Memorandum III

The Concept of Sanctions

and Their General Application and Use.

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I. CONCEPT OF SANCTIONS

A consideration of the possible use of sanctions requires a clear understanding of the concept of sanctions, because the use of sanctions entails certain legal or possibly moral conclusions or judgments.

General Concept. According to the Shorter Oxford English Dictionary, a sanction is defined as "the specific penalty enacted in order to secure obedience to a law." In a domestic legal sense,

"sanctions can take the form of the infliction of penalties for a breach of law that has been committed, or they may consist in measures taken for the actual prevention of a threatened breach. Sanctions operate in two ways: negatively, in that the knowledge of the will and power to apply them may deter a would-be wrongdoer from transgressing the law; positively, in that their application checks a wrongdoer in the act of transgression or compels him, after a transgression has been committed, to submit to the law and deprives him of the fruits of his transgression." (Sanctions, Information Department Papers, No. 17, London: The Royal Institute of International Affairs, September, 1935, p. 5.)

In the national sphere, as opposed to the international sphere, sanctions involve penalties and usually some sense of force. As Hans Kelsen has explained,

"sanctions have the character of forcible deprivation of certain possessions, such as life, freedom, economic or other values. They are coercive in so far as they are to be taken even against the will of the subject to whom they are applied, if necessary by the employment of force. This is the way in which the law protects life, freedom, economic and other interests against delicts. Hence sanctions are forcible interference in the sphere of interests normally protected by the law. They are legal sanctions if they shall be applied only on the condition that a delict (wrong, illegal act) has been committed or, what amounts to the same, that an obligation established by the law has been disregarded, and only against the delinquent or individuals who are in a legally determined relationship to the delinquent, that is to the one who by his own behavior has committed the delict. Sanctions are the specific reactions of the community constituted by the legal order, against delicts."
The fundamental legal concepts: delict obligation, and responsibility are corollaries of the concept of sanction. A certain behavior is delict if it is the condition of a sanction. A certain behavior is the contents of a legal obligation if contrary behavior is the condition of a sanction and as such a delict...If the sanction is directed against the individuals who belong to the same community -- family, tribe, or state -- as the delinquent, collective responsibility is established." (Hans Kelsen, "Sanctions in International Law under the Charter of the United Nations," 31 Iowa Law Review, p. 499.)

In this sense sanctions are "organized ... or positive action which a community has authorized in a particular situation for the purpose of inducing its members to observe the law to which they are bound as members of that community." (Quincy Wright, A Study of War, Chicago: University of Chicago Press, 1942, Vol. I, p. 939). It is the very essence of law that sanctions are collective and "that they are accepted by the community as a necessary element of law to ensure its enforcement and are applied with and by the general authority and not by the individual. It is these conditions that render possible the reign of law in the national sphere." (Sanctions, op. cit., p. 6) While it is true that there is a danger in pressing a close analogy between the formalized concept of sanctions which is prevalent in domestic law, the concept of collective action by the community against a delinquent may be transferable to the international scene.

Concept in the International Arena. In a general sense the concept of sanctions in international affairs has a special meaning--it has come to mean non-violent action taken by nations against a nation which has broken its pledges. The concept of sanctions as applied in international affairs and international law has evolved as the sophistication of the affairs between nations have developed. In its earlier and more traditional sense in international law, sanctions initially were conceived in the sense of measures short of war which one nation might take in attempting to enforce
obedience to obligations ignored by another state.

"In the earlier texts of international law it was customary to insert a few pages, as a sort of bridge between the law of peace and the law of war, descriptive of the methods by which coercion could be applied. These methods were treated not so much as sanctions as preliminaries of war, or as means of retaliation or of self-help. They were usually divided into amicable and non-amicable methods. Under the former were placed good offices, mediation, arbitrations, and the like; under the latter, retaliation, reprisals, 'pacific blockade' and others. These methods shaded off gradually into the final recourse, the ultima ratio, war itself. All of them, including war itself, could be used at any time, without illegality; and there was no judge to say when one of them was employed by a state against another state, whether it was for the legitimate maintenance of right or for a less worthy purpose...Until international society was organized upon a basis of collective responsibility, a nation could protect its rights only through its own efforts. These efforts might or might not extend so far as the technical status known as war. Short of war, there were a number of possibilities. The first step would usually be the breaking off of diplomatic relations. This could be followed by various other pressures such as retaliation, reprisals, embargo, blockade, or even forcible intervention in, or invasion of, the offending state." (Clyde Eagleton, International Government, N.Y.: Ronald Press, 3rd edition, 1957, pp. 48-49.)

Thus the concept of sanctions as developed in international law initially, at least, differs from the concept in domestic law because of an absence of a Corpus Juris of international law comparable to national codes of law. In the absence of a codified international law no international courts exist which have jurisdictions over all kinds of disputes or transgressions. Further there is "no permanent, impartial and international police force to suppress disorder, prevent law-breaking, and compel submission and obedience to law." (Sanctions, op. cit., p. 6.) Traditional international law, and international affairs prior to the League of Nations and the U.N., did not really evolve a concept of sanctions in a collective sense of the community. Traditional international law really involves a concept of self-help which in the absence of codified international law has
largely to rest on moral arguments. As Hans Kelsen has stated, general international law is decentralized, and there is no way therefore to determine whether a delict has been committed which would require a sanction against a delinquent state. (Kelsen, op. cit., p. 501.) This situation led President Taft of the United States to state in 1911 that:

"International law has no sanction except in the conscience of nations, and nations have not anywhere near the conscience that individuals have . . . yet either the utilitarian spirit, or perhaps a real conscience in all nations, has ultimately brought about a sanction for what we call international law, without any power to enforce it, but simply from the general public opinion of all peoples of the world. Begun by individuals, reasoned from their own consciences and from their own sense of justice, without any power to enforce their opinion, and finally but reluctantly adopted by nations by common consent, the history of the growth of international law may well command our admiration, our wonder, and our hope for a growth in the scope and sanctions of such law in the future that should make us all optimists." (quoted in Green H. Hackworth, Digest of International Law, Washington: G.P.O., 1945, Vol. I, pp. 13-14.)

In the applications of sanctions, individually or collectively, it might be argued that in the absence of an established code of international law, sanctions are possible and proper if they represent the moral conscience accepted by the international community.

Concept of Collective Sanctions. "The essence of sanctions, national or international, is that they should be collective in their acceptance and in their application." ("Collective Sanctions; An analysis of their application", Manchester Guardian, 3 Oct. 1935.) The establishment of the League of Nations and later the U.N. placed not only the law of nations on a firmer basis but also the possibility of the use of sanctions, if necessary, on a firmer basis.

"Two principles were established: first, the observance of the body of rules, generally accepted amongst civilized nations, termed 'international law' whether resulting from international engagements such as treaties or otherwise; secondly, the agreement that disputes between nations, whatever their nature may be, shall be settled by pacific means, that is to say by agreement between the parties to the dispute or by some judicial process, and in no circumstances by war." (Sanctions, op. cit., pp. 6-7.)

In other words, it can be argued that the Covenant of the League of Nations and the Charter of the U.N., apart from other treaty obligations, laid down principles of relationships which contribute to a considerable degree to establishing a sense of the will of the community of states. This fact is especially significant considering the decentralized character of general international law. The degree to which decisions in conformity with these "constitutional" documents reflect the will of the international community depends upon not only the extent to which the membership is universal but also the extent to which the decisions approach unanimity. At the present time when the membership of the U.N. approaches universality, a decision by near unanimity might well be
argued as reflecting collective acceptance of the international community. In such a situation the application of sanctions might, even in the absence of established general international law, give a closer approximation to the situation prevailing in domestic law with comprehensive national codes. In addition, the creation of the League of Nations and the U.N. also established the possibility of machinery for evoking collective sanctions.

**League Concept of Sanctions.** The Covenant of the League of Nations (as well as the Charter of the U.N. which will be considered subsequently) not only gives a legal basis for the possible application of sanctions but also lays down principles obligating the conduct of members. The Covenant went further than a mere statement of principles. It contained provisions with alternate methods for:

1. The peaceful settlement of disputes (Articles 11, 12, 13, 14, 15);
2. Precautionary measures in case of danger or threat of danger (Art. 10 and 11);
3. Sanctions against a wrongdoer, potential or actual (Art. 10, 11, 13, 15);
4. Reconsideration of treaties which have become inapplicable and the consideration of international conditions which might endanger peace by their continuation in force (Art. 19).

Together these Articles of the Covenant provided a general framework for expression of the will of the international community—the collective acceptance of principles backed by the possibility of collective sanctions.

Without going into a detailed explanation of the concept of collective sanctions under the League system, several points under this system might be noted that have relevance to the consideration of possible sanctions under the Charter of the U.N. (A detailed examination of the League concept can be found in International Sanctions—A Report by a Group of Members of the Royal Institute of International Affairs, London, Oxford University Press, 1938). The legal basis for the applications of sanctions was provided in Article 16 of the League Covenant. Article 16 was the principal sanctions article, and the only article that specified definite measures to be applied, although articles 10, 11, 13, and 15 all enabled the League Council to make recommendations. Article 11, in particular, was interpreted to allow any action to be taken short of military action to prevent war from beginning. Under the League each state had the right of deciding itself before applying the prescribed measures whether a breach of the Covenant had taken place—whether the specific conditions upon which its obligations depend had been fulfilled. In essence individual determination to implement was necessitated because of the lack of Corpus Juris of international law. The possible methods of applying sanctions under Article 16 were exhaustively analyzed by the International Blockade Committee of the League in 1921. The League Assembly adopted resolutions proposed by this Committee as rules of guidance. These resolutions considered Article 16 as "essentially economic in character" and the fourth resolution adopted in October 1921, stated:

"It is the duty of each Member of the League to decide for itself whether a breach of the Covenant had been committed. The fulfillment of their duties under Article 16 is required from Members of the League by the express terms of the Covenant, and they cannot neglect them without a breach of their Treaty obligations."

A decision to apply sanctions was individual, but the action in applying sanctions had to be collective. The Council was the organ to draw up a joint plan, but it could only recommend the actions to be taken. Resolution 9 stated that it might be necessary to recommend special measures by certain states and to postpone action by other states. The resolutions envisaged a gradual build up of
sanction action; first, the breaking off of diplomatic relations and, only as a last resort, the cutting off of food supplies from the offending state. Resolution 18 suggested that it might be advisable to entrust to certain Members the blockade of a Covenant-breaking state. It was also felt by the League resolutions that under Article 11 the Council could prepare its recommendations before "resort to war."

In summary, the League concept of sanctions provided for the possibility of collective sanctions not only for violation of treaty obligations but for violations under the Covenant. And plans for collective sanctions were to be made by the League Council, but it could only recommend collective application while each Member had the right to make its individual decision as to whether it should follow the recommendation. This latter point, an inherent weakness in a system of sovereign states, is basically at odds with the concept of sanctions in domestic law.

United Nations Concept of Sanctions. In concept, at least, the Charter of the U.N. provides considerable advance over the League Covenant. In the U.N. system the Security Council has more definite authority within its limited field of action and its decisions are in principle more binding upon Members than was true in the case of the League Council. Under Article 24, the Security Council has "primary responsibility" for the maintenance of international peace and security. The Security Council role is not exclusive, because it is possible (under Articles 10, 11, and 12 and under the Uniting for Peace Resolution 377-V) for the General Assembly to assume the role should the Security Council fail. The only limitation on the Security Council is that it should "act in accordance with the Purposes and Principles of the United Nations" (Art. 24, paragraph 2). Because there is no central body charged with interpretation of the Charter it is presumably possible for each individual Member to decide whether the Security Council is legally proper in its actions. Any decision, as opposed to recommendation, by the Security Council is binding on the Members according to Article 25 of the Charter. Based on the documents of the San Francisco Conference, it would appear that the Security Council makes decisions when it takes action under Articles 33/1, 39, 41, 45, 47/1, 52/1, and 53/1, while action under Articles 33/1, 36/2, 37/2, 38 and 40 constitute recommendations to which Members are not specifically obligated to follow the Security Council. All actions by the General Assembly are recommendations.

In theory, also, the concept of sanctions in the Charter goes beyond that of the League. The Charter, as indicated above, puts an obligation upon the Members to contribute armed forces and other assistance to the U.N. in a disturbance of the peace when the Security Council so decides. Any obligation that existed in the League was confined to economic sanctions.

"A decision by the Security Council . . . calls for immediate obedience and response by all Members, or by some of them as the Security Council may determine (Article 48); they are bound also to afford mutual assistance (Article 49), a phrase the meaning of which has not been developed." (Eagleton, op. cit. pp. 523-4.)

In many respects the key article for sanction possibilities under the U.N. Charter lies in Article 39, which provides that "the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression . . . " Once such a decision has been made, it is then possible for the Security Council to recommend "provisional measures" under Article 40, or to decide (with ensuing obligation) what measures short of the use of armed force are to "be employed to give effect to its decisions" (Article 41). These measures "may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the
severance of diplomatic relations" (Article 41). Should these collective sanctions fail, it is possible to take any and all types of military action under Article 42. The organization of military action in theory is to be possible through the implementation of arrangements under Article 43 or, pending the implementation of these prior agreements, under Article 106.

In addition to this comprehensive system of possible sanctions in Article 41 and 43, which are possible after the Security Council makes a decision as to a threat to the peace, breach of the peace, or act of aggression under Article 39, the Charter also provides a variety of other possible sanctions in the Charter. Under Article 5, the General Assembly, upon recommendation of the Security Council, may suspend a Member, and with similar procedure a Member may be expelled under Article 6 if it has persistently violated the principles of the Charter. Article 19 provides a sanction possibility against Members which are behind in their contributions to the budget. Article 102 provides a sanction in a sense in the case of any treaties that are not registered with the U.N.

The obligations of the Charter upon the behavior of its Members are clearly set out in the Charter, not only in Article 25 in the case of decisions of the Security Council, but in other Articles as well. Paragraphs 2, 3, and 4 of Article 2 prescribe proper procedures by Members, and paragraph 5 of the same Article obligates Members to give "every assistance in any action taken in accord with the present Charter." Presumably, any action recommended by the General Assembly, including recommendations for sanctions in the case of a Security Council deadlock, carry an obligation under the provision of Article 2/5. While it may be more questionable in terms of general international law, Article 2/6 implies that non-Members are obligated to act in accord with the Charter.

It should also be noted that decisions by the Security Council do not require unanimity, but a majority of seven including the five permanent Members of the Council (Article 27). In theory, then, it is conceivable possible that these seven Members might well obligate the total membership to enact sanctions. Any recommendations by the General Assembly in reference to sanctions require a two-thirds majority of the Members present and voting (Article 16). While this may be conceived an advance over the unanimity requirements of the League, the general concept of sanctions implies the necessity of getting a near unanimity decision or recommendation. The flexibility of using either the Security Council or the General Assembly to recommend sanctions is a definite advantage in that action is not precluded if one or two Members disagree with such a recommendation. Both in practice and theory it is important to the concept of obligation in enforcing sanctions that any recommendation be made by near unanimity. (This point is discussed in more detail subsequently).

Finally, the increasing membership in the U.N. approaching near universality means that the principles of the Charter have on an almost universal acceptance and therefore come close to the concept of community will inherent in the use of sanctions in domestic law. In this sense the Charter, which is after all a treaty, contributes a great deal towards providing some degree of the centralized necessity of law in international affairs.

Political Concept of Sanctions. Living in a world characterized by separate sovereign states, decentralized international law, and no single universal government of mankind, it would be dangerous to consider the possibilities of sanctions only on the basis of legal theory or constitutional interpretation of the Covenant or the Charter. It is true that law is the result of political compromises and therefore political decisions by an overwhelming majority may involve legal obligations. It is also apparent, however, that political decisions in the U.N. based as they are on the basis of one vote per sovereign state, do not necessarily
represent the majority of the population of the world. Law and binding obligations result from political compromises which represent not only the majority of the population, but also the majority capable of enforcing this community will. It is conceivable that an overwhelming vote of sovereign states in the U.N. might not necessarily represent the actual majority of the world's population capable of enforcing sanctions. In this sense the Charter is a politically sophisticated document, providing as it does that decisions in the Security Council must include the nations capable of enforcing them. No discussion or consideration of sanctions in the present system of states can be realistic unless it includes an awareness of the politics of sanctions. While arguments for sanctions can be based on moral or legal rights, any collective sanctions must reflect the "political facts of life."

Representing, as it does, the major military powers of the world, the Security Council is the logical organ of the U.N. to impose sanctions. If the Security Council decided there is a threat to the peace, breach of the peace, or act of aggression (Article 39) that warrants sanctions, the possibility of imposing them is almost assured, because such a decision would include the affirmative votes of the United States and the Soviet Union. If, however, one of the major powers disagrees with the proposed action, any system of sanctions recommended by the General Assembly might well be doomed to failure. Sanctions to be successful must be collective and nearly universal in their acceptance and in their application. If they are not, their moral or legal justification may be thrust in doubt and their chances of achieving a desired action may be jeopardized. Sanctions in the sense of denunciation by a majority may be feasible to proclaim; but lacking a near universal support, they may result in little other than a platitude of declaration. A decision to secure sanctions in the General Assembly, rather than the Security Council, based upon the possibility of gaining a two-thirds majority may be unrealistic if the objecting members by their reluctance and non-adherence can defeat the effect of the sanction attempt. The objecting Members in such a situation can always claim the action was not in conformity with the Purposes and Principles of the Charter. Sanctions to be truly successful need to represent the entire international community and they need to be applied simultaneously if they are to be effective. The frustration of an attempt at sanctions can have severe damaging effects on attempting to centralize international obligations.

Sanctions involve considerable prior planning and considerable coordination. The Reports of the Collective Measures Committee to the Sixth and Seventh Sessions of the U.N. General Assembly discuss in considerable detail the necessity of examining the resources and domestic legislation needed so as to be able to take the legal and administrative steps which might be necessary to participate in sanction proposals. A decision on an economic embargo may well require domestic legislation before it can become effective. The necessity of separate domestic legislation or administrative steps in 70 or 80 states may well delay immediate implementation of sanction recommendations and a loss of the psychological public opinion atmosphere created in the passing of a sanctions resolution. The simple suggestion of the Collective Measures Committee that Members of the U.N. "make ready and amend their laws" met with considerable opposition in the General Assembly. The reaction was typified by the attack of Mexico which "regarded the amendment of its laws as a sovereign right not liable to subordination or compromise of any sort." (UN. GAOR, Sixth Session, First Committee, p. 141) It is true that the immediacy of the situations in Korea and Suez evoked immediate response, but if such were possible the lesson may well be that immediate response depends upon a universal awareness of the impending crisis, irrespective of whether it was formally acknowledged a threat to the peace, breach of the peace, or act of aggression.

As in the domestic scene, sanctions on the international one are not steps easily taken. Lacking central organizing authority, sanctions in the international
arena are difficult to impose. The experience in the use of sanctions, or in the request for their use, points very clearly to the political problems involved.

II. APPLICATION OF SANCTIONS

Traditional law provides only for self-help measures by an individual state to attempt to get another state to live up to its obligations. The creation of the League of Nations and the U.N. made it possible for the membership to have the machinery to determine an illegality and to decide upon the means of coercion that might be used by the community against the delinquent member. Such action is not an irresponsible act by a single state but the action of community of states. As the U.N. approaches universal membership, its action in the case of sanctions represents the international community to the greatest degree. In this sense these sanctions are collective in acceptance and collective in their application.

As has been indicated previously, both the League and the U.N. make collective sanctions really possible only in the case of a breach of the peace and not necessarily against any other violation of international law. Any consideration of the possibilities of proposing collective sanctions, through the U.N. against a delinquent member, such as the Union of South Africa, must reflect the experiences of the League and the U.N. in responding to requests for collective sanctions and their imposition.

Collective Sanctions and the Practices of the League. As was noted in the discussion on the concept of sanctions in the League of Nations, the community could plan and call for sanctions but it was left to individual members to determine if the Covenant had been violated and if they would adhere to the plan for sanctions. In the period from 1920 to 1939, the possibility of sanctions was raised in at least 30 situations, including the Enzeli dispute between Persia and the Soviet Union, the Grand Chaco War, the Manchurian Incident, the Ethiopian Affair, the occupation of the Rhineland, and the Russo-Finnish War. In only three instances were collective sanctions planned and requested, all with discouraging results. Following the Manchurian Incident and the subsequent establishment of the regime of Manchukuo, there was a request for non-recognition of this new state which received mixed adherence. In the case of the Grand Chaco conflict, a partial arms embargo was attempted against Paraguay, but the solution to the issue was "peace by exhaustion" in the face of weak support of the embargo. Only in the case of the invasion of Ethiopia was there a clear attempt to provide collective sanctions against Italy. It is true of course that moral sanctions in the sense of resolutions denouncing a particular action were applied in many instances in the League, but they did not directly alter the disputes.

Economic sanctions were invoked against Italy in the invasion of Ethiopia, but the reluctance of some Members—including some of the major powers—as well as the fact that the League membership did not include all the significant states, resulted in a dismal failure to use this weapon of economic sanctions.

"The potentialities of the economic weapon are enormous in this interdependent world, and enough to daunt any aggressor if they could be properly concentrated against him; but their application is very difficult. There is required detailed knowledge of the economic needs of the aggressor, and also of each prosecuting Member in its economic relation to him. If any important state fails to join in, the aggressor may be able to supply his needs from this state. Universal action is called for. In each application, the burden will fall unequally upon various Members, and arrangements must be made for equalizing this burden, which in some cases might be dangerously heavy. Similarly, within each state the
burden would fall unequally upon individuals -- upon oil dealers in the case of Italy, upon silk dealers in the case of Japan -- which would require equalization within each state. Finally, certain states might be attacked by the aggressor if they engaged in economic measures against him; the Italo-Ethiopian affair made it clear that economic measures cannot be effective unless backed by sufficient military force."

(Eagleton, Op. Cit., p. 482)

Following the results in the Italian-Ethiopian affair, the League recognized its failure to give protection to a state that was entitled to it under the Covenant when the League Assembly withdrew sanctions in July 1936. Then there followed soul-searching through the creation of a Special Committee Set Up to Study the Application of the Principles of the Covenant. Thirty-one out of the 53 members failed to express any opinions on sanctions in the Committee’s considerations, and the work of the Committee reflected the reluctance of the membership to embark on any revitalization of the possibilities of collective sanctions.

The discouraging experience of the League of Nations in attempting to impose collective sanctions led Quincy Wright (Study of War, Vol. I, pp. 1071-4) to make the following general conclusions:

"The problem of sanctions against the state is entirely different from the problem of sanctions against the individual, because many of the states are so large and powerful that the application of sanctions may closely resemble war. The results are uncertain, and the economic and political structure may be so affected that innocent states may suffer as much or more than the guilty. Furthermore, there are usually many parties within the guilty state. Only one of these may have supported the government in aggression, yet sanctions would usually affect the innocent in the state as well as the guilty. There is a certain moral revulsion in public opinion against such actions. Finally the family of nations is not as yet sufficiently organized to make it certain that the sanctioning powers would act together.

"...the procedure of coercive sanctions against the states as such has not been effective. Through most of its history the League relied mainly upon moral sanctions. They were effective in some cases but not in all. It cannot be said that the value of such sanctions was completely tested because all the states of the world were never members of the League, and a moral sanction if it is to be effective, must be immediate and unanimous. Physical sanctions will not operate unless there is moral solidarity among those who must apply them. If that moral solidarity had existed, adequate methods might have been devised, even if they had not been elaborated beforehand. Improvisation of sanctions might not, however, inspire sufficient confidence.

"A more adequate coordination of moral and physical sanctions might be devised if it were recognized that in theory physical sanctions can never be against a state which is merely a legal construction of international law, incapable in itself of transcending that law. If a state appears to have violated world-law, it is because it has been betrayed by its government, which, misled by elements in its public opinion, has performed acts beyond the state’s competence. With this theory, sanctions should begin with an analysis of public opinion within the population subject to the accused government. This should be followed by efforts to encourage those groups opposed to the wrongful action of the government and to discourage those favoring it, with the object of inducing the government to change its policy or to retire. Economic
embargoes or even military action might be expedient.

"The idea of legal sovereignty, however useful it may be in juristic analysis and in international civil litigation would, under this theory, have no place in the application of sanctions against aggression. Political sovereignty values the unity of the state's population and the solidarity of that population with the government above respect for the limits which international law sets to the state's competence. It therefore contradicts the very idea of international sanctions. Opportunity of the agents of the world-community to propagandize in favor of international law within the member-states is the essence of effective sanctions."

Practices of the United Nations. The significant change in the procedure and practice of the U.N. over the League lies in the fact that, if the Security Council makes a decision under Article 39 that there is a threat to the peace, breach of the peace, or act of aggression and then recommends some type of sanction, all Members of the U.N. are obligated to carry out the action. Should the General Assembly concern itself with the possibility of sanctions either on its own or because of a deadlock in the Council, it can only recommend sanctions and the Members are not necessarily obligated to implement the recommendations collectively, but each has to decide voluntarily to carry out the recommendations. In the case of such action by the General Assembly the problems that were inherent in the League experience are applicable because the procedure and requirements are the same. Of course, the General Assembly can make sanctions recommendations without making a determination under Article 39, but it also lacks the ability to obligate the members to the collective action. While the Uniting for Peace Resolution of the Assembly has made it possible for the General Assembly to employ collective measures, it still cannot compel members to do so.

In the 15-year history of the U.N., the Security Council has not taken lightly its grave responsibilities under Article 39. Although it has been requested in most serious disputes to make a determination of a threat to the peace, breach of the peace, or act of aggression, it has been reluctant to do so. Only in two instances -- Palestine and Korea -- has the Council made the determination required under Article 39. A decision under Article 39 has been vetoed in a number of instances, notably in the Greek question and in the Middle East crisis of 1956. It is likely that, had all the permanent members of the Council been present at the time of the decision on Korea, this too might have been vetoed. In the second Indonesian case, the Council delicately avoided making a determination under Article 39, feeling it would aggravate the situation but in essence took action under the concept of provisional measures in Article 40. Article 40 was also invoked specifically in the Palestine and Korean questions, but in the case of Korea the Security Council in essence called for voluntary assistance to South Korea invoking the procedures in Articles 41 and 42 for collective measures. The practice of the Security Council from the first Iranian question to the situation in the Congo suggests that it is a rare instance in which the political situation will allow agreement on making a determination under Article 39. While it is true that without reference to specific articles of the Charter, the Security Council has proposed sanctions of one variety or another, these must be considered not decisions with an ensuing obligation, but recommendations which leave the decision to each Member individually. A deadlock in the Security Council, or the possibility of such a deadlock, which has brought a dispute or situation to the General Assembly may result in sanctions, but adherence to such recommendations are voluntary. The General Assembly in recommending a withdrawal of ambassadors in Spain, organizing the U.N. effort in assistance to South Korea, establishing the UNEF in the 1956 Middle East crisis—all depended upon voluntary adherence to the recommended actions. The failure in many years of negotiation to implement Article 43 to establish prior committed forces was overcome in the Korean situation by the organization of the concept of a Unified Command by the Security Council. The agreement of the major powers in
the Palestine case and the second Indonesian case assured the compliance of the requested provisional measures. Even in the Congo situation the voluntary aspect of the recommendations of the Security Council are apparent.

The history of the U.N. efforts for collective action emphasizes, as did the League experience, the necessity for unity of purpose among the great powers. The adoption of the Uniting for Peace Resolution was clear recognition that in the absence of such unity some way had to be found to deal with threatening situations. Although this development means that a deadlocked Security Council cannot prevent the U.N. from taking collective measures, it does not mean that such collective measures will be successful. To be successful, sanctions require common acceptance and common application especially of the major powers.

Apart from the experience in the U.N. in establishing collective measures or collective sanctions, the U.N. General Assembly in the Uniting for Peace resolution established a Collective Measures Committee to study the complicated problems involved in any process of applying sanctions. No consideration of the possibility of sanctions can be realistic without a detailed study of the reports of this Committee to the General Assembly.

II. POSSIBLE USE OF SANCTIONS

Using the first report of the Collective Measures Committee (UNGAQRs, VI, Supplement No. 13 -Doc. A/1891) as a guidepost, this section will outline possible sanctions. Generally sanctions fall into three categories: political measures, economic and financial measures, and military measures. Primary emphasis will be given to political measures and economic and financial measures.

Political measures. Possible political measures that might be undertaken would be

1. Appeals to parties, such as,
   a) Appeals to settle their dispute by peaceful means;
   b) Appeals to settle their dispute by a specific method;
   c) Appeals to refrain or desist from activities in violation of the Charter leading to a threat to the Peace;
   d) Appeals to comply with specific provisional measures in the case of a threat to the peace, breach of the peace, or act of aggression. (Comment: Technically and legally, such an appeal would have to wait upon the political possibilities of a Security Council determination under Article 39, which is very unlikely.)

2. Determination and denunciation of the responsible party or parties, in the case of a threat to the peace, breach of the peace, or act of aggression. (Comment: Such action, either by the Security Council or the General Assembly, even if not followed by other collective sanctions, could clearly constitute a strong warning. It would depend upon the degree to which the conclusion represented not simply a unanimity of the membership, but a unanimity of the major political powers.)

3. Collective diplomatic representations. (Comment: Collective diplomatic representations in support of appeals by the Security Council or the General Assembly are a possibility. Their effectiveness depends upon the degree to which they represent the totality of the international community.)
4. Severance of diplomatic relations and other measures affecting diplomatic intercourse, such as withdrawing, or requiring the offending State to withdraw:
   a) Heads of diplomatic missions;
   b) Diplomatic missions;
   c) Trade agencies;
   d) Consulates.

   (Comment: Such action may be complete or partial. It might also be gradual, beginning, for instance, with the withdrawal of heads of missions only. Here again, the degree to which Members would follow such recommendations by the General Assembly or the Security Council would determine the effectiveness. Of course, if the Security Council took this action under Article 41 after a decision under Article 39, all members would be obligated to follow the decision. Reluctance to go beyond withdrawal of the heads of missions would be considerable because it would lead to considerable complications not only in terms of diplomatic intercourse, but also in terms of the movements of nationals abroad and trade relationships which would exert pressures on national governments implementing such an action. However, in most countries, such action would not require action by national legislatures and would probably be speedily implemented if the governments agreed with the proposal.)

5. Suspension from the exercise of the rights and privileges of membership in:
   a) United Nations;
   b) Specialized agencies.

6. Expulsion from:
   a) United Nations;
   b) Specialized agencies.

   (Comment: This is an action, which if the proper majorities are agreed, can be taken with a minimum of complications.)

Economic and financial measures. Possible economic and financial sanctions that might be considered include:

1. Embargo on exports to the offending country:

   (Comment: Embargoes on exports to a country could be recommended by the General Assembly, or with a greater degree of obligation by the Security Council acting under Article 41. The imposition of an embargo, regardless of the type, requires considerable prior planning and coordination. In most instances, governments may need prior authorization from their legislative organs before the executive would have authority to implement any decision of the Security Council or recommendation of the General Assembly. The imposition of an embargo on exports to an offending nation is no simple matter, but requires a number of actions by each member of the United Nations: (a) Each State would have to apply the embargo if it were to be successful; (b) Each state would have to enact controls to give effect to the embargo; (c) Each state would have to organize, and possibly enact, all the means within its jurisdiction to prevent the circumvention of the controls applied by other states; (d) States would have to cooperate at every stage in the imposition in carrying out the purposes of the embargo; (e) In order to help ensure an effective implementation of the embargo, a U.N. body would be necessary to coordinate, receive reports on steps taken, and evaluate the effectiveness of the measures taken. In addition to all these procedural and organizational details that would have to
be worked out in attempting to impose an embargo, it must be recognized that there are many other problems involved. An embargo imposes a burden on certain states greater than others. The possibility of an embargo also needs to consider the character of the trade. Will the individuals and groups in this trade in a particular state constitute an effective pressure group against governmental action to implement such a sanction resolution? If certain countries are unable to participate in the embargo, it may prove ineffective. Here the experience of the League is very relevant. In many countries governments may not have direct control over transactions of trade; even though the government agreed, there could develop many loopholes which would defeat the purposes of an embargo. If a government is forced in attempting to support the sanctions proposal, to enact domestic controls, it may be a time-consuming process which would lead to legislative bickering that would deflect from the psychological impact of the sanctions resolution in the U.N. These and many other complications are discussed in greater detail in the Reports of the Collective Measures Committee (previously cited). This discussion applies to types of embargoes both on exports and on imports.)

a. Total embargo on exports.

(Comments: This type of embargo may be the simplest to apply, but it needs a real crisis situation, almost an act of aggression to justify it.)

b. Selective embargo on exports.

1). Arms embargo;
2). Embargo on other exports.

(Comments: A selective embargo on exports may attempt to get at crucial exports to a nation which could be effective in making its government willing to negotiate on actions it might take. A selective embargo magnifies the difficulties of imposition, because it is a complicated procedure, one which to be successful cannot have any loopholes. It requires almost total participation by all members. It also generally requires very difficult domestic steps to enact it, because of the necessity of justifying controls against a particular segment of a community that may be involved in trade in the selected export.)

2. Severance of Financial Relations:

a. Selective prohibitions;

b. Total prohibitions.

(Comment: While the severance of financial relations has the same general objectives as the more direct method of cutting off supplies, it raises some special problems. In some respects at least, a partial severance of financial relations would be involved in any considerable system of prohibition of exports and imports, if only as a means of making such prohibitions effective. Broadly speaking, action in this field would include the withholding of loans and credits, the suspension of payments to the offending country, the sterilization of gold resources, and the blocking of external assets. Financial measures may in certain instances be used alone as a means of restraint; or they may be developed as a necessary and useful means of reinforcing other measures.)

3. Severance of transport and communications.

(Comment: Effective application of action in this area depends largely upon national controls, and especially upon a conforming participation of all members if it is to be effective.)
Military Measures. Certainly in any situation, it is possible for military action if the majority of the U.N. agrees. However, the crisis nature of a situation would have to be demonstrated. Because of the U.N. military experience in Korea, organizing the UNEF in the Suez crisis, and the Congo Emergency Force, this paper will not discuss possible military sanctions.

IV. CONCLUSIONS

Without attempting to discuss the wisdom of using sanctions, several points need to be reemphasized as relevant to any consideration of sanctions. To be effective, sanctions must have common acceptance and common application. They must be agreed upon by the largest majority, and they must be applied by the largest possible majority. Their degree of success will depend upon the degree to which the majority constitute the total international community. If a near unanimous majority does not prevail, any sanctions would be questioned as to their moral and legal grounds of justification. If all countries are not agreed on the necessities of the problem demanding sanctions, there is every likelihood that any sanctions forced through with a minimum majority will fail because loopholes are present. Even if an overwhelming majority of members agree on sanctions, there is still a major problem in imposing economic sanctions which would require national steps to become operative. Any delay in imposing sanctions provides an opportunity to reargue the moral and legal justifications and helps defeat the psychological impact of agreeing upon sanctions. Any consideration of economic sanctions requires careful planning to ensure the maximum of cooperation and coordination to maintain maximum participation. These problems of planning and coordination are not simple; but involved, complicated, and full of loopholes. Sanctions have to have common acceptance and common application; otherwise their force as sanctions are lost.