

Investment Interdependence as a Potential Response by the United States to Future Arab Oil Embargoes*

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Introduction

Despite the optimism regarding the Egyptian-Israeli agreements at the 1978 Camp David Summit, the United States should allow for the possibility that there will be another Middle East war within the next few years.¹ Along with such a war, or perhaps even without a war *per se*, there will probably be another Arab oil embargo.² The United States needs to recognize these facts and the urgency of instituting effective diplomatic initiatives not only to avoid but also to mitigate future Middle East crises.³

To support any policy moves against future oil embargoes, the government should consider adopting, as its official policy, the following positions: (1) that oil is such a vital commodity that it should be categorized apart from other commodities under international norms; and (2) that an oil embargo is an ultra-coercive form of economic aggression which constitutes 'force' under Article 2(4) and 'aggression' under Article 39 of the U.N. Charter.⁴ Accordingly, this article will demonstrate why the United States should adopt the policy that in a situation involving an oil embargo, coerced countries are justified in using self-defence under Article 51 of the U.N. Charter.⁵ By taking these positions now, the United States can initiate, build, and strengthen both the patterns of authority and the patterns of compliance essential to their acceptance as international principles.

This article will also demonstrate several other important points. First, the United States needs to achieve at least partial energy independence so

* This article was prepared prior to the hostage-taking in Iran and the Soviet intervention in Afghanistan, and reflects the author's views as of mid-1979.

1. See Anderson, 'Carter Orders Secret Oil Study', *Atlanta Constitution* 21 Oct 1977 [hereinafter cited as 'Oil Study'].
2. See 'A Saudi Squeeze on Oil for the 1980s', *Business Week* 27 Feb 1978 [hereinafter cited as 'Oil Squeeze']; Anderson 'Saudi Arabia—Jittery and Rich in a Sea of Oil' *Washington Post* 16 July 1978 [hereinafter cited as 'Jittery Saudis']; 'Oil Study' *Atlanta Constitution*.
3. Anderson, 'Carter's Energy Drive Falls Short', *Atlanta Constitution* 30 Aug 1977 [hereinafter cited as 'Energy Drive']; 'Jittery Saudis' *Washington Post*.
4. UN Charter Arts 39 & 2(4).
5. *Ibid*, Art 51.

that it cannot be involuntarily drawn into a Middle East crisis.⁶ Secondly, it needs to establish closer ties with the Arab world and to promote economic interdependence (or even dependence) of the Arab community with the United States. Thirdly, the Arab countries should be encouraged to join multinational trade agreements or other multilateral agreements to which the industrialized nations are parties. In accordance with establishing closer 'business ties', the United States should also enter into bilateral trade agreements with Arab countries and even into long-term agreements which would guarantee Arab oil in exchange for technology.

According to 'secret government documents' leaked to nationally syndicated columnist Jack Anderson, if the United States were subjected to another oil embargo at the present time, the result could be 'social upheaval and revolution'.⁷ This type of political pressure would probably force it to take drastic steps in the Middle East, including possible military intervention.⁸ However, this article will demonstrate that military intervention in the Middle East would eventually lead the United States into a military (and possibly nuclear) confrontation with the USSR.⁹ Consequently, U.S. military intervention in the Middle East must be avoided. The only way to prevent the United States from becoming involuntarily drawn into a Middle East war is to promote U.S.-Arab 'economic interdependence'.¹⁰

Promoting economic interdependence means that the United States should encourage long-term Arab investment in the United States. Existing federal statutes are already generally receptive to foreign investment. However, the United States should encourage trade missions to Arab countries and even give tax breaks to companies for encouraging Arab financiers to make 'long-term investments' in the United States. For example, these long-term investments could include investments in hotels, which one Arab group has already done. In addition, the United States could provide technology, technological personnel, and technological training, especially in advanced fields such as electronics. Tax incentives should be granted to American businesses to encourage these types of 'business ties'.

Since establishing closer ties with the Arab world is a tedious and time-consuming process, the time to begin is now. Delaying this process only reduces available foreign policy alternatives when the next Middle East crisis occurs.

The Arab Oil Threat

In 1960 the Organization of Petroleum Exporting Countries (OPEC)¹¹ was created to reverse a continuing trend of price reductions by the major

6. 'Oil Study' *Atlanta Constitution*; 'Jittery Saudis' *Washington Post*.

7. 'Energy Drive' *Atlanta Constitution*.

8. See 'Oil Study' *Atlanta Constitution*.

9. *Ibid.*

10. *Ibid.*

11. OPEC consists of the following 13 countries: Algeria, Ecuador, Gabon, Iran, Iraq,

multinational oil companies and to stabilize the existing price structure.¹² The controlling multinational corporations had established the price of oil at U.S. \$2.17 per barrel in 1948, but the price was gradually reduced by these corporations until it reached U.S. \$1.80 in August of 1960.¹³ The oil companies asserted that these reductions were necessitated by an excess in the world's supply of oil and by competition in the European and Japanese markets.¹⁴ However, the oil-producing nations viewed the trend in price reductions as a threat to their economic independence and development. Consequently, OPEC was founded to combat price reductions by the major oil companies.¹⁵

Though OPEC was originally established to achieve certain economic goals,¹⁶ it became apparent during the Arab-Israeli War of 1967 that political goals could also be achieved by the manipulation of oil exports.¹⁷ Consequently, in 1968 the oil-producing Arab countries formed the Organization of Arab Petroleum Exporting Countries (OAPEC) in order to present a united front to the oil-consuming countries.¹⁸ The Saudi Arabian Oil Minister, Baki Yamani, stated specifically that the goal was to make oil a 'genuine weapon'.¹⁹ By 1972 the Arab leaders were well organized and even held an international seminar on 'Oil as a Weapon'.²⁰

Historically, OAPEC has used its oil as a political weapon²¹ during those periods in which the Arab countries have been engaged in direct military confrontation with Israel. They first recognized the potential for using their oil as a weapon during the 1967 Six-Day War.²² From June 4 to August 29, 1967, some Arab members of OPEC tried an oil embargo of the United States.²³ However, the embargo was of limited effectiveness because the United States was not as dependent on foreign oil in 1967 as

Indonesia, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, United Arab Emirates, and Venezuela.

12. Muir, 'The Changing Legal Framework of International Energy Management' (1975) 9 Int Lawyer 605, at p 607 [hereinafter cited as Muir (75)].
13. Dempsey, 'Economic Aggression and Self-Defense in International Law: The Arab Oil Weapon and Alternative American Responses Thereto', (1977) 9 Case W R J Int L 253, at pp 256-57.
14. Ibid, p 257.
15. See Joelson & Griffin 'The Legal Status of National-State Cartels Under United States Antitrust and Public International Law', (1975) 9 Int Lawyer 617; Muir (75), op cit, pp 605-07; 'OPEC's Oil and Money Machine: How it Works' *US News & World Rep* 28 Oct 1974.
16. See Amuzegar, 'OPEC in the Context of the Global Power Equation', (1974) 4 Denver J Int L & Pol 221; Dempsey, op cit, p 257; Muir (75), op cit, pp 605-07; see also Mirvahabi 'Claims to the Oil Resources in the Persian Gulf: Will the World Economy Be Controlled by the Gulf in the Future', (1976) 11 Texas Int L J 75.
17. Dempsey, op cit, p 257.
18. Ibid.
19. Stocking G, *Middle East Oil* (1970), p 459.
20. See Permanent Secretariat of the Afro-Asian Peoples' Solidarity Organization, *Oil as a Weapon* (1972) [hereinafter cited as *Oil Weapon*].
21. Stocking, op cit, pp 458-59; *Oil Weapon*, pp 24-25.
22. Dempsey, op cit, p 258.
23. Ibid, p 258, fn 11.

it is today, and because the loss of revenues to Arab oil-producing countries was enormous.²⁴

The second oil embargo was not only more effective than the first, but also more harmful to the economies of the oil-consuming countries. On October 6, 1973, the Arab countries started the Yom Kippur War with a surprise attack on Israel,²⁵ and within 24 hours the Palestinian Liberation Organization (PLO) initiated the 1973 Arab oil embargo by calling upon all Arab countries to stop producing and exporting oil.²⁶ However, the embargo did not really begin until 12 days later when Saudi Arabia first announced cuts in its oil production.²⁷ As the largest oil-exporting country, Saudi Arabia was attempting to pressure the United States into reducing its support for Israel.²⁸ At the same time, 'the Persian Gulf state of Abu Dhabi announced that it was stopping all oil exports to the United States and would act similarly against any other country that supported Israel'.²⁹ It has been alleged that these decisions by Saudi Arabia and Abu Dhabi were triggered by President Nixon's request the day before for U.S. \$2.2 billion in military aid for Israel.³⁰ In any event, the oil boycott against the United States and the other countries which supported Israel rapidly gained momentum. The Netherlands was completely boycotted, while the other countries of the European Common Market (EEC) and Japan were placed under a 25 per cent oil reduction.³¹ In November of 1973, the Arab leaders adopted a joint resolution which stated that: (1) the embargo against countries supporting Israel would be continued; (2) oil production would be reduced in any event; and (3) a joint Arab committee would be formed to implement Arab objectives by categorizing states as 'friendly', 'neutral', or 'supporting Israel'.³² The Arab countries made it abundantly clear that 'if any joint or unilateral resistance were made to this approach to energy production and trade, those who resisted would be made to suffer the consequences'.³³

On January 18, 1974, both a cease-fire agreement and a disengagement agreement were concluded between Egypt and Israel, and a more comprehensive Geneva conference for the settlement of problems was being planned.³⁴ The military part of the Yom Kippur War was over, but the economic part continued. Despite the military settlement to the war and

24. Ibid.

25. Paust & Blaustein, 'The Arab Oil Weapon—A Threat to International Peace' (1974) 68 AJIL 410 [hereinafter cited as Paust].

26. Dempsey, *op cit*, p 259.

27. Paust, *op cit*, p 410; see also *N Y Times* 19 Oct 1973.

28. Paust, *op cit*, p 410.

29. Ibid.

30. Ibid, p 410, fn 2; see also Sheehan, *N Y Times Mag* 24 March 1974.

31. Paust, *op cit*, p 411; see also *N Y Times* 23 Nov 1973.

32. 'Arabs Halt Oil Shipments to 3 Countries' *N Y Times* 29 Nov 1973; Paust, *op cit*, p 411; see also Akins 'The Oil Crisis: This Time the Wolf is Here' (1973) 51 *For Aff* 462; Rostow 'Legal Aspects of the Search for Peace in the Middle East' (1970) ASIL Proc, 64 AJIL 64.

33. Paust, *op cit*, p 411.

34. Ibid.

the withdrawal of Israeli forces from some of the Arab territory captured during the 1967 Six-Day War, the total embargo on shipments of Arab oil to the United States remained in effect.³⁵ 'Additionally, there was no ending of the oil embargo against the Netherlands, Denmark, South Africa, Rhodesia, and Portugal'.³⁶ Under this type of economic coercion, countries 'like France, Italy, Japan, the Philippines, and the United Kingdom lined up to trade guns and technology for oil . . .'.³⁷

It should be remembered that the coercion practised upon the E.E.C. countries and Japan involved only a 25 per cent oil cut; therefore, a 'total embargo' would have been not only effective, but also destructive. Because European dependence on Arab oil has grown since 1973,³⁸ a comparable embargo of the European countries would be more coercive today than the embargo was in 1973, and, *a fortiori*, a 'total embargo' would be absolutely devastating.

The United States is also more dependent on Arab oil today than it was in 1973.³⁹ In 1975 it imported 7 million barrels per day, which was 37.4 per cent of its total consumption of oil.⁴⁰ Since 1975, U.S. imports of foreign oil have increased to a 1977 total of 8.7 million barrels per day.⁴¹ Therefore, a total embargo at this time would place more pressure on the United States to take drastic remedial action than the embargo did in 1973.⁴² This pressure would be minimal at first, but it would increase exponentially as oil supplies dwindled.⁴³

Naturally, this entire discussion is predicated on the assumption that there is a world-wide energy shortage and that an 'energy crisis' does, in fact, exist. Regardless of any academic debate on this issue,⁴⁴ a 1977 Gallup Poll states that 47 per cent of the American public believe that the energy situation in the United States is 'fairly serious' and 42 per cent believe that it is 'very serious'.⁴⁵ U.S. Energy Secretary James Schlesinger reportedly believes that the continued flow of Middle East oil into

35. Ibid, pp 411-12; see also 'Kissinger Says a Continuation of the Arab Oil Embargo Would be Blackmail' *N Y Times* 7 Feb 1974.

36. Paust, op cit, p 412.

37. Ibid; see also *N Y Times* 9 March 1974.

38. See *N Y Times* 18 Feb 1974; see also Washington Energy Conference Communique in (1974) Dept State Bull 220.

39. 'Oil Squeeze' *Business Week*; 'Jittery Saudis' *Washington Post*; Smith 'Oil Experts Say an Embargo Now Would Hurt U.S. More Than in '73' *N Y Times* 18 Oct 1971.

40. 'Pay More, Get Less: Oil-Gas Outlook' *US News & World Rep* 27 Jan 1975.

41. 'Oil Study' *Atlanta Constitution*; see also 'Oil Squeeze' *Business Week*; 'Jittery Saudis' *Washington Post*.

42. Smith, op cit; see also 'Oil Squeeze' *Business Week*; 'Jittery Saudis' *Washington Post*.

43. See 'Oil Squeeze' *Business Week*; 'Jittery Saudis' *Washington Post*; Smith, op cit.

44. See 'A Boom Gone Bust' *Newsweek* 31 Oct 1977; Carver 'Energy Shortage and Food Shortage: Lessons to be Learned' (1976) 9 Nat Res Lawyer 549; Mills & Woodson 'Energy Policy: A Test for Federalism' (1976) 18 Arizona L Rev 405; Solomon & Reismeyer 'Development of Alternate Energy Sources: A Legal and Policy Analysis' (1977) Oklahoma L Rev 319.

45. 'Verdict on Energy' *Newsweek* 31 Oct 1977.

the United States is currently less certain than at any time since the 1973 Arab oil embargo.⁴⁶

In any event, it is a fact that an embargo now would hurt the United States and Western Europe more than it did in 1973.⁴⁷ The increasing dependence of the United States and its allies on foreign oil (especially Arab oil) increases the likelihood that the world's major powers will be inexorably led into a direct confrontation—which could escalate into a nuclear showdown.⁴⁸ Accordingly, it is imperative that the United States adopt a foreign policy towards the Middle East which dissipates potential conflicts. If complete achievement of this goal is not possible (and it probably is not), then it must secure its position so that it cannot be drawn involuntarily into a Middle East war.

'Since World War II, a sea of blood has washed the sands of Sinai, Golan, Gaza and the West Bank in a continuing conflict which is ostensibly religious, unquestionably territorial and arguably *ad infinitum*'.⁴⁹ When the next war occurs in the Middle East, its scenario will probably be similar to the surprise attack on the morning of Yom Kippur in 1973. Since the Arab oil embargoes have traditionally increased in intensity and effectiveness, it is reasonable to postulate that coincident with or shortly after the commencement of hostilities, the Arab leaders will declare an oil boycott. The boycott may be delayed until the United States reiterates its support for Israel, but once the United States aids Israel politically, economically, or militarily, the boycott will begin. The Arab leaders have shown a tendency toward escalating their use of power with each successive Middle East war.⁵⁰ Accordingly, an 'imaginary horrible' (which may be more real than imaginary) would consist of a 'total boycott' of the United States and all countries supporting Israel. Such a move would completely devastate the economies of most of the embargoed countries, including the United States. It should be remembered that the 1973 oil embargo of Western Europe constituted an oil cutback of only 25 per cent; thus, a 'total embargo' would have been and will continue to be even more of a destructive threat.

Some of the European countries are more dependent on Arab oil than the United States and would suffer first in a total embargo, but eventually diminishing U.S. supplies would create tremendous economic and political pressures on the government to take drastic action. Estimates on how long the United States could 'economically' remain in existence in the event of another total embargo are speculative, but it has been argued that an oil reserve of from 2 to 9 months would be necessary to support a military seizure of Persian Gulf oil fields.⁵¹ Therefore, the implication has been that the United States is generally vulnerable. If another embargo

46. 'Oil Study' *Atlanta Constitution*.

47. Smith, *op cit*.

48. Dempsey, *op cit*, p 254.

49. *Ibid*.

50. See above.

51. Tucker 'American Force: The Missing Link in the Oil Crisis' *Washington Post* 5 Jan 1975.

occurred tomorrow, the United States would be forced to determine not only whether it should take military action, but also whether it should or could prevent its allies from taking such action. The tragic facts indicate that it may not even have a choice. If a major U.S. ally were forced to intervene in the Middle East to secure its source of oil, then the United States would be pressured to do the same—or at least to support its ally. A more likely scenario would involve military intervention by a number of oil-consuming nations, which could occur with or without U.S. support. The gravamen is that the natural tendency of the United States toward the peaceful settlement of disputes and toward supporting Israel may be overwhelmed by a domestic crisis greater than the Great Depression of the 1930's. In fact, the public support of Israel within the United States would agitate in favor of military intervention in the Middle East.

However, it is a major premise of this article that *any* military intervention in the Middle East by the United States, the USSR, or any of their respective allies (even in the capacity of a peace-keeping force) would eventually lead to a confrontation between the major powers. The world would then be faced with the ultimate imaginary horrible—nuclear confrontation. It is imperative that the United States extricate both itself and its allies from becoming involuntarily drawn into a Middle East holocaust. Accordingly, U.S. foreign policy in this area needs to be re-examined and clarified. The subsequent sections will look at this area of foreign policy and make recommendations as to its application in the future.

Economic Aggression under International Law

1. The International Law Established by the United Nations

According to Professor Richard Lillich, '[e]conomic competition—indeed, even “economic warfare”—between states has been a fact of international life at least since the Peace of Westphalia in 1648'.⁵² The international principle that the 'regulation of foreign trade is normally a right within the sovereign prerogatives of an independent country is too well established to permit disagreement in the context of existing international law . . .'.⁵³ Accordingly, the main question is 'whether such regulation becomes illicit when directed against a particular country or countries for purposes of diplomatic pressure'.⁵⁴

A resolution of this question involves an examination of existing international norms, and, of course, the U.N. Charter is the natural point of departure:

'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'⁵⁵

52. Lillich, 'The Status of Economic Coercion Under International Law: United Nations Norms' (1977) 12 *Texas Int LJ* 17.

53. Muir, 'The Boycott in International Law' (1974) 9 *J Int L & Econ* 187, at p 192.

54. *Ibid.*

55. UN Charter Art 2(4).

Since the 1973 Arab oil embargo, this part of the U.N. Charter has provoked intense debate over its meaning.

Professors Jordan Paust and Albert Blaustein have concluded that an oil embargo constitutes a 'threat or use of force' and is prohibited under Article 2(4) of the U.N. Charter and key supporting documents.⁵⁶ In support of their position, they have amassed an impressive array of U.N. instruments which supplement the U.N. Charter.⁵⁷ In addition, other attempts have been made to include 'economic aggression' under the 'aggression' which is proscribed by Article 39 of the U.N. Charter,⁵⁸ but these attempts have been unsuccessful.⁵⁹ However, just because 'aggression' under Article 39 and *force* under Article 2(4) have been construed not to include economic coercion . . . does not mean that certain economic activities of a state may not violate other Charter norms'.⁶⁰

Lillich states that economic coercion is regulated by the international norms established by documents which support and interpret the U.N. Charter.⁶¹ These documents include the General Assembly's 1965 Declaration on the Inadmissibility of Intervention Into the Domestic Affairs of States⁶² and the 1970 Declaration on Principles of International Law

56. Paust, *op cit*, p 412.

57. Those UN instruments which Paust and Blaustein claim as supportive of their interpretation of Article 2(4) of the UN Charter include:

- (a) Draft Declaration on Rights and Duties of States, Report of the ILC, 4 UNGAOR Supp 10 at 7-10, UN Doc A/925 (9 June 1949);
- (b) Essentials of Peace Resolution, GA Res 290(IV), 4 UNGAOR Resolutions at 13, UN Doc A/1251 (1 Dec 1949);
- (c) Peace Through Deeds Resolution, GA Res 380(V), 5 UNGAOR Supp 20 at 13-14, UN Doc A/1775 (17 Nov 1950);
- (d) Report of the Secretary General of the United Nations on the Question of Defining Aggression, UN Doc A/2211 (3 Oct 1952);
- (e) Draft Code of Offences Against the Peace and Security of Mankind, Report of the ILC, 9 UNGAOR Supp 9 at 11-12, UN Doc A/2693 (28 July 1954);
- (f) Soviet Draft Resolution on the Definition of Aggression, 9 UNGAOR Annexe 51 at 6-7, UN Doc A/C 6/L 332/Rev 1 (18 Oct 1954);
- (g) Declaration on Inadmissibility of Intervention Into the Domestic Affairs of States, GA Res 2131(XX), 20 UNGAOR Supp 14 at 11-12, UN Doc A/6014 (21 Dec 1965), reprinted in (1966) 60 AJIL 662;
- (h) Vienna Convention on the Law of Treaties, UN Doc A/CONF 39/27 (23 May 1969), reprinted in (1969) 63 AJIL 875;
- (i) Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, GA Res 2625 (XXV), 25 UNGAOR Supp 28 at 122-24, UN Doc A/8028 (1970), reprinted in (1971) 65 AJIL 243; and
- (j) Resolution on Permanent Sovereignty over Natural Resources, GA Res 3171 (XXVIII), 28 UNGAOR Supp 30 at 52, UN Doc A/9030 (1974), reprinted in (1974) 68 AJIL 381.

Paust, *op cit*, pp 417, fns 30-33, 418, fns 34-39.

58. See generally Ferencz B, *Defining International Aggression* (1975), p 30; Stone J, *Aggression and World Order* (1958), pp 54, 58-60, 66-68.

59. Lillich, *op cit*, pp 18-19.

60. *Ibid*, p 19 (emphasis added).

61. *Ibid*, pp 19-21.

62. GA Res 2131 (XX), 20 UNGAOR Supp 14 at 11-12, UN Doc A/6014 (21 Dec 1965), reprinted in (1966) 60 AJIL 662.

Concerning Friendly Relations and Co-Operation Among States in Accordance With the Charter of the United Nations.⁶³ Both of these General Assembly resolutions were also used by Paust and Blaustein to support their position.⁶⁴ However, Lillich emphasizes the significance of those General Assembly resolutions which occur after the 1973 Arab oil embargo and which reaffirm the pre-embargo resolutions.⁶⁵ These newer U.N. instruments include the 1973 resolution on Permanent Sovereignty over Natural Resources⁶⁶ and the Charter of Economic Rights and Duties of States.⁶⁷ Thus, while most authors reject the argument that Article 2(4) of the U.N. Charter includes 'economic coercion',⁶⁸ there is increasing authority to the effect that economic coercion is proscribed by other U.N. documents and international norms.⁶⁹

Regardless of the intricacies involved in this debate, the United States needs to adopt as its official policy the following positions: (1) that oil is such a vital commodity that it is in a category by itself; and (2) that an oil embargo is an ultra-coercive form of economic aggression which constitutes 'force' under Article 2(4) and 'aggression' under Article 39 of the U.N. Charter.⁷⁰ By merely taking these positions, it lends strength to the arguments supporting this construction and (to some degree) establishes a pattern of compliance. Other oil-consuming nations will then be more likely to undertake the same construction. Although OPEC will undoubtedly oppose the U.S. interpretation,⁷¹ most nations will probably agree with the United States since it is in their interest to do so. Even the Group of 77 should support this construction.

An oil embargo of even minor magnitude causes 'deleterious effects upon jobs, balance of payments, worldwide trade patterns, incentives for new development programs (national and international), general economic development (if not survival) of the developing countries of the

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63. GA Res 2625 (XXV), 25 UNGAOR Supp 28 at 122-24, UN Doc A/8028 (1970), reprinted in (1971) 65 AJIL 243.
 64. See above.
 65. Lillich, *op cit*, p 20.
 66. GA Res 3171 (XXVIII), 28 UNGAOR Supp 30 at 52, UN Doc A/9030 (1974), reprinted in (1974) 68 AJIL 381.
 67. GA Res 3281 (XXIX), 29 UNGAOR Supp 31 at 50, UN Doc A/9631 (1974), reprinted in (1975) 69 AJIL 484.
 68. Bilder, 'Comments on the Legality of the Arab Oil Boycott' (1977) 12 *Texas Int L J* 41; Bowett, 'International Law and Economic Coercion' (1976) 16 *Virginia J Int L* 245; Lillich, *op cit*, pp 18-19; Shihata 'Destination Embargo of Arab Oil: Its Legality under International Law' (1974) 68 AJIL 591.
 69. Garvey, 'The U.N. Definition of Aggression: Law and Illusion in the Context of Collective Security' (1977) 17 *Virginia J Int L* 177, at pp 177-80, 198-99; Lillich, *op cit*, pp 18-21; Parry, 'Defining Economic Coercion in International Law' (1977) 12 *Texas Int L J*, at 1-3; Paust & Blaustein, 'The Arab Oil Weapon: A Reply and Reaffirmation of Illegality' (1974) 15 *Columbia J Transnat L* 57, at 57-59, 72-73 [hereinafter cited as Blaustein]; Paust, *op cit*, pp 415-23; Stone 'Hopes and Loopholes in the 1974 Definition of Aggression' (1977) 71 AJIL 224, at pp 230-31. *Contra*: Bilder, *op cit*, p 41; Shihata, *op cit*, p 591.
 70. For an in-depth discussion of aggression, especially under Article 39 of the UN Charter, see Garvey, *op cit*, pp 177-80, 198-99.
 71. Shihata, *op cit*, p 591.

Third World, and recessionary trends'.⁷² There is an interdependency of 'virtually all parts of the agriculture industry'⁷³ on oil and electricity. Oil embargoes necessarily cause indirect but 'devastating effects upon fertilizer production and consequential cuts in food production which have emphasized the warning that as many as 20 000 000 people could die in the Third World as a result of such scarcities'.⁷⁴ 'The poorest of the earth will be the most seriously affected *victims* of the scarcity of oil, food, and fertilizer',⁷⁵ and 'cutbacks in the production of medicines could also result in health problems and more deaths around the globe'.⁷⁶ Both the Arabs and the Third World must realize the effects of oil embargoes on food production.

'Given the fact that the United States and Japan produce much of the world's fertilizer and that North America and Australia are the only food grain exporters in the entire world, it is difficult to escape the fact of predictable food scarcity over an extended period and an extended area of the globe—an effect which was neither "necessary" nor "proportionate" in terms of "legitimate military objectives" or the maximizing of all relevant community goals of world public order and human dignity.'⁷⁷

The facts favor the U.S. position, if only those facts can be conveyed to the Third World. Accordingly, the United States, in its foreign policy, should diplomatically but continually point out these facts to its allies and to the Third World in an attempt to marshal international public opinion against future oil embargoes against *any* nation. The pressure of international public opinion has potential for preventing future oil embargoes and/or mitigating them once they have been activated.

2. *International Trade Law*

The General Agreement on Tariffs and Trade (GATT)⁷⁸ is the most important document governing international trade. GATT has 'more than 76 parties, including Egypt, Israel, Kuwait, Lebanon, and Syria'.⁷⁹ Under Article 1, GATT establishes most-favored-nation treatment and prohibits discriminatory measures among its parties. Even so, Article 21(b) (iii) provides that a nation may take necessary measures to protect essential security interests during a war or national emergency.⁸⁰ Therefore, Article 21(b)(iii) would apparently justify the imposition of an Arab oil embargo against an enemy, but it is arguable that an 'enemy' would have to be a

72. Paust, *op cit*, p 434.

73. *NY Times* 28 Feb 1974; see also *ibid* 31 Dec 1973.

74. Paust, *op cit*, p 435; *NY Times* 26 Jan 1974.

75. Paust, *op cit*, p 435.

76. *Ibid*.

77. *Ibid*.

78. General Agreement on Tariffs and Trade (30 October 1947), 61 Stat Pts (5) & (6) (1947), TIAS No 1700, 55-61 UNTS (effective 1 January 1948). The agreement, as adopted by the United States, can also be found in 19 USC ss 1201 and following (1970).

79. Paust, *op cit*, p 423.

80. *Ibid*, pp 423-24; see also Metzger, 'Cartels, Combines, Commodity Agreements and International Law' (1976) *Texas Int LJ* 527.

nation with whom one was in military confrontation. In any conflict, the classification of nations as friendly, neutral, or hostile creates problems, and the judgment of one nation may or may not be determinative with respect to its allies. During the 1973 Yom Kippur War, the Arab leaders actually set up a committee to decide these particular issues and to categorize those nations not actually engaged in military conflict in the Middle East.⁸¹

In any event, the imposition of an oil embargo on any member of GATT by any other member appears to be a violation of both specific provisions and the Agreement's general tenor. 'Article 11 makes export prohibitions or restrictions unlawful; Article 13 prohibits discriminatory quantitative restrictions; and Article 20 lists certain exceptions, but reiterates the basic denial of *arbitrary or unjustifiable discrimination* in the trade process'.⁸² Hence it is arguable that an oil embargo by one member party against another violates GATT,⁸³ and that, therefore, the United States and its oil-consuming allies should encourage the oil-producing states to become members of GATT. This can be accomplished by emphasizing the trade advantages available under GATT, and it will strengthen Arab ties to the oil-consuming nations in ways involving something besides oil. This policy should make it more difficult for the Arabs to institute another oil embargo.

For similar reasons, the United States needs to encourage bilateral trade agreements, such as agreements on friendship, commerce, and navigation (FCN's), between itself and the OAPEC countries. Currently, the United States has bilateral trade agreements with Saudi Arabia,⁸⁴ Iraq,⁸⁵ and Oman.⁸⁶ It should promote closer ties with other Arab countries by getting similar agreements with other oil-producing countries and by encouraging all of the Arab countries to become parties to GATT. The typical bilateral trade agreement contains most-favored-nation clauses 'with respect to import, export, and other duties and charges affecting trade and similar principles with respect to any concession, regulation, advantage, prohibition, or restriction on imports and exports'.⁸⁷ The bilateral trade agreement between the United States and Saudi Arabia, the world's largest oil-exporting country, has no exception similar to the GATT exception in Article 21(b)(iii),⁸⁸ but the agreements with Iraq and Oman both contain 'security' exceptions. In any event, both the Iraq and Oman trade agreements, like GATT, are subject to the fulfilment of U.N. Charter obligations.⁸⁹

The large number of countries involved in GATT and the establishment

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81. See above p 282.
 82. Paust, *op cit*, p 423.
 83. *Ibid*, pp 423-24.
 84. 48 Stat 1826, 142 LNTS 329.
 85. 54 Stat 1790, TS 960, 203 LNTS 107.
 86. TIAS No 4530, 11 UST 1835.
 87. Paust, *op cit*, p 424.
 88. *Ibid*.
 89. *Ibid*, pp 424-25.

of closer ties with the OAPEC countries would contribute toward stability. As members of GATT and with other business relationships apart from oil, the OAPEC countries are less likely to attack the oil-consuming nations via another oil embargo. Similarly, bilateral trade agreements, especially agreements without 'security' exceptions like the one between the United States and Saudi Arabia, foster stability in the Middle East. Naturally, the Arab countries would probably not negotiate agreements which overly restricted their ability to act through embargoes, but Saudi Arabia, the largest producer of OAPEC oil, has done just that. Even if other Arab countries insisted on 'security' exceptions which impliedly or even explicitly allowed oil embargoes, the agreements would encourage business ties with the United States. The more long-term business the Arab countries have with the United States, the less likely the Arab leaders are to impose an embargo which would hurt their U.S. investments.⁹⁰

In addition, all of these different agreements could provide legal arguments against the use of oil boycotts. 'Surprisingly, no Arab government which used the *oil weapon* and blacklisting of foreign firms has yet expressed any legal justification for its action'.⁹¹ Therefore, the United States has an opportunity to promote more agreements similar to GATT and to its existing FCN's with Arab countries.

Alternative Responses of the United States to Arab Oil Embargoes

1. The Drastic Alternatives

(a) Clandestine Intervention in Arab Countries

'No international covenant prohibits clandestine intelligence operations, and today over 40 nations are actively engaged in surreptitious activities'.⁹² Covert operations conducted by the United States are supposed to be directed toward solving problems at an early stage before they develop into international crises, and former CIA Director William Colby has touted the ability of the CIA to accomplish this goal.⁹³ However, U.S. covert operations have been hindered by disclosures of past abuses within the intelligence community—most notably the CIA.⁹⁴ Consequently, Congress may impose severe legal restrictions on the amount and type of activities that U.S. intelligence agencies may conduct. Various forms of intelligence operations may have already been precluded by Congressional investigations and by press leaks.⁹⁵ However, if the events in a given Middle East situation eventually necessitate a choice between military or clandestine intervention by the United States, the latter is preferable.⁹⁶

90. 'Saud on War and Oil' *Newsweek* 31 October 1977 [hereinafter cited as 'Saud'].

91. Blaustein, *op cit*, p 58.

92. Dempsey, *op cit*, p 299; McCone 'Why We Need the CIA' *Washington Star* 20 Jan 1976.

93. Dempsey, *op cit*, p 299.

94. 'Can George Bush Save the CIA?' *US News & World Rep* 9 February 1976.

95. 'It's Maddening and Frustrating' *Time* 19 January 1976.

96. Dempsey, *op cit*, p 299.

Naturally, the essence of any military or covert operation is the efficient gathering of information and the correct analysis thereof. Before the best decision in a given situation can be determined, the information on which it is based must be proved to be highly accurate.⁹⁷ Considering the explosive nature of the Middle East, accurate information is essential.

(b) *The Use of Military Force*

It appears that the U.S. Department of Defense has already prepared contingency plans for limited military involvement in the Middle East.⁹⁸ Civilian theorists have also postulated that the 'United States could easily defeat Arab armies and, although the Arabs could probably sabotage the wells, the technology of oil production in the desert is so simple that the United States could induce a resumption in production in a minimal amount of time'.⁹⁹ Currently, military planners believe that only three divisions would be needed to seize the oil fields in one of the three likeliest targets: Saudi Arabia, Kuwait, or Libya.¹ Saudi Arabia is the most likely target since it is the world's largest oil-exporting country, providing a daily output of 8.9 million barrels.² By contrast, Kuwait's daily output is 2 million barrels and Libya's is 1.4 million.³ Therefore, 'some authorities maintain that the current oil production of Libya and Kuwait is inadequate to cope with an international economic crisis of the scope that could trigger military action'.⁴ Instead of exempting these smaller countries from seizure due to their smaller outputs, the prevailing solution seems to consist of seizing the production facilities in several countries, for example, a seizure of the entire coast 'from Kuwait down along the coastal region of Saudi Arabia to Qatar'.⁵

'It is this mostly shallow coastal strip less than 400 miles in length that provides 40 per cent of present OPEC production and that has by far the world's largest proven reserves (over 50 per cent of total OPEC reserves and 40 per cent of world reserves). Since it has no substantial centers of population and is without trees, its effective control does not bear even remote comparison with the experience of Vietnam.'⁶

'If Vietnam was full of trees and brave men, and the national interest was almost invisible, here there are no trees, very few men, and a clear objective'.⁷

These bellicose statements exemplify that 'from important policy

97. See Futterman, 'Controlling Secrecy in Foreign Affairs' in Wilcox & Frank (eds), *The Constitution and the Conduct of Foreign Policy* (1976), pp 6-57.

98. Ignatus 'Seizing Arab Oil' *Harpers* Feb 1975; Tucker, op cit; 'Will U.S. Seize Mideast Oil?' *US News & World Rep* 2 Dec 1974 [hereinafter cited as 'Mideast Oil'].

99. Dempsey, op cit, p 299; Tucker, op cit.

1. Ignatus, op cit, p 44.

2. Dempsey, op cit, p 303; 'Oil Squeeze' *Business Week*.

3. Dempsey, op cit, p 303.

4. *Ibid.*

5. Tucker, op cit.

6. *Ibid.*

7. Ignatus, op cit, p 44.

makers . . . a grim new mood is developing in Washington that military intervention may be necessary to bring down the price of oil and save the West from economic ruin'.⁸ However, when the U.S. Secretary of State Henry Kissinger was asked after the 1973-1974 embargo if the United States was contemplating military intervention in the Middle East, he stated that:

'We should have learned from Vietnam that it is easier to get into a war than to get out of it. I am not saying that there's no circumstance where we would not use force. But it is one thing to use it in the case of a dispute over price; it's another where there is some actual strangulation of the industrialized world.'⁹

Unlike most other military 'contingency plans' which have been prepared by the United States, not only the possibility of military intervention in the Middle East but also the military details have become issues for public debate.¹⁰

Another viewpoint is that any type of U.S. military intervention in the Middle East is unacceptable. To support this position it is necessary to examine some of the arguments favoring eventual military intervention in the Middle East. Setting aside all moral considerations, it should be noted that seizure of the oil fields in Saudi Arabia alone will not solve an oil embargo by OAPEC. Though U.S. needs might be met, there would probably be little oil that the United States could send to Western Europe or the Third World countries. In 1975 the United States needed 7 million barrels of foreign oil per day, while the world's largest oil-producer, Saudi Arabia, was producing 8 million barrels per day; however, the current U.S. needs are 8.7 million barrels per day, and these needs are growing.¹¹ Kuwait (2 million barrels per day) and Libya (1.4 million barrels per day) have also been pinpointed as potential targets for military action, but since they and the other OAPEC countries produce considerably less oil than Saudi Arabia, the Saudis' oil fields have been considered to be the prime targets.¹² Given the volatility of oil and the resultant difficulty in protecting oil fields from sabotage, it is highly questionable whether captured oil fields could increase their output or (because of sabotage) even maintain their current output. In addition, the very fact that the United States had secured a source of supply only for itself would completely undercut its position. Such unilateral U.S. action would imply that each oil-consuming nation was entitled to secure its own source of oil by seizing an oil-producing nation.

This hypothetical situation may sound absurd, but it is a major conclusion of this article that U.S. armed forces should not be sent to the Middle East under any circumstances. Once troops are involved, the United States will find itself committed to a course of action which invites

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8. Nationally syndicated columnist Anderson, quoted in Dempsey, *op cit*, p 300, fn 176.
 9. 'Kissinger on Oil, Food and Trade' *Business Week* 13 Jan 1975 [hereinafter cited as 'Kissinger'].
 10. Dempsey, *op cit*, pp 299-304; Tucker, *op cit*.
 11. Dempsey, *op cit*, pp 283, 303; 'Oil Study' *Atlanta Constitution*.
 12. Dempsey, *op cit*, p 303; Tucker *op cit*; 'Mideast Oil' *US News & World Rep*.

continued military escalation due to threats of sabotage, unforeseen repair problems, and the difficulty of protecting volatile oil fields.

U.S. military intervention in one or more Arab countries would probably be so outrageous as to result in the entire Arab world declaring war on the United States.¹³ Just because the West recognizes that responses to aggression are limited by the principles of 'necessity' and 'proportionality',¹⁴ does not necessarily mean that the Arab world recognizes or is bound by these same principles, especially in the context of Middle East issues.

Since oil fields are easily destroyed, any military seizure of Arab oil fields or production facilities would have to be swift and unexpected.¹⁵ The necessity of a surprise attack is so crucial that it probably precludes the United States from asking its allies for help. Naturally, the seizure of oil fields by a multinational 'peace-keeping' force gives greater weight to the argument that intervention is essential to protect the oil-consuming nations, and especially the developing countries.¹⁶ An assessment by the Stockholm International Peace Research Institute recently arrived at the conclusion that the United States would have little difficulty in conquering most of the Middle East countries.¹⁷ 'Successful military control over the Arabian-Persian Gulf area could probably be achieved in hours, even minutes'.¹⁸ The major problems are in 'sustaining such an operation and managing its repercussions'.¹⁹

In such a military operation, the United States would need to make sure that its armed forces could use Israel as a staging area (since there are no friendly bases within easy reach),²⁰ that the staging of three divisions or more could be kept a complete secret, and that the resupplying of troops could be accomplished from the Israeli staging area, which is 1000 miles away.²¹ In reality, none of these three goals is likely to be accomplished, but if the United States could capture the oil fields reasonably intact, then there would still be the problem of protecting those oil fields and resupplying the military forces. The vulnerability of the oil fields to guerrilla sabotage is high.²² Protecting 400 miles of coastal territory and hundreds of miles of pipes from sabotage is extremely difficult. In World War I, Colonel T E Lawrence²³ demonstrated that Arab guerrillas could effectively disrupt and even destroy conventional armed troops. Given the volatility of oil and the difficulty in putting out oil-well fires (as demonstrated by the 1976 oil-well fire in the North Sea), it would be

13. 'Saud' *Newsweek*; see also Ignotus, op cit, p 51; Tucker, op cit.

14. Dempsey, op cit, pp 310-11.

15. Tucker, op cit.

16. Dempsey, op cit, p 303; Tucker, op cit.

17. SIPRI, quoted in Dempsey, op cit, p 303.

18. *Ibid.*

19. *Ibid.*

20. Ignotus, op cit, p 44.

21. *Ibid.*

22. Dempsey, op cit, p 300.

23. Colonel T E Lawrence (1888-1935) was a British adventurer and writer known as 'Lawrence of Arabia'. See Lawrence T, *Seven Pillars of Wisdom*, 3rd ed (1926).

almost impossible to protect the captured oil fields. Thus, the United States could conceivably find itself bearing the brunt of adverse international opinion and having little oil to show for it.

In the wake of military intervention in the Middle East, 'world public opinion would, to say the least, indicate vehement opposition to a U.S. military seizure of Arab oil fields'.²⁴ The argument that 'industrialists and labor in Japan and Europe would be delighted that their factories'²⁵ were running again is a specious argument, because the United States does not have the military capability of seizing and holding enough oil fields to supply the whole world. Even if it had the military capability, the international ramifications of this course of action would be enormous and deadly. Equally specious are arguments that the 'Fourth World, whose economic progress has been crippled by the incredibly inflated price of petroleum, and whose millions will starve because of the diminished production of fertilizers, might *eventually* be delighted to receive oil at pre-1973 prices or lower'.²⁶ Again, the United States would be unable to supply the developing countries and, even if it could, the initial reaction of those countries to U.S. military intervention in the Middle East would probably be a blow from which the prestige of the United States could not recover.

In addition, the USSR might use the U.S. military intervention as 'an excuse to seize West Berlin, or Finland, or beyond'.²⁷ 'The Soviet Union could deploy a naval flotilla off the Saudi Arabian coast, or move mine-sweepers into the Straits of Hormuz, or land troops in Iraq'.²⁸ These actions could well escalate into a direct confrontation between the United States and the USSR 'and thereby ignite a third World War'.²⁹ However, there is support for the proposition that the USSR would recognize the vital U.S. interests in the oil fields and would not interfere—just as the United States did not interfere in Czechoslovakia when it was 'recognized that Soviet national interests were at stake'.³⁰ Even the willingness of the USSR to commit troops and the adequacy of the Soviet fleet have been challenged.³¹

These arguments display a callous and dangerous attitude toward the real facts of the situation. In actuality, the USSR has displayed almost an eagerness to commit its own troops to the Middle East. In 1973 the USSR wanted to move several divisions into Egypt.³² This was prevented only by the fear of a direct confrontation with the United States—a fear which was confirmed when the latter put its Mediterranean fleet and the 82nd

24. Dempsey, *op cit*, p 303.

25. *Ibid*.

26. *Ibid* (emphasis added).

27. *Ibid*.

28. *Ibid*, p 304. *Contra*: Tucker, *op cit*.

29. Dempsey, *op cit*, p 304.

30. *Ibid*; Tucker, *op cit*.

31. *Ibid*.

32. *Ibid*.

Airborne Division on alert.³³ From the experience gained and the precedent set in 1973, it is apparent that any Soviet or U.S. troops in the Middle East would eventually provoke another dangerous confrontation. Another point which has been made in the context of the current Middle East situation is that rationality in military or political decision making does not necessarily preclude error.³⁴ Naturally, the risk and consequences of errors are enormous in any confrontation between the United States and the USSR.³⁵

Once such a confrontation occurs, the positions taken by the international community become important. Since military intervention by the United States in the Middle East would be illegal under international norms,³⁶ the U.S. position would be tenuous. The gravamen is that the issues and the vested interests in the Middle East are so complex that the unknown variables preclude accurate decision making.³⁷ Since the Middle East is so volatile, the United States should never allow itself to become enmeshed in a situation, such as a military operation, in which the available options are reduced—or possibly eliminated.³⁸ Once troops are committed to combat, the overwhelming tendency is to support those troops with reinforcements who, in turn, require more reinforcements and supplies.

In 1974 President Ford emphasized that, historically, nations have gone to war over 'natural advantages' such as oil,³⁹ but he added that 'in the nuclear age, when any local conflict may escalate to global catastrophe, war brings unacceptable risks for all mankind . . .'.⁴⁰ According to a recent Gallup Poll, only 10 per cent of the American public believes that the United States should resort to military intervention to combat an Arab oil embargo in the future.⁴¹ However, it has been predicted that '[s]tarving, unemployed Americans might support whatever measures necessary to reverse *economic strangulation*'.⁴² In this context, 'economic strangulation' is foreseen as being the inevitable result of a prolonged oil embargo.

Nationally syndicated columnist Jack Anderson has reported that 'secret government studies' have warned that energy shortages could cause 'social upheaval and revolution'.⁴³ The increasing dependence of the United States on foreign oil supports the proposition that these

33. See Dempsey, *op cit*, pp 259-60; Tucker, *op cit*.
34. McKenzie-Smith, 'Crisis Decision-Making in Israel: The Case of the October 1973 Middle East War' (1976) *Naval War College Rev* 39.
35. Dempsey, *op cit*, pp 254-55; see also McKenzie-Smith, *op cit*, pp 39-41.
36. See above.
37. McKenzie-Smith, *op cit*, p 39.
38. See Dempsey, *op cit*, p 300 & fn 177.
39. 'Ford's Warning to the Arabs—Will it Bring Down Oil Prices?' *US News & World Rep* 7 Oct 1974.
40. *Ibid*.
41. 'At Hand: Even Higher Fuel Prices' *US News & World Rep* 3 Feb 1975 [hereinafter cited as 'Fuel Prices'].
42. Dempsey, *op cit*, p 302.
43. 'Energy Drive' *Atlanta Constitution*.

prognostications are correct. If they are correct, then when the next oil boycott occurs, U.S. public opinion will most likely turn to supporting military intervention. The natural tendency of the American public to support Israel against the Arabs would further increase the pressure for military action.⁴⁴ However, as has been repeatedly emphasized, U.S. military intervention would be disastrous. Consequently, the United States must avoid being trapped into having no other alternative.

If the United States committed itself to military operations in the Middle East, its position would be supported only by a minority of international legal scholars.⁴⁵ 'Clearly, the weight of current international law, as expressed in numerous U.N. resolutions, prohibits the occupation and acquisition of the territory of another State by force, war, or military conquest'.⁴⁶ While it is questionable whether or not oil embargoes constitute the use of 'force' under Article 2(4) of the U.N. Charter, it is clear that U.S. military intervention in the Middle East would be a use of 'force'.⁴⁷ If the United States resorted to military operations in the Middle East, every argument which was used to convince international experts that oil boycotts were illegal under the U.N. Charter (and supporting documents) would *a fortiori* be thrust back at it. The United States would be hoisted with its own petard, because the overwhelming weight of international law is against military intervention in an attempt to counter economic sanctions.⁴⁸

'[U]nless the United States could lawfully assert the right of self-defense, U.S. military intervention against Arab oil producers would clearly be prohibited by the . . . principles of international law'.⁴⁹ Under the U.N. Charter, the use of force is allowed in only two instances: (1) as a collective action of the United Nations (as in the Korean conflict); and (2) as a response in self-defense against 'armed attack' under Article 51 of the U.N. Charter.⁵⁰ The prevailing view in international legal thought supports the position that self-defense under Article 51 is allowed only in response to an 'armed attack'. 'Certainly, because the employment of the Arab oil weapon in an embargo of petroleum, and the resultant *strangu-*

44. According to a Gallup Poll taken in October 1977, 46 per cent of the American public favor Israel, while 11 per cent favor Arab countries. 'These findings not only closely parallel those recorded in June 1977, but are similar to those recorded 10 years ago'. 'Majority Still Backing Israel' *Richmond Times-Dispatch* 13 Nov 1977.

45. See above. See also Dempsey, *op cit*, pp 304-05.

46. *Ibid.* For General Assembly resolutions condemning the use of force, see GA Res 2628 (XXV), 25 UNGAOR Supp 28 at 5, UN Doc A/8028 (1970); GA Res 2799 (XXVI), 26 UNGAOR Supp 29 at 82, UN Doc A/8429 (1971); GA Res 2949 (XXVII), 27 UNGAOR Pt I at 24, UN Doc A/4548 (1972). For a resolution condemning the use of war, see SC Res 242, 22 UNSCOR 8 (1967). For resolutions condemning military conquest, see SC Res 252, 23 UNSCOR 8-12 (1968); SC Res 267, 24 UNSCOR 4 (1969); SC Res 271, 24 UNSCOR 5 (1969); SC Res 298, 26 UNSCOR 6 (1971).

47. See Dempsey, *op cit*, pp 306-7.

48. See above.

49. Dempsey, *op cit*, p 306.

50. *Ibid.*

lation of Western economies would not constitute an *armed attack*, Article 51 would be inapplicable'.⁵¹

The minority view, which is gaining adherents and is generally supported by the United States, asserts that traditional international law recognizes other forms of attack which might justify a military response as a type of self-defense under Article 51.⁵²

'Because it is well recognized under traditional international law that an armed attack is not the only form of aggression which so imperils a State's right of self-defense, a military response to intense economic coercion may well be permissible under customary international law.'⁵³

Traditional international law has always required a showing of a high degree of necessity to justify a response involving the use of armed force.⁵⁴ In customary international law, the restrictions on the lawful assertion of force in self-defense are summarized by the terms 'actual necessity' and 'proportionality'.⁵⁵ Under these restrictions the United States would have to show that economic strangulation via a given oil boycott had caused and would continue to cause severe and even disastrous economic problems. Under this 'actual necessity' test, official predictions of future economic disasters or public opinion in the United States would not be a sufficient showing of 'necessity'. In addition, any response to a future oil embargo would have to be 'proportional'. Thus, a U.S. embargo or blockade against Arab countries participating in an oil boycott would be a 'proportional response', whereas military intervention in the Middle East would not.

Under customary international law, the assertion of force by the United States against an Arab oil boycott would have to comply with three conditions to constitute self-defense. First, the Arab country or countries would have to impose a severe oil embargo against the United States.⁵⁶ The United States could not take preventive action against a country in anticipation of an embargo but would have to wait for actual imposition of the oil embargo. Secondly, U.S. attempts to obtain redress or protection by other means must be known to have been made and failed, or to be inappropriate or impossible in the circumstances.⁵⁷ Finally, the use of force by the United States must be limited to the necessities of the case and proportionate to the wrong done⁵⁸ by the Arab country or countries. Some authorities have interpreted these tests as permitting

51. Ibid, p 308.

52. Brierly, *The Law of Nations* (1963), p 417; Kelsen, 'Collective Security and Collective Self-Defence Under the Charter of the United Nations' (1948) 42 AJIL 783, at p 784; Kunz, 'Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations' (1947) 41 AJIL 872, at pp 876-77. Contra: Dempsey, op cit, pp 308-09.

53. Dempsey, op cit, p 309.

54. Ibid, p 312; see also 'Kissinger' *Business Week*.

55. Dempsey, op cit, p 310.

56. Bowett, 'Reprisals Involving Recourse to Armed Force' (1972) 66 AJIL 1, at p 3.

57. Ibid.

58. Ibid.

U.S. military intervention,⁵⁹ but the better view is that military operations would not be justified.⁶⁰

2. *The Feasibility of a U.S. Economic Boycott of the Arab Countries*

One problem with trying to discredit the Arab oil boycott as a violation of international law is the fact that the United States itself has often imposed or sanctioned similar types of boycotts.⁶¹ Historically, it has supported 'primary boycotts', which consist of direct restrictions on sending certain goods to a target country.⁶² In addition, it has used 'secondary boycotts', in which it announced that it would trade with a given country only if that country did not deal with a specified target country.⁶³

The United States has been the Olympic champion in imposing political trade controls: through a combination of persuasion, inducement, and threat of sanction, it has sought and largely secured the cooperation of foreign nations in its programs. And it has utilized many of the same devices used by the Arab League—questionnaires, certificates, and blacklists.⁶⁴

In just the period since World War II, the United States has instituted and supported numerous primary and secondary boycotts. Under the Export Control Act of 1949⁶⁵ and the 1969 Export Administration Act,⁶⁶ an elaborate system of licensing controls was imposed on the export of all goods and technology originating in the United States. The Trading with the Enemy Act⁶⁷ currently imposes a total embargo on trade with North Korea, Cuba and Vietnam.⁶⁸ In addition, the United States has maintained 'a system of joint embargo on high technology strategic commodities, determined and controlled under CoCom by fifteen countries (essentially NATO minus Iceland but plus Japan)'.⁶⁹

Since 1951, the United States has denied most-favoured-nation status to all communist countries except Yugoslavia, Poland (since 1960), and Rumania (since 1975).⁷⁰ In a similar vein, the Foreign Assistance Act⁷¹ has imposed various restraints on the political activities of those countries seeking U.S. foreign aid, and the Export-Import Bank has been restricted in extending loans or guarantees to communist countries.⁷² The United States also denies tariff preferences to those developing countries which

59. Dempsey, *op cit*, pp 312-14.

60. See above.

61. Lowenfeld, '... *Sauce for the Gander: The Arab Boycott and United States Political Trade Controls*' (1977) 12 *Texas Int L J* 25, at pp 28-33.

62. *Ibid*, pp 25, 28-29.

63. *Ibid*.

64. *Ibid*, p 33.

65. 63 Stat 7, 50 USC App ss 2021-32 (1950-69) as amended.

66. 50 USC App ss 2401-13 (1970).

67. 50 USC App s 5(b) (1970).

68. Lowenfeld, *op cit*, p 28. From 1950 to 1972, Communist China was also boycotted under the Trading With The Enemy Act.

69. *Ibid*.

70. *Ibid*.

71. 22 USC s 2370 (a)-(x) (1976).

72. Lowenfeld, *op cit*, pp 28-29.

belong to OPEC or afford preferential treatment to the products of other developed countries.⁷³

'Having implemented all these programs, however, the United States surely would be contradicting itself if it were to adopt the position that it is somehow immoral to impose controls on economic activity on the basis of political motives. Switzerland may take such a position—or perhaps Sweden—but hardly the United States.'⁷⁴

Therefore, the United States has little support for an attack on an Arab oil boycott as being illegal when the United States itself has continually engaged in boycotts.

The only argument which the United States can really promote is the argument that oil is such a vital commodity as to constitute a 'special category'. Since World War II, none of the main boycotts instituted by the United States has had the effect of toppling a government—even though they were perhaps designed to do so. Red China, North Korea, Cuba, and Vietnam have all weathered U.S. boycotts. However, another oil boycott by OAPEC, especially a total boycott, could place in jeopardy the very survival of the United States and perhaps some of the other industrialized countries. Accordingly, the 'oil boycott' as an element of international coercion has been elevated from the role of a traditional boycott to something approaching 'force' or even 'armed force' under Articles 2(4) and 51 of the U.N. Charter.⁷⁵ This type of argument could be used to justify military intervention in the Middle East or *a fortiori* an embargo of OAPEC. Since military intervention has been discarded as being an alternative which would ultimately lead to disaster,⁷⁶ it is useful to examine the practicality of a U.S. embargo of OAPEC.

The same legal points, which argue against U.S. military intervention in the Middle East, argue in favor of an embargo. The Arab countries have consistently argued that an oil boycott: (1) is legal under international law;⁷⁷ (2) does not constitute 'force' under Article 2(4) of the U.N. Charter;⁷⁸ and (3) does not justify a military response in self-defense under Article 51 of the U.N. Charter.⁷⁹ Since these arguments have received the support of a majority of the international legal scholars and since international public opinion will probably follow their lead,⁸⁰ the United States could probably justify a retaliatory embargo against an Arab oil boycott. The question then arises as to whether a retaliatory embargo would be an effective response or whether it would only serve to aggravate the OAPEC countries into instituting a more virulent embargo against the United States and/or the other industrialized nations.

73. Trade Act of 1974, ss 502 (b) (1)-(3), 19 USC ss 2462 (b) (1)-(3) (1976).

74. Lowenfeld, *op cit*, p 30.

75. UN Charter Arts 51 & 2(4). See above. pp 287-8.

76. See above. pp 290 et seq.

77. Bilder, *op cit*, p 41; see also Blum, 'Economic Boycotts in International Law', (1977) 12 Texas Int LJ 5.

78. Lillich, *op cit*, pp 18-19.

79. Dempsey, *op cit*, p 306. See above. pp 291 et seq.

80. See above. pp 285 et seq. See also Blum, *op cit*, pp 14-15.

In a Gallup Poll taken approximately 8 months after the end of the 1973-1974 Arab oil embargo, 24 per cent of the American public favored retaliatory economic sanctions if the Arabs imposed another oil boycott.⁸¹ The United States could raise prices on the goods, services, and military hardware which are regularly sold to Arab oil-producing countries. 'Alternatively, the United States could impose an economic boycott against Persian Gulf States, refusing to sell armaments, industrial equipment, food and other commodities to Arab nations'.⁸² However, the Arab countries are not that dependent on U.S. food,⁸³ armaments,⁸⁴ or other goods, and the Arab countries could easily replace these commodities with shipments from other sources.⁸⁵

A type of economic reprisal which might prove more effective would be in the financial realm.

'The financial institutions of industrial nations could refuse to accept OPEC deposits unless they are long term, evenly distributed, and at low interest—or possibly under any circumstances. Conceivably, the transfer of real assets could be prohibited, and OPEC money could thus be forced to remain paper money.'⁸⁶

However, depending on the type of sanctions used, their effective implementation would require varying degrees of cooperation from those industrialized nations which are allied to the United States. France and Sweden would have to end their arms shipments to Arab countries; Swiss bankers would have to refuse Arab deposits; and South Africa would have to refuse Arab investments in South African gold.⁸⁷ These examples highlight the difficulties involved in achieving effective participation by those industrialized nations necessary to implement effective sanctions, and even if all of the countries allied with the United States agreed to cooperate in full, the USSR and the communist bloc countries would probably supply the Arabs with whatever they needed.⁸⁸

Bridging the gap between economic sanctions and military intervention is a concept known as the 'economic sortie'. As implemented in response to a future oil embargo against the United States, it would probably consist of a blockade of all of the shipping and communications emanating from those OPEC countries participating in the embargo. 'Economic warfare in this form has been waged frequently and effectively in the past and is adaptable to current conditions whether or not employed concomitantly to military hostilities'.⁸⁹ Naturally, military intervention in the form of seizing Arab oil fields has been eliminated as a viable alternative;

81. 'Fuel Prices' *US News & World Rep.*

82. Dempsey, *op cit*, p 296.

83. 'Food: Potent U.S. Weapon' *US News & World Rep* 16 Feb 1976.

84. Dempsey, *op cit*, p 297.

85. *Ibid.*

86. *Ibid*, p 296.

87. *Ibid*, p 297.

88. See *ibid*, p 296.

89. Alford, 'Modern Economic Warfare' (1963 JSD thesis, Yale Law School), subsequently published in U.S. Naval War College, *International Law Studies* (1963).

however, if a partial blockade of all OAPEC countries participating in the embargo could be proven to be effective, then perhaps it should be considered.

If a 'total' oil embargo is instituted against the United States as it was in 1973, then the United States has nothing further to lose with regard to the Arab countries. The Arab countries cannot cut off more than 100 per cent of their oil. The U.S. blockade could permit exports from the Arab countries but no imports. Hopefully, this would mitigate the effect of the oil embargo with regard to Western Europe and Japan, while achieving maximum economic disruption within the Arab countries. By permitting all exports, the United States could claim that any reduction in oil shipments to Western Europe and other countries was solely the decision of the Arab countries. Even though the Arabs might reduce their oil shipments to other countries in an attempt to bring political pressure on the United States to end the blockade, there is nothing that the Arabs would not eventually do in any tense situation in the Middle East.

A U.S. blockade against imports to those Arab countries participating in an oil embargo has several advantages over military intervention. First, it is a limited response which complies with the international principles of 'actual necessity' and 'proportionality'.⁹⁰ Though international public opinion would probably be against the United States, a one-way naval blockade of imports is a more defensible position than military intervention. If U.S. military intervention in the Middle East could be justified, then *a fortiori* a limited naval blockade can be justified under Articles 2 (4) and/or 51 of the U.N. Charter and supporting documents.⁹¹ Additionally, U.S. allies could publicly side with the Arabs (in order to secure their oil supplies), while being politically excused from shipping arms or other goods to the Arab countries because of the one-way U.S. blockade. Thus, the United States would not have to secure total overt cooperation from its allies to achieve effective economic sanctions, although these same nations would probably covertly support the U.S. blockade. The only nations which could really publicly support the United States would be those nations that were not dependent on Arab oil.

Secondly, a limited U.S. blockade has as a precedent the naval blockades of Cuba and North Vietnam. A blockade would constitute a 'limited response' in self-defense under Article 51.⁹² Although U.S. forces would not seize Arab oil fields, a naval blockade would not preclude that eventual possibility, and it would demonstrate to the Arab countries the serious light in which the United States viewed their oil embargo. The naval presence would also establish a base for future military intervention if such intervention became necessary. It would provide a staging area and practice for a greater military involvement.⁹³ If the United States could not maintain a limited blockade either militarily (due to the supply

90. See Dempsey, *op cit*, pp 310-13. See above, p 297.

91. See above.

92. UN Charter Art 51.

93. Ignatus, *op cit*, p 44; 'Mideast Oil' *US News & World Rep.*

problems involved in using Israel or Diego Garcia in the Indian Ocean)⁹⁴ or politically (due to adverse international public opinion), then it could never seize the Arab oil fields⁹⁵ without encountering even greater problems.⁹⁶ More importantly, a limited naval blockade would also test the Soviet response.⁹⁷ If the USSR were to recognize the overwhelming U.S. interest in Arab oil and not interfere (like the United States did not interfere in Czechoslovakia),⁹⁸ then there would be no confrontation between the super powers. However, if the experts are somehow wrong⁹⁹ about Soviet responses, and the USSR did intervene, then the United States would have a more flexible and defensible position and be humbled less if eventually forced to withdraw. In any event, it is a certainty that if the USSR responded adversely to a limited naval blockade, it would respond even more adversely to a seizure of Arab oil fields.

In this area, several caveats to the use of a blockade as an 'economic sortie' are in order.

'In economic warfare by "economic sortie", the timing, direction of thrust and duration of action are critical. The "economic sortie" has, as its major weakness, complete dependence upon an effective intelligence system. Skill in the management of law is useful in planning and executing an economic sortie; and naval skills and force lend themselves to its effective employment.'¹

Therefore, in any naval blockade a high degree of control must be maintained. Support units must be efficiently and effectively supplied to the blockade, and the military intervention option must be maintained. All of these elements are dependent upon one another; the failure of any one component would ruin the economic sortie.²

Since future Arab oil boycotts would probably be instituted either simultaneously with or shortly after a military attack on Israel, a blockade on imports to Arab countries would be particularly effective. The effectiveness of the blockade would increase proportionately to the ability of a given country to destroy Arab equipment. Being unable to resupply their military units would pressure the Arab countries into reaching a peace settlement and/or ending their oil embargo.

Naturally, the United States would have to keep its blockade strategy a secret or the Arabs would increase their stockpiles of essential military supplies in anticipation of a blockade. In addition, it would have to be prepared to resupply and to stockpile Israel before instituting its blockade of the Arab countries, or it may find the Arab countries, their allies, or

94. Dempsey, *op cit*, p 303; Ignotus, *op cit*, p 44.

95. See above pp 292 et seq.

96. Presumably, the United States has the technology to jam communications systems from outer space and from offshore ships similar to those using 'pirate broadcasts'. See Van Panhuis and Boas, 'Legal Aspects of Pirate Broadcasting', (1966) 60 AJIL 303.

97. Dempsey, *op cit*, pp 303-04.

98. *Ibid*, p 304; Tucker, *op cit*.

99. See above p 294.

1. Alford, *op cit*.

2. See *ibid*.

even the USSR instituting a retaliatory blockade against Israel. Accordingly, the U.S. Navy would have to blockade the Arab countries and protect the Israeli ports from a retaliatory blockade. It should be noted that (similar to the blockade imposed by the United States) retaliatory blockades, boycotts, or other actions by the Arab countries would arguably be justifiable under the same 'self-defense' rationale used by the United States.

3. *Investment Interdependence*

Since military intervention in the Middle East and naval blockades are options which should be avoided if possible, the United States needs to look to other alternatives. In addition, economic sanctions against Arab countries are useless unless those Arab countries are dependent on the United States or its allies to the extent that the oil-consuming nations are dependent on oil. Accordingly, the United States needs to foster a two-way interdependence between itself and the Arab countries to the extent that the Arab leaders will not institute, or at least will hesitate before instituting, future oil embargoes for fear of hurting their investments in the oil-consuming nations.

Of the U.S. \$60 billion accumulated by OPEC in 1974, only U.S. \$1 billion was invested in stocks and assets in the United States.³ Approximately U.S. \$4 billion was invested in bank deposits in the United States and U.S. \$6 billion was placed in securities issued by the United States.⁴ The major portion of Arab funds was invested in the short-term Euro-currency market.⁵ The Arab governments are investing most of their capital in short-term and highly liquid portfolios, and the significance of this type of investment is clear. In case the West ever tries to freeze or 'nationalize' Arab funds, this type of investment portfolio allows the quick withdrawal of funds from the United States and Europe. In addition, by 'shifting their funds from one currency to another, the oil sheiks can precipitate an unending round of monetary crises'.⁶ Thus, it appears that, by design or by chance, the Arab governments could financially ruin the West in a short period of time.⁷

The solution is time-consuming but relatively simple, and in the long run it can constitute a viable answer to the U.S. dependence on Arab oil. The solution is to encourage long-term Arab investment in the United States and Europe; however, in the recent past Arab overtures to this effect have been slighted. If achievement of this goal of Arab investment necessitates a short-term foreign policy that favors the Arab countries over Israel, then such a short-term policy must be implemented. In today's world, interdependence is a fact of world politics, and a recognition of interdependence and the role it plays constitutes the only way in

3. Dempsey, *op cit*, p 292.

4. *Ibid*, pp 292-93.

5. *Ibid*.

6. *Ibid*, p 295.

7. 'A Marshall Plan for OPEC?' *The Economist* 28 Dec 1974 [hereinafter cited as 'Marshall Plan'].

which the world's current problems can be approached or solved.⁸ If the United States is to reduce its vulnerability to the whims of Arab governments, it must first recognize that it is rapidly losing its position as an economic and financial world power.⁹ Industries in the oil-consuming nations are starved for capital and are heading towards depression.¹⁰ Given the financial status of the Arab countries and the U.S. dependence on Arab oil, a concerted and protracted effort by the Arab countries to ruin the United States would probably succeed. The only way in which the United States can remedy this situation is to increase its diplomatic ties with the Arab world and encourage long-term Arab investment in the United States. 'Existing federal statutes and regulations are generally receptive to foreign investment, prohibiting acquisitions in only a few industries and under a few circumstances'.¹¹ If the Arab countries invested U.S. \$30 to 60 billion a year in the industrialized countries, OAPEC would hesitate before imposing another oil boycott which would hurt their own investments.¹² The United States should encourage trade missions to the Arab countries and even give tax breaks to U.S. companies for encouraging Arab financiers to make long-term investments in the United States.

4. *Energy Independence*

Naturally, the best way of thwarting future oil embargoes is for the United States to become independent of foreign oil sources. Not long after the end of the 1973-1974 Arab embargo, a Gallup Poll indicated that 35 per cent of the American public wanted the United States to become energy independent to nullify the effects of future oil embargoes.¹³ However, it appears that the United States cannot achieve energy independence within the foreseeable future.¹⁴ Current U.S. domestic oil reserves are only 36.8 billion barrels, including 10 billion barrels in Alaska.¹⁵ In addition, tariff controls, tax incentives, conservation programs, and exotic energy source proposals (such as solar and geothermal

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8. 'Oil Squeeze' *Business Week*; 'Jittery Saudis' *Washington Post*; see also Bell, 'The Future World Disorder' (1977) 27 *For Policy* 109; Manning, 'The Congress, the Executive and Intermestic Affairs: Three Proposals' (1977) 55 *For Aff* 306; Nye, 'Independence and Interdependence' (1976) 22 *For Policy* 129.
 9. 'Marshall Plan', *The Economist*.
 10. *Ibid.*
 11. Dempsey, *op cit*, p 294. Congress has restricted foreign ownership of companies which are engaged in such activities as domestic radio communications, coastal or inland shipping, and the production of atomic energy. Also restricted are those companies engaged in air transportation, mining on federal lands, and developing hydroelectric power.
 12. Even advocates of military intervention by the United States in the Middle East concede that closer business ties between the Arab countries and the United States would help avert future crises. Tucker, *op cit*.
 13. 'Fuel Prices' *US News & World Rep.*
 14. See above p 282.
 15. Dempsey, *op cit*, p 282; 'Major Oil Consuming Countries Meet in Washington to Discuss the Energy Problem' (1974) 70 *Dept State Bull* 201, at p 212.

energy) will not solve the problem.¹⁶ Some feasible proposals which would serve as partial solutions include the use of alcohol in gas to produce 'gasohol'¹⁷ and the utilization of the 437 billion tons of coal reserves in the United States, which constitutes a 340-year supply of energy.¹⁸

The use of pure alcohol or a mixture of gas and alcohol (gasohol) to run cars could significantly reduce U.S. dependence on foreign oil.¹⁹ Gasohol is less of an air pollutant than gasoline, and it can be made from excess grain stocks and even from the garbage collected by cities.²⁰ Gasohol could conceivably be the solution not only to the energy shortage problem, but also to some pollution and economic problems.²¹

In addition, plans are currently underway for creating a large stockpile of oil to mitigate the effect of future oil embargoes.²² In conjunction with the U.S. State Department, the U.S. Federal Energy Administration (FEA) has manipulated its purchases of this oil to combat OPEC price increases. Since the United States will be purchasing a huge amount of oil, pressure has been placed on the Arab countries to compete for this business. In the fall of 1975, Saudi Arabia held the OPEC price increase to 10 per cent, though other cartel members wanted more.²³ This lower price was because of the close business ties which the United States has been trying to foster with the Saudis and because of the potential U.S. purchase of large amounts of Saudi oil.²⁴ Thus, the FEA does have some power to combat price increases, since the quantities involved in its oil purchases are very large. Perhaps the FEA could pinpoint certain OPEC countries in the future and selectively cancel some contracts for oil while negotiating lower oil prices with others. At least, this would put pressure on the Arab oil-producers to reduce prices, and it might even cause schisms in OPEC or OAPEC.

The Foreign Policy of the United States: A Proposed Response to the Arab Oil Threat

In the diplomatic arena, '[s]everal Arab oil-producing States have warned that the United States cannot be assured of obtaining uninterrupted supplies of oil unless it modifies its pro-Israeli foreign policy'.²⁵ The United States does not have to disavow Israel, but it does need to foster

16. Dempsey, *op cit*, pp 284-85.

17. 'A Farmbelt Push for Gasohol' *Business Week* 27 Feb 1978 [hereinafter cited as 'Gasohol']; Anderson 'Alcohol Could Fill Fuel Needs' *News-Virginian* 9 Aug 1977 [hereinafter cited as 'Alcohol'].

18. 'King Coal's Return; Wealth and Worry' *Time* 1 March 1976.

19. 'Gasohol' *Business Week*; 'Alcohol' *News-Virginian*.

20. 'Gasohol' *Business Week*; 'Alcohol' *News-Virginian*.

21. 'Gasohol' *Business Week*; 'Alcohol' *News-Virginian*.

22. See 'Energy: What New Law Does to Fuel Prices and Supplies' *US News & World Rep* 5 Jan 1976.

23. See 'Living with OPEC' *Time* 19 Jan 1976 [hereinafter cited as 'OPEC'].

24. *Ibid*.

25. Dempsey, *op cit*, p 287.

closer ties with the Arab countries.²⁶ As was demonstrated in the 1973 crisis, the U.S. position in any future Middle East crisis will be enhanced to the extent that the United States can retain the respect of both sides.²⁷

In 1974 U.S. Secretary of State Kissinger's strategy for combating future oil embargoes included: (1) a policy encouraging all oil-consuming nations to reduce their oil imports to help lower the cost of oil; (2) coordinated measures aimed at developing alternate energy sources; and (3) the establishment of a U.S. \$25 billion loan fund providing secondary financing for the U.S. \$40 billion annual oil payment deficit of the industrialized nations.²⁸ Since that time, the United States and 15 other countries have formed the International Energy Agency (IEA) which is designed to work closely with the Organization for Economic Cooperation and Development (OECD) and to combat OPEC and OAPEC.²⁹ Minimum prices for imports of oil have been established by IEA to protect domestic producers in the IEA countries,³⁰ and in the event of a future oil embargo, the IEA has developed a mutual assistance plan which utilizes emergency oil supplies, oil sharing, and reduced consumption.³¹ Some businessmen and political leaders in the United States and Western Europe have suggested that Arab oil be declared an 'international resource' and be regulated by the United Nations.³² A resolution favoring the 'international resource' concept would never pass because the composition of the General Assembly is heavily weighted against the industrialized nations.³³ However, the concept itself shows that there is some precedent and support for the proposition that oil should constitute a 'special category' with regard to the legal arguments involving Articles 2(4), 39, and 51 of the U.N. Charter.³⁴

The United States needs to adopt as its official policy the position: (1) that oil is such a vital commodity that it is in a category by itself; and (2) that an oil embargo is an ultra-coercive form of economic aggression which constitutes 'force' under Article 2(4) and 'aggression' under Article 39 of the U.N. Charter.³⁵ It needs to re-emphasize the catastrophic effects that oil embargoes can eventually have on developing countries. Once the developing countries recognize that the OAPEC countries are hurting food production and economic development within the Third World, they should become more favorably inclined toward those positions taken by the United States.

In addition, the United States should establish closer ties with the Arab

26. See 'Blackmail by Oil' *New Republic* 20 Oct 1973.

27. *Ibid.*

28. Dempsey, *op cit*, p 289; see also Energy Policy Project of the Ford Foundation, *A Time to Choose* (1974), p 171.

29. Katz, 'Department Discusses International Economic Policy' (1975) 43 *Dept State Bull* 707, at p 710.

30. *Ibid.*

31. *Ibid.*

32. Dempsey, *op cit*, p 288.

33. *Ibid.*

34. See above pp 286 et seq.

35. Above p 298.

world. However, it should advise Israel of its policy of establishing closer ties with the Arab countries in the short run to increase its ability to support Israel in the long run. Naturally, public disclosure of this policy would hinder or even thwart its implementation.

In any event, the United States should encourage the Arab countries to join GATT and other multilateral trade agreements. Despite the suggestions of some authorities to the contrary,³⁶ it should enter into bilateral FCN treaties with Arab countries and even into treaties which would guarantee Arab oil in exchange for technology.

'The oil-producing States are acutely aware that their economies are based upon a wasting asset, and that unless they acquire an alternate base for their economies within the next few decades, they may lose their single opportunity to achieve economic prosperity and development. It is precisely in the fields of economic planning, science and technology and industrial development, that the consuming nations can provide something to the producing nations which the latter desperately need.'³⁷

Due to interrelated business interests, these treaties reduce the possibility of future oil embargoes, and in the event future embargoes do occur, they provide legal arguments for marshalling international public opinion against the radical Arab world. Similarly, the United States needs to promote agreements providing military assistance to Arab countries, while being careful to maintain the balance of power. It should also encourage Mexico, Canada, and Great Britain (once its North Sea oil is tapped)³⁸ to join OPEC. These countries could provide closer ties between the industrialized countries and OPEC and perhaps even some fifth column pressure to reduce oil prices.

Currently, the United States is abandoning its policy of trying to disunite OPEC.³⁹ This abandonment is a mistake. The United States needs to continue its efforts to disunite OPEC, but it needs to do so without arousing attention. This new technique does not mean that it should utilize surreptitious activities involving the CIA, and it does not necessarily mean that it should cover up its foreign policy initiatives. The new technique simply means that the United States should not advertise its positions unless publicity is a desired goal.⁴⁰

In recent months, the United States has tried to accommodate Saudi Arabia, OPEC's largest oil-producer. 'The Saudis' ardent anti-communism, their support of Egyptian President Anwar Sadat against more radical Arab leaders, and their relatively moderate position on oil pricing... [have made] them particularly acceptable to U.S. policymakers'.⁴¹ Though it was in the self-interest of the Saudis not to cause a recession in the West, the U.S. policy toward closer ties with

36. Dempsey, *op cit*, pp 288-89.

37. *Ibid*, p 288.

38. *Ibid*, pp 291-92; see also Pauly & Cook 'Now an Oil Glut' *Newsweek* 19 Sept 1977.

39. Dempsey, *op cit*, pp 290-91.

40. See *ibid*, p 292.

41. *Ibid*; see also 'Jittery Saudis' *Washington Post*.

Saudi Arabia provided the means by which the United States helped to persuade the Saudis to hold the 1975 OPEC price increase to 10 per cent.⁴² Thus, the benefit of establishing closer ties with the Arab world has already been proven.

As demonstrated in the preceding sections, the establishment of business, political, and even military ties with the Arab world reduces the probability that future oil embargoes (and wars) will occur. The knowledge that hostilities are going to hurt Arab business serves as a strong deterrent to another oil embargo or war. The more interrelated the Arab economic world is with the United States, the less likely the Arab leaders are to impose a total oil embargo because it hurts Arab business interests.

In addition, the potential effect of a retaliatory U.S. embargo increases as U.S.-Arab ties increase. Similarly, the extent to which the United States achieves partial or complete energy independence increases the pressure that it can bring to bear on the Arab community to end an oil embargo.

Conclusion

The United States must realize that another oil embargo would draw it closer and closer to military intervention in the Middle East. U.S. military intervention would be disastrous and would probably force the United States into a military or even a nuclear confrontation with the USSR. Since such a confrontation must be avoided at all costs, the United States must develop a more efficient and effective foreign policy with regard to the Middle East.

To decrease the likelihood of another oil embargo or war, the United States needs to quietly but aggressively develop closer economic, political, and even military ties with the Arab world. It should also try to create an Arab 'dependence' on certain U.S. goods, while working to achieve as much energy independence as possible. In any event, the United States should increase the economic interdependence between itself and the Arab world. Only by increasing these ties can it decrease the possibility of being drawn into a military confrontation in the Middle East. It should underplay its commitments to Israel while working to increase its ties with the Arab community. However, '[p]erhaps the most effective strategy that the United States could adopt is also the most constructive—continuing its efforts as a broker to guarantee a peaceful settlement between the Arabs and Israelis'.⁴³

42. 'OPEC' *Time*.

43. Dempsey, *op cit*, p 292.