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RICHARD B. LILLICH'S CONTRIBUTION TO UNITED NATIONS SANCTIONS ENFORCEMENT LAW

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Although Richard B. Lillich is mostly remembered as a lawyer and scholar specializing in international claims and human rights, he also had a life-long interest in collective sanctions enforcement and, in that context, tried his hand as a legislator by drafting a domestic implementation model law for a United Nations body.

In April 1989, two General Assembly bodies jointly sponsored hearings on the oil embargo against South Africa, at which Richard Lillich appeared and spoke. At the conclusion of the hearings, one of those bodies, an intergovernmental group ("IGG") mandated to monitor the oil embargo,[1] announced that it would proceed to work on a model law governing this embargo. The first step in this direction was to commission a study on the subject from Richard Lillich, and it was in this context that I first met him and came to work with him on this project. As a political affairs officer with the U.N. Center Against Apartheid, I had been in charge of collecting copies and translations of domestic law statutes relevant to the struggle against apartheid, including sanctions measures, and it was this mass of material that we put at his disposal for the study. In addition, as a link between instructed diplomats in a sensitive and highly politicized environment and an independent outside scholar, who might prove too independent, I was also supposed to subtly explain to him what we wanted (and did not want) and to advise him on some of the pitfalls and sensitivities inherent in this problem.

The basic issue had long been known: governments regarded U.N. sanctions as binding or, in this case, recommendatory, as the business of some U.N. organ. All they had to do was to agree with them or refrain from openly violating them in order to fulfill their obligations. Few had any specific statutes on the subject, and those that did were often satisfied with weak provisions, narrow scopes, and vague definitions. With this regard, Richard Lillich remarked that even the term "U.N. sanction" was a misnomer, for the only acts

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1. Its full name was the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa.

qualifying as sanctions had to be in the form of domestic law measures of the member states.

Richard Lillich worked on this project in the spring of 1990 and submitted, in the summer, a report on the problem, with a text of such a model law attached as an annex. I was responsible for organizing the hearing held by the IGG at U.N. headquarters in New York on August 31, 1990, at which he presented his report. For that gathering, he invited three colleagues: Professor Stephen Cohen of Georgetown, Professor Hurst Hannum of Tufts (both of them had also provided inputs for his report), and Professor Andreas Lowenfeld of N.Y.U. Professor Michael Malloy of Fordham also appeared. Together these five international legal scholars—the "Group"—discussed the intricacies and dilemmas of domestic sanction enforcement measures for several hours. They did so at an intellectual level considerably above the usual in U.N. committee meetings and left behind a transcript which was eventually published by the U.N. The draft model law was also published in the IGG's annual report that year.[2] Thanks to Lillich's erudition and professional connections, all of this cost the United Nations merely a fraction of what U.N. committees normally spent on junkets and verbose meetings.

As could be expected, the model law followed the general principles discussed in the report, such as specific legislation, penalization, wide territorial scope (now a highly controversial position), burden of proof for compliance (i.e., end-user certificates and discharge certificates), and invalidity of contracts violating the purpose of the sanctions. Richard Lillich's proposals regarding seizure and confiscation was met with considerable misgivings from members of the IGG and led them to weaken their endorsement of the proposed law. That is why the law was recommended to member states as a general guide for adopting its general principles, not as a model.

In December 1990, the General Assembly in Resolution 45/176 F recommended that governments consider adopting laws, using Lillich's model as a guide. The same recommendation was made the following year in Resolution 46/79 E. The first official reaction to the model law came with a typically diplomatic ploy: a member state which had a history of the exact conduct criticized in Lillich report, publicly endorsed the report and urged all members to adopt it. Lillich reacted to this unexpected development with humor.

Lillich had advocated the enforcement of sanctions against Rhodesia and South Africa in 1970s and 1980s, when coalitions of

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2. RICHARD B. LILLICH ET AL., MODEL LAW ON THE OIL EMBARGO AGAINST SOUTH AFRICA, UNITED NATIONS CENTER AGAINST APARTHEID NOTES & DOCUMENTS, No. 10/91 (Apr. 1991).

nonaligned and communist states supported the sanctions, and was frequently critical of the behavior of the United States, the United Kingdom, and France, which persistently fought to block such sanctions or dilute them. In the 1990s, he was just as consistent in backing the strict sanctions measures, which these three governments—frequently in the face of criticism from the same constituencies that had supported sanctions against Rhodesia and South Africa—were now pressing against Iraq and Yugoslavia.

Lillich's model law of 1990 and the discussion of its ramifications at the meeting on August 31, 1990, still retain their relevance today. Despite massive use of binding sanctions by the Security Council after 1990, no sanctions committee ever commissioned a comparable study from an independent legal expert; nor has the Council considered elaborating such a model law. It is remarkable that an obscure and poorly endowed ad hoc body of the General Assembly (the Group did not even have the status of a committee) provided the only example of such sophistication in the U.N. system in recent decades. The Group was able to do so because Richard Lillich was actively involved in the project and accepted a fee which was far below what he commanded in his private practice. It is my understanding that he even used part of the fee to pay the travel expenses of his colleagues in order to get them to participate in the hearing.

Although much of his work was in the area of "soft" law, Richard Lillich was highly interested in issues of enforcement and was very much an advocate of strong international governance. His contribution to the theory of international law is outstanding, and his death is an indispensable loss to the international legal community.