

Repertory of Practice of United Nations Organs
SUPPLEMENTS No. 7-9 (1985-1999)
(Advance study to be included in Supplements Nos. 7 to 9
of volume III of the Repertory)

ARTICLE 50

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TEXT OF ARTICLE 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

INTRODUCTORY NOTE

1. Article 50 of the United Nations Charter gives States that incur economic hardship, as a result of Security Council measures, the right to consult with the Security Council. During the period from 1985 to 1999, organs of the United Nations were engaged with, or discussed, Article 50 with regard to the sanctions regimes in South Africa, Iraq, the Libyan Arab Jamahiriya,¹ the Federal Republic of Yugoslavia (FRY) and Haiti.²

I. GENERAL SURVEY

A. SOUTH AFRICA SANCTIONS

2. In 1985, the Security Council adopted resolutions 568(1985), 572(1985) and 580(1985), which contained implicit references to Article 50. These resolutions referred to the question of assistance to Botswana and Lesotho, as both States had suffered losses as a result of their adherence to the Security Council sanctions against South Africa.³

3. During the consideration of Security Council resolution 569(1985) on the imposition of voluntary economic sanctions against South Africa, the representatives of some Member States presented, in their statements, arguments relating to the interpretation of Article 50. Specifically, they argued that the economic sanctions would hurt the front-line States more than they would harm Pretoria.⁴ This argument was opposed by statements that the imposition of sanctions was called for by the leaders in the region themselves.⁵ Moreover, it was stated that South Africa had been systematically implementing its own policy of political and economic sanctions against its neighbors on a regular basis.⁶ Also, it was proposed to increase the economic assistance to States in the region in order to reduce their dependence on South Africa.⁷

¹ The Security Council referred to Article 50 in its resolutions 748 (1992) and 883 (1993).

² Following the 1993 Haiti sanctions regime, the Security Council, through resolution 917 (1994), decided that the Haitian Sanctions Committee (Established pursuant to Resolution 841 (1993)) should undertake the examination of Article 50 requests; there was, however, little discussion referring to Article 50 directly.

³ See *Repertoire of the Practice of the Security Council*, 1985-88, p. 425.

⁴ S/PV.2737: Federal Republic of Germany, p. 20; S/PV.2797: United States, pp. 18-19.

⁵ S/PV.2624: Zambia, p. 61.

⁶ S/PV.2652: Zambia, pp. 29-30.

⁷ S/PV.2733: Nicaragua, p. 19.

4. In the report on “Policies of Apartheid of the Government of South Africa” dated 7 November 1988,⁸ the Secretary-General discussed the exploitation of sanctions by third States, an issue that occurred mostly as a result of the failure to comply with the sanctions uniformly. The report stated: “States that have voluntarily deprived themselves of certain commercial opportunities out of solidarity with the struggle against apartheid are thereby creating commercial opportunities for other countries that do not wish to do so.”⁹ The Secretary-General referred to the United States Comprehensive Anti-Apartheid Act of 1986, containing a wide range of provisions directed at other countries that benefit from the void of the United States sanctions, including the limitation of imports from countries that take advantage from the sanctions and the right of private action in U.S. courts by U.S. nationals against individuals and companies in other States. It was noted in the report that, in the absence of broadly accepted international norms regulating the matter, the use of unilateral counter-measures to face this problem could lead to international disputes.”¹⁰

B. IRAQ SANCTIONS

5. Sanctions were imposed against Iraq on 6 August 1990¹¹ and twenty-one States requested assistance under Article 51: Jordan, Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Lebanon, Poland, Romania, Seychelles, Sri Lanka, the Sudan, the Syrian Arab Republic, Tunisia, Mauritania, Pakistan, the Philippines, Uruguay, Viet Nam, Yemen and Yugoslavia.¹² The Security Council established the Iraq Sanctions Committee,¹³ which created an open-ended working group to assist in the examination of State applications in order to deal with the series of requests.¹⁴

6. The Secretary-General delegated the task of assessing the uniquely difficult economic situation of Jordan to his Special Representative, Jean Ripert.¹⁵ Ripert described Jordan’s unique geographic location and the status of its economy, stating that the situation in the Persian Gulf “placed [Jordan] in an extremely difficult situation . . . particularly by the implementation of Security Council resolution 661 (1990) [implementing sanctions].”¹⁶ The Special Representative stated that the “estimates are very large for such a small economy as that of Jordan. For example, the 1990 estimates . . . expressed as a share of 1989 gross domestic product (GDP)

⁸ A/43/786 (1988).

⁹ *Ibid.*, para. 53.

¹⁰ *Ibid.*, para. 55.

¹¹ SC resolutions 661 (1990); *see also* SC resolutions 666 (1990), 670 (1990), 674 (1990), 687 (1991), 692 (1991) and 778 (1992).

¹² S/22382 (1991) (letter from the Representatives of Bangladesh et al. to the United Nations, addressed to the President of the Security Council (22 March 1991)).

¹³ S.C. Res. 669, U.N. SCOR, 45th Sess., 2942d mtg. at 24, S/INF.46 (1990). (The Security Council invoked S.C. Res 661 (1990) to establish the Sanctions Committee.); For further information on Sanctions Committees with regard to Article 50 see Repertoire of the Security Council, 1989–1992, Chapter XI, Part VIII, pp. 929–933 and 1993–1995, Repertoire of the Security Council, 1989–1992, Chapter XI, Part VIII, pp. 1142–1147.

¹⁴ S/AC.25/SR.14, 5 October 1990; S/AC.25/SR.15, 12 October 1990.

¹⁵ S/21826, 26 September 1990.

¹⁶ S/21938, 13 November 1990.

range from 16 to 35 per cent. As a share of 1989 foreign exchange earnings, they range from 24 to 51 per cent.”¹⁷

7. Among Ripert’s suggestions to respond to the difficulties in Jordan were: financial assistance, debt relief, urgent cash infusion, protection of ongoing projects, outstanding evacuee expenses, international trade, and co-ordination of assistance.¹⁸ The Secretary-General forwarded the report to the Security Council¹⁹ and called on relevant United Nations bodies to respond.²⁰

8. For States other than Jordan, the Working Group prepared recommendations, which annexed documents submitted by States; for example, Romanian Government officials had estimated a negative impact of 14 percent of Romania’s gross national product due to the sanctions.²¹ The Working Group recommendations included appealing to the United Nations and financial institutions.²² The Sanctions Committee confirmed the recommendations for States which, in its view, had valid concerns²³ and sent them to the Security Council.²⁴ The Security Council requested implementation of the Working Group recommendations,²⁵ and the Secretary-General addressed letters to all States and relevant United Nations bodies supporting the Committee’s recommendations and requesting information on responsive steps with regard to assisting States affected by special economic problems.²⁶

9. While neither Egypt nor Turkey had invoked Article 50, both States were included in the major financial assistance response by the international community.²⁷ Additionally, in the Iraq sanction regime, *ex post facto* assistance was made available for some States through the creation of a compensation fund by resolution 687.²⁸

10. In May 1991, Jordan informed the Sanctions Committee that it had resumed oil imports to the extent “absolutely essential for Jordan’s internal needs [and] funded by drawing on outstanding Iraqi debts to Jordan.”²⁹ The Committee held several discussions and decided to

¹⁷ Ibid.

¹⁸ S/21938, 13 November 1990 (*Report of Mission to Jordan Undertaken by Mr. Jean Ripert*, at page 11–14).

¹⁹ Ibid.

²⁰ A/48/573, S/26705, 8 November 1993.

²¹ S/AC.25/53 (1990) (reply of Romanian Government to a Security Council questionnaire concerning the implementation of Security Council resolution 661).

²² S/22508 (29 April 1991), Presidential Statement of 29 April 1991.

²³ S.21789 (18 September 2009); S/22021 & Add. 1 & Add.2) (19 and 21 December 1990, and 19 March 1991), (recommendations of the Committee concerning applications for special assistance of Bangladesh, Bulgaria, Czechoslovakia, Djibouti, India, Lebanon, Mauritania, Pakistan, the Philippines, Poland, Romania, Seychelles, Sri Lanka, the Sudan, Syrian Arab Republic, Tunisia, Uruguay, Viet Nam, Yemen and Yugoslavia).

²⁴ S/22021, 20 December 1990; S/22021/Add.1, 21 December 1990; S/22021/Add.2, 19 March 1991.

²⁵ S/22033, 21 December 1990.

²⁶ S/1996/700, August 36, (1996).

²⁷ A/48/573, Economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro, report of the Secretary-General prepared pursuant to the note by the president of the Security Council (s/25036) regarding the question of special economic problems of States as a result of sanctions imposed under chapter VII of the Charter of the United Nations.

²⁸ Security Council resolution 687 (1991), paras. 16-19.

²⁹ S/1996/700, August 36 (1996).

take note of Jordan's actions.³⁰ The United States of America expressed the concern that "Article 50 should not be used as a means of circumventing," and thereby weakening a sanctions regime.³¹

C. FEDERAL REPUBLIC OF YUGOSLAVIA SANCTIONS

11. Following the sanctions imposed on the Federal Republic of Yugoslavia (FRY) on 30 May 1992,³² eight States invoked Article 50: Albania, Bulgaria, Hungary, Romania, Slovakia, the Former Yugoslav Republic of Macedonia, Uganda and Ukraine.³³ The Sanctions Committee established a working group to review applications on a case-by-case basis and made recommendations to the Committee.³⁴

12. The General Assembly acted to urge international organizations to "broaden access for suppliers from the affected countries and to ensure their active participation in the process of post-conflict reconstruction and rehabilitation of the former Yugoslavia."³⁵

13. Additionally, some General Assembly resolutions may be regarded as having an implicit bearing on Article 50. In the resolutions adopted on the issues of "Assistance for the reconstruction and development of Lebanon"³⁶ and "Assistance for the reconstruction and development of Yemen,"³⁷ the General Assembly noted specifically the deterioration of the

³⁰ S/21620 (1990) (*Letter Dated 20 August 1990 from the Permanent Representative of Jordan Addressed to the President of the Security Council*); see also Annex, S/21786 (1990) (*Letter Dated 27 August 1990 from the Permanent Representative of Jordan Addressed to the Chairman of the Security Council Comm. Established by Res. 661*); S/AC.25/1990/CRP.3 (1990) (summary records of the Committee's meetings); U.N. SCOR, Comm. Established by Res. 661, 41st mtg., Agenda Item *Review of the Implementation of Resolution 661 (1990)*, S/SR.25/SR.41 (1991) ("Given the unique position of Jordan with respect to Iraq," the Chairman "suggested" that the Committee "take note of Jordan's resumption" of oil imports, "pending any arrangements that could be made to obtain supplies from other sources," and "on the understanding that such Iraqi oil exports were subject to the provisions" of resolution 692).

³¹ S/AC.25/SR.2 (Comment by the delegate of the United States, Mr. Watson, 22 August (1990)).

³² Security Council resolution 757 (1992); see also Security Council resolution 760 (1992), 787 (1992) and 820 (1993).

³³ A/49/356 (Report of the Secretary-General, *Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance: Special economic assistance to individual countries or regions: economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro)*), stating that "eight States, namely, Albania, Bulgaria, Hungary, Romania, Slovakia, the former Yugoslav Republic of Macedonia, Uganda and Ukraine requested, in accordance with Article 50 of the Charter, consultations with the Security Council"; A/50/423, A/51/356, and A/52/535.

³⁴ See e.g. S/26040, 8 July 1993 (Working Party recommendations with regard to the applications by Bulgaria, Hungary, Romania, Uganda, and Ukraine); S/26040 & Add. 1 & Add. 2 (2 July, 4 August, and 10 December 1993): Recommendations of the Committee concerning the applications for special assistance of Albania, Bulgaria, the former Yugoslav Republic of Macedonia, Hungary, Romania, Slovakia, Uganda and Ukraine.

³⁵ General Assembly resolution 48/210 of 21 December 1993; General Assembly resolution 49/21 A of 2 December 1994; General Assembly resolution 52/169, of 16 December 1997 (The General Assembly "[u]rges the relevant international organizations to take appropriate steps in order to broaden access for suppliers from the affected countries and to ensure their active participation in the process of post-conflict reconstruction and rehabilitation of the former Yugoslavia.").

³⁶ General Assembly resolution 45/225 of 21 December 1990.

³⁷ General Assembly resolution 45/222 of 21 December 1990.

economic situation in Lebanon and Yemen “due to the serious and adverse effects of the situations between Iraq and Kuwait” and called for international assistance for economic progress.³⁸ The General Assembly also continued to adopt resolutions on the issue of “Assistance to Mozambique”,³⁹ while recalling Security Council resolution 386 (1976) and requesting international assistance for the reconstruction and development programmes within Mozambique.

14. During discussions of the Second Committee of the General Assembly on Article 50,⁴⁰ the representatives of Austria⁴¹ and Romania⁴² explained the effects of the sanctions on their economies.

15. The Secretary-General reiterated requests for assistance and information on the status of any assistance. 11 responses had been received in 1993, and one State responded in 1999.⁴³

16. In 1994, the Secretary-General stated in a report that there had been no “substantive . . . discussion on methodology of impact assessment . . . Thus, both the affected countries and the funding agencies have been performing their own quantitative assessment, often applying different standards and criteria. . . It is essential to identify a set of general issues (principles or criteria) for the purpose of impact analysis and assessment.”⁴⁴ He also noted specific areas of concern such as failing to take adequate account of “redirected exports and/or without netting out the import component of lost production and exports.”⁴⁵

17. Resolution 724 (1991) authorized limited exceptions to the sanctions imposed on the FRY. For instance, Albania was able to receive electricity from other States via the FRY power grid for one month.⁴⁶ In February 1993, the representatives of Bulgaria, Hungary and Romania addressed the President of the Security Council both individually⁴⁷ and jointly⁴⁸ to express concern at the situation “aggravated by the sanctions” and set out proposals to “mitigate the impact of the sanctions.”⁴⁹ Again in May 1995, Bulgaria, Greece, the Republic of Moldova, Romania and Ukraine submitted a letter proposing “to convene at the United Nations special consultative meetings on those issues, with the participation of the donor countries, relevant agencies and the affected countries.”⁵⁰ International bodies such as the Commission on Security

³⁸ Ibid.

³⁹ See General Assembly resolutions 45/227, 47/42 and 49/21 D.

⁴⁰ A/C.2/48/SR.33-35, 40 and 45.

⁴¹ A/C.2/48/SR.33, paras. 35–38.

⁴² A/C.2/48/SR.35, paras. 61–62.

⁴³ A/48/317, 8 November 1993, para. 46 (in 1993, responses to the initial request were received from Antigua and Barbuda, Belgium, Denmark, Ecuador, Hungary, Liechtenstein, Malawi, the Netherlands, Nigeria, Turkey and the United Kingdom); A/54/534, 8 November 1999 (one response was received in 1999, from Germany).

⁴⁴ A/49/356.

⁴⁵ Ibid.

⁴⁶ S/1996/946, 15 November 1996.

⁴⁷ Respectively: S/25213, S/25201, S/25189.

⁴⁸ S/25322.

⁴⁹ *Repertoire of the Practice of the Security Council*, 1993-1995, Chapter 9, at p. 155.

⁵⁰ A/50/361, 22 August 1995, Para 72, report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, Implementation of the Provisions of the Charter of the United

and Cooperation in Europe (CSCE), the World Bank, the IMF and UNDP were involved in multilateral initiatives to alleviate the problems caused by sanctions on third States.⁵¹ Mention may be made, for example, of the CSCE short term projects aiming to alleviate transportation problems at State borders.⁵²

18. The General Assembly acknowledged and supported the collaborative approach to cross-boundary economic issues, noting “the important role of the . . . the Economic and Social Council and the Committee for Programme and Coordination in mobilizing and monitoring, as appropriate, the economic assistance efforts by the international community and the United Nations system . . . and, as appropriate, in identifying solutions to the special economic problems” of third States.⁵³

D. FURTHER DEVELOPMENTS

19. Overall, the appeals by the General Assembly for the international community to act to assist affected States took several forms including: (1) general appeals to provide financial and material assistance to States;⁵⁴ (2) requesting a broadening of access to supplies when rendering humanitarian assistance;⁵⁵ (3) directing States, the United Nations, financial organizations, international organizations and regional organizations to improve “procedures for consultations to maintain a constructive dialogue with such States, including through regular and frequent meetings as well as, where appropriate, special meetings between the affected third States and the donor community, with the participation of United Nations agencies and other international organizations.”⁵⁶

20. In the 1992 “An Agenda for Peace,” Secretary-General Boutros Boutros-Ghali considered sanction regimes and “special economic problems.”⁵⁷ Paragraph 41 states that “[i]n circumstances when peacemaking requires the imposition of sanctions under Article 41 of the Charter, it is important that States confronted with special economic problems not only have the right to consult the Security Council regarding such problems, as Article 50 provides, but also have *a realistic possibility of having their difficulties addressed.*”⁵⁸ Secretary-General Boutros-

Nations related to Assistance to Third States Affected by the Application of Sanctions under Chapter VII of the Charter, (citing to A/50/189, 24 May 1995).

⁵¹ General Assembly resolution 50/58 (1995) (commending efforts of international financial institutions, and also intergovernmental organizations and regional organizations, in particular the Organization for Security and Cooperation in Europe and the European Union).

⁵² S/1996/776, 24 September 1996.

⁵³ General Assembly resolution 50/58 (1995) (the Assembly “[c]ommend[ed] efforts of international financial institutions, and also intergovernmental organizations and regional organizations, in particular the Organization for Security and Cooperation in Europe and the European Union.”); General Assembly resolution 52/162 (1997).

⁵⁴ General Assembly resolution 51/30 (1996) (regarding the FRY sanctions regime).

⁵⁵ General Assembly resolution 50/58 (1995) (regarding the FRY sanctions regime).

⁵⁶ General Assembly resolution 52/162 (1997) (general discussion).

⁵⁷ An Agenda for Peace, A/47/277-S/24111, 17 June 1992, para. 41; *see also* General Assembly resolution 47/120, 18 December 1992; General Assembly resolution A/48/935 6 May 1994, para. 143 (In his report on Development and International Economic Cooperation: An Agenda for Development, the Secretary-General added that “[t]he Security Council, through the provisions of Chapter VII, can adversely affect the course of development within States to which sanctions apply, as well as in neighbouring and other States.” (1994).)

⁵⁸ *Ibid* (emphasis added).

Ghali recommended that the Security Council “devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate states from such difficulties. Such measures would be a matter of equity and a means of encouraging states to cooperate with decisions of the Council.”⁵⁹ The recommendations of Secretary-General Boutros-Ghali was reiterated in the Secretary General’s Supplement to “An Agenda for Peace”⁶⁰ and by the General Assembly.⁶¹

21. Additionally, following General Assembly Resolution 49/58 of 1995, the Secretary-General began a practice of regular reporting on the implementation of the provisions of the Charter related to the assistance of third States affected by the application of sanctions.⁶²

II. ANALYTICAL SUMMARY

A. EARLY IDENTIFICATION OF SPECIALLY AFFECTED STATES

22. The General Assembly invited the Security Council to consider the establishment of further mechanisms, as appropriate, for consultations as early as possible under Article 50, ideally to take potential third party harm into account during the formulation of sanctions, and before they are imposed.⁶³

23. Secretary-General Boutros-Ghali, in his 1995 Supplement to An Agenda for Peace, stated the following: “I should like to go beyond the recommendation I made in 1992 and suggest the establishment of a mechanism to carry out the following . . . functions: . . . To assess, at the request of the Security Council, and before sanctions are imposed, their potential impact on the target country and on third countries.”⁶⁴ This, in combination with a monitoring and loss analysis system, would assist “States that are suffering collateral damage and to evaluate claims submitted by such States under Article 50.”⁶⁵

B. THE METHOD OF ASSESSING AND VERIFYING “SPECIAL ECONOMIC PROBLEMS”

1. Methodology of Assessing Economic Loss

24. There is “no uniform and internationally recognized methodology for identifying and assessing the special economic problems of non-target States affected by the implementation of

⁵⁹ Ibid.

⁶⁰ A/50/60-S/1995/1, paras. 73-75.

⁶¹ General Assembly Resolution 47/120, 20 September 1993.

⁶² See further General Assembly Resolutions : A/50/361, A/51/317, A/52/308, A/53/312, A/54/383.

⁶³ General Assembly resolutions 50/51 (1995) and 52/162 (1997).

⁶⁴ Supplement to “An Agenda for Peace,” A/50/60–S/1995/1, 3 January 1995 (The Secretary General’s five functions included: (a) To assess, at the request of the Security Council, and before sanctions are imposed, their potential impact on the target country and on third countries; (b) To monitor application of the sanctions; (c) To measure their effects in order to enable the Security Council to fine tune them with a view to maximizing their political impact and minimizing collateral damage; (d) To ensure the delivery of humanitarian assistance to vulnerable groups; (e) To explore ways of assisting Member States that are suffering collateral damage and to evaluate claims submitted by such States under Article 50).

⁶⁵ Ibid; *see also* Security Council resolution 917 (1994).

mandatory economic sanctions.”⁶⁶ The different methods of evaluations have led to a broad scope of available evaluations and differing views on assistance by affected countries and the donor community.⁶⁷ In this regard, the representative of France, speaking before the Sixth Committee of the General Assembly in 1996, indicated that “an adequate methodology was hampered by inadequate sources of statistical information.”⁶⁸

25. United Nations bodies as well as individual States have put several proposals forward. In resolution 52/169 (1997), the General Assembly urged the Secretary-General to develop a possible methodology for assessing the adverse consequences actually incurred by third States and to initiate action in order to explore innovative and practical measures of assistance to the affected third States.⁶⁹ This role includes collating and coordinating information about international assistance available to third States affected by the implementation of sanctions and a regular basis,⁷⁰ with the use of further resources to deal with Article 50 expeditiously.⁷¹ The General Assembly also requested that the Secretary-General seek information from States and regional organizations on Article 50 issues to report to the Security Council⁷² and the General Assembly⁷³ on a regular basis. Secretary-General Boutros-Ghali suggested considering losses likely to arise, such as the interruption of trade and financial transactions, in order to identify sets of principles and criteria for assistance.⁷⁴ Ukraine suggested creating an Article 29 standing Security Council sanctions committee charged with conducting research to estimate losses of affected States and to coordinate measures to minimize those after-effects.⁷⁵ Pursuant to General Assembly resolution 52/162, the United Nations Department of Economic and Social Affairs convened an ad hoc expert group in June 1998 to consider the question of developing the assessment methodology and set out a variety of factors which could be approved by member States and used in Sanctions Committee reports.⁷⁶

2. Independent Review of Assessment of Losses

26. The self-evaluation method has been perceived as a further source of difficulties, thus leading to suggestions for independent verification of loss by the donor community. The *ad hoc* expert group, argued that, in the most severe cases, the Secretary-General should appoint

⁶⁶ Report of the Secretary General A/50/361, 22 August 1995, Para 44.

⁶⁷ Ibid.

⁶⁸ Sixth Committee - 5 - Press Release GA/L/3002 5th Meeting (PM) 26 September 1996, Delegate from France, Hubert Legal, stated “the development of such a methodology was hampered by inadequate sources of statistic information. The report of the Special Committee was more an analysis of the existing obstacles than a methodology for assessing the damage to third States. It was hoped the Secretary-General would continue to consult with experts on the issue.”)

⁶⁹ General Assembly resolution 52/169 (1997).

⁷⁰ General Assembly resolution 52/162 (1997).

⁷¹ General Assembly resolution 50/51 (1995).

⁷² General Assembly resolution 50/58 (1995).

⁷³ General Assembly resolutions 51/208 (1996); 52/169 (1997) (relating to the FRY); 52/162 (1997) (endorsing the recommendation of the Secretary-General that the expert group explore innovative and practical measures of assistance that could be provided by the relevant organizations both within and outside the United Nations system to the affected third States, and requests the Secretary-General to submit a report on the results of the expert group meeting to the General Assembly at its fifty-third session.)

⁷⁴ A/49/356, 21 December 1993.

⁷⁵ A/51/226, S/1996/595, 24 July 1996.

⁷⁶ General Assembly resolution 52/162 (1998).

Special Representative to undertake, in collaboration with the government, a full assessment, and identify and coordinate appropriate measures.⁷⁷

C. THE MEANING OF THE WORDS “ARISING FROM”

27. It would appear that the words “arising from” could mean two distinct situations: difficulties arising from the State’s participation in the measures, and/or the difficulties resulting from enforcement measures taken by other States. In a meeting of the Sanctions Committee in August 1990, Chairman Rasi of Finland stated that, while there had been “very limited experience with the implementation of [Article 50,] ... a number of conclusions could be drawn.”⁷⁸ One such conclusion was that “problems [under Article 50] might arise as a result of the direct application of sanctions by the State concerned, or indirectly as a result of the application of sanctions by third States.”⁷⁹

D. THE MEANING AND IMPLICATIONS OF THE “RIGHT TO CONSULT”

28. Several representatives of United Nations organs have stressed that the Article 50 right to consultation should be more than formulaic.⁸⁰

1. A Security Council Obligation to Act?

29. Some delegations argued that no State should be asked to commit “economic suicide”⁸¹ due to sanctions, and therefore there would be some form of obligation to act to assist. A more wide reaching argument was proposed by the Russian Federation, alleging that there was not only a Security Council obligation to act, but also a State right to compensation.⁸² Additionally, the Movement of Non-Aligned Countries proposed the establishment of a trust fund mechanism.⁸³

30. In the 1995 Supplement to An Agenda for Peace, Secretary-General Boutros-Ghali expressly addressed the issue of financial compensation to affected members, recognizing that “the sums involved will be large.”⁸⁴ Nonetheless, Boutros-Ghali invoked both a “practical argument” for effective uniform compliance and a “moral argument” that the affected countries

⁷⁷ Report of the Secretary General, A/53/312, 27 August 1998, Para 54–57. (Referring to the *ad hoc* expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to the affected third States).

⁷⁸ S/AC.25/SR.2, 22 August 1990 (the Chairman drew attention to “a reply from Under-Secretary-General for Legal Affairs” with regard to the implementation of Security Council resolution 661 (1990)).

⁷⁹ *Ibid.*

⁸⁰ UN Juridical Yearbook 1996 (Taking note of the UN report of the Secretary-General submitted in accordance with General Assembly resolution 50/51 of 11 December 1995, Page 3, the General Assembly the importance of consultations under Article 50).

⁸¹ S/AC.25/SR.3, 27 August 1990.

⁸² UN Document S/AC.25/SR.3, 27 Aug. 1990, *See also* A/55/33 (Report of the Special Committee on the Charter of the United Nations and on Strengthening the Role of the Organization, para 16 *et seq.*).

⁸³ A/50/361 Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. *See also* A/51/330, S/1996/721, 6 September 1996.

⁸⁴ A/50/60-S/1995/1.

should not be expected to bear alone costs resulting from action collectively decided upon.⁸⁵ As an alternative mechanism for compensation, Secretary-General Boutros-Ghali invoked the concept of “expenses of the Organization,”⁸⁶ and suggested that the applicability of Article 17(2) of the Charter⁸⁷ could allow for effects of economic hardship of third States to be “borne by the Members as apportioned by the General Assembly.”⁸⁸

31. Certain States objected to the idea of a trust fund on the grounds that such a mechanism is not contemplated by Article 50, that it would hamper the Security Council in the discharge of its functions, and that it would set a precedent for the United Nations to compensate States for the consequences of Security Council decisions.⁸⁹

32. States have sometimes suggested alternative mechanisms, short of a right to compensation, which would have the effect of assisting with financial burdens. These include setting aside of more United Nations humanitarian assistance for companies in affected states, additional financing for long-term transportation and infrastructure projects,⁹⁰ and donor countries introducing trade preferences for affected States.⁹¹

2. Transparency in Sanctions Committees

33. Some States expressed concern as to the uncertain status of Jordan’s oil imports under Article 50, and the factors in consideration which led to Romania’s similar claim under Article 50 being denied.⁹² The General Assembly, on several occasions, called for the Security Council

⁸⁵ A/50/60-S/1995/1, para 73.

⁸⁶ See *Advisory Opinion No. 49, Certain Expenses of the United Nations*, 1962 I.C.J. Rep. 151 (the ICJ concluded that peacekeeping activities (although not specifically authorized by the Charter) were within the implied powers of the Organization and thus their costs were “expenses of the Organization” for purposes of Article 17.)

⁸⁷ Article 17(2) of the Charter provides that “the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.”

⁸⁸ See “Supplement to Agenda for Peace,” paras 73–74.

⁸⁹ Sixth Committee - 4 - Press Release GA/L/3002 5th Meeting (PM) 26 September 1996 (for instance, the Delegate from Ireland. Francis Mahon Hayes emphasized that “overall effectiveness of sanctions regimes, as the primary enforcement measure available under the Charter, must be preserved.”)

⁹⁰ A/50/189, S/1995/412. 24 May 1995.

⁹¹ A/51/226, S/1996/595, 24 July 1996.

⁹² A/50/361, 22 August 1995 (comparing exception given to Jordan to import oil from Iraq, and the denial of Romania’s similar claim). Jordan invoked Article 50 in a letter dated 20 August 1990 stating “my government hereby officially requests to enter into consultations, on an urgent basis, with the Security Council with regard to finding a solution to the problems that will arise from the carrying out of measures under Chapter VII.” Jordan included with this letter an enclosed “memorandum on the economic and financial impact on Jordan,” which provided details such as Iraq’s debt to Jordan, and the “[b]urden from the massive outflow of expatriates from Iraq and Kuwait through Jordan.” The conclusion requested *inter alia* “the ability to increase exports, and to obtain additional financial inflows from abroad in the form of grants and remittances.” Significantly, Jordan requested a certain supply of oil, and requested “a waiver on an interim basis to continue importing oil...from Iraq.” Romania sent a letter requesting proposed imports from Iraq, valued at US\$300 million (to be offset by the \$1.7 billion Iraq owed to Romania) in order to alleviate Romania’s winter shortage of fuel. The recommendation by the Sanctions Committee with regard to the Article 50 communication by Romania noted the information that Romania had provided, but asserted that “continued full implementation” of the sanctions must continue with the rest of the community in order to “restore the authority of the legitimate Government of Kuwait,” without any further explanation as to Romania’s specific situation.

to establish further mechanisms and procedures under Art. 50 in order to *inter alia* enhance transparency.⁹³

⁹³ General Assembly resolutions 50/51 (1995); 52/162 (1997) (recommending that the Council continue its efforts further to enhance the functioning of those committees, to streamline their working procedures and to facilitate access to them by representatives of States that find themselves confronted with special economic problems arising from the carrying out of sanctions); and 54/107 (1999).