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THE SOVEREIGN STATE AND UNIVERSAL PEACE

Cornelius F. Murphy, Jr.*

"I would rather be known not for the fact that I ended a war but for the fact that I won a lasting peace."

Richard M. Nixon

I. Introduction

However else they are divided, the Great Powers are together in one essential respect. They agree that international order should be built upon the relations between sovereign states. In the foreign policy of the Soviet Union, and that of the Communist Bloc, a commitment to the state is seen as a necessary consequence of Marxist-Leninist theory. The position of peoples in their struggle for emancipation is reflected in the state which is the personification of whatever class holds dominant power in any given society. To coordinate the wills of peoples living under diverse social systems, the intergovernmental confrontation of sovereigns is indispensable. Since each state expresses a particular stage of development, it also provides a convenient focal point upon which to establish the laws of peaceful coexistence.¹

A similar commitment to the state is an integral part of American foreign policy and international theory. The reasons are historical as well as philosophical. Sovereign independence was an essential part of the revolutionary break with Great Britain, and a general desire to transform the world into this ideal has been an enduring part of our diplomatic history. More important has been the attraction of ideas of equilibrium.

The economic theory of "laissez-faire" postulated that the energies of many in market competition would result in a happy balance. The interests of each and those of the social whole would coalesce. The same fascination with the positive effects of autonomous action has held sway in the field of international affairs. The Western mind is deeply attached to the ideals of nineteenth-century European diplomacy manifested by the Concert of Europe. Following the Napoleonic wars, statesmen such as Metternich and Castlereagh sought, and in large measure attained, a system of external tranquility premised upon the self-equilibrating consultations of the leading sovereign powers.

Optimistic reliance upon forms of equilibrium as a source of order has been prominent in American foreign policy since the Second World War. When a coordination of policies with the Soviet Union proved impossible, the United States sought to offset a superpower confrontation by the development of regional coalitions responsive to American direction and nuclear strength. As it became difficult to translate abstract military strength into concrete policy, the

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hegemony of American power eroded. In addition, the prevailing military bipolarity was weakened by the emergence of new nations and the renewal of nationalism in older states. A gradual shift from the reign of superpowers to a field of multipolar politics necessitated new modalities of order.

In response to this political pluralism, the United States has sought to give new form to the equilibrism ideal. Protectorate strategies are being replaced by policies of partnership. A greater emphasis upon regional autonomy and self-sufficiency encourages the self-reliance of independent states. By seeking to harmonize the activities of free states, the Nixon doctrine hopes for an international tranquility comparable to that peace of equilibrium which was so dear to nineteenth-century statesmen.2

A commitment to state sovereignty is also an essential part of the international policies of the developing nations. The premise that only states can become full members of the international community has been of great importance to their struggle for independence. Once possessed of the requisites of statehood, the emerging nations have become entitled to all the privileges and capacities which flow from sovereign independence. Bilateral relations with established states upon a basis of equality is an immediate consequence of vast importance. The new states participate in the affairs of international organizations with voting power and institutional recognition which often exceed their population base and actual power. The postulate of sovereign equality upon which the United Nations is premised makes it possible for developing nations to influence U.N. policies in ways which are particularly to their advantage. The decolonization program of the General Assembly and the emerging economic policies of UNCTAD are examples of the manner in which the state-centeredness of international life has been a distinct advantage to the poorer nations of the world.3

International political theory considers the state as indispensable to human progress; a similar belief pervades international legal thought. The Marxist understanding of the state as the personification of a class provides international lawyers with an insight which has juristic, as well as political, importance. The perception that the state is a reflection of underlying social relations makes it possible for law to overcome the limitations of the positivistic jurisprudence which has dominated international legal theory.

Upon the premises of positivism, international law consisted of rules derived

2 See Rostow, Law, Power and the Pursuit of Peace (1968). The present emphasis upon equilibrium in American foreign policy is expressed in major addresses by President Nixon. See, e.g., his first annual foreign affairs message to Congress, New York Times, Feb. 19, 1970, at 19. The theoretical basis of the Nixon doctrine can be found in the writings of his special advisor, Professor Kissinger. See, e.g., H. Kissinger, American Foreign Policy (1969), which stresses the theme of political multipolarity, and A World Restored; Metternich Castlereagh and the Problems of Peace 1812-22 (1957). The theory, it should be observed, does not advocate stability as an end in itself, but as a means of assuring a universal well-being which will result from the creative initiatives of states.

from a coordination of transcendental sovereign wills. While the thesis had advantages—such as logical consistency—it also had serious failings. Its “metaphysical” character promoted the notion of the state as an end in itself, and its unlimited voluntarism often masked the will to power of aggressive nations and political leaders.4 The advent of Marxism created new jural possibilities. Its sociological origins shifted attention from the metaphysical to the concrete as the starting point of ideological analysis. It provided jurists with a methodology by which they could moderate the transcendental ambitions implicit in prevailing legal theory.

Remaining within a framework of sovereignty, the jurist could substitute the will of peoples for the abstract voluntarism of classical theory. Conscious of the real relation between the state and underlying social structures, the international lawyer could revitalize basic jural concepts which had traditionally been the vehicles for the domination of weak states by the metaphysical will of the strong.

In such an approach sovereignty, and related concepts such as recognition and succession, are no longer the pure abstractions of classical voluntarism. Nor do they evidence a status conferred by existing states whose superior power places the existence of statehood within their discretion. Sovereignty is a radically subjective notion, caused by the emergence of peoples whose aspirations provide the content of sovereign will.5

From the perspective of the jurist, the state remains at the center of international development and order, but it now implies a theory of sovereignty which is humanistically persuasive. The reason for international law is no longer to coordinate transcendental entities which confront each other across a social void. As states and peoples are convertible terms, only human beings face one another upon a universal plane. And in assisting the realization of these separate wills the lawyer actively promotes the welfare of mankind.

This new direction is prevalent among lawyers educated on the continent of Europe. In the Anglo-American tradition, lawyers look toward a state-centered universal order for reasons which parallel the political theorists’ attraction towards equilibrium. From the lawyers’ perspective, the crucial notion is reciprocity.

Taking the decentralized character of international life as a given datum, legal philosophers such as McDougal refuse to permit it to obstruct the purposeful growth of legal theory. They insist that within the power processes of international life it is possible to discern certain stable characteristics normally associated with the existence of a legal order. Careful observation reveals a high degree

4 There is a good exposition of this development in C. DeVisscher, Theory and Reality in Public International Law (Corbett Trans. 1957). The development through the 19th century is traced in J. Westlake, International Law (1897).

5 The movement of international legal theory in this direction is exemplified in the writings of Charles Chaumont, Professor of Law at the University of Nancy. See, e.g., his essay on the Vietnam War, Chaumont, A Critical Study of American Intervention in Vietnam, in 2 The Vietnam War and International Law 127 (Falk ed. 1969). A more developed exposition is made in his General Course Lecture, Hague Academy of International Law, Summer, 1970, which the present writer attended. The lectures will be published in a forthcoming volume of the Recueil des Cours.

of mutual deference and restraint which make possible both the realization of common expectations and the wide diffusion of human values. Because law is formed horizontally, through the interaction of sovereign states, the absence of a super national authority is not fatal to legal development.6

In surveying the varied intellectual disciplines which support international sovereignty some mention should be made of the philosophical assumptions which ultimately explain political and legal theories. Marxist dependence upon an inverted Hegelianism is well known, but the philosophical premises of other political and legal theories are not sufficiently appreciated. Idealism, for example, affects a considerable amount of the reflection upon state sovereignty. The tendency to personify the state can be observed in all systems which restrict thought to forms of self-consciousness, and this is particularly the case with theories of the state which are prevalent in Europe. The Kantian noetic, with its fixation upon the transcendental ego, transfers to the ideal of jural sovereignty the virtually unlimited subjectivity which it attributes to the individual. This has had considerable influence upon international legal theory, where restrictions upon the state are often viewed as autolimitations arising from the requirements of universal good will.7

More recent legal thought has gained a greater concreteness in its search for sovereign will, but it retains much of the mental apparatus of idealism. While it insists that real people exist behind the juristic state, the humanity in question remains as abstract as the fiction it is designed to replace. The state is people; cognition of concrete human persons distinct from the state remains outside the intellectual frame of reference.8


There is some argument whether this approach leads to the discovery of legal rules, or merely to an identification of convergent state policies. The work of Professor Falk reflects this difficulty. Somewhat skeptical about the jural possibilities of sovereign confrontation, Falk has placed the problem of order in a broader perspective. To gain a better comprehension of authoritative conduct, he studies the interplay of effective patterns of order with formal legal norms which possess a low degree of behavioral impact. Through this methodology he has gained valuable insights into the influence of the normative expectations of the United Nations upon the de facto practices of sovereign states. See, e.g., R. Falk, The Status of Law in International Society (1970) and more particularly his essay, The Interplay of Westphalia and Charter Conceptions of International Legal Order, in I The Future Of The International Legal Order (Falk and Black ed. 1969). Falk's differences with the McDougal approach are explained in his essay, McDougal and Feliciano on Law and Minimum World Public Order, in R. Falk, Legal Order In A Violent World 80 (1968).

7 For a general critique of idealism see J. Maritain, The Dream of Descartes ch. 5.

8 Compare Brierly's observations on the influence of Rousseau: "... Rousseau conceived of the state or sovereign as a unity, but still as a unity very definitely composed of associated human beings. From that conception the transition to the conception of the state as an abstract person, with a transcendental existence of its own separate from and far superior to that of individual human beings, is one that would have struck at the roots of Rousseau's own conception of the social bond, but it is also a transition to which his philosophy easily led ... from the international point of view there is little practical difference between the sovereign monarch of Hobbes ... the sovereign personne publique of Rousseau ... and the sovereign state, the end-in-itself or the perfect realization of the rational free will of Hegel. J. Brierly, The Basis of Obligation in International Law 28-29 (1958).
A further influence is that of philosophical anthropology. This branch of modern thought seeks to understand man, his institutions, and his universe in terms of concrete human experience, rather than through the modalities of abstract thought. Applied to political and legal theory, it attempts to understand these social structures in terms of human evolution. Legal institutions, like all social phenomena, pass through various stages of growth, from rudimentary to more sophisticated forms of organization. From this point of view the absence of super national authority is not an impediment to legal order. It simply reflects the fact that man at this stage of global history has chosen to be governed by a decentralized form of order. Higher forms of organization may appear in the future, but the present horizontal system is validated by the evolution of human consciousness and understanding.  

If we consider the cumulative effect of these varied approaches, the attraction to state sovereignty appears irresistible. Those who approach international affairs in terms of ideological struggle consider the state as indispensable to human progress. Where ideas of balanced equilibrium are influential, the construction of international society through the active cooperation of viable states is a basic premise of foreign policy. When poorer nations evaluate their universal needs, statehood is considered to be essential to progress.

The approach of jurisprudence complements that of political science. Jurists see humanistic possibilities in attributing to sovereign will the aspirations of peoples toward development and reconciliation. Moreover, the nonexistence of a super national authority does not prevent an ordered reciprocity from developing within the horizontal interactions of autonomous states. Finally, beneath the active support of the state as the supreme universal authority, there lie intellectual convictions which appear to be unshakable.

The difficulties surrounding a critique of state sovereignty can be overcome if the matter is properly approached. Too often this has not been the case. Critics of the state system have not only overlooked the reasons for its duration, they have also failed to take an overall view of the needs of international society. As a result, their attacks upon sovereignty have not been persuasive. This is especially true of arguments concerning the responsibility of states for the maintenance of peace.

II. An Age of Instability

A. Inconclusive Peace

Apologists of sovereignty contend that reliance upon the state is the best guarantee of peace. The point has some cogency. It can be argued that equilibrium of military power has prevented a nuclear holocaust from engulfing the Great Powers. But the defense of sovereignty runs much deeper. The continuance of the state is not justified exclusively in terms of its capacity to deter.

Balances of terror are unsatisfactory; the possession of ultimate authority implies the possibility of more positive accomplishment.

States which adhere to Marxism promise peaceful coexistence; Great Powers of every persuasion proclaim their ability to extinguish armaments of destruction. What is of importance is the common contention that war is not a necessary consequence of sovereignty. Men dedicated to continuance of the nation-state system are convinced that wars only occur because a state, or group of states, has aggressive designs upon its neighbors. Not only can such threats be met with counterforce; the apologists of sovereignty believe that potential aggressors can be reconciled within the creative equilibrium of free and responsible states.¹⁰

There have been many denials of this optimistic prognosis, refutations which seek to indict absolute sovereignty as the principal cause of violence.¹¹ But these dissents are inconclusive because they approach the problem primarily from the perspective of interstate confrontation. To grasp the essence of the question of peace, state sovereignty must be analyzed from a different angle. The major issue in the contemporary world is not whether states inevitably make war; it is, rather, whether they have the ability to establish lasting peace. The distinction is admittedly subtle, but, when understood, it reveals the reasons why the interstate system is incompatible with human well-being.

The history of the twentieth century is characterized by the instability of peace. To the common mind, there has occurred a series of distinct wars—comprehended as acts of aggression or self-defense—which were followed by victories or defeats. But the actual record is quite different. The century’s major violence can be better understood not in terms of two distinct world wars, but rather as a long period of warfare and discord, principally between the Anglo-European states, whose hostilities were temporarily suspended by a 1918 “armistice.”¹² If such an appraisal seems too imaginative, it is unquestionable that the “second” world war, at least in its European phases, has never been finally settled. Further, on strictly legal grounds, the Korean War is at the status of an armistice which looks forward to an eventual, albeit remote, political settlement.¹³

A similar instability pervades the Middle East. From the time of the Balfour Declaration until the present, the area has been torn by the antagonistic

¹⁰ This is clearly the conviction of President Nixon, as expressed in his policy addresses quoted supra note 2. It is also the viewpoint of Professor Chaumont, the leading international legal theorist in Europe. Such optimism probably draws its inspiration from the successful reconciliation of France within the European system at the conclusion of the Napoleonic wars. In any event, it is an important positive aspect of sovereign theory which is obscured by “realistic” analysis which sees sovereignty merely as a struggle for domination.

¹¹ See, e.g., ADLER, HOW TO THINK ABOUT WAR AND PEACE (1944).

¹² See, e.g., ADLER, HOW TO THINK ABOUT WAR AND PEACE (1944).

and seemingly incompatible claims of Jews and Arabs. The conflicts have intensified, and uncertainties increased in spite of repeated efforts by states of the international community to establish permanent peace. A comparable sense of indefinite warfare is the dominant feature of life in Southeast Asia. As the Vietnam hostilities spill over into neighboring countries, the prospects of bloodshed appear to be endless.

Ironically, while a feeling of constant insecurity spreads across the globe, optimistic reliance upon states as a source of universal order intensifies. Assertions that the state is a creative peacekeeper and peacemaker are made as boldly in 1971 as they were at the dawn of the century. Convictions of political science, legal theory and practical necessity continue to uphold the state as the central authority for the maintenance of world order. Yet it is obvious to any impartial observer that states have failed to attain lasting peace. Man has surely suffered from aggression of states, and he is kept in fear by their possession of nuclear weapons. But, at the present stage of history, man should be more concerned about what the states cannot do than by their propensities towards violence. The primary problem of our time is the prospect of universal anarchy, a danger more related to the inability of states to establish peace than to their inclinations to make war.

One reason for this impotence lies in the jural nature of the state. While it may be described as the embodiment of certain values, or a unit of power, the state must function according to legal criteria. Kelsen's idea of the state as a supercorporation, a point of juristic unity, highlights the extent to which its activity is enveloped in juridical formula. It is marked with this character in its international, as well as its domestic, operations. It understands universal affairs as experiences which occur on a plane of sovereign relations.

An inherent legalism, activated at a level of supreme juridical relationships, prevents the state from being an effective instrument of universal peace. Given the premises of sovereign juridicism, global conflicts are conceptualized in terms of interstate confrontations, when in reality the underlying antagonisms have more to do with the political destiny of an area than with a clash of sovereign entities. And these internal forces, working beneath the surface of juridical formula, elude the external power and diplomacy of states. Some historical instances of instability are illustrative of this separation of international theory and social reality.

In Europe, a final settlement of the Second World War has been complicated by the existence of two German governments. In particular, the emergence of East Germany, with its claims to sovereign independence, has generated a whole range of additional problems which divert attention away from the fundamental issues. What is essentially a matter of the political rehabilitation of a defeated nation has been transformed into a question of formal sovereign relations. Recognition or nonrecognition, the legal effects of dual governments, the possibility of separate peace treaties; these, and related issues, engage the talents of diplomats, political scientists, and lawyers.15 But the difficulty is that

15 There is a general survey of the legal complications in Mann, Germany's Present Legal Status Revisited, 16 Int'l and Comp. L. Q. 760 (1967). The official United States position,
these aspects of sovereign legal relations tend to occupy the field. They become matters of primary concern, while underlying sociopolitical questions, whose resolution is indispensable to a conclusive peace, are ignored or forgotten.

Comparable approaches have dominated the Korean question with similar inadequate results. There, the continuing conflict and antagonisms are understood as hostilities between two states, or in terms of the aggressive intentions of North Korea towards its neighbor. Such comprehension is perfectly understandable, indeed necessary, in light of the armed attack of June, 1950, against the recognized Republic of South Korea. What is unfortunate is the fact that such an approach has become the exclusive form of analysis. American policy towards Korea is reduced to a single value: the defense of the sovereign independence of South Korea from external aggression. Such a policy is surely legitimate; its weakness lies in its inability to grasp the essence of the controversy. The Korean War was a tragic episode in a long historical effort of the Korean people to gain national independence; the existing separation results from the divisive impact of ideologies upon that process. This deeper urge towards national cohesion must be accounted if there is to be a permanent peace; yet it is forgotten in the reduction of the Korean question to a matter of relations between sovereign states.

The interminable bloodshed in the Middle East further illustrates the insufficiencies of state-centered forms of peacemaking. There is an inveterate tendency of those with responsibility for settlement to conceive of the problem in terms of the jural relations between states. Obviously this method is important since the legitimate existence of Israel is an essential element of the controversy. Moreover, since the actual hostilities have often taken the form of traditional international warfare, they must be controlled within that frame of reference. But lasting peace depends upon consideration of forces operative within a different dimension.

Both within and outside the United Nations the Middle East crisis is handled as though it could be finally settled on the basis of interstate law and policy. Great Power efforts to achieve a settlement are premised upon the optimism of traditional diplomacy; broadening of common interests in stability is the primary...
strategy for peace.\textsuperscript{18} Within the United Nations, expectations of permanent peace are centered upon the November 22 Resolution\textsuperscript{19} which seeks to encompass the tragedy within the formal criteria of interstate relations. It calls for an end to the status of belligerency, stresses the inadmissibility of territorial acquisition by war, and demands the establishment of a lasting peace by the sovereign state parties with the assistance of a United Nations representative. All of these efforts are praiseworthy, but they cannot achieve lasting peace. They miss the mark, because their state-centeredness draws them away from the heart of the controversy: a clash between the aspirations of political Zionism and Arab Nationalism over Palestine.\textsuperscript{20}

B. Revolutionary Change

These examples of continuous instability are not proofs that states are absolutely incapable of establishing peace. But they do challenge a major premise of the sovereign state system. The legal and political theories offered as justifications of sovereignty promise mankind an enduring tranquility in exchange for the conferring of supreme international authority upon states. Not only is the premise contradicted by the preponderance of historic evidence, it becomes even more questionable in light of the developing nature of human conflict.

The separation between sovereign theory and social reality which has been growing since the First World War threatens to become catastrophic in the present period of history. In addition to the unsettled questions of the Second World War and Korea, the world community is faced with a pervasive phenomenon of civil strife which has global implications. We are conscious of the increasing significance of internal political forces whose violent collision with established governments can substantially influence the stability of large regions. A continuous struggle against the remnants of racism and colonialism, the spread of Marxist-Leninist ideologies to areas of economic discontent, the violent urge for new ethnic or nationalistic expression—all reflect a general upheaval which has made revolution a dominant feature of contemporary life. These powerful impulses, which rise from the roots of social life, threaten to topple the state system of order whose instruments of power, law and diplomacy operate within a distant and ineffectual realm of supreme sovereign relations.

To this dim prognosis one may reply that, in time, the underlying political forces will be incorporated into the existing system of universal relations. Jurists have already drawn the abstract sovereigns of classical theory down to the concrete will of peoples. And the fact that the United States has begun to negotiate with the Viet Cong at Paris suggests the possibility of a general reconciliation of divergent political realities. But such optimism fails to grasp how international theory and practice considered as a whole are not conducive to such adaptation. It fails to appreciate the degree to which the premises of sovereignty are in-

\textsuperscript{18} See the views of former Ambassador Ball in \textit{Slogans and Realities}, 47 \textit{Foreign Affairs} 623 (1969).


compatible with the changes which must occur if some enduring stability is to be realized within the human community.

The response of international theory to the phenomenon of internal revolution has been a restatement of traditional norms dealing with intervention. The Vietnam War provided an opportunity for scholars to rejuvenate long-standing jural concepts designed to contain the violence flowing from civil wars and domestic, internal disorder. The events also suggested the need for a sober reevaluation of the policy factors relevant to any interventionary decision. These efforts have had some impact upon the practices of states. More important for present purposes have been the efforts of the United Nations to transform the violence of internal political upheaval into a process of peaceful change. These attempts are important if only because they illustrate the extent to which the highest international authority has been inhibited by the logic of sovereignty from realizing its pacific purposes.

Within the General Assembly the problem has been viewed as a matter of reconciling two ideal principles: the sovereign equality of states and the self-determination of peoples. Such a formulation is consistent with the structure of the organization. Theoretically, its commitment to sovereignty can be extended to existing states and to political movements which are advancing toward statehood. But the United Nations must rely upon its members to work out an adjustment between present and emerging power. The available evidence suggests that they are incapable of making the necessary accommodation between established sovereignty and revolutionary change.

The immediate difficulty is existing power relations. For example, the process of decolonization is incomplete because the recalcitrant states possess a sufficient measure of financial and military power to temporarily resist the inevitable. But the problem runs much deeper. The juridical logic of state sovereignty is, in the long run, as much of an impediment to peaceful change as is any existing balance of power. The normative structure of the nation-state system is so heavily oriented towards an adjustment of the external relations of states that it cannot adapt sufficiently to the exigencies of modern violence. This obstacle of theory, so often overlooked in the concrete affairs of state, has been painfully evident in the working of committees established by the United Nations to reconcile sovereignty and self-determination.

The impediment is revealed in the workings of committees established by the General Assembly to develop policies of stability. It can be observed that some progress towards a consensus of order is made whenever the objective of peace is posed within a framework of sovereign state relations. But the capacity of member states to translate Charter aspirations into working precepts diminishes to the degree that the question is one of intrastate violence. For example, the Special Committee on Friendly Relations quickly formed a consensus on the

22 See, e.g., Morgenthau, To Intervene or Not to Intervene, in A NEW FOREIGN POLICY FOR THE UNITED STATES (1969).
23 More precisely, emerging political forces may become the new governments of member states or they may achieve a status of independent statehood and then be admitted as a new member of the organization.
principle of sovereign equality of states, but it has been unable to establish a concrete agreement on the meaning of the principle of equal rights and self-determination of peoples.\textsuperscript{24} Similarly, while it could agree that states have a duty to refrain from the threat or use of force against either the territorial integrity or political independence of a state, it was unable to maintain a consensus when the problem of force was related to the phenomenon of revolutionary upheaval.

If the use of force against the political independence of an established state is unlawful, it is logical to maintain that the use of force against the inalienable rights of peoples struggling to realize their independence should also be proscribed. Further, as states have a right of self-defense to protect their independence, similar defensive rights arguably attach to liberation efforts; even to the extent of seeking and obtaining assistance from other states.\textsuperscript{25} When it is

\textsuperscript{24} Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation Among States. The Committee was established on December 19, 1963 by G. A. Res. 1966 (XXI). II. On the consensus concerning sovereign equality, see the report of the 1964 Committee 20 U.N. GAOR, annex items 80-94 U.N. Doc. A/5746 (1965), reprinted in 4 INTERNATIONAL LEGAL MATERIALS 28. There is a general summary of the Committee's early work in McWhinney, The "New" Countries and the "New" International Law: The United Nations' Special Conference on Friendly Relations and Cooperation Among States, 60 AM. J. INT'L L. 1 (1966). The question of equal rights and self-determination was considered during the 1967 session of the Special Committee with no agreement on its content. See 22 U.N. GAOR, agenda item 87, U. N. Doc. A/6799. During the twenty-second session of the General Assembly the question of self-determination took on a special urgency because of the Southern Rhodesia and South African situations. By its resolution 2327 (XXII) the Assembly urged the Special Committee to complete its formulation of the principles prohibiting the threat or use of force and that of equal rights and self-determination. It was also requested to widen agreement on the principles of nonintervention expressed in the Assembly resolution 2131 (XX) of 21 December 1965. The most recent summaries of the Committee's work will be found in the 1968 and 1969 Reports of the Special Committee 23 U.N. GAOR Supp. 19, U.N. Doc. A/7619 (1969). Cf. also the summary quoted in note 25, infra.

\textsuperscript{25} Cf. the joint proposal of Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia:

1. All peoples have the inalienable right to self-determination and complete freedom, the exercise of their full sovereignty and the integrity of their national territory.

2. In accordance with the above principle:

(A) The subjection of peoples to alien subjugation, domination and exploitation as well as any other forms of colonialism constitutes a violation of the principle of equal rights and self-determination of peoples in accordance with the Charter of the United Nations, and, as such, is a violation of international law.

(B) Consequently peoples who are deprived of their legitimate right of self-determination and complete freedom are entitled to exercise their inherent right of self-defense by virtue of which they may receive assistance from other states.

23 GAOR, Agenda Item 87 A/7326 para. 136 (1968).

At the 1968 meetings the Special Committee was unable to reach any agreement concerning the content of the principle of equal rights and self-determination of peoples, ostensibly because of insufficient time to give the matter any in-depth study. For similar reasons no conclusions were reached with respect to the related principle of nonintervention.

At the 1969 session a proposal was submitted by Czechoslovakia, Poland, Romania and the Union of the Soviet Socialist Republics, which stated, \textit{inter alia}:

(C) The subjection of peoples to alien subjugation, including the practices of racial discrimination, domination and exploitation, as well as by other forms of colonialism, constitutes a violation of the principles of equal rights and self-determination of peoples.

Peoples who are under colonial domination have the right to carry on the struggle by whatever means, including armed struggle for their liberation from
understood that the phrase “self-determination of peoples” is broad enough to embrace the widest spectrum of social conflict, the implications of such reasoning are ominous. And the destabilizing impact of such logic is even more evident when the state members of the United Nations attempt to define the meaning of aggression.

If the principle of self-determination should include a right to receive outside assistance, it is impossible to develop stable principles of nonintervention. So also with the development of rules dealing with aggression. Member states have made some progress toward a definition of direct aggression, but with respect to “indirect aggression” the lack of consensus is pronounced. States acknowledge that they should not support sabotage, terrorism or subversion in other states. But many states qualify such restraints if the promotion of such violence would advance a revolutionary struggle. And while states which suffer domestic violence see little difference between it and external aggression, the exigencies of existing theory inhibit them from making a legitimate response. Armed subversion may be as painful as armed attack, but Charter theory only condones defensive reactions to traditional forms of interstate aggression. Under colonialism and may receive in their struggle assistance from other states.

Compare the Draft Proposal which the Soviet Union submitted to the Special Committee on the Question of Defining Aggression. After enumerating acts of aggression which should be considered international crimes against peace, the document provides that “. . . Nothing in the foregoing shall prevent the use of armed force in accordance with the Charter of the United Nations, including its use by dependent peoples their inherent right of self-determination in accordance with General Assembly Resolution 1514 (XV).” No meaningful agreement was reached on these questions by the Special Committee on Friendly Relations at its 1969 session. For a summary of the various views, see the report of the Drafting Committee, para. 180.

At its 1970 session the Committee developed a “consensus” which purports to recognize the obligation of each state to promote the realization of the principle of equal rights and self-determination of peoples, in order:

(a) To promote friendly relations and cooperation among states; and
(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the people concerned; and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter of the United Nations.

Every state has the duty to refrain from any forcible action which deprives peoples referred to above . . . of their right to self-determination and freedom and independence. In their actions against and resistance to such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter of the United Nations. 25 U.N. GAOR, Annexes, Agenda Items 21, 24, 42, and 85 at 15, U.N. doc. A/L 600 24 Oct. 1970.

Beneath the diplomatic language there exist the same contradictions and potentials for violence which are more vividly expressed in the earlier proposals quoted supra.

26 The Concept ranges from the rather specific phenomenon of colonial domination to generalities concerning the right of peoples to determine their own political, economic and social systems. See the debate in A/7619 para. 146-159 (1969).

27 The formal action of the General Assembly has been restricted to a concern with colonialism, e.g., Declaration on the Granting of Independence to Colonial Countries and Peoples G.A. RES. 1514 14 Dec. 1960; RES. 2562 (XXIII) and Programme of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples RES. 2621 (XXI) U.N. doc. A/L600 at 2 (1970). However, the real breadth of the principle is determined by ideological interpretation, such as Marxist-Leninist ideas of “neo-colonialism” and justified wars of “national liberation.” Expansive meanings have been asserted by member states in the search for an agreed definition of aggression. See Report of the Special Committee on the Question of Defining Aggression, 25 GAOR Supp. 19, para. 141, U.N. doc. A/8019 (1970).
article 51, a state which suffers direct armed attack can make some response in kind, but should reactions to indirect aggression be allowed it would probably exceed the quantum of defensive force permitted by the Charter.\textsuperscript{28}

The possibility of some reconciliation between established sovereignty and the forces of change cannot be discounted, but it would be folly to expect any conclusive adjustment within the present framework. Not only is jural theory remote from the center of conflict, it can be logically manipulated in ways which assure its ineffectiveness. Despite these inadequacies, statesmen and jurists continue to advance the ideal of a state-centered world order. Proposals ostensibly directed at improving the United Nations Organization illustrate the tenacity of the ideal.

Suggestions that the Security Council’s operations be improved by more frequent foreign minister meetings are not completely devoid of merit, but they are little help if the problem of human security is seen as one in which intrastate violence is the primary threat to the human race. Chapter VII can be stretched to reach the domestic realm,\textsuperscript{29} but the general effectiveness of the Council depends upon something more than a manipulation of Charter language. The states themselves must agree upon some substantive criteria upon which the legitimacy of violence can be measured. At present they have no agreed principles to which they can consistently refer. What some states comprehend as indirect aggression others perceive as lawful assistance to oppressed peoples. These inconsistencies will multiply as the phenomenon of revolutionary change spreads convulsively across the globe.\textsuperscript{30}

Similar criticisms can be addressed to proposals which seek to universalize and reform United Nations membership. Given its organizational premises, there is an obvious incompleteness in the fact that the United Nations does not count among its membership important states which have a significant influence upon world politics. It is also important that a state should have only such representation as its population warrants.\textsuperscript{31} But these improvements would also extend the sovereign state system. The problem of domestic strife will continue, as well as the inabilities of sovereign legal theory to abate its consequences. No matter how much the organization is enlarged, or however its voting power is ap-


\textsuperscript{29} See, e.g., the determination that the proclamation of independence in Southern Rhodesia constituted a threat to international peace and security. 20 U.N. SCOR, 1263 meeting RES. 217 (1965).

\textsuperscript{30} The determination of the General Assembly that representatives of liberation movements shall be invited to deliberate in the proceedings of international organizations (A/L 600 at 4 (1970)) may be helpful, but cannot of itself prevent the spread of violence.

\textsuperscript{31} See G. CLARK & L. SOHN, WORLD PEACE THROUGH WORLD LAW ch. IV (3rd ed. 1966). This proposal improves upon the existing structure in several ways. For example, the General Assembly would be proportioned to population and would gradually be subject to popular election. However, the plan does not directly establish world government on the basis of the sovereignty of peoples. \textit{Compare Constitution For The World discussed infra}, note 33.
portioned, we shall still lack agreement upon stabilizing rules of nonintervention and nonviolence.

The same point can be made with respect to the enlargement and extension of United Nations Peacekeeping Forces. Clearly necessary as an interim measure to control violence between peoples, they do not have the capacity to guarantee permanent peace between contentious entities. This is evident from their previous or existing use, since they never extinguish the underlying conflict which endures in spite of their presence.

III. Conclusion

Given the immense political, ideological, and legal convictions which sustain the primacy of the state, those conscious of its limitations are reluctant to challenge its premises. But what passes as practical wisdom also perpetuates a moral wrong. Life is not possible without government, and a fictitious order is an affront to human dignity. Our obsession with practicality has prevented us from seeing how vast the gap is between the pretensions of the state system and the actual requirements of universal society.

What needs to be challenged is the assumption which underlies all prevailing theories of international law: that through some immutable necessity the state should forever be at the center of world authority. When the inadequacies of the prevailing system are fully appreciated, when it is understood that the state is incapable of assuring elementary security to mankind, this process of self-perpetuation may be expunged from world history. To hasten that time, we should recall that every form of government is tested by its utility; when it obstructs the fulfillment of human needs "... it is the right of the people to alter or abolish it . . ."32 And it is this right which is crucial because it emphasizes that concrete human beings, and not the state, are sovereign.

A pseudo-government of interstate power prevails because it appears as the exercise of sovereign authority. Some states perpetuate the myth of an inherent right to govern which its predecessors inherited from the medieval monarchs. Marxist states justify their power in world affairs on the pretense that they personify the rising working class. With differing justifications they all promote the theory that through their continuance in history man will experience an era of unending peace.

True sovereignty, the right to govern, resides in the people of the world and not in the states of the international community. It is a sovereign authority which includes everyone, regardless of their class, their race, or even their particular nationality. And it is an authority clearly distinct from any particular form of government which may, by delegation, exercise a limited power.33

The failure of the states system to achieve universal peace is manifest. When

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32 Declaration of Independence.
33 The sovereignty of peoples is not, as continental theory supposes, an authority which is virtually absorbed in the exercise of state power. See the discussion at note 7, supra. European thought attributes sovereignty to the people as an abstraction. Its tendency to identify state action with "the people" probably reflects the influence of Rousseau who, denouncing representative institutions, favored direct forms of democracy. As a result, legislation, as the expression of General Will, became the equivalent of sovereignty.
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its inability to guarantee freedom from fear is understood, its continuation as the primary source of world order will no longer be accepted. A genuine world government must be formed which surpasses the theory that the state should be the supreme universal authority. We must move beyond the state and create institutions whose breadth can accommodate those political movements whose aspirations are now violently suffocated by the system of state sovereignty. Such a higher authority, independent of the will of states, can only be formed as an expression of the sovereignty of the human race; as the government of a world political society of which states are but a part. On that basis, and only on that basis, can we establish that universal peace which has for so long eluded the theory and practice of man.

The influence of this form of thought upon international law has been enormous, and much of it has been beneficial. It has probably contributed to the formulation of norms such as those contained in the Declaration on Permanent Sovereignty over Natural Resources (17 U.N. GAOR Supp. 17 U.N. doc. A/5217 (1962). Criticism in the present context is directed at the failure of the theory to adequately distinguish the sovereignty of peoples from the exercise of state power. This distinction, crucial to the reconstruction of world authority, is more clearly made in American political history, where the establishment of the national Constitution is understood as an exercise of constitutive power by the people through which limited authority was delegated to governmental organs. See I Palmer, The Age Of The Democratic Revolution ch. VIII (1959).

Strictly speaking, sovereignty is an inappropriate term to apply to a people's right of self-government because sovereignty connotes a power of supreme government which exists separate from, and above, those who are to be governed. The autonomy of peoples would be a more accurate expression. See the chapter The Concept of Sovereignty in J. Maritain, Man and the State (1951).

The actual structure of a world political society and government is beyond the scope of this study, which only attempts to impose some of the weaknesses of the prevailing state system. However, there are some models for discussion to which reference should be made, such as the Clark Sohn Plan, supra, note 31 and the proposed Constitution for the World published by the Center for the Study of Democratic Institutions (1965). This latter project suggests the convening of a convention consisting of delegates elected directly by the peoples of all nations. In this connection, article 109 of the United Nations Charter, which places revisory power in the member states, is not an absolute barrier to a radical restructuring of global government. It may be recalled that the Constitution of 1787 grew out of a conference originally convened to revise the Articles of Confederation.