The Violation of the Regional Disarmament Agreement

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1. Introduction

To some countries in the world, for example, the Middle East, the fear of aggression and the fear of subversion combined with the arms race has been a malignant illness and a serious obstacle to their progress. There may be various methods to achieve the peace in those areas, but it is believed that the disarmament is the least costly way of doing it. It can be argued that the disarmament of those countries shall be not only a big help to their progress but also contribute to world peace and security significantly since the military confrontation between those countries incessantly poses the danger of regional war and involves the risk of direct military confrontation of great powers, which may lead to the third world war. And it is quite clear that the progress toward peace can be made only through the simultaneous forward movement in political, military and economic areas. And also the relationship between the disarmament measures and political systems of those countries should be explored.

The disarmament is merely a first step toward the peace and involves many difficult problems. But such a pessimistic outlook should not end the inquiry into the problem or militate against moving forward with a new approach to improve the present stalemate situation. So

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(1) See generally Humphrey, Regional Arms Control Agreement, 1 Journal of Arms Control 359, 361-362 (1963).
(3) See Goldman, The Political Context of Arms Control: A Systems Approach, 1 Journal of Arms Control 712 (1963). He deprecates the simplistic approach to world peace and says that "Ban the bomb and the peace will follow" approach will not work.
it is not enough to say that disarmament proposal possesses the rough edges and problems or will take time to perfect. The emphasis of this paper is put on the problem of dealing with the violation of the disarmament agreement without attempting to do the analysis of any other problem of disarmament.

II. The procedure and legal authority

In this paper, it is assumed that U.N. is the most appropriate organization by which the disarmament agreement between the countries involved (hereinafter cited as A country and B country) can be carried out. Also it is assumed that the presence of neutral U.N. forces is the most effective way to assure each regime that they can maintain their independence without arm's buildup and fear of being invaded and protect their existing interests.

This proposal can be implemented without the amendment of United Nations Charter. Upon the recommendation of the General Assembly, the disarmament agreement between the countries involved can be carried out. Also it is assumed that the presence of neutral U.N. forces is the most effective way to assure each regime that they can maintain their independence without arm's buildup and fear of being invaded and protect their existing interests.

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(4) The status of General Assembly's recommendation in international law has not been settled, but it may well be a considerably strong recommendation if it is passed by the overwhelming majority of U.N. members including the Great Powers. See A. Fisher, Arms Control and Disarmament in International Law, 50 Va. L. Rev. 1200, 1205 (1964).

(5) There is a basic problem, i.e., which method between a unilateral restraint of arms reduction by the A government or an international agreement between A & B is better in terms of reducing the tension and arms race which is regarded as a first step toward the peace. Prof. Fisher urges that the demonstrated unilateral restraint on both sides is a more promising method than the negotiated international treaties for developing a system of arms control. See R. Fisher, Role of International Agencies: Legal Problems, Summer Study on Arms Control; Collected (cont'd) Papers by the American Academy of Arts and Science (1960) at 271. See also R. Fisher, Constructing Rules that Affect Governments, Summer Study on Arms Control: Collected papers by the American Academy of Arts and Science (1960) at 275. But Prof. Sohn indicates that "well-balanced agreement" is superior to the unilateral method in arms control and categorically criticizes and evaluates each justification of the preference for the unilateral approach over the treaty method. See Sohn, Unilateral Restraints vs. International Agreements, Summer Study on Arms Control: Collected Papers by the American Academy of Arts and Science (1960) at 289.

Prof. Fisher's preference for the unilateral method seems to be mainly based on the premise that there will be no superior force to compel compliance by government with such rules as may be applicable to them. See R. Fisher, Constructing Rules that Affect Governments, Summer Study on Arms Control: Collected Papers by the American Academy of Arts and Science (1960) at 275. 276. But in this proposal, there is a superior force, i.e. U.N. forces which are established under Chapter VII power of Security Council to enforce the disarmament agreement, once it is signed. So it is clear that the treaty method is a better approach than the unilateral method in this proposal.
Council can decide that the violation of the disarmament agreement constitute a threat to the international peace and security.\(^6\)

So even though there is a violation of the disarmament agreement by one government, the other government has no power to terminate the disarmament agreement\(^7\), and the only way to redress the violation is through the enforcement action of U.N. forces under Chapter VII Power.

The legal authority and procedure of U.N. action are as follows:

A. The U.N. Commission should make a recommendation for the adoption of the proposed resolution to the General Assembly, or A or B should bring to the attention of General Assembly the question relating to the disputes, (§35(2) of the charter) or some other countries should request that the item relating to the disputes be added to the agenda for the next session of the General Assembly. (§35(1)).

B. The General Assembly is competent to consider any situation regardless of its origin and to recommend measures for its peaceful adjustment (§14, see also §10, §11).

(a) A two-thirds vote is necessary to make this recommendation because a recommendation with respect to international peace and security is an important matter (§18).

(b) The General Assembly may establish a commission to assist it in the performance of its functions (§22).

(c) The General Assembly may make recommendations to the Security Council with respect to any question relating to the maintenance of international peace and security (§11).

C. The Security Council, upon recommendation from the General Assembly, or even without it, may:

(a) Determine the existence of a threat to international peace and security (§39).

(b) Decide to exercise its Chap. VII powers (§§40, 41, 42).

(c) Make an agreement with the Members in order to form U.N. forces (§§43, 44, 45).

(d) Request the Military Staff Committee to assist it with regard to matters relating to armed forces (§§46, 47).


\(^7\) In the ordinary disarmament agreement context, it is generally accepted that the violation of the disarmament agreement by one government confers on the other parties a privilege to terminate the agreement. See R. Fisher, supra note 4, at 1207, and Barnett, Violations of Disarmament Agreement, 1 Disarmament and Arms Control 33, 45(1963). See also Sohn, A General Survey of Responses to Violations, 1 Journal of Arms Control 95, 101 (1963), concerning the danger of recognizing such privilege.
III. Disarmament Subcommissions

A. Introduction

It is proposed that two separate subcommissions be established, i.e. an Administrative Disarmament Subcommission (hereinafter cited as A.D.S.) and a Judicial Disarmament Subcommission (hereinafter cited as J.D.S.). Their functions would be quite different and they should be independent from each other.

While the ultimate power to enforce the disarmament agreement and decide the dispute over it should be vested in the U.N. Commission or General Assembly, there is also a need for an impartial organization composed of experts to enforce the disarmament agreement and decide the disputes.

In enforcing the disarmament agreement and deciding the disputes arising from the disarmament agreement, there is need for two separate organs to perform these functions. If one subcommission is authorized to investigate the violations of the disarmament agreement, and to prosecute, and at the same time is given the power to adjudicate whether an act constitutes a violation or not, there is a substantial possibility that there might be an inherent evil for one person to serve as both prosecutor and judge in the same case, and this would jeopardize the fundamental fairness of the procedure. The functions should be separated, therefore, into the investigatory or prosecutory function, on the one hand, and the judicial function, on the other hand; and the former function should be allocated to A.D.S. and the latter function to J.D.S.

One could set up a regional court instead of J.D.S., but one might anticipate some difficulties here in setting up a regional court, or even in calling the J.D.S. a regional court. J.D.S. is supposed to perform three different kinds of functions: first, it should act as a fact-finder in case of a violation of the substantive disarmament agreement by individuals; second, it should have exclusive jurisdiction over individuals to find facts and impose sanctions in case of violations of an order of the disarmament subcommissions; third, with regard to a violation committed by a government, it should be only authorized to find fact. But a regional court of the kind proposed by Professor Sohn and Mr. Clark would have exclusive jurisdiction over individuals and private organizations accused of offenses against the Charter or any law.

or regulation enacted thereunder.\(^\text{(10)}\) So within its subject matter jurisdiction the regional court would function like an ordinary court in finding facts applying law and imposing penalty. There would be a marked difference between the functions of the regional court and J.D.S.

The problem arises whether an institution which only performs the function of fact-finding (even though it functions like ordinary court under some circumstances) may be set up as a court. Even though J.D.S. would exercise some judicial functions, J.D.S. should be classified as an administrative institution which exercises limited judicial functions. There are conceptual differences between the two and inherent restrictions which may flow from the denomination as court. It can be legitimately argued that the functions of J.D.S. would constitute such a departure from ordinary functions of a court that it hardly can be called a court.

It may be a lot easier and more feasible to work out a flexible and efficient system through an institution which is characterized as an administration institution rather than as a court.

**B. Composition**

The members of each subcommission shall be elected by the General Assembly upon recommendation of the Secretary General.\(^\text{(11)}\) The number of members of each subcommission shall be 20 respectively. But the General Assembly upon recommendation of the Secretary General may increase or decrease the above number. Not more than one-tenth of the total membership of each subcommission may come from the same state\(^\text{(12)}\) and no national of a member country of the U.N. Commission can be a member of a subcommission.\(^\text{(13)}\) In making his recommendations, the Secretary General should take into account each person’s professional expertise as it relates to the function of the subcommission.\(^\text{(14)}\) Especially, in light of its judicial function, judicial competence should be required for a member of J.D.S.\(^\text{(15)}\)

**C. Administrative Disarmament Subcommission**

This subcommission would be responsible for supervising and enforcing the disarmament

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\(^\text{(10)}\) *Id.* at 342.

\(^\text{(11)}\) We exclude the U.N. Commission from participating in the selection of the members of a subcommission. This is one attempt to make the subcommission more free from influence by the U.N. Commission in its decision-making process, even though a subcommission’s decision would ultimately be subject to the review by the U.N. Commission, and though the A.D.S. is obliged to follow the guideline and policy decisions of the U.N. Commission.

\(^\text{(12)}\) WPTWI. at 209. 218. Sohn & Clark indicate that this measure is necessary to ensure the impartiality of the subcommission.

\(^\text{(13)}\) *Id.* at 219. Sohn & Clark adopt this measure to avoid one country’s exercising too much influence and to reduce undue competition for the seats on the subcommission.

\(^\text{(14)}\) *Id.* at 220. See the need for the highest standard of competence and integrity of member of subcommission.

\(^\text{(15)}\) See e.g. Statute of the International Court of Justice, Art. 2.
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agreement.

(1) It would supervise the U.N. Force, which would be under the exclusive control of A.D.S. A.D.S. should play a pivotal role in providing a check against possible abuses of the U.N. Force.

(2) It should have a rule-making power. It should have the power to interpret the treaty and to make the regulations needed to implement the disarmament agreement. There will be a large demand on A.D.S. to solve the various problems in enforcing the disarmament agreement. There are substantial advantages in approaching these problems by the rule-making method rather than the case-by-case method. Also this power can be granted to the A.D.S. by the delegation of legislative power by A & B as to the subject matter of the disarmament agreement. Any regulation approved by the A.D.S. would apply directly to any individual action without the need for explicit adoption by each government.

To protect against the abuse by A.D.S. of this rule-making power and to make possible the judicial review of any regulation by J.D.S., the disarmament agreement should set up standards to guide the A.D.S. in making regulations.

In the process of making regulations, A.D.S. should hold hearings at which each interested party would be given a chance to express its views and to offer such information and evidence as might be relevant to the making of the regulations.

(3) It should have the power to issue an order. By issuing an order to the U.N. Force, designated officials, or individuals, and to one of the governments under exceptional circumstances, it would ordinarily carry out the main function of enforcement of disarmament.

Among orders which A.D.S. should have the power to issue would be: an order to destroy


(19) See L. Jaffe, Judicial Control of Administrative Action (1965) at 85. He says that the requirement of the standard has the positive virtue of assisting the administration and the court in minimizing arbitrary determinations.

(20) See Administrative Procedure Act 5 U.S.C. § 553(c). It provides that “the agency shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views or arguments with or without opportunity” for oral presentation. See also Shapiro, 78 Harv. L. R. 921, 930 (1965). He states that quite apart from considerations of fairness, their participation in the rule-making process is likely to assist the agency in formulating a practical and sound rule.

(21) See Chap. VII. (D) (2) infra.
designated material or equipment; an order to inspect; an order to the violating states to remove a violation; an order not to interfere with a U.N. Force action, etc. Each government and individual should be able to complain to A.D.S. asking that it issue an order in a particular case. This order would be binding upon individuals directly and they would be obliged to obey the order. The order should be as explicit as possible, in order to make its addressees understand exactly what they are supposed to do. If, after issuing an order to an individual which is vague or ambiguous, A.D.S. should attempt to punish the person for violating the order, there would be the problem of fair warning and fairness.

In case of "indirect aggression" by means of hostile propaganda, undue exertion of political and economic pressure and attempt to wage a guerrilla war, the aggrieved government should bring the complaint to A.D.S. for an appropriate order. After a hearing A.D.S. should determine whether there is an indirect aggression (which shall be defined as precisely as possible in the agreement), and what kind of order is appropriate to correct the situation. This order would be reviewable by J.D.S. and U.N. Commission.

(4) It should have the power of prosecuting a violator at the trial before J.D.S. or U.N. Commission. In particular, it should have the power to make a preliminary investigation, and if it believes that a violation has occurred, to prosecute any member of U.N. Force who has violated the rules and abuses his authority, and any individual or government who has violated the disarmament agreement.

(22) L. Sohn, supra note 7 at 102.
(24) It is generally accepted international law doctrine that a treaty, though internationally binding on States does not become a part of the law of the land and does not apply to an individual directly without further legislation. See J. Brierly, The Law of Nations (6th ed.31963) at 89, 90. But we can make a more adequate arrangement by having a provision in the disarmament agreement that certain provisions of this agreement should be directly enforceable against individuals and that each government would be required to enact the necessary legislation to make the subcommission an internal organization having the power to issue orders and making rules.
(25) See generally, R. Fisher, supra note 23. He says that an order should be explicit; and that action required should be physical rather than juridical. The international authority should direct the order to an individual rather than the government, and in case of an official, to as low echelon official as may be possible. An order should be narrow in scope, of limited significance and of limited duration, and also it is preferable to issue the order in negative terms.
(26) A. Fisher, supra note 4 at 1215. He emphasizes the relative importance of indirect aggression when both countries become disarmed.
(27) As A.D.S. would be made by domestic legislation a domestic agency, it would seem absurd to make a domestic agency prosecute its own government. Where A.D.S. prosecutes a government, A.D.S. would act only in its capacity of a U.N. organ. See also, L. Sohn, supra note 7 at 100.
D. Judicial Disarmament Subcommission

It would perform an adjudicatory function and would issue temporary restraining orders, warrants for search and seizure, and for arrest.\(^{(28)}\) In an adjudication by J.D.S., A.D.S. would act as a prosecutor, but under certain circumstances the government affected might act as a prosecutor.\(^{(29)}\)

In the process of enforcement of disarmament, it is necessary to draw distinction between violations by individuals and violations by a government, since the latter involve quite different problems from the former. As to violations by individuals, they may be further classified into violations of the substantive provisions of the disarmament agreement and those of an order of the Disarmament Commission.\(^{(30)}\) It may be assumed that a more critical danger is involved when an official of a government or an individual fails to comply with an explicit order rather than with a substantive rule in the disarmament agreement.\(^{(31)}\) J.D.S. shall have a different mode of trial and appeal systems according to the above three different types of violations.

In order to avoid the judicialization of the whole process of enforcement of disarmament, which may result in rigidifying the situation, it seems desirable to give the power of pardon to the U.N. Commission or the General Assembly, which would be able to take political considerations into account.

(1) Violations by an Individual

Since the disarmament agreement can be violated by States only through an individual act,\(^{(39)}\) sanctions against the individual have special importance.

(a) A violation of the agreement, that is, of a substantive limitation contained in the treaty; for example, of a provision prohibiting production or retention of weapons, etc.

In this situation J.D.S. would perform only the function of the fact-finder. Its fact-finding should be final and should be binding upon local courts in each nation. Upon these facts, a local court should apply the law and impose the punishment on the violator. He would have the right to appeal to the local high court according to the court system of the country concerned.

One of the difficult problems is that the distinction between fact and law is a fuzzy one.

\(^{(28)}\) See R. Fisher, supra note 23. at 450.
\(^{(29)}\) See Chap. VIII, sec. C (Privilege and Immunity) infra.
\(^{(30)}\) This follows the distinction drawn by Professor Fisher, who distinguishes between first order compliance, compliance with a general standing rule, and second order compliance, compliance with particular orders and commands of courts and police. See R. Fisher, supra note 23 at 451.
\(^{(31)}\) R. Fisher, supra note 23 at 451, 452.
\(^{(32)}\) D. Partan, supra note 16 at 899.
The function of fact-finding by J.D.S. should only include pure fact-finding and should not extend to the application of law to facts.\(^{33}\) There is little danger in leaving the function of application of law to facts and the imposition of penalty to a local court, since the disarmament plan would not be seriously affected by the violation of a disarmament rule in itself.\(^{34}\) It is a better system not to interfere with internal law enforcement process and to accept its autonomous functioning unless there is a compelling need for an international approach.

Going one step further, it has been urged that to impose sanctions for a violation of a substantive provision of a disarmament agreement would be an unwise policy.\(^{35}\) Professor Fisher reasons that the violator would not fully cooperate with a disarmament authority if the possible punishment for his first order non-compliance should be too great, but that, in case of non-punishment for a first-order violation, officials would be under far greater pressure to comply with the second order and it would be difficult for them to find political and moral justification for the defiance of a second order.\(^{36}\) He seems to urge that an incentive should be given to the prospective violator to comply with the second order at the expense of nonenforcement of first-order, but such an incentive might be too costly to the disarmament plan as a whole. The most important purpose we have in enforcing the disarmament agreement is to deter a violation by showing the unfavorable consequences to the prospective violator.\(^{37}\) So the removal of one of the deterrents may be fatal to the whole disarmament plan. If we follow Professor Fisher's argument, it would remove one of the main deterrents to violate the disarmament agreement. Until he receives the second order, an official can blatantly ignore the disarmament agreement without the fear of punishment and make the agreement just a piece of paper. In addition, it would throw too much burden upon the disarmament subcommission to have to deal with each violation and to issue a second order, since that would be the only way left to enforce the disarmament plan. Other methods would permit some violations to be disposed of on a local level.

The substantive disarmament agreement should be observed and enforced just as much as an order from the disarmament subcommission since only this approach would provide one of the main deterrents to the violator. The only difference between the two would be the degree of concern of the disarmament subcommission about compliance with agreement or order. So

\(^{33}\) Compare this with Chap. VII, \(\text{D} (2)\) (violation by nation) \textit{infra}.
\(^{34}\) \textit{R. Fisher, supra} note 23, at 451.
\(^{35}\) \textit{Id.} at 467, 468.
\(^{36}\) \textit{Ibid.}
\(^{37}\) \textit{L. Sohn, supra} note 7 at 95.
the problem is not whether it is wise to impose the sanction or not but whether it is wise for J.D.S. itself to enforce it or not. In case of a violation of the substantive part of the agreement, since there is less risk involved, the value which can be achieved by respecting the nation's autonomy overrides the need for disarmament subcommission itself to enforce the substantive disarmament agreement.

By delegating primary enforcement to a local court, opportunity would be provided to test the willingness of each government to cooperate with the disarmament plan. Each government would be made more responsible for the enforcement of disarmament; would be given a chance to participate in the enforcement of disarmament activity; and to feel that it is its own matter rather than an imposition by U.N. But there must be a minimum check against the flagrant abuse of this power by the government. The findings of fact by J.D.S. may provide such a minimum check.

In case of a trial by local court of a person who has violated the disarmament agreement on instructions of his government, the local court might attempt to strain the interpretation of the law to acquit him or might impose upon him only the minimum punishment. But, in doing that, the judge would have to articulate the reason for his opinion. By setting up an arbitrary reason, the judge would have to pay a high political cost which might restrain him from reaching an arbitrary result.

(38) See supra note 34.
(39) See L. Sohn, supra note 7, at 96. Prof. Sohn says that the delegation of enforcement to national authorities subject to international supervision may be feasible and possible in relatively minor situations. So we can regard these first-order violations as "relatively minor situations."
(40) See infra note 54.
(41) L. Sohn, supra note 7 at 98. Prof. Sohn says that the national system of enforcement might be useful as a supplement to international system.
(42) Id. at 97. See the possibility of making the entire punishment process a mockery in national court.
(43) See id. at 97. As an alternative we can utilize Prof. Sohn's proposal that the international authority might send an observer to the local courts, who would report to it on the performance of the local judges or might even participate in the proceedings as a friend of the court.
(44) See id. at 98. There is a substantial possibility that, at the inception, a local court may acquit the violator, who has assisted the government in a violation, by setting up an arbitrary reasoning. By doing that the judge would expose himself to the pressure of world opinion, and would soon realize that the continuance of such behavior would not be advantageous to the national interest.

But see F. Iklé, After Detection-What?, The Strategy of World Order Vol. 4, at 812. His argument that world opinion is impotent as a deterrent may not be applicable to this situation. In this context, world opinion may have a significant weight in the "balance sheet" when a government tries to make a profitable choice. See R. Fisher, International Conflict for Beginners (1969), at 101-106.
Where the violation has been detected by the local police force, a local court should have exclusive jurisdiction to find the facts and impose the sentence. This should encourage the nation to detect the violator actively, by giving its government a reward of prestige and good reputation of having conducted properly its own trial. In addition to giving an incentive, this approach should lessen the burden of J.D.S. by dividing the burden of enforcement of disarmament between J.D.S. and each government.\(^{(45)}\)

So only in case of detection of a violation by the U.N. Force, J.D.S. would perform the function of a fact-finder.

(b) A violation of an order of the Disarmament Subcommission

J.D.S. would have in this case jurisdiction to find facts, ‘to apply the law and to impose penalty. The individual who would be sentenced by J.D.S. would be imprisoned at a penitentiary controlled by the U.N. Force. The convicted individual should have the right to appeal to the U.N. Commission. Such a right of appeal by the individual or official concerned is needed to achieve the fundamental fairness to him.

Since a violation of an order of the Disarmament Subcommission would pose a real danger to subcommission’s operation and the whole disarmament plan,\(^{(46)}\) the J.D.S. should have exclusive jurisdiction to deal with these cases, and the result of these cases should not depend upon the discretion of each government.

It would also seem preferable to limit J.D.S.’s exclusive jurisdiction to cases of clear violations of the disarmament agreement since in such cases there would be less possibility of J.D.S.’s usurpation of power and infringement upon each nation’s autonomy. The order of subcommission would be more likely to be clear while the substantive rule of disarmament agreement might be less clear and vague.\(^{(47)}\) Essential safeguards should be provided to protect the rights of the accused individual.

(2) Violations by a Nation

It is generally admitted that it would be less advantageous for the subcommission to proceed against a government than against an individual, and it would be wise to deal with the conduct of an individual rather than that of a government.\(^{(48)}\) But there might be some situations in

\(^{(45)}\) In this situation local officials would be more likely to deal with the violator properly.

\(^{(46)}\) R. Fisher, supra note 23, at 453, 454.

\(^{(47)}\) Ibid.

\(^{(48)}\) See L. Sohn, supra note 7 at 99 as to the treatment of violating officials. Prof. Sohn draws the distinction between civil and penal cases and prefers the civil enforcement over the penal one. See also R. Fisher, supra note 57 at 455, 456.
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which the subcommission would have no alternative but to proceed against the government, i.e. where the violation is flagrant and the discovered violation is clearly of governmental origin.\(^{(49)}\)

It has been argued that most disputes over violations of a disarmament agreement by a nation cannot be solved by judicial methods and that it would not be desirable to attempt to do so.\(^{(50)}\) Even though there is some force in this argument, it seems to over-generalize the problem. Where a government should violate the disarmament agreement, it might be better to separate the problem into disputes over what happened, and disputes over what kind of measures should be applied on the basis of those facts. In the former case, the judicial approach should be a big help, but the latter case might be more suitable for a political approach.\(^{(51)}\) In the former category should be included the decision whether particular facts constitute a violation of the agreement, i.e. the application of law to the facts. Ordinarily, three steps are required to impose a sanction against a government which violates the agreement. First step is a pure finding of fact, i.e. "what happened"; second step is application of the disarmament agreement to the facts found, i.e. whether the facts constitute a violation; the last step is the decision of what kind of sanction should be applied in consequence of the above finding of facts.

It is proposed here that the fact-finding function and the application function should be delegated to an impartial, neutral organization, i.e. J.D.S., while the third function should be exercised by the U.N. The concrete finding of facts by an impartial organization through judicial process is more likely to influence the decision of the U.N. Commission or the General Assembly, and should help the U.N. Commission to reach the political decision by narrowing the issues.

Ordinarily, the public and other countries may regard the clear finding of a violation by an impartial international organization as correct and impartial.\(^{(52)}\) If, despite this finding, the violating government should insist that there has been no violation, and should express no intention of correcting it, it would be likely to pay high political price in terms of reputation.

\(^{(49)}\) L. Sohn, supra note 7 at 101.
\(^{(50)}\) Henkin, Enforcement of Arms Control: Some Basic Considerations, 1 Journal of Arms Control 188, (1963) But he also recognized that the judicial machinery might be appropriate for the resolution of disputes about the interpretation or application of a disarmament treaty.
\(^{(51)}\) The line between judicial and political solution may be fuzzy sometimes, but there is a significant difference. The attitude of judges and political decision-makers toward the problem or their method of approach may be quite different; they may put the problem in a different perspective; the factors they take into account in making the decision may be different. Also, there may be a difference over the degree of discretion given to them in solving the problem.
and public opinion in the international community,\(^{53}\) which government officials would have
to regard as harmful to their national interest after weighing the gains and losses arising
from that denial. Also this might be regarded as an indication of the intention of the violating
country not to abide by the disarmament agreement and as an expression of its belligerency,\(^{54}\)
and it might cause the U.N. Force or one of the Great Powers to take some precautionary
measures in advance.

What is involved is a balancing operation between the value of preserving the flexibility
through the U.N. Commission or General Assembly exercising political judgement and the
value of having the concrete finding of facts through judicial process.

The decision by U.N. Commission of what kind of sanction it should take against the
violating nation is a political judgement. Among the sanctions might be included: the
imposition of a fine on the violating state,\(^{55}\) the severance of diplomatic relations, economic
sanctions,\(^{56}\) or military action by the U.N. Force.\(^{57}\)

Many procedural safeguards and the intricate evidentiary rules, which are mainly designed
to protect the freedom of the individual rather than to ensure the finding of the truth of a
fact, would be unnecessary in procedures designed to find whether a government has committed
a violation of the agreement.

There should be a right to appeal to the General Assembly by the violating government
against the decision with respect to sanctions made by the U.N. Commission.

(3) J.D.S. should have jurisdiction to review the orders\(^{58}\) and the regulations of A.D.S.
It should recognize the wide discretion in A.D.S. and should try only to deal with the possible
arbitrariness, abuse, and frivolousness of the A.D.S.'s order or regulation.\(^{59}\) J.D.S. and the
local court should articulate the reasons in their written opinions and should publish them
through the U.N. The proceedings should be open.

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\(^{54}\) L. Sohn. *supra* note 7 at 96.

\(^{55}\) Id. at 103.

\(^{56}\) *See generally*, Bornstein, Economic Sanctions as Responses to Arms Control Violations, 1 Journal
of Arms Control 203 (1963).

\(^{57}\) *See* L. Sohn, *supra* 7 at 103, 104; WPTWL at 212. It is suggested there that it is preferable
to provide in advance in the disarmament agreement itself for dealing with violations for which
a government might be responsible. *See also* A. Fisher, *supra* note 4 at 1217.

\(^{58}\) *See* R. Fisher, *supra*, note 23 at 462, concerning the advantage of having the right of review.