

## EDITORIAL COMMENT

### INTERNATIONAL LAW AND ECONOMIC COERCION: "FORCE," THE OIL WEAPON AND EFFECTS UPON PRICES

After numerous writings on the legal permissibility or impermissibility of the employment of the Arab oil weapon from October 1973 to March 1974 and the social consequences of the decision to employ economic coercion against numerous states, adequate attention has not yet been paid to three important aspects of law and fact: (1) A policy-oriented interpretation of Article 2(4) of the United Nations Charter, (2) Production Cuts and Embargoes, and (3) Price Increases and War Aims. Confusion and even outright inaccuracy has flowed from the printed scratchings of scholars and advocates engaged in an incomplete reference to legal policies at stake and the many relevant features of context. Insufficient attention has also been paid to past trends in authoritative decision, conditioning factors and the effects of particular strategies of economic coercion upon all values in various interdetermined social processes.

Effort is now under way to move beyond consideration of the oil weapon, to analyze economic coercion in general and to articulate useful criteria for decision concerning the permissibility or impermissibility of any strategy of economic coercion under international law. However, future effort to articulate criteria and relate past use of economic coercion, such as the Arab use of oil as a politic-economic weapon, will be hampered if there is insufficient awareness of the three aspects of law and fact that are addressed in this comment.

Of primary concern is the failure of many scholars to attempt a richer, policy-oriented interpretation of Article 2(4) of the United Nations Charter, which proscribes certain threats or uses of force in international relations. A second and third concern are interrelated--the failure of many writers to adequately perceive the intertwined impact of war objectives: economic strategies of coercion and sharp, drastic increases in the market price of oil. Whether it is determinative of permissibility or not, one should not lose sight of the fact that the Arab oil embargoes and production cuts were war related. Furthermore, it is unrealistic and inhibiting of future scholarly effort to treat the oil price increases and formal OPEC announcements of price as outcomes of pure economic decision-making. This comment explores each of these concerns.

The Question of Force

Professor Derek Bowett, in his article on "International Law and Economic Coercion," argues that the "relevance" of Article 2(4) of the United Nations Charter to situations of intense economic coercion is "doubtful."<sup>1</sup> He finds; instead, that such forms of economic coercion as the Arab oil weapon are regulated under Article 2(7) of the Charter, which proscribes certain forms of intervention into what are essentially the "domestic" affairs of other states.<sup>2</sup> Professor Richard Lillich, confronted with this problem of Charter interpretation, preferred to accept Professor Bowett's approach, noting all the while that both Professor Bowett and Dr. Shihata, in a Virginia symposium, recognized that certain forms of economic coercion are impermissible under international law.<sup>3</sup> There are similar attempts to preclude Article 2(4) from a useful role in the management of economic coercion, but it seems that each of these authors were just a bit unmindful of some of the basic points made about the interpretation of Article 2(4) in a pre- and post-Charter formation context.

Elsewhere it is pointed out that Article 2(4) of the Charter does not contain any restrictive words such as "armed" which would limit application of the article merely to situations of "armed" force. The prohibition applies to certain forms of threat or use of force.<sup>4</sup> No one has ever proven that the intent of the drafters was that only armed force was proscribed;<sup>5</sup> neither has anyone proven that the predominant expectation today is that only armed force is proscribed in Article 2(4). Much of the myth of restriction is based upon conjecture or resolutions that were not adopted for various, unarticulated reasons. Needless to say it is not based upon the semantic definitional exercise by dictionary toting textualists exploring the "meaning" of the term;<sup>6</sup>

1. 16 Va.J.Int'l L. 245 (1976).

2. See *ibid.*

3. See Lillich, "Economic Coercion and the "New International Order": A Second Look at Some First Impressions," 16 Va.J.Int'l L. 233, 236, 238 (1976).

4. See Paust & Blaustein, "The Arab Oil Weapon--A Threat to International Peace," 68 Am.J.Int'l L. 410, 415-417 (1974). Also see Paust & Blaustein, "The Arab Oil Weapon: A Reply and Reaffirmation of Illegality," 15 Col.J.Trans.L. 57 (1976).

5. See also M. McDougal & F. Feliciano, Law and Minimum World Public Order 124 n.8 (1961).

6. See, e.g., Webster's New Collegiate Dictionary,

nor is it based upon the objects and purposes of the United Nations Charter, which are indeed broad. It seems rather unusual for textualist-oriented scholars to ignore even the textualist commands, e.g., of the 1969 Vienna Convention of the Law of Treaties. Articles 31 and 32 of that convention would require some effort to investigate the "ordinary" meaning of a term that may, if necessary, be supplemented and confirmed by the preparatory work. Moreover even such an approach to interpretation requires that the word "force" be interpreted in its textual context and in light of the object and purpose of the treaty, thus taking into consideration the phrase "in any manner" and other articles of the Charter such as Articles 1(2), 1(3), 2(7), 55(c) and 56.

From a contextualist's perspective, however, a more realistic approach to interpretation would (1) investigate the whole flow of past and subsequent communication to determine relevant common expectation, (2) supplement ambiguities by reference to basic expectation and (3) further integrate, when necessary, particular expectations with more intensely demanded and basic community policies at stake.<sup>7</sup> In the present case, however, there is no generally shared pre-Charter formation expectation that precludes interpretation of Article 2(4) as proscribing certain forms of economic coercion. As McDougal and Feliciano point out, "[t]he discussions and preparatory work at San Francisco appear somewhat confused and equivocal" with regard to modalities of coercion sought to be proscribed "and hardly yield conclusive

"force," 449 (1974), stating: "to compel by physical, moral or intellectual means . . . to press, drive, attain to, or effect against resistance . . . to produce only with unnatural or unwilling effort . . . syn FORCE, COMPEL, COERCE . . ."; and 1 The Compact Edition of the Oxford English Dictionary 419-420 (1971), stating: "5d. In non-material sense: Constraint or compulsion exerted upon a person . . .; 7. Of things . . . Power to influence, affect or control . . .; 3. To constrain by force . . . to compel . . . to compel one . . . to adopt a policy he dislikes; 4. To compel, constrain, or oblige (a person, oneself, etc.) to do a thing . . . to drive (a person, etc.) to or into (a course of action, a condition)." (emphasis original.) From these definitional approaches it is certain that the dictionary approach to a meaning of "force" is far broader than "armed force" and that it includes any modality of coercion.

7. See, e.g., M. McDougal, H. Lasswell & J. Miller, The Interpretation of Agreements and World Public Order (1967); and McDougal, "Human Rights and World Public Order: Principles of Content and Procedure for Clarifying General Community Policies," 14 Va.J.Int'l L. 387-396, passim (1974).

indication of the correctness" of an assertion that "force" meant "armed force."<sup>8</sup> Subsequent practice has not established any special meaning different from the approach taken and recommended here, that the economic modality is regulated by Article 2(4) of the Charter. Indeed, general expectation evident in subsequent U.N. resolutions supports our approach.

Much of the "myth" about Article 2(4) moreover ignores the kinds of prohibition contained in the Charter of the Organization of American States, Article 16; the 1954 Draft Code of Offenses Against the Peace and Security of Mankind; the Draft Declaration on Rights and Duties of States, 1949; the Essentials of Peace resolution, 1949; the Peace Through Deeds resolution, 1950; the 1965 Declaration on Inadmissibility of Intervention; the Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation, 1970; and others.<sup>9</sup> These prohibitions, as elucidated by Lillich, Bowett and others, demonstrate continuing community expectations that, in appropriate contexts, certain forms of economic coercion are unlawful under international law, including Charter law.

As Professor Bowett declared some time ago, the purpose of the phraseology in Article 2(4) of the Charter at the time of its adoption was not a "qualifying" purpose; phrases within the article were not designed to qualify the general proscription.<sup>10</sup> With this background of draftsmanship in mind one certainly cannot read into the arti-

8. McDougal & Feliciano, *supra* note 5, at 124 n.8. Also see *id.* at 125 and 178-179. See Lillich, "Economic Coercion and the International Legal Order," 51 *Int'l Aff.* 358, 360-361 (1975); Boorman, "Economic Coercion in International Law: The Arab Oil Weapon and the Ensuing Juridical Issues," 9 *J.Int'l L. & Econ.* 205, 220-223 (1974); Comment, "The Use of Nonviolent Coercion: A Study in Legality Under Article 2(4) of the Charter of the United Nations," 122 *U.Pa.L.Rev.* 983 (1974); Brosche, "The Arab Oil Embargo and United States Pressure Against Chile: Economic and Political Coercion and the Charter of the United Nations," 7 *Case W.Res.J.Int'l L.* 3 (1974); J. Stone, Aggression and World Order 58-59, 66 f8., 85, 111 (1958).

9. See Paust & Blaustein, 68 *Am.J.Int'l L.*, *supra* note 4, at 417-418.

10. D. Bowett, Self-Defense in International Law 151 (1958).

cle other qualifying words, such as "armed," that do not exist.<sup>11</sup> One must read the article with this general prohibition in mind; and, as McDougal and Feliciano point out, this prohibition was extensive.<sup>12</sup> Moreover, the article contains an important phrase that seems to have escaped the scholarly attention of Professors Lillich and Bowett in their discussions. Article 2(4), in addition to territorial integrity and political independence, addresses threats or uses of force which are "in any other manner inconsistent with the Purposes of the United Nations." This is a significant phrase for at least two reasons: (1) it further reinforces the general prohibition in terms of forms of force prohibited ("in any other manner"), and (2) if, *arguendo*, economic coercion is included within modalities of "force" proscribed by Article 2(4), the use of economic coercion that violates Article 2(7), or any other article of the Charter, would also be violative of Article 2(4) since a violation of Article 2(7) would involve actions that were inconsistent with the purposes of the United Nations; thus also, Article 2(4).<sup>13</sup>

Debate about permissible and impermissible forms of economic coercion will enhance a more comprehensive awareness of all of the legal policies at stake and the social consequences that flow from these decisions. In this regard, I am pleased to find recognition of several prohibitions of certain forms

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11. See 11 Oppenheim's International Law 154 (H. Lauterpacht ed., 7th ed., 1952).

12. McDougal & Feliciano, *supra* note 5, at 179. On economic coercion, also see *id.* at 177-179, 190-196, 200, *passim*.

13. The fact of interrelated prohibition (with 2(4) and 2(7)) compels a contextual and policy-serving interpretation of the word "force" in Article 2(4) that is consistent with, and serving of, an integrated prohibition. Thus, an interrelated prohibition compels a contextual interpretation of "force" which includes economic coercion that is violative of Article 2(7). Since the Arab oil weapon clashed with norms and expectations intertwined with a policy-serving interpretation of Article 2(7) and constituted an unlawful form of intervention into what were essentially domestic affairs of other states (i.e., their determination of their foreign policy, and so forth), such a use of economic coercion necessarily was employed "in any manner inconsistent with the Purposes of the United Nations" and was, therefore, also prohibited under Article 2(4).

of economic coercion by nearly all of the contributors to a recent symposium in the Virginia Journal.<sup>14</sup> From here we can map out the types of consensus, common interest and other criteria that are useful for more detailed inquiry and normative guidance for future choice.

#### Production Cuts and Embargoes

The 1973 oil production cuts and embargoes were directly related to an Arab effort to compel Israel to withdraw from occupied territory. Furthermore, the 1973 Arab efforts to cut production, as a strategy to coerce other states, and to employ an oil embargo as a second, interrelated form of economic coercion directly resulted from the 1973 war. As the October 17, 1973 communique issued by the Conference of Arab Oil Ministers in Kuwait states:

Before and during the present war, the United States has been active in supplying Israel . . . The Arabs have therefore been induced [to cut oil production], unless the international community hastens to rectify matters by compelling Israel to withdraw from our occupied territory, as well as letting the U.S. know the heavy price which the big industrial countries are having to pay as a result. . .<sup>15</sup>

The communique also announced a five percent production cut, "with a similar reduction to be applied in each successive month," until the Arab war efforts were achieved.<sup>16</sup> Moreover, the communique emphasized a direct nexus between war aims, the embargo and production cuts. The communique specifically declared that no production cuts or interruptions in oil would occur for "any friendly state."<sup>17</sup> It further added that the Arab states were ready "to supply the world with its oil needs as soon as the world shows its sympathy with [them] and denounces the aggression against [them]."<sup>18</sup>

In an attempt to justify this use of economic coercion and subsequent communiqués and actions in the face of international legal norms to the contrary, Dr. Ibrahim F.I. Shihata, then a Legal Advisor for the Kuwait Fund for Arab

14. 16 Va.J.Int'l L. 233 (1976).

15. Official text reprinted in I. Shihata, The Case for the Arab Oil Embargo, appendix 1, at 75 (1975).

16. See id.

17. Id. See also infra note 19.

18. Id.

Economic Development and the present Director-General of the OPEC Special Fund alleged, incorrectly, that the relevant norms assume "normal peacetime conditions" and "cannot apply in an actual war situation where belligerent states are ordinarily entitled, in accordance with the rules of the law of war, to use their economic power to coerce their adversaries and even to inflict damage on third parties."<sup>19</sup> That, of course, is one of the justifications offered for the embargoes of several states.<sup>20</sup> What is significant about the Director-General's statement concerning this inquiry is the admission that both forms of economic coercion (the production cuts and the more directly coercive embargoes) were tied to the war effort.

There can be no doubt that these high level Arab admissions, printed as the only type of justification offered under international law, are factually correct and that these two forms of economic coercion were tied to the war effort. While hostilities were still in progress, although certain military operations had terminated,<sup>21</sup> a second meeting of the Arab Oil Ministers was held on November 4-5 in Kuwait to further a shift from a military effort to an intensified use of economic force as, the Director-General wrote, "an attempt to enhance the use of oil for accelerating the process of reaching a peaceful settlement of the Arab-Israeli conflict."<sup>22</sup> At the second meeting, it was decided that a production cut amounting to twenty-five percent of the September, 1973 production levels was to be implemented.<sup>23</sup> Another five percent reduction was threatened for December. "As a result, a total reduction of about 2,826,000 b/d or some 28.5 percent below the September average became effective," among four states,

19. See Shihata, "Destination Embargo of Arab Oil: Its Legality Under International Law," 68 Am.J.Int'l L. 591, 618 (1974).

20. See id. at 596. Also see 17 Middle East Economic Survey, No. 6, at 2 and 7-8 (Nov. 30, 1973).

21. On "war" and "hostilities," see also U.S. Dep't. of Army Pam No. 27-161-2, 11 International Law T-33, 207-212 (1962); Pan American Airways, Inc. v. Aetna Casualty, 505 F.2d 989 (1974); Shihata supra note 19, at 592-595; 17 Middle East Economic Survey, no. 1, at 3 and 9-11 (Oct. 26, 1973) (Saudi Arabian armed forces remain under Syrian command); and 17 Middle East Economic Survey no. 6, at 4-6 (Nov. 30, 1973) (Communique, Sixth Arab Summit Meeting, recognizing a continuation of war).

22. Shihata, supra note 19, at 595.

23. See Shihata, supra note 15, appendix III, at 83. The dramatic level of production cutback, by 25 percent, in-

with a total cut of approximately 4.875 million b/d.<sup>24</sup>

Each of these coercive measures was designed to further war efforts as outlined in a formal Resolution issued by the first Kuwait Conference on October 17, 1973. Pertinent parts of the resolution supplement the demonstrated nexus between war aims and the economic coercive measures taken. As the resolution states:

Considering that the direct goal of the current battle is the liberation of the Arab territories occupied in the June 1967 war and the recovery of the legitimate rights of the Palestinian people in accordance with the United Nations resolutions; . . .

Considering that the economic situation of many Arab oil producing countries does not justify raising oil production, though they are ready to make such an increase in production to meet the requirements of major consumer industrial nations that commit themselves to cooperation with us for the purpose of liberating our territories;

Decided that each Arab oil exporting country immediately cuts its oil production by a recurrent monthly rate of no less than 5% to be initially counted on the virtual production of September, and thenceforth on the last production figure until such a time as the international community compels Israel to relinquish our occupied territories or until the production of every individual country reaches the point where its economy does not permit of any further reduction without detriment to its national and Arab obligations.

cluded volumes deducted as a result of embargoes against the U.S. and Holland. See 17 Middle East Economic Survey, no. 2, at 2 (Nov. 2, 1973).

24. Shihata, supra note 19, at 595, citing 17 Middle East Economic Survey, Supp., at 2, 5 (Nov. 6, 1973) (for Libya, Abu Dhabi, Algeria, Qatar); c.f. 16 Middle East Economic Survey, no. 52, at 3-4 (Oct. 19, 1973), estimating a total OAPEC production in September of around 19.5 million b/d, "which means that a 5-10 percent cut would take between 1 and 2 million b/d" out of circulation, quoted with approval in Shihata, supra note 19, at 594; and 17 Middle East Economic Survey, no. 1, at 3 (Oct. 26, 1973), disclosing the fact that a 10 percent cut in Saudi Arabian oil alone, when tied to the impact of the embargo against the U.S., resulted in "a reduction of approximately 2.3 million b/d." The "b/d" symbol is used as a shorthand expression of barrels daily. Twenty five percent of 19.5 b/d (the total Sept. production) is equal to a total cut of some 4.875 million b/d.

Nevertheless, the countries that support the Arabs actively and effectively or that take important measures against Israel to compel its withdrawal shall not be prejudiced by this production cut and shall continue to receive the same oil supplies that they used to receive prior to the reduction. Though the cut rate will be uniform in respect of every individual oil exporting country, the decrease in the supplies provided to the various consuming countries may well be aggravated proportionately with their support to and cooperation with the Israeli enemy.

If any doubt remains, it is clearly stated in subsequent publications by Director-General Shihata that this nexus existed. He wrote:

In October 1973, Arab oil-exporting States imposed an outright embargo on oil shipments to certain destinations and coupled it with across-the-board production cutbacks. Such exceptional measures were implemented during a war situation in which military personnel from Kuwait, Iraq, Saudi Arabia, and Algeria joined the Egyptian and Syrian armed forces in an attempt to put an end to the forcible Israeli occupation of Egyptian and Syrian territories. The objective of these measures was to discourage certain countries from violating their obligations of neutrality toward Arab belligerents and from continuing their encouragement of, or their acquiescence in, the illegal occupation and annexation of Arab territories.<sup>25</sup>

The Sixth Arab Summit Conference held in Algiers from November 26 to 28, 1973, issued another oil resolution that further evidences the direct nexus between Mid East hostilities and the oil embargoes and production cuts imposed. The resolution declared in clear and trenchant language:

The Conference resolves to continue using oil as an economic weapon in the battle until such time as the withdrawal from the occupied Arab territories is completed and the national rights of the Palestinian

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25. Shihata, "Arab Oil Policies and the New International Economic Order," 16 Va.J.Int'l L. 261, 267 (1976). Also see A. Attiga, Secretary General of OAPEEC, letter to Petroleum Press Service, reprinted at 17 Middle East Economic Survey, no. 10, at IV (Dec. 28, 1973) stating: "The Arab governments began their policy of reducing oil production in self-defense and as a direct result of the October war . . ."; and Shihata, supra note 19, at 592-594 and 608, passim.

people are restored, in accordance with the following bases:

- Maintenance of the embargo on countries supporting Israel.'
- Maintenance of the progressive cuts in oil production to the extent that the reduction in income accruing to any of the producing countries should not exceed one-quarter on the basis of the 1972 income level.
- Formation of a committee composed of the Ministers of Foreign Affairs and Oil of the Arab oil producing states with the following functions:
  - 1) To draw up a list classifying states in accordance with the following categories: friendly countries; neutral countries; and countries supporting the enemy.
  - 2) To follow up the implementation of the decision of the use of oil . . .<sup>26</sup>

As if to stress the fact that the production cuts and embargoes were only related to the war effort, Director-General Shihata declared that these measures were not initiated as "price" or economic measures.<sup>27</sup> They certainly affected world oil prices,<sup>28</sup> but price increases were "the consequence of the cutbacks rather than their objective."<sup>29</sup> As the Director-General stated:

OPEC policy instruments have consistently been confined to fiscal and pricing measures. The only instance of coordinated output restrictions by the Arab oil exporters occurred during the period of October 1973 - March 1974. And these restrictive measures were implemented outside the scope of OPEC and were meant to serve a specific political purpose completely unrelated to the price issue.<sup>30</sup>

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26. See Shihata, *supra* note 15, appendix V, at 87. Also see 17 *Middle East Economic Survey*, no. 6, at 1-9 (Nov. 30, 1973).

27. Shihata, *supra* note 25, at 263.

28. See *supra* notes 19 and 25; Paust & Blaustein, "The Arab Oil Weapon - A Threat to International Peace," *supra* note 4, at 410; Paust & Blaustein, "The Arab Oil Weapon: A Reply and Reaffirmation of Illegality," *supra* note 4, at 57 (1976); and *infra* note 33; Akbar, "The Iranian Reaction to Increased Oil Revenues," 24 *Am.U.L.Rev.* 1175 n.1 (1975).

29. Shihata, *supra* note 25, at 263.

30. *Id.*

Even with this admission, however, an official denial that oil price increases as such were war related persists;<sup>31</sup> but the facts and admissions prove otherwise.

#### Price Increases and War Aims

As demonstrated above, certain price increases were a direct consequence of the production cuts. It is a basic economic reality that production cuts will have a direct effect upon the amount of oil available in the international market; thus, a direct effect upon the price of oil--an increase in price will normally follow a decrease in available amounts of oil. Furthermore, the embargoes dried up the normal access of consumers to the international market. That market of available oil was not only diminished greatly by eventual production cuts of around twenty-five percent but, for embargoed states, were cut off severely. An increase in price, as a direct consequence of the wartime production cuts and complete embargoes, was an economic certainty. The consequential impact on prices, a United States Senate Subcommittee Report adds, "was immediate and dramatic."<sup>32</sup>

It is also important to note that Arab and Israeli combat operations resulted in the damage or destruction of oil facilities, pipelines and oil stored in or near such facilities. A United States Subcommittee Report provided precise details: "Military action curtailed up to two-thirds of the 2 million barrels per day exports from major Eastern Mediterranean pipeline terminals."<sup>33</sup> An OAPEC advertisement in The Guardian on November 15, 1973 added that Israeli raids on oil export terminals aggravated the shortage of oil<sup>34</sup> and, neces-

31. See id., at 262-263, passim.

32. Report, U.S. Oil Companies and the Arab Oil Embargo; Subcommittee on Multinational Corporations, Committee on Foreign Relations, U.S. Senate, at 13 (Jan. 27, 1975). Also see Penrose, "The Development of Crisis," 104 Daedalus - Journal of the American Academy of Arts and Sciences 39, 50-51 and 54 (1975); Mikdashi, "The OPEC Process," id. at 203, 205; and Jensen, "International Oil - Shortage, Cartel or Emerging Resource Monopoly?," 7 Vand.J.Transnat'l L. 335, 336-337 and 381 (1974).

33. Id. at 14. Two thirds of 2 million b/d would be some 1,320,000 b/d.

34. The Guardian, Nov. 15, 1973, reprinted at 17 Middle East Economic Survey, no. 4, at i-ii (Nov. 16, 1973). Also see A. Attiga, Secretary General of OAPEC, letter, supra note 25, at v; October 17, 1973 Communique, Conference of Arab Oil Ministers, supra note 15; and supra note 32.

sarily, aggravated the spiraling price increases.

The recognition of war related impacts of production cuts and militarily damaged or destroyed oil and oil facilities on oil prices is important for an understanding of actual effects in the market-price process. With this recognition, for example, it is evident that formal announcements of price increases by the Ministers of six Gulf members of OPEC on October 16, 1973 and November 1, 1973 were not in fact the only stimulants of price increases. It is significant to note also that the new formula announced unilaterally by the six Gulf members of OPEC on October 16th, and used subsequently, linked posted prices and future adjustments in price to market prices,<sup>35</sup> which were already conditioned by sharp production cuts and combat damage or destruction.<sup>36</sup> It was already a seller's market, an artificial market manipulated by intentional, war related cuts in production and exacerbated by combat damage and destruction. To a certain extent, the announcement of price increases was merely a formal recognition of spiraling increases that had already occurred in a manipulated market where buyers scrambled for what oil was available and thus drove prices even higher. As the Gulf members' October communique announced, the posted price increase of some 70% from \$3.011/barrel to \$5.119/barrel represented "only a 17% increase over the actual sale of the same crude recently."<sup>37</sup> Using the same market based formula, an announcement of the Arab decision to adopt an additional 130% increase in the posted price of oil was made in December.<sup>38</sup> Between

35. See, e.g., 17 Middle East Economic Survey, no. 5, at 4, 6 (Nov. 23, 1973); 16 Middle East Economic Survey, no. 52, at 4-6 (Oct. 19, 1973); 12 Petroleum Intelligence Weekly, no. 42, at 9ff. (Oct. 16, 1973).

36. The announcement of a 25 percent production cut in November in many cases only mirrored an actuality--war related production cuts had already occurred in many states beyond the 5 percent announcement of October. See Shihata, supra note 19, at 595 (e.g., 10 percent in Saudi Arabia, 25 percent in Kuwait); and Shihata, supra note 25, at 263 (price rises and cutbacks). Also see supra note 32.

37. See Gulf state communique of October 16, 1973, reproduced at 12 Petroleum Intelligence Weekly, no. 43, at 9 (Oct. 22, 1973); 16 Middle East Economic Survey, no. 52, at 4-6 (Oct. 19, 1973).

38. See Joelson & Griffin, "The Legal Status of Nation-State Cartels Under United States Antitrust and Public International Law," 9 Int'l Lawyer 617, 621 (1975), citing Communique of Dec. 23, 1973, reprinted at 12 Petroleum Intelligence Weekly, no. 53, at 10 (Dec. 31, 1973).

October 1 and December 31, 1973 "the posted price of oil rose from \$3.01 per barrel to \$11.65 per barrel and the market price of oil (actually reached a high of) \$22 per barrel."<sup>39</sup> Apparently the war related production cuts, which increased substantially during this period, were significant conditioning factors of the actual price of oil when a manipulated "market price plus" formula was utilized, although the exactitudes (other than the 17 percent increase over market price noted on October 16th) are not known at this time. What is known is that the effects of production cuts and combat destruction or damage were necessarily built into the market price formula that was used as a base for subsequent posted price increase announcements. It is not correct to state, therefore, that announced price increases arose merely from economic decision-making in the abstract. The war context and the war objectives directly shaped market realities, even assuming an effort by Arab decision-makers to relate price increases only to presumed economic goals.

It should be noted, however, that meetings of the six Gulf members of OPEC (Saudi Arabia, Kuwait, Iraq, Abu Dhabi, Qatar and Iran--with Algeria and Libya as observers)<sup>40</sup> to consider posted price increases were curiously similar to meetings of OAPEC (Saudi Arabia, Kuwait, Iraq, United Arab Emirates, Qatar, Algeria, Libya, Oman, Egypt, Syria and Bahrain)<sup>41</sup> which considered embargoes and production cuts. Although it may be conceivable that war objectives were not considered in oil price increase decision-making, oil price increases were decided in close parallel to production cut decisions both in time terms of timing and the parties to these decisions. They were, in general, concomitant efforts with intertwined effects.<sup>42</sup> It is unrealistic to ignore these actual features of decision in context, and it is doubtful that the Arab ministers and their advisers would have completely ignored war objectives and the potential short and long term

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39. Id. Also see Amuzegar, "OPEC in the Context of the Global Power Equation," 4 Denver J. Int'l L. & Pol. 221, 223 (1974); and supra note 32.

40. See, e.g., 12 Petroleum Intelligence Weekly, no. 53, at 10 (Dec. 31, 1973).

41. See, e.g., Boorman, "Economic Coercion in International Law: the Arab Oil Weapon and the Ensuing Juridical Issues," 9 J. Int'l L. & Econ. 205 (1974).

42. See Paust & Blaustein, Am. J. Int'l L., supra note 28, at 428 and 434; Paust & Blaustein, Colum. J., supra note 28, at 66 and 69-71. Also see supra note 32.

war usage of foreseeable oil profits. As the Iraq representatives had recognized, the effective use of oil as a political weapon would require recognition that "economics and politics go hand in hand. The two are inextricably inter-related and no country on earth can keep them separate."<sup>43</sup>

Nevertheless, it would appear that while some portions of price increases were probably motivated primarily by economic considerations,<sup>44</sup> not only did some portions of the price increases mirror the market effect of production cuts and combat operations but also other portions of the drastic price increases must have been motivated by overall war objectives.<sup>45</sup> Again, the exactitudes are unknown at present. What is known was expressed adequately during the period in question by Secretary of State Kissinger. He noted that:

without warning, we were faced first with a political embargo, followed quickly by massive increases in the price of oil. In the course of a single year the price of the world's most strategic commodity was raised 400 per-cent. The impact has been drastic and global.<sup>46</sup>

In conclusion, it is beyond doubt that OAPEC embargoes and production cuts were war related, that the embargoes and production cuts directly contributed to price increases and that certain price increases were, thus, war related. It is also beyond doubt that some announcement of production cuts and price increases were partly reflective of actual production and market conditions at the time of the announcements; conditions that were directly intermeshed with war objectives

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<sup>43</sup>. 16 Middle East Economic Survey, supp., no. 52, at 3 (October 19, 1973). Also see Boorman, supra note 28, at 205-206 (Saudi Arabian recognition of the politico-economic nature of OAPEC in 1968, and agreement by Saudi Arabia and Egypt on the use of oil profits in the battle against Israel). See also Bowett, "International Law and Economic Coercion," 16 Va.J.Int'l L. 245, 249 and 251 n.21 (economic and political motives); Stanley, "Some Politico-Legal Aspects of Resource Scarcity," 24 Am.U.L.Rev. 1106 (1975).

<sup>44</sup>. C.f. Shihata, supra note 25, at 270-271.

<sup>45</sup>. See also Paust & Blaustein, Colum.J., supra note 28, at 57 & 71 (use of oil profits as a weapon); Boorman, supra note 41, at 205-206; and supra note 43.

<sup>46</sup>. Address in Chicago, Nov. 14, 1974, reprinted as U.S. Dep't of State PR 500, at 1 (Nov. 1974).

and the war context. It is also beyond doubt that the formula used for announced price increases included a market base, and that a manipulated market price was built into the formula. Since war related production cuts and combat produced shortages were intertwined with market pricing and since the production cuts were intentional, substantial, and rapidly successive, there can be no doubt that a partially artificial and manipulated market pricing was a consequence of intentional production cuts under the circumstances. An imposed scarcity and a skyrocketing price base seemed to feed each other through a succession of unilateral manipulations.

Nevertheless, the exactitudes of price increase percentages due solely to economic motivation are unknown. It is suspected that production cuts and combat produced shortages, however, were prime contributors to the rapid price increases at the end of 1973, especially given the manipulated market price impact through the price formula. It should also be noted that, in one sense, the entire price increase (nearly 400 percent) was indirectly war related. If the war had not occurred, such sharp and rapid increases would not have been possible. A presently felt "fairness" of present oil prices (which are less than the wartime market highs)<sup>47</sup> is not a proper focus concerning the question whether the 400 percent increase in oil prices was related, directly or indirectly, to the war in the Middle East. As an historic fact, the 400 percent increase in the price of oil was intermeshed with the war and the overall objectives and strategies of war participants.

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<sup>47</sup>. See Shihata, supra note 25, at 268 ff.

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This editorial comment has benefited from valuable assistance given by Professor Albert P. Blaustein and Dr. Ibrahim F. I. Shihata concerning Arab documents and other relevant materials.

