

ARTICLE

LAW AND PEACE IN A CHANGING WORLD*

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Designs for peace among nations have abounded throughout the course of history. The most successful plans harnessed the self-interest of ruling elites in the communities of the world. Rational leadership was a crucial factor in their success. Common global cooperation in minimizing the use of violence was, and is, the most difficult goal to achieve. It requires careful analysis of claims, claimants, perspectives, identifications, and other contextual factors. Cordell Hull was a master at that. Figures of no lesser stature than Franklin Roosevelt and Dean Acheson have called him the “father” of the United Nations. He was, in a true sense, not only “present at the creation” of a viable international security system; he was greatly influential in shaping it. He richly deserved the Nobel Peace Prize awarded to him in 1945. The purpose of this article is to honor the memory of Cordell Hull by analyzing the framework, policies and moving factors in the process of authoritative decision-making of the use of violence or persuasion on the global level, as well as to present alternatives for its improvement.

* Professor Myres S. McDougal is the first recipient of the Cordell Hull Award, bestowed upon this eminent scholar during the celebration of the centennial of Cordell Hull's graduation from Cumberland School of Law on October 2, 1991. Professor Siegfried Wiessner accepted the award on behalf of Professor McDougal and delivered the Cordell Hull Lecture reprinted here in the format of an article. The address features significant parts of MCDUGAL & WIESSNER, *Law and Minimum World Public Order*, to be published in MYRES S. MCDUGAL & FLORENTINO P. FELICIANO, *THE INTERNATIONAL LAW OF WAR* (forthcoming, New Haven Press, 1992).

Both authors drew freely, though with changes, upon McDougal, *Law and Peace*, 18 DEN. J. INT'L L. & POL'Y 1 (1989), a preprint of id., *Law and Peace*, ch. 6 of the United States Institute of Peace publication *APPROACHES TO PEACE, AN INTELLECTUAL MAP* (W. Thompson & Kn. Jensen eds. 1991).

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I. FORMULATING THE PROBLEM

In traditional literature, international law is commonly divided into a most imprecise dichotomy of "war" and "peace." These words are characteristically employed to make simultaneous reference both to the presence or absence of the facts of transnational coercion and violence and to the legal consequences to be attached by the authorities to different intensities of coercion and violence.¹ The facts are those of the global process of effective power in which many different participants (state and other), for many varying objectives in expansion and conservation, employ all instruments of policy (military, diplomatic, ideological and economic) in differing stages of intensity of violence and coercion, in attack upon the bases of power (people, resources, and institutions) of other participants, and are themselves in turn the targets of attack. The legal policies and sanctioning consequences that the authoritative decision-makers of the global community apply to the different aspects of this continuous process of violence and coercion vary with many particular problems. These problems may be categorized in terms of the minimization of major coercions, the conduct of hostilities, the termination of hostilities, the regulation of minor coercions, and so on. In a first effort to minimize major violence and coercion, authoritative decision-makers seek through a law of "aggression" and "self-defense," to prevent alterations in the existing distribution of values among nation-states by processes of unilateral and unauthorized coercion and to promote value changes and adjustments by processes of persuasion or by community-sanctioned coercion. When persuasive strategies fail and violence and coercion break out, a second effort is to reduce to a minimum the unnecessary destruction of values by defining, with as much simplicity as possible, the

¹ For a comprehensive review, see MYRES S. McDOUGAL & FLORENTINO P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER; THE LEGAL REGULATION OF INTERNATIONAL COERCION* (1961). See also W. Michael Reisman, *Private Armies in a Global War System: Prologue to Decision*, 14 VA. J. INT'L L. 1 (1973), reprinted in MYRES S. McDOUGAL & W. MICHAEL REISMAN, *INTERNATIONAL LAW ESSAYS: A SUPPLEMENT TO INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE* 142 (1981); W. MICHAEL REISMAN & JAMES E. BAKER, *REGULATING COVERT ACTION: PRACTICES, CONTEXTS AND POLICIES OF COVERT COERCION ABROAD IN INTERNATIONAL AND AMERICAN LAW* (forthcoming, Yale Univ. Press, 1992); W. MICHAEL REISMAN & C. ANTONIOU, *THE LAW OF WAR: BASIC DOCUMENTS ON INTERNATIONAL ARMED CONFLICT* (forthcoming, Vintage Books, A Division of Random House, Inc., 1991).

permissible maximum of violence and destruction in particular types of situations. Our inherited concepts of "peace" and "war,"² making such ambiguous reference to this vast maze of facts and legal policies, have many times been documented as casting but a darkening light upon the difficult problems in public order that presently confront humankind.

It is suggested that a more relevant conception of peace may be found through employment of contemporary notions of world public order. A distinction is sometimes made between "minimum order," in the sense of the minimization of the unauthorized use of force, and "optimum order," as the arrangements that provide the greatest access of the individual human being to all of the values of human dignity.³

However, both of these kinds of allegedly different public order goals would appear to be indispensable to any workable conception of peace. Even when conceived in the minimum sense of freedom from the fact and expectation of arbitrary violence and coercion, peace seems increasingly dependent upon maintaining people's expectations that the processes of authoritative and effective decision will respond to their demands for a reasonable access to all the values we today characterize as those of human dignity. When peace is more broadly conceived as security in position, expectation and potential with regard to all basic community values, the interrelationship of peace and human rights quite obviously passes beyond that of interdependence and approaches that of identity. Hence, there is much in President John F. Kennedy's question "Is not peace, in the last analysis, basically a matter of human rights?"⁴

² Cf., e.g., RAYMOND ARON, *PEACE AND WAR: A THEORY OF INTERNATIONAL RELATIONS* (1967).

³ MYRES S. MCDUGAL, HAROLD D. LASSWELL & LUNG-CHU CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY*, ch. 5 (1980).

⁴ Address at the American University, June 10, 1963. See also James Toth, *Human Rights and World Peace*, in I RENÉ CASSIN, *AMICORUM DISCIPULORUMQUE LIBER 362-82* (Institut International des Droits de l'Homme ed. 1969).

This integrative view of human rights and peace is echoed in the United Nations General Assembly Declaration on the Right of Peoples to Peace of November 12, 1984. It, inter alia, "solemnly proclaims that the peoples of our planet have a sacred right to peace," and "solemnly declares that the preservation of the right of peoples

It may be generalized that the basic policies that underlie contemporary conceptions of peace and human rights are the same policies that, in any democratic community, underlie all law. Peace and law may appropriately be described as one side of the coin (in community process and effective power) of which arbitrary violence and coercion are the opposite side. A major goal of an international law of human dignity must be to make the persuasion component of the global process increasingly dominant over the coercive component.

For the most perspicacious proponents of an optimum public order, the realistic and immediate challenge is that of introducing into the global process of effective power the necessary, more collectivized, perhaps even more centralized, perspectives and operations of authority, sustained by control. It is not to be assumed that humankind is limited in choice to an anarchy of allegedly equal, independent, and sovereign territorial communities or some fantasied omniscient universal state with all its threats to the values of human dignity. The words federal, confederal, region, alliance, and coalition are primarily meaningful in their suggestion of the infinite variety of potential modalities in organization. The parts may be related to the whole in many different, and changing ways to serve the purposes of public order. The rearrangement of decision-making structures in the Soviet Union and Yugoslavia illustrates the many possibilities.

Any effort toward improvement of world public order must begin with the existing global process of authoritative and controlling decision that is already collectivized in a higher degree than many observers are aware. A brief historical review of law and minimum world public order is therefore apposite.

II. THE CONTEMPORARY AUTHORITATIVE PROJECTION OF BASIC COMMUNITY POLICIES

The earlier policies and procedures, developed under the aegis of inherited theories about international law, for the control of major coercion and violence, sometimes called

to peace and the promotion of its implementation constitute a fundamental obligation of each State." G.A. Res. 39/11, 39 U.N. GAOR Supp. 220 (1984).

force, were most primitive.⁵ For some centuries there have been reasonably observed policies for the protection of diplomats and facilitation of diplomacy; for the making, application, and termination of international agreements; for the protection of nationals abroad from abuses by other states; and for the peaceful settlement of disputes, as through conciliation, mediation, and arbitration. With respect to the more direct control of major coercions and violence, the policies and procedures developed were far from being adequate in aspiration and were much less consistently observed. The most important effort to control major coercion and violence, with roots reaching far back into the Middle Ages, derived from a distinction between just and unjust wars.⁶ The basic thrust of *bellum iustum* was that resort to major violence could be regarded as legitimate self-help only for certain objectives, such as redressing a received wrong. This required a serious wrong commensurate with the losses the war would cause and which could not be repaired or avenged in any other way. The effective power of the Papacy made possible some centralized administration of so general a concept of necessity and consequentiality. Yet even this modest effort to control major coercion and violence fell before changes in community and effective power processes in the eighteenth century. By the nineteenth century the requirement of *bellum iustum* was brought to an unobtrusive demise.

In the nineteenth and early twentieth centuries, resort to force came to be regarded as a prerogative of sovereignty, the legitimacy of which non-participating states were not competent to judge. In the international law of the time "war was the sport of princes and the privilege of states, and could be undertaken for power, glory, revenge, or many rea-

⁵ MYRES S. MCDUGAL & FLORENTINO P. FELICIANO, *supra* note 1, chs. 1 & 3; C.H.M. Waldock, *The Regulation of the Use of Force by Individual States in International Law*, 81 HAGUE RECUEIL DES COURS, at 455 (1952).

⁶ In contrast to early Christian doctrines of pacifism, St. Augustine in 412 A.D. and St. Thomas Aquinas in 1266-73 developed elaborate criteria for the "justness" of wars. Cf. ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, vol. II, pertinent translation reprinted in JOHN NORTON MOORE, FREDERICK S. TIPSON & ROBERT F. TURNER, NATIONAL SECURITY LAW 53-54 (1990). See also JAMES TURNER JOHNSON, *JUST WAR TRADITION AND THE RESTRAINT OF WAR: A MORAL AND HISTORICAL INQUIRY* (1981); YEHUDA MELZER, *CONCEPTS OF JUST WAR* (1975); WILLIAM V. O'BRIEN, *THE CONDUCT OF JUST AND LIMITED WAR* (1981); Fredrick R. Struckmeyer, *Just War and the Right of Self-Defense*, 82 ETHICS 48 (1971); MICHAEL WALZER, *JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS* (1977).

sons beyond considerations of self-help.”⁷ International law offered no general prohibition of violence and made no clear distinction between impermissible and permissible coercion. It attempted only the regulation and humanitarization of violence once it had been initiated. Contending belligerents were regarded as upon a plane of “juridical equality,” and third states that chose not to participate were said to be under a duty of “neutrality.” In deep paradox, though states were said to have a fundamental right to independent existence, there was no prohibition against states waging war and destroying one another. Decisions were to be taken by the relative strength of states and violence was permissible, not only for self-help and self-vindication in the conservation of values, but also for changing the international distribution of values. In only less paradox, a few authoritative prescriptions purported to govern the employment of minor coercions, limited in dimension and objective, sometimes labelled as “retorsion,” “reprisal,” “intervention,” or “pacific blockade,” and so forth, and generally categorized as “measures short of war.” Any such governance was of course illusory: the initiating state could at any time designate its operations as “war” and avoid the thrust of limitation.

The movement in the twentieth century toward a general prohibition of major coercion and violence, and toward a collectivized administration of that prohibition, is traceable through the Covenant of the League of Nations,⁸ the Pact of Paris,⁹ and the Nuremberg Principles,¹⁰ with culmination in

⁷ Eugene V. Rostow, *Disputes Involving the Inherent Right of Self-Defense*, in THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 264, 283 (Lori F. Damrosch ed. 1987). Carl von Clausewitz described war as “nothing but a continuation of political intercourse, with a mixture of other means.” CARL VON CLAUSEWITZ, ON WAR 402 (P. Paret & M. Howard trans. 1976).

⁸ The Covenant, based upon the belief that World War I was started by accident, in essence allowed nation-states the resort to war only after certain procedures of peaceful settlement of disputes had been gone through. Cf. Articles 12, 13, 15 of the Covenant of the League of Nations, June 28, 1919, 225 Consol. T.S. 195.

⁹ Better known as The Kellogg-Briand Pact of August 27, 1928, this Treaty, providing for the Renunciation of War had its states parties “solemnly declare . . . that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.” (art. I). Actions taken in self-defense were understood to be excluded from this prohibition. Cf. Quincy Wright, *The Meaning of the Pact of Paris*, 27 AM. J. INT’L L. 39, 42-43 (1933), relying heavily on the *travaux préparatoires*.

¹⁰ The 1945 Charter of the Nuremberg Tribunal ascribed individual responsibility

the core provisions of the United Nations Charter.¹¹

In 1945, spurred by the “rising, common demands” of individual human beings from every corner of the globe to be free from “the scourge of war” and for greater participation in the shaping and sharing of all the values of human dignity, the framers of the United Nations Charter made two revolutionary changes in historic international law. The Charter postulated, and authoritatively prescribed, both a general prohibition against the unauthorized employment of major coercion and violence and a new protection of the fundamental human rights of individuals, even against their own states.¹² In its preambular clauses and the statement of goals in Article 1, the Charter clearly recognized the intimate interdependence, if not identity, of peace and human rights and made the protection of human rights coordinate with the maintenance of peace. In Article 2(3) the Charter prescribed: “All members shall settle their international disputes by peaceful means in a manner that international peace and security, and justice, are not endangered.”

The most difficult problem for law in any community, a problem greatly magnified in the global community by gross inequalities in the distribution of effective power, is that of characterizing and minimizing unlawful coercion and violence. In Articles 2 (4) and 51, and certain auxiliary articles, the United Nations Charter makes an indispensable distinction between impermissible and permissible coercion and violence and projects a set of complementary prescriptions to protect and promote peaceful change.

Article 2 (4) states the most important of the new policies, the general prohibition against the unauthorized use of force. It reads: “All Members shall refrain in their international relations from the threat or use of force against the

for crimes against peace, war crimes, and crimes against humanity. Cf. MOORE, TIPSON & TURNER, *supra* note 6, at 73-76 (1990).

¹¹ C.F. AMERASINGHE, *STATE RESPONSIBILITY FOR INJURIES TO ALIENS* (1967); IAN BROWNLIE, *SYSTEM OF THE LAW OF NATIONS: STATE RESPONSIBILITY* (1983); *INTERNATIONAL LAW OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS* (Richard B. Lillich ed. 1983); *UNITED NATIONS CODIFICATION OF STATE RESPONSIBILITY* (Marina Spinedi & Bruno Simma eds. 1987).

¹² It requires only brief note that for centuries international law purported to offer little protection to the citizens of a state against that state. Traditional law exhausted its concern for human rights as shown by the modest protection afforded aliens.

The first of these developments is described in MCDUGAL & FELICIANO, *supra* note 1, ch. 3; the second is described in MCDUGAL, LASSWELL & CHEN, *supra* note 3, ch. 4.

territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

The still primitively organized global community, offering only modest expectation of the capability of the general community for protecting its members, however, recognized that some right of self-defense by states is indispensable to the maintenance of even the most minimum public order. Hence, Article 51 of the Charter reads: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”

The historic right of states to self-defense did not require them, like sitting ducks, to await actual armed attack, and it is commonly recognized, despite the occasional literalist interpretation, that the framers of the Charter had no intent to impose suicide by precluding response to *imminent* attack. That is the most rational construction of these complementary policies, contraposed in Articles 2 (4) and 51 would appear to be the right of self-defense, established by the Charter, authorizes a state which, being the target of activities by another state, reasonably decides, as third-party observers may later determine reasonableness, that such activities require it to employ the military instrument to protect its territorial integrity and political independence and to use such force as may be necessary and proportionate to its defense.¹³ The employment of force which creates this expectation in the target state is in violation of Article 2 (4) and is commonly characterized as “aggression,” the unlawful complement to lawful self-defense.

Learning from the obvious difficulties in Grotius’ *dédoublement fonctionnel*¹⁴ and the failures of the League of Nations, the framers of the Charter projected a highly collectivized

¹³ The detailed application of this test is outlined in MYRES S. McDOUGAL & FLORENTINO P. FELICIANO, *supra* note 1, ch. 3.

¹⁴ The same states that are claimants in one case may be sitting as judges, through world opinion, in the next comparable case. Cf. H. Lauterpacht, *The Grotian Tradition in International Law*, 23 BRIT. Y.B. INT’L L. 1 (1946); Georg Schwarzenberger, *The Grotian Factor in International Law and Relations*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS ch. 12 (Hedley Bull, Benedict Kingsburgh & Adam Roberts eds. (1990); Georges Scelle, *Le phénomène juridique du dédoublement fonctionnel*, in RECHTSFRAGEN DER INTERNATIONALEN ORGANISATION: FESTSCHRIFT FÜR HANS WEHBERG 324 (1956).

and centralized structure of decision-making for the detailed administration of this basic distinction between impermissible and permissible coercion and violence. Thus, in Article 24(1), the Security Council, with its veto for the protection of permanent members, was accorded "primary responsibility for the maintenance of international peace and security," and the members of the United Nations agreed that the Security Council, "in carrying out its duties under this responsibility," would act on their behalf. In other chapters of the Charter, elaborate provision was made both for the peaceful settlement of disputes and for employment of organized community force in the maintenance of public order. Article 39 authorized the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to recommend or take appropriate measures "to maintain or restore international peace and security." Other articles outline possible measures of varying intensity in coercion. The cap-stone provides: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

III. TRENDS IN PAST ACHIEVEMENT OF BASIC COMMUNITY POLICIES

The highly collectivized and centralized structure of decisionmaking projected by the United Nations Charter for characterizing and minimizing major coercion and violence appeared, for a long time, to be still-born. So complex an administrative structure, requiring the careful coordination of member states, seemed not to be able to survive the vast disparities in the effective power and interests of the member states and the mounting intensity of the struggle between an expansive totalitarian public order and an opposing order that at least aspired toward the values of human dignity. As the horrors of world-wide war receded, finding a common interest between the contending orders became more and more difficult. The "Cold War" ensued, a tense hegemonical strife between the two contending world orders resulting in an unprecedented arms buildup and constant states of alert.

In consequence of the long-lasting dormancy of the projected centralized structure of decisionmaking, the larger

community of humankind was thrown back, making difficult the distinction between impermissible and permissible coercion and violence, upon Grotius' ancient *dédoulement fonctionnel*, in which the several states themselves make the necessary evaluations and undertake appropriate sanctioning measures.¹⁵ The threat or use of superpower vetoes often stalemated the United Nations Security Council; the General Assembly tried to fill that gap and overreached in the 1950 *Uniting for Peace* Resolution.¹⁶ Unsurprisingly, states commonly made their evaluations in terms of their own special interests, including the interests of the public order to which they adhered. The great bulk of humankind, however, taken as individuals, have not abandoned their demand to be free from the "scourge of war," and have not lost the realistic expectation that some stable, uniform administration of the distinction between impermissible and permissible coercion and violence is indispensable to even minimum attainment of a law-governed global community. The states of the world, and the whole of humankind as expressed through world public opinion, do continue to challenge and evaluate the behavior of states by the criteria of Articles 2 (4) and 51.

Most recently, the *rapprochement* between the superpowers, if not the partial eclipse of one of these powers, has allowed for more multilateral solutions to problems, fostering the hope that more centralized and more effective procedures for the administration of an indispensable policy can still be achieved. The unprecedented cooperation in the Security Council during the Persian Gulf Crisis of 1991 led to the use of United Nations enforcement powers under Chapter VII of the Charter, which had appeared obsolete to many observers for the many years of the Cold War. President Bush has called this common action the first test of a "new world order" based on concepts of universal collective security

¹⁵ Cf. ISAAC I. DORE, *INTERNATIONAL LAW AND THE SUPERPOWERS: NORMATIVE ORDER IN A DIVIDED WORLD* (1984); ADAM ULAM, *THE RIVALS: AMERICA AND RUSSIA SINCE WORLD WAR II* (1972).

¹⁶ G.A. Res. 377A (V), 5 U.N. GAOR Supp. No. 20 at 10, U.N. Doc. A/1775 (1950). Cf. Harry Reicher, *The Uniting for Peace Resolution on the Thirtieth Anniversary of its Passage*, 20 COLUM. J. TRANSNAT'L L. 1 (1981). For a comprehensive account of pertinent United Nations action, see N.D. WHITE, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* (1990).

rather than superpower rivalry and stalemate.¹⁷ In the light of such expectations and hope, it can scarcely be said, with realism, that Articles 2 (4) and 51 are dead and that humankind is without authoritative prohibition of major coercion and violence.¹⁸ At least for the proponents of a public order of human dignity, the understanding remains that the application of major coercion and violence to the human person is fundamentally incompatible with basic human rights and that a global community that genuinely aspires toward the values of human dignity must continue to seek to minimize major coercion and violence as an instrument of change, or as an instrument obstructing peaceful change.

A principal obstacle to the uniform application of Articles 2 (4) and 51 was the insistence, from the beginning, by the Soviet Union that "wars of liberation" are not subject to Article 2 (4).¹⁹ This concept, designed to facilitate totalitarian expansionism, is derived from an earlier idiosyncratic distinction between "just" and "unjust" wars. The distinction reads:

- (a) *Just* wars, wars that are not wars of conquest but wars of liberation, waged to defend the people from foreign attack and from attempts to enslave them, or to liberate the people from capitalist slavery, or, lastly, to liberate colonies and dependent countries from the yoke of imperialism; and
- (b) *Unjust* wars, wars of conquest, waged to conquer and enslave foreign countries and foreign nations.²⁰

The Soviets used this alleged exception to Article 2 (4) to justify interventions in many countries in Europe, Asia, Africa, and Latin America.²¹

In supplement to this alleged exception from Article 2 (4) of "wars of liberation," the Soviets in more recent times

¹⁷ Cf. Thomas M. Franck & Faiza Patel, *UN Police Action in Lieu of War: "The Old Order Changeth"*, 85 AM. J. INT'L L. 63 (1991).

¹⁸ The question was raised by Thomas M. Franck, *Who Killed Article 2 (4) or: Changing Norms Governing the Use of Force by States*, 64 AM. J. INT'L L. 809 (1970).

¹⁹ Cf. AZIZ HASBI, *LES MOUVEMENTS DE LIBÉRATION NATIONALE ET LE DROIT INTERNATIONAL* (1981); JULIO ELIAS BERRIOS HERRERA, *EL STATUS JURIDICO DE LOS MOVIMIENTOS DE LIBERACIÓN NACIONAL* (1987); HEATHER A. WILSON, *INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS* (1988).

²⁰ *HISTORY OF THE COMMUNIST PARTY (BOLSHEVIKS), SHORT COURSE 167-168* (Commission of the Central Committee of the C.P.S.U.(B) ed. 1939). See also G. FADDEJEW, *DER MARXISMUS-LENINISMUS ÜBER GERECHTE UND UNGERECHTE KRIEGE* (1953).

²¹ GALIA GOLAN, *THE SOVIET UNION AND NATIONAL LIBERATION MOVEMENTS IN THE THIRD WORLD* (1988).

have sought to establish an allied exception known as the "Brezhnev Doctrine."²² This doctrine was designed to justify Soviet intervention in "socialist" states to preclude their choice to become other than socialist. The violence with which this doctrine was applied in Eastern Europe and elsewhere needs no new description.

Now, as part of the new thinking under Gorbachev, the Soviet Union appears happily to have explicitly given up the Brezhnev doctrine and its support for "wars of liberation."

It should have been no cause for wonder, in an infectious deterioration of policies and procedures for the regulation of major coercion and violence, that the United States, as a principal proponent of a public order of human dignity, began in measure to adopt policies and procedures parallel to those employed by the Soviet Union. Through the Monroe Doctrine²³ and participation in the Organization of American States the United States has long sought to preclude outside states from acquiring territorial power in the Western hemisphere. More recently, Presidents as diverse in general perspective as Kennedy and Johnson made pronouncements, in content comparable to the later Brezhnev Doctrine, designed to justify interventions against totalitarian expansion into this hemisphere.²⁴ In more recent times Presidents Carter and Reagan extended comparable doctrines to the Persian Gulf and Saudi Arabia.²⁵

²² JOHN NORTON MOORE & ROBERT F. TURNER, *INTERNATIONAL LAW AND THE BREZHNEV DOCTRINE* (1987); *See also* BORIS MEISSNER, *DIE "BRESCHNEV-DOKTRIN". DAS PRINZIP DES "PROLETARISCH-SOZIALISTISCHEN IMPERIALISMUS" UND DIE THEORIE VON DEN VERSCHIEDENEN WEGEN ZUM SOZIALISMUS* (1969); THEODOR SCHWEISFURTH, *SOZIALISTISCHES VÖLKERRECHT* 585-615 (1979); M. WESLEY SHOEMAKER, *THE SOVIET UNION AND EASTERN EUROPE* (1986).

²³ Monroe Doctrine, Annual Message to Congress of Dec. 2, 1823 (Seventh Annual Message) from the President, *in* 2 JAMES D. RICHARDSON, *A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS* 776 (1897). *Cf.* JOHN BASSETT MOORE, *THE MONROE DOCTRINE: ITS ORIGIN AND MEANING* (1895); DEXTER PERKINS, *HANDS OFF: A HISTORY OF THE MONROE DOCTRINE* (1941); *THE MONROE DOCTRINE* (Armin Rappaport ed. 1976). For some Latin American assessments, compare INDALECIO LIEVANO AGUIRRE, *BOLIVARISMO Y MONROISMO* (1987), R. NIETO-NAVIA, *LA DOCTRINA DE MONROE: PRESENCIA HISTORICA* (1962), and CARLOS F. ARANGUA RIVAS, *LA INTERVENCIÓN: DOCTRINAS DE MONROE, DRAGO Y TOBAR* (1924).

²⁴ The various pronouncements of United States officials are summarized in W. Michael Reisman, Comment, *Old Wine in New Bottles: The Reagan and Brezhnev Doctrines in International Law and Practice*, 13 *YALE J. INT'L L.* 171 (1988); *see also* Isaak I. Dore, *The U.S. Invasion of Grenada: Resurrection of the "Johnson Doctrine"?*, 20 *STAN. J. INT'L L.* 173 (1984).

²⁵ *Cf.* W. Michael Reisman, *Critical Defense Zones and International Law: The Reagan Codicil*, 76 *AM. J. INT'L L.* 589 (1982).

Another important obstacle to the rational, uniform application of Articles 2 (4) and 51 derives from an attempt to cut down the reach of the historic right of self-defense.²⁶ Some state officials and scholars have taken the position that Article 51 imposes upon states a higher degree of necessity than that of customary international law and requires states to await the inception of actual armed attack, without option to respond to realistic expectations of imminent attack. This view of Article 51 is based upon an allegedly literal interpretation of the words "armed attack" regarded as an isolated component of the article.²⁷

It may be noted, however, that such reading introduces the words "only if" into the Article and is contrary to all the important canons for the interpretation of international agreements.²⁸ Most importantly, the principle of effectiveness in interpretation by major purposes makes the asserted limitation of self-defense to the actual inception of armed attack an absurdity. In an age of increasingly awesome instruments of destruction and highly sophisticated coercion by other than military instruments, the state that finds itself in that context and still awaits armed attack, can expect only quick transition to oblivion. To think that an interpretation of a prescription that would in effect impose suicide could either create the expectations, indispensable to law, of its enforcement or could in fact be enforced defies not merely major purposes, but even common sense. The concept of a customary law right of anticipatory self-defense was reaffirmed by the international community in its reaction to the 1967 Arab-Israeli War. Where to draw the line remains, however, somewhat unclear given the split world reaction to the Israeli bombing of an Iraqi nuclear reactor in 1981.²⁹ A comprehensive contextual analysis would provide an appropriate starting-point for any determination of lawfulness.

It may be recalled that the United Nations Charter makes

²⁶ Eugene V. Rostow, *supra* note 7; Oscar Schachter, *In Defense of International Rules on the Use of Force*, 53 U. CHI. L. REV. 113 (1986).

²⁷ Ian Brownlie, *The Use of Force in Self-Defence*, 37 BRIT. Y.B. INT'L L. 183, 266 (1962); Quincy Wright, *The Cuban Quarantine*, 57 AM. J. INT'L L. 546, 560 (1963).

²⁸ This position is fully developed in McDUGAL & FELICIANO, *supra* note 1, at 217, 232.

²⁹ Cf. William V. O'Brien, *Israel's Attack on Osirak*, 63 FREEDOM AT ISSUE 3, 4 (Nov.-Dec. 1981); W. Thomas Mallison & Sally V. Mallison, *The Israeli Aerial Attack of June 7, 1981, Upon the Iraqi Nuclear Reactor: Aggression or Self-Defense?*, 15 VAND. J. TRANSNAT'L L. 417 (1982).

the protection of human rights coordinate with, if not inclusive of, its prohibition of unauthorized coercion and violence. Scholars and others are currently debating to what degree the core provisions about human rights are, like the provision for self-defense in Article 51, completely complementary to Article 2 (4).³⁰ Most observers agree that Article 2 (4) does not outlaw the long enjoyed practice of humanitarian intervention, for the protection of a state's nationals and sometimes others. It would thwart reason to hold that a constitutional Charter that explicitly commits the organization and its members to human rights should be interpreted to abolish a historic remedy so effective in the protection of human rights, a remedy which does not in fact threaten territorial integrity and political independence.³¹

The most intense contemporary controversy centers directly upon whether it is lawful for one state to interfere (engage or assist in coercion and violence) in the internal affairs of another state. Unhappily, the discussion is carried on in terms such as "intervention,"³² "counter-intervention,"³³

³⁰ See, e.g., W. Michael Reisman, *Coercion and Self-Determination: Construing Charter Article 2 (4)*, 78 AM. J. INT'L L. 642 (1984); *The Use of Force in Contemporary International Law*, 78 PROC. AM. SOC'Y INT'L L. 74 (1984); W. Michael Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 YALE J. INT'L L. 279 (1985); *The Emperor Has No Clothes: Article 2 (4) and the Use of Force in Contemporary International Law*, ch. 1 in UNITED NATIONS FOR A BETTER WORLD 3 (J.N. Saxena et al. eds. 1986). But see Oscar Schachter, *The Legality of Pro-Democratic Invasion*, 78 AM. J. INT'L L. 645 (1984); Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620 (1984); *International Law in Theory and Practice*, 178 RECUEIL DES COURS ch. VII-VIII (1952-V); *The Role of International Law in Maintaining Peace*, in APPROACHES TO PEACE: AN INTELLECTUAL MAP ch. 5 (W. Scott Thompson et al. eds., 1988).

³¹ See W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866 (1990); R. George Wright, *A Contemporary Theory of Humanitarian Intervention*, 4 FLA. INT'L L.J. 435 (1989).

³² Cf., e.g., ROGER FISHER ET AL., *ESSAYS ON INTERVENTION* (Richard F. Stranger ed. 1964); F.X. DE LIMA, *INTERVENTION IN INTERNATIONAL LAW* (1971); R.J. VINCENT, *NONINTERVENTION AND INTERNATIONAL ORDER* (1974); Lloyd N. Cutler, *The Right to Intervene*, 64 FOREIGN AFF. 96 (1985); Jordan J. Paust, *Conflicting Norms of Intervention: More Variables for the Equation*, 13 GA. J. INT'L & COMP. L. 305 (1983); John Norton Moore, *LEGAL STANDARDS FOR INTERVENTION IN INTERNAL CONFLICTS*, 13 GA. J. INT'L & COMP. L. 191 (1983); Louis B. Sohn, *Gradations of Intervention in Internal Conflicts*, 13 GA. J. INT'L & COMP. L. 225 (1983); Miner S. Ball, *Ironies of Intervention*, 13 GA. J. INT'L & COMP. L. 313 (1983); Richard Ullman, *Reflections on Intervention*, 52 REV. JURIDICA U.P.R. 127 (1983); Scherle R. Schwenninger, *The 1980's: New Doctrines of Intervention or New Norms of Nonintervention?*, 33 RUTGERS L. REV. 423 (1981).

³³ Cf. John A. Perkins, *The Right of Counterintervention*, 17 GA. J. INT'L & COMP. L. 171 (1987).

“civil war,”³⁴ “self-determination,”³⁵ “spheres of influence,”³⁶ “reprisals,”³⁷ “retaliations,”³⁸ and so on, which make so ambiguous a reference to both facts and legal policies, that what is being asserted is often difficult to know. One suggestion appears to be that the self-determination of states is the paramount policy of contemporary international law and that the proponents of human dignity may intervene in other states to protect or promote self-determination, even as totalitarian states do in promotion of totalitarian public order. In response, other commentators insist that such intervention would be in clear violation of the allegedly literal and neutral words of Article 2 (4). In a counter-response, the proponents of human dignity insist that they may lawfully intervene *after*, but not before, expansive totalitarian intervention in a state. In such controversy it is sometimes forgotten that what is involved in all instances is the application of the larger community’s fundamental policy, as embodied in Articles 2 (4) and 51, against *change* by unauthorized coercion and violence and that the underlying objectives of a state, whether for expansion or conservation, are among the most important features of the factual context for evaluating the lawfulness or unlawfulness of a state’s action.

The rational application of Articles 2 (4) and 51, in clarification of common interest, requires in every instance of challenged coercion and violence, not mere logical derivation from allegedly autonomous (policy neutral) rules, but rather a careful, configurative examination and appraisal of the many relevant features of the larger context of the coer-

³⁴ Cf. Steven C. Greer, *Military Intervention in Civil Disturbances: The Legal Basis Reconsidered*, PUB. L. 573 (1983).

³⁵ Cf. W. Michael Reisman, *Coercion and Self-Determination: Construing Charter Article 2 (4)*, 78 AM. J. INT’L L. 642 (1984). But see Oscar Schachter, *The Legality of Pro-Democratic Invasion*, 78 AM. J. INT’L L. 645 (1984).

³⁶ Cf. W. Michael Reisman, *Critical Defense Zones and International Law: The Reagan Codicil*, 76 AM. J. INT’L L. 589 (1982).

³⁷ Cf. Derek Bowett, *Reprisals Involving Recourse to Armed Force*, 66 AM. J. INT’L L. 1, 22 (1972); QUINCY WRIGHT, ET AL., *THE INTERNATIONAL LAW OF CIVIL WAR* (Richard A. Falk ed. 1971); FRITS KALSHOVEN, *BELLIGERENT REPRISALS* (1971); Barry Levenfeld, *Israel’s Counter-Fedayeen Tactics in Lebanon: Self Defense and Reprisal Under Modern International Law*, 21 COLUM. J. TRANSNAT’L L. 28 (1982); Guy B. Roberts, *Self-Help in Combatting State-Sponsored Terrorism: Self-Defense and Peacetime Reprisals*, 19 CASE WEST. RES. J. INT’L L. 243 (1987).

³⁸ Richard A. Falk, *The Beirut Raid and the International Law of Retaliation*, 63 AM. J. INT’L L. 415 (1969).

cion and violence.³⁹ For example, in relevant prescription the customary right to use force in self-defense is limited by the criterion of *necessity* to defend against an imminent, or exercised, use of force against the territorial integrity of a state or its political independence, and by the requirement of *proportionality* of the action taken in self-defense. Thus, the action defended against has to be appraised in its entire context: the participants have to be determined as well as their objectives (e.g., whether they are expansionist or conservative in nature), the situation of decision, the bases of power behind the activities, the strategies employed, and their immediate outcomes in intensities of coercion. If the activities complained of would lead a disinterested third party reasonably to conclude that use of the military instrument is urgently required to protect the target country's territorial integrity or political independence, then the target country may employ force in a reasonably proportionate response—the proportionality of the defensive action, again, being determined through comprehensive contextual analysis. What the proponents of a public order of human dignity cannot accept is that a double standard be established that discriminates in favor of expansive totalitarianism.⁴⁰

With the expansive totalitarian bloc disintegrating (contrary to the bedrock assumptions of many people), and many communities enjoying a new freedom, the global focus may shift to new problems and solutions. The chances for multilateral solutions through the international security system of the United Nations could improve. A very recent example is the United Nations Security Council authorization of the use of force by a group of states to drive Iraq out of illegally attacked and annexed Kuwait. Skillful diplomacy by the Bush Administration secured worldwide acceptance of a U.N.-sanctioned, but not U.N.-conducted multinational

³⁹ This position is believed to be established in MCDUGAL & FELICIANO, *supra* note 1, ch. 3.

⁴⁰ The importance of criteria of "common interest" to law was stressed by Soviet Foreign Minister Shevardnadze in a profound and eloquent address to the General Assembly on September 25, 1990. In demanding a "universal human yardstick of good and evil," he stated, *inter alia*, with respect to the United Nations' condemnation of Iraq's invasion of Kuwait: "An approach based on common interest does not permit any other course of action. From now on the world community intends to act by a single standard." U.N. Doc. A/45/PV.6, at 46, 47; *see also Excerpts From Shevardnadze's U.N. Address Calling for Iraq to Quit Kuwait*, N.Y. TIMES, Sept. 26, 1990, at A10.

police action under the leadership of the United States. Obviously, the role of the United States in forging the virtually universal consensus on the justness of the Gulf War cannot be underestimated. Even though the U.N. and its other member countries at times appeared to be reduced to the role of pawns in the global chess game, the very fact that the United States secured authorization for its coalition's measures from the U.N. Security Council gives a boost to the collective enforcement powers under the United Nations Charter. The price of going it alone was considered to be too high, and collective action was considered to be achievable since the prospect of superpower vetoes were eliminated through the use of backdoor diplomacy and the carrot, rather than the stick, approach.

The specter of a *Pax Americana* in the sense of the United States acting as a vigilante on the world scene, trying to enforce law and order against rogue tyrants or outlaw communities, is thus a less likely prospect than a benign American preeminence in the insistence upon negotiated solutions to festering problems. This tendency can be seen in the Bush Administration's drive toward a Middle East Peace Conference and a resolution to the Greco-Turkish dispute over Cyprus.

With the rising probability of internationally conducted or, at least, condoned, enforcement action, the question arises as to whether the taking of, or discussion of, pertinent Security Council measures supersedes or in any way impairs individual or collective rights of self-defense of the attacked nation and its friends. An argument could be made that self-defense becomes unnecessary once collective security measures have been taken or are contemplated.⁴¹ This reasoning, however, overlooks the fact that the collective security system will work only if the Article 51-customary law option remains operational. Otherwise, if individual action were disallowed each time a threat to peace is debated in the U.N. Security Council, needed timely individual acts of self-defense might be thwarted and, in effect, suicide imposed. International processes take time and are highly politicized. The victim of an attack may be on clearer and more solid legal ground if international bodies authorize the use of de-

⁴¹ Thomas M. Franck & Faiza Patel, *supra* note 18, at 63-64; *see also* Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AM. J. INT'L L. 452, 457-61 (1991).

fensive force, but that authorization cannot and should not take away the right of the attacked community to defend itself or the right of its friend to come to its rescue. A different result might be acceptable if there were an international police force that could act swiftly and without need for Security Council authorization in each individual case of aggression. The international system, in its present stage of development, however, does not provide a "policeman at the corner" who could ensure security, obviating the need for a state's inherent right to self-defense.⁴²

Besides the universal level, there are regional collective security systems whose enforcement actions are recognized by the United Nations Charter.⁴³ In particular, the Organization of American States (OAS) has legitimized, *inter alia*, military action undertaken in the Western hemisphere.⁴⁴ Interestingly, the European Community has undertaken to mediate in the Yugoslavian conflict, underscoring the Community's progression from a mere economic union to a regional political organization—extending its scope of action beyond its constituting treaties to a non-member state, and beyond the economic sphere to the area of security. Invitations to intervene, especially when extended by not yet es-

⁴² Cf. W. Michael Reisman, *Some Lessons From Iraq: International Law and Democratic Politics*, 16 YALE J. INT'L L. 203 (1991); Eugene V. Rostow, *Until What? Enforcement Action or Collective Self-Defense*, 85 AM. J. INT'L L. 506, 510-514 (1991). See also John Norton Moore, *War Crimes and the Rule of Law in the Gulf Crisis*, 31 VA. J. INT'L L. 403 (1991).

⁴³ Cf. Articles 52 and 53. Domingo Acevedo, *Collective Self-Defense and the Use of Regional or Subregional Authority as Justification for the Use of Force*, 78 PROC. AM. SOC'Y INT'L L. 69-74 (1984); Marvin G. Goldman, *Comment, Action by the Organization of American States: When is Security Council Authorization Required Under Article 53 of the United Nations Charter?*, 10 UCLA L. REV. 837 (1963).

⁴⁴ Compare the United States' naval blockade in the Cuban Missile Crisis, contextually analyzed by Myres S. McDougal in *The Soviet-Cuban Quarantine and Self-Defense*, 57 AM. J. INT'L L. 597 (1963); see also GRAHAM T. ALLISON, *ESSENCE OF DECISION: EXPLAINING THE CUBAN MISSILE CRISIS* (1971); ABRAM CHAYES, *THE CUBAN MISSILE CRISIS* (1974); ROBERT F. KENNEDY, *THIRTEEN DAYS* (1969); NIKITA KHRUSHCHEV, *KHRUSHCHEV REMEMBERS* 493-504 (1970); ARTHUR SCHLESINGER, *A THOUSAND DAYS* (1965); THEODORE SORENSEN, *KENNEDY* (1965); Todd Cranshaw, *A Test for Freedom: The Cuban Missile Crisis Revisited*, 1 ST. THOMAS L.F. 1 (1988). Another example would be the 1965 invasion of the Dominican Republic. See A. THOMAS & A. THOMAS, *THE DOMINICAN REPUBLIC CRISIS 1965* (1967). Controversy surrounded the claim by the Organization of Eastern Caribbean States (OECS), as a regional organization, to call on the United States to intervene in Grenada. Compare JOHN NORTON MOORE, *LAW AND THE GRENADA MISSION* (1984) with Christopher C. Joyner, *Reflections on the Lawfulness of Invasion*, 78 AM. J. INT'L L. 131 (1984). See also Ved P. Nanda, *The United States Armed Intervention in Grenada—Impact on World Order*, 14 CAL. W. INT'L L.J. 395, 409 (1984).

established governments, have, in some instances, been received with skepticism by the international community.⁴⁵

IV. THE CONDITIONS AFFECTING PAST ACHIEVEMENT OF BASIC COMMUNITY POLICIES

In considering the conditions that have affected past failures in humankind's achievement of a stable minimum public order, we have to analyze a maze of interacting predispositional and environmental variables.⁴⁶ The predispositional variables are the subjectivities of individual human beings, including their demands for values, their identifications with others, and their expectations about the context of social interaction. These relevant subjectivities may be organized by employment of the maximization postulate that individuals adopt one response rather than another when they expect to be better off in terms of all their values by the response chosen. The environmental variables are the features of the larger community context which condition and constrain predispositions.

As previously noted, a most important variable in the contemporary global process of effective power is what is commonly referred to as "the rising, common demands" of peoples for greater participation in the shaping and sharing of all the basic human dignity values. Different peoples, conditioned by differing cultural traditions and modes of social organization, may of course pursue and achieve the same basic values through different modalities and nuances in institutional practice. Unhappily, in a world of immense contrasts in degrees and directions of development, peoples nurtured in differing parochial communities may tend to express special, rather than common, interests. Unable to clarify and agree upon common interests, peoples often become preoccupied with short-term, immediate payoffs rather than long-term consequences. As the respect revolution accelerates, peoples' demands for new participation in the different value processes may become more realistic in

⁴⁵ Compare the Soviet Union's 1980 invasion of Afghanistan, its 1956 occupation of Hungary, and the crushing of the Prague uprising in 1968; *but* consider the 1989 U.S. occupation of Panama. For a general overview, see Louise Doswald-Beck, *The Legal Validity of Military Intervention By Invitation of the Government*, 56 BRIT. Y.B. INT'L L. 189 (1985).

⁴⁶ These variables are outlined, and described in some detail, in MYRES S. MCDUGAL, HAROLD D. LASSWELL & LUNG-CHU CHEN, *supra* note 3, ch. 1.

recognition of the need for reciprocity in promotion of common interest. The universalizing demands of individuals for greater participation in all value processes can be expected to continue to affect all effective and authoritative decisions.

The identifications upon which demands for values are asserted today range from the whole of humankind to small parochial groups. The earliest parochial identifications with the family and the tribe were broken, in part, by the advent of cities, facilitating later identifications with larger states. In more recent times, the "nation-state" has been the symbol around which individuals could organize their collective identifications.⁴⁷ Most elites who base their power largely on the symbol of the "state" have, of course, sought to inhibit more inclusive identifications that might limit their power. However, the potentialities for individuals to acquire and sustain more inclusive identifications, at least for the promotion of minimum order appears to be strengthening. The increasing tempo of interaction in all value processes about the globe, facilitated by modern communication and transportation, allows an individual not merely to change geographic location, but also to change "place" through identifications with many different functional groups. Individuals who participate in a vast global network of territorial and functional activities may be better able to identify with a common humanity and to demand its common interest. Nevertheless, aggression may turn out to be a constant of human behavior.⁴⁸ Respected Freudian theory assumes the existence of destructive alongside constructive tendencies. Continued violence, on an inter-state level, would thus come as no surprise.⁴⁹ We might see, and in fact are seeing, resurgences of parochial, nationalist, and funda-

⁴⁷ For a history of membership in the various types of territorial communities, see SIEGFRIED WIESSNER, *DIE FUNKTION DER STAATSANGEHÖRIGKEIT* 85-109 (1989).

⁴⁸ Cf. KONRAD LORENZ, *ON AGGRESSION* (1966). According to Lorenz, aggression, defined as the "fighting instinct in beast and man which is directed against members of the same species," *id.* at ix is phylogenetically programmed, not learned human behavior. *Id.* at 29, 237. This view is sharply attacked by Kim, *The Lorenzian Theory of Aggression and Peace Research: A Critique*, in, *THE WAR SYSTEM: AN INTERDISCIPLINARY APPROACH* 84-107 (Richard A. Falk & S. Kim eds. 1980); see also F. HARTMANN, *THE CONSERVATION OF ENEMIES: A STUDY IN ENMITY* (1982).

⁴⁹ DEAN G. PRUITT & RICHARD C. SNYDER, *THEORY AND RESEARCH ON THE CAUSES OF WAR* (1969); CHARLES REYNOLDS, *THE POLITICS OF WAR: A STUDY OF THE RATIONALITY OF VIOLENCE IN INTER-STATE RELATIONS* (1989); JOHN G. STOESENGER, *WHY NATIONS GO TO WAR* (4th ed. 1985).

mentalist tendencies. Even so, demands for minimum and optimum world public order are likely to intensify.

As to some of the more important environmental variables that characterize the global community process, the following observations are in order.⁵⁰

In the area of security, we note the following: a significantly reduced level of confrontation between former superpowers, with diminishing expectations of cataclysmic violence; an attenuation, if not elimination, of the East-West conflict, but a possible exacerbation of North-South and regional conflicts; threats of nuclear destruction and of chemical and biological warfare; the acquisition of contemporary instruments of destruction by smaller powers; and the rise and spread of private violence and terrorism.

The world's population is increasing at an accelerating rate. People are ever more unevenly distributed in relation to resources and ever higher barriers to migration are erected.

Resources, commonly referred to as "the environment," are spoiled, polluted and exhausted at an accelerating rate. New global threats to the environment are emerging, such as global warming, ozone layer depletion, etc. Increasingly, sharable resources are monopolized, with restraint upon scientific inquiry about resources. Deliberate and accidental climate and weather modification constitute both a promise and a threat. Significant resources continue to be diverted to destructive purposes.

The antiquated nation-state structures as well as weak international governmental organizations continue to persist, while significant, functional, transnational associations devoted to values other than power and wealth fail to emerge. Wealth and other private associations remain largely immunized from transnational authority.

As to particular value processes within the global community processes, we recognize, with respect to power, the rise of democracy and the retreat of totalitarianism within many communities. As to wealth, we note the following: continued prevalence of individual poverty; unequal distribution of wealth both within and across community lines; inadequate regulation of transnational monetary units; govern-

⁵⁰ This presentation is adapted from Myres S. McDougal, *International Law and the Future*, 50 *Miss. L.J.* 259 (1979). More recent developments are taken into account.

mental interferences with private trade; irrational allocations of resources and unequal development of resources; and continuing cycles of depression and inflation.

Concerning the value of respect, we observe widespread denials of individual freedom of choice about social roles; increasing individual differentiations and group hatreds upon grounds such as race, sex, religion, language, national origin—all irrelevant to individual capabilities and contributions; and massive encroachments upon individual autonomy and privacy through modern technology and increasing governmental bureaucratization.

As regards well-being, a high mortality rate and low life expectancy continue to prevail in many parts of the world. Incidents of famine, epidemics, and deadly disease are on the increase. Indiscriminate mass killings in armed conflict and other interactions are to be noted as well as the phenomenon of unexplained disappearances. Torture becomes ever more fashionable as a deliberate instrument of policy.

With respect to enlightenment, high rates of illiteracy and differential access to information persist in many communities. Deliberate fabrications of fact and disseminations of misinformation occur. We also note the unequal distribution of skills in modern technology and the rapid obsolescence of skills by changes in technology. Developing countries continue to suffer from brain drain to the developed. There are also restrictions upon the freedoms of skilled groups to organize and to function.

Loyalty in the name of the state continues to be required, resulting in the undermining of more universal loyalties. Severe restrictions upon freedom of association persist. Congenial personal relations are often frustrated by governmental action and sanctioned by social ostracism. Increasingly, human beings identify themselves with severely limited groups.

Freedom of worship and choices among secular criteria of responsibility are still often denied, and rectitude is politicized. Messianic religious fundamentalism is on the rise. On the other hand, we note continuing intolerance and persecution of religious minorities.

The intense interdependences among all the predispositional and environmental conditions make it possible to effect changes in the larger global community process,

including movement toward a more stable minimum public order, by making changes in, and managing, any of the various particular conditions.

V. PROBABLE FUTURES IN ACHIEVEMENT OF BASIC COMMUNITY POLICIES

Law concerns itself with the past and the present in aid of anticipating and shaping the future. Even in relation to a problem as difficult as that of establishing and maintaining a stable minimum world public order, the projection of possible futures, when inspired and disciplined by knowledge of past trends of achievement and their conditioning factors, may serve to stimulate creativity in the invention and evaluation of improved alternatives in decisions. One procedure for inquiry about the future, invented by Harold Lasswell, is that of deliberately formulating provisional maps of "developmental constructs" of future possibilities that range through a broad spectrum, from the most optimistic to the most pessimistic.⁵¹ When this method of inquiry is applied to the problem of minimum world public order, the contrast in rival constructs is stark.

The most optimistic developmental construct projects increasing progress toward a wider and more responsible sharing of power and a greater production and wider sharing in all the values of human dignity among the peoples of the world. This construct builds upon various assumptions about predispositional and environmental variables and their interaction. It projects that the widespread demands of peoples for a greater and more rewarding participation in all value processes will not diminish, but will rather intensify. Further, it projects that the contemporary largely parochial identifications of peoples may, despite recurrent phases of fragmentation, expand toward recognition, not merely of common humanity, but of shared community, and that peoples will achieve increasingly realistic perceptions of, and expectations about, their indissoluble interdependences in the shaping and sharing of all values. It projects

⁵¹ HAROLD D. LASSWELL, *WORLD POLITICS AND PERSONAL INSECURITY* (1935); *THE WORLD REVOLUTION OF OUR TIME: A FRAMEWORK FOR BASIC POLICY RESEARCH* (1951). See also Eulau, *H.D. Lasswell's Developmental Analysis*, II WEST. POL. Q. 229 (1958); WILLIAM ASCHER, *FORECASTING: AN APPRAISAL FOR POLICY-MAKERS AND PLANNERS* (1978).

also, among environmental variables, the following assumptions: that the accelerating rate of population growth can be controlled; that the resource-environment of the world can be protected from exhaustion and spoliation; that science and science-based technology can create vast new resources; that more economic, governmental and value-functional institutions can be created, and so on.

The most pessimistic developmental construct regards the direction of history as reversing itself and moving toward an aggregate of militarized and garrisoned communities, each controlled from the center and modelled on the prison. This trend could culminate in an all comprehensive, single totalitarian state, with a system of public order that, when finally entrenched, organizes the global community into a vast hierarchical pattern under the rule of a self-perpetuating military caste. This construct builds upon the following assumptions from among predispositional variables: that the peoples of the world will not be able to clarify their genuine common interests, but will rather pursue short-term special and exclusive advantages; that the identifications of peoples will remain territorially bound and parochial, rather than extending to a common humanity; and that peoples' expectations will in general remain diffuse, truncated, and unrealistic, and include, in particular, an anticipation that violence will be so high and pervasive as to provide a chronic justification for the continuing military mobilization of humankind. The assumptions made in this construct about environmental variables are of course largely the opposite of those that sustain the optimistic construct. Even the natural resource environment could conspire with other factors to make life nasty, brutish, and short. In added pessimistic expectation, technological factors could make achieving the community control of nuclear and biological weapons that is necessary to their legal regulation impossible.

Whatever mid-extreme constructs that may be drawn between these two extremes, most observers today agree that contemporary world public order is undergoing transformations of unprecedented magnitude and scope and that such change is likely to continue at an accelerating rate. Happily, any particular developmental construct is not inevitable in outcome. The future may, in ways about which we do not

yet know, be inevitable, but statements about the future, made in the light of present knowledge, cannot fathom the inevitable and may be accorded differing degrees of probability, subject to change. This indeterminacy of the future presents the proponents of a world public order of human dignity with the opportunity, as well as the desperate necessity, to refashion the global constitutive process of authoritative decision in modalities better designed to secure both minimum public order and other community demanded values.

The struggle between contending ideological world orders appears to be receding, if not vanishing. Broad realignments are possible probably along economic lines. The G-7 is a possible model for the restructuring of the Security Council or similar inclusive authorities providing for an effective international security system.⁵² The first, uncertain steps of the unified Germany on the world scene make an accurate prediction of its future role somewhat difficult. It, as well as Japan, will probably be included, and play a large role, in any inclusive security system. The North-South and regional conflicts will continue unabated, if not exacerbated, through the combined effects of the burdens of international debt,⁵³ overpopulation, environmental spoliation and the pursuit of special interests.

VI. ALTERNATIVES FOR IMPROVED ACHIEVEMENT

The optimalization postulate, assuming that individuals act within their capabilities to maximize their values, and the many historic successes of law as an instrument for the clarification of common interest, would suggest that by appropriate modifications in perspectives the peoples of the world can be encouraged to move toward both the establishment of more effective decision processes and the making of more rational specific decisions about public order values. It is hardly a novel thought that these factors—culture, class, interest, personality, and crisis—which importantly condition peoples' perspectives can be modified to foster constructive rather than destructive perspectives.

There are of course multitudinous modalities in institu-

⁵² W. Michael Reisman, *International Law After the Cold War*, 84 AM. J. INT'L L. 859 (1990); see also WILLIAM K. DOMKE, *WAR AND THE CHANGING GLOBAL SYSTEM* (1988).

⁵³ Cf. GEORGE MACESICH, *WORLD DEBT AND STABILITY* (1991).

tion and policy that might be employed, if appropriate perspectives could be created in the peoples of the world, to move the existing global process of authoritative decision toward a more secure, free, and abundant world public order. For centuries philosophers, clerics and kings have proffered plans for perpetual peace.⁵⁴ Contemporary proposals abound for various forms of world government and lesser modifications of existing institutions and practices.⁵⁵

In the absence of comprehensive and detailed studies, it is difficult to offer a definitive illustration of the changes in policies and measures that might transform the existing global constitutive process into a more effective instrument of minimum and optimum orders. Highly impressionistic suggestions of the kinds of policies and measures that could, in appropriate context, point in the direction of a more secure, free, and abundant world public order may, however, be possible.⁵⁶ We proceed phase by phase through the features of existing global constitutive process.

A. Participation in Decision-Making

We should seek a more genuinely representative and responsible balancing of power through the creation of more rational and effective intergovernmental regional organizations. We should encourage the creation of political parties, pressure groups, and private associations, dedicated to all values, for participation in transnational activities and legal functions. We should recognize the importance of the indi-

⁵⁴ For an overview see McDUGAL & FELICIANO, *supra* note 1, ch. 4, in particular, at 263-66.

⁵⁵ For an introduction to the literature, see RICHARD A. FALK, *EXPLORATIONS AT THE EDGE OF TIME: THE PROSPECT FOR WORLD ORDER* (1992); BENJAMIN B. FERENCZ, *A COMMON SENSE GUIDE TO WORLD PEACE* (1985); S. MENDLOVITZ, *ON THE CREATION OF A JUST WORLD ORDER: PREFERRED WORLDS FOR THE 1990'S* (1975); JOSEPH A. MIKUS, *BEYOND DETERRENCE: FROM POWER POLITICS TO WORLD PUBLIC ORDER* (1988); JOHN A. PERKINS, *THE PRUDENT PEACE* (1981); *ALTERNATIVE SECURITY: LIVING WITHOUT NUCLEAR DETERRENCE* (Burns H. Weston ed. 1990); THE INDEPENDENT COMMISSION ON DISARMAMENT AND SECURITY ISSUES, *COMMON SECURITY: A BLUEPRINT FOR SURVIVAL* (1982); *THE UNITED NATIONS AND A JUST WORLD ORDER* (Richard A. Falk, Samuel S. Kim & Saul H. Mendlovitz eds. 1991); Richard A. Falk, *A New Paradigm for International Legal Studies: Prospects and Proposals*, 84 *YALE L.J.* 969 (1975). See also HIDEKI SUGANAMI, *THE DOMESTIC ANALOGY AND WORLD ORDER PROPOSALS* (1989).

⁵⁶ In his address before the United Nations General Assembly of September 25, 1990, Foreign Minister Shevardnadze outlined many potentially effective reforms. See *supra* note 41. He emphasized the need for control of armaments, nuclear testing, and the production of chemical and biological weapons.

vidual human being, as ultimate actor in all organizations, through provision of increasing access to all authoritative arenas and functions.

B. Perspectives: Basic General Community Policies

It is crucial to reinforce our commitment to minimum order, i.e. that no change be effected by unauthorized coercion and violence, by explicit recognition of the complementarity of Articles 2 (4) and 51 of the United Nations Charter, while emphasizing a broad conception of self-defense. Article 2 (4) should be interpreted to prohibit expansionist activities. Article 51 should continue to be read to authorize states to take measures in self-defense when attack is imminent, without necessity for awaiting the fact of armed attack. A right of humanitarian intervention should be recognized. It should be strictly limited in purpose and scope, temporary in duration, and subject to the requirements of international responsibility of intervening parties. Also, our commitment to optimum order should be reinforced by consolidating the emergence of a global bill of human rights through appropriate application of the Charter, the major covenants, national decisions, and customary behavior.

C. Arenas: Structures of Authority

Structures of authority should be balanced in geographic range between centralized and decentralized, and integrated in a way to take into account the intensity of reciprocal impacts within different geographic areas. The scope and authority of the executive within international governmental organizations should be expanded. Panels of skilled experts for the voluntary settlement of disputes by mediation, conciliation, arbitration or adjudication should be provided. With modern technology, these panels could be moved quickly about the world for sessions in convenient locations.

Compulsory jurisdiction for adjudication might be increased with respect to matters not directly involving state security.

D. Bases of Power

The promotion of minimum and optimum order might be

enhanced by a more pluralistic distribution of both authority and effective control.

1. Authority

Insofar as compatible with the genuine security interests of states, claims of "political questions" and "domestic jurisdiction" that immunize activities from legal evaluation, should be rejected. To protect inclusive interests, inclusive institutions should be accorded a more ample competence with respect to the intelligence, promotion, appraisal, and invocation functions; with respect to the prescription, application, and termination functions, they should be accorded a broad competence on matters that do not endanger the security of states. The separate states should be allocated the competence necessary to protect their exclusive interests, and settle conflicts between themselves by the criteria of reasonableness as determined through a disciplined, systematic examination of the features of the larger context that affects both exclusive and inclusive interests.

2. Control

Through coalition, alliance, and regionalization, the control of the resource bases of the earth-space community should be more rationally organized. By agreement and unilateral action, the resources being devoted to armaments and military purposes should be reduced. Multiple networks of transnational associations, governmental and private, should be expanded to increase the greater production and wider sharing of all the values that affect power, as well as the quality of life. Educational institutions should be encouraged to increase their inquiries about the conditions, policies, and alternatives necessary to an improved world public order. The technologies of modern communication should be employed to promote a world public opinion that demands and sustains a public order of human dignity.

E. Strategies: Authoritative Procedures

We should strive for an appropriate integration in support of public order of all strategies—diplomatic, ideological, economic, and military—with a strong emphasis upon persuasion rather than coercion. In revival of Chapter VII of the United Nations Charter, our goal should be to collec-

tivize and centralize such coercion as may be necessary and proportionate to the maintenance of public order. The diplomatic instrument should be enhanced by minimizing the employment, other than in relation to matters affecting the security of states, of special majorities and vetoes, and by rationalizing the law of international agreements. Free transnational channels of communication should be maintained for more effective employment of the ideological instrument. The economic instrument should be used to improve the channels of trade, financial assistance, and development in the greater production and wider distribution of goods and services. In performance of decision functions, the best available scientific procedures should be utilized to explore facts and potential policies, and make findings as contextual, dependable, and creative as possible. In prescriptive and applicative decision, the final characterization of facts and policies should be deliberate, rational in relation to goals, and non-provocative, employing contextual analysis in evaluation and choice of alternatives.

CONCLUSION

A fundamental restructuring of the world social and constitutive process is taking place before our very eyes. The host of national "reawakenings" and redefinitions of communities amount to revolution on the global scale. Eternal peace,⁵⁷ however, is not imminent. Immanuel Kant's dream is not likely to be realized soon because of the continuing fierce struggles among peoples for wealth, power and other desired values. What we see, with pleasure, though, is that peoples, increasingly, are taking control of their destinies. Individual human beings are demanding more power, more wealth, more influence over their lives—and they are getting it. The current situation in Haiti may be but one retarding event in the global move toward peoples' taking ever greater control of the shaping and sharing of the values of human dignity.

We may contribute, through thorough contextual analysis of problems of minimum world public order, and blueprints for reform, to closely approximate the optimum order of the

⁵⁷ Cf. IMMANUEL KANT, *PERPETUAL PEACE: A PHILOSOPHICAL ESSAY* (C. Smith trans. 1903).

full realization of our human potential. To guide in this quest, however, a leader of the stature of Cordell Hull is sorely needed.