

Review Essay

For Whom the Bell Tolls: The Soviet Gas Pipeline Crisis and the Making of International Law

ALLY VERSUS ALLY: AMERICA, EUROPE, AND THE SIBERIAN PIPELINE CRISIS. By Antony J. Blinken.† *New York and Westport, Connecticut: Praeger Publishers—Greenwood Press, 1987. Pp. x, 193. \$37.95 (hardbound), \$12.95 (paper).*

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[P]ablo's hand gripped his hard and pressed it frankly and he returned the grip. . . . We must be allies now, he thought. There was always much handshaking with allies. Not to mention decorations and kissing on both cheeks, he thought. I'm glad we do not have to do that. I suppose all allies are like this. They always hate each other *au fond*.¹

In Ernest Hemingway's tale of the Spanish Civil War, *For Whom the Bell Tolls*, Robert Jordan, an American, leads a band of guerrillas to blow up a bridge, so that the Republicans can more effectively prosecute the war against the Fascists. What transforms the book from a technically superior account of a military operation into a modern classic is Hemingway's insight into human nature,² especially into the variety of emotional responses to the crisis of carrying out the operation, and his

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1. E. HEMINGWAY, FOR WHOM THE BELL TOLLS 404 (1940) (Robert Jordan speaking).

2. Hemingway's genius was manifested in his ability to examine human situations on a variety of analytic levels. The study of international relations also occurs on a variety of levels. Scholars derive insight into international relations by analogizing the behavior of states to that of individuals, firms, or even markets. For example, a classic analysis of international relations, elaborating the insights that can be drawn from the study of human nature, is found in K. WALTZ, *MAN, THE STATE AND WAR* 16-79 (1959). For a treatment of the different levels on which international relations analysis may be carried out, see generally Singer, *The Level-of-Analysis Problem in International Relations*, in *THE INTERNATIONAL SYSTEM* 77 (K. Knorr & S. Verba eds. 1961). One might even try to use Hemingway's insights into how

ability to relate the cast of characters to the larger social context in which they are fighting. For example, Jordan can never articulate to his band just why they are fighting at all, let alone why it is so important that they blow up that particular bridge.³ His inability to educate his allies leads to a variety of problems, including, perhaps, the cowardice of Pablo, the Spanish guerilla leader.⁴

In *Ally versus Ally*, Antony Blinken has written a technically superior account of the Soviet Pipeline crisis.⁵ Blinken sets out the variety of issues and perspectives usually involved in the analysis of international crises with clarity. He even points to some aspects of the larger social context that give the crisis enduring significance.⁶ Yet, all too often, the reader is left wishing that Blinken had spent more time linking the facts to the broader theoretical issues raised by the controversy. To review a book and to criticize its author for not producing a Hemingway on his first try⁷ is, of course, a bit unfair. But the study of international relations and international law does require efforts at theory-building. This review essay will attempt to draw upon Blinken's analysis and to use it as a starting point toward building a theory of international relations.

Part I of this review discusses the imposition of the American embargo and presents a variety of issues that Blinken appropriately raises. Part II examines some of the concerns of international relations theory and tries to link efforts at theory-building to the problems that Blinken poses. In doing so, I hope to encourage alternative policy choices by expanding the realist paradigm. Finally, Part III attempts to develop an "expectations"

humans behave when forced into a loose alliance to illuminate the dynamics of the Western alliance during the Pipeline crisis.

3. During one poignant moment of introspection, Jordan argues to himself:

You went into it knowing what you were fighting for. You were fighting against exactly what you were doing and being forced into doing to have any chance of winning. So now he was compelled to use these people whom he liked as you should use troops toward whom you have no feeling at all if you were to be successful.

E. HEMINGWAY, *supra* note 1, at 162. In the Pipeline crisis, the United States faced a central problem for decision-making in alliances: whether to impose a decision by command or to consult one's allies so as to arrive at a consensus. Like Jordan, President Reagan could never articulate clearly why it was so important that the alliance "blow up" the Pipeline project.

4. President Reagan's inability to convince the allies of the value of the Pipeline sanctions led to a variety of problems, including, perhaps, Western fear of continued confrontation with the Soviet Union.

5. A. BLINKEN, *ALLY VERSUS ALLY: AMERICA, EUROPE, AND THE SIBERIAN PIPELINE CRISIS* (1987) [hereinafter cited by page number only].

6. Blinken highlights three broad issues that the Pipeline controversy raises: 1) Was the pipeline "a wise or a foolish strategic and economic undertaking for the West"? 2) What were the "long-term consequences of the crisis within the alliance"? 3) What insights could be gained "into the future possibilities and limitations of Western trade policy toward the Soviet Union"? P. 13.

7. This is Mr. Blinken's first book. It began as an undergraduate thesis at Harvard College.

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framework with respect to one policy approach that Blinken analyzes: containment. This framework seeks to promote values such as stability and mutual adjustment and, in a larger sense, to blend considerations of power and principle. By linking practice to theory, this review attempts to give more shape to the rich data that Blinken offers.

I. Pipeline Issues and the Fragments of Theory

In Blinken's book, the Americans lead a group of allies in attempting to "blow up" a pipeline "bridge" so that the Republicans can more effectively prosecute a trade war against the totalitarians. Blinken conceptualizes the pipeline as a "physical, living link between East and West at a time when relations between the two blocs were fast reverting to Cold War status . . ."⁸ He reports that European leaders themselves believed that by building the pipeline Western Europe "could serve as a bridge between Washington and Moscow, thus assuring its own security and reasserting leadership in the concert of nations."⁹ Thus, on a variety of levels, the Soviet Pipeline controversy can be studied as more than a political dispute. Like Hemingway's bridge, it can serve as a window into an examination of the larger social context of international behavior.

Blinken analyzes the Pipeline crisis from several different angles. First, he traces the history of the deal as a response to the West's need for energy. Next, he examines the Pipeline deal both from the micro-level of how the supply contracts were written and from the macro-level of the political issues at stake. Third, he focuses on the American embargo and describes how each ally reacted to its imposition and subsequent withdrawal. Finally, he ties together the various Western European responses by discussing the problems of alliance politics within the context of different policy approaches. A short review of the facts should set the stage for an examination of the more theoretical points Blinken raises.

A. *The Embargo*¹⁰

Between 1980 and 1984, the Soviet Union constructed a 3,000-mile pipeline to supply natural gas to Western Europe. To accomplish this massive undertaking, the Soviet Union sought financing, equipment, and technology from the West. On December 29, 1981, while the pipeline was still under construction, President Reagan barred U.S. companies

8. P. 34.

9. P. 78.

10. For a discussion of the imposition of the American embargo, see DeSouza, *The Soviet Gas Pipeline Incident: Extension of Collective Responsibilities to Peacetime Commercial Trade*, 10 YALE J. INT'L L. 92 (1984).

from supplying pipeline equipment for the project. The President's decision was motivated by a variety of policy considerations, the most salient being the need to respond to the imposition of martial law in Poland. On June 18, 1982, the President broadened the ban to include all pipeline equipment manufactured by Western firms under license from U.S. companies. These restrictions were criticized by both domestic and international leaders on political, economic, and legal grounds. The dispute ended when an informal understanding was reached between the United States and the relevant members of the Atlantic Alliance. On November 13, 1982, President Reagan lifted the sanctions.

This informal agreement had little real effect on the trade policies of the allies. The alliance agreed to: a) refrain from entering into new contracts for the purchase of Soviet natural gas until an alliance study of alternative Western sources of energy could be carried out; b) strengthen controls on the transfer of strategic items to the Soviet Union; and c) establish procedures for monitoring financial relations with the Soviet Union which would be consistent with alliance export credit policies. The ban on new natural gas contracts, however, did not affect the long-term arrangements previously concluded by the Western Europeans and the Soviet Union.

This outcome indicated that expectations in the Atlantic Alliance had crystallized around the norm that states are "free to engage in peacetime commercial transactions, even at the risk of transferring power through the wealth process to an adversarial alliance."¹¹ Moreover, the crisis revealed that the collective security arrangement had found its limit, in that member states considered the alliance to be a means to safeguard a public order goal of national autonomy and not an end in itself.¹² As Blinken puts it, "western Europe will not forego the benefits of trade with the East in conditions short of war or acute tension . . . [T]he NATO alliance they joined was meant to be a shield not a sword. NATO's charter describes a defensive alliance."¹³

B. *Issues: The Demands of Policy*

Eugene Rostow once pointed out that "[a]n academic book about foreign policy normally . . . begin[s] with a geopolitical analysis of our national interest in the changing realm of world politics."¹⁴ Since Blinken

11. *Id.* at 117.

12. *Id.*

13. Pp. 154-55.

14. Rostow, *Searching for Kennan's Grand Design* (Book Review), 87 YALE L.J. 1527, 1533 (1978).

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is writing about the response of the Western alliance to the Soviet Pipeline crisis, one would expect a chapter exploring theoretical questions about the geopolitical interests of the alliance vis-à-vis the Soviet Union. For example: What is the West's vision of world public order? Is the West interested in stability, evolutionary change, or dynamic change? What are the minimum requirements for policy that would achieve such a preferred order? How does the relative distribution of power between alliances affect the prospects for attaining the West's vision of international relations? What are the limits of collective security? What room is there for independent action by sovereign states? The latter question is particularly critical if one considers the aphorism that "peace really is indivisible."¹⁵

Blinken does not develop this theoretical analysis. He spends a great deal of time setting out the internal divisions within the Western alliance and not enough on how these divisions relate to the common goal of a preferred public order that the alliance was designed to achieve. That Blinken does not undertake this theoretical analysis is a surprise, since he poses various questions throughout the book that lead the reader to believe he will do so. At one point, for example, Blinken notes:

A case study of the pipeline cannot help straying into the broader issues of East-West coexistence. . . . The alliance has vacillated among trying to destroy the Soviet system by force, merely containing its expansion, and encouraging it toward peaceful evolution; the pipeline crisis is a useful litmus test for these approaches. Moreover, it highlights the practical limitations on each approach within the framework of a voluntary alliance composed of politically independent and economically competitive powers.¹⁶

An argument such as this demands a chapter developing a theoretical framework. Although Blinken has chapters on strategic issues¹⁷ and the debate over policy,¹⁸ such chapters remain at the level of tactics rather than attempting to explore the requirements of a preferred public order. Before examining the needs of theory-building in international relations, it is useful to look at some points that Blinken does make that could provide a bridge to a more theoretical treatment.

In chapter four, Blinken identifies what he entitles "strategic issues." He begins with the apt question of what it means to have leverage over a

15. Rostow, *Containment, Peace, and the Charter*, in 2 *CONTAINMENT: CONCEPT AND POLICY* 677, 698 (T. Deibel & J. Gaddis eds. 1986).

16. P. 13.

17. Pp. 49-66.

18. Pp. 127-50.

primary adversary.¹⁹ From such an opening, one might expect a brief discussion of the effect of leverage on the changing balance of power among states. Instead, in presenting the variety of perspectives involved in the crisis, Blinken focuses only on the probabilities for the exercise of power in a particular instance.²⁰ Whether the issue is the reliability of the Soviets as energy suppliers,²¹ the possibility of doomsday scenarios,²² the relative mix of Soviet hard currency earnings between oil and gas,²³ or the use of forced labor,²⁴ he focuses on how the particular use of power might be applied rather than on the relationship of the issue to the larger dynamic of international relations. For instance, the forced labor question could have been framed in terms of the normative restraints on the *realpolitik* way of doing business in international relations.²⁵

In chapter nine, Blinken elaborates on what he calls "The Great Debate." He sets out three "strategic approaches"—trade denial, linkage, and pro-trade—which have been used by the West to regulate its trade relations with the East.²⁶ Although Blinken gives some hints of a theoretical orientation in this chapter also, his analysis once again remains concerned with the tactical uses of power. In his treatment of the strategy of trade denial, Blinken provides an excellent discussion of the link between the gains from trade and the resources the Soviets have for military applications,²⁷ as well as the problems of regulating "dual use" technologies.²⁸ Concerning linkage, he describes the domestic political difficulties that undermined Henry Kissinger's program to establish a "network of relationships."²⁹ But while Blinken presents much useful information in examining the "trade denial" and "linkage" approaches, his failure to analyze this information in a broader conceptual framework robs his analysis of much of its power.

19. P. 49.

20. See pp. 49-66. International relations theorists have attempted to build theory from statistical analyses of probabilities and expectations of utility. See generally B. BUENO DE MESQUITA, *THE WAR TRAP* 34, 47, 55-64, 101-02 (1981).

21. Pp. 52-53.

22. Pp. 54-55.

23. Pp. 56-59.

24. Pp. 63-66.

25. Blinken hints at framing the discussion in such a theoretical way as he points out, "Man's inhumanity to man is common knowledge. . . . This view, while admittedly grounded in a realistic perception of the way nations tend to act and interact, is not particularly satisfying." P. 65. More could have been said with respect to the role of normative imperatives in international politics. For such a treatment, which analyzes the normative restraints on power with respect to the supply of food, see Puchala & Hopkins, *International Regimes: Lessons From Inductive Analysis*, 36 INT'L ORG. 245, 259-69 (1982).

26. P. 127.

27. P. 129.

28. Pp. 134-41.

29. P. 142.

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Of the three discussions of strategy, Blinken's pro-trade analysis comes closest to providing a theoretical framework that could illuminate the geopolitics of a public order of East-West trade relations. As Blinken points out, "Beneath the trade for trade's sake view, often, lies a strategic vision. Some pro-traders believe commerce can, in the long run, help stimulate a peaceful and positive evolution of Soviet foreign and domestic policies."³⁰ Blinken adds that "[h]uman and intellectual interaction of this sort [by business executives, academics, scientists, and artists] may help change perspectives favorably."³¹ At this point, a behavioral theory of rational expectations derived from empirical evidence of on-going business relationships could be introduced to examine how particularized uses of power are shaped by the predominant ways of doing business.³² Economic research on rational expectations provides important theoretical insights for the study of decision-making in international relations. It tries to study the relationship between the subjective expectations of decision-makers and the objective reality of a situation.³³ Analyzed against the background of such an expectations framework, the three "strategic approaches" and the variety of evidence that Blinken presents can have more meaning for the study of international relations.

II. The Need for Theory-Building in International Relations

Bridges can be constructed everywhere. Robert Cover conceptualized law "as a system of tension or a bridge linking a concept of reality to an imagined alternative."³⁴ It is this understanding of law that can help open up the realist paradigm, which focuses almost exclusively on the use of power in international relations, and enable us to construct a theory that not only better approximates the world in which we live, but also allows us to shape policies that can lead us to a preferred future. The examination of possible alternative futures is the type of analysis that

30. P. 146.

31. *Id.*

32. For an illustration of this approach, see *infra* notes 83-89 and accompanying text.

33. For a general treatment of rational expectations, see S. SHEFFRIN, RATIONAL EXPECTATIONS 1-23 (1983). For example, economists have offered a "cobweb theorem" to capture the observation that "farmers' planting decisions depend[] not only on current market price, but also] on the prices they expect[] to receive when the crop [is] marketed." *Id.* at 3. Different assumptions concerning price expectations could "radically alter the actual price dynamics in the market." *Id.*

34. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 9 (1983). For a further analysis of the late Professor Cover's metaphor of law as a bridge, see Garet, *Meaning and Ending*, 96 YALE L.J. 1801, 1804, 1808-15 (1987). Cover argued that law, as a system of tension, created a normative universe between reality and a vision of an alternative future. Cover, *supra*, at 9.

Rostow calls for in any consideration of the national interest.³⁵ By viewing the Pipeline crisis against the backdrop of an expectations framework infused with a concept of international law, we might better understand the enduring significance of the pipeline as a “physical, living link between East and West.”³⁶

A. *Reimagining the Nomos of International Relations*

In surveying the needs of theory-building in international relations, it is useful to start with some basic premises. First, we live in a world that is ordered by³⁷ and filled with social institutions³⁸ that shape the policy decisions, such as those surrounding the Pipeline controversy, that in turn affect that order. Some of these decisions are “creative, speculative, adaptive, and risk-taking . . . [while others] are cautious, predictable, and risk averse.”³⁹ The former have been metaphorically called engines and accelerators, the latter, brakes and stabilizers.⁴⁰ These decisions affect the international order in different ways: “accelerators” produce political change and often lead to conflict, while “brakes” produce restraint and often lead to stability. Both international relations theorists⁴¹ and international legal theorists⁴² have tried to study and explain these decisions and the expectations that result from them.

35. *See supra* text accompanying note 14.

36. P. 34. *See supra* note 8 and accompanying text.

37. By ordered, I mean that there are patterns of human behavior that communicate expectations which, in turn, shape future decisions. These basic patterns promote certain goals of human society. For a further elaboration of the meaning of order in international relations, see H. BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* 8, 20 (1977). Professor Bull contends that the primary goals of the international order are: 1) preservation of the system and of the society of states itself; 2) maintenance of the independence or external sovereignty of individual states; 3) peace; and 4) achievement of the common objectives of social life—limiting violence, keeping promises, and stabilizing possession by property rules. *Id.* at 16-20.

38. Oran Young points out that we live in a world of social institutions called “regimes,” *see infra* notes 69-73 and accompanying text, in which expectations converge around recognized patterns of practice. Young, *International Regimes: Problems of Concept Formation*, 32 *WORLD POL.* 331, 332 (1980). Regimes govern issues regarding money, international trade, natural resources, and management of power. *Id.* at 331. In this respect, regimes are fundamental building blocks of the international order. For a more precise definition of the term as used in international relations theory, see Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 *INT'L ORG.* 185, 185 (1982).

39. Schauer, *Precedent*, 39 *STAN. L. REV.* 571, 604 (1987).

40. *See id.*

41. For an excellent analysis that develops a theory of international relations as “interdependent decision-making,” in which the various participants act based on the expectations of others’ behavior, see T. SCHELLING, *THE STRATEGY OF CONFLICT* 14-16 (1960).

42. Professors McDougal and Reisman have conceptualized the making of law as a function of decisions that “create, in a target audience, a complex set of expectations.” McDougal & Reisman, *The Prescribing Function in the World Constitutive Process: How International Law Is Made*, in M. MCDUGAL & W. REISMAN, *INTERNATIONAL LAW ESSAYS* 355 (1981).

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In my own research regarding the Pipeline controversy⁴³ (and I believe that Blinken comes to the same conclusion)⁴⁴ a consistent pattern of decisions emerged with respect to American sanctions on East-West trade. Over time, the Western alliance has rejected, as a part of the security arrangement, U.S. attempts to restrict peacetime commercial transactions with the Soviet Union and its allies.⁴⁵ Based on this pattern of decisions, one might propose the hypothesis for international relations theory that a norm now exists under which alliance members consider themselves free to engage in peacetime commercial transactions even at the risk of transferring to the Soviets additional wealth derived from the gains from trade.⁴⁶

This norm, by validating current expectations,⁴⁷ shapes future expectations and decisions.⁴⁸ In doing so, it leads us toward a particular future which reflects the preferences of the Atlantic Alliance. Blinken, I believe, considers this set of decisions to be “brakes.” For example, Blinken argues that the trade “pillar” *stabilized* political relations between Moscow and Washington during the 1970s.⁴⁹ This norm with respect to East-West trade has thus shaped behavior between states. It remains to be discussed, however, where this aspect of international life fits into the study of international relations.

43. See DeSouza, *supra* note 10, at 117.

44. See pp. 115-17.

45. See DeSouza, *supra* note 10, at 96-99.

46. *Id.* at 117.

47. For a sample of contemporary expectations in international community with respect to the Pipeline controversy, see *id.* at 112.

48. Some international relations theorists have speculated that historical developments constrain future decisions because they lead participants down particular paths at different points in time. For an elaboration of “path dependency” with respect to international relations, see S. Krasner, *Sovereignty: An Institutional Perspective* (February 1987) (Unpublished manuscript, copies on file with the Department of Political Science, Stanford University and *Yale Journal of International Law*).

49. P. 88. On a different level of analysis, Blinken points out that the economic benefits of trade with the East served to *stabilize* domestic politics within Western countries by quelling unrest brought about by rising unemployment. P. 92. Such political and social unrest within the alliance could disrupt its foreign policy initiatives, especially in times of crisis. For a treatment of how domestic economic circumstances affect foreign policy choices, see generally *BETWEEN POWER AND PLENTY: FOREIGN ECONOMIC POLICIES OF ADVANCED INDUSTRIAL STATES* (P. Katzenstein ed. 1978) [hereinafter *BETWEEN POWER AND PLENTY*].

B. *The State of International Relations Theory*

Central to the study of international relations is an examination of the patterns of behavior of states.⁵⁰ Theory-building efforts seek to develop a framework for asking questions about these patterns.⁵¹

International relations may be conceived of as a continuing historical process in which the international system remains at a status quo position "if the more powerful states in the system are satisfied with existing territorial, political, and economic arrangements."⁵² Moreover, as Edward Carr pointed out in a classic study of international relations, understanding the behavior of states around the status quo requires exploring the "compromise between the utopian conception of a common feeling of right and the realist conception of a mechanical adjustment to changed equilibrium of forces."⁵³ This "compromise" calls to mind similar themes struck in Professor Cover's jurisprudence of expanding the possibilities for a preferred normative universe.⁵⁴

By studying the compromise between utopian and realist conceptions of international relations, one can aspire to more than just understanding the dynamism of international behavior. Analyzing the "system of tension" between conceptions serves to illuminate an element essential for shaping peaceful international change: "win[ning] the confidence of the dissatisfied."⁵⁵ Shaping peaceful change requires not only a give-and-take between nations, in order to keep states satisfied, but also an element of self-sacrifice by the most powerful states.⁵⁶ In this way, stable patterns of state behavior—one goal of the international order—are maintained.

Studying the compromise between utopian and realist conceptions of international relations does not mean that these conceptions are distinct elements. Professor Carr conceived of international relations as involving the inter-relationship of utopian and realist conceptions, of morality and power.⁵⁷ Thus, in examining patterns of international behavior, one

50. Professor Gilpin notes that even though political change in international relations may be the result of unpredictable events, "it is possible to identify recurrent patterns, common elements, and general tendencies. . . ." R. GILPIN, *WAR AND CHANGE IN WORLD POLITICS* 3 (1981).

51. *Id.* at 2.

52. *Id.* at 11. Professor Gilpin sets out a series of assumptions about the behavior of states in international relations. At the heart of these assumptions lies the notion of cost-benefit analysis as motivating state behavior. States will attempt to change the international system as long as the marginal benefits exceed the marginal costs. *Id.* at 10-11.

53. E. CARR, *THE TWENTY YEARS' CRISIS 1919-1939*, at 222-23 (1962).

54. *See supra* note 34 and accompanying text.

55. E. CARR, *supra* note 53, at 214; *see also supra* note 52 and accompanying text.

56. E. CARR, *supra* note 53, at 168.

57. *Id.* at 222, 223. Even where the give-and-take of international behavior is accomplished by "peaceful" bargaining, threats of force lie in the background as an accepted part of

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must account for aspects of both normative behavior and the naked use of power. The current state of theory-building in international relations, though, mistakenly tries to separate normative behavior from uses of power in its attempt to isolate explanatory variables for international outcomes.

1. *The Inadequacies of International Relations Theory*

Philosophers of science often describe scientific method—including that of the social sciences—as the testing of hypotheses through attempted falsification.⁵⁸ Such falsification generates new hypotheses that advance the theoretical framework. Because the dominant paradigm of international relations theory—realism—does not adequately address the interrelationship between norms and power, it cannot generate auxiliary hypotheses to test that paradigm.⁵⁹

Political realism leaves out of its assumptions the role of norms. Realists believe that anarchy is the rule in human nature; order, justice, and morality are exceptions.⁶⁰ They may choose to admit the possibility of behavioral norms, but essentially they maintain that “the final arbiter of things political is power.”⁶¹ Realists also insist that the essence of social reality is the group (the state for international relations purposes), the unit through which humans confront each other.⁶² Finally, realist thinking involves the “primacy in all political life of power and security in human motivation.”⁶³

These assumptions cannot always explain political reality. For example, with respect to the Pipeline controversy, one might ask, if power is the “final arbiter,” how was it that the most powerful member of the Western alliance could not lead its allies to achieve a collective security goal? Was it because of a failure in the tactical uses of power, or was the outcome determined by the norm of behavior that had emerged with respect to the economic autonomy of states? If one remains at Blinken’s

the game. *Id.* at 215. In fact, “power plays a part in determining our moral outlook.” *Id.* at 219.

58. See generally Lakatos, *Falsification and the Methodology of Scientific Research Programmes*, in *CRITICISM AND THE GROWTH OF KNOWLEDGE* 91, 132-38 (I. Lakatos & A. Musgrave eds. 1970).

59. Professor Keohane, in surveying the dominant research program in international relations, political realism, points to the need for developing auxiliary hypotheses regarding the rules and patterns of decision-making that affect calculations of interest in world politics. Keohane, *Theory of World Politics: Structural Realism and Beyond*, in *POLITICAL SCIENCE: THE STATE OF THE DISCIPLINE* 503, 532 (A. Finifter ed. 1983).

60. Gilpin, *The Richness of the Tradition of Political Realism*, 38 *INT’L ORG.* 287, 290 (1984).

61. *Id.*

62. *Id.*

63. *Id.*

level of analysis, without attempting to generate hypotheses for theory-building, one might be left with the impression that the outcome of the Pipeline crisis was determined only by American tactical mistakes in the application of political power.

Realism can blind policy analysts to the true lessons of the Pipeline controversy.⁶⁴ "Blindness" is currently evident as U.S. policy-makers continue mistakenly to waste political capital by attempting to force allies to adhere to U.S. economic sanctions against adversaries, such as Nicaragua⁶⁵ and Libya,⁶⁶ when the norm of economic autonomy of states during peacetime dictates that their efforts will fail.

The empirical evidence offered by the Pipeline controversy calls into question the assumptions of the realist position on the use of power as an explanatory variable for this particular outcome. Behavior by the Western alliance reflected the adoption of a norm that guided decision-making during the Pipeline crisis.⁶⁷ Moreover, as Blinken suggests, the outcome of the crisis reinforced goals, such as stability and the independence of states, and values, such as keeping promises, that are fundamental to international order.⁶⁸ This expansion in the range of "protected" values beyond power and security shows that the international system is not merely a reflection of the existing distribution of power, as in the realist paradigm.

Recently, international relations theorists suggested the concept of "regime" in order to expand the theoretical structure of realism to include behavior determined by norms.⁶⁹ This concept, although still "conceptually thin" and in need of development,⁷⁰ may be helpful in analyzing the Pipeline controversy.

Regimes are defined as "principles, norms, rules, and decision-making procedures around which actor *expectations converge* in a given issue-area."⁷¹ A regime is a variable used "to account for the persistence of [certain types of international] behavior and outcomes even though basic

64. See DeSouza, *supra* note 10, at 117.

65. Exec. Order No. 12,513, 50 Fed. Reg. 18,629 (1985), *reprinted in* 50 U.S.C. § 1701 note at 661 (Supp. III 1985); *see also* DeSouza, *supra* note 10, at 117 & n.148.

66. Exec. Order No. 12,543, 51 Fed. Reg. 875 (1986), *reprinted in* 51 U.S.C. § 1701 note at 663 (Supp. III 1985).

67. See *supra* text accompanying note 11.

68. See *supra* note 38 and accompanying text.

69. International relations theorists began a serious effort to articulate the concept of regimes at a conference in Palm Springs, California, in February 1981. Key articles from the conference were collected and presented in volume 36, issue 2 of *International Organization* (Spring 1982). Krasner, [Untitled Introduction to Issue], 36 INT'L ORG. 184 (1982).

70. Young, *International Regimes: Toward a New Theory of Institution* (Book Review), 39 WORLD POL. 104, 106 (1986) (presenting arguments of critics of regime concept).

71. Krasner, *supra* note 38, at 185 (emphasis added).

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causal factors associated with political power have changed.”⁷² A regime may act as an intervening variable, conditioning outcomes produced more directly by such factors as the relative distribution of political and military power, or it may even assume a life of its own and thus act as a causal variable.⁷³ Its development as a conceptual variable distinct from power has enabled new hypotheses to be generated within the realist paradigm.

The most pointed criticism of this concept is that it “diverts attention away from the analysis of power relationships that . . . should constitute the major concern of students of international relations.”⁷⁴ This criticism reflects the realist research agenda in international relations. Realist theorists argue for the predominance of politics in understanding the world.⁷⁵ They believe that factors such as the national interest and the relative distribution of power capabilities among various states⁷⁶ determine international outcomes by themselves.⁷⁷

Such criticism of regime analysis overlooks the reality that the use of power is purposive. Choices with respect to when, where, and how power is used are guided by expectations of what other actors are going to do. As a result, purposive conduct is channelled into “rules of prudent behavior” that enable states both to protect their interests and to minimize international conflict.⁷⁸

72. Krasner, *Regimes and the Limits of Realism: Regimes as Autonomous Variables*, 36 INT'L ORG. 497, 500 (1982).

73. *Id.* at 499.

74. Young, *supra* note 70, at 118.

75. Professor Kenneth Waltz argues that “[t]o be a success, such a theory [of international relations] has to show how international politics can be conceived of as a domain distinct from the economic, social, [international legal,] and other international domains that one may conceive of.” K. WALTZ, *THEORY OF INTERNATIONAL POLITICS* 79 (1979).

76. Waltz requires that power be analyzed as a unified index of economic, military, and political capabilities. *Id.* at 130. Although outside the scope of this essay, methodological questions may be raised as to how such an index is compatible with a theory that argues for the autonomous sphere of politics.

77. Professor Susan Strange pushes the critique of the regime concept further. She argues, first, that the concept is used to rationalize a downturn in U.S. power during the 1970s; second, that it is imprecise; third, that it is value-biased in that the concept is assumed to be a positively-valued good; fourth, that regime analysis represents too static a view of international relations; and fifth, that the concept overestimates the gains and underestimates the costs of international cooperation. Strange, *Cave! Hic Dragones: A Critique of Regime Analysis*, 36 INT'L ORG. 479, 479-93 (1982).

78. Professors Gordon Craig and Alexander George point to a “nonperfectionist” school of thought in considering perspectives on the use of force in international relations. Nonperfectionists formulate questions regarding the use of force as follows: “Under *what* conditions do *which* ends justify *what* means?” G. CRAIG & A. GEORGE, *FORCE AND STATECRAFT: DIPLOMATIC PROBLEMS OF OUR TIME* 274 (1983) (emphasis in original). Nonperfectionists are described as taking a “*contextualist* approach . . . employ[ing] *situational ethics*, not absolutist ethical standards.” *Id.* (emphasis in original). Such an approach to the use of power suggests a normative component embedded in the “power variable” stipulated by realist theory.

For this reason, it is a mistake to think about international decision-making as determined solely by the existing distribution of power between states. As currently set forth, however, the "regime" concept involves a checklist of elements without any tie-in to a "larger system of ideas that would help solve definitional ambiguities . . . and that would offer guidance in formulating key questions and hypotheses regarding international regimes."⁷⁹ By isolating power and regimes as separate, independent variables that explain outcomes, theorists, while being methodologically more precise, fail to articulate the inter-relationship between norms and power in purposive state behavior. In part III, I attempt to develop a public international jurisprudence based on patterns of practice and rational expectations that gives international relations concepts, such as "regime," a tie-in to a larger system of ideas that takes into account both power and principle.⁸⁰

2. Pipeline Expectations

Antony Blinken offers raw material for further developing existing theories of international behavior that are grounded in the expectations of conduct among the various states. Such a theoretical level of analysis would better generate new hypotheses about broader issues such as the West's vision of world public order and the minimum requirements for attaining such a preferred order.

Building on Robert Axelrod's initial work using computer simulation to propose and study the evolution of behavioral norms,⁸¹ international

79. See Young, *supra* note 70, at 106.

80. The dominant exposition of the realist research program in international relations theory, as presented in K. WALTZ, *supra* note 75, does not even raise the possibility of international law guiding state behavior. Law is mentioned only in the "scientific" sense as replicating relations between variables. *Id.* at 1. To Professor Waltz, "[l]aws are facts of observation." *Id.* at 6. It is ironic that Waltz is actually employing a notion of law that is also used in the jurisprudential sense. Compare the great legal realist Karl Llewellyn's search for "[legal t]heory that can face fact." Llewellyn, *The Constitution as an Institution*, 34 COLUM. L. REV. 1, 40 (1934). See also *infra* text accompanying notes 144-45 (incident methodology providing legal theory that can face fact).

81. Axelrod has identified additional hypotheses for testing the realist paradigm. He points to the need to explore the requirements of a normative order and the interactive relationship between that order and the behavior of groups (in this case states). Axelrod, *An Evolutionary Approach to Norms*, 80 AM. POL. SCI. REV. 1095 (1986); see also R. AXELROD, *THE EVOLUTION OF COOPERATION* (1984) (fuller treatment of how norms of cooperation arise and develop). He calls for the development of a theory of "how norms arise, how norms are maintained, and how one norm displaces another." Axelrod, *supra*, at 1096. His research focuses on coordinated behavior that takes place under conditions of anarchy, as exist in international relations. He defines a norm in terms of the extent to which "individuals usually act in a certain way and are often punished when seen not to be acting in this way." *Id.* at 1097. He evaluates norms on a growth-decay continuum rather than on just their existence. *Id.* In studying this continuum, Axelrod focuses on the decision-making process of interactive behavior. His "norms game" is based on an evolutionary theory of behavior that captures the dynamism of international relations as a continuing historical process. *Id.*; see also *supra* note 52

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relations scholars have tried to outline the conditions under which norms of cooperation exist in world politics.⁸² When viewed from a game-theory perspective,⁸³ cooperation “occurs when actors adjust their behavior to the actual or anticipated preferences of others.”⁸⁴ Such analyses focus on interactive decision-making⁸⁵ and the expectations that are generated therefrom. Research indicates that “reciprocity” or “conditional cooperation” is a required tactic for any strategy that seeks to promote behavior that is guided by a norm of cooperation.⁸⁶ Further, the effectiveness of reciprocity and ultimately the stability of the norm of cooperation depend, *inter alia*, on whether the particular problem is an iterated game,⁸⁷ that is, whether it casts a “shadow of the future.”⁸⁸ The shadow depends on factors such as the length of the players’ “time horizon,” the “regularity of stakes,” the “reliability of information about the others’ actions,” and “quick feedback about changes in the others’ actions.”⁸⁹ Blinken offers considerable evidence of such factors, showing that the Pipeline decisions were shaped by expectations of mutual adjustment, the awareness of norms of conduct, and the importance of reputation in an ongoing relationship.⁹⁰ At best, this evidences a continuing historical process that points to a vision of world public order, with respect to East-West trade, based on a norm of cooperation. At the very least, such evidence generates new hypotheses for the realist paradigm.

and accompanying text. The evolution of norms is modeled as an N-person strategic situation, where the choices involved reflect decisions to be bold or vengeful, which may also be thought of as decisions that are either “accelerators” or “brakes.” For a more elaborate presentation of the simulated game, see Axelrod, *supra*, at 1099-1102. For further elaboration of the use of game theory to illuminate interactive decision-making and the generation of expectations, see *infra* notes 82-89 and accompanying text. The simulation, using strategies of reciprocity such as tit-for-tat, pointed to the existence of metanorms that allowed for other norms to get started and to be protected once they were established. Axelrod, *supra*, at 1102. Axelrod points to a variety of mechanisms that also support the existence of norms, supplementing the effect of the metanorms. Examples of these mechanisms include: a) a dominant player, such as a “hegemon” in international relations, who prevents others from receiving the collective benefits of the metanorm without sharing in the costs of policing it; b) the effect of internationalization of norms which makes it psychologically painful to violate them; and c) reputation which establishes expectations among the players. For an elaboration of Axelrod’s findings on these support mechanisms, see *id.* at 1103-04, 1107-08. Such simulated results encourage further inquiry into the role of norms in shaping policy decisions in international relations.

82. See, e.g., Axelrod & Keohane, *Achieving Cooperation Under Anarchy: Strategies and Institutions*, 38 *WORLD POL.* 226 (1985).

83. *Id.* at 228; see also Oye, *Explaining Cooperation Under Anarchy: Hypotheses and Strategies*, 38 *WORLD POL.* 1 (1985).

84. Axelrod & Keohane, *supra* note 82, at 226.

85. See *supra* notes 41-42 & 70.

86. Axelrod & Keohane, *supra* note 82, at 249.

87. Game-theory analysis suggests that “an iterated environment permits resort to strategies of reciprocity that may improve prospects of cooperation.” Oye, *supra* note 83, at 14.

88. Axelrod & Keohane, *supra* note 82, at 232-34; see also Oye, *supra* note 83, at 14-17.

89. Axelrod & Keohane, *supra* note 82, at 232.

90. See *infra* notes 91-92 and accompanying text.

Blinken offers evidence of mutual adjustment in his survey of the history of the pipeline project. He quotes a 1972 remark of U.S. Secretary of Commerce Peter Peterson: "I believe that these types of joint projects are potentially the single most important product of this new commercial relationship in which the two largest economies of the world each adjust their ways of doing business to the mutual benefit of both."⁹¹ Blinken's research also suggests that, in addition to a willingness by both sides to adjust, all parties—the Soviets, the Americans, and the Western Europeans—were concerned about their respective reputations as reliable business partners.⁹² These two factors suggest a willingness on both sides to maintain the status quo. In Professor Carr's terms, the stability of East-West behavior in peacetime commercial trade indicates an accepted compromise between a utopian conception of cooperation and a realist conception of a "mechanical adjustment to changed equilibrium of forces."⁹³ Under these conditions of stability, the historical pattern of decisions by the Western allies regarding the pipeline may be considered "brakes" on the processes of international change. This is why the American attempt to change settled expectations of cooperation in East-West trade met with severe opposition. As Blinken points out, "[o]fficials in Washington admit that they failed to *anticipate* the violent European reaction."⁹⁴

By focusing solely on the tactical uses of power in the Pipeline controversy, Blinken misses the implication of the event for world public order. On a variety of levels, the expectations of state autonomy with respect to peacetime commercial trade shape the Atlantic Alliance's vision of its preferred future.⁹⁵ At the most theoretical level, these expectations offer support for the contention that norms sometimes guide political decisions. This result generates new hypotheses for the realist framework in international relations. In addition, evidence of the existence of "rules of conduct" in the use of power ties such decisions into a larger system of ideas offered by public international law. On another level, the particular set of expectations regarding peacetime commercial trade offers insights into the decision-making processes that constitute "brakes" and "stabilizers" in international relations. One such insight is that continued sta-

91. P. 29. Soviet flexibility in renegotiating downward the price of gas to the Western Europeans indicates the current stability of expectations with respect to mutual adjustment. See pp. 42-45.

92. P. 45 (Soviets' concern about their reputation); p. 126 (U.S. companies' concern); p. 124 (Western Europeans' concern). Reputation is an important factor for the enforcement of norms. Because of iterated play and the threat of future reciprocity if one "defects" from the relationship, each side has an incentive to maintain its reputation. See Axelrod & Keohane, *supra* note 82, at 233 (significance of reputation with respect to international debt problems); see also R. AXELROD, *supra* note 81, at 150-54 (strategies of interaction based on reputation).

93. E. CARR, *supra* note 53, at 222-23.

94. P. 104 (emphasis added).

95. See *supra* note 34 and accompanying text.

bility requires some self-sacrifice in the political agenda of the most powerful states.⁹⁶ Finally, acknowledgement of current expectations, and an understanding of the dynamic by which such expectations are formed, is the first step toward shaping future choices with respect to East-West trade. Effective public policy requires not only power but also public education,⁹⁷ so that expectations with respect to the minimum requirements for a preferred public order may be articulated and tested.

Expectations, however, are not generated randomly. They are articulated, shaped, and tested through the use of analytic frameworks that make information processing by the public more manageable.⁹⁸ Blinken acknowledges the “need for a shared allied approach to the issue of trade with the Soviet bloc.”⁹⁹ He also recognizes the fundamental question that follows: “*Which* approach could find general acceptance within the West and simultaneously meet the strategic and economic concerns of the alliance countries?”¹⁰⁰ In part III, I outline one approach—containment—that seeks to promote expectations of stability and mutual adjustment. In so doing, I try to develop a coherent theory for foreign policy that blends considerations of power and principle.

III. Containment: A Framework For Shared Expectations

Blinken suggests three possible approaches for the West to the problem of managing East-West trade: confrontation, containment, or cooperation.¹⁰¹ Containment will be developed here as a legal concept, in that

96. See *supra* note 56 and accompanying text; see also p. 141 (reexamining the embargo list).

97. Accountability in public administration requires public deliberation of issues. See Reich, *Public Administration and Public Deliberation: An Interpretive Essay*, 94 YALE L.J. 1617, 1625 (1985). Public administrators, for example those in the Department of State, should not merely make decisions for the public, but also help the public deliberate over issues such as the preferred vision of world public order. See *id.* at 1637. Eugene Rostow points out that “no nation, and surely no democratic nation, can carry out a sustained policy of any importance, especially one that may involve the catastrophe of war, unless public opinion understands and accepts it.” Rostow, *supra* note 14, at 1535. Thus, molding expectations among the allies during the Pipeline controversy involved an aspect of testing expectations among relevant domestic constituencies, for example the U.S. Chamber of Commerce. See DeSouza, *supra* note 10, at 104.

98. Decision-makers often simplify the complexities of a situation by using frameworks that enable them to take shortcuts in thinking about policy choices. For an analysis of such “cognitive maps,” see STRUCTURE OF DECISION: THE COGNITIVE MAPS OF POLITICAL ELITES 3-55 (R. Axelrod ed. 1976). I suggest that the public uses similar methods to sift through information and form an opinion about a given public policy situation.

99. P. 126. As noted earlier, see *supra* note 16 and accompanying text, Blinken points out that the Pipeline controversy may be a litmus test for other Western approaches to Soviet foreign policy. The range of approaches includes: a) “destroying the Soviet system by force”; b) “containing its expansion”; and c) “encouraging it towards peaceful evolution.” See p. 13 (emphasis added).

100. P. 126 (emphasis added).

101. See p. 13.

it enables us to set up for international relations Cover's normative "bridge" between reality and a vision of a preferred future.¹⁰² Such a "bridge" will generate new hypotheses about world public order and open up the realist paradigm for international relations theory.

To define the contours of this "bridge," I first introduce Professor Carr's perspective on international law. This perspective helps explain international behavior by enabling us to tie realist theory, with its notions of regimes, into a larger system of ideas. Next, I develop the idea of containment as a subordinate "legal" concept that can be integrated with Carr's perspective on international law to implement my proposed framework for foreign policy. Within this context, I discuss the debate over containment and offer a reformulated version that may be used to answer the policy's critics. Finally, I note some developments in international jurisprudence that reinforce these ideas.

This framework takes raw data about a particular crisis—the one that erupted around the Soviet gas pipeline—and places it within a broader theoretical context. The focus of this framework is on shaping expectations of decision-making so as to establish behavioral norms with respect to East-West trade that promote values such as stability. Containment thus becomes a technique for promoting expectations. In this way, Blinken's analysis becomes a central building block for a coherent foreign policy that blends realism with a vision of world public order.

A. *Carr's Perspective on International Law*

Professor Carr's *The Twenty Years' Crisis 1919-1939*¹⁰³ is a valuable statement of international law derived from the international relations theory of realism. This work analyzes the peace of the inter-war period on the eve of World War II. As noted earlier,¹⁰⁴ Carr believed that political life centered on the balance between realism and utopianism, between power and principle. He felt that, although realism exposed the "hollowness" of utopianism,¹⁰⁵ it was of limited use in guiding decision-making in international society because its very assumption of the "naked struggle for power" made the idea of international society impossible.¹⁰⁶ His vision of a synthesis of realism and utopianism infused realism with the ingredients of elaboration of finite goals, allowance for emotional appeals, right of moral judgments, and requirement of justifi-

102. See *supra* note 34 and accompanying text.

103. E. CARR, *supra* note 53, at 170-80.

104. See *supra* note 53 and accompanying text.

105. E. CARR, *supra* note 53, at 89.

106. *Id.*

cations.¹⁰⁷ These ingredients, by contributing to the development of “rules of the game,” would help structure expectations based on realism. Without these ingredients, pure realism reduces international life to chaos.¹⁰⁸

Professor Carr considered international law the “meeting place for ethics and power,” for the blending of utopianism and realism.¹⁰⁹ Law to him was a function of neither fixed universal standards (the Kantian perspective) nor the power of the state divorced from ethics (the Hobbesian perspective). Rather, international law was based on the “political community of nations.”¹¹⁰ Law was binding because it represented the rules and institutions that the international society had set up for itself to live by—the Grotian perspective.¹¹¹ International law could only be understood within its social framework, where politics and law were intertwined. Thus law was not “self-contained,” and neither was it “self-creating []or self-applying.”¹¹² Law was not merely text but rested on the shared expectations that evolved from political practice.

International law, conceived of as expectations evolving from political practice, can answer foreign policy demands for structural constraints on Soviet expansionist ideology by promoting “rules of the game.” As noted above, expectations of future decision-making by states are shaped by how power is channelled in the present and how power was used in the past. The economic theory of rational expectations teaches that such future expectations shape objective reality.¹¹³ Because it structures expectations, containment is a policy approach that activates this international law framework based on political practice. In *The Public and Its Problems*, the American pragmatist John Dewey offered an image of law that can perhaps further illuminate this expectations framework. He pointed out that “[r]ules of law are in fact the institution of conditions under which persons [states] make their arrangements with one another. They are structures which canalize action,” much like the banks of a river.¹¹⁴ By directing the uses of power along particular paths, containment molds expectations and functions as a legal concept.

107. *See id.*

108. *See id.*; *see also supra* notes 37-38 and accompanying text.

109. E. CARR, *supra* note 53, at 178.

110. *Id.*

111. For a comparison of the Kantian, Hobbesian, and Grotian perspectives in international relations theory, see H. BULL, *supra* note 37, at 41.

112. E. CARR, *supra* note 53, at 178.

113. *See supra* note 33 and accompanying text.

114. J. DEWEY, *THE PUBLIC AND ITS PROBLEMS* 54 (1946).

B. *Containment as a Legal Concept*

International legal concepts such as containment can serve as building blocks for foreign policy. They can be employed to meet the concerns of Professor Carr that international law be based on political practice. Considering containment as a legal concept is a starting point, in that it is compatible with Carr's concern that "[l]aw give[] to society that element of fixity and regularity and continuity without which no coherent life is possible."¹¹⁵ Infused with some of Carr's jurisprudential ingredients, such as finite goals and the requirement of justification, containment can be developed as a generative concept, a meeting place for principle and power.

1. *Kennan's Containment*

Recently, *Foreign Affairs* published a retrospective examination of the concept of containment.¹¹⁶ George Kennan, in 1947, first conceived of containment as a response to Soviet power, which he felt was a product of "ideology and circumstance" and was manifested through a "basic antagonism between capitalist and socialist worlds." He proposed that the U.S. regard "the Soviet Union as a rival, not a partner" and expect "a cautious, persistent pressure toward the disruption and weakening of all rival influence and rival power."¹¹⁷ I would assume that this applies to economic tactics, such as the pipeline project, as well as military tactics. Kennan argued that a coherent foreign policy strategy would be to apply "counterforce at a series of constantly shifting geographical and political points corresponding to the shifts and maneuvers of Soviet policy . . ."¹¹⁸ Such a sustained effort by the West would lead to a moderation of Soviet expansionist ideology and a stabilization of the processes of international change.

Kennan's position has evolved somewhat since 1947. He now looks at containment in broader terms, calling for the development of a concept "more closely linked to the totality of the problems of Western civilization at this juncture in world history . . ."¹¹⁹ The ideological-political threat that he focused on forty years ago seems to have waned in his estimation. Now it is the military of the Soviet Union and, more broadly, the arms race with its "unanticipated consequences" that he is chiefly

115. E. CARR, *supra* note 53, at 179.

116. See W. Rostow, *On Ending the Cold War*, 65 FOREIGN AFF. 831 (1987); X [Kennan], *The Sources of Soviet Conduct*, *id.* at 852 (reprint from 25 FOREIGN AFF. 566 (1947)); Lippmann, *The Cold War*, *id.* at 869 (excerpts); Kennan, *Containment Then and Now*, *id.* at 885.

117. X [Kennan], *id.* at 867.

118. *Id.* at 862.

119. Kennan, *Containment Then and Now*, *supra* note 116, at 890.

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worried about. Moreover, Kennan seeks an even wider application for the containment concept: he feels that the United States must learn to contain itself as well, given our “environmental destructiveness, our tendency to live beyond our means”¹²⁰

How does one make sense of this expansion of the concept of containment? Perhaps a useful focus, which encompasses both U.S. and Soviet behavior, can be found in Professor Carr’s insight that the blending of realism and utopianism is manifested in public law, which is found, in turn, in give-and-take, mutual adjustment, and self-limitation.¹²¹ Self-limitation plays an especially important part in any on-going political relationship, calling for each side to pass up short-term political gains in order both to minimize the perceived threat to the other side and to maximize the stability of the system. In the Pipeline context, self-limitation required the United States to accept the decision of the Atlantic Alliance on peacetime commercial trade. It also required the Soviet Union to renegotiate the price of gas with the Western Europeans in order to reinforce expectations that it is a reliable business supplier. The fact that trade (as opposed to nuclear warfare) is necessarily an iterated game gives both sides incentives to limit themselves in assessing possibilities for political gain.¹²²

Making sense of Kennan’s evolution in thought is only one task; the dangers of his new outlook must also be assessed. Kennan’s call for a broader conceptualization of containment is intended to redirect attention away from our ideological rivalry with the Soviet Union. Such redirection risks overlooking the most basic problem for the management of a changing international environment: the balance of power. As W.W. Rostow argued in *Foreign Affairs*, “the cold war . . . has arisen from the fourth major effort in the twentieth century by a latecomer on the world scene to enlarge its power at the expense of earlier frontrunners already at or beyond the inherent limits of their international stature.”¹²³

The rivalry between those interested in stability and those interested in change remains as threatening to international life today, in the case of the United States and the Soviet Union, as it did fifty years ago, in the case of Britain and Germany, and more than 2500 years ago, in the case of Athens and Sparta. Change grows out of the marginal cost/benefit calculations of states interested in bringing it about. Containment attempts to keep the system stable by altering these cost/benefit calculations. Such stability is critically important in the nuclear age, when

120. *Id.* at 889.

121. *See supra* notes 53 & 56 and accompanying text.

122. *See supra* note 87 and accompanying text.

123. W. Rostow, *supra* note 116, at 831.

crises can get out of control during transitions in the balance of power. Blinken makes a similar point, noting that "projects such as the Siberian pipeline pull the East-West relationship one step back from catastrophic conflict" ¹²⁴

C. *Containment Reformulated*

A broad conceptualization of containment as a foreign policy strategy highlights the need to slow the pace of international change, so that it does not become destabilizing. Containment combines realism with vision through its concern for maintaining the balance of power. It incorporates Carr's essential ingredients for establishing "rules of the game" in the political community: a) containment's goal is to maintain the balance of power; b) it takes emotional appeal into account in its challenge to expansionist ideology; c) its morality is derived from the international community's shared expectation of the integrity of the state system; and d) its ground for action is that power is being used as a defensive measure to counter persistent pressure aimed at disrupting the state system. By structuring Soviet behavior through timely Western responses to Soviet expansionist pressure, containment performs the legal function of establishing "rules of the game" based on practice. In this respect, containment can be viewed as a legal concept that derives its ultimate authority as law from politics.¹²⁵ More precisely, it may be thought of as a type of customary law, using Lon Fuller's description of law as "a language of interaction . . . a social situation in which the moves of the participating players will fall generally within some predictable pattern."¹²⁶

Present expectations of the moves other states will make are conditioned by past events; in turn, future expectations are molded in the present.¹²⁷ Firm American *reaction* to Soviet pressure can actually be leadership, in that it shapes future expectations and thus modifies Soviet decision-making. A basic premise of this framework is that Soviet decision-making is not mechanical, but internalizes the expectations of the world around it to some degree.¹²⁸ Blinken raises the possibility of an

124. P. 150; *see also supra* notes 53-56 and accompanying text. As Robert McNamara writes, "Things can go wrong [in crises]. Actions can lead to unintended consequences. Signals can be misread. Technologies can fail. Crises can escalate even if neither side wants war." McNamara, *Blundering Into Disaster: The First Century of the Nuclear Age*, 5 BROOKINGS REV. 3, 9 (1987).

125. E. CARR, *supra* note 53, at 180.

126. Fuller, *Human Interaction and the Law*, in THE RULE OF LAW 171, 173 (R. Wolff ed. 1971) (emphasis in original omitted).

127. *See supra* note 48 and accompanying text.

128. Axelrod's "norms game" suggests that such internalization is not only likely but crucial to the conclusion that "metanorms" exist which guide behavior. *See supra* note 81.

on-going Soviet-American contest in which expectations are shaped. He points out that “[s]anctions can have a beneficial secondary effect. In the case of the grain embargo, even though the American ban did not succeed in forcing the Soviets to withdraw from Afghanistan, it may have made similar forays less likely in the future by imposing even limited, short-term costs.”¹²⁹

Containment, in its expectations function, does not, as Walter Lippmann argued, show a disbelief in the possibility of “settlement” among rivals.¹³⁰ Rather, by organizing a balance of power such that rivals cannot afford to commit aggression,¹³¹ containment as a legal concept actually promotes settlement through shared expectations that the balance of power will not be overturned. It is the reactive quality of containment that is stabilizing, in that it seeks only to promote settlement.

Lippmann argued that a “free and undirected economy” could not marshal the resources required for a policy of containment, especially if the strategy required a sustained response of ten to fifteen years.¹³² As noted above, policy-making is more difficult when decision-makers must educate the public and get its consent for costly strategies.¹³³ Yet Lippmann assumed far too quickly that, once educated in the strategy of containment, the American people would opt out and risk the instability produced by a hands-off attitude toward the processes of international change. The requirement of consent might actually strengthen public resolve to bear the burden of meeting Soviet expansionary pressure, especially if the policy is explained as a corollary of a public law “rule” that promotes a stable international environment.

Containment requires that choices be made with respect to the use of power.¹³⁴ Not all difficult situations in world politics require state reaction in order to achieve the public order goals of stability and settlement. Strategy involves careful assessment of, and reaction to, the situations likely to produce changes in the balance of power. Moreover, in some instances self-sacrifice and restraint are required on the part of the most powerful states in order to achieve a preferred “alternative future” of stability that represents a compromise between realism and utopianism.¹³⁵ For example, as Blinken points out, the application of sanctions

129. P. 145.

130. Lippmann, *supra* note 116, at 882..

131. *Id.* at 883.

132. *Id.* at 872-73.

133. *See supra* note 97; *see also* BETWEEN POWER AND PLENTY, *supra* note 49 (on the effect of domestic economy on foreign policy choices).

134. *See supra* note 78 and accompanying text.

135. *See supra* notes 55-56 and accompanying text.

in response to the Soviet invasion of Afghanistan may produce important secondary effects by shaping expectations of the costs of such adventurism.¹³⁶ This is a situation that clearly challenges the balance of power and demands reaction by the West. On the other hand, peacetime commerce with the Eastern bloc may actually promote the public order goal of stability.¹³⁷ After all, peacetime commerce does not implicate the balance of power, unless one comes to the extreme assessment that all benefits from trade are used to bolster the Soviet military threat.¹³⁸ Because the Pipeline controversy did not threaten the balance of power, it was a situation that did not require reaction. For this reason, the Atlantic Alliance demanded "self-sacrifice" on the part of the United States in order to promote the public order goal of stability. Blinken suggests the desirability of such discrimination with respect to foreign policy tactics: "American interests would be best served by streamlining the embargo list so that it covers only technology whose primary application is military. Rather than build short fences around broad areas, we should erect tall barriers around carefully defined areas."¹³⁹

D. *Notes on an International Law Framework for Foreign Policy*

Theorists in both international relations and international law have been moving toward a common analytic perspective upon which an international law strategy based on expectations generated from political practice may be crafted.¹⁴⁰ "Policy science" has been developed in both international relations and international law as a method of analyzing the conditions under which power is used. In international relations, Alexander George and Richard Smoke have discussed what is required to make theory relevant to policy in their study of deterrence.¹⁴¹ They argue that policy science offers insights to decision-makers for coping with specific problems by developing "contingent generalizations" that "identify how relevant situational variables change and vary according to circumstances."¹⁴² As policy science advocates note, international law need not exist only when behavior is conforming exactly to a promulgated rule. The policy science focus on expectations based on practice can pro-

136. P. 145.

137. See p. 150.

138. See DeSouza, *supra* note 10, at 92 n.2.

139. P. 141.

140. See *supra* notes 41-42 and accompanying text.

141. See A. GEORGE & R. SMOKE, *DETERRENCE IN AMERICAN FOREIGN POLICY: THEORY AND PRACTICE* 618 (1974).

142. *Id.* at 636 (contingent generalities).

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vide useful insight into policy-making problems in international relations.

Policy science has been developed from the jurisprudential perspective by Myres McDougal and W. Michael Reisman.¹⁴³ Like the policy science approach to international relations, McDougal and Reisman's approach to jurisprudence is one oriented toward problem-solving and based on practice. It examines shared expectations with respect to the choice of policy, its authority, and its control.¹⁴⁴ In this way, the policy science approach to jurisprudence seeks to channel the use of power in international relations by developing Carr's ingredients for law in the political community: goals, moral judgment, and grounds for action. More recently, Professor Reisman and Andrew Willard have developed a unit of analysis, called the "incident," through which international law derived from practice may be described, tested, and refined. The incident methodology uses a case study approach, similar to that used in identifying the common law, to explore the crystallization of expectations during crises.¹⁴⁵ It considers a variety of sources of law in world politics, but focuses on practice in deriving expectations in the international political community. Such an orientation is critical given the anarchic structure of international relations. The incident approach thus offers a methodology for developing an expectations framework that uses concepts such as containment to ground our vision of international society in realism.

Conclusion

Antony Blinken offers much information, solid analysis, and a starting point from which to develop a foreign policy framework grounded in theories of international relations and international law. Like Hemingway's bridge, the Pipeline crisis can serve as a window through which to

143. See, e.g., McDougal, Lasswell & Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, in INTERNATIONAL LAW ESSAYS, *supra* note 42, at 43, 139-41.

144. McDougal & Reisman, *supra* note 42, at 355-56.

145. INTERNATIONAL INCIDENTS: THE LAW THAT COUNTS (W. Reisman & A. Willard eds. 1988) (forthcoming); see also Reisman, *International Incidents: Introduction to a New Genre in the Study of International Law*, 10 YALE J. INT'L L. 1 (1984); Willard, *Incidents: An Essay in Method*, 10 YALE J. INT'L L. 21 (1984). For an application of the incident methodology to the Soviet Pipeline crisis, see DeSouza, *supra* note 10. For an evaluation of the incident methodology, compare Falk, *The Validity of the Incidents Genre*, 12 YALE J. INT'L L. 376 (1987) (lauding the genre's contribution), with Bowett, *International Incidents: New Genre or New Delusion?* 12 YALE J. INT'L L. 386 (1987) (arguing that the genre is neither novel nor superior to traditional methods).

Professor George has also developed a case study method for the development of international relations theory. He uses John Stuart Mill's method of similarities and differences in analyzing international crises. See A. George, *Case Study Method for International Relations* 2, 3, 7-8 (1982) (unpublished manuscript on file with the *Yale Journal of International Law*).

view the broader context of human behavior. The Pipeline crisis exposed the alliance politics involved in East-West trade, and Blinken describes these well. Yet the crisis also raised geopolitical questions regarding our vision of a preferred world public order and the minimum requisites for achieving such order—questions that Blinken leaves largely unanswered.

Like Professor Cover's bridge, the Pipeline crisis was a focal point in the historical process through which the international community creates shared expectations about future behavior. The Atlantic Alliance's insistence on reinforcing the norm favoring peacetime commerce reinforced important goals of international society, such as stability and settlement. These decisions may prove to be a precedent that has a "braking" effect on the process of international change.

International relations theory does not currently take sufficient account of how such norms influence state behavior. One potentially helpful direction for future research on the role of norms is to use insights from economics and game-theory to study the formation and influence of expectations about behavior. Research in this direction should focus on interactive decision-making. Some of this ground has already been broken by international relations theorists and international law scholars who have a "policy-science" orientation. By surveying patterns of decisions and the expectations they generate, scholars can trace the path of choices toward a preferred future.

Containment is one policy that captures these ideas for developing an expectations framework that integrates theories from international law and international relations. Containment attempts to structure expectations over time, setting forth "rules of the game" that channel international behavior into certain paths. It can help shape expectations for policies such as economic sanctions. These expectations, in turn, structure the context in which future decisions will be made.

An expectations framework requires not only active shaping of expectations through immediate policy responses such as economic sanctions, but also sensitivity to the expectations flowing from existing norms, such as the autonomy of states in conducting peacetime commerce. In an international legal order whose rules are primarily visible by reference to state practice, settled expectations demarcate public international law by tracing a path of decision that forms the span of our omnipresent bridge to a particular future.