to imply such justifications for recourse to Chambers.[8] In contrast, nothing in the Canadian Government's public statements—either of the Trudeau Government, which agreed to the Chamber in *Gulf of Maine*, or of the successor Mulroney Government—derogates from long-standing policies of support for the International Court of Justice in its normal full jurisdiction as a prime means of international dispute settlement.

EDWARD MCWHINNEY*

TO THE EDITOR IN CHIEF:

July 18, 1988

Professor Barrie's arguments that the ASIL policy on divestment violates international law (82 AJIL 311 (1988)) are erroneous, for reasons going beyond Paul Szasz's excellent responding Comment (*id.* at 314). As the author of the underlying Note on the Society's divestment decision (81 AJIL 744 (1987)), and also as one who, like Professor Barrie, makes his daily bread teaching international law, I add a few words in reply.

In citing Chief Buthelezi's aphorism against burning down a house to rid it of a snake, Professor Barrie is too kind to both the snake and the house. An apter reference would have been to the historical necessity in many parts of East and southern Africa to burn down village huts and sometimes even whole villages to rid them of driver ants. This reflects the nature of apartheid to black, and increasingly to white, South Africans, not as a single creature but a deadly scourge of racism made pervasive by the Pretoria regime. All participants are obliged under the Convention on the Suppression and Punishment of the Crime of Apartheid (Annex to GA Resolution 3068 (XXVIII) of November 30, 1973) to help rid the international community of this crime, as apartheid is now defined by international law.

It was a recognition of "law," including obligations to desist from being either a joint tort feasor or an accessory to a crime, that helped produce the ASIL decision to desist from taking steps economically or symbolically to cooperate with or lend support to a governmental system that is both illegal and criminal under international law.

As Szasz well states, the principle of domestic jurisdiction is no longer a bar to the international scrutiny of human rights violations (82 AJIL at 317). Moreover, that principle's underpinning doctrine of sovereignty is no longer a bar to individual state action, provided that action is consonant with the United Nations Charter and other major global community policies, in response to massive human rights violations. This permissibility arguably extends to all participants under international law, including learned societies.

The illegality of apartheid and the obligation of states to act against it derive directly from the UN Charter. Thus, all General Assembly resolutions, such as those cited by both Barrie and Szasz, are governed, regarding

[8] *See, e.g.*, Statement of Department of State on U.S. Withdrawal from Nicaragua Proceedings, Jan. 18, 1985, *reprinted in part in* Contemporary Practice of the United States, 79 AJIL 438, 441 (1985).

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issues relating to apartheid, by authoritative interpretations of the Charter, including its Purposes and Principles. These interpretations, as regards the rights of black South Africans and permissible means of implementing them, have been, and are being, spelled out in a considerable body of General Assembly and Security Council resolutions specifically pertaining to South Africa and apartheid. South Africa is not a "normal" state entitled to enjoy "normal" discretionary internal actions of sovereignty, including the weighing under Article 29 of the Universal Declaration of Human Rights of the rights of its citizens as against their duties to the state. Decisions about the rights and duties of black South Africans have rightfully become the intense concern of the entire international community.

Further, the legality of economic pressure by one state against another is not limited to instances of self-defense and reprisal. Rather, economic pressure is encompassed within and permitted by the duty of all states to respond to the commission of an international crime by a regime, to respond to a system of government that is per se illegal under the Charter and international law, and illegitimate in its utter alienation from and brutality toward the great majority of its citizens. The duty to apply economic pressure has arisen as a consequence of the continuous actions and expectations under the Charter and other law of the international community condemning apartheid over the past 40 years. This duty exists notwithstanding the lack, as yet, of a Security Council resolution imposing economic sanctions. It would exist toward any state to which the global response in law and fact had been the equivalent, regarding duration of time and focus of objective, to that toward South Africa for its policy of apartheid. Its existence, accordingly, cannot be dismissed by invoking the illegality of random self-help economic measures of national policy convenience. A separate issue would be raised, however, if an outside state proposed to use military force under non-self-defense circumstances, absent appropriate authorization by the United Nations.

The recent reimposition of a state of emergency by Pretoria, long condemned as contrary to law and basic rights; its recent announcements of new plans to enforce the Group Areas Act more effectively; and the suppression of Nelson Mandela's birthday celebrations only, sadly, confirm the entire appropriateness of the duty to apply economic pressure in this case.

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TO THE EDITOR IN CHIEF:

April 26, 1988

It may be that some of your readers would have preferred it if the comment on *Taking Treaties Seriously* (82 AJIL 67 (1988)) had appeared after the decision of the arbitration tribunal to be set up in accordance with the International Court of Justice's ruling on the United Nations request for an advisory opinion, for it may be that even that tribunal would not agree with your suggestions.

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