



General Assembly

Distr.
GENERALA/44/510
10 October 1989

ORIGINAL: ENGLISH

Forty-fourth session
Agenda item 82 (b)DEVELOPMENT AND INTERNATIONAL ECONOMIC CO-OPERATION:
TRADE AND DEVELOPMENTEconomic measures as a means of political and economic
coercion against developing countriesReport of the Secretary-General

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I. INTRODUCTION

1. The present report has been prepared in response to General Assembly resolution 42/173 of 11 December 1987. In that resolution, the Assembly deplored the fact that some developed countries continued to apply and, in some cases, had increased the scope and magnitude of economic measures that had the purpose of exerting, directly or indirectly, coercion on the sovereign decisions of developing countries subjected to those measures. The Assembly called upon the international community to adopt urgent and effective measures in order to eliminate the use of coercive measures against developing countries, and reaffirmed that developed countries should refrain from threatening or applying trade restrictions, blockades, embargoes and other economic sanctions, incompatible with the provisions of the Charter of the United Nations.
2. In the same resolution, the General Assembly requested the Secretary-General to prepare a comprehensive, in-depth report on effective measures to eliminate the use of coercive measures against developing countries, taking into account relevant information provided by Governments and the relevant organs and organizations of the United Nations system, suggestions for monitoring the application of coercive economic measures and, if the Secretary-General deemed it appropriate, opinions and suggestions of competent internationally recognized experts in the field. It should be recalled that earlier reports of the Secretary-General on the same subject were submitted to the General Assembly at its thirty-ninth session (A/39/415), pursuant to resolution 38/197 of 20 December 1983, at its fortieth session (A/40/596), pursuant to resolution 39/210 of 18 December 1984, at its forty-first session (A/41/739), pursuant to resolution 40/185 of 17 December 1985, at its forty-second session (A/42/660), pursuant to resolution 41/165 of 5 December 1986.
3. Pursuant to the request of the General Assembly, the Secretary-General, in a note verbale, invited the Governments of all States and the pertinent organs and organizations of the United Nations system to provide relevant information. At the time of preparation of the present report, replies had been received from the following States: Byelorussian Soviet Socialist Republic, Cuba, Cyprus, Dominica, El Salvador, German Democratic Republic, Iraq, Mongolia, Romania, Samoa, Saudi Arabia, South Africa, Ukrainian Soviet Socialist Republic and Union of Soviet Socialist Republics. Replies had also been received from the following organs and organizations of the United Nations system: Economic Commission for Latin America and the Caribbean (ECLAC), Economic and Social Commission for Asia and the Pacific (ESCAP), Economic and Social Commission for Western Asia (ESCWA), World Food Council (WFC), Food and Agriculture Organization of the United Nations (FAO), World Health Organization (WHO), General Agreement on Tariffs and Trade (GATT) and United Nations Conference on Trade and Development (UNCTAD).
4. The present report contains summaries of the responses of the Governments and organizations referred to above and does not necessarily represent the views of the Secretary-General. This applies also to the views of internationally recognized experts reflected in the annex to the present report.

II. SUMMARY OF RESPONSES RECEIVED FROM GOVERNMENTS

5. Governments pointed out that coercive economic measures, meaning the application of such measures for political purposes, had taken a variety of forms, such as trade and credit embargoes, discriminatory restriction of exports and imports, unilateral denunciation of existing agreements and specific restrictions imposed on scientific and technological co-operation arrangements. They expressed the view that coercive economic measures were incompatible with and contravened basic principles of international law and principles set forth in the Charter of the United Nations.
6. Some Governments expressed concern at the increasingly frequent recourse by some developed countries to the threat or implementation of coercive economic measures, which damaged trust and confidence in international economic relations and inhibited international economic security, which should be characterized by stability, predictability and reliability. It was stressed that the application of coercive economic measures affected developing countries especially severely owing to their high economic vulnerability as a consequence of their relatively low state of economic development and the existing degree of asymmetric interdependence.
7. Some socialist countries underlined that the application of coercive economic measures in the context of East-West economic relations was based mainly on differences in socio-economic systems and consequent policies.
8. The Government of Cuba referred to the issuance of a United States presidential proclamation prohibiting the acquisition of United States visas in third countries by Cuban citizens, as well as trade with companies located in third countries, which were described as "Cuban front companies", as well as to the imposing of close controls on the transmission of money or goods to Cuba, as concrete examples of the application of coercive economic measures. The Government of Cuba also drew attention to section 1911 of the 1988 United States Omnibus Trade and Competitiveness Act, which established measures for improving the enforcement of restrictions on imports from Cuba.
9. The Government of Cyprus indicated that Turkey had banned vessels flying the flag of Cyprus from entering or using Turkish ports in an effort to hurt the economy of Cyprus and exercise political coercion. Similar measures were applied to restrict use of Cypriot airports by airplanes overflying Turkish air space.
10. The Government of the German Democratic Republic stated that the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, adopted by the General Assembly at the forty-second session (resolution 42/22 of 18 November 1987), explicitly provided relevant prohibitions concerning the use of coercive economic measures and should be used as a practical norm in all spheres of international relations.
11. The Government of Iraq vigorously condemned the use of coercive economic measures as an instrument for the intervention in the international affairs of sovereign States and indicated that such measures contravened basic provisions of international law and relevant United Nations instruments. The United Nations

should strengthen its activities concerning the collection of information and the adoption of steps to prevent the application of coercive economic measures.

12. The Government of Mongolia condemned the application of coercive economic measures, citing specific cases and their negative effects for the affected countries, and requested strict adherence to established norms of international law and relevant United Nations instruments.

13. The Government of Romania stressed that the imposition of coercive economic measures was incompatible with international law and contrary to the fundamental principles and purposes of the Charter of the United Nations and other relevant United Nations instruments. The attempt of the United States to make the granting of the most-favoured-nation treatment in United States-Romanian trade relations subject to conditions with no relevance to trade relations was considered to be an inadmissible interference in Romanian internal affairs. This led the Government of Romania to announce that it was no longer accepting most-favoured-nation treatment as long as the discriminatory conditions introduced by the United States were maintained. The Government of Romania stressed that a similar policy of pressure and politically motivated conditions had lately been pursued by some bodies of the European Community in their relations with Romania. This concerned, *inter alia*, a resolution, adopted by the European Parliament on 16 March 1989, containing threats to apply coercive economic measures against Romania.

14. The Government of Samoa referred to coercive economic measures applied by developed countries against developing countries in the following areas: terms of trade and comparative advantages; aid modalities and external assistance; control of territorial waters; control of air space; the brain drain from developing countries; and monitoring of the major currencies *vis-à-vis* the weak and vulnerable currencies of developing countries.

15. The Government of Saudi Arabia stated that the most dangerous coercive economic measures the developed countries undertook against the developing ones was the freezing of assets and money. This created a climate of non-confidence and instability in the world economy and required urgent corrective action.

16. The Ukrainian Soviet Socialist Republic supported the full adherence to provisions of international law and relevant United Nations instruments in preventing the use of coercive economic measures. The technology export controls exercised by the Co-ordinating Committee for Multilateral Export Controls were mentioned as a specific example of coercive economic measures applied *vis-à-vis* socialist countries for political reasons.

17. The Government of the Union of Soviet Socialist Republics indicated that, despite a series of resolutions adopted by the General Assembly against the imposition of coercive economic measures, discriminatory measures continued to be used in international economic relations for primarily political reasons. Specific examples were measures applied against Cuba, Nicaragua, Panama, the Libyan Arab Jamahiriya and other developing countries, as well as the stringent technology export controls adopted by a number of Western countries directed against socialist countries in the framework of the Co-ordinating Committee for Multilateral Export

Controls. The United Nations should intensify a wide-ranging universal dialogue with the aim of building consensus in favour of consolidating universally recognized legal norms against the use of coercive economic measures.

18. Some Governments renewed their previous proposals to establish a mechanism within the United Nations, which could monitor and gather information, develop norms and propose action against the imposition of coercive economic measures.

III. SUMMARY OF RESPONSES RECEIVED FROM ORGANS AND ORGANIZATIONS OF THE UNITED NATIONS SYSTEM

19. WHO reported that at the request of a number of member States a sub-item entitled "Embargo on medical supplies and its effects on peoples' health" was placed on the agenda of the fortieth World Health Assembly. The Assembly decided to refer the matter to the Executive Board for preliminary examination. Subsequently, a draft resolution entitled "The embargo on medical supplies and its effects on health care" was submitted. Following a discussion in the World Health Assembly the draft resolution was referred to the Executive Board.

20. WHO stressed that it had no supranational power to force States that withheld medical supplies, *inter alia*, for political reasons to reverse their decision and to supply the medical equipment and the medical drugs concerned to the other State. The World Health Assembly could, however, use its moral standing to request the withholding State to do so. The Director-General could take action without a specific resolution or decision of the Assembly or the Executive Board. Thus, at the request of the member State that considered that it was being deprived of medical supplies by another member State, for whatever reason, the Director-General could take the necessary measures to ensure the provision of these supplies, either from the withholding member State, if it agreed to provide the supplies through WHO, or from another member State. If, in spite of his efforts, the Director-General could not find a satisfactory solution, he might bring the matter to the attention of the Assembly.

21. ECLAC referred its response to decisions 222 and 226 of the Latin American Council of the Latin American Economic System, which dealt specifically with the United States trade embargo against Nicaragua. ECLAC stated that coercive economic measures were frequently used by some industrialized countries as a means of exerting political pressures on developing countries, and that the adoption of such measures often created a grave economic emergency in the affected States.

22. ECLAC also referred to decision 112 of the Latin American Council, which, in article 3, condemned the application of illegal and arbitrary coercive economic measures against some developing countries for the purpose of undermining and impeding the full exercise of their national sovereignty over their territories and natural and economic resources, and of obstructing the economic and social policies that each of them had established by the sovereign decisions of their peoples and Governments.

23. ECLAC also indicated that the use of such measures against a member State was contrary to international law and in violation of the Charter of the United Nations, the Charter of Economic Rights and Duties of States, the Charter of the Organization of American States and the General Agreement on Tariffs and Trade.

24. ESCWA condemned the use of any type of coercive actions by one State against another and fully supported all efforts to eliminate any forms of restrictive economic measures applied by developed countries against developing countries with the purpose of inducing changes in their domestic or foreign policies.

25. In general, ESCWA countries had not reported being subjected to trade restrictions for non-economic reasons. None the less, restrictive measures applied directly by a developed country had been reported by the Syrian Arab Republic, where on past occasions the suspension of economic and technical assistance programmes as well as restrictions in transfer of technology had been applied for political reasons.

26. ESCWA indicated that coercive economic measures intended to exercise pressure or control over a country's internal decision-making processes politically or economically constituted only one type of coercive economic measure. Another type of measure was related to trade policies with the purpose of restricting market access of developing countries products to the markets of developed market economies. It was reported that ESCWA countries had been subjected to market access restrictions in contradiction to GATT provisions.

27. Such restrictive trade practices negatively affected world trade and impaired the economic growth of affected countries by distorting the price mechanism and the allocation of resources.

28. As regards the prevention and monitoring of the application of coercive economic measures ESCWA proposed:

(a) Active participation by UNCTAD to ensure that the principles and rules governing the prohibition of coercive economic measures be enforced by all member States;

(b) A strengthening of the GATT system through the improvement of monitoring and reporting on member countries' trade policies, in the form of a surveillance system whereby any application of coercive economic measures to a developing country could be identified rapidly and called to the attention of the member country;

(c) The strengthening of co-operation between developed and developing countries in order to reduce barriers to trade and to bring about a reduction in protectionism and restrictive trade policies.

29. ESCAP pointed out that, in accordance with the Charter of Economic Rights and Duties of States, no member State should be subjected to coercive economic measures that might prevent it from the free and full exercise of its sovereign rights. The solution of development problems and the restructuring of international economic

relations on a just and equitable basis were often hindered by the use of coercive measures against developing countries.

30. ESCAP indicated that coercive economic measures were often disguised in forms whose implications were not readily recognizable by developing countries. ESCAP referred in that respect especially to specific problems relating to trade barriers and trade blocs, non-tariff barriers, trade in services, international capital flows, official development assistance, generalized system of preferences, activities of transnational corporations and external indebtedness.

31. WFC reiterated its specific concern relating to coercive economic measures and its strong opposition to the use of food as a political weapon.

32. UNCTAD convened a special group of internationally recognized experts in order to examine the multifaceted problems related to the definition, legal basis and impact assessment of coercive economic measures. The main findings and proposals are reflected in the annex to the present report.

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ANNEX

Report of the expert group meeting

1. Background

1. In response to General Assembly resolution 42/173 of 11 December 1987 and to a subsequent request by the Director-General for Development and International Economic Co-operation, the Secretary-General of UNCTAD convened a group of experts at Geneva from 1 to 3 May 1989 for the purpose of considering effective approaches to the elimination of the use of coercive economic measures against developing countries. The list of participants is given in the appendix to the present report.

2. UNCTAD had earlier commissioned a research paper on the subject. 1/ That paper, as well as the prior reports of the United Nations, 2/ formed the background for the experts' discussions.

3. The experts addressed a number of difficult issues dealing with limits on coercive economic measures. Although they were able to reach considerable consensus on many matters, the experts also recognized the need for further discussion of several issues. Their views can be summarized as follows.

2. Current state of international law

4. Putting aside for the moment the difficulties in defining what coercive economic measures are, it was the general view of the experts that international law lacked a clear consensus as to when those measures were improper. The international legal system also lacked adequate mechanisms for monitoring and dealing with the use of those measures

5. Those gaps in international law existed in spite of commendable efforts in the past - through treaties and through declarations and resolutions in international organizations - to develop norms limiting the use of coercive economic measures. The principal exception to the situation was provided by GATT (see sect. 4).

3. Defining coercive economic measures

6. In theory, a host of economic activities might qualify as coercive economic measures. States and entities controlled by them engaged in or affected international economic activity in many ways every day. These activities could be grouped roughly into five major categories, as limits on:

(a) Bilateral government programmes, such as foreign assistance, low-interest credit, fishing rights and aircraft landing rights;

(b) Exports from the country that is imposing the measures (the "sender" State);

(c) Imports from the country that is the object of the measures (the "target" State);

(d) Private financial transactions, such as on bank deposits, loans related to trade and loans for investment;

(e) The activities of the international financial institutions, such as the International Monetary Fund (IMF), the World Bank and the regional development banks.

7. The experts generally agreed that many of these activities could be proper. Seeking to limit some of these activities would be inappropriate and even counterproductive. The problem was to identify those activities which should be eliminated or limited.

8. Some of the experts also thought that "economic sanctions" constituted something different from coercive economic measures as that concept was discussed at the meeting, although the experts did not necessarily agree on the differences between the two. In any event, the experts generally preferred to avoid the use of the phrase "economic sanctions" when trying to define coercive economic measures.

9. There was general consensus that the intent of the sender country was an important criterion in determining what constituted a coercive economic activity, that is, one that should be eliminated or limited. Intent that seemed to be acceptable was where the sender State sought to influence changes in the non-economic policies - domestic or foreign - of another State. This included intent of a non-economic nature, for example, to influence the target State in its choice of government, in its foreign policies towards third countries and in its allowing individuals and groups in the State to enjoy various political and civil rights.

10. The intent criterion, however, did not include many economic activities, for example, and probably most importantly, those against a target State to get it to change its tariff or non-tariff trade barriers. The experts generally believed that it would be over-inclusive and counterproductive at that point to expand the fledgling concept of economic coercive measures to include the large and complex mix of sender States' economic activities for economic purposes. Some experts also noted that GATT already provided a developed international legal framework that covered many such economic activities undertaken for economic reasons.

11. Most of the experts also thought that for an economic measure to be defined as coercive there should be some impact on the target State. While international and domestic law often prohibited "attempts" - that is, attempted actions - in many situations, most of the experts thought that the developing concept of coercive economic measures should focus at least initially on cases where a country actually suffered some harm. These were presumably the most important cases. The experts also generally agreed that the impact should be at least "material", or clearly observable.

12. There was considerable discussion and some disagreement, however, over just how much effect was required. Some experts believed that the required effect must be "serious". Some of these experts would view the requirement as a two-part one: that the sender State be in a "dominant" position relative to the target State and that the impact be "serious" or "material". Those who favoured a version with stricter requirements wanted the focus to be on the most important cases, where there had been economic loss and dislocation, and where development efforts had been hampered.

13. Those experts who hesitated to specify the extent of the effect were concerned primarily that arguments over the extent of harm could be used to evade developing any norm against coercive economic measures. They did not want to limit the category too much in their view, nor to provide an unintended loophole.

14. Although the need for some impact to exist was generally accepted, it was universally agreed that the impact could result from a sender State's threat of economic measures, as well as from the actual imposition of those measures. For example, a sender State could threaten a trade embargo to influence a target State to change its foreign policies *vis-à-vis* another State. The threatened trade embargo could cause serious repercussions in the target State's economy.

15. In measuring impact, most of the experts agreed that offsetting benefits that a target country might receive from a third country should not be counted in determining whether the minimum requisite effect existed or not. Those offsetting benefits might occur when a third State began purchasing the exports of the target country after the sender State had imposed a trade embargo. Several of the experts noted that any effort to take offsetting benefits into account would often be difficult to measure, it would be hard to determine, for example, whether the actions of the third State were intended to be an offsetting measure and or were simply normal commercial activity. The calculation would also be further complicated by the fact that the target State might have had to pay some price (not always obvious) to enter into new arrangements with the third country.

16. On the other hand, some experts noted the general agreement of the experts, discussed above, that the sender State's actions should have some economic impact to be coercive. If a third country's activities more than made up for the sender State's action, then there was an issue of whether the threshold test of requisite impact was satisfied.

17. There was considerable discussion whether affirmative as well as negative economic activities should be included at that point in the concept of coercive economic measures. Affirmative economic activities were those where a country was offering a benefit or "carrot" to the other country to encourage economic or political developments. A prime example would be bilateral foreign aid. The country receiving such assistance might be paying a price for it in one subtle way or another in terms of reduced independence.

18. It was generally agreed that only negative economic activities, such as trade embargoes and asset freezes, could be considered coercive economic measures. It did not seem advisable at that point to include affirmative economic activities.

Although these activities could have a material impact on the target country, favourable economic relations between countries should be encouraged. To begin to delve into the subjective motivation for, say, a grant of bilateral foreign aid would probably be unworkable and might make it more difficult for recipient countries to obtain foreign assistance in the future.

4. Allowable exceptions

19. There was a general consensus that the exceptions to the criteria developed above should be limited in both number and scope. The experts were concerned that exceptions were subject to abuse, or would at least raise problems of interpretation. Moreover, there also seemed to be a sense that the initial criteria had been drawn relatively narrowly so that most acceptable economic activities were not caught in the concept of coercive economic measures as developed so far.

20. The experts generally agreed that there should be a security, or self-defence, exception. Thus, a State could take what would otherwise be a coercive economic activity if it were necessary for its security interests. Nevertheless, the experts also generally agreed that the exception should be defined narrowly.

21. Some experts suggested that other exceptions found in GATT, such as those in article XX, might also be allowed. However, other experts noted that most of those exceptions were designed for evaluating economic activity for economic purposes and not for the non-economic purposes that were being considered here.

22. Some experts suggested that there should be a general exception allowing activity that was pursuant to international treaty obligations. This was not refined further, but it was taken for granted that there should definitely be a provision at least recognizing that States could take economic measures pursuant to a Security Council resolution under Article 41 of the Charter of the United Nations. The measures against South Africa were an example.

23. Some experts suggested a possible exception to allow activity to protect human rights. Other experts thought that would be providing a loophole to allow activity that should not be permissible.

24. One expert suggested allowing an exception for activity that was taken in response to the target State's breach of an international obligation that entailed a material injury and had not been compensated for fairly. The response would have to meet the equivalence standard (see the Vienna Convention on the Law of Treaties, 1969). Moreover, the responding State would still have an obligation under Article 33 of the Charter of the United Nations to seek to resolve any dispute by peaceful means. Other experts questioned the need for an explicit exception for such a situation.

5. Mechanisms

25. It was generally agreed that economic activities that were within the jurisdiction of GATT should continue to be evaluated by GATT. Moreover, further improvements in its dispute resolution mechanisms were encouraged.

26. The principal problem with GATT was that it did not cover many situations where coercive measures might be used. Firstly, some of the present target States were not contracting parties to GATT, including Panama, the Libyan Arab Jamahiriya, and the Islamic Republic of Iran. Secondly, GATT primarily covered import controls and government programmes (e.g. subsidies) that influenced the price of imports. Although there were efforts to expand the coverage of GATT in the ongoing Uruguay Round of Multilateral Trade Negotiations, GATT's coverage of export controls, financial controls and bilateral government programmes was uneven.

27. Thirdly, even regarding import controls (or export controls where the General Agreement might be applicable), some experts noted that GATT's present framework allowed broad exceptions to the GATT rules, so that what would otherwise be coercive economic measures could be tolerated. Other experts noted, however, that improvements had been made in the dispute resolution process during the Uruguay Round and that other changes might be made. These changes, those experts explained, would eliminate some of the problems, as in the past, in reaching agreement on the terms of reference and so on. While applauding those changes, other experts wondered whether even more should not be done in order to tighten up the exceptions and strengthen the dispute resolution system in GATT.

28. In any case, however, there would in future be economic activities outside GATT's jurisdiction, for example, when a non-GATT State or a type of economic activity not within the scope of the Agreement was involved. For those activities, it was generally agreed that the United Nations should designate an "institutional capacity" to receive complaints, investigate the facts, evaluate the activity and report to the United Nations.

29. There was a considerable discussion of what that institutional capacity should be. Many experts thought that a new capacity should be established in the United Nations. Some experts suggested that an economic ombudsman should be created somewhere in the United Nations structure. In any case, the designated entity should be a relatively independent, expert one that could delve impartially into challenged activities, investigating, evaluating and reporting.

30. The experts generally agreed that the standard of what was a coercive economic measure was not yet clear enough to allow formal adjudication of complaints and formal remedies, unless the States involved agreed independently to submit themselves to such adjudication. The designated entity, however, should strive to develop the concept and related criteria further on a case-by-case basis with its investigation and reporting. Moreover, the entity should consult further with States and with experts.

31. Some experts expressed concern that the commendable effort of developing a standard that might lead to limits on coercive economic measures should not be viewed as any endorsement for a sender State to use other means to influence a target State, for example, through covert action or military force. Rather, the experts were only addressing economic activity and not other means.

Notes

1/ See Barry E. Carter, Designing Effective Approaches to Eliminate the Use of Coercive Economic Measures against Developing Countries (unpublished working paper of the meeting). Mr. Carter, of Georgetown University Law Center, Washington, DC, United States of America, is a professor of international law and recently published a relevant book, International Economic Sanctions (Cambridge University Press, 1988).

2/ See, in particular, the reports of the Secretary-General of the United Nations entitled "Economic measures as a means of political and economic coercion against developing countries" (A/41/739 and A/42/660).

APPENDIX

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