a peaceful measure by which to resolve the dispute between the United States and Nicaragua. The termination of all trade with Nicaragua very likely violates the United States obligations under articles 2(3) and 33 to resolve its disputes with other members of the United Nations in a peaceful manner.

In addition to the U.N. Charter, the United States and Nicaragua are parties to the General Agreement on Tariffs and Trade (GATT). Opened for signature on October 30, 1947, GATT is a multilateral convention primarily created to facilitate access to international trade markets by eliminating protectionist barriers and restrictions on international commerce.


104. See supra note 98 (economic sanctions do not constitute peaceful measure of dispute resolution).

105. See U.N. Charter arts. 2(3), 33 (requiring that members settle disputes peacefully). The Reagan Administration has made efforts at ameliorating the conflict in Central America. See supra note 100 (discussing bilateral talks between United States and Nicaragua); Dep't St. Bull. 67-74 (June 1984 (report on United States efforts to achieve peace in Central America). Critics of United States Central American policy, however, contend that the Reagan Administration is not interested in any negotiations that would leave the Sandinista government in power, even if the Sandinistas agreed to discuss key issues such as Nicaraguan support for guerrillas in El Salvador and Cuban and Soviet influence in Nicaragua. See P. Gleijeses, Resist Romanticism, 54 Foreign Pol'y 122, 136 (1984) (discussing Reagan Administration's philosophy toward dialogue with Nicaragua). President Reagan's "Peace Plan" of April 4, 1985 appears to reinforce the view that the United States is unwilling to accept much less than a political reorganization of the Nicaraguan government. See 21 WEEKLY COMP. PRES. DOC. 416-18 (Apr. 8, 1985) (text of President Reagan's proposal for Nicaragua). The President's offer called for a cease-fire and implementation of Church-mediated dialogue between the Sandinista government and the contras. Id. President Reagan linked the peace plan, however, to a March 1, 1985 agreement among opposition forces in San Jose, Costa Rica. Id. The San Jose declaration called for significant alterations in the Sandinista government, including elimination of the National Assembly and new elections. See 43 Cong. Q. 713 (1985) (declaration included proposals for Nicaraguan governmental alteration and Church-mediated dialogue). The Reagan Administration adheres to the position that insistence on a democratic reorganization such as that emphasized in President Reagan's peace plan is not inconsistent with good faith efforts at a peaceful resolution of the dispute between Nicaragua and the United States, because the government of Nicaragua promised to implement democratic institutions in government when the Sandinistas gained power in 1979. See Dep't St. Bull. 85 (June 1984) (Administration policy that Nicaragua adhere to commitment of democratic pluralism).

106. GATT, supra note 31.

107. Id.; see J. Jackson, World Trade and the Law of GATT §§ 1.3, 2.6 (1969) (examining basic premises of GATT and regulation of international trade); R. Hudec, The GATT Legal System: A Diplomat's Jurisprudence, 4 J. World Trade L. 615, 616-36 (discussing negotiating history of GATT). Ninety states are signatories to the GATT convention, including
Articles 11 and 13 of GATT particularly are relevant in assessing the legality of the trade embargo imposed upon Nicaragua. Under article 11, a contracting party to GATT cannot restrict or prohibit the imports from or exports to another member state except in certain circumstances. If a member of GATT imposes quantitative restrictions on the products of a fellow member, then under article 13 of GATT the state taking such measures must apply similar restrictions to comparable products of third states. As the economic measures taken against Nicaragua represent a zero quota, or a prohibition against any amount of imports from or exports to Nicaragua, the United States sanctions violate article 11 of GATT. Since the United States applied the trade embargo exclusively against Nicaragua, the sanctions also violate article 13 of GATT.

Although the trade sanctions against Nicaragua appear to violate articles 11 and 13 of the GATT Convention, the United States asserts that the national security exception in article 21 of GATT justifies the United States prohibition on trade with Nicaragua. Under article 21, GATT will not...
may take discriminatory measures against coparty to protect essential security interests in time of war or international emergency).

114. GATT, supra note 31, at art. 21(b)(iii).

115. See JACKSON, supra note 107, at § 28.4. The members of GATT addressed the issue of who is to determine the existence of essential security interests in 1949. Id. Czechoslovakia brought a complaint against the United States alleging that the United States export control licenses against Czechoslovakia violated the United States obligations under GATT. Id. The United States argued that the GATT Convention authorized the export control licenses as security measures under article 21. Id. The members of GATT voted against the Czechoslovakian complaint, stating that every nation has the right to determine matters pertaining to a state's own security. Id. The GATT Council recognized, however, that states should not take any action that could undermine the GATT Convention, thus expressing disfavor with the use of the security exception in article 21 for political purposes. Id.

116. Id. The members of GATT convened on May 29, 1985, to hear a Nicaraguan complaint that the sanctions imposed by the United States violated the GATT Convention. See 2 INT'L TRADE REP. 765 (1985) (discussing GATT action taken on United States trade embargo against Nicaragua). The GATT Council neither accepted the United States position that article 21 justified the sanctions, nor condemned the trade embargo. Id.; see JACKSON, supra note 107, at §§ 8.1-8.5 (discussing dispute resolution procedures of GATT).

117. See JACKSON, supra note 107, at § 28.4 (security exception of article 21 provides dangerous loophole to obligations under GATT).

118. See id. An underlying objective of the GATT Convention is to create a body of efficacious regulations through which states can conduct international trade relations free from arbitrary exercises of economic power. Id. The Reagan Administration has deemed Nicaragua a significant threat to the security of the United States and has instituted an embargo program in an attempt to influence the future conduct of the Nicaraguan government. See infra note 153 and accompanying text (discussing Nicaraguan threat and objectives of United States sanctions). Although international political and economic relations are inextricably intertwined, the contracting parties to GATT have recognized, in a ministerial conference, the undesirability of restrictive trade practices taken for political purposes. See GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, Supp. No. 29 at 11 (1983) (GATT members agree to refrain from implementing restrictive trade measures for noneconomic purposes). Addressing specifically the issue of article 21 security exceptions, the contracting parties to GATT acknowledged the necessity of security exceptions, yet failed to set forth a formal interpretation of article 21. Id. at 23-24.
States (OAS). The OAS is a regional agency within the framework of the United Nations, formed to promote peace and security among the states of the Western Hemisphere. Article 18 of the OAS Charter prohibits any type of interference into the internal or external affairs of a member state. Additionally, article 19 of the OAS Charter explicitly forbids the use of coercive economic measures by which a state intends to compromise the sovereignty of another state. The United States trade embargo against Nicaragua immediately appears to fall within the proscription of article 18 because the sanctioning measures severed Nicaragua’s economic relations with the United States, one of Nicaragua’s largest trading partners. Article 19 of the OAS Charter, however, is more limited than article 18 and prohibits only economic conduct that a state employs to subordinate the sovereignty of the target state so that the coercing state may obtain advantages therefrom. The intent of the United States in imposing sanctions against Nicaragua, therefore, becomes an important criterion in determining whether the United States breached article 19. The Reagan Administration admits that the United States terminated trade with Nicaragua in order to pressure the Sandinista government to alter Nicaragua’s course of government and


120. See OAS CHARTER, supra note 119, at art. 1 (declaring OAS existence under structure of United Nations).

121. OAS CHARTER, supra note 119, at art. 18. The principle of nonintervention embodied in article 18 prohibits military intervention as well as interference against a state’s political and economic elements. Id. Article 18 of the amended Charter of the OAS previously was article 15 of the original Charter of the OAS. See Protocol of Amendment to the Charter of the Organization of American States, February 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847, art. 5 (renumbering article 15 to article 18) [hereinafter referred to as Protocol of Amendment].

122. OAS CHARTER, supra note 119, at art. 19. Article 19 of the amended OAS Charter previously was article 16 of the original OAS Charter. See Protocol of Amendment, supra note 121, at art. 5 (renumbering article 16 to article 19).

123. See V. Pregelj, Nicaragua: Selected Figures and Facts on Foreign Trade and U.S. Trade Sanctions, CONG. RESEARCH SERV. (May 13, 1985) (report of Economics Division of Congressional Research Service on Nicaraguan foreign trade and United States sanctions against Nicaragua). The United States was the largest importer of Nicaraguan goods in 1982, accounting for more than 22 percent of Nicaragua’s total exports. Id. at 3. The termination of such a significant portion of Nicaragua’s export market very well could constitute a prohibited interference into Nicaragua’s economy under article 18 of the OAS Charter. See infra notes 175-90 and accompanying text (discussing principle of nonintervention).

124. OAS CHARTER, supra note 119, at art. 19.

125. See id. (prohibiting any state from implementing measures of economic coercion designed to force sovereign will of target state or garner advantages therefrom).
cut ties with the Soviet bloc. The attempt to force the Nicaraguan government to pursue a course of conduct desired by the United States appears to be an interference with Nicaragua's sovereign right to dictate the course of its own government. The objectives of the United States trade embargo against Nicaragua, however, may not completely lack legitimacy under the OAS Charter. Article 22 of the OAS Charter declares that measures taken to maintain peace and security will not violate the principles of nonintervention set forth in articles 18 and 20. The Reagan Administration states that the prohibition of trade with Nicaragua is merely part of a comprehensive policy designed to enhance peace and security in Central America. The predominant purpose of the United States sanctions against Nicaragua, however, is to force the Sandinista government to follow a pattern of behavior that the United States deems advantageous to the interests of the United States and allies in Central America, therefore violating the express prohibition of economic coercion in article 19 of the OAS Charter.

In addition to multilateral, regional, and international conventions, the United States and Nicaragua are parties to a bilateral Treaty of Friendship, Commerce, and Navigation (FCN Treaty). The FCN Treaty accords both parties most-favored nation status with regard to imports.

126. See Dep't St. Bull. 75-77 (July 1985). A primary objective of the United States sanctions against Nicaragua was to force the Sandinistas to change governmental policies that the United States deems subversive and dangerous to Central America and to the United States. Id. at 75-76. Other stated objectives of the trade embargo were to manifest a determination to oppose aggression in Central America and to protect the security of United States allies in the region. Id.

127. See supra note 126 and accompanying text (purpose of United States trade sanctions against Nicaragua was to impose change upon Sandinista government).

128. See infra notes 129-30 and accompanying text (United States embargo against Nicaragua may be valid under article 22 of OAS Charter).

129. OAS Charter, supra note 119, at art. 22.

130. See Dep't St. Bull. 75-77 (July 1985) (objectives of United States sanctions against Sandinista government are to maintain peace and security in Central America).

131. See OAS Charter, supra note 119, at art. 19. Article 19 of the OAS Charter prohibits only economic coercion that a state undertakes to dictate the sovereign will of another state and obtain any advantages therefrom. Id. Although a part of the objective of the United States embargo against Nicaragua is to facilitate peace in Central America, another purpose of the economic measures is to force the Sandinista government to follow a pattern of behavior that the United States deems advantageous to interests of the United States and allies in the region. See Dep't St. Bull. 75-77 (July 1985) (embargo against Nicaragua is part of United States efforts to pressure Sandinista government to change).

132. See McNair, supra note 29, at 29-30. The term "multilateral" is used most often in international law to denote treaties by more than two parties. Id.

133. See id. A "bilateral" treaty refers to a treaty between two parties. Id.

134. FCN Treaty, supra note 60. Signed in 1956, the FCN Treaty was an extension of the post-World War II U.S. policy of entering into bilateral trade agreements with other states. See Dep't St. Bull. 174-75 (Jan. 1956) (announcement of FCN Treaty). The United States and Nicaragua intended the FCN Treaty to provide a legal framework within which to conduct economic relations. Id.

135. See FCN Treaty, supra note 60, at arts. 14(2), 19(3) (provisions granting most-favored-nation status to imports, exports and harbor access). A most-favored-nation clause of a treaty
and exports,\textsuperscript{136} access to ports,\textsuperscript{137} and generally guarantees freedom of commerce and navigation between the United States and Nicaragua.\textsuperscript{138} Article 14(2) of the FCN Treaty precludes either the United States or Nicaragua from restricting the imports or exports of the other party, unless the restricting party applies the same restrictions to all third parties with whom the restricting state trades.\textsuperscript{139} Article 19(1) broadly assures freedom of commerce and navigation between the United States and Nicaragua.\textsuperscript{140} Additionally, article 19(3) expressly stipulates that the ships of either party shall have access to the ports of one another on a basis equal to that which vessels of other states enjoy.\textsuperscript{141} On May 1, 1985, the day that the United States announced the economic sanctions against Nicaragua, the Reagan Administration informed the Nicaraguan government of the United States intention to abrogate the FCN Treaty in accordance with article 25(3) of the FCN Treaty.\textsuperscript{142} Under article 25(3), the FCN Treaty would not expire until May 1, 1986.\textsuperscript{143} As long as a treaty remains in force, then the treaty is binding upon the parties, and the parties must perform all obligations under the treaty in good faith.\textsuperscript{144} The United States, however, terminated all trade with Nicaragua and denied Nicaraguan vessels access to U.S. ports, beginning on May 6, 1985, five days after notifying Nicaragua of the United States intention to abrogate the FCN Treaty.\textsuperscript{145} Therefore, the United States violated articles 14(2), 19(1), and 19(3) of the FCN Treaty, at least until May 1, 1986, the date the FCN Treaty legally expired.\textsuperscript{146}

While the sanctions imposed by the United States on Nicaragua are contrary to article 14(2), 19(1), and 19(3) of the FCN Treaty, the United...

\footnotesize{obligates a signatory to extend to the other parties the treaty all trade concessions or advantages that the signatory has granted to any other state, so that the members of the treaty enjoy trade relations with one another on the most favorable basis. See 14 WHITEMAN, supra note 113 at § 12 (discussing most-favored-nation clauses in international trade).

136. FCN Treaty, supra note 60, at art. 14(2).
137. Id. at art. 19(3).
138. Id. at art. 19(1).
139. Id. at art. 14(2).
140. Id. at art. 19(1).
141. Id. at art. 19(3).
142. See supra note 61 and accompanying text (United States notification of FCN Treaty termination); FCN Treaty, supra note 60, at art. 25(3); supra note 61 (discussing article 25(3) of FCN Treaty).
143. See FCN Treaty, supra note 60, at art. 25(3). Article 25(3) of the FCN Treaty requires that a party wishing to terminate the FCN Treaty must give the other party one year's notice of termination. Id.
144. See Vienna Convention, supra note 30, at art. 26. Article 26 of the Vienna Convention sets forth the rule of \textit{pacta sunt servanda}, a principle of customary international law that requires parties to a binding treaty to perform the agreement in good faith. Id. See \textit{generally} Kunz, \textit{Meaning and Range of the Norm Pacta Sunt Servanda}, 39 AM. J. INT'L L. 180 (1945) (examining fundamental international norm of \textit{pacta sunt servanda}).
145. See supra note 59 (executive order to impose sanctions on Nicaragua that prohibited trade with Nicaragua and closed United States ports to Nicaraguan ships).
146. FCN Treaty, supra note 133, at arts. 14(2), 19(1), 19(3).}
States has asserted that the security exception contained in article 21 of the FCN Treaty justifies the measures taken against Nicaragua. Article 21(1)(d) of the FCN Treaty allows either Nicaragua or the United States to take measures necessary to maintain international peace and security, or to protect essential security interests. Certainly the activities of the Nicaraguan government concern United States security interests. Central America is strategically important to the United States not only because of the region's geographic proximity to the United States, but because Central America borders the Caribbean Basin, a vital passageway for the United States. The activities of Nicaragua, as a revolutionary state in Central America with Marxist-Leninist underpinnings, are important to the United States. The existence of a Nicaraguan threat requiring the exercise of article 21(1)(d), however, appears dubious. States must not apply security exceptions such

147. Id. at art. 21. See Security Council, supra note 113, at 27 (U.S. Ambassador Soronzo justifying United States embargo against Nicaragua as security exception under article 21 of FCN Treaty).
148. FCN Treaty, supra note 60, at art. 21(d).
149. See Dep't St. Bull. 1-5 (June 1983) (President Reagan's address to Congress on defending U.S. interests in Central America); infra note 153 and accompanying text (discussing Nicaraguan threat to U.S. security interests).
152. Dep't St. Bull. 1-5 (June 1983).
153. See Exec. Order 12,513, supra note 56 (declaring that activities of Sandinista government constitute national emergency). Official sources cite Nicaragua's subversive activities, military escalation, and military ties to the Soviet bloc, including arms shipments to Nicaragua from the Soviet Union and East Germany, as the basis of Nicaragua's threat to the security of the United States. See Dep't St. Bull. 76 (July 1985) (behavior of Sandinista government destabilizes region of Central America and therefore represents threat to U.S. security); A Background Paper: Nicaragua's Military Build-up and Support For Central American Subversion 8-37 (Departments of State & Defense, July 18, 1984) (assessment of Nicaragua's subversive course of conduct in Central America) [hereinafter cited as Background Paper]. Efforts by Nicaragua to undermine the government of El Salvador have included training and providing bases of operations for insurgents fighting the Salvadoran government and acting as a conduit for arms shipments from Cuba and the Eastern Bloc to the rebels in El Salvador. Dep't St. Bull. 76 (July 1985). Additionally, the United States has claimed that Nicaragua has exported subversion and political violence to Honduras and Costa Rica. Background Paper, supra, at 26-33. Furthermore, the Reagan Administration points to the dramatic growth in the number of Nicaragua's military personnel, from 12,000 in 1979 to 102,000 (including civilian militia) in 1984, as posing a pervasive threat to Nicaragua's Central American neighbors and, consequently, to the security of the United States. See The Role of the U.S. Southern Command in Central America: Hearing Before the Subcomm. on Western Hemisphere Affairs of the House Committee on Foreign Affairs, 98th Cong., 2d Sess. 40 (1984) (report of Nicaraguan military expansion). However, commentators doubt the notion that Nicaragua, either independently or with Soviet support poses a legitimate threat to the United States. See N.Y. Times, Mar. 30, 1985 at 1, col. 2 (Reagan Administration officials privately deny that Nicaragua intends to move militarily against neighbors in Central America); R. Leiken, Fantasies and Facts: The Soviet Union and Nicaragua, 83 CURRENT HIST. 314, 344 (Oct. 1984) (suggesting that military buildup in Nicaragua is defensive in nature). Although Nicaragua undoubtedly has assisted in
as Article 21(d) of the FCN Treaty indiscriminately, but with good faith.\textsuperscript{154} To justify the imposition of a total embargo against Nicaragua under the Article 21(d) security exception is an abuse of the United States discretion with regard to the FCN Treaty, and constitutes a failure to perform the treaty in good faith.\textsuperscript{155}

In addition to treaties and the U.N. Charter, several United Nations General Assembly resolutions have addressed the issue of coercive economic conduct.\textsuperscript{156} Resolutions of the General Assembly, though not binding in a legal sense, nevertheless represent the expectations of the international community and provide evidence of the norms of customary international law.\textsuperscript{157}
The sanctions against Nicaragua are inconsistent with several United Nations resolutions.158

An important U.N. resolution condemning coercive economic conduct is the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (Declaration on Intervention).159 Passed in 1965 by the U.N. General Assembly, the Declaration on Intervention forbids the use of economic or political measures designed to subordinate the will of, or obtain advantages from, another state.160 In addition to the Declaration on Intervention, the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Principles of Friendly Relations) is pertinent in analyzing economic sanctions under General Assembly resolutions.161 The Principles of Friendly Relations expresses authoritative norms of economic conduct and reaffirms the Declaration on Intervention’s opposition to the use of economic coercion as a means of compromising the sovereign will of another state.162

Although both the Declaration on Intervention and the Principles of Friendly Relations forbid the use of coercive economic conduct, the resolutions apply only to economic measures that a coercing state undertakes to subordinate the sovereignty of a target state or to procure advantages for the coercing state.163 Therefore, the legitimacy of the Reagan Administration’s

in turn can develop custom); R. Falk, On the Quasi-Legislative Competence of the General Assembly, 60 AM. INT’L L. 782, 784-86 (1966) (consensus found in General Assembly resolutions is part of law-creating process of customary international law). But see S. Schwebel, The Effect of Resolutions of the U.N. General Assembly on Customary International Law, 1979 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 301-05 (1979) (General Assembly’s authority is limited to adopting resolutions, which does not give resolutions binding quality).

158. See supra note 54 (United States sanctions against Nicaragua); see also infra notes 159-174 and accompanying text (examining economic coercion in light of U.N. resolutions).


160. Id.


163. See Principles of Friendly Relations, supra note 161, at 123, reprinted at 1295. The Principles of Friendly Relations precludes any state from using economic coercion to impinge upon a target state’s sovereign rights and to secure advantages therefrom. Id. See also Declaration on Intervention, supra note 159, at 12, reprinted at 663. The Declaration on Intervention prohibits a state from carrying out coercive economic conduct in order to restrain
economic sanctions against Nicaragua under the Declaration on Intervention and the Principles of Friendly Relations turns on the purpose of the United States in implementing the trade embargo. If the United States terminated trade with Nicaragua in order to subordinate the sovereign will of the Sandinista government or to obtain advantages from Nicaragua, then the United States has violated the Declaration on Intervention and the Principles of Friendly Relations. However, if the Reagan Administration did not intend to detract from the sovereignty of the Nicaraguan government or acquire any advantage therefrom, then the United States did not violate the aforementioned United Nations resolutions. The predominant intent of the Reagan Administration in ordering a trade embargo appears to have been to alter the operation of the Sandinista government and force Nicaragua to follow a course of conduct that met the United States acceptance. Specifically, President Reagan demanded that Nicaragua cease military support of Salvadoran rebels fighting the government of El Salvador, that Nicaragua end military ties with Cuba and the Eastern Bloc, and that Nicaragua discontinue military buildup and pursue a course of democratic pluralism.

Before coming to power in Nicaragua in 1979, the Sandinista rulers promised the Organization of American States that, once in control, the FSLN would institute a broadly-based democratic government and hold free elections.

a target state's sovereign rights or to obtain any advantages from a target state. Id. Coercive economic or political pressure to force a sovereign state to carry out a certain course of behavior would constitute a "subordination" of that state's sovereignty. See OPPENHEIM, supra note 1, at 288 (one state may not compel target state to follow course of international or domestic conduct without usurping target state's sovereignty).

164. See Joyner, supra note 55, at 243-44 (purpose of coercing state is essential element in ascertaining legality of economic conduct).

165. Declaration on Intervention, supra note 159, at 12, reprinted at 663; Principles of Friendly Relations, supra note 161, at 123, reprinted at 1295. See also Joyner, supra note 55, at 243-44 (discussing motive criterion under Declaration on Intervention). The implications of a violation of either the Declaration on Intervention or Principles of Friendly Relations depend upon the juridical value that one accords a U.N. Resolution. See ASAMOAH, supra note 157, at 46-62. If one views a resolution as evidence of state practice and as an assertion of opinio juris, then noncompliance with that resolution may violate a customary rule of international law. Id.; see also supra notes 32-40 and accompanying text (discussing custom as source of international law). However, if one regards a resolution as a simple vote on a recommendation, the compliance with which is optional, then the resolution as an expression of binding customary norms is void of juridical force. See I. MACGIBBON, General Assembly Resolutions: Custom, Practice and Mistaken Identity, INTERNATIONAL LAW: TEACHING AND PRACTICE 17-23 (criticism of resolution's ability to reflect state practice or opinio juris).

166. See note 163 and accompanying text (prohibition of economic coercion under Declaration on Intervention and Principles of Friendly Relations is qualified).

167. See DEP'T ST. BULL. 75 (July 1985) (statement on sanctions against Nicaragua as part of United States policy); infra notes 168-72 and accompanying text (discussing purpose of United States sanctions against Nicaragua).

168. See 21 WEEKLY COMP. PRES. DOC. 567 (May 1, 1985) (President Reagan calling on Sandinista government to moderate foreign policy and democratize domestic institutions).

169. See 63 CONG. DIG. 280, 282 (July 12, 1979) (promise of Sandinistas to install democratically plural government); CHRISTIAN, supra note 151 at 109-10 (Sandinista promise to allow coalition of anti-Samoza factions).
The United States asserts that the economic sanctions against Nicaragua are an attempt to induce the Sandinista government to adhere to the 1979 promises. The fact that the FSLN initially made democratic promises with which Nicaragua has failed to comply, however, does not alter the objective of the United States in imposing a trade embargo against Nicaragua, which is to induce an alteration in the Nicaraguan government. In effect, the United States insisted on the subordination of Nicaragua’s sovereign right to determine Nicaragua’s own course of government. As a consequence of the Nicaraguan government’s failure to comply with the Reagan Administration’s demands, the United States ceased all trade with Nicaragua. The intent of the United States was to compel the Nicaraguan government to follow a certain course of foreign and domestic conduct by means of economic coercion; therefore, the embargo violates the United Nations Declaration on Intervention and Principles of Friendly Relations.

An additional means of analyzing the legality of economic sanctions is the principle of nonintervention. The duty of nonintervention underlies the important United Nations statements on economic coercion and is a significant check on the aggressive economic conduct of a state. Under international law, the duty of nonintervention requires that a state refrain from intervening in the internal or external affairs of another sovereign state against the will of that state. Economic conduct is interventionary if a nation carries out an economic policy that coerces a target state to take a course of action that the coercing state desires. Because the United States terminated trade with Nicaragua in an effort to induce the Sandinista

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170. See Dep’t St. Bull. 76 (July 1985) (termination of trade with Nicaragua is element of United States effort to facilitate change in Nicaraguan government to accord with Sandinista’s promises of 1979).

171. Id.

172. See 21 Weekly Comp. Pres. Doc. 567 (President Reagan’s message to Congress calling on Nicaragua to alter domestic and international practices). The essence of President Reagan’s demands is to compel Nicaragua to change its behavior and structure of government. Id. Every state, however, has the sovereign right to develop its political status free from external interference. See Principles of Friendly Relations, supra note 161, at 123, reprinted at 1295 (proclaiming principle of equal rights and self-determination of peoples).

173. Supra note 59 (executive order declaring sanctions against Nicaragua).

174. See supra note 163 (discussing requirements of Declaration on Intervention and Principles of Friendly Relations).

175. See Bowett, supra note 50, at 246 (duty of nonintervention may regulate economic coercion).

176. See Declaration on Intervention, supra note 159 (general proscription against intervention); Principles of Friendly Relations, supra note 161 (nonintervention listed as one of seven major principles of United Nations); see also U.N. Charter art. 2, para. 7 (prohibiting intervention into affairs of another sovereign state); Charter of the OAS, supra note 119, at art. 18 (no state has right to intervene into affairs of another state).

177. See generally Thomas & Thomas, supra note 77 (comprehensive treatment of principle of nonintervention including duty against economic intervention).

178. See id. at 409-14 (economic policy implemented to coerce behavior of another state is intervention).
government to follow a course of conduct prescribed by the Reagan Administration, the economic measures imposed upon Nicaragua fall into the category of intervention.\footnote{179. See supra notes 126, 167-68 and accompanying text (objectives of United States sanctions against Nicaragua).}

The classification of the trade embargo against Nicaragua as an act of intervention, however, does not end the analysis of the legality of the sanctions under the principle of nonintervention.\footnote{180. See infra notes 181-88 and accompanying text (discussing possible exceptions to prohibition of interventionary economic conduct).} A state may justify any economic conduct, including an act of economic intervention, if the state takes action in self-defense or as a legitimate act of retorsion or reprisal to secure redress for a prior wrong committed by the target state.\footnote{181. See Bowett, supra note 50, at 249-52 (discussing categories of exceptions to otherwise prohibited economic conduct). Every sovereign state possesses the right of self-defense and, therefore, may take action that is necessary and proportionate to secure the state's defense. See generally 5 WHITMAN, DIG. INT'L L. 971-1048 (1965) (discussing states' inherent right of self-defense). In addition to self-defense, a state may resort to retorsion or reprisal against a target state as a legitimate means of self-help. See Waldock, The Regulation of the Use of Force by Individual States in International Law, 81 RECUEIL DES COURS 455, 458-61 (1952) (under customary international law, acts of retorsion or reprisal may justify state's aggressive or illegal behavior). An act of retorsion is a legal act taken in retaliation to another state's unfriendly, but legal, conduct. Id. at 458. A reprisal is a retaliatory act that international law ordinarily would prohibit, but a previous illegal act taken against the retaliating state renders the reprisal legal under international law. See generally 12 WHITMAN, DIG. INT'L L. 148-87 (1971) (reprisals may constitute legitimate means of self-help under international law).} For the United States to justify the trade embargo against Nicaragua as an act of self-defense, the United States would have to show that Nicaragua posed an immediate danger to the security or independence of the United States and that no alternative means of protection were available to the United States.\footnote{182. See Bowett, supra note 50, at 249-50 (state that seeks to legitimize coercive economic conduct as act of self-defense must show that target state represented present danger and that other means of protection were unavailable). Customary international law traditionally has required a high degree of necessity to justify coercive conduct as self-defense. See McDougall & Feliciano, supra note 84, at 229-41 (examination of necessity includes immediacy of threat and availability of alternative recourses). In addition to necessity, a state that claims self-defense must show that the act taken in self-defense was proportionate to the threat that the target state presented. See id. at 241-44 (requirement of proportionality demands that act of self-defense be reasonably related to initial threat of target state).} While the United States sufficiently has outlined what it deems to be the Nicaraguan threat,\footnote{183. See Background Paper, supra note 153 (analyzing growth of Nicaraguan military forces and subversive activities in Central America).} the United States cannot maintain with significant plausibility that Nicaragua, with a trained army of less than 50,000 troops and virtually no air force, poses an imminent threat to the United States.\footnote{184. See N.Y. Times, March 30, 1985, at 1, col. 2 (report of Nicaragua's military capabilities and comparative Central American strength). The argument that Nicaragua poses a legitimate threat to its Central American neighbors and, therefore, presents a danger to United States security interests is more realistic than the argument that Nicaragua poses a direct threat to the
Nor can the United States maintain that the trade embargo was a legitimate exercise of self-help under international law. By definition, an act of retorsion inherently is legal. However, the United States trade sanctions against Nicaragua may be outside the legal competence of the United States, with particular regard to treaty obligations. Thus, the sanctions fall outside the parameters of legitimate retorsion. Legitimizing the sanctions as a reprisal would require that the United States show that Nicaragua previously had violated international law in an action against the United States, that the United States had no other available means of redress, and that the trade embargo was proportionate to the wrongful act committed against the United States. The United States is unable to establish the requisite facts necessary

United States, yet insufficient to justify a claim of self-defense. See id. A direct Nicaraguan invasion of any Central American state would mean instant military retaliation from the overwhelmingly superior forces of the United States. Id. In addition, as the United States sanctions may have dire consequences for the Nicaraguan economy, the termination of trade with Nicaragua may be disproportionate to any actual danger that Nicaragua may pose to the United States. See McDougal & Feliciano, supra note 84, at 241-44 (discussing requirement of proportionality for acts of self-defense); N.Y. Times, May 2, 1985, at A10, col. 2 (even though United States-Nicaraguan trade has declined since 1980, United States still accounted for 17.5 percent of Nicaragua's total trade). But see N.Y. Times, March 30, 1985, at 1, col. 6 (effect of United States sanctions against Nicaragua may be more symbolic than substantive).

185. See Waldock, supra note 181, at 458-61 (discussing retorsion and reprisal under customary international law); infra notes 185-190 and accompanying text (discussing possibility of characterizing United States embargo against Nicaragua as legitimate retorsion or reprisal).

186. See Waldock, supra note 181, at 458 (act must be legal to constitute retorsion).

187. See supra notes 106-55 and accompanying text (discussing treaty obligations between United States and Nicaragua).

188. See Waldock, supra note 181, at 458. When international law prohibits certain action by a state, such conduct cannot constitute a legitimate act of retorsion. Id. Thus, an act that conflicts with the treaty obligations of a state is not retorsion. Id.

189. See id. at 460, citing Nautillia, 2 REPORTS OF ARBITRAL AWARDS 1012 (1928) (espousing majority interpretation of customary law of reprisals). The issue of whether the United States trade embargo against Nicaragua was a legitimate reprisal initially depends upon whether Nicaragua previously violated international law as against the United States. See id. at 460 (state against which coercing state directs reprisal must have committed illegal act against coercing state prior to reprisal). The United States has asserted that Nicaragua, by undermining the stability of other Central American states, has violated the U.N. Charter and the OAS Charter as against the United States. See Security Council, supra note 113, at 29 (United States Ambassador Soronzo stating that Nicaragua's subversive activities in Central America violate article 2(4) of U.N. Charter and articles 3, 18, 20 and 21 of OAS Charter). However, no objective authority, such as the United Nations Security Council or the International Court of Justice (ICJ), has determined whether or not Nicaragua committed any international delict against the United States. See Bowett, supra note 50, at 254 (objective and impartial standards should apply in determining legality of economic retorsion and reprisal). Even if Nicaragua had committed an illegal act against the United States prior to the implementation of economic sanctions against Nicaragua, the United States still would have to show that the United States had exhausted all other means of redress, or that such means simply did not exist. See Bowett, supra note 50, at 252 (coercing state must deplete any available means of conciliation). The United States and Nicaragua have engaged in limited, unsuccessful dialogue. See supra notes 100-01 and accompanying text (listing efforts at United States-Nicaraguan dialogue). However, the Contadora peace process remains a viable mechanism for the resolution of many issues.
to characterize the economic sanctions against Nicaragua as self-defense, or a legitimate act of retorsion or reprisal; the trade embargo, therefore, remains as an illegal act of economic intervention against Nicaragua. 190

Although the recent economic sanctions imposed upon Nicaragua may be a politically attractive exercise of foreign policy for the Reagan Administration, the application of such measures violates a number of specific treaty commitments as well as customary international law. 191 By implementing an extensive trade embargo against Nicaragua, the United States has breached its obligation under the U.N. Charter to settle its disputes in a peaceful manner. 192 The sanctions also violate provisions of the General Agreement on Tariffs and Trade, the OAS Charter, and the bilateral FCN Treaty between Nicaragua and the United States. 193 Furthermore, customary international law, as evidenced by U.N. resolutions and the principle of nonintervention, does not permit the use of economic sanctions designed to coerce the independent will of another state. 194 The Reagan Administration’s trade embargo exceeds the boundaries of permissible influence, becoming instead an illicit intervention into the sovereign affairs of Nicaragua.

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