THE UNITED NATIONS AND ECONOMIC COERCION

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The following remarks merely serve to indicate my present views on the topic, subject to modifications as a consequence of arguments to be found in the special reports. *Grosso modo*, I agree with the views held by Kewenig and Heini (1).

I. — NOTION OF THE TREAT OF ECONOMIC COERCION

I firmly share the view advanced by Kewenig (2) in reply to Neuhold (3). It would be aberrant, if we were to subscribe to Galtung's notion of « structural violence ». Thus, the mere fact that country A is richer than country B and does not want to share its wealth with B does not amount to any exercise of economic coercion by A against B. I wonder, however, if Kewenig (4) is right in dealing only with the use of economic force by States as such. I recall the discussions concerning the Chinese boycott of Japanese goods in the 1930's. This boycott was not organized by China as a State, but by the Kuomintang, i.e. the dominant political party (5). Yet, these considerations would lead us to discuss in some detail matters of State responsibility.

Kewenig (6) wants to distinguish between a use of economic force with the intention to intervene, on the one hand, and measures producing similar effects e.g. the blocking of certain exports, which the State concerned did adopt for domestic reasons, e.g. for the preservation of dwindling

(1) *Die Anwendung wirtschaftlicher Zwangsmaßnahmen im Völkerrecht und im Internationalen Privatrecht*, Berichte des Deutschen Gesellschaft für Völkerrecht, 22, 1981.
(2) *Ibid.*, p. 63.
(3) *Ibid.*, p. 60.
(4) *Ibid.*, p. 10.
(5) Les boycottages anti-étrangers en Chine en 1932. Document A, Annexe 7 of the Japanese Memorandum.
(6) *Ibid.*, p. 10.

stocks for domestic use. It may be difficult to ascertain the true motives of such actions (7), which may be intermingled. Thus, the P.C.I.J. found in the *Oscar Chinn Case* (8) that Belgium by granting a subsidy to UNATRA, the Belgian Congo State Shipping Line, thereby did not primarily intend to enable this Line to underbid its foreign competitors, thus virtually driving them away from navigation on the Congo. By granting such subsidy, i.e. by this use of its economic force, Belgium thus was held not to have violated the treaty rule (9), that such navigation should be free to all nations.

II. — LEGALITY OF THE USE OF ECONOMIC FORCE UNDER GENERAL INTERNATIONAL LAW

A. — *Art. 2, para 4 of the U.N. Charter.*

Art. 2 para 4 of the U.N. Charter is generally held to be declaratory also of customary international law (10). However, we can subscribe to this statement only if we read the prohibition of the treat or use of « force » as referring exclusively to military force. This view has been contested in the past mainly by spokesmen for the Third World. Yet, a Brasilian amendment to Art. 2 para 4 of the Charter to insert after the words ... « refrain from the ... treat or use of force » the words « *and* from the treat or use of economic measures in any way inconsistent ... » was rejected by 26 against 2 votes in San Francisco (11). The very fact, that even this amendment made a distinction between « force » and « economic measures » seems to refute the argument, that the notion of « force » should include « economic force » (12). If such were the case, we would be confronted with the absurd situation, that Art. 51 of the U.N. Charter granting an inherent right of self-defence against any armed attack, would not admit such a right against an (unarmed) economic attack.

The point appears more or less moot in U.N. practice (13). A rearguard action of the adherents of the view extending the prohibition of the use of force also to the use of economic force is found in a resolution figuring — quite significantly — only in an annex to the Final Act of the

(7) C. Czarnikow Ltd v. Rolimpex, *House of Lords* (per Lord Wilberforce), 1978, 3, *W.L.R.*, 279.

(8) PCIJ December 12, 1934, PCIJ *Series A/B* No 63, p. 84-86, *I.L.R.*, 7, 1933/1934, p. 316.

(9) Art. I of the Convention of Saint-Germain of September 10, 1919 and Art. I of the General Act of Berlin of February 26, 1885.

(10) SODER, *Die Vereinten Nationen und dei Nichtmitglieder*, 1956, S. 274.

(11) *United Nations Conference on International Organization, Vol.* 6, 1945, pp. 335 and 559.

(12) KEWENIG, *loc. cit.*, p. 12.

(13) KEWENIG, *ibid.*, p. 13 and LINDEMEYER, *Schiffsembargo und Hendelsembargo völkerrechtliche Praxis und Zulässigkeit*, 1975, p. 361, but see BUCHHEIT, « The Use of Non-Violent Coercion : A Study in Legality under Article 2 (4) of the Charter of the United Nations » in *Lillich (ed.) Economic Coercion and the New International Economic Order*, 1976, p. 68.

Vienna Convention on the Law of Treaties in 1969 (13*bis*). The Austrian Government report on this Convention states however that the term « force » in Art. 52 of the Convention itself is to be interpreted in the same way as in Art. 4 para 2 of the U.N. Charter as referring only to armed force and that efforts by Third World countries to insert into this notion of « force » in art. 52 also economic and political pressures failed at this Conference. In view of the subsequent developments (oil embargo), these efforts are said to have lost some of their topical interest (14). The U.N. definition of agression (15) does no longer include any reference to what many people used to call « economic agression ».

B. — *Non-Intervention.*

However, U.N. efforts aiming at the prohibition of at least certain uses of economic pressure have merely been transferred into another arena (16). Such pressures are said to be illegal no longer as a use of force, but as illicit interventions into the matters within the domestic jurisdiction of another State. Although Art. 2 para 7 of the Charter appears more concerned with intervention by U.N. itself than with intervention by its several member States, a prohibition of such acts also by member States results from the entire context of the Charter. We find clear evidence of this new approach in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Resolution N°. 2625 [XXV] of 24 October 1970). From the context of the chapter of this resolution on the prohibition of the use of « force » it becomes evident that this prohibition refers merely to armed force. However, the chapter on intervention provides that « no State may encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind ».

At least the first part of this sentence appears to indicate that its drafters

(13*bis*) *Convinced* that States must have complote freedom in performing any act relating to the conclusion of a treaty,

Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States,

Desiring to ensure that in the future no such pressure will be exerted in any form by any State in connexion with the conclusion of a treaty,

1. *Solemnly condemns* the treat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent,

2. *Decides* that the present Declaration shall form part of the Final Act of the Conference on the Law of Treaties.

(14) Message of the Austrian Government of 3 July 1978 requesting parliamentary approval for the Vienna Convention of 1969, Annex No 983 of the Stenographie Period, p. 59 *Record of the Nationalrat*, XIV. Legislative.

(15) Resolution No 3314 (XXIX), *A.J.I.L.*, 1975, p. 480.

(16) KEWENIG, *loc. cit.*, p. 15.

must have had doubts concerning a general ban on all economic pressures (17). After all, given the great disparities in the economic situation of the several member States of the U.N., the mere weight of a wealthier State may be felt by a poorer State as some sort of pressure — at least as a fact, which may have an influence on the latter's decisions. Yet, such influences could only be fully excluded, if States of disparate economic strength would avoid all economic contacts. This result clearly is so undesirable, that it is reasonable to assume that the drafters wanted to outlaw merely pressures so grave as to amount to a subordination of the exercise of the sovereign rights of the poorer State. However, the realistic trend of this rule appears to be nullified by the second part of this sentence. No economic pressure will be exercised merely for the sake of exercising such pressure, but rather in order to gain some advantage. The model for thus trying to extend the ban to even the slightest type of economic pressure was Art. 19 of the O.A.S. Charter of 1967. Subsequent practice gradually backed away from such attempts. The Final Act of the C.S.C.E. (18) restricted the effect of this sentence by reformulating it as follows « ... and *thus* (i.e. by a subordination of sovereign rights) to secure advantages of any kind ». Art. 32 of the Charter of the Economic Rights and Duties of States (19) merely prohibits « the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights ».

U.N. practice therefore prohibits merely very grave forms of the use of economic force. Even at a time, when the West could assume that economic force would be a weapon in the hands of the West, Western writers did not defend an unlimited use of such force (20). They were ready to accept a limitation of such use, where it would lead to grave interventions into sovereign rights of another State. Their views thus did coincide with U.N. practice. The Arab oil boycott of 1973, which for the first time made the West the target of such use of economic force, reinforced this tendency (21).

We thus may safely assume, that there exists a consensus declaring illicit the most extreme uses of economic force. The problem remains, where this line is to be drawn.

Recourse to relevant rules of domestic or E.E.C. law concerning the abuse of economic force, e.g. of a dominant position on the market, are of little help (22), as these rules operate with rather wide clauses, which,

(17) To this effect also SHIHATA, « Destination Embargo of Arab Oil : Its Legality under International Law » in *Lillich (ed).*, *op. cit.*, p. 181.

(18) *A.J.I.L.*, 1976, p. 419.

(19) Resolution No 3281 (XXIX), *A.J.I.L.*, 1975, p. 493.

(20) DERPA, *Das Gewaltverbot der Satzung der Vereinten Nationen und die Anwendung nichmilitärischer Gewalt*, 1969, p. 136.

(21) e.g. PAUST/BLAUSTEIN, « The Arab-Oil Weapon — A treat to International Peace » in *Paust/Blaustein (ed.)*, *The Arab Oil Weapon*, 1977, p. 96.

(22) KEWENIG, *loc. cit.*, p. 97.

however, will be interpreted and applied to a given set of facts by courts having obligatory jurisdiction. Moreover, claims that a certain use of economic force amounted to an attempt — illicit under international law — to subordinate a foreign State's sovereign rights to the will of the State taking such measures might not even be supported by recourse to generally accepted principles of domestic law. Thus, some writers claim, that U.S. discontinuance in 1960 of preferential customs on Cuban sugar amounted to an illicit use of economic force. Cuba was said to be able to rely on estoppel (23). Even without any treaty obligation the U.S. would be prevented from suddenly ending Cuba's privileged position on the U.S. market. However, in the Federal Republic of Germany, chain stores have driven some of their small furnishers into bankruptcy, when the chain store, the largest and sometimes even exclusive customer of the furnisher decided to change its furnisher. Such acts were not held to be illegal. The plea of estoppel in the Cuban case is further weakened by the fact, that the U.S. measures were taken as retaliation for Cuban measures ordening U.S. oil refineries in Cuba to switch from Latin American to Soviet crude oil. These firms, too, could have invoked estoppel and could have pointed to the fact, that their economic rentability was upset by the transformation of their plants required to refine oil of a different type (24).

Shihata (25) justifies the Arab oil boycott by claiming, that these measures were adopted in order to promote an objective in conformity with the Charter of the United Nations. We do not want to discuss here the merits of the Israeli/Arab dispute. However, in view of the gravity of the measure concerned, its legality or illegality should not be based on any interpretation that may be attributed to a vote by the Security Council, and *a fortiori*, to a vote adopted by the General Assembly. State A would therefore act at its own risks if it were to adopt domestic legislation e.g. recognizing the retro-active claim of the U.N. Council for Namibia to diamonds mined in Namibia since the termination of South Africa's mandate. If diamond cutters in State B had bought a precious diamond from the present South African management of these mines and had sent it to an exhibition in State A, where after the enactment of the above law the diamond were handed over to the U.N. Council for Namibia, State B could claim damages from State A. The legality of any exercise of economic coercion should be beyond any doubt only if the measures concerned were ordered in so many words by the Security Council pursuant to Art. 41 of the U.N. Charter.

(23) FRANCK/CHESLER, « At Arm's Length : The Coming Law of Collective Bargaining in International Relations between Equilibriated States » in Lillich (ed.), *op. cit.*, pp. 352-353.

(24) GORDON, *The Cuban Nationalizations, The Demise of Foreign Private Property*, 1976, p. 94.

(25) SHIHATA, *loc. cit.*, p. 189.

Apart from this rule, any State appears free to judge *prima facie* and under its own responsibility (26) « where to draw the limits between a licit and an illicit use of economic force. I do not deem it advisable *de lege ferenda* to go beyond this point.

I therefore reject well-meaning proposals concerning the drawing of such limits (27), which often will be coupled with projects to regulate and improve the use of economic sanctions by international organizations, especially of the U.N. experience has shown, that such sanctions most often failed to achieve the desired effect. The only reasonable suggestion in this respect concerns the duty of member States economically less affected by the adoption of these measures to compensate other members for the heavier losses incurred by them when enforcing sanctions imposed by the organization (28). Such a duty appears to result already from the very fact of participating in an organization based on a spirit of solidarity between its members.

According to my opinion any attempt to restrict the sue of economic force beyond the most serious cases of intervention would be counter-productive. Larger States often consider even the prohibition of the use of armed force hardly compatible with their interests. As long as international law does not provide obligatory jurisdiction and an effective enforcement of its judgements, the prohibition of the recourse to armed force establishes a sovereign equality between stronger and weaker State only to the effect, that now also the weaker State can escape the consequences of an illegal act. At least such State no longer will have to be afraid that the stronger State will adopt armed reprisals against it (29). If stronger States would to deprived even of their means of economic retaliation, or see their use submitted to severe restrictions, I would be afraid that they would then brush aside as unrealistic any rule attempting to restrict their freedom of action and would resort even to armed force in defence of their rights. The relative freedom in the recourse to the use of economic force thus acts as a safety valve (30).

I did state these views before the Arab oil boycott and I maintain them up to the present day. Moreover, my respect for the prohibition of the use of armed force goes so far, that I reject Tucker's view (31) that an

(26) See the example given at the end of the prededing paragraph.

(27) BUCHHEIT, *loc. cit.*, p. 67.

(28) KEWENIG, *loc. cit.*, p. 28.

(29) Cf. Albania and the United Kingdom in the Corfu Channel Case, I.C.J. 9 April 1949, *I.L.R.*, 16, 155.

(30) SEIDL-HOHENVELDERN, *Völkerrecht*, 1979, p. 346, para. 1294, ID., « The Right of Economic Self-Determination », *Mélanges Dendias*, 1980, p. 985 and LINDEMEYER, « Das Handelsembargo als wirtschaftliches Zwangsmittel der staatlichen Außenpolitik », *Recht der internationalen Wirtschaft* (*R.I.W.*), 1981, p. 16.

(31) TUCKER, « Oil — The Issue of American Intervention », in Paust/Blaustein (ed.), *op. cit.*, pp. 266, 269.

illicit use of economic force which could treaten the very existence of the State concerned, would justify military reprisals. Tucker thinks of a renewed Arab oil boycott against the U.S. I will not discuss the fact, that a feasibility study ordered by the U.S. Congress came to the conclusion that such military action would not be able to ensure U.S. use of oil from the Middle East (32). If I deem such military action illegal (33), this does not mean that I am opposed to any reaction to an illegal use of economic force. However, the rules on economic warfare, if applied like they were in World War II by blacklisting ruthlessly also any neutral trading with the enemy, appear to be strong enough a riposte to compel the State concerned to abandon its illegal use of economic force (34).

As a result of the wide discretion which States enjoy under international law when using economic force, I see no illegality when States not directly concerned by the acts of a foreign State none the less apply economic force against such a State in order to show their disapproval of the acts of this State. These States certainly would not need to rely on the defence, that the act concerned had violated *jus cogens* and thus constituted an illegality *erga omnes*. I am very sceptical about the admissibility of *actio popularis* in international law (35) and a recourse to *jus cogens* would be permissible only, if the State concerned would be ready to submit this issue to obligatory adjudication (36).

If States are free to have recourse at least to a moderate use of economic force, they may do so even under the above circumstances. The rules of international law concerning an international wrong, as producing its effects merely between the wrongdoer and its victims, does not amount to *jus cogens* (37).

As far as coercive actions by the E.E.C. against third States are concerned, their legality in the Greek coup d'Etat case, in the Teheran hostages case and in the Falkland war (38) may depend on the issue, as to whether such acts by the European Economic Community adopted for toher purposes than as a retaliation for economic wrongs are not *ultra vires* in virtue of

(32) Oil Fields as Military Objectives : A Feasibility Study prepared for the Special Subcommittee on Investigations of the Committee on International Relations by the Congressional Research Service, Library of Congress, 94th Congress, 1st Session, August 21, 1975, in Paust/Blaustein (ed.), *op. cit.*, pp. 211-262.

(33) See *supra* note 30 and DICKE, *Die Intervention mit wirtschaftlichen Mitteln im Völkerrecht*, 1978, p. 153.

(34) For such an inherent right to economie self-defence also BIOORMAN III, « Economic Coercion in International Law : The Arab Oil Weapon and the Ensing Juridical Issues » in Lillich (ed.), *op. cit.*, p. 281.

(35) SEIDL-HOHENVELDERN, « Actio popularis im Völkerrecht? » *Studi in onore di Gaetano Morelli*, 1975, p. 806, contests the dicta to this effect in the Barcelon Traction case.

(36) Art. 66 of the Vienna Convention on the law of Treaties.

(37) Thus also KEWENIG, « Thesis 10 », *loc. cit.*, p. 31 and p. 87.

(38) BLECKMANN, *Zur Rechtmäßigkeit der E.G.-Sanktionen gegen Argentinien nach allgemeinem Völkerrecht und dem Recht der Europäischen Gemeinschaften*, Vorträge, Reden und Berichte aus dem Europa Institut der Universität des Saarlandes Nr. 4, 1982.

the E.E.C. Treaty. A literal interpretation would induce us to deem such acts *ultra vires* although they are in conformity with the spirit of the Treaty and certainly with the decisions of the European Council and of those taken within the framework of the European Political Cooperation. These facts by themselves would be sufficient to ensure their legality. It therefore was redundant that the European Common Market Foreign Ministers justified these measures in the Hostages case by recourse to a veto-ed resolution of the Security Council. This latter argument does not only appear to be inconvincing but constitutes moreover a precedent dangerous for the West in the long run (39).

III. — ILLEGALITY OF THE USE OF ECONOMIC FORCE UNDER THE LAW OF INTERNATIONAL ORGANIZATIONS

Although treaties establishing international organizations sometimes appear to limit recourse to the use of economic force, the relevant rules have such large escape clauses, e.g. in G.A.T.T. and in the I.M.F., that they do not indicate any more specific limitations than those existing under general international law. Let us signal however the decision of the Court of the European Communities preventing a member State from taking economic reprisals against another member State, as the E.E.C. Treaty offers other means of redress against an alleged violation of the Treaty (40).

IV. — THE USE OF ECONOMIC FORCE IN THE CONFLICT OF LAWS

When a State uses its economic force by enacting laws decreeing an embargo or vesting foreign-owned assets, such measures will produce no direct effects outside the country having enacted them. Other states will not recognize the power of the Custodian appointed by this State to dispose of assets in another State, which belong to a person subject to such vesting measures (41).

By analogy to what happens in other cases of confiscations or nationalizations (42) the foreign forum State will recognize the effects of such takings (at least where they are not violated international law) (43) in so far as the assets concerned are located within the taking State at the time of the taking and will not be ready to do so when, at that time, these

(39) REISMAN, « The legal effect of vetoed Resolutions », *A.J.I.L.*, 1980, p. 904.

(40) Court of the European Communities, Case No 232/78, *Samnlung* 1979, p. 2739.

(41) Swiss Federal Tribunal, 28 October 1948, Firma Wichert v. Wichert, ATF 74 II 224, *I.L.R.*, 1948, p. 23.

(42) SEIDL-HOHENVELDERN, *Internationales Konfiskations- und Enteignungsrecht*, 1952, p. 41.

(43) SEIDL-HOHENVELDERN, « Chilean Copper Nationalization Cases before German Courts », *A.J.I.L.*, 1975, p. 117.

assets are located outside of the taking State (Principle of territoriality) (44). As far as corporations governed by the law of the taking State are concerned, their foreign assets are not subject to seizure by the custodian. In virtue to the doctrine of severance, the rights of the shareholders remain unaffected by such measures (45), unless a treaty between the States concerned grants extra-territorial effects to such seizures (46).

Parties may try to escape the effects of legislation enacted in support of a show of economic force by placing their contract under the law of some other State. This will raise problems especially if the contract obliges one of the parties to an act illegal in the country where the act is to be performed. There are two ways to solve this problem. (*a*) The judge in the forum will use the method of special application (*rattachement*) and will apply to the contract such mandatory provisions of a law, which normally, — but for the choice of the parties — would have been applicable to relations between them. (*b*) The judge will apply merely the *lex causae* chosen by the parties, including, however, the rules of this law concerning impossibility of performance, *rebus sic stantibus*, *renegotiation* etc. The latter course appears preferable (47), as a neutral law and the public policy of the forum will have the ultimate decision rather than the partisan law of the State using its economic force (48).

Heini hopes to avoid political arguments by the presumption that no foreign law will be immoral (49) and that hence any contract obliging a party to acts contrary to such a preexisting law would be immoral under the *lex causae*. However, he, too, introduces political criteria, as he is willing to recognize contracts, whereby a party promises to facilitate the escape of a person from the German Democratic Republic (50). Political considerations likewise will inflence the outcome of cases obliging a party to break the embargo law of a foreign State. When this State is an ally, its embargo law will be respected, even if it is not the law governing the contract (51). However, a neutral country should refuse thus to participate

(44) SEIDL-HOHENVELDERN/KEGEL, « On the Territoriality Principle in Public International Law », *Hastings International and Comparative Law Review* 5, 1982, pp. 246-290 and SEIDL-HOHENVELDERN, « Völkerrechtliche Erwägungen zum französischen Verstaatlichungsgesetz van 1982 », *Volume 5 of Sschriftenreihe der Deutschen Gruppe der AAA*, 1983, p. 57.

(45) SEIDL-HOHENVELDERN, « The Impact of Public International Law on Conflict of Law Rules on Corporations », *R.C.A.D.I.*, vol. 123, 1968, I, p. 71 ss and Maltina Corporation v. Cawy Bottling Company, 462 F 2d 1021/1028, 1972.

(46) Art. 87 of the Austrian-German Property Treaty of June 15, 1957, See SEIDL-HOHENVELDERN, *The Austrian-German Arbitral Tribunal established by the Property Treaty of June* 15, 1957, p. 77 and *R.C.A.D.I.*, vol. 123, 1968, I, pp. 96-97,

(47) HEINI, *loc. cit.*, pp. 40 ff.

(48) HEINI, *ibid.*, p. 86.

(49) HEINI, *ibid.*, p. 50.

(50) HEINI, *loc. cit.*, p. 50.

(51) HEINI, *loc. cit.*, p. 51 criticizing however *ibid.*, p. 83 that this political motive was invoked in this « Borax case » by the German Federal Court, 21 December 1960, *B.G.H.Z.*, 34, pp. 169-176. See also LINDEMEYER, *R.I.W.*, 1983, pp. 22 ff.

in an act of economic warfare. Heini thus rightly criticizes the British decision *Regazzoni v. K. C. Sethia* (52), which respected an Indian embargo against South Africa. By contrast, the Swiss Federal Court ignored French measures of economic warfare. When in 1917 a Swiss company decided to go into liquidation as its French assets had been blacklisted, France had appointed a special liquidator for these French assets of the company. This French liquidator vested 47,2 % of these assets as German property and handed the rest to the Swiss liquidator « for distribution among the non-enemy shareholders ». According to the Swiss Federal Court, these assets as assets of the company, had to be distributed to all its shareholders including those of German nationality (53).

Discussion du rapport de M. Seidl-Hohenveldern sous la présidence de M. Van Hecke

Mr. MEACHUM wonders whether there is any possibility of action left, if the drawing of an economic black list fails to be effective. He equally expresses his concern about the options available to the target country, if economic countermeasures clearly cannot work.

The REPORTER draws a basic distinction between wartime and peacetime situations. In this respect he refers to the 1980 American boycott on wheat exportations to the Soviet Union. Argentina, a third country, undercut the boycott, by increasing its share on the Soviet wheat market to the extent of the American retreat. In wartime, the United States could have ordered *e.g.* that American banks withdraw their credit lines and block Argentine business activities. That would be a normal way to make an economic black list effective against an enemy. In peacetime, this seems unacceptable. Likewise, in peacetime, if economic countermeasures taken by the target country are excluded for practical reasons, a response of another kind will not be justified.

Tout en appréciant l'exactitude des éléments de fond relevé dans le rapport, M. SALMON en critique toutefois le caractère partiel et la philosophie générale. En effet, le rapport ne fait aucune allusion aux valeurs nouvelles qui, aux Nations Unies, sous-tendent le développement d'un nouvel ordre économique international. Celles-ci condamnent toute utilisation de la force y compris de la force économique, sinon au titre de l'interdiction du recours à la force du moins au titre de l'interdiction de l'intervention. De nombreux textes témoignent de cette orientation. La déclaration jointe à la convention sur le droit des traités, diverses déclarations sur

(54) 1958, *A.C.*, 301.

(53) Swiss Federal Tribunal, April 1, 1924, Weixler c. Société des Transports Internationaux, *B.G.E.*, 50 II 51, et p. 61. SEIDL-HOHENVELDERN, *R.C.A.D.I.*, vol. 123, 1968, I, p. 90.

les principes de non-intervention, la Charte sur les droits et les devoirs économiques des Etats, etc...

Se référant à l'exemple cité par le rapporteur au sujet de la fourniture de diamants en provenance de la Namibie, M. SALMON y voit un contentieux relatif au droit de propriété (revendication) plutôt que l'illustration de l'efficacité d'un moyen de pression économique. Le RAPPORTEUR admet cette qualification, mais il souligne que la pression économique constitue bien le but poursuivi dans le cas cité.

Le RAPPORTEUR ne nie point l'émergence de valeurs nouvelles mais il doute qu'elles aient à ce jour suffi pour engendrer des règles juridiques. Ainsi observe-t-on que le principe de l'interdiction de la contrainte économique lors de la conclusion des traités figure, non dans le corps de la Convention de Vienne comme l'auraient souhaité les représentants de pays du tiers-monde, mais dans une simple déclaration annexe. Par ailleurs, il est un fait que toute mesure de pression économique doit passer par un autorisation du Conseil de Sécurité. Enfin, on peut affirmer le principe de l'égalité des Etats tout en avançant le correctif de l'inégalité compensatrice au sens entendu par M. Virally.