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The Economic Aspects of Sovereignty and Self-Determination in Contemporary International Law. Basic Issues[1]

I
Introductory Remarks

With the growing economic interdependence of States, with the subjection of many States to the stringent exigencies of membership in international financial organisations (IBRD, IMF), and with the integration processes in Western Europe currently extending to Central Europe, the questions of "economic sovereignty" or even "monetary sovereignty" are discussed with increasing frequency not only in economic or political reports and literature, but also in writings on international law.

The latter also feature the concept of "economic self-determination." In this connection, it can be further observed that certain important international documents, while laying down the fundamental principles of international law, formulate them in such a way that the same components reoccur in both the principles of the sovereign equality of States and the self-determination of peoples. This may result in not only the complementarity of both principles, but also their mutual competitiveness.

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1 Translated from: J. Tyranowski, *Ekonomiczne aspekty suwerenności i samostanowienia we współczesnym prawie międzynarodowym (zagadnienia podstawowe)*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1992, no. 1, pp. 25–40 by Tomasz Żebrowski and proofread by Stephen Dersley and Ryszard Reisner. The translation and proofreading were financed by the Ministry of Science and Higher Education under 848/2/P-DUN/2018.

Moreover, the conceptions of people's sovereignty and state self-determination appear in the scholarly literature devoted to international law. The two conceptions can hardly be reconciled on the plane of international law norms. Finally, is the permanent sovereignty of peoples over their wealth and natural resources a legitimate issue to discuss in the dimension of international law, as some international documents assume? All this makes for a considerable terminological and conceptual confusion as regards sovereignty and self-determination.

This article attempts to bring some order to this confusion, with special focus on its economic aspects, including coercive economic measures. The principal assumptions from which the article proceeds hold that only peoples enjoy the right to self-determination, thus the concept of self-determination of the state is rejected. Following this assumption, the rights of States are protected by the principle of the sovereign equality of States, while the position of peoples in international law is defined by the principle of self-determination. It follows that the conception of people's sovereignty founded on public international law is rejected.[2]

The present discussion concerns the self-determination of the entire population of a State, rather than individual population groups to be found within its borders. The latter situation is connected to the questions of territorial integrity, secession and the foundation of a State.[3] In this context, another assumption is made, namely, that the principle of self-determination of peoples complements, in terms of content, the principle of sovereign equality with regard to the entire population of a State. The role of the principle of self-determination is primarily to reinforce the prohibition on foreign intervention, which is a natural consequence of the principle of sovereign equality.

2 For more on these issues, see J. Tyranowski, *Zasada suwerennej równości państw a inne podstawowe zasady prawa międzynarodowego*, in: *Suwerenność we współczesnym prawie międzynarodowym*, Warszawa 1991, pp. 18–28.

3 On this issue, see J. Tyranowski, *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*, Warszawa–Poznań 1990.

II
The Right to Choose the Economic System

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the UN Charter of 24 October 1970[4] includes, among the components of sovereign equality, the right of every State to choose and develop freely its political, social, economic and cultural systems. Hence, the right to choose an economic system is an integral element of the sovereign equality of States. At the same time, the Declaration, by virtue of the principles of equal rights and self-determination of peoples, says that "all peoples have the right freely to determine freely, without external interference, their political status and pursue their economic, social, and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter." Thus, the right to choose an economic system is also an integral component of the principle of self-determination of peoples and is similarly approached in other international documents.[5]

One of the most important documents on international economic relations, and one fundamental for the present discussion, namely the Charter of Economic Rights and Duties of States adopted by the UN General Assembly on 12 December 1974[6], states that:

> Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

4 UN General Assembly Resolution 2625 (XXV).

5 See in particular the Final Act of the Conference on Security and Cooperation in Europe of 1 Aug. 1975. Declaration on Principles Guiding Relations between Participating States.

6 UN General Assembly Resolution 3281 (XXIX). On the Charter see K. Skubiszewski, *Karta Gospodarczych Uprawnień i Obowiązków Państw*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1981, vol. 2, pp. 85–99; J. Makarczyk, *Zasady nowego międzynarodowego ładu gospodarczego. Studium prawnomędzynarodowe*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1988, especially pp. 90–123.

The right to choose an economic system is a vital component of "economic sovereignty"; it is not, however, an independent category in international law: it is one of the aspects of sovereignty. The term "economic sovereignty" itself serves a single purpose: to indicate certain problems that shall be discussed below.

The integral connection of the right to choose an economic system with that to choose political, social and cultural systems is borne out by Chapter I, which lays down the fundamentals of international economic relations.[7] Economic relations, along with political and other relations among States, are governed by the same principles set out therein. They include the sovereign equality of States, non-intervention and the self-determination of peoples.

It follows from this that the principal assumptions on the relationship between the principles of sovereign equality and self-determination also apply to the issue under discussion. In other words, the right of a people to choose freely its economic system in this case is merely complementary to the right of a given State. This complementarity is even more evident in this context, because the Charter lists many detailed rights that stem from the right to choose an economic system; the detailed rights may be associated only with the State and only by the State can they be enforced. The detailed rights are as follows:

A) With respect to international trade and other forms of international co-operation, every State is free to choose the forms of organisation of its foreign economic relations and enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic co-operation (Article 4).
B) The right to choose a development model, i.e. to choose the means and goals of development (Article 7).

7 For structural and other flaws of the Charter with respect to the formulation of the principles it lays down, see J. Makarczyk, *Zasady…*, pp. 103–120.

C) The right, in agreement with the parties concerned, to participate in subregional, regional and interregional co-operation in the pursuit of their economic and social development (Article 12).

D) The right to associate in organisations of raw-material producers.

The last-mentioned right gave rise to a controversy when the Charter of Economic Rights and Duties of States was being worked on. Today, the prevailing view holds that the burden of proof to demonstrate that cartels of raw-material producers have breached international law norms rests on the States that question the legality of such cartels. Until now, no such proof has been furnished by any State.[8]

Similar to the right of sovereign equality as a whole, the right to choose an economic system as its component is closely related to the principle of non-intervention. As was already mentioned, in Chapter I of the Charter, the principle of non-intervention is listed among the fundamentals of international economic relations. The fundamentals are related to Article 32[9], which states: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights."

Questions concerning the use of coercive economic measures will be discussed in Part IV. Now, a more general question needs to be tackled, one concerning "economic sovereignty" or "economic self-determination." As was pointed out earlier, the principle of self-determination may have consequences praxeologically inconsistent with sovereignty, in particular when one considers the admissibility or inadmissibility of foreign intervention. It is quite imaginable that the economic system

8 See *Progressive Development of the Participles and Norms of International Law Relating to the New International Economic Order*, Report of the Secretary – General, A/39/504/ Add. l, 23 X 1984 (hereinafter: UNITAR Study), pp. 44–45, para. 48; see also J. Makarczyk, *Zasady.*..., p. 150.

9 On this placement of the clause included in Article 32 of the Charter, see J. Makarczyk, *Zasady.*..., p. 109.

of a State may be glaringly inconsistent with the will of the people. For instance, the system is conducive to the exploitation of the State's natural resources by foreign capital or transnational corporations (this also involves the question of permanent sovereignty over natural wealth and resources, which will be discussed below). The question springs to mind of whether a foreign State can intervene militarily, when the population of the State takes up arms against this system, to preserve the existing economic system by force, following the invitation (call) of the government of the State. It can be assumed, as a matter of fact, that such an intervention will also have as its goal the preservation of the existing system of government, which—as the experience of developing States shows—is likely to be a dictatorial system.

In the light of sovereign equality, so-called intervention by invitation is admissible.[10] Is such an intervention admissible in the light of self-determination though? In fact, even if other legal aspects pertinent to such a situation are ignored (the issue of the representativeness under international law of a government of a State engulfed in a civil war), it can be said without hesitation that current international law does not allow such an intervention on account of self-determination. This conclusion applies of course to the entire relationship between the principles of sovereign equality and self-determination, and not only to the choice of an economic system. At this juncture, it must also be made clear that international law does not allow "pro-democratic intervention" either,[11] and thus an intervention in favour of the right of a people to self-determination and against the government of a State.

10 In the latest relevant literature, these issues are exhaustively discussed by L. Doswald-Beck, *The Legal Validity of Military Intervention by Invitation of the Government*, "The British Year Book of International Law" 1986, vol. LVI, pp. 189–242.

11 See in particular O. Schachter, *The Legality of Pro-Democratic Invasion*, "The American Journal of International Law" 1984, vol. 7, p. 649. The admissibility of such an intervention was ruled out by the ICJ; Case Concerning Military and Paramilitary Activities in and against Nicaragua, ICJ Reports 1986, p. 126, para. 246.

III
Permanent Sovereignty Over Natural Wealth and Resources

The emerging principle of permanent sovereignty over natural wealth and resources harks back to the old doctrines formulated by the South American jurists, Calvo and Drago, for the purpose of limiting the use of military force (military intervention) to enforce the payment of government debts owed to the citizens of another State.[12] The Drago Doctrine was proclaimed in the wake of the 1902 blockade of Venezuela by European powers to protect the interests of the creditors of the Venezuelan government.[13] As the UNITAR study mentioned already earlier says:

> The re-emergence of this issue in the United Nations in the early fifties under the new denomination "permanent sovereignty over natural resources" came in the wake of the first wave of post-war independence. It was a reflection of the spreading view that this was a necessary complement or component of the right of self-determination.[14]

There is no doubt that the origins of permanent sovereignty over natural resources are related to decolonisation, and for this reason the principle was originally held to grant the right to a people rather than the State.[15] The same tendency is seen in the Resolution of the UN General Assembly of 14 December 1962 (1803/XVII) on permanent sovereignty over natural resources. The Resolution is characterised by considerable conceptual chaos and inconsistency. To wit, according to the preamble to the Resolution, permanent sovereignty over natural wealth and resources is

12 *Zarys prawa międzynarodowego publicznego*, vol. I, Warszawa 1955, pp. 91, pp. 166, 201.
13 Ibidem, p. 201. The blockade contributed to the signing of the Second Hague Convention (so-called Porter Convention) in 1907 on the limitation of the use of force to recover debts owed under a contract.
14 UNITAR Study, p. 46, para. 53.
15 The first resolution of the UN General Assembly on this matter (no. 626/VII) dates back to 1952.

considered "a basic constituent of the right to self-determination", while throughout the dispositive part it refers to "the right of peoples and nations to permanent sovereignty over their natural wealth and resources." On the other hand, the preamble speaks of "the sovereign right of every State to dispose of its wealth and its natural resources," "the inalienable right of all States freely to dispose of their natural wealth and resources", and "the inalienable sovereignty of States over their natural wealth and resources."[16]

Characteristically, later UN General Assembly resolutions, including those concerned with the new international economic order[17], connected the concept of permanent sovereignty over natural wealth and resources only with States. For instance, the Charter of Economic Rights and Duties of States says unequivocally that "Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities" (Article 2).

The later tendency to connect permanent sovereignty over natural wealth and resources with the State, consequently, with the principle of sovereign equality of States, is thus quite clear. The same position is taken by the UNITAR Study, which states as follows:

> […] the normative content of this principle [i.e. permanent sovereignty—J. T.], which derives from sovereign equality, is the affirmation of a faculty or freedom of the States. The consequence of this affirmation is a passive obligation incumbent on all other States to respect the exercise of this faculty, capacity or freedom (i.e. not interfere with, hinder or set obstacle to, such exercise) and *a fortiori* not to take reprisals (in the legal sense) by reason of it. These legal consequences were always subsumed under the principle of sovereign equality, but were not expressly articulated in the earlier resolu-

16 See the critical stance on this matter of L. Dembiński, *Samostanowienie w prawie i praktyce ONZ*, Warszawa 1969, p. 83; also K. Doehring, *Das Selbstbestimmungsrecht der Völker als Grundsatz des Völkerrechts*, "Berichte der Deutschen Gesellschaft für Völkerrecht" 1974, H. 14, p. 20.

17 For instance, the Declaration on the Establishment of a New International Economic Order of 1 May 1974; Resolution 3201/S-VI.

tions on permanent sovereignty over natural resources. They were emphasized, however, in the resolutions relating to the NIEO.[18]

Interestingly enough, the International Law Association took the stance that permanent sovereignty followed from the principle of self-determination in the Declaration on Progressive Development of Public International Law Principles relating to the New International Economic Order (Principle 5, item 2).[19]

In the Polish scholarly literature, the conception which connects permanent sovereignty over natural wealth and resources with the principle of self-determination is strongly supported by Jerzy Makarczyk. In the context of his reasoning, this is understandable as—apparently—he connects the very principle of self-determination with the State as well.[20]

Rejecting, however, the conception of the self-determination of the State, one has to assume that permanent sovereignty over natural wealth and resources stems from the principle of sovereign equality and is an attribute of the State.

The connection made in the earlier resolutions of the UN General Assembly between permanent sovereignty over natural wealth and resources and the principle of the self-determination of peoples can be considered a *sui generis* gesture towards colonial people. It must be noted, however, that this connection could have also some negative consequences. With the opinions on the nature of the principle of self-determination of peoples being varied—as Makarczyk admits—namely if it is a norm of *jus cogens*[21], at least certain components of the principle

18 UNITAR Study, p. 60, para. 96; NIEO – New International Economic Order.

19 International Law Association, Report of the Sixty-Second Conference, Seoul 1986.

20 For instance, Jerzy Makarczyk writes: "Self-determination and political and economic sovereignty are attributes that follow directly from the essence of the State. […] There is […] no dispute anymore as to whether permanent sovereignty, as a consequence of self-determination, follows from the very essence of the State, while international law may only regulate how it is enforced by its carrier […]. However, on the issue whether the source of permanent sovereignty—self-determination of the State—can be considered a principle of *jus cogens* opinions vary." J. Makarczyk, *Zasady.*…, pp. 232, 214.

21 Cf. quotation in footnote 19.

of permanent sovereignty may be adversely affected as well. Permanent sovereignty over natural wealth and resources is thus far more strongly anchored—apart from other aspects of this issue discussed here—in the principle of sovereign equality.

What remains to be considered is the question of the rights of peoples with respect to natural wealth and resources. These rights ought to be considered on the level of the self-determination of peoples. Any such considerations are greatly helped by the provisions of both Human Rights Covenants of 1966. Article 1(2) of both Covenants (concerning self-determination of peoples) states:

> All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The above statements have additionally been reinforced by the following twin provisions of the International Covenant on Economic, Social and Cultural Rights (Article 29) and the International Covenant on Civil and Political Rights (Article 47):

> Nothing in the present Covenant shall be interpreted as impairing the inherent right of all people to enjoy and utilize fully and freely their natural wealth and resources.

Thus, it can be clearly seen that when addressing the right of peoples to self-determination, the provisions of the Human Rights Covenants do not invoke the principle of permanent sovereignty over natural wealth and resources, but rather refer to the right of peoples to dispose freely of their natural wealth. This is where the key to solving the problem lies. In this context, it is worth remembering that the first draft of the

present Article 1(2), submitted by the Human Rights Commission in 1954, included the following sentence: "The right of people to self-determination shall cover also permanent sovereignty over their natural resources." This wording, however, was not accepted by the Third Committee of the General Assembly. It would be worthwhile to add that in the course of discussion of the draft, some States held the phrase "rights of people" to actually mean the "rights of sovereign States."[22]

In conclusion, it can be said that while States, in pursuance of the principle of sovereign equality, exercise permanent sovereignty over their natural wealth and resources, peoples enjoy—pursuant to the principle of self-determination—the right freely to dispose of their wealth and resources.[23]

The permanent sovereignty of States over natural wealth and resources and the right of peoples to freely dispose of their natural wealth are closely intertwined. Just as on the level of the relationship between the principles of sovereign equality and self-determination, in this case, too, the right of peoples freely to dispose of their natural wealth and resources complements the rights of States with regard to permanent sovereignty over this wealth. On the other hand, permanent sovereignty is to be exercised "in the interest of their national development and of the wellbeing of the people of the State concerned" (Resolution 1803/XVII). The same document continues to say that: "The exploration, development and disposition of such resources […] should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable…".

As Makarczyk observes, these provisions grant "if interpreted literally, broad supervisory powers to peoples and nations with regard to

22 J.N. Hyde, *Permanent Sovereignty over Natural Wealth and Resources*, "The American Journal of International Law" 1956, vol. 50, no. 4, p. 858.

23 Cf. M. de Waart, *Implementing the Right to Development, Annotated outline for joint research under the auspices of the ILA NIEO Committee*, International Law Association, Warsaw Conference 1988, p. 16, para. 43.

state activities."[24] Many developing countries, however, did not consider these provisions to complement and reinforce their permanent sovereignty over natural wealth and resources at all, but rather took them to constitute (or their above interpretation, to be precise) an inadmissible interference in their internal affairs.[25]

It follows that a conflict between the principle of permanent sovereignty of States over natural wealth and resources, and the right of peoples freely to dispose of them is not all that difficult to come by. A particularly disagreeable situation will arise if, as a result of a State exercising permanent sovereignty over natural wealth and resources, a people will be deprived of their means of subsistence.

At this juncture, the question arises of how a people deprived of its means of subsistence may recover its natural wealth and resources. It appears that the only possible way of recovery in such cases is the succession of governments. A new, i.e. revolutionary government, invoking the right of its people to self-determination (the right freely to dispose of its natural wealth), could make appropriate claims on the level of government succession.

The permanent sovereignty of States over natural wealth and resources as well as all economic activities[26] encompasses many questions of detail, calling for separate studies. Here, only the most important ones listed in the UNITAR Study will be discussed:

A) Control of foreign investment.
B) Nationalisation: purpose, compensation (applicable law, meaning of "appropriate" compensation, settlement of compensation disputes).[27]

24 J. Makarczyk, *Zasady*…, p. 245.
25 Ibidem, p. 241.
26 "All economic activities" was the phrase that expanded the principle of permanent sovereignty by the Declaration on the Establishment of a New International Economic Order (Resolution 3201/S-VI) and the Charter of Economic Rights and Duties of States.
27 UNITAR Study, p. 45 ff.

Makarczyk presents the major controversies relating to permanent sovereignty over natural wealth and resources as follows:

A) What restrictions, if any, can be imposed by international law on the right of a State to regulate the way its natural wealth and resources are explored and exploited?
B) Can a State waive the exercise of some of its sovereign rights so that the principle itself is not breached and, if so, in what manner? The question is if this can be done by an act that is not an international treaty. In this connection, the problem emerges of the legal status of economic development agreements. Another problem that needs to be solved in this context is the recognition of the right to renegotiate such agreements (investment agreements).
C) Nationalisation, expropriation, the transfer of ownership of foreign property; the applicability of national or international law when international law is deemed equally applicable; the responsibility of the State for damage done to foreigners; protection of acquired rights and their relation to the needs of economic development; the terms and scope of diplomatic protection. Controversies also include international law conditions for the legality of nationalisation, i.e. the issues of public interest and non-discrimination.
D) Problems relating to compensation for nationalisation or expropriation, which particularly often cause disputes between developed and developing States. Developed States invariably invoke the Hull Rule, under which compensation should be "prompt, adequate and effective", while developing States demand that the interests of their economic development be taken into account and the construction of unjust enrichment be relied upon in the first place.
E) The problem of applicable law and the manner of resolving disputes arising out of nationalisation decisions, including the question of exhausting national remedies.[28]

28 J. Makarczyk, *Zasady…*, pp. 215–217.

These problems are compounded by the complex issues involved in the activities of transnational corporations. These matters are dealt with by the auxiliary body of the Economic and Social Council—the Commission on Transnational Corporations. Additionally, the UN Centre of Transnational Corporations has been set up.

IV

Economic Coercion vs. "Economic Sovereignty"

The "economic sovereignty" of a State may be threatened and violated not only by the use of military force (especially as a result of military intervention), but also by the use of economic coercion. However, these vast issues, which have become increasingly relevant recently, are rarely studied by international law scholars. As a rule, authors writing on international economic law and the new international economic order do not go beyond acknowledging their existence. In turn, authors engaged in the study of the prohibition on the use of force usually focus on issues relating to the use of military force. The reason for this is the stubborn resistance of issues associated with economic coercion to yield to legal analysis. Meanwhile, there continue to be many doubts and ambiguities in this area. The decisive factor is, however, the firm resistance of the best-developed countries of the world to any attempts to subsume economic coercion under the concept of force, the use of which (as well as the threat of its use) is banned under the UN Charter, Article 2(4).

The most bitter conflict over this issue came to a head in the course of work on the draft Declaration of Principles (1970). It was the firm stance adopted by the States with the greatest economic potential that prevented the wording of the principle that "all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations", from containing any mention of economic coercion. By way of compromise,

some general words on the prohibition on the use of such measures were introduced to the Preamble of the Declaration[29] and elaborated on when laying down the principle of non-intervention in the affairs falling under the internal jurisdiction of any State. The elaboration of the principle provides: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."

The point is, however, this provision does not have a proper footing in the UN Charter and, therefore, cannot be held to be its binding interpretation, as the UN Charter does not expressly contain a prohibition on intervention. The prohibition on military intervention follows directly from Article 2(4), imposing the prohibition on the use of force, while the prohibition on intervention in matters that essentially fall within the domestic jurisdiction of any State, laid down in Article 2(7), applies to the Organisation itself and not relations among States. Furthermore, it is far too obvious that the prohibition of the use of economic coercion cannot be based on any customary rule of international law, because both an *opinio juris* and the uniform practice of States are lacking. Thus, the inescapable conclusion is that any provisions prohibiting the use of economic coercion thus far have remained in the sphere of *de lege ferenda* postulates.[30] The same is true of course for Article 32 of the Charter of Economic Rights and Duties of States quoted earlier.

29 A. Jacewicz is right to observe, however, that "[…] the connection between the Preamble of the Declaration and Article 2(4) of the Charter is merely presumed and does not sustain the hypothesis that the term "force" has been given a meaning covering also economic and political coercion as the only possible interpretation". A. Jacewicz, *Pojęcie siły w Karcie Narodów Zjednoczonych*, Warszawa 1985, pp. 122–123.

30 A different view is presented by J. Gilas, *Sprawiedliwość międzynarodowa gospodarcza*, Toruń 1991, p. 3. He says that there is no doubt that the prohibition on the use of economic pressure by States applies to specific situations such as imposing an economic system on other States, forcing other States to enter into unfair international treaties or exploiting their natural wealth and resources in contravention of the principle of sovereignty. Later, however, this author toned down his position by writing that the prohibition on the threat and use of economic force is only taking shape.

To compile a catalogue of economic coercion measures would be a difficult task today. Certainly, one such measure is an embargo, involving a ban on importing or exporting specific commodities in international trade. It may seriously harm the economy of the State concerned. Other such measures include reprisals, involving the repudiation of economic agreements imposing obligations to another State or the suspension of performance of obligations under such agreements.

Moreover, the concept of "economic intervention" remains unclear. Some authors go as far as to hold that this concept also means foreign assistance to a State.[31] Characteristically enough, the current discussions of economic intervention tie this concept primarily to the activities of international financial institutions and transnational corporations.

Makarczyk writes about a real impact frequently exerted by international organisations, "which, as practice has shown, may on their own or in collaboration with selected States not only infringe the right [i.e. the right to choose an economic system – J.T.], but also simply to attempt to do away with it by exerting pressure on Member States in matters which are essentially within their jurisdiction."[32] Thus discussions of the subject depart from the classic concept of intervention that has treated it solely as an action of one State (or a group of States) towards another State.

The question of economic intervention in connection with the operations of the International Monetary Fund (IMF) has been studied by Caroline Thomas. She claims that developing countries have no other choice but to join the IMF (the only other option is autarky). The IMF can intervene in these countries and often does, imposing policies on them that their governments do not approve. Hence—Thomas writes—developing countries can justifiably claim that the coercion exerted by the IMF falls within the ambit of intervention and is a violation of one of the cardinal principles of international politics—the principle of non-intervention—as formulated in the Charter of Economic

31 Cf. C. Thomas, *New States, Sovereignty and Intervention*, Aldershot (England) 1985, p. 17.
32 J. Makarczyk, *Zasady*…, p. 151.

Rights and Duties of States. This opinion is significant, because it not only extends the definition of intervention to the intangible and difficult sphere of the economy, but also claims that other entities than States may also interfere in the sphere of competence that should be reserved to sovereign States under international law.[33]

Another problem is the activity of transnational corporations. The fact of its existence is borne out by Article 2(2)(b) of the Charter of Economic Rights and Duties of States,), second sentence, under which transnational corporations may not interfere in the internal affairs of the host country. The Code of Conduct on Transnational Corporations, drafted in 1988 under the auspices of the UN Commission on Transnational Corporations stipulates:

> 7. Transnational corporations shall respect the national sovereignty of the countries in which they operate and the right of every State to exercise its permanent sovereignty over its natural wealth and resources. […]
>
> 16. Transnational corporations shall not intervene in internal affairs of host countries without prejudice to their participation in activities allowable under the law, regulations or established administrative practice of host countries.[34]

These provisions of the Code go far beyond the regular formula commanding respect for and compliance with the law of a host State. The issues associated with the operation of transnational corporations are dealt with on the level of the duty to respect the sovereignty and the prohibition on intervention in the internal affairs of a host State, i.e. on the level that has been reserved until now for relations between States. If the controversy mentioned earlier is recalled, namely whether the restriction on exercising permanent sovereignty over natural resourc-

33 C. Thomas, *New States.*…, p. 151.
34 Quoted after ILA Report of the Sixty-Fourth Conference, 1990, pp. 258–259.

es may be effected also by acts that are not international treaties, such as economic development agreements (investment agreements), it becomes apparent that we are facing a deep evolution of international law with respect to international economic relations. This involves, on the one hand, the extension of the use of force to cover economic coercion and, on the other, the realisation that not only States, but also international organisations (sanctions imposed by the UN Security Council, as a separate issue, are left out of the discussion) and transnational corporations may be capable of applying such coercion.

The problem of economic coercion is not limited of course to the sphere of international economic relations; on the contrary, it encroaches on the entire general sphere of international relations, as shown by the preamble to the 1970 Declaration of Principles, prohibiting the use of economic coercion directed against the political independence or territorial integrity of any State. The same is evidenced by the Declaration of the 1969 UN Conference on the Law of Treaties concerning the prohibition on the use of military, political or economic coercion in concluding treaties. The Declaration condemns the use—by any State in any manner—or the threat or use, of military, political or economic pressure, in violation of the principles of the sovereign equality of States and free expression of will, to force another State to perform any act connected to the conclusion of a treaty.

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SUMMARY

The Economic Aspects of Sovereignty and Self-Determination in Contemporary International Law. Basic Issues

The paper is an English translation of *Ekonomiczne aspekty suwerenności i samostanowienia we współczesnym prawie międzynarodowym (zagadnienia podstawowe)* by Jerzy Tyranowski, published originally in Polish in "Ruch Prawniczy, Ekonomiczny i Socjologiczny" in 1992. The text is published as a part of a jubilee edition of the "Adam Mickiewicz University Law Review. 100th Anniversary of the Department of Public International Law" devoted to the achievements of the representatives of the Poznań studies on international law.

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