Towards a theoretical foundation for the success of international sanctions

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Towards a

Theoretical Foundation

for the

Success of International Sanctions

by

Ellie Cross

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as partial fulfilment of
the requirements for the degree of

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Date 31.3.95
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I. Introduction

In 1989, the tearing down of the Berlin Wall marked the beginning of the end of the Cold War. Once again, some forty years after Hitler had set the world on fire in his search for a "new world order", the world set about searching for this seemingly elusive concept. Nearly a year later, in a speech to Congress, President Bush spoke of "a new world ... struggling to be born, a world quite different from the one we have known, a world where the rule of law supplants the rule of the jungle, a world in which nations recognise the shared responsibility for freedom and justice, a world where the strong respect the rights of the weak". While America spoke of a New World Order and the world speculated about the move from bi-polarity to unipolarity or a return to a concert of powers, some remembered that the Second World War had begun with Hitler proposing 'a new world order'. Then when his quest was finally put to rest, the end of the Second World War saw the birth of the United Nations and another New World Order was born (Suter, 1992, p 11).

After the failure of the League of Nations and the devastation of the war years, the establishment of the United Nations was welcomed as the beginning of a new international order. This was to include all of the nations of the world. Two world wars in fairly quick succession had finally put to rest any isolationist ideas and Kant's prophetic insight of the eighteenth century that "The intercourse ... which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it," was acknowledged (Inis, 1964, p 251). The founders of the United Nations spoke of cooperation, of a joining of all states, large and small, for the common good. Even Stalin proclaimed, "It will be a new, special, fully authorized international organization having at its command everything necessary to defend peace and avert new aggression". The idea of a world state or government was not unique to this period. Grand plans for world organization had appeared from as early as the fourteenth century, but it is generally agreed that it is Kant's work Perpetual Peace published in 1795 which did seem to have some influence on the setting up of the United
Nations (see Inis, 1964, p 51 and Brown, 1992, p 46). Kant had expressed the ideas of a world confederation and it is this which many see reflected in the Charter of the UN.

In a confederation, as opposed to a federation, each nation retains full sovereignty and relinquishes only specified powers to the central unit. This unit cannot compel its members to observe its decisions and act in accordance. In a federation, however, the central authority is capable of expanding its powers, usually through up to date interpretations of its constitution, and the members are legally bound to decisions of the central unit.

The institution of this new world order was to have an assembly of all member states and any newly formed states were to be allowed membership. This assembly could not be likened to a parliament as it had no power. It was more of a parlement (using the literal French translation 'to speak'), as it was empowered under Article 10 to discuss any matters within the scope of the Charter. Power was to be in the hands of the executive or the victorious allies, collectively known as the Security Council.

The Charter of the United Nations came into effect on 24th October, 1945. Article 1 states that the primary purpose of the UN is to maintain peace and security. It is Article 2 that reaffirms the principle of the sovereign equality of all members. However following on from this, it is stated that collective action will be used to prevent threats to the peace or other aggressive action and for the purposes of adjustment or settlement of international disputes. It is Chapter VII of the Charter that sets out the procedures to be followed for collective measures against uncooperative or aggressive states. This was seen by many as the 'teeth' that the League of Nations had lacked. It was this ability for collective action that was expected to make the United Nations a successful and truly international institution. The steps set out in chapter seven were the best way to deter and punish any state that broke away from the norms of the international society. However, as we have seen in the decades following its inception, this has not been carried out as intended. As Seyom Brown (1992, p 47) tells us it is this ability to coercively enforce its decisions, despite the deference to national
sovereignty in the Charter, that has embodied a potentially fatal contradiction of assigning a characteristically federal mission to an organization built on confederal foundations.

However it was as if the great powers, once having joined to give birth to this organization, immediately set about divorcing each other. The division of ideological interests among the world powers overtook the original theoretical bases for the United Nations. As Brian Urquhart (1986, p 389) tells us "Under the pressure of events, the great powers, soon followed by the other states, gradually abandoned the assumptions and principles of the Charter by failing to co-operate in implementing them". The world, in an ideological contest, divided into two hostile camps and world politics became a balance of power between the two blocs. The organization of the United Nations with its system of collective security and its methods to settle disputes in place, sat on the side lines while the nations of the world continued with their efforts to solve their own problems. All the major decisions affecting the international society during the next forty three years of the Cold War were made in Washington and Moscow and since the seventies, also in Beijing, not at the United Nations (Bell, 1993, p 50).

Today, as the world approaches the twenty first century, it is acknowledged that the cold war has now ended, and as Coral Bell noted in her article The Fall and Rise of the UN (1993, p 50), "even in its earliest days just after the Second World War, the United Nations was far less relevant to the well-being of the society of states than it is at the moment". As the smaller states of the international system recognise that they no longer can rely on the larger powers to protect and look after them, it is to the security services of the United Nations that they are turning. Also the leaders of the major powers are looking to the UN to provide the unity that the international society has been lacking since the end of the second world war. For many, the writer included, it is important that the end of the Cold War does not become an isolated moment in history and the international processes now begun be allowed to retreat and the states granted a free hand to re-monopolize international relations (Banks and Shaw, 1991 p 15). However the UN can only lead the new world order to the extent that the nations of the world allow it, as it was the nations themselves that relegated it to the
sidelines at its creation. It remains to be seen if their actions actually accomplish the desires expressed in their rhetoric.

The leaders of the world's seven major industrialised countries during their London Summit Meeting in July 1991 expressed the idea that the UN should lead this New World Order when they declared that

the conditions now exist for the United Nations to fulfil completely the promise and the vision of its founders. A revitalised United Nations will have a central role in strengthening the international order. We commit ourselves to making the U.N. stronger, more efficient and more effective in order to protect human rights, to maintain peace and security for all and to deter aggression.

Following on from this, June 1992 saw the United Nations Secretary General Boutros Boutros-Ghali publish a report titled An Agenda for Peace. The reading of this report incited much debate in academic and political circles as to the role the United Nations was to play in the world community as it approached the twenty first century.

While the end of the Cold War opened up the way for the UN to take its rightful place in international relations, the Gulf War provided the opportunity for it to demonstrate the effectiveness of co-operation and the principles of collective security envisaged by its founders. The most important way in which we are beginning to see the UN work as first envisaged is in the area as designated in chapter seven of the Charter. It is in this chapter that a series of graduated steps is set out in order to enforce a recalcitrant state to comply with the norms of the international society (Evans, 1993, p 133).

While the words used in the articles of the Charter are "measures ... to maintain or restore international peace and security" it is generally understood that these measures are now referred to as sanctions. While the term sanction is not used in official documents, the journalists reporting on
international events, and the leaders of states involved, refer to any 'measures' undertaken as the imposition of sanctions.

Since the end of the Cold War, or since 1990, the UN has imposed five instances of sanctions. They were against Iraq, former Yugoslavia, Somalia, Libya and Haiti. Previous to 1990, in its forty five year history the UN had only imposed sanctions on two occasions, against Rhodesia and against South Africa. It is interesting that during this period the use of sanctions was steadily on the increase. In 1983 Hufbauer and Schott presented a comprehensive and systematic analysis of ninety nine cases of sanctions being imposed against states.

Prior to World War II economic sanctions were seldom used. In the twenty five years between 1914 and 1939, which includes the first World War period, only thirteen instances of the use of economic sanctions occurred. This total is lower than for any decade since 1940 (Rothgeb, 1993, p 77). During this period the League of Nations possessed the power to impose sanctions on recalcitrant states and this was seen as being the great deterrent against any state breaking the norms of the international society. However, in 1935 the threat of sanctions and later the implementing of them did not deter Mussolini in his military invasion of Abyssinia.

The West does not shrink from imposing economic sanctions against those countries that are not part of its exclusive domain. Since 1950 the western world has imposed a total of eighty economic sanctions around the world. Four (5%) have been aimed at other western states, eleven (14%) have been against the communist bloc and sixty five (81%) have been directed at underdeveloped countries. Those countries that are poor and thus unable to offer any meaningful retaliation have faced the brunt of these sanctions (Rothgeb, 1993, p 79).

So it seems obvious that this widespread use of sanctions is not about to diminish. This has led to an increase in the written matter on the subject in the media and also in academic manuscripts. The majority of the literature has been concerned with the effectiveness of the sanctions, and while the greater part of the evidence contained within this literature points towards
the inability of international sanctions to achieve the goals required of them, the practice of countries sanctioning other countries continues. Analysts of international sanctions have often proclaimed the importance of the sender nation gaining co-operation from others if sanctions are to be successful. In many cases reported as unsuccessful, such as the US sanctions against Cuba and the attempts to impose a grain embargo against the Soviet Union in 1980, the problem has been exposed as the failure to gain international support (Martin, 1993, p 408). The receiver nations are often successful in countering the sanctions by increasing internal solidarity and negotiating with other nations.

These contrast with the level of international co-operation mounted against Iraq when it invaded Kuwait in 1990/91. As Rothgeb (1993, p 104) informs us, the UN sanctions applied against Iraq before, during and after the Gulf war in 1991 covered virtually all goods entering and leaving Iraq and were vigorously enforced by an impressive international coalition. From all reports, the UN efforts greatly disrupted the Iraq economy and caused severe problems. Yet the Iraq government never gave in to the UN demands regarding Kuwait. As Lisa Martin (1993, p 407) argues, "international acquiescence in the boycott was so extensive that Saddam Hussein's sales of oil began to suffer immediately, and sanctions continued even after Iraq's military defeat".

While this shows the international community being led by the United Nations the practice of imposing penalties outside the United Nations has increased the function and meaning of sanctioning. Britain alone imposed sanctions on Argentina in 1982 and United States Presidents since Carter have repeatedly used the process of sanctioning other nations. As Judith Miller wrote in 1980 (p 118), "economic sanctions, once shunned by American foreign policy makers in all but the most serious of international confrontations, are suddenly in vogue". Today, when speaking of international sanctions, it would be unrealistic to limit the discourse to those imposed by the UN. When looking at the number of sanctions that have been imposed since the end of the Second World War it becomes obvious that the process of sanctioning or penalising a nation as a consequence of a wrongdoing has moved outside the realm of international institutions to be
used by countries in an attempt to achieve foreign policy goals. This is not the United Nations acting out its designated role but single nations or small groups of nations acting together to impose hardships against another member of the international community. So the question must be asked, in this post Cold War world will the major powers allow the UN, their own international organization, to take the lead in handing out sanctions against deserving states or will they insist on their sovereign right to coerce and punish other states?

With the closing of the Cold War and a New World Order being established, the relevance of each separate nation in the international society using, as part of its own statecraft, the right to impose measures or sanctions against another needs to be questioned. It is my intention to establish that a sanction is punitive in intent and that this punitive intent is being ignored in the case of international sanctions. When sanctions are recognised as punishments it becomes obvious that they must only be imposed as a result of a state moving away from the norms of the international society, and the punishment for such must only be handed out with the legitimate authority of the international society. In order for this to be achieved, I will argue, it is the theory of each nations' sovereign right to impose penalties against each other that has outgrown its usefulness and is no longer applicable in the post cold war, or post-modern world. Finally, I will look at the theories of cooperation that must now be put into practice for the global village of the twenty first century to survive. It will be shown that the only acceptable way for the sanctioning process within world politics is to be workable is if the institution of the United Nations can now insist that the nations of the world cooperate to recognise the need for, and to hand out punishments to states or international groups that stray from the accepted norms.

In order for us to understand that the policy of sanctioning is not a new phenomenon two of the most influential works on sanctions during the last decade (Baldwin, 1985 and Hufbauer & Schott, 1985) have begun their works with the story of Athens punishing Megara for its support of Corinth during the battle of Sybota in 432 B.C. by forbidding any trade between Megara and the Athenian Empire. Others mention that "collective sanctions were to be part of Sully's Grand Design in the sixteenth century for keeping order in the world" (Strategic Survey, 1993, p 39) and it is well known how Irish tenants practised a policy of exclusion or non communication against Captain Charles Boycott in 1880. In 1933 Charles Remer wrote his important book entitled A Study of Chinese Boycotts in which a simple statement about the Chinese boycott of Japan is able to reveal an adequate definition of this action. "The Chinese said, in effect, we will not buy Japanese goods until the Japanese do what we want them to do, or better, until they stop doing certain things we do not want them to do" (p 1). Remer was writing during the time of the League of Nations and while he cites several differences between the Chinese boycotts and those of the League, he does think that it is conceivable that the league may come to regard the use of boycotts as a weapon that could be used by the collection of nations in international relations and Remer sees the boycott used in this way would be a powerful weapon.

Sanctions, as we know them today, incorporate the use of boycotts, embargos and other forms of economic and diplomatic actions. Prior to the Second World War sanctions tended to foreshadow or accompany warfare. However, today, most who use economic sanctions envision them as a substitute for military resources. It will be noted that in the later decades of the twentieth century all international sanctions have tended to become economic sanctions, attacking trade and the monetary housekeeping of the target state.

While in 1933 Remer saw the result of the Chinese boycott as a success, today the literature regarding sanctions views them as generally
unsuccessful. Wallensteen, writing in 1968, examines economic sanctions that were imposed between the years 1932 to 1967 and concludes that generally economic sanctions have been unsuccessful as a means of influence in the international system. Ten years later Losman (1979) concludes that while sanctions do bring about economic hardship on the target country they are unsuccessful in producing their political goals. When Hufbauer and Schott in 1983 presented their comprehensive and systematic analysis of 99 cases of sanctions, they concluded that sanctions have a 40 percent success rate, however when we look at the cost involved to the sender nation these odds do not seem that good at all.

While most observers write of the ineffectiveness of sanctions, governments continue to impose them and scholars debate over what goals they were intended to achieve and if there was any degree of success in the application of the sanctions. It appears to be their effectiveness as instruments of foreign policy that the major part of the literature on international sanctions is concerned with. Exactly how this effectiveness is to be assessed, as well as the original objectives for the sanctions being implemented, appear to be contentious issues. Even agreement on a definition of what an 'international sanction' is little lone what it does or how well it does it seems to be unattainable.

Robin Renwick in *Economic Sanctions* (1981, p 2) said that "sanctions may be defined in legal terms as the penalty imposed to ensure compliance with a law" but then goes on to say that "in current international usage sanctions are conceived essentially as the imposition of economic penalties to bring about a change in the political behaviour of the country against which they are directed". It appears that Renwick is inferring that a penalty is a hurtful measure imposed to achieve other purposes not a punishment imposed because of an act of wrong doing (Nossal, 1989, p 309).

Baldwin, in *Economic Statecraft* (1985, p 36), notes in exasperation that the term 'sanctions' is used in so many different ways that there is much to be said for avoiding it altogether. The one place where it is omitted is within the Charter of the United Nations and the word itself appears not to be seen
in UN documents. Ruth Lapidoth (1992, p 114) explains that this is because it may imply an element of punishment.

If we look at the Latin origin of the word 'sanction' it clearly establishes the relationship between a wrong doing and the hurts imposed on wrongdoers. *Sanctio* was the penalty specified for a transgression of a law or decree. The Latin origin thus suggests that a sanction is not simply a penalty imposed for a violation of the rules; it is a punishment for a wrong deemed to be immoral, or offensive to the moral conscience and damaging to the interests of the community as a whole (Nossal, 1989, 306). Joel Feinberg, in *Doing and Deserving* (1970), argues that we make such distinctions in domestic law between 'penalties' for rule breaking such as overstaying one's time at a parking meter and 'punishments' for acts of wrongdoing that are morally offensive to the community and therefore involve hard treatment and condemnation.

It is important to note that sanctions are only imposed in response to an act. It must be remembered that the primary use of sanctions is to ensure conformity with the norm. A prerequisite for a sanction being imposed upon a State is that it has been perceived that this State has moved away from the norm. Unfortunately it has been the practice of using the word 'sanction' for a collection of instruments of a Nation's statecraft that has tended to confuse the issue and distort the meaning of the term itself (Nossal, 1989, p 305). James Lindsay (1986, p 155) suggests that when states use sanctions, they are seeking to achieve one or more of five broad ends or goals. These goals are compliance, subversion, deterrence, international symbolism or domestic symbolism. If, as I have argued, sanctions are imposed following an act of wrongdoing, it is difficult to exclude the punitive objective - the goal of punishing.

Since the late 1980's writers have been prepared to recognise an element of punishment in sanctions. In 1987 Margaret Doxey, in her revised second edition of *International Sanctions in Contemporary Perspective* (p 4), noted "it is still possible - and desirable - to preserve the sense of sanctions as penalties linked to real or alleged misconduct". Richard Nossal published an article in 1989 titled *International Sanctions as International*...
A punishment is not an end in itself. We do not impose punishments just for the sake of punishing. A punishment is handed out in order to achieve an end result related to the wrongdoing. In order to assess if the theory of punishing wrongful acts can be successfully used within the international system, which is perceived to have no legitimate superordinate authority, we must explore the various theories and purposes of punishment.
3. Punishment in International Relations.

At some time in our lives, from the moment that we begin interacting with people, we punish and are punished by others. Most of us find that the angry reaction to a wrong doing and the desire to punish is ingrained within us and accept it as a norm. When these situations take place there is generally some unpleasantness or deprivation associated with one or other party. As Alfred Lindesmith in the Encyclopaedia of Social Sciences (1966, p 217) tells us, "the full-fledged punishment situation is thus a complex social relationship in which the perceptions, motives, and intentions of both parties are essential features".

During this century there have been two questions that have dominated the literature regarding punishment. The first problem has been the ongoing debate of finding a suitable definition for the word itself. Secondly the various theories that attempt to explain the reasons or justifications for the practice of punishing have filled the pages of the manuscripts about punishment. In order to define the word punishment we will trace the ideas put forth by different writers through the ages and look at how the practice of imposing punishments within the domestic political arena is comparable to world politics.

Grotius, writing in the seventeenth century, defined punishment as "the infliction of an ill suffered for an ill done (cited in Bean, 1981, p 1). Bean himself, writing in the twentieth century, seems to agree with this definition of long ago saying that "the essence of punishment is that it involves suffering" (1981, p 1). Hobbes, in chapter 28 of Leviathan, calls punishment an evil but points out that it is a public authority that inflicts the punishment. Bosanquet (1899, p 203), tells us that Durkheim, who has become known as the Father of Sociology, defined punishment as having a negative character and saw the act of punishing "simply as a reaction of a strong and determinate collective sentiment against an act which offends it". During the later half of this century other writers have expanded the definition, as shown with Frinberg in 1970 adding the words that punishment includes "judgements of disapproval and reprobation". John Kleining in
1991 explains punishment as a deliberate imposition, and goes on to say that there is a stigma attached to the act of punishing as the person being punished is deemed to have acted in a morally discreditable manner.

However it is a list of five elements that Flew (1954) sees as essential to punishment, that have become the standard definition used by many. Because of Benn in 1958 and Hart in 1968 using these same five criteria for their own definitions, it has often been referred to as the Flew, Benn, Hart definition and is as follows:

i. It must involve pain or other consequences normally considered unpleasant.

ii. It must be for an offence against legal rules.

iii. It must be of an actual or supposed offender for his offence.

iv. It must be intentionally administered by human beings other than the offender.

v. It must be imposed and administered by an authority constituted by a legal system against which the offence is committed.

Thomas McPherson (1967, p 25) finds this definition unsatisfactory, but fails to reply with a totally different one, except to say that "punishment is the infliction of an unpleasantness on a guilty person in the interests of the general happiness". He then goes on to say that the definition and the justification of punishment are hard to keep apart. Alf Ross, writing a little later in 1975, also finds the Flew, Benn, Hart definition "hardly a satisfactory definition" (p 36). Ross sees their work deficient because it does not express that there is disapproval of the violation of a rule and provides his own definition as follows,

punishment is that social response which: 1. occurs where there is violation of a legal rule; 2. is imposed and carried out by authorized persons on behalf of the legal order to which the
violated rule belongs; 3. involves suffering or at least other consequences normally considered unpleasant; and 4. expresses disapproval of the violator (p 39).

It is agreed that when a punishment is applied there must first be an ill done, a crime committed, or when referring to punishment in a juridical or community sense, a law or rule broken. The immediate reaction to this is anger, and Aristotle, in his work Politics, has defined anger as "an impulse, accompanied by pain to a conspicuous revenge for a conspicuous (clearly visible) slight directed without justification towards what concerns oneself or towards what concerns one's friends". It is also, he noted, accompanied by a certain amount of pleasure arising from the anticipation of revenge (cited in Brubaker, 1988, p 823). Stanley Brubaker (1988, p 823) tells us that "the anger that underlies punishment at law is for the wrong done more broadly to 'what concerns oneself or one's friends' this anger displays a caring for persons and matters beyond ones narrow self interest and expresses the desire to vindicate them". Punishment expresses and satisfies that longing for vindication. It gives shape and form to the anger.

So the search goes on for a suitable definition, apparently without finding one that meets with majority approval. One way of coping with this situation has been to gradually delete the word 'punishment' from our legal and written language. Christie, writing in 1974, noted that terms such as 'sanctions' or 'treatments' were being substituted for punishment in a subtle attempt to conceal the nature or harshness of the word (Bean, 1981, p 1). It is noteworthy that in 1992 Dr. Ruth Lapidoth writes "the term 'sanctions' is not used in official international documents, probably because it may imply an element of punishment" (p 114). While the actual word, 'punishment' or the act of punishing, may be hidden in our reading most people use the word every day in their vocabulary and are able to see beyond the disguise.

With the reading of our newspapers it is obvious that the act of punishing, no matter what it is called, is prevalent in our society, although it must be noted that the form of punishment has changed through the ages. In the Ancien Regime punishment was used to show the power of the sovereign and took the form of spectacular destruction of the offender. The age of the
Enlightenment deemed these acts to be irrational, inhumane and barbarous (Hart, 1968, p 147). It was shown that punishment could work better for all within the community if the offender was reformed and deterred from committing the offence. These new ideas have moved along into the modern age and we find that as the twentieth century draws to a close punishment, while having changed considerably since the Ancien Regime, is still necessary and the rising crime rate shows that punishment has failed in its quest to deter people from breaking the rules of society. Many would ask the question, is it not the society that demanded the existence of these rules that was at fault, but as Ewing (1929, p 47) tells us, "the existence of society depends on laws and a law that is not enforced by punishment, if necessary will not be regarded as a law in the present stage of moral development". It must be agreed that this statement still holds true at the end of the nineteenth century.

So punishment, regardless of an agreed definition, is here to stay. It must also be noted that this punishment still involves pain and suffering which is against the theories of our liberal tradition. It is the infliction of pain and suffering to others that liberalism seeks to avoid (Brubaker, 1988, p 825). John Stuart Mill in his thesis On Liberty stressed that the only reason a man should have to extend power over another was to prevent harm to others. It stands to reason that we must find a justification for punishment, but today, just the same as a hundred years ago, the aims of punishing, or the theories of why we punish, remain in open contradiction. The major opposition is between those who think punishment need only be just and those who believe that punishment must deter and reform.

Writers who believe in the retribution theory of punishment treat punishment as an end in itself. Ewing (1929, p 13) says this is the essential characteristic of this theory. Kant and Hegel share the idea that punishment has no purpose in the sense of serving some end beyond itself, or producing some desired consequence in the future. Kant, writing in 1790, says "Juridical punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to the civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime" (1952, p 446).
F. H. Bradley in his work *Ethical Studies* written in 1927 explains

Punishment is punishment only where it is deserved. We pay the penalty because we owe it and for no other reason; and if punishment is inflicted for any other reason whatever than because it is merited by wrong, it is a gross immorality, a crying injustice, an abominable crime and not what it pretends to be (p 26 - 7).

Bean (1981, p 12) referred to Francis Bradley as the "fiercest retributionist of modern times". Retributionists believe that a prerequisite of punishment is guilt. No person is punished unless he is guilty and so deserves the punishment. It is not the state or the legislators who choose to punish but the person who chooses to break the law and so makes the choice himself. As Nossal (1989, p 315) says "The useful purpose of this punishment is the harm that will be done to the offender, an equivalence of evil suffered for an evil committed - an analytical construct that is fundamentally different than 'petulance,' 'punishment for its own sake,' or sadism."

Examples of this are seen daily within our own country as people convicted of crimes are locked away in prisons and the public calls for the re-introduction of capital punishment for certain offenders. Likewise we see leaders calling for the imposition of sanctions only because the perpetrators of wrongdoings must be punished. *The New York Times*, reporting President Carter's response to the Soviet invasion of Afghanistan on 23th January 1980 quoted him as saying "But verbal condemnation is not enough. The Soviet Union must pay a concrete price for the aggression. That is why the United States has imposed stiff economic penalties on the Soviet Union". Cyrus Vance, Secretary of State in Carter's administration was reported as saying "the Soviet Union must pay a heavy price for its invasion" (Nossal, 1989, p 320).

The primary focus of this theory of punishment is in the past, only looking at what has been done and why it was done. The reason for the punishment is that there has been an offence and the offender must be punished. There is
no looking towards the future in retributive punishment. However the second theory regarding the aim of punishment looks towards the future with its deterring and reforming focus. This is known as the utilitarian theory and it is defended by Beccaria and Bentham.

These writers consider that the main aim of punishment is to control action. Bean (1981, p 30) says "many earlier philosophers such as Grotius, Puffendorf and Locke had considered the deterrent argument, but Bentham and Beccaria give it the strength that it now commands. Bentham was its intellectual exponent, Beccaria its humanitarian".

Bentham saw all punishment as evil and thought that it ought only to be admitted in as far as it promises to exclude some greater evil. He thought all punishment must be justified by the value of its consequences. Utilitarians argue that punishment works by threat and when a punishment is applied this is a failure of the system. The punishment is carried out only to retain effectiveness for the future (Bean, 1981, p 33). Today many would agree that we are deterred in our actions because of the possibility of punishment being imposed. States have used the threat of sanctions being imposed in order to deter other states from actions thought to be moving against international norms. President Carter noted in his memoirs that the Soviets had to recognize that the world was against their expansionist actions after their invasion of Afghanistan (Nossal, 1989, p 318). It was clear that he meant for the sanctions to act as a deterrent against further expansion of the Soviet Empire.

The third theory of punishment is to compel the offender to cease the wrongful behaviour. Inside the state we see this at work when the offender is taken out of the normal intercourse of society and so refrains from continuing the offence. Sanctions imposed by the international community against South Africa were not only to punish for the non recognition of their Black peoples but to compel the White minority government to cease their apartheid regime.

So it can be seen that all three theories of punishment are used against wrongdoers both within the domestic and international political arenas.
Today as at the beginning of the century, there is no agreement on the main aim of punishing, as Brubecker (1988, p 825) says "we punish not just to discourage future wrongs to our well being but to express our indignation and reprobation at the wrong that has been done".

Most people believe that the crime rate is rising in both national and international arenas and there seems to be a general feeling that we are failing in deterring people from breaking the law. The sentences or punishments we see handed out to the law breakers by our judiciary indicates that often the severity of the punishment bears little resemblance to the severity of the crime. What we do see is that punishment is a confirmation of the power of the law or in some cases a confirmation of the power of the powerful.

Within the state the government holds the legitimate power but within the world of states it remains a contentious issue just where the legitimate power lies. Today no one state is all powerful against another. Only the combined power of all states against one that moves away from the laws of the community will be successful in bringing a punishment to bear. The question now is whether the states can cooperate to achieve this?

As we approach the twenty first century the idea that it is an acceptable practice for any state or small group of states to be able to continue handing out punishments to any other state in a self help fashion must be questioned. While we have seen great changes in the world system occur relatively peacefully and the beginnings of cooperation among the states, now is surely the time to look for a better way to bring justice to bear on states that move away from the norms of international behaviour. The theories that have led the study of international relations lack the ability to portray realistically the structure of the state's system. A new theory is needed to explain the movement of the system from a world engaged in a Cold War to a world uniting to cope with problems that previously had been unforeseen.

The state centric model of international politics, that began to dominate theories of state relations in the 1930's showed the states as individual actors and these states, which are sovereign in their own right, are selfishly driven by their own interests. The relationship between these states has been seen as one of competition and conflict among the individual actors in their quest for power. The sovereign status of these actors allows them to act without accountability to others and without a central authority. It is believed that war is inescapable as the sovereign states compete for power and this view still dominates thinking about international relations (Booth, 1991, p 527).

Realism saw power as the moving force behind relations between states and the power that each state pursued was of the political-military order as suited the time and the place. The end of a world war and the beginning of a Cold War that the world watched and waited to become inflamed. While a form of International Law had existed since the Treaty of Westphalia in 1648 it seemed that such a concept could not be a workable reality while each state was a sovereign power in its own right and acted in its own interest. What was needed was for all the states to agree to cooperate and coordinate the creation of mutually accepted legal codes. The realisation of this was seen as a utopian dream.
It must be remembered that theories reflect the time and the place in which they are produced. The 1930's was a time of instability and fear. There was fear of the devastation left by the first World War along with fear of another war to come. It was E. H. Carr's *The Twenty Years' Crisis* published in 1939 that greatly influenced this school of thought known as Realism and provided the rejection of the utopian ideas found in the doctrine of Idealism. The collapse of the world into another war gave authenticity to the realist's model of world politics. While Realism was in some ways an answer to the failure of The League of Nations it became the basic outlines of the study of international relations at a time when in reality the nations of the world were together setting up the institutional framework for unification and cooperation.

This institution, known as the United Nations, was to provide a forum for debate and a framework to enable nations that moved away from the norms of international life to be punished and so allow the world to live in harmony. To the followers of this realist theory the idea of all or most states cooperating together was seen as a utopian dream. So as the institution of the United Nations was relegated to the sidelines of the ways of world politics the Cold War validated the principles and predictions of the realists

As the years moved by without major conflict, what we saw happening in reality were states accepting a code of international norms as law and generally, as demonstrated by their behaviour, obeying it (Kegley and Wittkopf, 1992). During the time of the cold war we saw many incidents of states cooperating. While east and west remained in an ideological dispute, within each bloc states were obeying the rules laid down by the leader and cooperating with each other.

An attempt to update the theories of Realism in the seventies resulted in a school of thought known as Neorealism. Kenneth Waltz's, *Theory of International Politics*, published in 1979, became the leading work in this area. In an effort to make the theory of international relations more reflective of what was actually happening in the world neorealism sought to incorporate economic issues into the theories of Realism. Because states
were banding together in groups in order to organise trade and economic issues on a more global perspective, Regime Theory was also incorporated. Regimes were formed to promote economic interests of the leader known as the hegemon and were thought to have a stabilising effect in world politics. However as the process of the formation of states into regimes was widely recognised, comparatively little research was conducted into the influence of the regimes on the behaviour of states. The school of neorealist theory still sees sovereign states as the main actors in world politics and these states exist in a relentless pursuit of power in order to secure themselves against other like animated unites. Along with this ran the idea that world politics was now a system with a definite structure to it. This structure was composed of the single units, namely the sovereign states. The contrast was often drawn between their ordered political systems within their boundaries and the anarchical system they existed in externally.

Because in reality states were beginning to cooperate together for reasons of trade and economics as well as security, game theory was incorporated into Neorealist theories to explain how this could be achieved in an anarchic world. Most studies have focused on the Prisoner's Dilemma (PD) game. While PD is essentially a game of non cooperation it can produce cooperative behaviour under conditions that resemble reality in the games played between states. However the game is played with two players, and within international relations many states are often involved in any interaction. Each has a choice, namely cooperate or defect and the choice must be made without knowing what the other will do. No matter what the other does, defection yields a higher payoff than cooperation. The problem is that if both defect, both are worse off than if both had cooperated. However, if the game is played over and over or iterated, the payoff is better for cooperation. What is not taken into account is the shadow of the future and the possibility of reciprocity, both of which must account substantially in international relations. As Haggard and Simmons (1987, p505) tell us "the very existence of a network of regimes and transnational relations among the advanced industrial states facilitates communication, enhances the importance of reputation, and lengthens the "shadow of the future".
The shadow of the future is an essential consideration in international relations. Today with advanced technology and communications between states available in seconds all players in the world scene know that they must remain in the game, there really is no where else for them to go to. Game theory shows that when players expect to be placed in similar situations in the future and with similar players the incidence of cooperation rises substantially (Oye, 1985, p 13).

Rousseau's Stag Hunt is a game often used to show that even though men or states know that they seek a common goal they may not be able to reach it. If the men in the hunt cooperate and trap the stag they will all eat well but if one defects to catch a rabbit (which he likes less than stag) all the others will go hungry. While the realists and neorealists interpret this to show that cooperation in a group is impossible because someone will always defect. There is, however, a preference order:

i All cooperate and catch the stag (all nations cooperate in placing sanctions on a wrongdoer in order for the punishment to be effective in having him cease his wrong and in deterring others).

ii Chase a rabbit and eat a small meal yourself while the others are left hungry (one or several states to defect from unification and so lessen the effect of the others).

iii All chase rabbits (remain as we are today without making any advances for a united world - the results of this preference for the world could be devastating).

Maybe today as we move into the twenty first century we could have a new interpretation - one that says that if we do not all cooperate to catch the stag (or the ones that cannot stay within the confines of the norms of world politics) then none of us is going to have the stag and the future will not look bright for any member.

While game theory has proved to be a powerful tool in explaining how people and nations' behaviour when relating to each other, it is in many
ways ambiguous and leaves many unresolved questions. It assumes that the players are rational and understand the rules of the game. The state is still seen as a single unit or player in the game and this structure tends to impose a 'self help' logic on the players and in reality the players in world politics are showing that they understand this is not going to allow them to survive in the twenty first century. Game theory also makes the assumption that the state is playing a separate political game outside its boundaries to the one it plays inside. The problems with this concept will be discussed more fully in the next chapter.

While realist theory insisted that no state would give up their quest for power, this is exactly what the Soviets did in 1989 in Eastern Europe and in 1991 within its own union.

But, even before these happenings, at least a decade before, we saw a steady questioning of the adequacy of the theories of Realism in explaining international relations which were becoming increasingly characterised by many forms of cooperation that transcended the territorial borders of states. Indicators of its demise became apparent when papers were published with such titles as, *The Poverty of Realism* (Krauthammer, 1986), *The Poverty of Neorealism* (Ashley, 1984), *Is Realism Finished?* (Zakaria, 1992) and as John Lewis Gaddis (1992, p 31) says

> Realism has no way of accounting for the peaceful relinquishment, by a great state, of its own instruments of authority and legitimacy, and that fact has to call into question the predictive potential of Cold War theory for a post-Cold War age.

We have seen that states are not only prepared to, but also realise that they must cooperate together in all interstate or world ventures. It appears that in the post Cold War world the nations that make up the world community are showing by their actions that cooperation amongst themselves for a number of reasons is already happening. It is being recognised by most that not only must they cooperate with others for defence and security purposes but that
they cannot exist economically, socially and politically on their own, but must join together for the benefit of each and every one of them.

Cooperation for reasons of trade and economics has been successful in the organisations of GATT (General Agreement on Tariffs and Trade), OECD (Organisation for Economic Cooperation and Development), and APEC (Asia Pacific Economic Cooperation) along with the World Bank and the International Monetary Fund. Regionally states have cooperated in organisations such as NATO, ASEAN and the EC. While we have seen cooperation between the nations involved within these groups to impose punishments on recalcitrant nations or states it is really only when sanctions were set against South Africa and later imposed on Iraq that cooperation between a significant number of the world community cooperated together.

It is now time to update and look beyond the notion of what the theory of realism is about. The states in the world can no longer be described as billiard balls. As Ferguson and Mansbach (1991, p 370) tell us

>This conception of the world of sovereign states presents only about as accurate a vision of the 'real world' as a hollywood western stage set does of the old American West. It is not entirely fiction, but it is primarily a fiction. It is no more that pseudorealism.

It is now reasonable that with the end of the Cold War we can now see the outlines of a potentially new system of world politics and a new theory is needed to guide and explain its concepts. The rigidity of the theories incorporated within Realism need to be addressed and the real situation of change from the modem industrial world to the postmodern, post industrial one accounted for.

As Ken Booth in his inaugural lecture to students and staff at the University College of Wales (1991, p 528) said "But despite its insights and pre-eminence, realism has deep problems as the lens through which students and practitioners look at world politics". If we go back to the second edition of E. H. Carr's *The Twenty Years' Crisis* published in 1966, Carr himself notes
that while utopia and reality are different planes, there could be a need for a combination of utopia and reality and he also saw the importance of basing thought on elements of both utopia and reality (Booth, 1991, p 561).

By combining the processes of cooperation that are actually happening in the post Cold War world with guidelines of explanation and prediction we will arrive at an approach that can be called 'utopian realism' (Booth, 1991, p 533). If it is utopian thinking to see the players in world politics cooperating fully together to hand out punishments to the law breakers, Utopian thinking can set goals and stir people into action. It can provide a map with a destination that seems to have been missing from the theories of world politics.
5. Sovereignty in Transition.

Since the seventeenth century the sovereign state has been the dominant unit of politics and during this century of world politics in particular. This immediately raises suspicions about realist theories that treat the sovereign state as an inevitable and irreversible political institution (Walker and Mendlovitz, 1990, p 14). If the idea of sovereign states begun at some point back in time and has evolved to what we know as today's form of the sovereign state, does it not represent a historical logic instead of an absolute? Is the sovereign state, at the end of the twentieth century, still the same entity as in earlier times?

Bodin, writing in the sixteenth century, while admitting that all were subject to the laws of God, saw sovereignty as meaning absolute and total power on earth. Hobbes a little later and Hegel in the earlier eighteen hundreds agreed that as there was no leviathan above the states a states' sovereignty was absolute and free from any limits (Lapidoth, 1992, p 326). There was no higher power than the state. It is this idea of the sovereign state that has dominated politics both in the domestic arena and in the international system. In 1979, when it was obvious that no state was free to act in any way it would like to without affecting others within the international community, Kenneth Waltz (1979, p 96) explained a states' sovereignty as "its power to decide for itself how it will cope with its internal and external problems, including whether or not to seek assistance from others and in doing so to limit its freedom by making commitments to them". However, some fifteen years later, it is questionable whether a state still possesses this right.

When searching for a definition of this concept, 'the sovereign state', it is not back to the middle ages we should look but to the precise nature and meaning of the word today, at the end of the twentieth century. As Ruth Lapidoth (1992, p 326) tells us, "the meaning of a concept is related to the civilization prevailing at a certain period, and a drastic change in the political environment may entail a new meaning or nuance to an old concept".
Today, if we are to endeavour to locate just where state sovereignty lies, R. B. J. Walker (1993) tells us that we must look in two places, within the state and also outside the state. This dichotomy poses many problems in the post Cold War world as the units that make up the world struggle to find a place and a political identity in the New World Order.

Within the territorial boundaries of the state, sovereignty is located as the center of power and authority. This is the sovereign center around which society, polity, culture, economy and territory orbit with a degree of harmony. This fixed point of power and authority inside fixed boundaries allows an ordered political community to exist and becomes the ultimate unit to protect those within its boundaries. Within the state this center of power also has the legitimate right to enforce compliance with the rules of the community and to punish those who do not abide by the rules.

However outside these territorial boundaries when sovereign states engage in international politics there appears to be no one center but many, and therefore no community only clashes and anarchy. Boundaries are central to the concept of sovereignty. Not only the physical that separate the territory of each sovereign entity but also the cultural boundaries that segregate the same from the other and the conceptual boundaries that distinguish the domestic from the international (Camilleri and Falk, 1992, p 236).

These ideas have been rooted in the early modern theory of the territorial state but in the 1970's when states were becoming more dependent upon each other with alliances and regimes being part of the reality of interstate life, new notions regarding interstate actions were exposed. Hedley Bull, a stimulating influence on the ideas of international relations, in 1977 explained that while the world polity did consist of sovereign states with no higher power, there did exist among the states a sense of community and of order and justice. Because of the level of interstate relations and cooperation that he saw existing between the states he went on to describe the system of international relations as a society. His distinction between the concept of a system of states and that of an international society gave many a new insight into the relationship between states.
For others it became fashionable to assert that within the modern world the territorial state was becoming obsolete (Banks and Shaw, 1991, p 22). However, today no one doubts that the Nation State is an important integral part of the modern world system and that its complete demise is not obvious in the near future. But territorial states do change borders, as we have witnessed in the last few years with the former Soviet Union and the former Yugoslavia. New states are born while some disintegrate away. With modern communications and transport, the people who make up the population within the state territory also move easily across borders in great numbers and ballistic and nuclear weapons reduce the relevance of borders (Lapidoth, 1992, p 334). Organizations of people without specific territory such as the Palestine Liberation Organization (the PLO) have gained recognition from the United Nations and are allowed to participate, as the state of Palestine, with observer status in the General Assembly. James Rosenau writing in 1990 (p 132) tells us how he sees a state within the contemporary world system,

limping along, buffeted by internal and external forces that drive the norms, habits and practices relevant to their capacities for cooperation to the brink of transformation, and yet managing to persist, sometimes resisting the tides of change and sometimes astride them, but with few exceptions retaining sufficient legitimacy to sustain their essential structures and undertake collective action.

As has been shown in an earlier chapter, with continued interdependence and regime building in the international community of the 1990's, it is obvious to all that no state is self sufficient, no state can survive on its own and any decision or change in a state's actions will affect other states within the world polity. We have shown earlier that when a single state, deciding that another has committed a wrongdoing, exercises its sovereign right and imposes sanctions on the transgressor, it is doomed to have the sanctions shown as ineffective and worthless. The facts of modern life show the demise of the idea that the state has full and exclusive sovereignty within the international world. It is important as we approach a restructuring of the
world order that the effects of the changing economic and political conditions on the characteristics of the sovereign state be reassessed.

Whenever states subscribe to international commitments and obligations they, invariably surrender some of their sovereignty. The ultimate cost of cooperation is loss of sovereignty. Today there is no way that any state outside its own boundaries can have or can exercise absolute power, not even the United States of America. Also inside the states the sovereign centers of power are now going through an internationalisation of the internal structures that were previously only the concern of those within the state. While the Charter of the United Nations acclaims each state's sovereign right to freely choose and develop its own political and social systems within its own territory, we have witnessed the UN declaring that the protection of human rights is an international concern. The world was able to insist that South Africa abandon the practice of not allowing the people of its black majority the right to representation. The United Nations has intervened in the internal politics of Haiti. A particularly interesting case, as here we have the United States asking the United Nations to impose sanctions and then to permit the use of military force in order to punish the overthrowers of the rightful government and to stop human abuse in that land. Our own country has been asked to look into our laws regarding the homosexual community within our own boundaries. States no longer have self contained economic systems as free trade agreements and common markets have rendered trade and therefore economics an international affair.

Rousenau, writing in 1990, has persuasively argued that virtually all governments are confronted by growing challenges to their control. These arise from the technological revolution and restraints imposed by structural interdependencies.

If, as I have shown, once outside its territorial borders the state no longer remains sovereign and in many instances within its borders its sovereignty is in question, where does the center of power and authority within the world polity lie? We have already established that norms not only exist within the community of states but that these norms or rules are now permeating every facet of international life and the framework is in place to impose
constructive and useful sanctions or punishments on those who break away from these rules.

The states show by their actions that they accept and generally observe the rules of the international community (Kegley and Wittkopf, 1992, p 203). John Austin, who dominated jurisprudential thinking in Great Britain during the nineteenth century reasoned that for a legal system to exist three elements must be present.

Firstly a law must be a statement in which a prescribed pattern of behaviour must be evident. These exist in international law in the form of treaties, customs and judicial decisions of the courts. Secondly a basis of obligation approved by the society must be present. Within the international community it is in the state's interest to be obligated to international law after all the states are the law givers in this community. States, in the same manner as individuals, have discovered that consent to be bound by and obligated to certain rules can serve to facilitate, promote and enhance their welfare and opportunities within their society. Thirdly some process for punishing unlawful conduct in the society must be available. So we are able to see that it is indeed laws that the international community subscribes to and in general obeys (Kegley and Wittkopf, 1992, p 205).

It is only in the third characteristic that there is a problem. Despite the development over the last seventy years of relatively sophisticated universalistic sanctions equipped international organisations, the League of Nations and the UN, the world community still relies primarily upon the principle of self help to enforce legal sanctions. As we have seen earlier, when discussing sanctions, still today states feel that they have the sovereign right to impose punishments themselves and it is this process that allows international law to fall short when being assessed against the characteristics of law. This self help process places severe restraints upon the legal systems' effectiveness and is the reason why many see international law as weak and decentralised. As Robert Art and Kenneth Waltz in their book
The web of social and political life is spun out of the inclinations and incentives, deterrent threats and punishments. Eliminate the latter two, and the ordering of international society will depend entirely upon the former - an anarchic ideal that is unworkable this side of the Garden of Eden.

One may well ask why the techniques of self help can still exist when the unravelling of national sovereignty seems to be a feature of the post Cold War period? As Fleiner-Gerster and Meyer (1985, p 277) say, "the traditional concept of sovereignty no longer fits the necessities of modern international law. The idea that sovereignty can be neither limited nor divided is contrary to modern development in international society". Governments who insist in their outmoded views on sovereignty will steadily rule themselves out of the game of international relations and as I have stated before it is now impossible for any one state to remain in isolation as the world heads for the twenty first century.

This surely is the time for the organization of the United Nations to begin to carry out the tasks originally set out for it to do? In this post Cold War period the boundaries between the national and the international are becoming more blurred than ever before. It is also impossible to make sense of emerging forms of world politics while continuing to be bound by categories, such as state sovereignty, that explicitly denies the possibility of a world politics (Walker, 1993, p 183).

What we are left with, the one constant that remains, is the people who make up the world polity. These people have shown that they can cope with different levels of loyalties. In their lifetime they remain loyal to families, to their own particular religions, to their nationality and in many cases to the government of the country that they reside in. These individuals now have rights within the international community and as such the international system is obligated to defend their rights. It is the individuals that are
becoming the units in international politics and this introduces the idea of world democracy (Holm and Sorensen, 1993, p 283).

The modern theories of international relations have been dominated by the idea of the system consisting of sovereign states. However it is the postmodernists that open the door to reinvigorating the prescriptive, ethical dimension of theory and shift attention away from 'givens' like the nation state to the micro level—the authentic repository of human loyalties and affections (Ferguson and Mansbach, 1991, p 365). Postmodernist theory sees the end of "the grand narrative" that has begun in a fixed point in time but through time has enlarged into mythological dimensions and has been given such symbolic weight that it no longer resembles the original (Heller and Feher, 1988, p 2). In this case the grand narrative is the one regarding state's sovereignty.

The trend towards individualism has already stated in the real world along with the prevailing forms of deconstruction of the written word and this points to a new foundation for the study of world politics, as Holm and Sorensen (1993, p 297) say "the propelling of individuals to center stage will require large-scale restructuring in our thinking".

Part of the new world order, as stated in the agenda of the United Nations, is to make sure that human rights are given precedence over the sovereignty of states. Holm and Sorensen (1993, p 286) ask "will this lead to the gradual creation of an international civil society where individuals and the groups they form are recognized internationally alongside the states?"

As we can see, the process of judgement and punishment on people, groups or states who move away from the norms or rules of the world polity does not lie within the foreign policies of nation states.
6. Conclusion.

International sanctions have been part of the process of states interacting with each other since ancient times. In modern times we have seen the sanctioning process evolve from a much talked and written about, but little used, idea to one that has gained momentum and become a much used component of international relations. The foreign ministers of modern industrial countries, who are the main users of this practice have tended to exert their countries' sovereign right to impose these sanctions on any other state that they see as having made a move that they disagreed with.

In assessing the effectiveness of sanctions, writers have looked at the ability of the receiver state to find an avenue to circumvent the sanctions, the cost to the sender nation and whether the receiver ceases the action that brought about the sanctions. In all of this there is much contention as to which sanctions are successful and which are not. What appears to be forgotten is that a sanction, being derived from the Latin word 'sanctio, to punish', is a punishment and as such should only be imposed when a law is broken.

As the world polity is made up of people, states and organisations and it is these entities that have composed the norms and laws that the community should live by, is it possible that each can have the right to judge and pass sentence on ones that move away from the norms? This procedure, known as self help, became acceptable during the Cold War when the world was divided in blocs each with a leader who was overseer of this procedure. But the Cold War has ended and the world is searching for a new world order.

This new world order is to rise from the recognition that no one state can proclaim itself the most powerful and so the leader of the others. Today, power is not defined in terms of military prowess, nor by economics, nor by technology but by a combination of these. Today it is unrealistic that any one state could be the most powerful in all of these categories and so become the hegamon. The only way that all the necessary fragments needed to lead the world into the next century can consolidate is by cooperation among the units that together make up the world. This cooperation between
the states has been shown not only to be acceptable, but to be already in practice.

However the ultimate cost of cooperation is loss of sovereignty for the states, but when we look at what is actually happening in the world of states it is found that this elusive concept has been in a state of transformation for quite some time. So no one state has the 'sovereign' right to pass out punishments on another. Sanctions will only be used correctly and efficiently when they are imposed by the united nations of the world. We have seen the world moving in this direction with South Africa correcting its unlawful practice of apartheid following collective sanctions being imposed. The world has the structure, in the form of the United Nations Organization, already in place for the states to cooperate together to judge and to punish wrongdoers.
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