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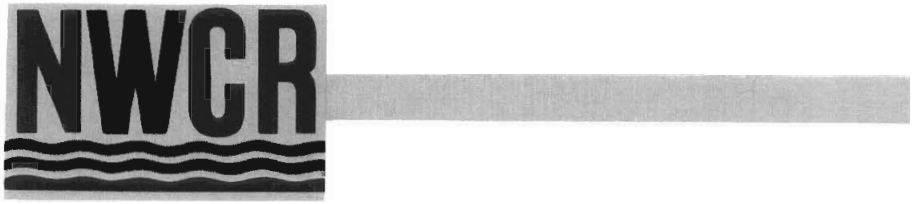

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FOREWORD The *Naval War College Review* was established in 1948 by the Chief of Naval Personnel in order that officers of the service might receive some of the educational benefits available to the resident students at the Naval War College. The forthright and candid views of the lecturers and authors are presented for the professional education of its readers.

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Although the press has recently been caught up in the vortex of an increasingly bitter debate over the propriety of its conduct (particularly in regard to the Vietnamese war and those who protest U.S. involvement in it), the essential role of a free press in an open society is still misunderstood by many Government officials–both civilian and military. The situation whereby communication between Government and the general public is failing despite our technical capability to widely disseminate the news must be rectified if our Government is to function. Rather than view the press as an antagonist, Government must recognize the value of an informed press as a means of satisfying a more sophisticated and demanding public.

THE ROLE OF THE COMMUNICATIONS MEDIA IN A DEMOCRATIC SOCIETY

A lecture presented at the Naval War College

by

Mr. Barry Zorthian

I gather that while the formal part of your study on public diplomacy has just begun, some points of controversy have already arisen. Perhaps before this morning is over, we can generate a few more sparks in talking about a subject that we are all aware is extremely sensitive, involved, complicated, and currently under critical examination. You will probably regard the purpose of this talk as an attempt to defend the press, but I assure you it is not that. The press is perfectly capable of speaking for itself. Historically, it has been examined and critically analyzed many times.

My objective in speaking before this Government- and service-oriented audience is to suggest that we step back and try to put the problem into some kind of perspective. Then, subsequently, we can better examine your role in the very important communications triangle of the press, the public, and the Government.

The temptation in any dialog of this type is the likelihood that we end up complaining and criticizing the press, its proponents, and its particular contribution to some of the divisiveness that this Nation has faced over the past several years. This could be a very satisfying and pleasant exercise for most of us gathered here. However, it is not one that is very productive, particularly for men who are going to assume positions of major command in the service of the country. I believe it is much more important that we look at how communications in our society today can be improved and the contribution and

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obligation that you as naval officers, your associates, and colleagues throughout the services can render.

I think that we are in general agreement that the process of communications is in trouble, in very serious trouble. This has been true not only in Vietnam, perhaps the classic example of faulty communications, but also in regard to many of the other problems that face our society—ranging from civil rights to the economic situation, and, for this audience, such subjects as the role of the military, the performance of the military, and the performance of the Government as a whole.

We are going through and are still in the midst of a period of social unrest, questioning, and tearing down of old values. Some of that process is healthy; this is an evolutionary society and one that should properly reexamine its standards and precepts. Obviously the war has been both the focus and the cause of much of this uneasiness, but even if communications had been functioning well in this country, a good argument can be made that many of the difficulties we faced in the sixties and so far in this decade would still have existed. Nevertheless, communications has failed, and I would suggest that this failure has intensified the problems that have divided our country. We must face up to the problems associated with communication if we are to reduce some of these strains in our society and if we are to deal successfully with the growing uncertainties that so recently have plagued the national spirit.

The tragedy of our failure to communicate is that this situation has come about even as our technical capabilities to broadcast and print the news have grown enormously. In this generation we have moved from an age of wireless transmission of the telegraph to one of extraordinarily sophisticated electronic techniques capable of projecting visual images as well as the spoken word literally around the world. We accept casually an audience of 600 million people watching man walk on the moon 250,000 miles away. We accept casually the transmission of war in "living color" from Southeast Asia back to almost every single home in this country. However, these successes are just the starting point. We now have the technical capability for everyone on this globe, close to 3 billion people, to all observe at one moment, simultaneously, the actions and activities of any single person on the globe. We can transmit video signals anywhere with whatever scope and spread we want. The only problem is simply one of the money.

Under development is a whole series of new capabilities that will provide the individual with access to information he wants when he wants to see it. The whole world of cable television and video cassettes lies ahead of us. The technicians have done their job well; they have placed us at the stage where the means of communication are available. Our failure is that we have not been able to maintain our capability for substance, for concepts; and this is the task to which we must now turn.

In order to examine this task, if you will allow me to digress into what seems like basic civics but is frequently ignored, we must first ask what role the media plays in our society. In the United States we made this choice a long time ago. We believe in the concept of an open society, a concept of a government that is responsive to its population, to its public. But for the public to exercise its role, that of passing judgment on the performance of the Government, information is not only necessary, it is vital. The Jeffersonian ideal of an enlightened public is still a valid one and of crucial importance to the successful functioning of our form of government.

The primary means the public possesses to gain information vital to reaching decisions is the press, and I use the term "press" in its broadest sense,

including all the active media. The daily mass media is the major channel for informing and enlightening a popnlation of 210 million on public affairs and is an essential means of achieving our very basic goal of an informed and educated public. One must always keep that ultimate goal in mind when dealing with the problems of the press today. I would argue that the frustrations and shortcomings of the performance of the press should not divert us from this goal. The press is the channel to the ultimate goal we have set in our society. This point needs to be emphasized to Government officials, particularly when they find themselves both frustrated and irritated over the performance of the press.

The need for an informed public and enlightened public is much more important today than it has ever been in the past. The technical means of communicating has permitted and enabled our public to get more information, and the pnblic itself is getting more sophisticated and more demanding. It wants to be better informed, and it wants to participate in the process of government. I believe that this public need in the age of communications has added a whole new dimension to anyone serving the public, and that certainly includes the military services.

The addition of this new dimension of communications, to the responsibilities of the military represents quite a shift from the traditional role, and I recognize it is not always accepted. Nevertheless, I would argue very emphatically that just as the commander must learn the techniques of his profession, he now must learn the art of communicating as an integral part to his command responsibilities.

I have been asked by commanders in the field why they have to bother with the press, why they cannot just go about their tasks, let someone else worry about the press, and concentrate on their responsibility to their men. I agree their responsibility is to their men, but part of the exercise of that responsibility in today's age of communications is to ensure an informed public that provides the wherewithal, both the men and the treasure. A knowledgeable and enlightened public that sees the need for the actions of a particular unit in support of a believable Government policy should be the goal of every public servant, including the military officer. I do not think yon get away from this responsibility by assignment or by delegation. Staff personnel in this field have a role like any other staff personnel, but no more than that. The Public Affairs Officer, the professional on your staff, should certainly be encouraged, should certainly be part of your policy-making process, and you should listen to him, particularly if he is effective in his trade. But he cannot assume your role as a commander in the execution and the supervision of the task of communication.

I believe this aspect of the military services' present role in the United States in the 1970's is one that must be understood, accepted, and trained for. It still is possible today for a Government official, military or civilian, to become an ambassador or a general with a major command without ever having received any training in the art of communicating or in the need for communications. We have no press relations doctrine in the armed services; we have no press relations doctrine in the foreign service. Capability in this field comes by accident, and the range of skills is very wide. In Vietnam there were some generals who were perfectly able officers in all other respects, but who were absolute disasters in communicating with the press. There were others who were quite skillful. The trouble was that the skillful ones were effective either by virtue of instinct or aptitude and not because they had been prepared for the task.

The military must undertake training

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in this area if it is to accomplish its mission in the years ahead. Public information has become such a vital element in national military strategy that it is important for the commander to recognize and learn the customs and habits of the press and the media as a whole. Just as you expect the media to be knowledgeable about military affairs, even if they are not professionals, so you, in communicating, have to become knowledgeable about the media, even if you are not a professional. Despite the use of highly complicated and sometimes esoteric trade terminology in the profession of journalism, the system and procedures really are not that difficult to understand; the principles by which the media function are not that intricate. There is no reason that the military officer cannot accrue at least a rudimentary knowledge of how the media functions. Once having obtained that knowledge, I believe there are 10 principles which the military officer should observe in the process of communicating with newsmen. The 10 points comprise, in my opinion, a needed press relations doctrine for the military, the foreign service, and for the Government as a whole.

The first of these principles is that of respecting the role of the press. At the expense of repeating myself, there are too many in public office who should contribute to the public's awareness but do not accept the true implication of the role and function of a free press in our society. Lipservice is paid to it, but when discomfort results from critical stories in the press, the temptation is to blame the press and, where possible, control the press. A true acceptance of the role of the free press is a sine qua non of effective communication.

Secondly, I suggest the press be regarded as a channel to the public, providing the means of creating the enlightened public that I have been discussing. There is a virtue in positive thinking about the opportunity that is represented by the media. The picture of the media having closed doors that cannot be penetrated as a channel to the public just does not stand up under examination.

A third principle is a corollary to the above—that every opportunity be taken to educate the press, again as a means of reaching the public. Most journalists are responsible professionals. Like any other profession, there are those who are not, but most journalists welcome information. You are the experts, and your task is to impart more knowledge to that communicator, to that journalist, so that he, in turn, can be that much more effective, that much more accurate, in communicating with his audience, which is your audience, the public. So education of the press becomes important. Avoidance of the press, refusal to deal with it, refusal to provide the correspondent your information obviously jeopardize your basic goal, which is an informed public. The press very often is not qualified, particularly on complex stories. Too often the reaction to this situation has been a dismissal of the press rather than an attempt to help it seek its goals. Certainly by educating the press, informing a correspondent who is not qualified, the results are not going to be worse. Even if the story does not reflect your information as accurately as you might hope, at least you have not made it worse. The odds are that by providing information to the correspondent and educating him about some of the considerations involved you will have taken some steps that will prove to be very constructive.

Principle number four, and again a very critical one, is to distinguish between information and publicity. A great deal of the difficulty in relations between Government and the press lies in the Government's attempts to reach the public through publicity, not through information. The press will not serve willingly as a transmission belt for

publicity. Now the difference is a very old one, in my mind. Publicity, in its simplest definition, is the provision of information and transmission of it to the public in the form and in terms that the originator wants to set forth without intervention by an independent observer, without examination by an objective, detached, or at least a non-involved analyst. Information is the provision of facts. The provision of facts calls for acceptance of a system whereby an independent observer, an independent judge, passes on the completeness and accuracy of those facts, passes on the policies evolved from those facts, and transmits both the information and the judgment to the public. This is not something that the press has recently demanded for itself, but rather has practiced historically. Even more importantly, it is a constitutional provision as well. The enlightened public is so important in our order of things that the first amendment of the Constitution was approved even before the Constitution as a whole was accepted by most States. That free press provision gives the press an independent role in behalf of the public, if you will, to pass judgment on the facts provided by the Government and the actions taken by the Government. Until this basic point is understood, the Government will not deal effectively with the press or through the press with the public.

Point five, I would suggest, is one that is very current to our present national state of mind. That is the need for candor in the act of communicating. One of the problems in regard to Vietnam was that President Johnson depended too much on a type of rhetoric that was useful and acceptable in a setting of World War II or even the Korean war, but was not suitable for the sophistication and candor required in the 1960's. While I am a great admirer of President Johnson as an individual, there cannot be a gap between reality and words. In the open society where communication is instant, where a visual picture can be transmitted from one corner to the other immediately, where all the elements of the public can see and hear directly, one cannot remove one's self from the reality of what the public is observing directly. Words cannot be divorced from what is seen. Candor, honesty, a forthright outlook are essential to successful communication today. The public is more sophisticated, the press is skeptical, and those approaches and reactions must be recognized. I have often told my Marine friends, in discussing some of their past problems, that it is simply not enough anymore to play "The Marine Hymn" and expect everyone to salute. It just does not work that way in the year 1971. Unless the military as well as the Government stops expecting this kind of automatic receptivity, which was the case up through World War II, your efforts to communicate are going to fail.

The sixth point is the need to keep the privilege of national security to an absolute minimum. I use the word "privilege" specifically, recognizing full well that your reaction to such a concept of national security is probably going to be very critical and even heated. Nevertheless, our concept of society dictates that the Government function completely in the open, subject to continuing examination by the public and, if you will, in behalf of the public by the press. National security is the exception to this basic principle of an open society. Freedom of the press is not the exception to national security. Even though national security is a legitimate, necessary privilege, it nonetheless is one which should be exercised and applied with only the greatest caution. Too often the record shows that this privilege has been used not for its intended purpose—to protect the lives of our military in situations of danger, to protect national interests in situations of great sensitivity. Too often the privilege of national security has been

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used to protect shortcomings, to camouflage failures; it has been applied in a scope and breadth that was never conceived of in its original concept and application. A broad concept of classification is going to fail if it is abused, and we have abused the privilege. Vietnam was probably the first war fought without censorship, on center stage, in the full glare of the floodlights. When the press was asked in Vietnam to respect legitimate rules of protection of tactical military security, it did. There were some 4,000 press accreditations in Vietnam while I was there, and over a period of 4½ years only five correspondents had their credentials lifted for violating military security. If our benchmark had been violation of political security, violating all the information that the Government tried to or would have liked to have kept secure, then most of the press would have had to have had their credentials lifted. If you try to extend valid national security beyond its legitimate use, you are going to lose the battle.

I cite as the seventh important point in the public servant's doctrine for successful press relations the need to take the initiative in communicating. Our habits within the Government in the past have been to wait, to let the Government's particularly embarrassing developments surface and then to respond. Today's age requires you to take the initiative. Communication today is very intense, very immediate, very indiscriminate and very comprehensive. That electronic tube is instantly responsive, and the first impact it makes very often sets the course for subsequent development. One of the facts of life today is that the public's attention span is very brief. If I had a tough story today, I would get it out of the way because I know that in a few days something else will come along that will shove it off the front pages. A My Lai story is bad news no matter what happens. However, it is far less damaging if the military takes the initiative, reveals that it knows of the situation, is taking steps to remedy whatever problems exist, and is seeking to punish anyone that is guilty. The military's record, when it finally heard of My Lai was perfectly reasonable. However, it would have been much better if the initiative in surfacing and communicating this story had been in the hands of the military rather than leaving it to a couple of discharged privates. I keep saying there is a variation of "Murphy's law" that applies—if you do not take the initiative and do it the right way, any bad information is going to come out and be surfaced in the worst possible manner and in the most damaging possible form. It seems almost inevitable that it will be thus. Initiative in surfacing material in the act of informing the public is critically important.

My eighth principle, certainly applicable to bureaucracies, is the recognition that there is no compartmentalization of information. There is no room in today's scene for service rivalries, for rivalries of inconsistencies between the civilian and the military, for any effort to compartmentalize developments. The distinction between military and political news has virtually disappeared. The distinction between economic and political news is blurred. In the field of foreign affairs, the distinction between civilian and military news is virtually meaningless. I would hope that by now all the services are aware of the dangers of parochialism in communication by the services, that the "purple suit" concept is applicable to most all media-directed communications. Coordination and consistency must be achieved by all elements of Government.

Similarly, I suggest, as a further principle, a recognition that the world itself cannot be compartmentalized. With today's technology, one must be as concerned about the audiences in the most remote corners of the world as with the audience at home. When the

White House speaks, the words are heard just as quickly in New Delhi, London, and South Africa as they are in Washington. In essence, this capability of instantaneous transmission eliminates what used to be a very useful buffer that provided time for contemplation, time for a considered response. Today everything is so intense that you can develop your news and get a response from any corner of the world almost instantly. Here again, like it or not, this is a feature that must be understood and accepted. You simply cannot deal with issues in the United States, whether in uniform or mufti, and speak only to the American public. A General Westmoreland speaking in Saigon on any military developments speaks to at least a dozen different audiences: a Vietnamese civilian audience, a Vietnamese military audience, a hostile audience in the North, numerous third country audiences, the U.S. public, his own troops, the U.S. Government, and these are all interrelated today. Prince Sihanouk in Cambodia used to say, "You foreign correspondents have no right to listen while I am speaking to my people. This is communication within the Family." Unfortunately, this is just not possible, In any communication, the impact on all audiences that have interests in that development has to be taken into consideration.

Now finally, let me try to put this whole art of communications in perspective. I regard myself as a communicator and say that with pride. But I am also aware that communications is not a substitute for basic policy. If all that I have said is faithfully observed, carefully and competently executed, you can still have a failure, the response can still be something you did not anticipate. Human beings are involved, personality is involved, but beyond all that, *basic policy is involved.* The art of communications will never substitute for the execution of policy. Your essential task remains the formulation and execution of substantive programs. What communications can do is add to the impact of your efforts; it can often provide the difference between success or failure; and it can certainly lead to greater public understanding and thus to more effective public judgment.

In Vietnam, we were never successful in creating public understanding of our policy or its execution, and public opposition simply forced the Government to abandon its program. Vietnam is the classic case where public opinion, public reaction, in due time forced a major reversal in Government performance, in Government action, for better or worse, depending on your outlook. I suggest that improvement in the capability to communicate is critically important to the Government and to the military if public understanding and public support for their policies and programs is to be achieved.

BIOGRAPHIC SUMMARY

Mr. Barry Zorthian did his undergraduate work at Yale University and earned an LL.B. from New York University. Early in his career he worked as a newspaper reporter and editor, and from 1948 to 1961 served in various positions with the Voice of America—including Chief of the News Branch, Policy Officer, and Program Manager. Affiliating with the U.S. Information Service in 1961, he first served as Deputy Public Affairs Officer, New Delhi (1961-64) and from 1964 to 1970 served as Minister-Counselor for Information, U.S. Embassy, and Director of Joint U.S. Public Affairs Office, Saigon. Mr. Zorthian joined Time, Inc. in 1968 and is serving as President, Time-Life Broadcast, Inc., and as Vice President, Time, Inc.

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THE PRESS AND THE PENTAGON PAPERS

In trying to gain a better appreciation for the proper role of the press in American society today, recognition should be given the newspaperman's own self-image. The author, a particularly outspoken and eloquent advocate of an active and inquiring press, sets forth some of his views on the failings of the press in Vietnam in light of the recent publication of the "Pentagon Papers."

by

Mr. Neil Sheehan

Introductory remarks, subsequently edited by the author, to a panel discussion on "Communications Media" at the Naval War College.

Panel Participants:

Mr. Joseph C. Harsch
Mr. Neil Sheehan
Mr. Barry Zorthian

This morning I would like to speak briefly about the press and the Pentagon Papers. We in the press have been drawing lessons from the Pentagon Papers for everyone else—lessons for the Vietnam policymakers, lessons for the military institutions, lessons for the Congress. I think it is just as important that we draw a lesson or two from the Pentagon Papers for ourselves. In seeking to outline some lessons this morning, I speak solely as a journalist and not in any way for *The New York Times*. I shall merely raise the lessons as I see them in the hope that they may stimulate others outside the news media to pose further questions regarding the role of the press in our society.

The Pentagon Papers show the magnitude of the mistakes in official decisionmaking on Indochina over most of three decades. Where the press is concerned, the papers demonstrate our failure to adequately report on American involvement in Indochina over that same period. How did we fail? Our most serious shortcoming, in my opinion, was that we did not raise in our reporting truly essential questions about American policy in Indochina. We questioned the details of policy. We did not question the substance.

Let me give you some examples from my own experience in Vietnam during my first tour as a reporter there from April of 1962 to April of 1964. These were the critical years of the Kennedy commitment and the early policy moves of the Johnson administration which preceded the entry of American ground and air combat forces into full-scale war in 1965.

I and other journalists in Vietnam then reported that the Diem regime was corrupt and unpopular; we reported that the Saigon army lacked motivation and leadership; we reported that the Vietcong guerrillas were winning the war and that Washington's allies in Saigon were gradually losing the conflict. Our reporting was much criticized. Actually, our dispatches reflected the doubts of the dissidents within the American mission itself. These were usually younger members of the mission, both civilian and military. From Embassy officers in Saigon to military advisers in the field, they all had considerable doubt about whether policy was working. Their superiors were also not listening to them. The reporters in the country were the only people who paid attention to what they had to say, and so they talked to us rather frankly about what they thought was going on in Vietnam. What they believed was reflected in large part in our dispatches, and I think that in retrospect their dissidence over the working of policy has been well vindicated by history. The Kennedy administration's policy of supporting the Diem regime simply was not succeeding. As we now know, the Vietcong were winning the war in those early years. The Saigon administration and army did lack motivation and leadership.

Nevertheless, we the journalists, and this also applies to those dissenters over policy within the official mission itself, assumed that a policy of preserving a non-Communist South Vietnam and of defeating the Vietcong guerrillas could be made to work if only the right formula could be found to implement it. We assumed that what was needed, among other ingredients, was a better non-Communist government in Saigon, more effective American political and military advice, more psychological warfare, and less destruction in the countryside. We would go on at great length, for example, about the fact that psychological warfare was not being sufficiently emphasized by the American military. As a lesson, we would all repeat to ourselves the anecdote about the psychological warfare specialist who told a senior military adviser, a U.S. Army brigadier general, that the war could not be won without better psychological warfare to convert the peasantry to the Saigon government's cause. To this remark the general replied: "How many Communists are there in this country?"

"Twenty-five thousand Vietcong on the books, General," the civilian adviser answered.

"Well," the general said, "if we kill 25,000 Vietcong, it will be over. We don't need any psy war. If you kill enough, you'll win the war."

At the time this, to us, was the height of simpleton thinking. What was clearly needed, we thought was fewer bombs and more sophisticated psychological warfare techniques to win the confidence and support of the Vietnamese people. We assumed, and I repeat this for emphasis, that policy could be made to work provided the right formula, the right mixture, could be developed. We assumed that it was actually possible "to win the hearts and minds of the Vietnamese people," in the phrase so common in those years. More importantly, we assumed that the United States ought to be in Vietnam attempting to win the hearts and minds of the Vietnamese. We assumed that we, the Americans, knew what was best for the Vietnamese. And we assumed that it was within the power of Americans to

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so mold Vietnamese society that this good, in our definition, could be achieved.

Perhaps we were the simpletons, because our mistake, our failure, was of greater magnitude than the general's. We in the press failed to ask whether the United States should be in Vietnam at all. We journalists raised questions about whether the strategic hamlet program was working in the countryside, but we never asked whether the United States should be attempting any such program and whether it really ought to be involved in Vietnam to the extent it was. We never seriously asked whether it was possible to achieve American objectives in Vietnam. We never asked whether it might be a greater evil for the Vietnamese people to have a large American military force in their country and an endless war destroying their homeland than it would be for the average Vietnamese to live under a Vietnamese Communist regime, however dour and brutal that regime might be by American ideals. (And you will note that I use the word ideals and not standards, because we now know how far our own standards can deviate from our ideals in our conduct toward other nations.) We never asked whether the Vietnamese Communist movement was, in fact, a basically national Communist movement that would, therefore, act independently from both Moscow and Peking whenever the Vietnamese Communists saw fit.

We assumed that Hanoi's aims, if not directed by Moscow and Peking, at least coincided with those of the two major Communist powers.

We assumed other things. We assumed, for example, that Indochina was of great strategic value to the United States. We had heard this said so many times that we just repeated the words. Indochina was strategic, that was that. We never truly addressed the question. I believe there is now considerable evidence, as we reexamine our experience during World War II, that Indochina may, rather, be a strategic backwater of relatively little importance to the United States in Asia.

Indochina played a relatively minor role in the naval war with Japan that won the United States dominance over the Pacific. The Japanese forces in Indochina remained in control there until the end of the war. There was even an abortive effort by the Allies to use them for a period of time after the Japanese surrender to maintain a semblance of order in Indochina until sufficient British and Nationalist Chinese forces could arrive. The American involvement in Indochina during World War II, if you look at it closely, was quite minimal, and our military leaders who achieved victory in the Pacific regarded Indochina as a secondary theater.

Why did we journalists not ask these basic questions about American policy in Vietnam? A partial answer is that we reporters were products of the cold war thinking in this country during the 1950's. We carried the assumptions of the cold war into Vietnam as our mental baggage. We had grown up and had been educated in the years when these assumptions were bedrock axioms and attitudes in our society.

Another partial answer to the question of why we did not ask the fundamental questions about policy is that we were operating, more or less, with the tools of a police reporter. We were primarily concerned with detail. This concern, by the way, is one of the strengths of the journalist. He seeks to gather together the small pieces of a given situation and to present them in a manner that the average reader can comprehend. The journalist's analysis of a situation gains power from his knowledge of detail. But this strength can become a grave flaw if carried too far, and in Vietnam, now that I look back upon my reporting there, I realize that we did become preoccupied with detail.

We became so obsessed with the details of policy implementation that we could not see the forest for the trees. What we needed to complement the method of the police reporter were the tools of the historian and the sociologist. We needed a broader perspective in order to develop the truly thoughtful and provocative reporting necessary to a subject like Vietnam during those critical years of 1962, 1963, and 1964. But instead we accepted the assumptions of policy, we accepted the world as someone else had delineated it, and we scrutinized the details of this world through a narrow magnifying glass.

It is ironic for a reporter to read the Pentagon Papers and to discover that the most profound examination of Indochina policy during these years was being conducted within the U.S. intelligence community. The intelligence community was questioning the foundations of policy. We now know that this questioning was not heeded by the policymakers in government. They had developed the theories of the cold war that the rest of us took whole. Nevertheless, it is very uncomfortable for a journalist to learn that the intelligence community was asking in secrecy the questions that he should have been asking in public. For instance, I was astonished to read a CIA memorandum written in June of 1964 for the President of the United States which questioned the validity of the domino theory. At that time I still accepted the domino theory as scripture, and I wrote about it as such. If South Vietnam fell, all of Southeast Asia would fall too, and perhaps the rest of Asia as well. Now that I reread my writing of that period, I wish that I had asked the same questions that CIA analyst did, instead of parroting what some supposed authority had told me.

The second major lesson that we in the press can draw from the Pentagon Papers is that we have allowed ourselves too frequently to be used by the power managers within the executive branch as a tool to further policy. News management succeeded to quite a degree when you look at the performance of the news media on Vietnam in retrospect. There is a saying that it all comes out in *The New York Times.* We who work for *The Times* like to believe that. I learned when I read the Pentagon Papers that it is simply not true. All does not come out in *The New York Times.* In fact, *The Times* was used just as much as most other newspapers during those years, and while we are more wary now, we are still used too often by the power managers within the executive branch in Washington.

Let me give you an example of what I am talking about—the infiltration of men and arms from North Vietnam into the South. When you read the Pentagon Papers you discover that the policymakers in Washington during the first half of the 1960's regarded the infiltration of guerrillas and arms into the South as primarily important in order to justify U.S. involvement in Indochina to the American public. The intelligence analyses told them—and the policymakers appear to have believed these analyses—that the infiltration did not have a significant impact on the war in the South. The infiltration was not seen as seriously affecting the fortunes of the Vietcong guerrillas against the Saigon government. Again and again, the intelligence analyses stated that the essential elements of Vietcong strength lay in South Vietnam.

Yet in the Pentagon Papers you find a continuing search by the policymakers for information about the infiltration of men and arms from the North, in order to justify gradually increasing American involvement in Vietnam as the fortunes of the Vietcong waxed and those of the Saigon government waned. You then find this information on infiltration being leaked in calculated fashion to the press through background briefings and other public relations techniques. You

find that at one point the Johnson administration thought it was leaking this information too rapidly and building up so much popular pressure that the decisionmakers might be forced to bomb North Vietnam before they believed it was necessary to do so. If you read the Pentagon Papers, you will find that in December of 1964 Dean Rusk, the Secretary of State at the time, secretly instructed Gen. Maxwell Taylor, then the American Ambassador in Saigon, to shut off leaks to the press about a major increase in infiltration so that the Washington policymakers would not be forced prematurely into bombing the North. When I read that sort of thing as a journalist, I realize that my impression in 1964 that I was fairly well informed was indeed a misimpression.

Well, I have tried to outline for you this morning two basic lessons which I hope that we in the press may draw from the Pentagon Papers. Let me end by stating a third lesson which I hope that all of us as American citizens can draw from that record of U.S. policy in Indochina. That lesson is suspicion of power. The American Presidency has acquired too much majesty for our own good. We must learn to be more suspicious and skeptical of our Presidents, regardless of what party they represent, and we must act with suspicion and skepticism toward all those high officials who wield power in the name of the President from behind the shield of the Presidency. We must be skeptical of the wisdom of these men; we must doubt their motives; we must be suspicious of their actions. For suspicion of power is, in my opinion, the central lesson of the Pentagon Papers for all of us—for the press, for the Congress, for the courts, for the general public, and for those of you in the military institutions who affect policy by the ideas you put forward for your superiors and the orders you accept without qualm. If we do not learn this lesson, I believe that it is going to become increasingly difficult for our country to survive as a democratic society over the long term. And the lesson of suspicion and skepticism will have to be learned particularly well by those of us in the press if we are to do our job effectively and to be useful to ourselves and to society as a whole in the years to come.

BIOGRAPHIC SUMMARY

Mr. Neil Sheehan is a distinguished journalist and reporter with the Washington Bureau of *The New York Times*. He graduated from Harvard University in 1958 and served for several years thereafter with the United Press International in the Far East. In 1964 he joined *The New York Times* as a reporter, was subsequently assigned as Department of Defense correspondent in 1966 and White House correspondent in 1968. In 1969 Mr. Sheehan assumed his present position as reporter on national security affairs with the Washington Bureau of *The New York Times*.

Ψ

You think we lie to you. But we don't lie, really we don't. However, when you discover that, you make an even greater error. You think we tell you the truth.

Lord Tyrrell, Permanent Undersecretary of the British Foreign Office, to a reporter

The impact of what one academic observer has characterized as "the plain lessons of a bad decade" are today perhaps less than obvious to those who have a close acquaintance with the inner workings of the State Department and AID. Dealing from this perspective, the author suggests that key elements in the U.S. Government were well aware of the limitations of intervention even before our costly involvement in Vietnam and that no lessons have been learned from the Vietnam experience. Working from a hypothesis of ever-decreasing superpower ability to shape events abroad, Professor Goodman argues that while insurgencies and regional wars will go on in the future, the question of who will be a world power by the year 2000 is becoming increasingly obsolete.

U.S. DEVELOPMENT ASSISTANCE IN THE INSURGENCY ENVIRONMENT: Gulliver's Coming Out

A lecture delivered at the Naval War College

by

Professor Allan E. Goodman

Gulliver was both a sleeping giant and a helpless one. What was to Stanley Hoffman an apt characterization of the problems of U.S. foreign policy in the late 1960's is today even more apt as a characterization of America's position in the world. The experience of the past decade, in fact, suggests that some radical changes are now required in our view of what our power means to the world: the more power we appear to have, the less it can be used. As recent events have demonstrated, there are, for the first time since the 1940's, externally set limits on our capacity to influence world events.

I take my theme, that of "coming out," from Alexis de Tocqueville who wrote that "the most important time in the life of a country is the coming out of a war." The events of the past year suggest to me that we are in the midst of a momentous coming out process. The fanfare and the courtesy, however, signal more an exit than an entrance. I would argue that both insurgency as a phenomenon and the environment in which it takes place have fundamentally changed. There are no counters to insurgency that intervention can provide: insurgency is likely to remain a permanent feature of the international scene, and it will take place alongside modernization and the end of the cold war as a destabilizing phenomenon. The level of instability associated with these phenomena, however, is increasingly going to be viewed as more tolerable by the United States. The Vietnam experience has proved insurgencies too costly to counter; the decade of development has proved too frustrating and complex to

manage, and the end of the cold war has made intervention in either insurgencies or development less compelling.

During the British surrender at Yorktown, the melancholy tune, "The World Turned Upside Down" was played; indeed the world, in English eyes, had. British power and diplomacy had failed against the inexperienced army and ragtag diplomatic corps of the colonists. It took more than a year to end a war that had extended to virtually every part of the globe. But "When Lord North heard the news of Yorktown," Samuel Eliot Morison recounts, "He threw up his arms as though hit in the breast by a musket ball and cried, 'Oh God! It's all over!'" Thus far, we have not received any such detailed report on President Nixon's reaction to the China vote, but the implications of it, coupled to this past year's experience in Vietnam, are unmistakable. The era of relatively facile U.S. influence over world events, and the corollary role that this implied for U.S. foreign aid, is rapidly drawing to a close.

This should not have been entirely unexpected. In 1967 my colleague, Samuel Huntington, wrote in a short piece entitled "Political Development and the Decline of the American System of World Order" that

> . . . in the year 2000 the American world system that has been developing during the last twenty years will be in a state of disintegration and decay. Just as American influence has replaced European influence during the current period, so also during the last quarter of this century American power will begin to wane, and other countries will move in to fill the gap.[1]

This decline has already begun, and it has stimulated a number of countries not to "rise from the ashes of the American system of world security" as Huntington predicted they would, but rather to seek alternatives entirely to the American experience. China in Asia and the Pacific, Brazil and Chile in Latin America, Tanzania and Zambia in Africa, and India in the Asian subcontinent are not either regionally or on a worldwide basis trying to take the place of the United States. In a recent interview with the managing editor of Japan's *Asahi Shimbun*, Chou En-lai observed: "We are opposed to the 'major powers,' to power politics and to domination. We will not become a major power under any circumstance."[2] Instead, the developing countries are trying to create a fundamentally different world. This is clear, for example, in the Brazilian economist Celso Furtado's *Obstacles to Development in Latin America*:

> If the primary concern of the United States in the second half of the twentieth century is that of its "security"—that is, of the kind of world-wide organization that will prevail as the result of the technological revolution already under way—the Latin American point of view is different. While Americans desire that the new organizations be compatible with the preservation of the American Way of Life at home and with the defense of ever increasing American economic interests abroad, the Latin Americans are faced with the crucial problem of "development," or how to open a means of access to the fruits of the technological revolution.
>
> We can thus consider the problems of the "security" of the United States and those of the "development" of Latin America in a confrontation.[3]

Such confrontation is profoundly stimulating to the kind of political change associated with development (as Huntington predicted it would). The more conscious countries have become of the conflict between security and development, the less they have responded to the appeals of either the Democrats or

the Communists, and sought, instead, solutions within the framework of their own national identity. As Furtado suggested, "In a world in which development is proceeding very unevenly, and, excepting the cases of national political domination by a foreign power, only the national framework and occasionally the regional one can serve as a basis for defining development value criteria." As the U.S. role wanes, so also does that of its principal antagonists. The experience of one colleague, just returned from India, illustrates the case in point:

> I found it impossible to work for our government and advise the Indians. We have such distinctive notions about development. But so do the Russians and the Chinese. Consequently, there are no clear choices here for India. Our theories and programs succeed and fail to just about the same extent as do those of our competitors. We are exporting development, alright, but it is rather like toothpaste: our brand is white, bright, and does about the same thing as any other brand.*

The United States has made much greater efforts than any of its competitors in the fields of development and security, but, increasingly, leaders in developing countries have come to view all Great Powers in just about the same terms. As Furtado further observed:

> In view of the conditions of strategic thermonuclear balance that presently prevail in the world, the exercise of supranational hegemonies finds no justification in terms other than those of specific interests. "Spheres of influence" no longer have any significance for the superpowers, from the point of view of their military security. And, as they relate to the underdeveloped world, the spheres of influence should be interpreted as systems of economic domination which in turn reduce the underdeveloped countries' ability to adapt their own structures to the requirements of a policy of national development.[4]

Like Gulliver, the United States is arising from a soporific, bewildered. We and our antagonists are viewed in the Third World as impediments to development. Why is this so?

The Limits of Intervention. Clearly, no discussion of what Professor Galbraith has called the "plain lessons of a bad decade"* could take place without reference to the experience of Vietnam. While I shall discuss the matter, I will argue that no lessons are being learned from the Vietnam experience. The principal lesson, rather, of the decade is that intervention—like world power—has limits, and this we knew before Vietnam, without having to experience the war. Intervention has limits, and among them the most prominent relates to our inability to bring internal stability and reform to countries which lack the political bases and institutions to sustain those processes. While we had accepted the notion throughout the 1960's that insurgencies were a profoundly destabilizing phenomenon we failed to realize that our strategies designed to counter them were themselves profoundly destabilizing. Countering insurgencies required elements of polities and priorities for institutional change that most countries lacked. Insurgency need not have been synonymous with warfare, although the insurgencies in Southeast Asia and the Middle East in the 1960's became, in fact, major wars in scope, cost, and cruelty. A fundamental error

*See also Norman D. Palmer, "Foreign Aid and Foreign Policy: the 'New Statecraft' Reassessed," *Orbis*, Fall 1969, p. 775.

*See his article on this subject in *Foreign Policy*, Winter 1970-71, p. 31-45.

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in our doctrine of response was that we primarily viewed them as limited *wars* to which a limited *military* response was appropriate, rather than as political struggles that challenged the stability of governments and the viability of the systems of politics of the incumbent regimes we often supported.

Apart from all the technological window dressing associated with counter-insurgency, the process required, fundamentally, governments and politics strong enough to compete with the insurgents. There was in Vietnam, for example, continuous talk of the need to transform the conflict from a military to a political one. But our approaches there consistently stressed the need for the Government of South Vietnam (GVN) to develop military capabilities and not political ones. And now, as we are preparing to disengage from the conflict, we find the GVN relatively well prepared to continue the war, but not so able to compete with the Vietcong politically. The prospect that the war will be permanent is very real; the capabilities for the GVN to emerge as a rival political force to the Vietcong have not been adequately developed.

What went wrong? To Sun-tzu's classic dictum: "Know yourself; know the enemy. A thousand battles, a thousand victories," we forgot to add, "Know your ally." By turning the insurgency in Vietnam into a war of proxy—perhaps proxy comes close to defining the real nature of limited war—between the United States and its Communist enemies, we failed to realize that the GVN itself was weak and that no amount of support to a weak government could substitute for one that was politically strong. We had continually sought to have the GVN decentralize power to the people—as a means of increasing popular support for the regime. But the GVN had no power to decentralize. It barely had enough to maintain itself vis à vis the military officer corps and religious groups that sought its overthrow. The GVN, in turn, made it easy for us to intervene in the war; but in so doing, we found ourselves virtually unable to influence the course of political developments—developments of the sort that were required to create political strength for the incumbent government. Intervention, thus, was not the same as influence. The findings of the MIT study group in 1959 with regard to this aspect of American foreign aid doctrines are still pertinent:

> There can be no easy optimism about the consequences of American action. We must face the fact that our influence is limited. Our relationship to the newly emerging countries is not that of a 19th century European power towards its colonies, nor that of a modern Communist power towards its satellites. We exercise no direct control and can influence the course of events only marginally, largely by helping to provide some of the resources—skills, education, public utilities, capital—which countries must have for successful and stable modernization.[5]

The experience of the past decade has not substantially changed this assessment. Indeed, the conclusions of one Senate staff study of our assistance to the Greek junta can be taken as both a summary of past efforts in most countries as well as prolog:

> The policy of friendly persuasion (to move the junta towards a constitutional state) has clearly failed. The regime has accepted the friendship, and the military assistance, but has ignored the persuasion. Indeed, the regime seems to have been able to exert more leverage on us with regard to military assistance than we have been able to exert on the regime with regard to political reform. We see no evidence that this will not continue to be the case.[6]

Such a state of affairs, of course, is not limited solely to the Military Assistance Program. Regardless of our goal (ranging from "friendly" persuasion to direct threats) and regardless of the vehicle by which it is advanced (ranging from military to development assistance to diplomacy), the results appear to be the same.

The more stable and secure the government establishment that we wish to influence, the less likely are our chances of doing so. The reasons for this are obvious. Strongly entrenched regimes have at hand the means to resist or selectively use American assistance and advice. Moreover, we are often inept in proffering aid and advice, and our overseas missions are frequently divided against themselves in ways that permit host governments to manipulate competing aid factions to their own advantage.

Ironically, however, our ability to exert influence through direct intervention or assistance is also very limited in countries where the ruling elite or the established government is weak. In such cases, regardless of the resources that we can provide to strengthen government, it may be inherently too weak to implement the kinds of reforms we suggest. Intervention, then, substitutes for development rather than stimulates it.* Our support to weakly entrenched governing elites tends to provide them with a level of confidence they have been unable to derive from their own politics. In the process of building such confidence, it often becomes unnecessary for the government to embark on the difficult task of fostering greater political mobilization by expanding opportunities for political participation. Regime survival depends upon the United States, not internal supports, and in a war by proxy we must appear to our foreign allies as more anxious to have their support than their reform. In fact, one distinct possibility suggested by past experience is that if our goal is to influence a particular government, the probability that we shall succeed is much greater if it is clearly *not* in our national interest or a matter of national policy to do so. The corollary to this proposition suggests that questions of intervention and influence ought to be resolved by criteria other than national interest. We should realize that what we wish to foster in other countries—the evolution of democratic institutions—is extremely difficult to achieve and perhaps impossible for us to impose on foreign cultures.

In dealing with insurgencies, the broadening and strengthening of institutions of political participation are crucial, but such reforms often are distasteful to the government we support. Democratic evolution requires that power be created and shared. The process implies, as most governing elites must view it, the likelihood that their position and influence will be eroded. In short, as one early study of the political significance of guerrilla warfare suggests: "The confidence inspired by strong American backing . . . may tempt the leaders to defer the very reforms which the American aid was intended to facilitate, the reasoning being that the regime is now so firmly entrenched and backed that these inconvenient and distasteful changes are no longer necessary."[7]

*See, for example, the discussion of this phenomenon contained in Amitai Etzioni, "Intervention for Progress in the Dominican Republic," in John D. Montgomery and Albert O. Hirschman, eds., *Public Policy*, XVII, 1968, p. 299-306; Abraham Lowenthal, "The Dominican Intervention in Retrospect," *Public Policy*, XVII Fall 1969, p. 133-48; and Peter A. McGrath, "The Style and Success of Counterinsurgency Foreign Aid: Some Determinants," in *Ibid.*, 1968, p. 307-31. A detailed analysis of the relationship between American policies and Vietnamese politics can be found in my *Politics in War: The Bases of Political Community in South Vietnam* (forthcoming).

This state of affairs is a result of two misconceptions about the efficacy of our policies. First, we tend to believe that when we support governmental establishments we are also supporting entire political systems or at least the possibility of the former working to strengthen the latter. In fact, we fail to recognize that the two are not complementary but often opposing forces; we may, in short, close off the prospects for internal political reform by seeking to foster it within the governmental system. Second, we tend to regard insurgency as an external problem, generated by Communist subversion rather than as an internal conflict over the distribution of political power in a society. This is not to say that Communist states do not practice subversion, but that subversion rarely succeeds unless there are sufficient forces of internal discontent that predate the introduction of foreign arms, finances, or cadre. Because we view with alarm Communist influences in developing countries, we respond to communism and not to the bases from which it might draw support.

Thus, a well-balanced program designed to assist a developing country meet some of the difficulties associated with modernization may very well be scrapped at the first appearance of even the most ambiguous signs of a Communist subversive presence. The host government realizes this and assumes that its interest in maintaining a grip on political power is identical with our preference for stable governmental and administrative systems to combat the Communists. Thus we end up providing the umbrella of sustenance under which the tenure of the governmental establishment is guaranteed. The result of this process is that the Pentagon abroad transforms development assistance into civic action, insurgencies become limited wars that can be preempted by the development of police and paramilitary forces, and questions of political reform are relegated to an "after the war" concern.

The Limits of the Vietnam Vision. Virtually no one would suggest that the American withdrawal from Vietnam is a bad thing, but it is not at all clear whether or not it is a good thing. If our involvement in Vietnam could be questioned in quite fundamental ways, then our withdrawal does not make much sense either. We expect, for example, that the stability we sought through war and massive intervention can now be achieved by withdrawal. The Vietnamization program seeks to provide the GVN with a reasonable chance to survive. However, if the problem has essentially been a political one, then military support and assistance can hardly make a fundamental contribution to the survival of the GVN. We have not, it seems to me, a new policy for either Vietnam or the rest of the developing world. To do less in these areas, whether under the guise of searching for low-profile activities or under the mantle of isolationism, are targets and not new policies. If Dean Rusk's fear that "one of the severe prices that we may be paying for Vietnam is that it may have stimulated a trend toward isolationism in this country" proves correct, then we shall not have any post-Vietnam policy. Indeed, if President Nixon's second State of the World Report can be taken as a prolog, it suggests that low profile may ultimately mean no policy:

> The American interest in the future of South Asia, which includes such large countries as India and Pakistan, is . . . reduced to three pages of banalities; the discussion of black Africa and its growing conflict with South Africa amounts essentially to a proclamation of American neutrality; and the analysis of Latin America does not address itself at any length to the dynamics, prospects, and implications of rising

> radicalism on the left and right, both exploiting and responding to popular anti-Yankeeism.[8]

Could the agony of the Vietnam experience fail to result in a new American foreign policy? It can, and the danger that it is already doing so is great. Vietnam was a disaster, but not to create new principles for foreign policy in its aftermath would be an even greater disaster.

The dénouement of the Vietnam war, it is generally assumed, will precipitate substantial changes in American foreign policy. How could it be otherwise? The war itself has been one of incredible scope, intensity, and cost. More young people have been mobilized against this war than had been involved in the struggle for human rights of the late 1950's and 1960's; the protest appeared to coincide with the emergence of a new and alienated youth culture that exposed in sometimes beautiful but more often in bizarre ways the decay of the American social structure. One President sacrificed what would in all probability have been a second term of office out of the conviction that so doing would help to end the war, while another President will no doubt run for a second term largely upon the record of his efforts ending American military participation in it. Countless Government officials—at all levels—have left their posts as gestures of their opposition to the war; those who had upon leaving remained quiescent are increasingly coming forward to make their opposition known. Seven thousand pages of classified Government reports were leaked in a dramatic gesture of despair to the public press, providing scholars with access to archival information (particularly from Defense Department and Joint Chiefs of Staff files) hitherto unavailable for scrutiny in the aftermath of any other war. All these features of the Vietnam war (to list only some of the most prominent) are bound to precipitate change in American foreign policy; or are they?

The very elements which have thrust this war so dramatically upon the political consciousness of Americans may be the ones which may make for the absence of any profound changes in the principles upon which American foreign policy is based. I suspect that we tend to overrate the lessons learned from unpopular or unsuccessful involvements abroad and, in the case of the Vietnam war, the very immensity of our involvement and failure makes it unlikely that its lessons will have much consequence.

It is commonly accepted among Government officials now, as it was among concerned academics throughout most of the latter half of the 1960's, that the Vietnam war made little sense in the context of our foreign policy. As one Government official suggested to me in an interview,

> This war has been blamed on the cold war mentality of supposedly cold warriors who were concerned about falling dominoes and stemming the red tide. But I do not think this is true, if I may speak as a cold warrior. Cold warriors *learn* from the past, and one of the most prominent of the lessons we have learned is that we should have no land wars in Asia.

Similarly, Walt Rostow in his new book *Politics and the Stages of Growth* observes:

> . . . an implicit common law for the conduct of the struggle across the truce lines of the cold war . . . [was this] if A obtruded with military force or the threat of military force over B's side of the line, it was acceptable for B to bring to bear whatever defensive power he could mobilize against A's intrusion; but it was not acceptable for A to take B's defensive actions as an occasion for escalation.[9]

Where did these principles come into play in the Vietnam war?

In Vietnam such rules of the road governing intervention did not apply. The point here, of course, is not only that the level of intervention in the Vietnam war made no sense and could not be justified by reference to any contemporary U.S. policy,* but also that because it has made no sense, the prospect that we can learn from it is greatly reduced. As horrendous and costly as the war has been, it has only marginally affected the bureaucracies and procedures which have participated in it. From the policymaking end of the involvement, ever since early 1965 the Vietnam war has been a special war, handled by special working groups within the diplomatic, security, and intelligence communities. Officials of high and low levels have gotten, as one put it, "stuck in the Vietnam thing," and many have remained "with it" for almost a decade. Those who have left staff and operational roles associated with Vietnam frequently report that they are warned, when they arrive at their next post, that nothing they have learned in or about Vietnam is relevant to their new assignment. One early Vietnam hand in the State Department, for example, described his mid-career transition in the following terms:

> I have spent three years in Vietnam and three in Washington working on Vietnamese affairs and I was, during the latter period, literally inundated with advice to get out of it. I finally did so by requesting a post in Latin America and the first thing I was told was that nothing I had learned in Vietnam would be of help. I was amazed, in fact, at the intensity of the pressure within the [diplomatic] service to isolate the Vietnam experience.

Vietnam operations groups exist as self-sufficient entities (and sometimes as separate buildings) within the foreign policy bureaucracy, and in two agencies with which I am most familiar (the State Department and AID), I have always been struck by how little the whole of the institution had been affected by Vietnam. The remarks of one high-level official in the State Department (who was not working on Vietnam) made in response to a question about how he felt toward the students then protesting the Nixon administration's war policies serve to summarize the comments of many that I recorded over the past few years.

> I do not think you should be amazed at how sympathetic we are towards the students. They have made getting to work for the mass of the Washington service difficult, but they have not really struck at what any of us are, in fact, doing in our work. We do not like, support, or believe in the Vietnam thing either. When the students speak, therefore, they are not speaking to us or to the way the government *as a whole* works. [Emphasis added.]

To the extent that this atmosphere is a pervasive one, the experience of the Vietnam war is effectively controlled and isolated, and so, also, is the impact of its lessons.

The prospect is thus very real that we may be coming out of the Vietnam experience with our foreign policy-making institutions having learned very little and with those individuals who have learned something being in the least opportune positions to apply it. Our coming out may be much like Alexis de Tocqueville predicted it might when he wrote that:

> Two things are surprising in the United States: the mutability of the greater part of human actions,

*See especially, Leslie N. Gelb, "Vietnam: the System Worked," *Foreign Policy*, Summer 1971, p. 145.

> and the singular stability of certain principles. Men are in constant motion; the mind of man appears almost unmoved. When once an opinion has spread over the country and struck root there, it would seem that no power on earth is strong enough to eradicate it. . . . Not that the human mind is there at rest, it is in constant agitation; but it is engaged in infinitely varying the consequences of known principles and in seeking for new consequences rather than in seeking for new principles. Its motion is one of rapid circumvolution rather than of straightforward impulse by rapid and direct effort; it extends its orbit by small continual and hasty movements, but it does not suddenly alter its positions.[10]

New Principles in a New Environment. New principles will not automatically spring from within; they never have. Gulliver's coming out, rather, signifies that the primary impetus for change in the principles upon which American foreign policy will be based is the world environment itself. Two principles can thus be suggested.

First, insurgencies are political conflicts; they will increasingly focus on questions of political power and political participation. They will be launched by those who are denied adequate and effective channels of access to and participation in politics. They will not be wars of self-defense against armies of a foreign power; they will be wars of self-determination. As such, there have often been political conflicts that began with rather than ended at the achievement of independence. Future insurgencies, thus, can be distinguished from wars of subversion, wars of proxy, and limited engagements between two or more countries.

Too often we have intervened to "preempt" insurgencies, and this has resulted in turning them into wars. Such a policy only delays or postpones either the insurgent or the incumbent coming to terms with the crisis of participation, that is, the conflict over who will participate in creating and exercising the political power that the outbreak signaled. Insurgencies will become conflicts about the distribution of power in a single country. The only way in which they can be preempted is by coming to terms with the issues of participation in politics that they raise, not by converting one side or another into a more effectively armed camp.

Insurgencies are also likely to become permanent wars. They will be characterized in their incipiency—whether it takes several years or a decade to play out—by intervention and withdrawal of either waning global or emerging regional powers. The second phase of the insurgency will be characterized by lower levels of violence than the first, but the basic issues of the conflict will remain the same. Phase two is the crucial stage. The Vietcong have demonstrated that insurgent movements can survive massive intervention. The real question is whether each side can sustain the conflict and transmit its goals over as much as several generations. If one side is successful in prevailing over the other in phase two, then the outcome will resemble the Mexican "success story": subjugation of the side least able to transfer the fervor of the conflict from generation to generation, class to class, and from political movement to political institutions. If neither side prevails over the other, the outcome is likely to resemble the Korean "success story": stable partition.

The second new principle relates to the need to understand the new environment in which the dénouement of phase two will occur. It would be easy for an academic to argue that past disasters all result from the policymaker's misunderstanding of both the world and present realities. Misunderstanding is a part of

my answer but, as I shall try to suggest, it is too obvious an answer. We knew a great deal about what went wrong well before any of it occurred. Gulliver's "coming out," rather, is a profound transformation: the United States has become a helpless giant and the world has turned upside down.

Something profound is happening not *in* the world but *to* the world, which makes the question of "Who shall be a world power by the year 2000" obsolete. The world by that time will have less need for giants. I see nothing on the horizon which could substitute for the American system of world order, for it was not unique from that of its present competitors. I do not see the great nations now emerging as intent upon taking over the system we have created.* Nor do I see, fundamentally, the prospect of agreement and cooperation arising from the realization that we are, in the words of poet Archibald McLeish all "riders on a tiny spaceship." I do not see the enfranchisement of a worldwide peasantry nor the political triumph of the middle class. Rather, I see the breakup of the world into regional conflicts, perpetual conflicts or insurgencies, if you will, that current policies—much less current academic thought—will be unable to influence.

There will be cooperation on such things as the environment and possibly on the problems inherent in the specter of chronic poverty accompanying unparalleled rapid urban growth, but no fundamental agreement on war and peace. If anything, the once great global and the now-emerging regional powers will come to recognize that their ability to influence the world has greater limitations than anyone ever expected. Ironically, this realization—which will be a time yet in coming—may do more to end war and promote peace than anything that we could create, institutionally or politically, to do the job. The secret of riding the spaceship—and this also is a new principle—lies in the growing realization of shared perils, rather than in a burgeoning sense of efficacy and control, either over nature, ourselves, or the universe.

*While the author's thesis proposes that a superpower's *capability* to shape events in the world to its liking is overrated and will continue to diminish, Soviet actions over the last 5 years would seem to belie an *intent* to play just such a role. Ed.

BIOGRAPHIC SUMMARY

Professor Allan E. Goodman did his undergraduate work at Northwestern University and gained his Ph.D. from Harvard University. He has served as Civilian Executive Assistant to Deputy Chief of Staff, Plans and Programs, Headquarters, U.S. Marine Corps; as an adviser to the State Department for Thailand and South Vietnam; as a consultant for the Rand Corporation; and most recently as a Southeast Asia Development Advisory Group Scholar to South Vietnam and as an associate of the East Asian Research Center, Harvard University. Professor Goodman is currently on the faculty of Clark University in the Department of Government and International Relations, at Worcester, Mass.

FOOTNOTES

1. Samuel Huntington, "Political Development and the Decline of the American System of World Order," *Daedalus*, Summer 1967, p. 928.

2. Chou to Moto Goto on 28 October 1971 and reprinted in *The New York Times*, 9 November 1971, p. 16.

3. Celso Furtado, *Obstacles to Development in Latin America* (Garden City, N.Y.: Doubleday, 1970), p. 19-20.

4. *Ibid.*, p. 65.

5. Center for International Studies, Massachusetts Institute of Technology, "Economic, Social, and Political Change in the Underdeveloped Countries and Its Implications for U.S. Policy," in Senate Foreign Relations Committee, 86th Congress, 2d Session, U.S. Foreign Policy (Washington: U.S. Govt. Print. Off., 1960), p. 1240.

6. Richard Moose and James Lowenstein, *Greece: February 1971, a Staff Report.* Prepared for the use of the Committee on Foreign Relations, U.S. Senate (Washington: U.S. Govt. Print. Off., 1971), p. 16.

7. James Cross, *Conflict in the Shadows: the Nature and Politics of Guerrilla War* (Garden City, N.Y.: 1963), p. 140.

8. Zbigniew Brzezinski, "Half Past Nixon," *Foreign Policy*, Summer 1971, p. 11.

9. Walt W. Rostow, *Politics and the Stages of Growth* (London: Cambridge University Press, 1971), p. 307.

10. Alexis de Tocqueville, *Democracy in America* (New York: Random House, 1961), v. II, p. 271-272. For a classic portrait of this trend in politics see James Reston, "How to Win by Losing," *The New York Times*, 15 November 1971, p. 43.

Ψ

Power, in whatever hands, is rarely guilty of too strict limitations on itself.

Edmund Burke: Letter to the Sheriffs of Bristol on the affairs of America, 1777

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Some observers have characterized the current mood surrounding relations between the superpowers as moving toward "détente," while others have decried the ever-growing Soviet military might, both strategic and conventional, claiming it represents the principal threat to Western security. The crucial issue in this vital contemporary debate is clearly the question of Soviet intent. Indeed, future policy decisions cannot be made without first resolving this point. Tentative answers to these vexing questions can perhaps best be reached by first investigating Soviet strategic thought as it has evolved within the matrix of Russian historical experience.

SOVIET STRATEGIC THINKING, 1917-1962

SOME HISTORY REEXAMINED

An article developed from a series of faculty lectures given at the Naval War College. *[Editor]*

There are no experts on the Soviet Union; there are only varying degrees of ignorance.

Ambassador "Chip" Bohlen

When Ambassador Bohlen made this remark and when Winston Churchill described the Soviet Union as a riddle inside an enigma wrapped in a mystery, they were both emphasizing how little we in the West really know about Russia. Our ignorance stems largely from the fact that the Soviet Union is a closed society in which information is controlled to an extreme which seems ridiculous to us. However, contributing to our ignorance was our failure to make any serious effort to collect information about the Soviet Union or to train specialists in Soviet affairs until the Second World War, and by then it was almost too late.

Over the last 20 years we have worked very hard to gain a greater understanding of the U.S.S.R. Our knowledge today of things Russian may be far from complete, but it is infinitely greater than it was 25 years ago. We now recognize, for example, that our failure to appreciate the strengths and weaknesses of the Soviet Union has cost us very dearly; but fretting over *how* things might have been different serves no useful purpose. Instead, the purpose of this article is to go back to the Bolshevik Revolution of 1917 and review some key factors in the development of Soviet strategic thought from the vantage point of hindsight.

We are able to understand Soviet policy and strategy—and the motivations behind them—only to the extent that we are able to put ourselves into the other fellow's shoes and give serious consideration to his perspectives on the world. Therefore, let us take a look at the world as it appears from Moscow and not from Washington. Doing this

will help to provide some insights into *why* the Soviets behave the way they do and will make some of their strategic decisions a little easier to comprehend. It might also change some of our preconceptions about the other superpower.

First off, there are three basic axioms that one should keep in mind, because they are the underlying themes to our consideration of Soviet strategy.

- National policy is influenced by national character.
- Strategic thought is never separate from political thought.
- When you're second, you try harder.

Every country has a distinct national character which has been shaped by such factors as history, culture, traditions, geography, that is, by the sum total of its national experience. This national character has a strong influence on policy and strategy. While this is true for every nation, it is especially true for the Soviet Union.

Strategic thought cannot be separated from political thought in that strategy is no more than the handmaiden of politics. Strategic thinking determines the methods through which political objectives are attained. This is true for every country, but it is particularly true for the Soviet Union.

The third axiom speaks for itself. When you are in second place in the struggle for world power, you put forth a great deal of extra effort to catch up. This is especially true of the Soviet Union.

Why these three axioms seem to apply to the U.S.S.R. more than to any country becomes clear when one considers the manner in which Soviet strategic thinking has evolved. In considering its development, we shall examine Soviet strategic thinking in each of its four rather distinct phases. The first phase began with what the Soviets call the Great October Socialist Revolution of 1917 and lasted until approximately 1934.

It began on a rather phony note. There was no great revolution. The masses of the Russian people did not rise up to overthrow the old order, and they certainly did not insist that the old order be replaced by the socialism of Karl Marx. In fact, the Russian people had very little to do with it.

What happened was very simple. Courtesy of the Germans, Lenin was on the scene in Russia where he and his associates found political power writhing in the streets of the capital and they picked it up. Once they had the power they had coveted for so long, the new Bolshevik leadership was confronted by some very harsh realities, the first of which was the realization that the brave new world of communism stood a very good chance of being stillborn.

The country they sought to rule could only be described as being in absolute shambles. After 3 years of war, Russia had been bled white; politically, economically, and militarily. For all intents and purposes, public order was nonexistent, and famine was already imminent.

The army, historically ill-trained, ill-equipped, and ill-led, ran up an unparalleled record of defeat in World War I and could lay claim to the highest casualty lists in Europe—it lost over 3 million men in 1915 alone. Demoralization in the ranks, at least some of it caused by Bolshevik agitation, was virtually complete, and desertions had reached an astronomical rate.

While Russia no longer possessed a viable fighting force, the German Army, on the other hand, was deep inside Russian territory, ready and willing to resume a general offensive which could easily carry it to St. Petersburg and Moscow. In this situation, with the total collapse of the nation just around the corner, compelling necessity became the driving force behind Bolshevik actions.

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Circumstances dictated policy at a time when there could only be one policy—that of survival.

If the Bolsheviks were to maintain their slim hold on power, if there was to be a continued national identity, if the country was ever to be rebuilt and transformed into the Communist utopia Lenin had promised, a peace treaty with Germany had to be concluded at once. It had to be a peace at *any* price, and it had to be a peace which would endure for many years.

Yet the Bolsheviks temporized. Even as he sent Trotsky racing off to Brest-Litovsk to negotiate with the Germans, Lenin instructed him to delay a peace settlement for as long as possible, but to secure a cease-fire.

His reasons for issuing such orders seem astonishing indeed. Minor mutinies in the French Army and German Navy had convinced Lenin that the war-weary soldiers of Europe were about to rise up in mass protest against further slaughter and seize power in the Communist world revolution which Karl Marx had envisioned. Thus, Lenin reasoned, an armistice would secure the time needed to consolidate the Bolshevik position at home, while every passing day would bring Europe closer to revolution. The Germans, fearful of developments in the Fatherland, would not insist upon very harsh terms in a peace treaty, so Lenin simply issued a call for revolution in Europe and then sat back and waited.

His reasoning was a classic example of the Communist desire to have the best of two worlds. More importantly, however, this is perhaps the first example of the process whereby the Soviet leadership, in viewing the outside world through the ideological blinders of Marxism, were led to a mistaken conclusion, but it was by no means the last.

An armistice was arranged in December 1917, and Trotsky began a brilliant campaign of holding off the German Army with words alone, waiting in vain for Europe to erupt. His tactics were correct, but his strategy was wrong. On the 10th of February 1918, Ludendorff finally ran out of patience with Trotsky's campaign of delay. He was anxious to secure as much territory as possible for Germany and then to bring the war with Russia to a close so that he could shift his forces to the Western front before the American Army could go into action in France. Accordingly, he ordered a general offensive.

Within 3 weeks the German forces had advanced all along the front, penetrating from a minimum of 100 miles in the north to a maximum of over 600 miles in the south, to the west bank of the Don River. With the entire Ukraine thus occupied by the enemy, with German troops in the north in a position to threaten St. Petersburg and even Moscow, and with the Russian Army unable to put up more than token resistance, Lenin finally gave in.

On 3 March 1918, he at last sued for peace. The price was very high indeed. Russia lost Finland, Estonia, Latvia, Lithuania, Poland, and the entire Ukraine.

The cost was exceedingly high in terms of territory, but it was most painful, most agonizing in terms of economic capacity. In accepting the peace of Brest-Litovsk, Lenin gave up 34 percent of the population, 54 percent of the industrial plants, and 89 percent of the coal and iron mines of Imperial Russia. It is true that he got the Ukraine back after the German surrender in November 1918, but Russia was not to recover control of her other western provinces until World War II.

As excruciating as these losses may have been, the new Soviet regime considered that they were more than offset by what had been gained—the peace and time required to establish a new Marxist order.

This they immediately set out to do, and it could be quite helpful at this point to look very quickly at how they did it. From March to November 1917

the people of Russia had freedom within their grasp, only to give it back, as if it were almost too great a burden to bear, into the hands of another dictatorship. This is precisely what happened. We would indeed be mistaken to assume that the people were duped into accepting the Bolshevik regime's promises of freedom, equality of all men, an end to the exploitation of the masses, and public ownership of the factories. The new dictatorship succeeded because its leaders understood the Russian soul, and they traded on responses that were as old as Russia itself. Acceptance of authority is an ingrained characteristic of the people. It has been their lot for almost a millennium, since the year 988 when Prince Vladimir of Kiev was converted to Christianity.

From that time until the Bolshevik Revolution, there were three dominant influences in Russian life. These were:

- *Autocracy*—the absolute rule of the Czar, who occupied the throne because he was God's chosen representative on earth;
- *Orthodoxy*—the state religion of Russia which pervaded all aspects of life, first with its rigid doctrine and then with its belief that Moscow—the Third Rome—had received the charter to save the world from itself; and
- *Nationality*—that strange and strongly emotional sense of being a part of the people and a part of the soil that is perhaps stronger in Russia than anywhere else.

For a thousand years these influences formed the basis of allegiance to Moscow and to the person of the Czar. Then came the Bolsheviks, agitating for overthrow of the old order on the grounds that Karl Marx had found the only true solution to the suffering of the masses.

The revolution came, but what changed?

	988-1917	1917-Present
Autocracy	Czar	Commissar
Orthodoxy	State Religion	State Ideology
Nationality	Russianism	Russianism

What is the difference between the absolute rule of the Czar and the absolute rule of the Communist Party, the earthly inheritor and interpreter of Karl Marx? Is there any difference between Russian Orthodoxy and an enforced state ideology which teaches that the victory of Russian communism is inevitable and that Moscow therefore still has the charter to save the world from itself?

To be sure, the form of the new regime was considerably different, but the content was simply very much more of the same. National character had exercised a determining influence on national policy. Once the dictatorship of the proletariat—that peculiar fusion of traditional Russian psychology with Marxist claptrap—had been established, the first vague glimmerings of Soviet strategic doctrine began to appear. They appeared only slowly, and once again circumstances forced the men in the Kremlin to make some very hard decisions.

We need only to recall that peace with Germany did not immediately bring peace at home. There were vast numbers of people who did not accept bolshevism—Russians, and especially Ukrainians, rallied around anti-Communist leaders like Admiral Kolchak and General Denikin, and 4 years of incredibly bloody war resulted. The situation was further complicated by the intervention of the Allied Powers, who sided with the anti-Communist white forces in a vain attempt to get Russia back into the war.

Furthermore, the end of the war in Europe had brought the creation of a belt of independent states across Eastern Europe—Estonia, Latvia, Lithuania, Poland, Czechoslovakia and Hungary. Western statesmen made no secret of the fact that these small nations formed a *cordon sanitaire* designed to separate Europe from the Communist menace.

Time does not allow a more detailed treatment of these events. Suffice it to

say that the Bolsheviks came to understand that they were not very popular in the world. Nobody liked them very much, and there was no one anxious to extend the vast amounts of economic aid they had somehow come to expect.

There was no alternative to what they did. They took it for granted that the new Soviet state was surrounded by hostile capitalist countries which would seek to crush the proletarian revolution and the U.S.S.R. This notion, which divided the world into two opposing camps, was sanctified in the doctrine of "capitalist encirclement." This was not a Marxist idea; it originated with Lenin and became the chief tenet of Josef Stalin, who forever preached that imperialism existed for the sole purpose of destroying socialism.

Stalin added to Communist dogma the accompanying idea of "socialism in one country." This was his own way of acknowledging that world revolution was not a realistic possibility and that, with no outside help, the Soviet Union would go it alone.

These two doctrines were born of political necessity, and they forced upon Moscow the only strategic posture possible under the circumstances—a posture of defense. If it was true that the Soviet Union was surrounded by hostile states, and if it was true that conflict between capitalism and communism is inevitable, then Moscow had to have a strategy which would ensure the security of the U.S.S.R. at all times and which would guarantee victory in any war the capitalists might start.

This also meant that the Kremlin was not about to embark on any adventures that might bring it into conflict with the capitalist world, because there was no real military power standing behind the strategy.

World War I, the civil war, and early Communist policy had combined to wipe the Russian Army out of existence. The tremendous casualties incurred over almost 10 years of constant fighting had taken an unbelievable toll of military manpower and had created a war weariness which was to last for a long time to come. But the determination of the Communists to destroy all vestiges of the Czarist army did almost as much damage. Basing themselves on some vague, ill-formed notions of what the world's first proletarian army ought to be, they attempted to do away with anything that smacked of traditional militarism. In the new "Workers and Peasants Red Army" ranks were abolished, saluting was abolished, officers were elected by the troops, everybody wore the same kind of uniform, and it was even possible for soldiers to vote not to accept the orders of their commanders.

This was a nonsensical state of affairs, of course, and it did not last long. Trotsky fought against it, but in essence it was corrected by Mikhail Frunze, the first of the great Communist military leaders. He became Commissar of war in 1924 and immediately went to work convincing his masters in the Kremlin that some changes had to be made. They finally agreed, and Frunze began the Herculean task of creating an army. He reintroduced compulsory military service for all males of 21 years or older, reinstituted ranks and insignia, and brought back the traditions and the rigid discipline of the old army. He began to rebuild a professional officer corps and sought training for the brighter Russian officers in the academies of the German general staff. In return, the Soviets permitted German officers to visit Russia, where they tested armored tactics away from the prying eyes of the Western Powers.

But from the standpoint of strategy as such, Frunze could do nothing more than to accept that defense of the Soviet regime was the first purpose of the Red army. Accordingly, he dispersed 90 percent of his forces along the borders of the U.S.S.R. and used the remainder as territorial units to garrison

the interior. At night he must have prayed to Karl Marx that there would be no war.

Frunze did not live long enough to see his efforts bear fruit. He died after a year in office and was replaced by Kliment Voroshilov. Voroshilov took on the job of equipping the army, for it had very little to fight with. Beginning with the first 5-Year Plan in 1928, the cream of industrial production began to go to the armed forces, and by 1934, aircraft, armor, and weapons of the latest type were going to the army in substantial numbers.

Militarily, the Communists had made good use of the breathing spell Lenin had won. How well they used it can best be appreciated by remembering that the rebirth of a modern army took place under almost impossible circumstances. These were the years when Stalin and his henchmen in the Kremlin had to give all their energies to rebuilding the entire national economy and shaping it in a Communist mold. These were the years of the collectivization of agriculture. These were the years of forced draft industrialization, when coal and iron to produce heavy machinery and new factories took precedent over everything else.

These were the years when the Russian people felt the lash on their backs as Stalin whipped up a national frenzy of trying to catch up with the West. And these were the years when it became clear that Stalin intended to maintain himself in power by the brutal physical elimination of all opposition, real or imagined.

That the army was reborn at all seems a miracle in itself. If there was no great strategic thought, it was because the demands of reconstruction left little time for thinking about strategy. In any case Russia had not produced a single strategic thinker worthy of the name since Marshal Kutuzov, who forced Napoleon out of Russia in 1812.

The first period in the evolution of Soviet strategic thinking, then, ended with the creation of a large standing army committed to defense alone and trained and equipped well enough to put up a substantial fight if the need arose.

The year 1934 marked the beginning of the second period, and it began on a note of alarm. To the men in the Kremlin, the rise of Adolf Hitler and the publication of *Mein Kampf* made it crystal clear that Russia was to be the prime target of Nazi expansionism. Hitler's hysterical anticommunism was disturbing enough by itself, but added to this his hatred and contempt for the Slavs and his avowed intent to move eastward in search of *Lebensraum* for the master race made it small wonder that Soviet policy took an abrupt, 180-degree turn.

The self-imposed period of isolation suddenly came to an end, and Moscow burst full blown into the world diplomatic arena, seeking military alliances and political support from any quarter. In a rather amazingly short period of time, the Kremlin sought and won recognition from the United States, concluded an anti-German treaty with France, joined the League of Nations, and sent officers and equipment to fight against Franco in Spain. This was obviously done both to test Soviet equipment and to provide future field commanders with combat experience.

At home, Soviet industry went onto a war footing. Finally, when war came to Europe in 1939, the Kremlin concluded the Molotov-Ribbentrop Pact with Nazi Germany, and Soviet troops occupied eastern Poland. All of these actions grew out of a need to gain time to prepare for war, to gain allies in the coming struggle, and to gain room for maneuver.

This last consideration led the Russians to occupy Latvia, Lithuania, Estonia, and part of Rumania in 1940. In order to secure the approaches to Leningrad, Stalin sent the Red army against

Finland in the terribly costly, but successful, winter war.

That Moscow was able to achieve as much as it did between 1934 and 1940 is almost incredible. It was also in 1934—the year that he realized that war with Germany could not be avoided—that Stalin revealed the full extent of his paranoia by launching the great purges. In rapid succession he purged the Communist Party, the Soviet Government, Soviet society, and even the secret police. And finally, on the very eve of war, he purged the army.

God alone knows how many people perished during the years of this terror, and He alone knows how many were shipped off to the slave labor camps of Siberia. Stalin's victims number well into the millions, and it is an established fact that at least 35,000 officers—the cream of the army—were purged. Among those who fell was Marshal Tukachevsky, the chief of the general staff and one of the most brilliant officers the Russians ever produced, the man who pioneered the development of paratroops and who moved entire divisions by air in the early thirties.

When war finally came to the Soviet Union in June 1941, Stalin took personal command of the entire war effort, gave himself the rank of Marshal of the Soviet Union, and, if Khrushchev is to be believed, did in fact make almost all of the strategic decisions of the war.

For the first 2 years of the fighting, strategy was dictated by circumstances. As it had been in 1917, the Communist regime had to face up to the fact that the survival of the nation was at stake. This was no war for the spread of international communism; it was a fight for the life of Mother Russia.

Stalin never defended himself or the people on this score. In his first wartime address to the nation, on 3 July 1941, he invoked a policy of scorched earth and guerrilla warfare. On Revolution Day 4 months later, when the Germans were 20 miles from Moscow, he stood on the Lenin mausoleum in Red Square and called upon the saints and warrior heroes of Imperial Russia. He exhorted the troops to "let the manly images of our great ancestors—Aleksandr Nevsky, Dmitry Donskoy, Kuzma Minin, Dmitry Pozharsky, Aleksandr Suvorov and Mikhail Kutuzov—inspire you in this war." If there was a grand strategic design to the war in Russia, it was a virtual duplicate of the plan Kutuzov had used against Napoleon—and was thus a Russian, as opposed to a Communist, strategy.

Kutuzov's defense of the homeland has been described as acting like a giant spring. The Russian Army would retreat, fighting constantly but drawing the enemy deep inside Russia. (Kutuzov pictured Moscow as the "sponge which will suck Napoleon in.") The retreat, however, would be like a spring being compressed, because the army, falling back on its mobilizing reserves, would then stand and hold. The enemy, his supply train terribly overextended and his lines of communication constantly harassed by guerrillas, would then fall victim to winter.

Then the spring would recoil, the massed might of the Russian Army would strike, and the invader would be expelled. It worked against Napoleon and it worked against Hitler, but it was a very near thing indeed. Let us take a look at how far the spring had to be compressed before it could recoil.

By November 1942, when it reached its deepest penetration into Russia, the Nazi army stood on a front extending from Leningrad southeastward to Stalingrad on the Volga and then looping almost to the Caspian Sea and Asia. The industrial and agricultural heartland of Russia had been ripped out.

But the Soviets held at Stalingrad, and in January 1943 the great counteroffensives began. By mid-1944 Russia was free of the German Army. The Soviet Army stood at the gates of Warsaw where, incidentally, Stalin

halted the advance long enough for the Nazis to take care of the Warsaw uprising and wipe out the Polish Home Army—an anti-Communist organization which could be expected to oppose Stalin's designs for Poland.

A year later the Russians and Americans met at the Elbe, and it was all over. The Soviet Army had come a long way, and Russian troops stood in Western Europe for the first time since 1815. In their advance they had gained a sizable amount of real estate to add to the Russian Empire.

Just to give you an idea of the area involved, the distance from Leningrad along the furthest line of German advance is roughly equal to that from the northern border of Maine to the Florida Keys. The distance from there to the borders of West Europe is about the same as that from the east coast to the Rocky Mountains. In 2½ years, fighting every inch of the way, the Soviet Army captured an area roughly equivalent to three-fourths of the entire United States.

If this seems to have been a rather short treatment of the cataclysmic events of World War II, it is because other aspects of the war and its aftermath are much more pertinent to the development of Soviet strategic thinking.

It is enough to remember that World War II was a war of national survival for the Soviet Union and that the overall strategy was defensive until 1944, when the country was cleared of the invaders. From then until the end, it was a war of national expansion, both in Europe and in the Far East, where the Soviets conducted a rather desultory campaign against the Japanese for the final 14 days of World War II. Throughout, Russian national interests were invariably placed far ahead of the revolutionary ideals of international communism. Once the war was over and an empire gained, however, Stalin reverted to proclaiming his old cliches about the inevitability of conflict between communism and capitalism and that time is on the Communist side.

Some scholars have suggested that the victorious Soviet Army, which had defeated the second-best army in the world, was ready, willing, and able to gobble up as much of Europe and the Middle East as possible and that only force or the threat of force prevented it from doing so. Other writers have further postulated that with victory won, Soviet strategic thought was consigned to limbo, while Communist historians glorified Stalin as the world's only real strategist. He had, after all, developed the "five permanently operating factors of victory," to which all Soviet strategic writings had to conform. In the light of what we now know, however, a somewhat different appraisal appears reasonable.

Within a year after the war's end, the Iron Curtain had come clanging down over Europe, and the cold war was with us. At that time the United States was flush with victory, and was demobilizing at full speed in response to domestic political pressures. We did not understand the true significance of the Iron Curtain. It was clearly designed to facilitate the incorporation of Eastern Europe into the Soviet orbit. That much was inescapable; but we could not perceive that the real purpose of the Iron Curtain was to set the conditions for the third phase in the development of Soviet Strategy.

Again it is necessary to see things through the other fellow's eyes. As they looked out on the world in 1945 and 1946, Stalin and his marshals could take immense pride and satisfaction in what had been accomplished. Germany, which had come very close to defeating Russia twice in Stalin's lifetime, lay wrecked and divided. A *cordon sanitaire*, this time separating Mother Russia from Western Europe, had been established at the point of Soviet bayonets. In the Far East, the acquisition of North

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Korea, southern Sakhalin and the Kuriles provided the desired buffer zone between Japan and the Maritime Provinces. True to form, the Americans were sending their combat troops back home across the Atlantic.

But what of the future? According to accepted Marxist-Leninist precepts, conflict between capitalism and communism is inevitable, and after 1945 there was only one real source of possible imperialist aggression—the United States of America. Even to a man who firmly believed that communism is bound to triumph, this must have been a horrifying prospect indeed, because Stalin knew a great deal that we did not fully realize until many years later. We did not know the full extent of Soviet wartime losses, and the Iron Curtain was a chief means of keeping us from finding out.

The victorious Red army was backed by an empty shell. The war had literally disemboweled the Soviet Union, and the country was in an even more precarious state than it had been in 1917. The nation and its people were bled white and exhausted. True, they had acquired an empire in East Europe, but it too lay in ruins.

To give you a very basic idea of the enormity of what Russia had suffered, remember that the Nazis had occupied and systematically looted and destroyed an area which embraced 75 percent of the nation's industrial and agricultural capacity. Add to this the fact that an estimated 20 million people—almost 1 out of every 10 Soviet citizens—had been killed, and the Lord only knows how many millions were maimed, incapacited either for fighting or for productive labor. Add to this the fact that the Soviet logistics train was never really able to keep pace and that the Soviet Union's warmaking potential depended in great measure on help from the West—to such an extent that Khrushchev claims that only American trucks carried the army from Stalingrad to Berlin and that American food fed the army. The dire situation the U.S.S.R. found itself in after the war was tragically illustrated by those instances of cannibalism which took place during the first dread winter after the war.

Stalin and his cohorts were faced with the same compelling needs that had faced the Bolsheviks in 1917—the need for peace and for time. So, in the same way Trotsky had done, Stalin held off the West with words alone. His propaganda machinery inundated the world with accounts of Stalin's strategic genius and the invincibility of Soviet arms. However, we must credit Stalin and his successors with realism. As the old man looked out on the world, how must it have appeared to him in terms of his own five principles for winning a war?

1. Stability of the rear area
2. Morale
3. Numbers and training
4. Supplies
5. Quality of leadership

We have just seen that the Soviet rear area was in a shambles—the country lay in ruins; morale both at home and in the forces was more a matter of relief than of spirit. It was impossible for the homefront to supply the army. All Stalin had going for himself were factors 3 and 5, a huge army experienced in combat and well led.

Now apply his five principles to the United States.

The rear area was not only stable, it had gone totally unscathed by war. Morale was at its zenith, and some people were even advocating that we keep right on going to Moscow. We had fought a two-front war—that war the Soviets fear most—our army, almost equal in size to the Red army, was only beginning to withdraw from Europe, and the Navy and Marines had turned the Pacific Ocean into an American lake. We had not only supplied and equipped our own forces, but had provided the Soviets vast quantities of the

logistic wherewithal to win their war and were embarking on a fantastic scheme to rebuild Western Europe through the Marshall plan.

At night Stalin undoubtedly sought some inspiration from Karl Marx, but during the day he put all his energies to reconstruction, and he put his strategists to the task of considering how to defend Russia against the Americans. The task was enormously complicated by the factors we have just discussed, but it was made virtually impossible because the United States had the atomic bomb and the means to deliver it.

In essence, then, Stalin's strategists could only wrestle with theory—concentrating meanwhile on the development of antiaircraft defenses until such time as Moscow also had the bomb.

In practice, the Soviets had no choice but to back down whenever we Americans proved willing to use the power at our disposal. And back down they did—in Greece, in Turkey, and in Iran, in the Berlin airlift, and in Korea—after the Chinese Armies had taken over a million casualties to keep the Americans and their U.N. allies from occupying all of North Korea, whose northeastern border is only 60 miles from Vladivostok.

By 1949 the Soviets had developed an atomic weapon. We need not rehearse the frantic efforts Stalin employed to get it—kidnapping German and East European scientists in wholesale lots to augment the work of his own physicists, while people like the Rosenbergs, Klaus Fuchs, and Alan Nun May were seeking to gain the secrets of atomic fission through espionage against us.

By 1953, when Moscow exploded its first thermonuclear device, the third phase of Soviet strategic thought really got off the ground. The immediate problem facing the strategists in these years was very simple. It was how to deliver nuclear weapons and in what kind of war. Their gropings for the answer to these questions thrust us into the arms race which has run to this day.

As the arms race began, time finally ran out for Josef Stalin, and Khrushchev came to the helm in the Soviet Union. He came to power at a time when the delivery of nuclear bombs was of overwhelming importance to his military thinkers. They knew that SAC and carrier-based air gave the United States the capability of striking the U.S.S.R. but that they would have trouble striking the continental United States.

The launching of Sputnik in October of 1957 was the harbinger of things to come. The ICBM was to be the great strategic answer for both sides, and it would lead us into a kind of Mexican standoff as we entered the era of deterrence. Nevertheless, until he had an assured strike capability, Khrushchev had no alternative to the course he adopted. He ran a colossal bluff, loudly proclaiming a strategic superiority he did not have. Like Trotsky and Stalin before him, he held off the West with words alone, using his bombastic, saber-rattling oratory to create the phony "missile gap" we all remember so well.

The crunch finally came with the Cuban missile crisis in 1962. The United States again demonstrated its willingness to use the power at its disposal, despite the risk of nuclear war. His bluff was called, and Khrushchev backed down.

But after Cuba things really began to change. The Soviets entered the fourth and current phase in the development of their strategic thought. Without examining it in depth, I will only note what seems to me to be its chief characteristics.

First, the men in the Kremlin learned from Cuba that they had to have a blue-water navy. The success they have enjoyed thus far in rapidly developing this capability is only too well known. Second, and even more important, the Soviets finally caught up with the West in the vital area of ICBM capability.

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These two developments raise a host of strategic problems for us.

For *both* sides, the key question is always whether and under what circumstances we will resort to nuclear war. The answer depends in part on the answer to other questions we must ask ourselves.

Is Soviet strategy, for the first time in history, offensive rather than defensive?

Now that they are our equals in destructive capability and delivery systems, will the Soviets be tempted to adopt a doctrine of preemptive strike?

What are the possibilities of conventional, nonnuclear war?

Is the confusion in Soviet strategic writings, which continue to harp about conventional wars and the need for massed armies, due to a growing fear of China?

Is the Soviet Navy Moscow's "first line of defense"?

In the world arena, is the Soviet Union now in the same position that we occupied in 1945?

These are only a very few of the strategic questions which must trouble our leaders in Washington as they daily confront the task of trying to develop a new role for the United States in the world, within the context of changing economic and political realities. The impact of Soviet strategic thinking is not solely a concern for national leaders alone, however, its meaning must be felt and appreciated by us all.

Success in war is obtained by anticipating the plans of the enemy, and by diverting his attention from our own designs.

Francesco Guicciardini, 1483-1540

LAW OF NAVAL WARFARE

International law has too often been considered by the layman to be solely the concern of the international lawyer. However, inasmuch as international law pertains to the rights and obligations claimed by all who use the world's oceans, it forms a part of the legitimate concerns of every Navy man. The following discussion of existing rules of naval warfare treats the question of their adequacy in today's environment of limited conflict and potential nuclear holocaust—a matter of key importance to the employment of naval forces in situations short of war.

A lecture delivered at the Naval War College

by

Captain William O. Miller, JAGC, U.S. Navy

Today I am going to speak to you about a problem area which has been the subject of much discussion among publicists, that is, whether or not existing rules of naval warfare are sufficient to meet the needs of current naval operations. Stated in another way, do existing rules of international law have real relevance to present and foreseeable uses of naval force in situations often characterized as short of war? In dealing with this subject it is not my intent to offer solutions, but I do hope to stimulate your thinking on this subject, one I consider extremely important to the operation of contemporary naval forces.

Most traditional international law publicists have approached their subject by setting up two obvious categories within which to discuss international legal rules—the laws of "war" and the laws of "peace." The legitimacy of the use of naval power, as with other coercive measures, has been generally discussed in the context of these two extremes. Using this rationale, the specific use of force at sea in a given situation can be characterized as legal or illegal, depending upon the existence of a state of war. Such thinking has been criticized by many as obviously unsatisfactory, since, on the contemporary scene, states sometimes perceive a need to exercise some limited degree of force at sea which they find difficult to justify under a peacetime regime, but yet find themselves unwilling to declare a state of war. However, to simply say that current situations involving possible use of naval force may not fit neatly into one or the other of these traditional categories does not adequately set forth the true nature of the problem. Nor does it necessarily lead to the conclusion that new rules are required.

This, then, is the broad question which is to be examined here, i.e.,

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whether there is a need for a new set of rules of naval warfare to apply in situations which are neither "war" nor "peace" in the classic sense.

I must add an aside at this point, primarily because I know that when one is first exposed to international law, and particularly to the "laws of war," questions arise along the following lines:

- Is not war simply a matter of the stronger or more operationally adept nation winning a victory through skillful application of force?
- If this is true, are there really any "laws of war" or is it just an academic exercise of lawyers and politicians?
- On the other side of the coin, if rational men now agree that war is a destructive force which must be abandoned as an instrument of national policy, why should rules for the conduct of war be formulated at all?

I will not attempt to deal specifically with these questions but will briefly comment on the necessity to formulate rules for the conduct of war.

There are two basic principles which guide any inquiry into the rules of warfare. These are the principles of military necessity and the principle of humanitarianism. The specific rules of warfare both on land and on the sea, which have been generally agreed upon for the past 100 years, have sought to bring these two concepts into balance. The essential thrust of these rules for warfare at sea has been to reserve for the belligerent, within the bounds of humanitarianism, the right to attack those objects which were recognized as *legitimate military objectives.* It also provided the belligerent with the right to use such force as may be necessary to attain his objective, while at the same time providing protection—as was physically possible under the circumstances—to noncombatants who may become involved and to survivors of the action. Also, it is generally agreed that the major *political* purpose of the traditional law of naval warfare was to attempt to limit the effects of combat at sea as much as possible both as to the area of the conflict and as to the participants; that is, to circumscribe the conflict so that it did not spill over to affect any more than necessary the rights of states who were not parties. It was in this context that the great body of law regarding belligerent and neutral rights and duties as we know it today arose.*

Neutrality is a concept in traditional international law which arises only when a state of war exists between two or more other states. Traditional law gave belligerent rights and obligations to the parties to a war. For those states not participating, the law provided corresponding neutral obligations and rights. The existence of a legal state of war brought these rights and obligations into existence.

Neutrality is defined under traditional international law as the nonparticipation of a state in a war between other states. The legal significance of such nonparticipation is that it brings into operation numerous rules whose purpose if the regulation of relations between neutrals and belligerents, providing certain rights and obligations for both parties.** The principle of impartiality holds that a neutral state is required to fulfill its obligations and enforce its rights in an equal manner toward all belligerents.

Although the rules of neutrality were violated on a large scale during both

*NWIP 10-2, *The Law of Naval Warfare* is a generally accurate summary of the traditional rules of naval warfare. It is premised on the "war" and "peace" categorizations of classical writers. Basic to this traditional treatment are the concepts of belligerent and neutral rights which, in theory, neatly takes into account both participants and nonparticipants in a conflict.

**The bulk of these rules as they relate to maritime warfare are set forth in the Hague Convention on the Rights and Duties of Neutral Powers in Maritime War.

World War I and World War II, the 1907 Hague Conventions on the Rights and Duties of Neutral Powers in Land and Maritime Warfare, to which the United States and the U.S.S.R. are parties, still states the basic law of neutral-belligerent relationship. Generally these rules provide for:

- inviolability of neutral territory or territorial waters from hostilities;
- no use of neutral territory as a belligerent base of operations for fitting out of ships or other combatant forces or as a warship sanctuary for longer than a stated period;
- no use of neutral territory for the transshipment of belligerent troops or war supplies;
- a neutral is not bound, however, to prevent the export or transit for use of either belligerent or war material.

Up to and including WW II, it was customary on the outbreak of a state of war for nonparticipating states to issue proclamations of neutrality, although such is not required. In both WW I and WW II the United States did issue such declarations, and before WW II, in a series of neutrality acts from 1935 through 1939, we actually legislated our neutrality. Stringent adherence to the belligerent-neutral rights and duties method of establishing rules for warfare follows logically from the "war"-"peace" dichotomy upon which such rules are premised. Perhaps the best example of this is the set of rules applicable to naval blockade.

Traditional or close-in blockade had as its basis the belligerent right to embargo sea commerce to and from its enemy—to stop the flow of those goods, both inward and outward, which enhance the enemy's warmaking effort. Blockade was originally conceived and executed as the maritime counterpart of siege and sought the total prohibition of maritime communication with all or a designated portion of the enemy's coastline. Its focus was on ships, unlike the law of contraband where the focus was on cargo. Blockade, by its nature, involves not only interference on the high seas with vessels flying the enemy's flag, but also with vessels flying the flag of neutral states. One of the most fundamental considerations in blockade is that it applies to belligerent and neutral vessels alike; hence, one of its restrictions is on the otherwise legally unrestricted right of neutral states to trade with whomsoever they wish. In light of this fact, it is not surprising that neutral states insisted that the enforcement of a blockade must be in accordance with strict and clear rules. For the traditional close-in blockade to be lawful it must be:

- enforced by sufficient ships to be effective (i.e., to create a substantial risk of apprehension for any would-be blockade runner);
- enforced impartially against all ships, belligerent and neutral alike;
- commenced with proper notification; and
- it must not bar access to neutral ports or coastlines.

The last requirement has virtually precluded use of traditional blockade in modern warfare, since the deployment of the blockading force close in to the blockaded area is often impossible from an operational viewpoint, and geographical considerations make it difficult in many regions to blockade farther at sea and still not interfere with innocent neutral shipping or bar access to neutral ports.

Conversely, under traditional rules, establishment of a belligerent blockade would generate corresponding neutral rights and obligations for nonparticipants in the conflict. A neutral must:

- require ships flying its flag to respect the blockade;
- require its ships to navigate so as not to unreasonably interfere with the blockading force; and
- otherwise to freely navigate its ships in the area of the blockade.

Two major factors which characterized warfare over the first half of this century have rendered literal adherence to these detailed rules difficult, if not impossible, to achieve. First, the scope of objectives sought by states at war expanded dramatically over what it had been in the 19th century. And secondly, the dramatic advances in technology during these years geometrically increased each country's ability to pursue its national objectives. World Wars I and II illustrated beyond doubt, if ever there was a doubt, that the amount of force which a state will employ in warfare varies in direct proportion to the scope of the objective sought to be achieved.

It should have surprised no one that when the conflict objective reached the point of "unconditional surrender"—or, if you wish, of national survival—that the scales which seek to regulate conflict would be weighted most heavily on the side of military necessity. Considerations of humanitarianism, whether we like it or not, simply took a back seat. Thus, history would seem to suggest that states will accept fewer and fewer restraints in the form of law as their national objectives become more significant to them.

I think this can be illustrated quite well by the actions of all belligerents at sea during World Wars I and II, for in each of these conflicts both sides adopted a type of maritime interdiction which they felt was essential in a war of total dimensions, where not only the military but the economic base of the enemy became a legitimate military objective. These measures involved closing and patrolling large areas of the high seas, hundreds of miles from the enemy's coastline, with a view toward prohibiting all maritime intercourse with the enemy.

In practice the Germans even sank neutral ships, without warning, by the use of unrestricted submarine warfare. British, and later United States, blockades of Germany were enforced by large-scale war zones, through which transit by an enemy or a neutral ship was made extremely hazardous by the use of mines and submarines. These policies represented major departures from the traditional law in that they utilized extensive restriction of access to neutral ports and subjected ships attempting to breach the blockade to destruction without warning rather than to capture and condemnation in prize. In sum, the maritime interdiction practices during WW I and WW II meant almost total control of, instead of minimal interference with, neutral commerce.

The WW II experience illustrates that in a conflict situation where the objectives of the participants are very broad, the commitment to such objectives may force participants to recast traditional rules of naval warfare to allow the exercise of that degree of force deemed essential.

An excellent example of this point is the submarine. The impact of its capabilities should have been apparent during the First World War. After its early use against surface warships, Germany turned her submarines primarily against merchant shipping, sinking more than 11 million tons of Allied and neutral shipping. Yet efforts between the wars, aimed at establishing rules for the use of the submarine, ignored the technology of the new weapon. After unsuccessful attempts to ban use of the submarine entirely, rules were codified as "international law" with respect to the submarine in the London Naval Treaty of 1930 which provided:

> In their action with regard to merchant ships, submarines must conform to the rules of international law to which surface vessels are subject.
>
> In particular, except in cases of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship, whether surface vessel or

submarine, may not sink or render incapble of navigation a merchant vessel without having first placed passengers, crew, and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea, and weather conditions, by the proximity of land or the presence of another vessel which is in a position to take them on board.

These provisions were reaffirmed verbatim in the London Protocol of 1936 and thereafter were acceded to by 48 states. All of the naval powers, including Germany, were bound by these rules at the outset of WW II. Clearly these provisions ignored the submarine's primary technological asset as a clandestine, surprise weapons system, and consequently they were bound to be ignored. Submarines were unable to comply with these rules without sacrificing their primary capabilities as a naval weapon. The all-encompassing constraints of these rules, drafted without consideration for the unique technological characteristics of the submarine and applied to a conflict situation which sought to forcefully obtain the broadest political objectives, virtually insured that they would not be followed. In point of fact, the probability of successfully obtaining adherence to other than the most general conflict rules in an environment of total war is almost nil.

Toward the close of WW II, however, a new factor was inserted into the equation with the development of atomic weapons. Total war, or the objective of reducing one's enemy to total submission, can well be a course of action which results in mutual annihilation. It appears to me that our technological achievements have placed some practical limit on the scope of objectives which can be sought through the use of force. Having more limited objectives permits the imposition and acceptance of more restraints. Hence, contemporary practice since WW II has tended to blur traditional concepts of belligerent and neutral rights and duties. States have not formally insisted on "belligerent" rights and, accordingly, those states not parties to conflicts have not had occasion to insist on "neutral" rights.

In contrast with the experiences of World Wars I and II and as an illustration of the type of conflict in which participants more readily accept restraints in the form of law, I think we can refer just briefly to the experience in Vietnam.

When contrasted to the experiences of World Wars I and II, the Vietnam affair provides some useful insights--in the form of law—of the restraints the participants will accept in today's conflict situations. Regardless of the classic definition of war accepted by international law, there is no doubt that Vietnam has been a conflict of major proportions. Yet the objectives have always been limited, and thus we have witnessed the exercise of significant restraint. Submarines have not been utilized, and no blockade or minefields have been established around either North or South Vietnam. In short, the Vietnam conflict has not resulted in the parties exercising those powers at sea which would be expected if the conflict were traditionally categorized as a war. Obviously, the situation in Vietnam has not been, and is not now, a time of peace. Yet that conflict has been fought in the maritime environment according to rules, primarily the peacetime rules set forth in the 1958 Geneva Conventions on the Law of the Sea.

Operation Market Time is an excellent example. The peacetime rule relating to the territorial sea holds that such waters are subject to the exclusive sovereignty of the coastal state. This has but one exception, and that is the right of foreign vessels to engage in innocent

passage through the territorial sea of a coastal state. The Geneva Convention on the Territorial Sea and the Contiguous Zone states that "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state." South Vietnam, in its 1965 decree on sea surveillance, served notice that its 3-mile territorial sea was going to be vigorously patrolled and that vessels of any country "not clearly engaged in innocent passage are subject to visit and search and may be subject to arrest and disposition. . . . in conformity with accepted principles of international law." It thereafter listed the type of cargoes—war goods—which would be considered suspect. Therefore, within the 3-mile band of territorial waters, peacetime rules were found to be adequate to deal with the threat posed.

International law also, in the form of this same 1958 convention, provides for the exercise of some degree of control in the contiguous zone which can extend a total of 12 miles from the baseline from which the territorial sea is measured. Within this 9-mile band of waters contiguous to the South Vietnamese territorial sea, the peacetime rules provide that "the coastal state may exercise that degree of control necessary to prevent infringement of its customs, fiscal, immigration, or sanitation regulations committed within its territory or territorial sea." South Vietnam accordingly provided that all vessels within its contiguous zone were subject to visit and search, and arrest where appropriate, for violation of any of the above regulations. It further provided that the entry of any person or goods through other than recognized ports was forbidden by South Vietnamese customs and immigration regulations and that these regulations were going to be strictly enforced. Thus, through sole reliance on the peacetime convention on the territorial sea and the contiguous zone, South Vietnam has been able to control virtually all threats that occur within 12 miles of land.

One possible situation remains uncontrolled under the 1965 decree. That is the situation where a North Vietnamese vessel, which is known by the South Vietnamese to be a North Vietnamese vessel, is outside the 12-mile zone and obviously carrying weapons to be used by the Vietcong against the South Vietnamese Government. Neither the decree nor the 1958 Geneva Conventions cover this type of situation. There is precedent, however, in current international law for South Vietnam to act against such a vessel should it become necessary.

I refer to the basic right of every state to take such actions at sea as are reasonable and necessary to protect its security interest against the hostile acts of other states. The old case of the U.S.-flag ship *Virginius* is frequently cited in support of this proposition. This ship was seized by the Spanish authorities in 1873 while it was in the process of transporting arms to Cuban insurgents. The British ship *Deerhound* was seized by Spanish warships during the Spanish Civil War for the same reasons, and during the Algerian war, French warships stopped at least two ships—one a British and one a Yugoslav, both of which were suspected of the same offense. Although it has not been considered necessary, I believe that these cases could be used as precedent for South Vietnam to seize a foreign vessel on the high seas which immediately threatens their security during this period of instability.

I do not suppose one should discuss the rules relating to the use of force at sea in a situation short of war without mentioning briefly the Cuban quarantine of October/November 1962. Briefly, the quarantine action involved the declaration of certain areas of the high seas adjacent to Cuba in which all shipping suspected of being bound for Cuban ports and of carrying certain

designated contraband goods would be subjected to visit and search. Ships found to be carrying prohibited goods and bound for Cuba would be diverted from their intended port. A clearance certificate procedure was established under which a ship at its port of departure could be certified as innocent and thus would be permitted to pass through the quarantine zone uninterrupted.

The quarantine differed from a blockade in that it:

- sought to ban only certain items of contraband goods, rather than all maritime intercourse;
- used as methods of enforcement only visit, search, and diversion and did not employ destruction without warning;
- sought to avoid the consequences of a formal state of war.

The quarantine actually bore a very close relationship to the old law of contraband, under which belligerents claimed the right to prohibit the inflow of certain strategic goods into enemy ports.

There was obvious and clear interference with the peacetime rights of the Soviet Union and of Cuba to trade with whomsoever they pleased and to utilize the seas for this purpose. As I indicated earlier, we have seen this type of interference in modern times only in those cases where the objectives are of the highest order. Such was the case in Cuba, of course. The stationing of nuclear missiles a scant 90 miles from our shores was considered such a threat that we were willing to risk a broadening of our dispute with Cuba, even to the point of involving open conflict, if necessary, with the Soviet Union.

I think these two illustrations demonstrate rather clearly that the basic policy ingredients which underlay the traditional laws of naval warfare continue to be operative today. This is true even though we do not have the classic requirement of an actual state of war or belligerency.

The basic ingredient, as I have noted earlier, was a political need to limit the conflict both as to area and as to participants, and I think it is clear that the great bulk of the rules which we call rules of naval warfare really involve this limitation and with it the belligerent neutral relationship. The same considerations which gave rise to the traditional laws of neutrality, particularly as they relate to sea warfare, continue to be given heed by policymakers today in situations short of war.

The major political consideration in a 20th century limited war is the same as it was in the 17th and 18th centuries—the need to limit the conflict, to keep it from unnecessarily spilling over to affect nonparticipants. This has meant, in Vietnam for example, that we do not interfere with commerce into North Vietnam, even though that commerce has been essential to their conduct of hostilities.

We have not insisted on belligerent rights at sea because to do so would involve other major powers and broaden the scope of the conflict.

On the other hand, the Cuban situation illustrates that where the circumstances are right, a state will insist, even in a peacetime situation, to what was traditionally known as a belligerent right. The question today really is not a purely legal one, and it never really was.

The rules are merely a reflection of the political realities. Under the old law, if one wished to exercise belligerent rights at sea, particularly as these rights came to be exercised in World Wars I and II, one had to assume the risk of broadening the conflict, of making enemies out of neutrals. The same is true today. If a state wishes to utilize force at sea, other than directly against his adversary, he must run the risk of bringing others into the hostilities.

Except in cases like the 1962 missile crisis, where the national security is

threatened, the potential risk is just too great today for a state to claim belligerent rights.

Where does all this leave us? While at one time I was ready to criticize rather severely the war/peace dichotomy, my views of late have been influenced by what I see as a commendable stability in relations between states which that dichotomy forces upon us. The reason for this, of course, is the political realities which underlie that separation.

These questions have been the subject of considerable study for some time now. These efforts are aimed at trying to determine whether there should be a broad program for preparing additional guidelines for use by naval forces in situations short of war. So I will close by simply posing that question to you. Is the current war/peace dichotomy, and its rules for the regulation of conflict at sea, satisfactory for the contemporary environment? Or do naval commanders need something new to guide them in situations short of war? I suppose what I am really asking is, "Are our present peacetime rules adequate?"

Now that I have raised the question, perhaps some of you would like to suggest some answers which could be of assistance to us.

BIOGRAPHIC SUMMARY

Capt. William O. Miller, JAGC, U.S. Navy, did his undergraduate work at the University of South Carolina, and holds a bachelor of laws degree from Atlanta University and a master of laws degree from The George Washington University. His numerous legal officer assignments include duties with the Office of the Judge Advocate General as Appellate Counsel and in the International Law Division; Assistant Legal Officer, Headquarters 14th Naval District; Assistant Legal Officer, Commander in Chief, Pacific Fleet; and legal advisor to the director, Joint Chiefs of Staff. Captain Miller is a graduate of the College of Naval Warfare and is currently serving as Deputy Assistant Judge Advocate General (International Law).

Ψ

There is an old saying that the laws are silent in the presence of war. Alas, yes; not only the civil laws of individual nations but also apparently the law that governs the relation of nations with one another must at times fall silent and look on in dumb impotency.

Woodrow Wilson, Address in Chicago, Ill., 31 January 1916; State Papers, p. 182

The problems of formulating effective concepts for managing states' offshore claims and competences is well appreciated by the international community. Hopefully, the United Nations Conference on the Law of the Sea, scheduled to meet in Geneva in the summer of 1973, will materially contribute to both international understanding and the development of a body of law that can effectively deal with offshore claims. Here, the author reviews many of the essential rules, legal fictions, and institutions that deal with the problem, and also examines some of the novel claims that states have made in their effort to exercise exclusive authority over offshore areas.

INTERNATIONAL LAW OF THE SEA

A REVIEW OF

STATES' OFFSHORE CLAIMS AND COMPETENCES

An article

by

Professor L.F.E. Goldie

INTRODUCTION

The sea constitutes some 70 percent of the Earth's surface. It and its riches have always challenged or charmed men into seeking to gain a livelihood from it—frequently at great risk. From classical times and even earlier, sympathetic magic, religion, and law have regulated man's uses of the sea. Today, however, as never before, science engineering and available capital are permitting new exploitations of the maritime environment and new means of gaining wealth, respect, knowledge, adventure, and power. As technology and investment in ocean activities progress, the legal rules which were evolved to meet less complex uses will have to be strained as the outer limits of their purposes are passed and the necessary congruence between social fact and relevant legal concept become increasingly attenuated. Hence, unless new rules are formulated, either social facts created by the new maritime economic investments and technological developments will become dislocated or the existing rules debased into legal fictions. In either case those rules are transformed into impediments to further progress, either through their rigidity or through the uncertainties which fictions inevitably generate.

The international law of the sea lacks the many essential institutions and rules and even, to a large extent, the necessary language for effectively managing the maritime resources now or shortly

to become available to man. Accordingly, it threatens to prove inadequate as an impartial framework of claim and decision for equitably distributing competences, titles, rights, and values with respect to those resources the wealth, science, and technology that may develop from them.

This article will provisionally survey and appraise the main patterns of the traditional rules and institutions and critically indicate some novel state claims to exercise exclusive authority over offshore areas which have historically lain within the zones of the free and common high seas.

Traditionally, international law has divided the seas into two great legal categories: those under the sovereignty of coast states, for example, internal waters and territorial waters, and those beyond the sovereignty of any state and which are common to all states, these have been historically designated as the "free high seas." At the present time a number of new categories of state claims seeking to exercise exclusive coastal state authority over additional sea areas are being brought within the same class of exclusive jurisdictional claims as the traditional territorial sea and internal waters (including historical waters). These were unknown to traditional international law. Those which are receiving international legal recognition embrace: contiguous zones; special fisheries zones; zones of special jurisdiction, for example, customs zones; and zones in which exclusive control is claimed for various kinds of weapons testing (this last still including, in the case of France, nuclear and hydrogen weapons testing in maritime areas). In addition to the sea areas subject to the recognized claims of states, there are lawful seabed claims extending beyond territorial limits, namely those over adjacent continental shelves. Again, increasingly states are establishing conservation zones by agreement. There are other types of coastal state claims which currently lack, even in this generally permissive world, the necessary recognition and acceptance that is essential to erect them into customary law concepts, namely the Chile-Ecuador-Peru (CEP) claims[1] and the "archipelago" claims of Indonesia and the Republic of the Philippines to draw baselines around their island systems from their outermost headlands and islands.[2]

MARITIME ZONES OF EXCLUSIVE STATE COMPETENCE

Internal Waters. In law, the status of internal waters tends to be assimilated to that of the land of the coastal state.[3] That is, coastal states' authority with respect to seas which are classified as internal waters is, juridically speaking, assimilated to the sovereign authority over their land territory—except insofar as the nature of the actual quality of the watery medium or element may impose factual as distinct from juridical differences. These waters include historic bays and bays with straight base or closing lines of less than 24 miles breadth.[4] Examples of historic bays abound: Chesapeake Bay is a very long-standing one. Again, when the State of California desired to establish the status of Santa Monica Bay as a historic bay,[5] for the purpose of the Submerged Lands Act of 1953,[6] she did so to ensure that its waters would not be characterized as territorial seas, but rather as internal waters. A consequence of such a holding would be to bring the submarine oil deposits of the bay and those out to 3 sea miles from the closing line of the bay under the State of California rather than the United States. When the U.S. Supreme Court found against California —in effect by deciding that Santa Monica Bay constituted part of the territorial sea of the United States rather than the internal waters of California—it permitted California to draw her seabed rights under the Submerged

Lands Act only 3 miles from the low-water mark.

Ports, Harbors, and Roadsteads. Ports, harbors, and roadsteads present a complicated picture. While ports and harbors are nearly always internal waters, roadsteads may be territorial waters or high seas. Coastal states have full control over (since harbors and ports fall within the category of internal waters) all vessels and activities within their ports and harbors. On the other hand, history and comity have brought them to subscribe, for reasons of convenience and reciprocity, to policies which recognize that control over the domestic discipline of ships in their harbors should be left to their masters, and so be governed by the laws of the flag state unless a matter involving the peace of the port is involved.[7] What amounts to a matter involving the peace of the port is always for the port state to determine, for the flag state's authority results from the port state's discretionary withdrawal of jurisdiction for purposes of convenience, reciprocity, and amity. The flag state does not enjoy an international privilege or immunity within the ports of coastal states. Hence, in strict theory, the port state is entitled to treat all matters which affect the "peace of the port" as beyond its discretionary withdrawal of authority and subject to its domestic laws. Furthermore, it is not required to submit to, or permit, polluting and other harmful activities or activities contrary to its health and quarantine laws in its harbors contrary to its laws and policies.

Roadsteads are different from ports and harbors. They may fall within the regimes of either internal waters or the territorial sea or even the high seas (although this latter is doubtful since the historic regulation of traffic in the roadstead and its use for quarantine and customs inspection purposes will generally place such regions under contiguous zones), depending on location.[8]

The Territorial Sea. This category is distinguishable from ports and harbors as well as from internal waters in that, while the territorial sea is subject to the sovereign power of the coastal state, it is also subject to the rights of shipping which may navigate freely through it—provided that navigation "is innocent." As traditional language phrases this situation, ships may exercise the right of innocent passage through the territorial sea of coastal states.[9] Innocent passage may also be exercised by warships, according to the U.S. doctrine and according to the Geneva Conventions on the Territorial Sea and Contiguous Zones.[10] This view of the right of innocent passage was shared by the International Court of Justice in the *Corfu Channel Case.* On the other hand, the Soviet Union does not recognize that warships are entitled to enjoy the right of innocent passage. But the Soviets' position on this is not altogether clear, as on so many other points of international law. Although ships may exercise the right of innocent passage, aircraft may not. Finally, ships may lose their right of innocent passage if during transit they disturb the peace of the coastal state in any way or engage in activities which are "non-innocent." Clearly, this would include any activities which the coastal state may regard as polluting its territorial or maritime environment, in addition to the more traditional criteria which turn on the peace, order, and good government of the coastal state.

At one time there was a widespread belief that the territorial sea was, with certain specific exceptions due to local practice, 3 miles in width. This belief in the uniform distance of the territorial sea received a mortal blow at The Hague Codification Conference 1930. The United Nations Conferences at Geneva on the Law of the Sea in 1958 and

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1960, respectively, witnessed its death and burial. No agreements on any alternative distances have been achieved. Although some unquenchable optimists seek to assure us that the 1960 Conference asserted the existence of a "customary law" rule providing that states may assert their authority over a 6-mile territorial sea with a further 6-mile contiguous zone added thereto (the so-called "6 + 6 rule"), state practice points in the opposite direction. Today many states would appear to claim whatever breadth of territorial sea which may appear feasible, or even desirable, to them. At least international law would not seem to provide them with guidelines in the matter.*

Contiguous Zones. This legal category of seas under international law is distinguishable from the territorial sea on a basis which has been widely and surprisingly misunderstood. Many international lawyers tend to assimilate it to the territorial sea and refuse to make meaningful and necessary distinctions between these two regimes of offshore waters. In this they are completely and clearly wrong.[11] Contiguous zones, properly defined, consist of areas of waters offshore over which states may exercise specialized jurisdictions for specific purposes having direct or immediate effect within the territorial sea, internal waters, or adjacent dry land. For example, during Prohibition the United States proclaimed a contiguous zone for a width of 12 sea miles. Its purpose was to prevent "rumrunning." Since this zone extended beyond the limits of her territorial sea, U.S. Customs and other Federal authorities only exercised jurisdiction over ships on the free high seas, but within the zone, and provided only that their destination was within the United States. If a ship was navigating, say, from Halifax to Havana without stopping at any intervening U.S. ports, and even though she made her progress through this particular stretch of waters off the U.S. shores, the U.S. authorities could not lawfully exercise any jurisdiction over the carrying, or even the drinking, of liquor aboard her; provided, of course, she was not an American-flag vessel.

The confusion is compounded today because the Geneva Convention on the Territorial Sea and Contiguous Zones limits the extent seaward of contiguous zones to 12 sea miles. The assumption underlying this limitation was that territorial seas would be no more than 3, or at the most, 6 sea miles in breadth. Since then, however, an inexorable trend has developed whereby a number of states have been claiming the outer limits of their territorial sea to be 12 sea miles and even beyond. Accordingly, the 12-mile limit of the contiguous zone is losing its significance as a means for expanding out from the low-water mark coastal states' specific claims to exercise specialized authority over events having direct results ashore. The 12-mile limit placed on such zones assumed the existence of a considerably narrower territorial sea.

In addition, there are contiguous zones which must be recognized and respected which extend far beyond 12 sea miles from the shore. For example, the United States has for a long period of time exercised authority over special customs zones and other special areas for distances of over 60 miles from our shores. Then there is also, of course, the ADIZ (Aircraft Defense Identification Zone), which is, to my way of thinking, an application of the contiguous zone concept under unique conditions. This zone extends some 500 sea miles offshore and provides for jurisdiction over aircraft only when they are approaching and intend to land within the United States. In the context of pollution and environmental protection, coastal states may, under general international law,

*See Appendix I.

only exercise authority to prevent polluting activities which have an impact on their land territory, internal waters, and territorial seas. They are not entitled to vindicate, in the contiguous zones, the universal moral claim for unpolluted high seas (or even contiguous zones!).

The Continental Shelf. The maritime zones I have discussed so far—apart from some types of contiguous zones—would all appear to be relatively traditional in nature. Although, in its general terms, the Continental Shelf Doctrine has come to be recognized as a form of customary international law, it is of relatively recent provenance.

Insofar as the Continental Shelf Doctrine (and the Convention which embodies it) reflect an acceptance of the inevitable by international lawyers,[12] one may regretfully assume, once technology made exploitation of submarine areas beyond territorial waters possible, that the only remaining question was how far out from their shores coastal states would be permitted to extend their jurisdiction over the resources of the seabed and subsoil, and at what point offshore the free high seas would provide a common regime. In either case, the environment is the main casualty. Where the latter rules, the tragedy of the commons provides the theme. In the case of the former, as the oil blowout in the Santa Barbara Channel in January 1969 and subsequent blowouts and fires in the Gulf of Mexico well illustrate, states are laggard in controlling pollution-prone activities. Be that as it may, political events arising out of the Union Oil Company's "miscalculation" in the geology of the Santa Barbara Channel tend to illustrate that a coastal state may more easily be held accountable for its actions in its own adjacent continental shelf region by a national constituency dedicated to protecting the environment than it would regarding activities on the high seas. Such a constituency can generate more authority, it would appear, when it insists on its own polity's responsibility toward its continental shelf areas than when such areas are not open to be exploited by the nationals of other states who are in a position to invoke the freedom of the common high seas and seabed.

What is the continental shelf? First, it is necessary to distinguish between the physical geographical shelf, which is purely descriptive, and the legal idea of the shelf. The latter is the child of policy and is prescriptive. First, the concept in physical geography. Every dry landmass stands upon a pedestal which plunges down into the ocean abyss. The geological formation of this pedestal begins, generally speaking and with certain dramatic exceptions (for example, the west coast of South America and parts of the California coast, the coast of British Columbia and the southern coast of Alaska), as a fairly gentle gradient, or shoulder, extending out from the dry land under the sea to a point marine geographers have named the "break in slope." The seabed off the northwest coast of Australia, off the northern shores of the Soviet Union, and off the east coast of China provide examples of where the submarine shoulder has a very gradual gradient. These shelves extend out over 100 miles, and in some cases several hundred miles, before the 200-meter isobath is met. It is of interest to note that the Senkaku Islands (where a major oil find was made about 2½ years ago) would appear to be on the geographical shelf off mainland China. A dispute is brewing as to whether they are also exclusively within the mainland Chinese legal continental shelf.

Be the physical contrasts between the submarine regions off the western shores of South America and those of the eastern shores of China as they may, geographers tell us that standardly the break in slope between the continental

shelf and the continental slopes may occur at any point between 35 and 400 fathoms—or even 500 fathoms. But most frequently it seems to occur at around 100 fathoms or 200 meters of depth. (Lawyers have argued—in order to impose uniformity of measurement on a geographical concept which can only be accurately measured with difficulty and evidences no uniformity—that no matter where the break in slope may in fact occur, the continental shelf's legal boundary should be constituted by the 200-meter bathymetric contour line or isobath.) Beyond the break in slope, the shoulder disappears and the landmass tends to plunge into the ocean abyss at far steeper gradients. At its foot the pedestal meets the bed of the ocean floor at depths of between 3,500 and 4,500 meters. Here a major geological change takes place. The chemical and geological formation of the seabed is different qualitatively from that of both dry land and the pedestal.

Secondly, although the legal definition of the continental shelf is enshrined in article 1 of the Continental Shelf Convention, this definition has a far wider reach of legal authority than merely among the states who have ratified the treaty. In 1969 the International Court of Justice laid down, in the *North Sea Continental Shelf Cases*,[13] that the first three articles of the Convention codified preexisting customary international law. Accordingly, these provisions reflect norms binding on all states and not merely the adherents to the treaty alone.

Article 1 of the Continental Shelf Convention defines the outer limits of the legal continental shelf as being either at the 200-meter bathymetric contour line or, alternatively, where, beyond 200 meters of depth, the resources of the seabed are exploitable. This is an extremely open-ended definition; so much so that organizations like the National Petroleum Council are now arguing that the "true" location of the continental shelf's outer limits under international law is not at the break in slope or shoulder of the shelf, let alone at the 200-meter bathymetric line indicated by article 1 of the Convention, but at the place of geological change, namely the foot of the pedestal and just beyond—this area being known as the continental rise. The National Petroleum Council's proposal for a definition of the shelf, not in terms of the 200-meter bathymetric contour line but of one which lies between 3,500 and 4,500 meters is the result of a seemingly plausible, but overelaborate, juggling with the "adjacency" and "exploitability" tests which article 1 of the Continental Shelf Convention provides. This prestidigitation has been due to the unreflectiveness of those who have sought to give "exploitability" its meaning and operational significance at which submarine holes can be drilled, regardless of the consequences—a singularly gross appraisal in this day and age when "exploitation" and its grammatical variants are tending to become pejorative terms.

The Santa Barbara Channel disaster of January-April 1969[14] underlines for us all that it is easier to drill a submarine oil well than to cap it after a blowout. Again, if newspaper reports of the fire and blowout at the Chevron Oil Company's well near Venice, La.,[15] are any indication, the lessons of Santa Barbara have not yet been learned. In my comments on Senator Pell's Senate Resolution 33 of 1969,[16] I proposed that:

> Senate Resolution 33 should contain a pledge that no exploration or exploitation activities will be espoused or licensed by states, or by any international organizations, at depths greater than the feasibility of closing of blow-outs. Nor should pipelines be permitted below . . . depths [at which they may be rapidly repaired].[17]

The pledge referred to in this quo-

tation is, of course, a promise by states who become parties to the "Declaration of Legal Principles" which Senator Pell included in his resolution that they would promulgate the necessary domestic legislation to prohibit drilling wells and pipelines below the depths of rapid and complete repair. Indeed, while "exploitability" remains a test for determining the outer limits of the continental shelf, the technological capacity to control the consequences of drilling holes in the seabed, rather than the mere capability of promiscuously inflicting them on the long-suffering environment, should set both the outer limit of exploitations and of the meaning of "exploitability" as a criterion of the extent of coastal states' continental shelves under article 1 of the Continental Shelf Convention.

Article 2 of the Continental Shelf Convention tells us that states may only exercise "sovereign rights" for the purpose of exploring their adjacent continental shelves and exploiting their "natural resources." Neither custom nor the Convention furnish coastal states with plenary sovereignty over their shelves, merely specific competences for the purpose of regulating exploration and exploitation activities with respect to "natural resources." And even this category is limited, applying only to minerals and "sedentary" species of living resources—namely "organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil" (article 2, paragraph 4). This definition has, as we may expect, given rise to an amusing if acrimonious dispute between Japan and the United States. We claim that the Alaskan king crab is a resource of the Alaskan continental shelf and, since it is a bottom crawler, is exclusively our resource. The Japanese claim that they can produce divers who can testify that they have seen the animal swimming. All this seems rather reminiscent of the medieval philosophers' disputes over how many angels could dance on the point of a pin.

CATEGORIES OF EXCLUSIVE COASTAL STATE CLAIMS, NOT RECOGNIZED BY INTERNATIONAL LAW

The Chile-Ecuador-Peru (CEP) Claims.

Declaration of Santiago. The Latin American States have not formulated any regional conservation regime in terms of the 1958 Geneva Convention on Fisheries and Conservation of the Living Resources of the High Seas[18] or those of proposals for fisheries management.[19] On the other hand, the basic instrument of CEP policies, the Declaration of Santiago,[20] imperfectly, and perhaps on a number of mistaken premises, has sought to express a Latin American felt need for a regional solution of the problems created by permitting the fishery of the Humboldt (Peru)[21] Current to be no more than a common (worldwide) property natural resource with unrestricted access. But once the point of approbation is made, it becomes necessary to question whether an adequate regulation and an equitable regime have been built on that foundation. The agreements constituting the declaration included a number of purported research and regulatory provisions and, most relevant for this discussion, a "Declaration on the Maritime Zone."[22] In terms of this declaration, and following a preambulatory observation that governments have an obligation "to ensure for their peoples access to necessary food supplies and to furnish them with the means of developing their economy," this declaration invokes a duty incumbent upon governments to prevent "essential food and economic materials"[23] provided by the high seas off the coast

of the participating states "from being used outside the area of [their] jurisdiction."[24] These statements provide the premise of a proclamation asserting the parties' sovereignty over sea areas adjacent to each of them,[25] namely their claimed maritime zones "extending not less than two hundred nautical miles from"[26] their coasts, including the coasts of islands.[27] "[T]he innocent and inoffensive passage of vessels of all nations" through the claimed maritime zones was the sole exception to the assertion of exclusive rights.[28]

"Bioma" and "Eco-system" Arguments. Perhaps the most complete statement of the CEP countries' juridical arguments justifying their claims is that given by Mr. Letts of Peru at the 486th Meeting of the United Nations General Assembly's Sixth Committee. He said:

> The sea off the coast of Peru has certain peculiar and unique characteristics which are determined by the Peruvian Humboldt current. This current flows along the coast of Peru, Chile and Ecuador; it is the largest cold-water current and as it wells up from the depths of the sea it brings with it the detritus carried down by the rivers. This accounts for the immense biological wealth of the area which contains an extraordinary abundance of plankton and consequently a great concentration of edible fish. The Humboldt current also accounts for two geological factors which have a bearing on the case: firstly, the low rainfall and consequent aridity of the Peruvian littoral and, secondly, the valuable guano deposits produced by the enormous concentration of sea birds attracted by the fish.
>
> Owing to the occurrence of these circumstances, Peru depends for its food supply mainly on the sea, that is to say directly on fish and indirectly on the guano which is essential to the farmers in the small coastal valleys. This is Peru's underlying motivation: the close relationship between man, the mainland and the sea in a particular country where the ecology is such that the biological balance must not be upset . . . The protection and utilization of these resources, which are essential to the nation's livelihood, were fundamental reasons for the action by Peru and for similar action by many other countries.[29]

Arguments, of which this statement is representative, have been compendiously designated "bioma" or "eco-system" theories.[30] Despite their rhetoric, however, this writer doubts whether these theories relate to a unique situation or, indeed, add very much to the general considerations which underpin regional fisheries agreements everywhere. If at all valid, the ecological underpinnings of the CEP states' argument may be tenuously relevant, not so much to regional arrangements as, possibly, to viewing the whole earth as a single ecological environment calling, ultimately, for a universal conservation and exploitation regime. While arguments of this kind may be consistent with an attempt to bring mankind within the scope of some conservation theories based on human ecological premises, they do not achieve the results which the CEP countries hope to derive from their "bioma" and "eco-system" theories. Because ecological arguments resting on ocean winds and currents ultimately have worldwide physical premises, those raised to justify CEP claims must in the long run either defeat the purpose for which they were developed or be cast aside as merely pseudoscientific. Finally, as the United States pointed out in the course of the 1955 Santiago negotiations:

> The communities that live in the sea do not in any sense require

> the coastal human populations to support their life. . . . Conversely while coastal communities, in some cases, may depend upon the products of the sea for their sustenance, the relationship is first of all limited, and secondly, is far from an intimate biological relationship as suggested. The relationship of coastal communities to the sea is . . . one of economic rather than biological character.[31]

Be that as it may, the CEP instruments and arguments just indicated illustrate an important regional concern for the conservation and rational use of a major resource of the region. Although not unique, they provide a paradigm of the vitality of regionalism in the establishment of fisheries regimes. Because a universal fisheries regime does not seem practicable for the time being, internationalism may be best served by taking regional approaches to such transnational problems as those of fisheries common to a group of states.

If the discussion appears to have lingered overlong with the CEP agreements, it is because international order may be better served by dropping some of the language of international idealism and by accommodating, in Orwell's terms, to the *realpolitik* of the averagely selfish. The discussion which follows is intended to adjust some of the current results of the average selfishness of states by pointing out a line of enlightened self-interest. On the other hand, the strength of national egoism is not undervalued in the benign hope that states may come to embrace altruistic policies.

The Archipelago Theory. Indonesia and the Philippine Republic invoke the "archipelago theory" in order to claim all waters within baselines joining the outer promontories of the outer islands of their groups as internal waters, and they measure their territorial seas outward from those baselines. Some stretches of the water included within each of these separate assertions of territorial sovereignty are more than 60 miles from the nearest piece of dry land. Perhaps the most bizarre use to which this doctrine has been put was President Sukarno's "nationalization," on one occasion, of Dutch-flag merchant ships found within the proclaimed baselines of Indonesia's archipelago waters. This claim has not been recognized by any state.

"Closed Seas." The Soviet Union is known as a state which has continuously adhered to the Czarist claim of a territorial sea of 12 marine miles. Now, when the United States appears to be ready to negotiate regarding that claim,[32] another category of exclusive claims has arisen over seas which Soviet Russia has inherited from the Czars, namely the so-called "closed seas." These would now appear to be left out of the U.S. calculations. It is very hard to pin down any exact meaning of this concept, but it would appear to indicate that the Soviet Union regards the following seas (and this list is neither complete nor closed against future additions) of internal waters: the White Sea, the Kara Sea, the Sea of Okhotsk, the Baltic Sea, the Sea of Japan.[33] In these seas, according to the Soviet view, only littoral coasts may exercise freedom of navigation. This claim is unrecognized by the Family of Nations, and the Soviet Union is not pressing it—for the moment. The Arab States have sought to adopt this Russian concept to the Gulf of Aqaba.

THE CANADIAN CLAIMS RESPECTING ARCTIC WATERS: A SPECIAL CASE?

Canada's recent declaration of a protection zone of 100 sea miles in width,[34] which is additional to her new territorial sea claim of a 12-mile belt, would appear to have been devised so as

to comply with the general international law right of abatement of high seas pollutions threatening a state's territory. That declaration (and its implementing legislation) has been misunderstood in the U.S. public press to the extent that it has been represented as an attempt to extend Canadian sovereign jurisdiction seaward in a manner resembling the maritime assertions of Chile, Ecuador, and Peru (as well as other South and Central American countries).[35] Canada is not claiming to exercise sovereignty over an offshore zone of 100 sea miles in width wherein she may exercise a comprehensive authority for all purposes, or even for a wide spectrum of purposes. Rather, she is merely designating an appropriate area in which she intends to exercise a limited authority to vindicate a specific national purpose, namely the protection of the delicate ecological balance of her Arctic tundra.[36] Be that as it may, this Canadian experiment in international law has not gone without criticism on the basis that if the theory of "creeping jurisdiction" is applied to it, it is tantamount to a claim of sovereignty.[37] There is a second Canadian thesis for underpinning her Arctic maritime pretensions, namely that coastal states have, where appropriate, a duty to the world community to exercise authority on the high seas off their coasts to control conduct which has the potential of creating pollution catastrophes. While I find the claim of a contiguous zone for antipollution purposes on balance acceptable, this latter thesis seems unbecomingly Peeksniffian. We all tend to suspect a man (or a state) who conveniently finds a duty where he desires to exercise a power.

CREEPING JURISDICTION— A COMMENT

"Creeping jurisdiction" or "Craven's Law,"[38] is being increasingly used as a pejorative phrase for indicating the danger of recognizing coastal states' limited unilateral claims to exercise jurisdiction beyond zones sanctified by tradition or by international law. The propounders of this theory (or "law") tell us that whenever a state enjoys exclusive offshore rights for some purposes, it tends to acquire further exclusive rights for other and perhaps all purposes, jeopardizing regional, international, and community interests in the freedom of the seas. Professor Bilder's recent article on the Canadian Arctic Water Pollution Prevention Act provides an example:

> The precedents established by the Act are clearly capable of widespread abuse by other, perhaps less responsible states, with potentially harmful consequences for traditional principles of freedom of the seas. If a nation of the international stature of Canada may establish a 100-mile contiguous zone to control pollution, other coastal states may also seek to do so; and the range of regulation justified under the rubric of pollution control may in practice differ little from that asserted under claims of sovereignty over such zones. Moreover, if 100-mile contignous zones can be established for pollution control purposes, why not for other purposes as well.[39]

One response to the "creeping jurisdiction" argument is that the Canadian claims of pollution control are predicated on the unique problems of Arctic ecology and on the extreme precariousness of the web of life in that region. Thus the title prescribes the act's purpose as being merely: "To prevent pollution of areas in arctic waters adjacent to the mainland and islands of the Canadian arctic." Again, the Canadian note handed to the U.S. Government of 16 April 1970 has been summarized as asserting, *inter alia:*

> It is the further view of the Canadian Government that a

> danger to the environment of a state constitutes a threat to its security. Thus the proposed Canadian Arctic waters pollution legislation constitutes a lawful extension of a limited form of jurisdiction to meet particular dangers and is of a different order from unilateral interferences with the freedom of the high seas such as, for example, the atomic tests carried out by the USA and other states which, however necessary they may be, have appropriated to their own use vast areas of the high seas and constituted grave perils to those who would wish to utilize such areas during the period of the test blast.[40]

If this is held to be the core quality of the claim, then there can be very few states that can treat it as a precedent. The Canadian claim can only become a precedent, and that precedent then can only become a means of allowing coastal states to add to their maritime authority by means of "creeping jurisdiction," if the necessary restrictions of purpose placed on the definition of Canada's pollution control contiguous zone are lost sight of. But if those limitations of purpose are lost sight of, the fault does not lie with Canada's claim, but with those who fail to identify the points of necessary distinction and find in "creeping jurisdiction" an excuse for either their own ineptitude or pusillanimity. States' exclusive jurisdictions can only creep forward if the contraposed community interests withdraw before them. A failure of will should not be disguised behind a pseudolaw. There is, furthermore, a need to distinguish between Pecksniffian claims in the name of pollution prevention (but whose real function is greed, bellicosity, or cartographical chauvinism) and the real article. "Creeping jurisdiction" theories are useful for absolving the timid from this invidious task.

COASTAL STATES' RIGHTS OF ABATEMENT BEYOND TERRITORIAL LIMITS

General International Law. Despite the apparently clear-cut situation outlined in the introduction to this section, writings about the international law doctrines of self-help, self-preservation, and self-defense testify to basic disagreements. The boundaries they set between these concepts are blurred. Indeed, it may well be that writers can only spuriously incorporate "self-preservation" into the body of international law, for it is an instinct rather than a legal right.[41] Be that as it may, self-help permits a state confronted by a major calamity to exert sufficient, but no more than sufficient, force to avert the danger or abate its effects. Furthermore, the exercise of this right requires the observance of the rule of proportionality. The measure of this rule's application and scope was well prescribed (in a context of armed self-defense rather than in the type of abatement envisaged here, but still, nevertheless, instructive) by Secretary of State Daniel Webster in the case of *The Caroline*. He stated that a government taking defensive or abatement action must "show a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show also that it . . . did nothing unreasonable or excessive, since the act, justified by the necessity of self-defense, must be limited by that necessity and kept clearly within it."[42] The *Torrey Canyon* casualty in March 1967 provided this writer with an application of Daniel Webster's standard:

> A case, surely, could have been made for a swift abating action on the part of the British Government, provided it did not involve risking the lives of the stricken vessel's officers and crew. Could there have been a valid charac-

terization of such steps by the British Government to save its coasts, and the livelihood of its inhabitants, as the excessive, overhasty use of force which the *Corfu Channel* case condemns as contrary to international law? A clear distinction can be drawn between the case where a country goes into the territorial sea of a distant nation and sweeps mines so that it can pass through that territorial sea, and the case where a coastal state, instead of passively awaiting catastrophe, destroys a potentially harmful entity off its shores but on the high seas. Would there have been doubts or delays if a disabled B-52 armed with hydrogen bombs had plunged into the waters adjacent to Pollard's Rock? The means of averting harm would have been different, naturally, but no one would have questioned haste.[43]

A Recent Treaty Formulation of the 1969 Inter-Governmental Maritime Consultative Organization (IMCO) Public Law Convention. Although it points to a clearer and more definitive formulation of the rights of states to prevent and abate oil pollution damage arriving within their territories from the high seas, the IMCO Public Law Convention has not yet come into force. Accordingly it merely stands as a public document expressing the desires of the states which have signed it. Furthermore, even if it were to come into force, it would still only bind the states parties to it in any particular where it did not either formulate existing customary international law or constitute an instrument of change in customary law. The International Court of Justice's decision, in 1969, in the *North Sea Continental Shelf Cases*[44] underlines the difficulty of resorting to a treaty to establish both of these points, and most especially the latter. While the discussion which follows reviews the IMCO Public Law Convention as *lex lata*, the treaty faces both the present of settled law and the future of legal change. It should be read, therefore, in the light of both its present status of being in the limbo of all treaties which have not yet been brought into force and its Janus-like quality of facing both the past and the future.

Before examining the IMCO Public Law Convention, perspectives should be formed by reviewing two earlier IMCO treaties on pollution of the ocean, namely the International Convention for the Prevention of the Pollution of the Sea by Oil,[45] and Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954.[46] As their titles indicate, these treaties were drawn up as instruments for diminishing the rapid increase of the oil pollution of the sea. They prohibited the discharge of oil in stated zones[47] by almost all the most significant classes of ships.[48] These zones were, in the main, contiguous to coastal areas dependent on clean seas. The conventions' effectiveness was limited, however, since their enforcement lay within the jurisdiction of the states of registry.[49] They contained no recognition of a coastal state's right of abatement, even in the defined "prohibited zones." Nor did they deal with the vexed issues of liability for harm.

To remedy these defects, the Inter-Governmental Maritime Consultative Organization (IMCO) called an International Legal Conference on Marine Pollution Damage which met in Brussels from 10 to 29 November 1969. It prepared and opened for signature and accession two conventions: the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties,[50] and the International Convention on Civil Liability for Oil Pollution Damage.[51] These conventions were accompanied by three resolutions: Resolution on International

Co-operation Concerning Pollutants other than Oil;[52] Resolution on Establishment of an International Compensation Fund for Oil Pollution Damage;[53] and Resolution on Report of the Working Group on the Fund.[54] The Conference also set out, in an annex to article 8 of the Public Law Convention, rules governing the settlement of disputes by conciliation and arbitration procedures.

Of these instruments the Public Law Convention is the agreement calling for treatment in the present context. It authorizes the parties to take necessary measures on the high seas "to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution" or the threat of it by oil "following upon a maritime casualty or acts related to such a casualty.[55] Warships and other public ships engaged on "governmental noncommercial service,"[56] however, are not subject to such measures. After setting out consultation and notification requirements with which a coastal state must comply, except in cases of extreme urgency and before taking preventive or curative measures,[57] the Convention stipulates that those measures "shall be proportionate to the damage actual or threatened."[58]

Were it to come into force, would this Convention change the customary international law rights, duties, and exposures of the parties? An answer to this question would center around four points: (1) the limitation of the Convention to "pollution by oil," (2) the article 3 provision of procedures for notification and consultation, (3) the article 5 requirement that measures should be "proportionate" to the damage, and (4) the article 6 obligation to pay compensation if the damage caused by the measures taken exceed what may be "reasonably necessary" to cure the harm.[59]

Clearly the Convention can only be invoked in the case of oil pollution, but this does not of itself repeal the general right of self-help in such matters. In addition, IMCO's Resolution on International Co-operation Concerning Pollutants Other than Oil recognizes that "the limitation of the Convention to oil is not intended to abridge any right of a coastal state to protect itself against pollution by any other agent."[60] It recommends that the contracting states exercise their general law rights in the light of the Convention's applicable provisions when confronted by pollution dangers from other agents. The procedures in article 3 for consultation and notification do not unduly limit or restrict the general law right of abatement. They provide the means of exercising, in an appropriate fashion, the rights recognized by general customary international law, and add the amenities of cooperation and good neighborliness while precluding the possibility of an Alphonse-Gaston routine preventing any positive action.[61]

The Public Law Convention's paragraph 1 of article 5 makes the general demand that the coastal state's response to a casualty and the ensuing harm of threat thereof shall be "proportionate." This, in itself, may be no more than the incorporation of the general customary law principle. Paragraphs 2 and 3 of the same article are as follows:

> 2. Such measures shall not go beyond what is reasonably necessary to achieve the end mentioned in Article 1 and shall cease as soon as that end has been achieved; they shall not unnecessarily interfere with the rights and interests of the flag State, third States and of any persons, physical or corporate, concerned.
>
> 3. In considering whether the measures are proportionate to the damage, account shall be taken of:
>
> (a) the extent and probability of imminent damage if those measures are not taken; and

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(b) the likelihood of those measures being effective; and

(c) the extent of the damage which may be caused by such measures.[62]

Clearly these provisions do no more than spell out the general law requirements for the lawful exercise of the contemporary circumscribed right of self-help as applicable in the special case of averting or abating the consequences of a catastrophic casualty at sea.[63]

Finally, the obligation under article 6 to pay compensation for harms caused by excessive measures is an embodiment of a very conservative view of customary international law. It may be that under special circumstances a case could be made for compensation when losses are inevitably incurred in the "proportional" exercise of force. Be that as it may, the conclusion from the consideration of these four points is that, insofar as the Public Law Convention is related to pollution by oil, it codifies the preexisting rights of coastal states to abate actual or threatened harms. It leaves the rights of these states untouched when the polluting agent is some substance other than oil.

THE FREE HIGH SEAS

History. Over against the proliferating legal categories which have just been adumbrated, and which are all alike in their function of clothing (or pretending to clothe) exclusive state claims with legal justifications for enclosing increasing areas of the high seas, there remain the free high seas. The doctrine which asserts this freedom clearly vindicates the long-term, common interests of all states.[64] Be that as it may, it is less than four centuries old and has only won universal recognition as a result of bitter struggles at sea and by bitter polemics at the negotiating table. In the Middle Ages and on through the Renaissance, and, indeed, into the 17th century, many states claimed to exercise sovereignty over the special sea areas, for example: Venice claimed sovereignty over the Adriatic, as did Genoa over the Ligurian Sea; England over the English Channel, the North Sea, and the Atlantic between the North Cape (Stadland) and Cape Finisterre; Denmark and Sweden over the Baltic, the Dano-Norwegian Kingdom over the North Atlantic, and especially the waters between Iceland and Greenland. But, most extravagant of all, Spain and Portugal claimed to divide all the oceans between them under the Bull of Pope Alexander VI (the famous Borgia Pope) *Inter Caetera* (1493) and the Treaty of Tortesillas. Nor were these claims merely high-sounding rituals of sovereignty. They were vindicated with comparative success, given the technological developments in the weaponry of the time, for several centuries. For example, as late as 1636 the Dutch paid England 30,000 pounds for the privilege of fishing in the North Sea, and in 1674, under article 4 of the Treaty of Westminster, they acknowledged their vessels' obligation to salute the English flag within "British Seas" in recognition of English maritime sovereignty. It is of further interest to note the survival of this claim into an era not at all favorable to its recognition or enforcement. As late as 1805 the British Admiralty Regulations ordered that:

> [W]hen any of His Majesty's ships shall meet with the ships of any foreign power within His Majesty's seas (which extend to Cape Finisterre) it is expected that the said foreign ships do strike their topsail and take in their flag, in acknowledgment of His Majesty's sovereignty in those seas; and if any do resist, all flag officers and commanders are to use their utmost endeavours to compel them thereto, and not suffer any dishonor to be done to His Majesty.[65]

Hall comments on this claim that

because "no controversies arose with respect to the salute at a time when opinion had become little favourable" to it, one need not doubt that it had been "allowed to remain a dead letter."[66] Thus, it seems to have become merely vestigial and unenforced during the 18th century.

Despite the long survival of these special claims, the doctrine of the freedom of the high seas had become dominant[67] from the 17th century and had been championed even earlier. For example, in 1580 Queen Elizabeth I of England had asserted to the Spanish Ambassador when he complained about Sir Francis Drake's famous incursion into the Pacific Ocean, that the ships of all nations could navigate the ocean since the air and the sea were common to all. Indeed, in words almost identical to those which Grotius later used and upon which his reputation partly rests, she claimed that no title to the ocean could belong to any nation, since neither nature nor regard for the public use permitted any possession of the ocean. But the English position was ambiguous, and in the early 17th century a number of British writers attacked Grotius' bold assertion that the high seas cannot be the subject of any state's dominion, but that navigation and fisheries on them are free to all nations. Be these observations as they may, despite the earlier protestations of her scholars[68] and the vestigial survival in her Admiralty Regulations, England had, by the end of the 17th century, replaced the Netherlands as the leading champion of the freedom of the high seas.

The "Tragedy of the Commons."[69] Today the free high seas are still (but decreasingly so from their heyday in the 19th century) a common resource of all mankind. As with a common, so with the oceans, all the states see their greatest mutual advantage as stemming from the general exercise of restraint by all, so that the high seas' resources and cleansing properties are not overstrained, and its areas lying near coastal states are not enclosed. On the other hand, each state sees its own individual profit as preempting to itself as much of the common resources as possible, of enhancing its own maximum and immediate use and abuse of the commons' resources, and of maximizing its own enclosures. Thus each state is impelled, in seeking its own short-term advantage, to work remorselessly against both the general welfare and its own long-term enlightened self-interest. This paradox of each state being impelled to work remorselessly and inevitably against its own interests justifies the designation of the competitive regime of the common as a "tragedy."

The contemporary trend of eroding the freedom of the high seas has stemmed from its largely negative character and its dependence on customary international law in an age which seeks to emphasize the concretization of justice and places a greater trust in public intervention than in private enterprise, than in the past. Being negative, the doctrine is largely one of prohibitions. So far it has not been built into institutions wherein the equal rights of all states provide the bases of affirmative policies of concrete distributive justice. This negative character, indeed, provides the ammunition for arguments that, like any common, the richer and more powerful states can obtain disproportionally greater benefits from the ocean at the expense of the smaller states. Its second weakness, that of its validity being largely based on customary international law, makes it dependent upon the continued practice and affirmance of states. Neither practice nor affirmation give it, today, the support it previously enjoyed. Its diminution today is also, in part, concurrent with the contemporary dwindling in significance of customary international law.[70] Furthermore, both of these

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characteristics have (in the absence of special conservation treaties) permitted states to engage in unlimited high seas fisheries so that the survival of some species (for example, blue and sperm whales) is threatened. Again, the negative character of the doctrine has increased the use of the ocean as if it were an infinite sink for all kinds of damaging materials—from dumping fissionable waste and testing nuclear bombs, to the constant flow of raw sewage, mercury, and DDT into its waters. While the problems of open access to fisheries are of great and increasing importance, this presentation will necessarily concentrate on the problems which arise from the permissive climate of the law that permits conduct to be based on the assumption that the seas have an infinite capacity to absorb the world's garbage for the indefinite future. Before this is taken up, however, the tasks of international law in the environmental field might be discerned more clearly as the result of a brief survey of some emerging activities which might well become as sensitive to the need for legal change as a result of technological developments as have problems of oil pollution damage.

Laissez Faire and the Freedom of the Seas—A Plea for Reflection. There is a contemporary overstatement that the doctrine of the freedom of the seas favors dominant maritime states, since it is negative in effect and so favors the stronger states in competition for the oceans' use as a common. This is an unreflecting application of the fable "'Every man for himself and the Devil take the hindmost' said the Elephant as he danced among the chickens." Such an oversimplified appraisal of the freedom of the high seas has been converted into an argument *é converso* for supporting the enclosure of the seas—supposedly by lesser developed countries. This perspective of the interactions of the uses of the seas and developing states' economies overlooks the historical fact that Venice was a dominant seapower with considerable military authority over adjacent lands (as well as dependent territories) bordering the Adriatic Sea when she claimed sovereignty over that sea. Similarly, Spain and Portugal were Great Powers when they claimed their halves of the 1493 papal donation of the world's oceans. History apart, practical politics show that smaller states can best flourish when the high seas are free and open to their commerce and fisheries on an equal footing with those of the Great Powers. (It is also true that regional regulation, rather than unilateral exclusivism, provides the best means of restraining greedy powers from "strip mining" a fishery so as to destroy its productivity for many years.) Regional

BIOGRAPHIC SUMMARY

Professor Louis F.E. Goldie is a recognized authority on the law of the sea, space law, and international organizations. The author of many articles, Professor Goldie holds an LL.B. degree from both the University of Western Australia and the University of Sydney and an LL.M. degree from the University of Sydney. He has also completed additional studies at Harvard University and at the Hague Academy of International Law, and from the latter he holds the diplomas of both the Academy and the Center of Research and Studies. He came to the United States in 1959 as a lecturer in political science at UCLA from the Australian National University where he was a senior lecturer. He also taught the Law and Usages of War at the Royal Military College, Duntroon. He has taught in the political science departments and law schools of a number of universities in the United States and occupied the Charles H. Stockton Chair of International Law at the Naval War College (1970-71). Professor Goldie is currently the Director of International Legal Studies Program at the College of Law, Syracuse University.

controls are thus available and appropriate to protect the fishery rights of the less powerful and predatory states and their fishermen.

Commerce can move across the seas more swiftly and cheaply—and hence with greater availability to poorer states and their domestic communities—when taxes and tolls are not exacted for the privileges of transit. Indeed, on the maintenance of cheap commercial transit the economic survival of the lesser developed (including landlocked) states may, in the long run, depend. When, as dominant seapowers, the Netherlands and England espoused the freedom of the high seas, they were not in a position to affirm claims of extensive maritime dominion because they were not also dominant land powers controlling the lands which surrounded or at least held the keys for controlling the seas. In addition, their long-term interests lay, as their diplomatic histories testify, on the side of the smaller nations, since they ultimately drew their strength from a worldwide web of commerce with these countries, not from concentrated military authority. Hence, for the past two centuries, the freedom of the high seas has not provided an example of the tragedy of the commons. This has been due to a number of factors including the limitations of technology, the interests of English and Dutch merchants in preventing maritime encroachments by coastal states, and the authority of the Royal Navy. Against that combination no state was able to hold any sea as a *mare clausum*.

FOOTNOTES

1. *I.e.*, the initials of Chile, Ecuador, and Peru—the original parties to the Santiago Declaration 1952 and the foundation members of the "200 Mile Club." See § III A *infra*.

2. For an indication of this species of unrecognized offshore claim, see § III B *infra*.

3. Note, however, that art. 5, para. 2, Convention on the Territorial Sea and the Contiguous Zone, done at Geneva, art. 29, 1958, (1964) 2 *U.S.T.* 1606, *T.I.A.S.* no. 5639, 516 *U.N.T.S.* 205 (effective 10 September 1964) [Thereinafter cited as "Convention on the Territorial Sea"] derogates, in some cases, from the proposition in the text. It provides:

> Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal water areas, which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

4. Art. 7, para. 4, Convention on the Territorial Sea.

5. *United States* v. *California*, 381 U.S. 136 (1965). *Supplemental* decree, 382 U.S. 448 (1966), *rehearing denied*, 382 U.S. 889 (1966).

6. 67 Stat 29 (1953), 43 U.S.C. § 1301.

7. See, for example, *Cunard S.S. Co.* v. *Mellon*, 262 U.S. 100 (1923), and note especially *ibid.*, at 125; *Wildenhus' Case*, 120 U.S. 1 (1886), and note especially *ibid.*, at 11, 12; *see also*, *The Creole* (1853), 2 Moore, *Digest of International Law* 358, 361 (1906). This is often known as the "English Rule." It originated in the dictum of Best J., in *Forbes* v. *Cochrane*, 2 B & C 448, 467, 107 E.R. 450, 457 (K.B., 1824); *Caldwell* v. *Vanvlissengen*, 9 Hare 415, 68 E.R. 571 (V. ch., 1851); and *Suarkar*'s case, Scott, *The Hague Court Reports* 516 (1911). For some additional cases see *Reg.* v. *Keyn*, per Phillimore J., L.R. 2 Ex. D. 63 at 82 (C.C.R., 1876). The American cases would appear to favor the "English Rule"; see, for example, *Cunard S.S. Co.* v. *Vellon* and *Wildenhus'* case, *supra*. See also *Patterson* v. *Bark Eudora*, 190 U.S. 169 (1903). Frequently the "French" or "Continental Rule" is contrasted with it; see, for example, *The Sally* and *The Newton*, 5 *Bulletin des Lois de l'Empire Francais* 602 (4th ser., 1807); *The Tempest*, Dalloz, *Jurisprudence Generale* 92 (1859); 1 *Oppenheim* 502-4; Brierly, *The Law of Nations* 223-5 (6th ed., Waldock, 1963) [hereinafter cited as "Brierly"].

On the other hand, *see*, as a little known example of the "English Rule," *In re* Sutherland, 39 N.S.W. *Weekly Notes* 108 (1922) *and see*, for a presentation and discussion of this case, Charteris, "Habeas Corpus in respect of the Detention of a Foreign Merchantman," 8 *Journal of Comp. Legislation* 246 (3d ser., 1926). Briefly the facts were these, two French convicts who had been sentenced to transportation to New Caledonia, and who were named Tulop and Szibar,

escaped from the French ship *El Kantara* whilst she was in the port of Newcastle, New South Wales, en route for the French penal colony. She sailed without them. The New South Wales authorities later arrested the convicts and handed them over to another private French ship, *La Pacifique,* in which they were destined to continue their voyage to Noumea. Before the vessel sailed, an application for a writ of habeas corpus rule on behalf of the convicts was made by Sutherland. The Full Court of the Supreme Court of New South Wales refused the rule on the ground that to grant it would be to ignore the immunity of matters of internal management aboard the French ship from Australian law. Sir William Cullen, the Chief Justice, said (*id* at 108-9): "If there were anything to show that the master of the French ship was acting without authority under French law, then the question might arise whether there was authority under Australian law for his keeping the men on board in Australian waters." This Australian version of the "English Rule" was delivered whilst the Court was sitting *en banco.* The concurrence was unanimous. When such cases as *In re* Sutherland are said to exemplify the "English Rule," it is submitted that perhaps the traditional distinction between the "English Rule" and the "Continental" or "French Rule" may well have become more a matter of formulation than of application and practice. See, for a discussion of this, and for a similar conclusion, Brierly at 225-6. Moreover examples abound which illustrate the point that terms such as the "public order" or the "tranquility" of the port are indeterminate, leaving their application to considerations of policy. To juxtapose the two Philippine cases of *People* v. *Wong Cheng,* 46 P.I. 729 (1922) and *United States* v. *Look Chaw,* 18, P.I. 373 (1910), will suffice to illustrate this point.

For examples of diplomatic action to protect the immunity of the internal management of foreign ships in port, *see* protests by Belgium, Denmark, Great Britain, Mexico, Netherlands, Norway, Portugal, Spain, Sweden, in 1923 against the assumption of jurisdiction by the United States over liquor carried (but not sold) aboard their ships whilst in U.S. waters and harbors, 1 *U.S. Foreign Relations* 113 (1923).

8. But see *People* v. *Wong Cheng,* 46 P.I. 729 (1922), *distinguish United States* v. *Look Chaw,* 18 P.I. 573 (1910).

9. For a definition of innocent passage *see* arts. 14-23 Convention on the Territorial Sea.

10. *Id.,* art. 4, para. 1. *See also, id.,* art. 23.

11. For a discussion of the solecism *see* Goldie, "International and Domestic Managerial Regimes for Coastal, Continental Shelf and Deep-Ocean Mining Activities," *The Law of the Sea: National Policy Recommendations* 226, 227-30 (Proceedings of the 4th Annual Conference of the Law of the Sea, 23-26 June 1969, University of Rhode Island, 1969).

12. Professor Georges Scelle was representative of the small band who refused to join the ranks of the international lawyers who saw virtue in the reception of the Continental Shelf Doctrine in international law or who were resigned, or complaisant, about its inevitability. *See* Scelle, "Plateau Continental et Droit International," 59 *Revue Generale de Droit International Public* 5 (1955) [hereinafter cited as "Scelle, 'Plateau Continental.'" See also the report of his comments in [1956] 1 *Y.B. Int'l L. Comm'n* 133 which states: "*Mr. SCELLE* observed that, as he did not attribute any scientific value, far less any legal validity, to the concept of the continental shelf, he welcomed any discussion which might further obscure the concept and thereby lead to its destruction."

13. [1969] I.C.J. 3.

14. *See, generally, The New York Times,* 31 January-3 April 1969.

15. *See The New York Times,* 2 March 1970, p. 17; 1-6.

16. S. Res. 33, 91st Cong., 1st Sess., 115 *Cong. Rec.* 1330 (1969), which recommends that the President should place a resolution endorsing basic principles for governing the activities of nations in ocean space before the United Nations Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction. Also printed in *Hearings on S. Res. 33 Before the Subcommittee on Ocean Space of the Senate Committee on Foreign Relations,* 91st Cong., 1st Sess. at 9 (1969).

17. *Memorandum by L.F.E. Goldie on Senate Resolution 33, Hearings on S. Res. 33, id.* at 290, 300.

18. *Done* 29 April 1958, [1966] 1 *U.S.T.* 138 *T.I.A.S.* No. 5969, 559 *U.N.T.S.* 285 (effective 20 March 1966).

19. *See, e.g.,* Goldie, "The Oceans' Resources and International Law—Possible Developments in Regional Fisheries Management" 8 *Columbia J. Transnat'l L.* 1 (1969).

20. The Declaration on the Maritime Zone, Santiago, Chile, 18 August 1952. For an English translation of this and the parties' accompanying declarations and agreements (together constituting the "Santiago Declaration"), as well as subsequent and supplementary declarations

and agreements, see B. MacChesney, *Situation, Documents and Commentary on Recent Developments in the International Law of the Sea* 265-89 (Naval War College Blue Book Series No. 51, 1956). See also B. Auguste, *The Continental Shelf—the Practice and Policy of the Latin American States with Special Reference to Chile, Ecuador and Peru* 187-92 (1960); S. Bayitch, *Inter-American Law of Fisheries, an Introduction with Documents* 42-47 (1957); U.S. Department of State, *Santiago Negotiations on Fishery Conservation Problems* (1955). For a polemical defense of the CEP claims and policies, see, e.g., Cisneros, "The 200 Mile Limit in the South Pacific: a New Position in International Law with a Human and Juridical Content," *ABA Section of Int'l & Comp. Law, 1964 Proceedings* 56 (1965). Note particularly the criticism of the CEP claims in Kunz, "Continental Shelf and International Law: Confusion and Abuse" 50 *Am. J. Int'l L.* 828, 835-50 (1956) hereinafter cited as "Kunz."

Until 1970 Chile, Ecuador, and Peru had been able to add only Nicaragua and El Salvador to their band—President Trejos having vetoed, on 21 November 1966, the ratification of the Declaration of Santiago by Costa Rica's Legislative Assembly. On the other hand, Argentina, by Law No. 18094, dated 4 January 1967, has asserted a double claim: out to 200 miles from the mainland coast, as well as from the coasts of islands, and out to the 200-meter isobath. While it is true that a number of South and Central American States have added to their continental shelf claims, claims to the "epicontinental sea" (*i.e.*, the volume of the waters superincumbent upon their continental shelves) off their coasts, and to the superaubient air above that "sea," this type of claim is still asserted (albeit spuriously, cf. Continental Shelf Convention, art. 3) in terms of the international law regime of the continental shelf. Thus, this type of claim is distinguishable from the CEP type. So far the six "CEP countries" (including Argentina) have not been successful in persuading other Latin American States to assert specifically CEP claims to adjacent seas, nor has the Organization of American States adopted this position as that of the collectivity of Western Hemisphere nations. Indeed it has not as a body, recognized as valid state claims to epicontinental seas. Thus, for example, at the Inter-American Specialized Conference on "Conservation of Natural Resources: the Continental Shelf and Marine Waters," Ciudad Trujillo, Dominican Republic, 15-28 March 1956 (see the *Final Act* of the Conference *Organization of American States Conferences & Organizations Series*, No. 50, Doc. No. 34.1-E-5514 (1956)) the CEP states were unable to gain the Conference's agreement to the "bioma" and "eco-system" theories, or to declare that either the waters above a continental shelf region, or waters extending from the shores of a coastal state for some distance such as 200 sea miles, appertain to the coastal state either on the basis of the continental shelf doctrine or on some other theory. The Conference observed (in Resolution I of the Conference, the "Resolution of Ciudad Trujillo," *Final Act supra* at 13-14) that:

> 2. Agreement does not exist among the states here represented with respect to the juridical regime of the waters which cover the said submarine areas.
>
> . . .
>
> 6. Agreement does not exist among the states represented at this Conference either with respect to the nature and scope of the special interest of the coastal state, or as to how the economic and social factors which such state or other interested states may invoke should be taken into account in evaluating the purpose of conservation programs.
>
> . . .
>
> Therefore, this Conference does not express an opinion concerning the positions of the various participating states on the matters on which agreement has not been reached . . ..

For the views of inter-American legal experts, see *Inter-American Council of Jurists*, "Resolution XIII, Principles of Mexico City on the Juridical Regime of the Sea. 8 Conservation of the Living Resources of the High Seas," *Final Act of the Third Meeting* 37 (English CIJ-29) (1956). Note should be taken of Dr. Garcia Amador's comments (as the representative of Cuba) on the "Principle of Mexico City" at the Geneva Conference on the Law of the Sea, 1958: "As to the Principles of Mexico City, the validity of that document should be considered in the light of the resolution unanimously adopted by the Inter-American Specialized Conference held in Ciudad Trujillo in 1956." 3 U.N. Conf. of the Law of the Sea, Geneva 1958, *Official Records* 37, *U.N. Doc. A/Conf.* 13/39 (1958).

For the 1956 Resolution of Ciudad Trujillo to which Dr. Garcia Amador is referring, see *supra* this note. For comments of governments, *see id.* 50-59; *Inter-American Juridical Committee, Opinion on the Breadth of the Territorial Sea* 24-42, OEA/Ser. I/VI.2 (English CIJ-80) (1966).

For the U.S. point of view, see U.S. Department of State, *Santiago Negotiations on Fishery Conservation Problems* 1-15, 19-20, 26-30, 36-41, 50-58, 59-66 (1955) [hereinafter cited as

Santiago Negotiations]. For the CEP countries' position and their criticism of the U.S. point of view, see *id.* 30-35, 41-44, 45-50.

Be that as it may, on 8 May 1970, Argentina, Brazil, Costa Rica, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay participated in the Declaration of Montevideo on the Law of the Sea whereby the above-named states announced:

> That in declarations, resolutions and treaties especially inter-American, as well as in multilateral declarations and agreements reached among Latin American states, juridical principles have been consecrated which justify the right of states to extend their sovereignty and jurisdiction to the extent necessary in order to conserve, develop and exploit the natural resources of the maritime zone adjacent to their coasts, its seabed and subsoil;
>
> That, in accordance to said juridical principles, the signatory states have extended, because of their special circumstances their sovereignty or their exclusive jurisdictional rights over the maritime zone adjacent to their coasts, its seabed and subsoil, to a distance of 200 maritime miles, measured from the baseline of the territorial sea.

21. The southern portion of the Peru Current is sometimes called the Chile Current. With due deference to the countries concerned, this current will be called the "Humboldt Current" throughout this article.

22. *See, supra,* note 20.

23. Declaration on the Maritime Zone, Preamble, § 1, *See* MacChesney 266.

24. *Id.* § 3.

25. At the 1958 Geneva Conference, Mr. Ulloa Sotomayor insisted, however, that the Declaration of Santiago was of a "defensive character, and its sole object was the conservation of the living resources of the sea for the benefit of the populations of [the CEP] countries." 3 *U.N. Conf. Off. Rec.* 7, *U.N. Doc. A/CONF.* 13/39 (1958). See also the restricted interpretation given by the representative of Chile at the 12th Meeting of the First Committee to the word "sovereignty" in the context of the claims made in the fulfillment of the Santiago Declaration, 3 *U.N. Conf. Off. Rec.* 33, *U.N. Doc. A/CONF.*13/39 (1958); the limited juridical scope intended for the claims to maritime zones in the declaration as enunciated by Peru's representative at the 5th Meeting of the Third Committee, 5 *U.N. Conf. Off. Rec.* 5-7, *U.N. Doc. A/CONF.*13/41 (1958); the assertion by the Ecuadorian representative at the 9th Meeting of the Third Committee that the Santiago Declaration was a "common policy for the conservation, development and rational exploitation of those resources and [the] joint machinery for the regulation of fishing in the areas in question," 5 *U.N. Conf. Off. Rec.* 18, *U.N. Doc. A/CONF.* 13/41 (1958); and the expressions employed by the latter representative at the 12th Meeting of the Third Committee. 3 *U.N. Conf. Off. Rec.* 61-62, *U.N. Doc. A/CONF.*13/39 (1958). These CEP assertions of self-denial may be contrasted with the latest (as of the time of this writing, 17 February 1969) application of violent force by the Peruvian Navy against three American tuna boats on 14 February 1969, *see, e.g., The New York Times,* 15 February 1969, p. 1:1 and at 2:1. *See generally* Garcia Amador 73-79.

26. Declaration on the Maritime Zone, art. II, *see* MacChesney 266.

27. *Id.* art. IV.

28. *Id.* art. V.

29. 11 U.N. GAOR, 6th Comm. 31, *U.N. Doc. A/C.6/SR.486* (1956).

30. *See also, e.g.,* Cisneros, 58-60; *Santiago Negotiations* 30-33, and note especially the statement:

> This is, in short, the concept of biological unity from which is derived, in the scientific field, the preferential right of coastal countries. According to this concept, the human population of the coast forms part of the biological chain which originates in the adjoining sea, and which extends from the microscopic vegetable and animal life (fitoplankton and zooplankton) to the higher mammals, among which we count man. *Id.* 32.

31. United States, "Comments on the Proposals of Chile, Ecuador and Peru," *Santiago Negotiations* 37.

32. See Speech of Legal Adviser to Department of State Stephenson.

33. *See* W. Butler, *The Soviet Union and the Law of the Sea,* 116533 (1971); and W. Butler, *The Law of Soviet Territorial Waters* 19-25 (1967).

34. Arctic Waters Pollution Prevention Act, 18-19 Eliz. 2, c. 47 (Can. 1970). Royal Assent given 26 June 1970. This act has not yet been proclaimed as having come into force, *see id.* § 28. *See also The New York Times,* 9 April 1970, p. 13:6-8; *id.* 10 April 1970, p. 13:3-4; *id.* 16 April

1970, p. 6:1-2; *id.* 20 April 1970, p. 38:2 (Editorial); *id.* 26 April 1970, § 4 (Week in Review) p. 3:5-8.

35. *See, supra,* § III A for a discussion of these Latin American claims.

36. For a clear enunciation of the validity of the distinction relied upon here, *see* McDougal & Burke, *The Public Order of the Oceans* 518-19 (1962).

37. *See, e.g.,* Bilder, "The Canadian Arctic Waters Pollution Prevention Act: New Stresses on the Law of the Sea." 69 *Mich. L. Rev.* 1 (1970). [hereinafter cited as "Bilder"]

38. For this appellation of creeping jurisdiction *see* Henkin, "The Continental Shelf," *The Law of the Sea: National Policy Recommendations* 171, 175-76 (Proceedings of the 4th Annual Conference of the Law of the Sea Institute, 23-26 June 1969, University of Rhode Island, 1969).

39. Bilder, *supra* note 37, at 30.

40. House of Commons Debates 6027 (17 April 1970). *But see R.* v. *Tootalik* E4-321, 71 W.W.R. (n.s.) 435 (Northwest Territorial Court 1970) *rev'd on other grounds,* 74 W.W.R. 740. Noted in Green, "Canada and Arctic Sovereignty," 48 *Can. B. Rev.* 740, 755-56, 773 (1970). *See also* Auburn, "International Law—Sea Ice—Jurisdiction," *id.* at 776-82.

41. This writer, for one, is most resistant to the uncivilized notion that self-preservation may justify making lawful that which would otherwise be unlawful. Professor Brierly was correct when he said, citing the cannibalism case of R.V. Dudley and Stephens, 14 Q.B.D. 273 (1884) in support of his argument:

> The truth is that self-preservation in the case of a state as of an individual is not a legal right but an instinct; and even if it may often happen that the instinct prevails over the legal duty not to do violence to others, international law ought not to admit that it is lawful that it should do so.

Brierly 405. For clarity, and because of the important moral issues outlined by Brierly in the passage just quoted, it is necessary to distinguish between self-preservation on the one hand and self-help on the other. *See* McDougal & Feliciano, *Law and Minimum World Public Order* 213 n. 204 (1961) for a critique of the "subsumption of disparate things under a common rubric."

42. 2 Moore, *Digest of International Law* 409-14 (1906) [hereinafter cited as Moore]. *See also* Jennings, "The Caroline and McLeod Cases," 32 *Am. J. Int'l L.* 82 (1938). Hall characterizes the quoted formula as "perhaps expressed in somewhat too emphatic language . . . but perfectly proper in essence." *See* Hall, *A Treatise on International Law* 324 (8th ed. A. Higgins, 1924). [hereinafter cited as "Hall"] For reasons stated in the preceding footnote, Oppenheim-Lauterpacht's characterization of the case of *The Caroline* as "self-preservation" is respectfully disagreed with. *See* 1 *Oppenheim* 301. For a reasoned justification of the use of the term "self-defense" to describe the coercive protective measures open to the British Government in the *Torrey Canyon* casualty, see Ditton, "Protective Measures and the 'Torrey Canyon'" 9 *B.C. Ind. & Com. L. Rev.* 613, 623 (1968). This writer, however, prefers the term "self-help" to indicate justifiable action in oil disasters of the type under discussion.

43. Goldie, Book Review, 1 *J. Maritime L. & Com.* 155, 158 (1969).

44. [1969] T.C.J. 3. *See* for a general discussion of this complex issue and of the different positions taken by the members of the Court on it, Goldie, "The North Sea Continental Shelf Cases—A Ray of Hope for the International Court?" 16 *N.Y.L. Forum* 325, 336-59 (1970).

45. *Done* 12 May 1954, [1961] 3 *U.S.T.* 2989, *T.I.A.S.* No. 4900, 327 *U.N.T.S.* 3 [hereinafter cited as the International Pollution Convention] *(entered into force* 26 July 1958).

46. *Adopted* 11 April 1962, [1966] 2 *U.S.T.* 1523, *T.I.A.S.* No. 6109 *(entered into force* as to amendments to arts. 1-10, 16 and 18, 18 May 1969 *and* as to art. 14, on 28 June 1967) [hereinafter cited as "Pollution Amendments"]. Further amendments were made in 1969, Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (as amended), annexed to IMCO Ass. Res. A. 175 (VI) *adopted* 21 October 1969. *See Two Conventions and Amendments Relating to Pollution of the Sea by Oil (Message from the President,* May 20, 1970), 91st Cong., 2d Sess., at 29-32. *See also* 62 *Dept. State Bull.* 756-57, 758-59 (15 June 1970).

47. *See* Annex A to the International Pollution Convention replaced by § 14 of the Pollution Amendments.

48. *See* the four exceptions listed in art. 2, para. 1 of the Pollution Amendment, *supra* note 46.

49. *See* art. 2 of the International Pollution Convention, *supra* note 29, as replaced by § 2 of the Pollution Amendments, *supra* note 30.

50. *Done* 29 November 1969, 9 *Int'l Legal Materials* 25 [1969] [hereinafter cited as the Public Law Convention].

51. *Done* 29 November 1969, 9 *Int'l Legal Materials* 45 [1969] [hereinafter cited as the "Private Law Convention."]

52. 9 *Int'l Legal Materials* 65
53. 9 *Int'l Legal Materials* 66.
54. 9 *Int'l Legal Materials* 67.
55. Public Law Convention art. 1, para. 1, *supra* note 34.
56. *Id.* para. 2.
57. *Id.* art. 3, art. 4 provides for the list of experts contemplated in art. 3.
58. *Id.* art. 5, para. 1. Paragraphs 2 and 3 set out the limits of state action.
59. Art. 7 saves all existing rights "except as specifically provided" in the Convention. *Id.* The question is, therefore, whether the express limitation of the Public Law Convention and the express provisions in arts. 3, 5, and 6 limit, or enlarge, the rights of coastal states.
60. *Supra* note 50.
61. The treaty among Belgium, Denmark, France, the Federal Republic of Germany, the Netherlands, Norway, Sweden, and the United Kingdom, the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil, *done* 9 June 1969, [1969] U.K.T.S. No. 70 *(Cmnd* 4205) *(entered into force* 9 August 1969), formulates some of the amenities of good neighborliness in this context.
62. Public Law Convention, *supra* note 50, at 469.
63. This position has recently been affirmed by the United Nations General Assembly in paragraph 13 of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction, G.A. Res. 2749, 25 U.N. GAOR—(1970) which reads:

Nothing herein shall affect

. . . .

(b) The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to the coast line or related interests from pollution or threat thereof resulting from, or from other hazardous occurrences caused by, any activities in the area, subject to the international regime to be established.

64. Professor Joseph Kunz cogently argues that "the long-established principle of the freedom of the high seas" is a norm *juris cogentis* of general customary international law, *see* Kunz, "Continental Shelf and International Law: Confusion and Abuse," 50 *Am. J. Int'l L.* 828, 844-45, 853 (1956).
65. Quoted from Hall 185.
66. *Id.*
67. *See, e.g. supra,* note 64 and the theory therein cited.
68. These were Gentilis, Welwood, Burrows, and Selden, of whom the last is the best known. Gentilis' defense was equally of Spanish and English claims. Selden is famous for his book *Mare Clausum,* the printing of which was commissioned by Charles I as a counterblast to Grotius' *Mare Liberum. See 1* Oppenheim, *International Law* 585 (8th ed. Lauterpacht 1955).
69. For a discussion of this built-in tragic situation whereby each is forced, by his immediate dilemma, to work against his own long-term advantage, *see* Hardin, "The Tragedy of the Commons," *The Environmental Handbook* 31, 36-38 (G. DeBell ed. 1970).
70. *See* Devisscher, *Theory and Reality in Public International Law* 162 (rev. ed. Corbett transl. 1968) for an incisive and realistic, if possibly pessimistic, discussion of this point.

APPENDIX I

The territorial sea claims shown in the following list unequivocally illustrate the point made in the text. This list is valid as of 18 June 1971. Acknowledgment for this list is gratefully given to the International Law Division, Office of the Judge Advocate General, Department of the Navy.

TERRITORIAL SEA CLAIMS

Country	Territorial Sea
Albania	12 miles
Algeria	12 miles
Argentina@	200 miles
Australia	3 miles
Barbados	3 miles
Belgium	3 miles
Brazil	200 miles
+Brunei (U.K.)	3 miles
Bulgaria	12 miles
Burma	12 miles
Cambodia	12 miles
Cameroon	18 miles
Canada	12 miles
Ceylon	12 miles
Chile	50 kilometers
China (Comm)	12 miles
China (Taiwan)	3 miles
Colombia	12 miles
+Comoro Islands (France)	3 miles
Congo (Brazzaville)	3 miles
Congo (Kinshasa)	3 miles
Costa Rica	3 miles
Cuba	3 miles
Cyprus	12 miles
Dahomey	12 miles
Denmark	3 miles
Dominican Republic	6 miles
Ecuador	200 miles
El Salvador	200 miles
Equatorial Guinea	6 miles
Ethiopia	12 miles
+Feroe Islands (Denmark)	3 miles
+Fiji (U.K.)	3 miles
Finland	4 miles
France	3 miles
Gabon	25 miles
Gambia	12 miles
Germany (E)	3 miles
Germany (W)	3 miles
Ghana	12 miles
Greece	6 miles
+Greenland (Denmark)	3 miles
Guatemala	12 miles
Guinea	130 miles
Guyana	3 miles
Haiti	6 miles
Honduras	12 miles
Iceland	4 miles
India	12 miles
Indonesia (See para. (3) under "II. Archipelago Theory")	12 miles
Iran	12 miles
Iraq	12 miles
Ireland	3 miles
Israel	6 miles
Italy	6 miles
Ivory Coast	6 miles
Jamaica	12 miles
Japan	3 miles
Jordan	3 miles
Kenya	12 miles
Korea (N)	12 miles
Korea (S)	3 miles
Kuwait	12 miles
Lebanon	20 kilometers
Liberia	12 miles
Libya	12 miles
Malagasy	12 miles
Malaysia	12 miles
Maldive Islands (See para. (2) under "II. Archipelago Theory.")	
Malta	3 miles
Mauritania	12 miles
Mauritius	12 miles
Mexico	12 miles
Moneco	12 miles
Morocco	3 miles
Muscat & Oman	3 miles
Nauru	3 miles
Netherlands	3 miles
+New Caledonia (France)	3 miles
New Zealand	3 miles
Nicaragua	3 miles
Nigeria	12 miles
Norway	4 miles
Pakistan	12 miles
Panama	200 miles
Peru	200 miles
Philippines (See para. (1) under "II. Archipelago Theory.")	
Poland	3 miles
Portugal	6 miles
+Reunion (France)	3 miles
Romania	12 miles
Saudi Arabia	12 miles

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Country	Territorial Sea	Country	Territorial Sea
Senegal	12 miles	Tunisia	6 miles
+Seychelles (U.K.)	3 miles	Turkey	6 miles
Sierra Leone	12 miles	USSR	12 miles
Singapore	3 miles	+Surinam (Netherlands)	3 miles
Somali	12 miles	UAR	12 miles
South Africa	6 miles	United Kingdom	3 miles
Spain	6 miles	United States	3 miles
Sudan	12 miles	Uruguay@	200 miles
Sweden	4 miles	Venezuela	12 miles
Syria	12 miles	Vietnam	12 miles
Tanzania	12 miles	Vietnam (S)	3 miles
Thailand	12 miles	Yemen	12 miles
Togo	12 miles	Yemen (S)	12 miles
Tonga	3 miles	Yugoslavia	10 miles
Trinidad	12 miles		

I. NOTES TO LIST

@ *Argentina:* By law of 29 December 1966, sovereignty was claimed over a 200 mile zone, but freedom of navigation of vessels and aircraft was not curtailed. It is not clear whether or not this is a territorial sea claim in extension of the previously claimed three mile limit.

Uruguay: Law of 3 December 1959, claims a 200 mile territorial sea, but specifically guarantees freedom of navigation and overflight in the area beyond 12 miles. In the 12-200 mile portion of the zone only foreign fishing is restricted.

+ Certain dependent areas are included on the list. These particular dependent areas are separately listed because their locations give them importance with respect to worldwide navigation. This list does not include all dependent territories. In each case the breadth of the territorial sea of the dependent is fixed by its metropole, which appears in parenthesis after the nave of the dependent territory.

II. ARCHIPELAGO THEORY

(1) Philippines: Archipelago theory: Waters within straight lines joining appropriate points of outermost islands of the archipelago are considered internal waters; waters between these baselines and the limits described in the Treaty of Paris, Dec. 10, 1898, the United States-Spain Treaty of Nov. 7, 1900, and U.S.-U.K. Treaty of Jan. 2, 1930, are considered to be the territorial sea.

(2) Maldive Islands: The "territory" of the Maldive Islands is defined as the islands, sea and air surrounding and in between the islands situated between Latitudes 7 degrees - 9½ feet (North) and 0 degrees - 45¼ feet (South) and Longitudes (East) 72 degrees - 30½ feet and 73 degrees - 48 feet. These coordinates form a rectangle of approximately 37,000 square nautical miles.

(3) Indonesia claims an archipelago theory under which its 12 mile territorial sea is measured seaward from straight baselines connecting its outermost islands.

The number of sovereign states claiming various territorial seas is as follows:

3 miles - 30 states	12 miles - 51 states	50 kilometers - 1 state
4 miles - 4 states	20 kilometers - 1 state	130 miles - 1 state
6 miles - 12 states	18 miles - 1 state	200 miles - 7 states
10 miles - 1 state	25 miles - 1 state	

The issues surrounding arms, political order, and national security which confront world leaders today bear a certain resemblance to those which characterized international politics after World War I. Although it would be misleading to infer that history repeats itself exactly, past events can lend valuable insights into the processes through which men interact. This scholarly examination of previous efforts at achieving arms limitations among the great powers of the world and of constructing a new political order for Asia contains implications for us all at a time when we as a nation are entering a new era of negotiation.

NAVAL DIPLOMACY AND THE FAILURE OF BALANCED SECURITY IN THE FAR EAST—1921-1935

A research paper prepared

by

Lieutenant Commander William S. Johnson, U.S. Navy

Introduction. The years from 1922 to 1934 were marked by an attempt to stabilize the balance of power in the Far East to the mutual benefit and security of both the Western Powers having interests in East Asia, and Japan, and China. Nine powers—seven Western and two Asian—met in Washington in November 1921 to discuss mutual problems in the Far East. The result of their nearly 3 months of diplomatic endeavor was a group of treaties designed to limit naval armaments and to usher in a new spirit of cooperation with regard to their mutual Far Eastern interests. The balance of power was restored, as was a sense of mutual security provided through naval limitation and a new alliance arrangement to replace the Anglo-Japanese alliance of 1902.

The diplomatic and politico-military achievements of the Washington Conference were hailed as the dawning of a new day in international affairs. Diplomats were fired with the inspiration of Woodrow Wilson's dream of a new world in which open diplomacy and public opinion would replace the old system of secret agreements and power politics. The old system had embroiled nations in wars as cataclysmic as the one just ended; the new purported to foster a new order in the Far East in which all settlement of disputes or other issues would be achieved amicably. China, struggling to carry through a revolutionary program of unification and modernization, was to be jointly aided in its effort to assume its rightful place in the family of nations. No one nation was to enrich itself at the expense of a weak, prostrate China; nor was any nation to infringe on the Asian interests of any other. Finally,

armaments were limited by agreement. Military power, as reflected in expensive naval shipbuilding races, would not threaten the security of any other power with Pacific interests. A naval limitation, to the idealist, heralded the prospect of later agreements as to total disarmament, thus removing one possible, though perhaps not major, cause for war.

The world was well pleased with the results of the Washington Conference and looked forward to a brighter day in world affairs. However, the treaties signed at Washington in February 1922 failed to fulfill their intended purpose. The quest for economic, political, and military influence and power continued in the Far East, finally culminating in open hostilities in 1941, once again submerging the nations of Eastern Asia in a world war. It is the purpose of this article to examine the background surrounding the Washington Conference, its achievements, and its failure to attain balanced economic and power interests in the Far East. Finally, the question of why the effort toward a balanced security system for the Far East failed to fulfill its purpose, as envisioned at the Washington Conference, will be addressed.

Prelude to the Washington Conference. Japan emerged from World War I as a major world power. She had taken advantage of the preoccupation of the Western Powers with the war in Europe and had made steady inroads politically, economically, and militarily into China. By 1915 Japan, as one of the Allied Powers in the Great War, occupied the areas of the Shantung peninsula that had been held by Germany. The famous 21 demands were presented to China, compliance with which would concede important commercial and extraterritorial rights to Japan in Shantung, south Manchuria, and eastern Inner Mongolia.[1] Although world public opinion forced the watering down of Japanese demands on China when the 21 demands were made known publicly by the Chinese, Japan acquired foreign recognition of her newly gained interests in China through an accord signed with Russia in July 1916. The Lansing-Ishii Agreement with the United States, signed in November 1917, recognized Japanese special interests in China. The negotiation of the Nishihara loan to China in September 1918 further demonstrated Japanese financial interests on the mainland. At the Versailles Peace Conference, the Japanese were successful in gaining formal recognition of their possession of all former German territories in Shantung in return for a pledge to return all but certain German economic interests to Chinese sovereignty at some future time.[2] Through Versailles, Japan also acquired the German islands of the Northern Pacific—the Marianas, the Carolines, and the Marshall Islands, under a League of Nations mandate. These islands formed the outer chain of defenses of a growing, security-conscious Japanese Empire.

Militarily and economically, Japan emerged from World War I in far greater strength than when she entered it. Japanese munitions industries were greatly expanded to supply, not only Japanese forces, but Allied ones as well.[3] Japanese land forces did not participate in the conflict in Europe, but were greatly strengthened at home and on the mainland. The Japanese Navy was enlarged to provide convoy services to Allied shipping in the Pacific and Mediterranean areas.

Japan participated in the Allied intervention in Siberia when the forces of bolshevism in the Russian Revolution threatened to weaken Russia to the point of its becoming an easy prey for the Central Powers. The Japanese wanted to intervene in Siberia to guard eastern Siberia against the Bolsheviks and to gain control of the Chinese Eastern Railway in Manchuria. Accordingly, the Japanese followed the

American initiative of July 1918 and in August dispatched a division of Imperial troops to Vladivostok. In January 1920 the United States announced withdrawal of its forces from Siberia, followed in short order by France, Canada, and the United Kingdom. All Allied forces, numbering about 7,000 men, had withdrawn from Siberia by March 1920; but Japan, under the guise of protecting Japanese interests in Korea and Manchuria, retained as many as 75,000 troops in western Siberia and the Maritime Provinces until their withdrawal in October 1922.[4] Further, the Japanese occupation of northern Sakhalin Island until 1924, in reprisal for the Bolshevik massacre of Japanese citizens at Nikolaevsk, again demonstrated Japanese expansionist policies in Eastern Asia. Japan had become the predominant military and economic power in the Far East, and the Western Powers were, as yet, not sufficiently recovered from their exertions in the World War to deal with Japanese expansion.

To the Americans it appeared that Japan was achieving control of the Far East to the ultimate exclusion of the Western Powers, a trend to which President Wilson was unalterably opposed. American policy became one of steady opposition to Japanese expansion. However, Washington moved cautiously for fear of raising Japanese antagonism to the extent that even further inroads would be made at the expense of a weak China. The Lansing-Ishii notes were viewed by the United States as restraining Japan by reaffirming the policy of the open door in China, but the recognition of Japan's special interests on the mainland signified American acquiescence to Japanese demands in the eyes of Japan and China.[5]

The Western Powers emerged from World War I in a greatly weakened condition as a result of 5 years of exhaustive and debilitating warfare. Britain had been drained economically and, together with France, Germany, and the other nations of Europe, had lost almost an entire generation of young manhood on the battlefields of France. Britain had succeeded in destroying the Imperial German Navy that had threatened her existence as an island nation, but now became fearful of a naval race with the United States. The United States had authorized an ambitious naval construction program in 1916 to safeguard her position as a neutral on the high seas. The program, as laid out in 1916, had been suspended during the course of the war when shipbuilding in the United States turned to producing the badly needed lighter naval escorts needed to shepherd the Atlantic convoys against the German submarine threat. Naval experts in the United States deemed it mandatory to build a balanced fleet equal in size to the combined fleets of Japan and Britain, the other two major world naval powers, since the Anglo-Japanese alliance could possibly be exercised against the United States. American neutral rights could not be safeguarded by a naval force weaker than the combined Anglo-Japanese force.[6]

Britain had viewed with dismay a naval race with the United States, since she realized that the United States was in an economic and industrial position to win any contest for naval supremacy. Several other factors entered the naval question as well. The U.S. Navy would be composed of new post-Jutland battleships and cruisers which would boast the latest technological advancements in armaments and armored protection. Although the Royal Navy was larger in total tonnage, the great majority of British ships were of an older, pre-World War I dreadnought design and would be markedly inferior both in power and cruising radius to the newer U.S. Navy.[7] To Britain, who depended upon naval supremacy and the control of the seas for security against invasion, the protection of the seaborne lifelines, and the defense of the Empire, some way had to

be found to avoid a costly naval race which she could only lose—while retaining some margin of security needed for British interests and virtual national survival.

At the Versailles Peace Conference, Colonel House fought what was then referred to as the "naval battle of Paris."[8] Britain threatened to withhold support of the League of Nations if she was not granted naval supremacy by the United States. The United States, on the other hand, would not grant naval supremacy to Britain without guarantees as to her neutral rights and the principle of "freedom of the seas." It was finally agreed that the United States would not seek naval parity with Britain; this concession was in return for British support for the League. The failure of the United States to join the League scuttled the agreement on naval matters and left things pretty much in the state where they had been before.

Not only could Britain not afford to enter into a naval armaments race, but the prospect engendered little enthusiasm in the other two major naval powers, the United States and Japan. In the United States the Hensley amendment to the 1916 Naval Appropriations bill called for a U.S. initiative for a world disarmament conference at the end of the war.[9] Later, Senator Borah introduced a resolution in the U.S. Senate on 14 December 1920, urging President Harding to call for a conference of the United States, Britain, and Japan to negotiate a naval limitation agreement that would reduce naval expenditures by 50 percent over the next 5 years.[10] If the building program laid down in 1921 were to be carried out, by 1924 the United States would have a fleet strength equal to that of Japan and Britain combined. The Borah resolution was passed by the Senate in May 1921 and by the House in June.

Similarly in Japan, a resolution was offered in the Lower House of the Diet on 10 February 1921, calling for a reduction in naval armaments in concert with the United States and Britain and a reduction of land armaments under League of Nations auspices.[11] Although this resolution did not pass, it reflected a readiness on the part of a segment of Japanese society to reach an understanding on armaments in order to avoid a costly armaments race. In 1921, 48 percent of Japan's budget was allotted for defense expenditures.[12]

The Anglo-Japanese alliance, which was negotiated in 1902 and enlarged in 1911, was due for renewal in 1921. The alliance, as has been noted, was a major factor in American naval expansion since it posed a possible threat to American interests in the Far East, to the open door policy toward China, and to freedom of the seas for American-flag ships in the Pacific. American policy was formulated in this direction despite Anglo-Japanese assurances that the alliance was not directed, nor would it be directed, against the United States.[13] When rumors of British willingness to renew the alliance reached Washington, the American Ambassador at the Court of Saint James was instructed to inform Britain through informal channels that the United States would not be pleased to see the alliance renewed.[14] At a meeting of Commonwealth Prime Ministers held in June 1921, it was proposed that a new security system for the Pacific be devised, abrogating the Anglo-Japanese alliance. The Prime Ministers of Australia and Canada thought it necessary that the United States be included in any new Pacific alliance.[15] Britain saw her East Asian interests with regard to China as similar to those of the United States. Britain further had her interests in India and the South Pacific to consider in any new Pacific arrangement. After a diplomatic exchange of notes, President Harding issued an informal invitation, on 11 July 1921, to Japan, Italy, France, and Britain to join with the United States in a conference at Washington to discuss "all

matters bearing upon solution of Pacific and Far Eastern problems with a view to reaching a common understanding with respect to principles and policies in the Far East."[16] Formal invitations were sent on 11 August 1921, and the Netherlands, Belgium, China, and Portugal were also asked to join the Conference.

On the eve of the Washington Conference, the major powers were concerned with the same and yet different aspects of Far Eastern security and stability, as well as a limitation of naval armaments. Both the United States and Britain feared an expansion of Japan on the Asian mainland, to the detriment of their interests in China and British interests in India. There was a possibility that Japan might fortify the Pacific islands she now controlled. Japan, in turn, feared fortification of the Philippines by the United States and Hong Kong by the British, which would have strengthened foreign naval forces within striking range of the Japanese home islands.[17] The United States desired no less than abrogation of the Anglo-Japanese alliance, which posed a threat to her interests and security in the Far East, and a reaffirmation of the open door policy toward China. Japan, the United States, and Britain each wanted to secure a naval limitation that would provide them with an adequate balance of naval power to secure their interests and yet avoid a costly naval race with its inherent economic strains, including a higher rate of taxation. This then was the relative situation regarding the desires of the powers attending the Washington Conference to hammer out an agreement shaping power relationships and interests in the Far East.

The Washington Conference. The Washington Naval Conference met on 12 November 1921, the day following Armistice Day and the dedication of the tomb of the Unknown Soldier in Arlington National Cemetery. After a short welcome by President Harding, Secretary of State and Chief U.S. Delegate to the Conference Charles Evans Hughes took the floor and astonished the assembled delegates with a proposal for a 10-year naval "holiday" on the construction of capital ships. He further announced that the United States stood ready to destroy 30 capital ships then in existence or building (some of them more than 90 percent completed), and suggested that Britain scuttle 36 of its battleships, thus establishing a 5:5:3 ratio of capital ship tonnage.[18] The United States and Britain would enjoy parity in capital ships, while Japan would be allowed up to 60 percent of the British or American capital ship tonnage, scrapping seven capital ships then in construction. The Hughes proposal took the entire assemblage by surprise. In fact, only nine men in the United States, including President Harding, were aware of the details of the American proposal before they were made public.[19]

The Japanese delegates to the Conference, Prince Tokugawa, President of the House of Peers; Adm. Tomasaburo Kato, Minister of the Navy; and Baron Shidehara, Japanese Minister at Washington, had been instructed to accept a curtailment of naval armaments so long as Japanese military security was not impaired by doing so.[20] The British delegation, led by Arthur Balfour, was prepared to accept naval parity with the United States. As a result, the Hughes proposal for naval limitation was accepted with minor alterations to compensate for Britain's older ships and for the Japanese construction program in progress. The Cabinet in Tokyo had instructed the Japanese delegation to press for a 70 percent ratio in capital ships on learning of the Hughes proposal, but gave Admiral Kato discretion to use his judgment as to the final decision, bearing in mind Japan's actual security needs.[21] The Japanese delegation agreed to a 60 percent ratio in

exchange for an agreement by the United States and Britain to maintain the status quo with regard to naval bases and fortifications of territories that they then held in the western Pacific.

The U.S. intention that the 5:5:3 ratio apply to auxiliary vessels, cruisers, destroyers, and submarines as well was not accepted. A limitation on the size of battleships, 35,000 tons and mounting no larger than 16-inch guns, was adopted along with a 27,000-ton limitation on the size of aircraft carriers and 10,000-ton cruisers mounting 8-inch guns. The United States and Britain were allowed to build up to 135,000 tons of aircraft carriers; Japan, 81,000 tons; and France and Italy, 54,000 tons. France and Italy accepted a 1.75 ratio in capital ship and aircraft carrier tonnage, but the French refusal to accept any limitations on submarine tonnage prompted Britain to refuse any limitations on the total tonnage of cruisers or destroyers which it might have to build to counter a possible French submarine threat.[22] Thus, no agreement was reached regarding cruisers, destroyers, or submarines, other than to limit the size of cruisers to 10,000 tons and 8-inch gun armament.

The next major item to emerge from the Washington Conference was the Four Power Treaty which replaced the Anglo-Japanese alliance. Arthur Balfour had proposed a preliminary conference to deal with the question of the alliance, but Secretary Hughes preferred to deal with the question within the framework of the conference.[23] The U.S. position was that nothing less than abrogation of the Anglo-Japanese alliance would allow the United States to proceed with a naval limitation agreement.[24] Britain needed an alliance that would preserve the friendship of Japan, that would not require a large fleet to protect British naval interests in the Far East or India, and that would not intimidate the United States or China. Therefore, she thought a triple entente of the United States, Britain, and Japan to her best interests.[25] The Japanese delegation was not initially in favor of terminating the Anglo-Japanese alliance, but was not opposed to replacing it with a new alliance structure.[26]

Secretary Hughes countered the British proposal for a triple entente with a suggestion of a four power pact made up of Britain, the United States, France, and Japan based upon the Root-Takihira agreement of 1908. Hughes hoped the parties to the new proposed treaty would characterize the informality of the Root-Takihira agreement, express American friendship for Japan by recognizing Japan's "natural and legitimate economic interests," and at the same time, record American opposition to Japan's political or economic domination of Asia.[27]

The terms of the Four Power Treaty read in part:

> I. The High Contracting Parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean.
>
> If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint conference to which the whole subject will be referred for consideration and adjustment.
>
> II. If said rights are threatened by the aggressive action of any other Power, the High Contracting Parties shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or

separately, to meet the exigencies of the particular situation.[28]

Article IV abrogated the Anglo-Japanese alliance. Secretary Hughes had his wishes of terminating the Anglo-Japanese alliance fulfilled at the cost of a treaty calling for no more than consultation in the event of future Pacific problems. No alliance per se had been entered into by the United States. A treaty of alliance most likely would never have been ratified by the Senate of the United States in view of the rough treatment meted out to the League of Nations Covenant and its rejection partially on the grounds that it was an entangling alliance that could drag the United States into a war not of its own choosing.

The third major treaty negotiated at the Washington Conference was the Nine Power Treaty which dealt with Chinese relations of the powers assembled. Article I of the treaty expresses the major principles of the treaty.

Article I The Contracting Parties, other than China agree:

(1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China;

(2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;

(3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;

(4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.[29]

Article III reiterated the open door policy toward China, and article IV was a formal renunication by the parties to the seeking of a sphere of influence within China. Respect for Chinese neutrality in time of conflict to which she was not a party was stated in article VI, and article VII called upon all the parties to communicate with one another should any situation that might involve application of the treaty arise.

A treaty on submarine and chemical warfare and a treaty extending the principle of the open door to the island of Yap were also concluded during the course of the conference. Britain and the United States offered their good offices in negotiations between Japan and China with regard to the Shantung question. The U.S. Senate considered a settlement of the outstanding Shantung problem necessary to the establishment of relative peace in the Far East. Senator Walsh, in a Senate speech, intimated that if the Shantung question were not settled, the entire series of treaties concluded might be in jeopardy in the Senate.[30] Arthur and Hughes redoubled their efforts to aid a settlement between Japan and China on Shantung and succeeded in doing so. Although Japanese forces were to withdraw from Shantung, commercial interests there were to be retained by Japan, as well as Port Arthur and the South Manchurian Railway. China received a renewed assurance of her sovereignty in return for concessions she was not at first ready to concede.[31] A further treaty regarding Chinese tariffs was negotiated, and the Washington Conference closed on 6 February 1922.

Following this brief review of the major treaty agreements of the Washington Conference, a short appraisal of what was actually concluded will prove helpful before going on to view the treaties in the light of subsequent events.

That Japan came away from the Washington Conference the dominant

seapower in the western Pacific is beyond doubt. Japan's Navy would only have to fear a portion of the British or American Fleet which could be sent to the western Pacific, while Anglo-American defense and extensive maritime interests would have to be safeguarded elsewhere by the rest of the British or Americau navies. When the conference was convened, the United States was bnilding fortifications in the Philippines in addition to constrncting a large fleet that Japan would have found difficult to match. By giving up naval bases closer to Japan than Hawaii for the United States and Singapore for Britain, Japanese security was greatly enhanced. British or American Fleets could not carry out sustained operations long distances from major bases and, therefore, posed a far less credible threat to Japan than if they could rely on bases to support their operations in the western Pacific. Elmer Davis, the Washington correspondent of *The New York Times,* commented on Japan's gains in the 6 February 1922 issue of *The New York Times:*

> As the score stands at present, it seems hardly too much to say that this confereuce has been the greatest success in Japanese diplomatic history. Japan has won more at other conferences, bnt always at the expense of hard feelings left behind. Her triumphs have usually heen conditioned by the certainty that the defeated nation was only waiting its chance to start a fight.
>
> The Four Power Treaty ought to remove much Japanese suspicion of America and American suspicion of Japan. Japan loses the British Alliance, which would have gone overboard anyway in the case of a war with America, and gains America's promise not to attack her in return for her promise not to attack America.
>
> Japan has given up in Shantung what she had already promised to give up . . . She has made some concessions with regard to Manchurian finances, but she holds to Port Arthur and the South Manchurian Railroad. She stays in Siberia until she is ready to get out.
>
> In other words, Japan retains her strategic supremacy, military and political, on the continent of Asia, and is reasonably assured that if ever that snpremacy shonld be challenged by Russia, or China, Rnssia or China would have to fight alone. Japan has Asia to herself.
>
> So far then, everybody wins but Russia. Japan wins most; she wins Eastern Asia, to do with according to her pleasure. And on the wisdom and good sense of future Japanese policy on the continent of Asia must depend the ultimate estimate of the result of the Washington Conference.[32]

The limitation of armaments treaties made it virtually impossible for any Western Power to utilize military power to connter Japanese expansion in the Pacific.

China's security seemed greatly enhanced as a resnlt of the Nine Power Treaty. Japan, however, interpreted the clause in article I of the treaty, pledging each party to the treaty to refrain from actions "inimical to the security of the signatory states," as protecting her special interests in China and as modifying her support of the open door policy.[33] Clearly, the Nine Power Treaty meant one thing to Washington and quite another to Tokyo.

Britain gained security for her interests in India and the Far East, but sacrificed her ability to intervene militarily in East Asia by naval limitation and had to rely on Japan's good faith in carrying out the spirit and intent of the Washington treaties.

The United States gained reaffirma-

tion of its open door policy with regard to China, saw the threatening Anglo-Japanese alliance terminated and thereby avoided a costly naval race, but paid the price of weakening her naval power in the western Pacific both through the naval limitation agreement and by forfeiting the construction of naval bases west of Pearl Harbor. China's security was apparently guaranteed in the Nine Power Treaty, or so China thought. China was, as a result, to place perhaps too great a reliance on the Western Powers to protect her territorial and administrative integrity in the coming years, as we shall soon see.

The Washington Conference attempted to establish a new order in the Far East based on self-denial rather than the policing power of the states to protect their Far Eastern interests.[34] The cornerstone of the conference was the Nine Power Treaty, and the naval limitations agreement the vehicle of self-denial that would preclude any possible future power struggle in the western Pacific.

The Treaty Powers and Asian Affairs, 1922-1929. The years immediately following the Washington Conference saw a genuine attempt made by most of the treaty powers to create the new order in East Asia that had been formulated at Washington. However, as the twenties drew to a close it became fully evident that the much hoped for stabilization in the Far East had failed to materialize. The prospects for political stability in the western Pacific grew fainter as the years passed, until by 1935 the drift toward war became almost irreversible.

In 1922 a Chinese loan consortium of the treaty powers was attempted, but fell through due to disagreement over the consolidation of existing Chinese debts and the reluctance of Japan to extend large credits to the Peking government of a still revolutionary, turbulent China.[35] The continental civil war in China made it difficult, if not impossible, for the treaty powers to implement further their formula for a new order in the Far East. China had to play an integral role in the new scheme for the East Asian area, but was unable to do so as long as it remained so divided that no one faction could speak or act for all of China. The Washington treaty powers were further hampered in seeking cooperative solutions to their China policies by the refusal of France to ratify the Washington treaties until the matter of reparations due from China for damage done to French interests in the Boxer Rebellion had been settled. This was not to occur until 1925.[36]

Japan returned Shantung to Chinese sovereignty as noted, withdrew her troops from Siberia, and negotiated the withdrawal of Japanese troops from northern Sakhalin and the return of the territory to the Soviet Union. Relations between Japan and the Soviet Union were fully regularized in 1925 with an exchange of ambassadors. Although Japan was experiencing a rapid turnover of governments during the period of the 1920's (between 1918 and 1932, 12 Japanese Cabinets were formed[37]), its China policy was conciliatory in nature. The movement toward expansion on the continent seemed somehow suspended. The military factions in Japan still held aspirations for greater expansion on the mainland, but the Japanese policy practiced with regard to China can best be summarized in the words of Baron Shidehara who was Foreign Minister from 1924 to 1927 and again from 1929 to 1931. The "Shidehara policy," enunciated before the Diet in 1927, contained the following principles:

> (1) To respect the sovereignty and territorial integrity of China.
>
> (2) To promote solidarity and economic rapprochement between the two countries.
>
> (3) To entertain sympathetically and helpfully the just aspirations of the Chinese people.

(4) To maintain an attitude of patience and toleration in the present situation in China, and to protect Japan's legitimate and essential rights and interests by all reasonable means at the disposal of the government.[38]

The Shidehara policy seemed intent upon reconciling China's aspirations with Japan's interests.

There were mitigating factors, however, that served to heighten tension and fears in East Asia and that greatly affected cooperation among the treaty powers. In 1924 the United States passed an immigration act that openly discriminated against orientals—particularly, as it was felt, the Japanese. This dealt a severe blow to Japanese pride such that, when added to the reluctance of the Western Powers to include a clause against racial discrimination in the Versailles Treaty, gave the Japanese the impression that they were viewed in Western eyes as an inferior race. American aid to help Japan recover from the severe earthquake of 1923 helped to assuage the hurt feelings of the Japanese, but still the feeling of resentment was deep in the individual Japanese citizen.

The continuing civil strife on the Asian mainland further prevented the achievement of a stable power structure in East Asia. By 1925 the Chinese Government seemed so irreversibly fractionalized that U.S. consuls began to recommend that U.S. relations with China take the form of bilateral treaties and agreements with the semiautonomous regions of China.[39] The Washington treaty powers began to back the factional power element they thought could best further their interests and perhaps ultimately bring unity to China rather than deal solely with the current government seated in Peking. Japan tended to favor Chang Tso-lin in Manchuria and North China, while other powers favored southern governmental factions. The Shameen massacre of 23 June 1925 touched off a wave of anti-British and anti-Western sentiment in China. A boycott of British goods was proclaimed, and anti-British riots were held in Canton and Hong Kong.[40] The conference of the treaty powers held in 1925 to consider the Chinese tariff problem ended in failure. The powers could not agree as to how far to raise the Chinese tariff schedule nor on the question of returning full tariff sovereignty to China.[41] The Japanese were adamant on holding Chinese tariffs at as low a rate as possible to protect the market for Japanese goods in China; the United States, at the other extreme, favored a full return of tariff autonomy to China. A similar conference meeting to decide the question of extraterritoriality in China also met with failure. The powers decided not to return the extraterritorial powers they held in China to Chinese authority and again were divided in their views on the subject. One writer, Akira Iriye, viewed the tariff conference as the last vestige of attempted Anglo-American-Japanese cooperation in their relations with China. Henceforth, each power felt that its interests were better served through bilateral agreements with China than through multilateral agreements to which they could all ascribe.[42]

Naval planners in both Washington and Tokyo still thought in terms of an eventual war between the United States and Japan. The U.S. Navy adopted the "Orange plan" as the basis for its Pacific strategy in 1924. The plan was built on the assumption that Japan posed the greatest naval threat to the United States in the Pacific and sought to shape American naval strategy to counter it.[43] Similarly, naval officers in Tokyo sought to develop the Imperial Fleet and defensive strategy to counter any American thrust into the western Pacific. Since the Washington naval limitation agreement did not limit the total tonnage of cruisers, destroyers, or submarines each signatory could

possess, a steady program of construction in these classes began.[44]

Another element that entered into the framework of Far Eastern affairs during the early and mid-1920's was the extent of Soviet influence in China. The Soviet Union had sent both political and military advisers to the Kuomintang government and had agreed to the abrogation of any special treaty rights or extraterritoriality in return for Chinese recognition of the new Soviet regime. This only served to fan the flames of Chinese anti-imperialism, and the fires were fed by a continuous stream of Soviet advisers and political organizers. The Soviet Union was not a member of the group of powers which signed the Washington treaties and therefore did not adhere to the concept of a new order in East Asia that had been promulgated there.

The deeper and more extensive Soviet influence was in China, the greater the problems of the treaty powers in attempting to achieve political stability in the Far East. It was particularly more difficult to approach a concerted China policy to aid in the unification and modernization of China in the face of Soviet-inspired and already deep-seated Chinese hostility toward the imperialism of the Western Powers and Japan.

In 1927 General Tanaka came to power in Japan, and Japanese policy took a turn toward a greater inflexibility on the continent. An expeditionary force was sent to Shantung in 1927, and again in 1928, to protect Japanese interests threatened as a result of the disorders arising from the Nationalist drive into Northern China from their bases in the south.[45] The "positive policy" of General Tanaka was further demonstrated after the Tsinan incident, when he issued a series of warnings to the Chinese against carrying the civil war into Manchuria where considerable Japanese interests lay.[46] The hardening of Japan's policy and attitude toward China underscored its continuous anxiety over the threat posed to Japanese interests and Asian security as a result of Chinese turmoil and Russian influence in East Asia.[47] Japan began, now more than ever, to consider Manchuria her special sphere of interest. The death of Chang Tso-lin just outside Mukden, at the hands of junior officers of the Japanese Kwantung Army and the inability of the government to punish the officers responsible adequately, foreshadowed the extent of the independence of the Kwantung Army and the growing influence of the military in Tokyo.

At the close of the decade of the 1920's, the spirit engendered and the new order for Far Eastern relations carefully engineered and widely acclaimed at the Washington Conference of 1922 had clearly broken down. The trend of events described was to continue into the 1930's, unchecked until only war could restore any semblance of the balance of power in East Asia that was steadily being eroded.

The London Naval Conference, 1930. There were several more attempts to extend the concept of naval limitation in the late 1920's. As was noted earlier, the Washington naval limitation agreement only dealt with capital ships, aircraft carriers, and the size of cruisers. The cruiser, destroyer, and submarine classes of vessels were not limited in the total tonnage any one navy could build or possess.

The League of Nations had established a Preparatory Commission to lay the groundwork for a future world disarmament conference. As a result of the naval aspects of the work of the Preparatory Commission, President Calvin Coolidge issued an invitation to the five signatories of the Washington Naval Conference to meet in an effort to further naval limitation. In his written invitation, President Coolidge expressed the hope of the United States

that the 5:5:3 ratio adopted at Washington in 1921 might be extended to include the tonnages of cruisers, destroyers, and submarines as well. Both Britain and the United States feared what was becoming a naval race in the 10,000-ton, 8 inch-gun cruiser category.[48]

The Conference opened on 20 June 1927 and was attended by the United States, Britain, and Japan. France and Italy declined the invitation to attend on the grounds that the Conference's being held outside the auspices of the League of Nations would serve only to weaken the prestige of that organization.[49]

Japan agreed at once to accept any plan that would reduce her naval budget and yet not leave her in an inferior proportional position of strength relative to the other two powers. The American proposal was based on the 5:5:3 ratio. The United States proposed an upper limit of 300,000 tons total tonnage for cruisers, 250,000 tons for destroyers, and 90,000 tons for submarines. The United States further announced that smaller total tonnage ratios were acceptable and that the United States favored total abolition of the submarine from the world's navies. Britain sought to reduce the size of capital ships to 30,000 tons; limit 10,000-ton cruisers to the 5:5:3 ratio; limit the light cruisers to 6-inch guns, but not in number; limit the size and number of destroyers; and gave support to the U.S. proposal for abolition of the submarine, even though Britain thought other powers not yet ready to do so.[50]

The Conference broke up when neither Britain nor the United States could agree as to the size classification or total number and armament of cruisers. The United States wanted to mount 8-inch guns on 6,000-ton cruisers, while the British held out for a 6-inch gun limitation. The British were more anxious to build a greater number of light, 6-inch gun cruisers than 10,000-ton treaty cruisers, but were adamant that neither the United States nor Japan would possess more 10,000-ton cruisers than Britain did under any sort of total tonnage formula for cruisers that would take the place of limitation by class of warship.[51] The Conference therefore dissolved without being able to resolve any of the problems set before it or to further the goal of naval limitation.

An Anglo-French agreement not to limit the number of 6-inch or less cruisers or submarines of 600 tons or less, while limiting the number of 10,000-ton, 8-inch gun cruisers and large submarines, was reached in 1928.[52] The United States turned down this proposal, and Tokyo only gave it a lukewarm affirmative response. Italy was in favor of the proposal so long as she could match the strength of the French Fleet, her primary rival, in the Mediterranean.

The 10 year naval holiday on capital ship construction was due to expire in 1931, and the naval powers once again felt the need to hold a conference on naval limitation before undertaking construction programs to replace aging ships then in their respective fleets. The British Government issued invitations on 7 October 1929 for a conference to be held in London on 21 January 1930.

Japanese Prime Minister Yuko Hamaguchi outlined the broad concept of Japanese policy in speaking before the government party convention at Nagoya on 13 October 1929. He claimed Japanese policy to have three components:

> (1) her navy should constitute no menace toward others, while, at the same time, she would tolerate no threat or insecurity from others;
>
> (2) the aim of the conference should be an actual reduction in naval armaments;
>
> (3) Japan would be willing to accept a ratio lower than that of Great Britain or the United States,

provided that it be adequate for defense in any contingency.[53]

The Japanese Admiralty took the initiative in drafting the instructions for the Japanese delegates, Reijiro Wakatsuki, former Prime Minister; Tsuneo Matsudaira, Ambassador to the Court of Saint James; and Admiral Takarabe, the Minister of the Navy. The instructions were approved by the Cabinet on 26 November and aside from providing for the naval defense and security of Japan sought these things:

(1) A 70 per cent ratio with respect to the strength of 8-inch, 10,000 ton cruisers of the United States Navy.

(2) To claim 70 per cent gross tonnage for all auxiliary craft with respect to the United States; and,

(3) To oppose radical reduction or abolition of submarines and to maintain the present strength of 78,500 tons, the tonnage not to be below that of the United States or Great Britain.[54]

The claims the Japanese were to present met with wide public acclaim and were loudly heralded in the press.

When the Conference opened in London, the U.S. delegation, led by Senator Reed, offered a 60 percent ratio in auxiliary tonnage to the Japanese which was immediately rejected. By 10 March a tentative compromise ratio had been worked out by Senator Reed and Ambassador Matsudaira, but this was rejected in Tokyo where it was firmly held that the 70 percent ratio, as prescribed in the three negotiating principles already mentioned, must be sought at all costs.[55] The diplomats at the Conference were willing to accept a compromise figure, but the Japanese naval officers wanted to gain as high a ratio as possible, even if it meant destroying the Conference. In Tokyo the Foreign Office favored acceptance of the compromise ratio, while the Admiralty was firmly opposed to anything less than a 70 percent ratio.[56] The British also approved the Reed-Matsudaira compromise figure arrived at. It was for Prime Minister Hamaguchi to decide whether to accept the viewpoint of the Foreign Office, which would secure a successful conference, or the Admiralty view, which risked the wrecking of the Conference. Prime Minister Hamaguchi decided to make the Foreign Office view policy and cabled the Japanese delegation "(1) to accept the Reed-Matsudaire compromise ratio and (2) to take appropriate diplomatic measures against committing Japan for the future."[57] He then attempted to assuage the Admiralty by explaining to them that they would have complete freedom of action after 1936, when the Washington Naval Limitation Treaty was due to expire. The Japanese delegation in London accepted the compromise ratio on 2 April 1930, but let it be understood that Japan would claim all she would deem necessary for her national defense upon expiration of the treaty. The Conference ended on 22 April with the signing of the agreement arrived at to continue the holiday on capital ship construction for 5 more years, but little more.

The London Naval Conference agreement touched off a governmental and constitutional crisis in Japan. The Admiralty had held meetings throughout Japan to acquaint the people with the progress of the negotiations at London but, in effect, educated the people to the Admiralty stand.[58] In the Diet the opposition party was denied a full explanation of the negotiations due to their secretive nature. Nevertheless, the Seiyukai party issued a statement "opposing any concession on the part of the delegation that might jeopardize the security of the nation."[59] Baron Shidehara, the Foreign Minister, addressed the Cabinet on 25 April 1930 saying,

Having carefully weighed all considerations, not only of foreign policy, but also of naval, financial, economic, and all other

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> factors of national strength upon which the security of the nation must in the final analysis depend, we were brought to the conclusion that, in accepting the terms of the agreement arrived at, we would decidedly be serving the interests of the Empire.[60]

The opposition in the Diet claimed that issues relating to self-defense ought to be determined by the army and navy general staffs from a technical viewpoint of defense needs, rather than by statesmen and politicians with only political views in mind. They further questioned the constitutionality of the Hamaguchi decision to accept the compromise ratio, saying that only the Emperor in his role as Commander in Chief under article XI of the Constitution, could arrive at such a decision, since he was alone responsible for the national defense.[61] The constitutional debate raged over the powers and responsibilities of political leaders as opposed to military leaders. Debates were conducted both within the naval bureaucracy and the Cabinet and became so heated that the Vice Chief of Naval Staff and Vice Minister of the Navy were relieved of their positions on 10 June.[62]

An Imperial Commission composed of four admirals was convened to determine the effect the London Naval Treaty would have on the national defense. The group concluded that the tonnage limitations accepted were defective in providing for the national defense but that they might be remedied since the treaty was to be of short duration.[63] The Cabinet, on the basis of this report, was persuaded to support a new construction program drawn up by Admiral Tanaguchi, that would strengthen the naval forces as much as possible, while yet remaining within treaty limits. Air forces were also to be expanded to complement maritime strength. Even with these measures taken, the national defense capability of Japan would still be defective in the view of the Supreme War Council.[64]

After a thorough study, the Privy Council recommended complete acceptance of the London Naval Treaty to the Emperor, and the treaty was duly ratified on 2 October 1930.

The ratification of the London Naval Treaty over the opposition of naval and military circles was a distinct victory for civiliau government in Japan. Nevertheless, the power of the military in the direct formulatiou of foreign policy was felt, and the military won a psychological victory of sorts by appearing to a large segment of the public as the group that championed Japan's defensive interests and national pride above all others and appeared, therefore, the one group with the Empire's best interests at heart. Prime Minister Hamaguchi's personal victory for civilian dominance in governmental decisionmaking was short lived, since he was assassinated a short time after ratification of the London Naval Treaty. Prime Minister Inukai was to be assassinated by rightwing military extremists in short order. In the trials that followed, the defendants were "united in attacking the humiliating implications of the London Naval Treaty, and in charging the government with the responsibility of having thus endangered the country."[65] This feeling was gradually coming to be shared by the Japanese citizenry as a whole and seriously threatened the future of civilian control of the government. Through the acceptance of an inferior ratio in naval strength from what they had sought at the outset, another blow had been struck at the pride of the Japanese, who sought equality of treatment and prestige with the Western Powers.

The Collapse of Asian Security Arrangements. By 1931 stability in the Far East had eroded to a greater degree. In May a split in the Kuomintang Party led to the establishment of a rival govern-

ment in Canton, China. Civil war was being fought in North China against the forces of strong warlord elements and Communists in the southwest of China and elsewhere. Both the United States and European powers were preoccupied by the economic crisis at home. Britain left the gold standard on the same day that the Mukden incident triggered the Japanese Kwantung Army's occupation of Manchuria and North China—18 September 1931. American naval construction had lagged since the 1922 Washington naval limitation agreements were signed, while Japan built her naval forces up to treaty limits, thus further assuring its naval dominance in the Far East. The Soviet Union was busily engaged in the turmoil of its first 5-year plan. None of the non-Asian powers, including the Soviet Union, were fit in either military or economic terms to intervene in or otherwise affect to a significant degree the course of events shaping up in East Asia.

The Mukden incident of 18 September 1931 marked the beginning of a Japanese drive to extend its hegemony to all of the Chinese mainland. The Kwantung Army moved steadily westward until it controlled all of Manchuria and had even extended its influence to Northern Chinese provinces by January of 1933, forcing the abandonment of Peking as the seat of government by Chiang Kai-shek. The truce of Tangku ended Sino-Japanese hostilities on 31 May 1933, but the seeds for a revival of the Sino-Japanese War remained sewn in the fabric of East Asian politics.

U.S. Secretary of State Stimson had informed the League of Nations on 5 October 1931 that the United States would support the League in any action it might take to counter Japanese expansion on the continent, in response to Chinese appeals to the League for help in doing so.[66] U.S. representatives were empowered to sit with the League on an informal basis during its deliberations on the Manchurian question. On 10 December the Lytton Commission was brought into being by the League to investigate the Manchurian question. The Minseito Cabinet resigned in Tokyo the next day, and on 7 January 1932 Secretary Stimson issued his doctrine of nonrecognition of any territorial gains on the continent achieved by Japanese aggression.[67]

Secretary Stimson wrote an open letter, dated 23 February 1932, to the chairman of the Senate Foreign Relations Committee, Senator Borah, in which he outlined his views on the past and future of American Far Eastern policy:

> The Washington Conference was essentially a disarmament conference, aimed to promote the possibility of peace in the world not only through the cessation of competition in naval armaments, but also by the solution of various disturbing problems which threatened the peace of the world, particularly in the Far East. These problems were all interrelated. The willingness of the American government to surrender its then commanding lead in battleship construction and to leave its positions at Guam and the Philippines without further fortification was predicated upon, among other things, the self-denying covenants contained in the Nine Power Treaty, which assured the nations of the world not only of equal opportunity for their Eastern trade, but also against the military aggrandizement of any other power at the expense of China. One cannot discuss the possibility of modifying or abrogating those provisions of the Nine Power Treaty without considering at the same time the other promises upon which they were really dependent . . .[68]

The publication of the Stimson-Borah letter caused a minor war scare in

some Japanese circles and demonstrated the threat of the United States to openly disregard the entire structure of the Far Eastern relations that the Washington Conference had created. However fierce the United States might sound diplomatically, it was not prepared to use force to stop Japanese expansionism. Neither Paris nor London supported the U.S. diplomatic effort or fully backed the Stimson doctrine of nonrecognition.[69] No meeting of the Nine Power Treaty signatories or the parties to the Four Power Pact was convened to deal with the new problem of Japanese aggression in China as might be expected.

As a result of Japanese actions in Manchuria, a boycott of Japanese goods was declared in China. The boycott took particular effect in Shanghai, where anti-Japanese demonstrations and rioting broke out in the city. In mid-January 1932, 6,000 Japanese troops were landed from Japanese naval units in the harbor. Shanghai was bombarded from the sea and air during a sporadic outbreak of fighting between Japanese troops and soldiers of the Chinese 19th Route Army. The fighting in Shanghai lasted almost 5 weeks, and additional divisions of Japanese troops put ashore to assist the original 6,000 landed in the city.[70] Shanghai was finally evacuated of the bulk of Japanese troops on 3 May 1932. France, Britain, the United States, and Italy extended their diplomatic good offices and were successful in mediating a truce between the Chinese and Japanese. A small force of British and American naval units, including two U.S. cruisers, was dispatched to Shanghai to effect a show of force to underscore Anglo-American determination to see an end to the disturbance and to protect Anglo-American lives and property in Shanghai, but took no part in the fighting.

On 2 February 1932, the Japanese proclaimed the independent state of Manchukuo and on 18 February named the former boy emperor of China, Pu-Y'i, to the titular head of the new state, while actual power was vested in the commander of the Kwantung Army and Ambassador to Manchukuo, General Nobuyoshi.

The Lytton Commission Report was presented to the League of Nations on 2 October 1932. The Commission found that Japan's actions in Manchuria were not defensive; were in violation of the Kellogg-Briand Pact; were in violation of the Nine Power Treaty respecting the territorial, administrative integrity and independence of China, as well as her right to develop and maintain a stable government, and that Japan had violated article X of the League Covenant by not respecting or preserving the political and territorial integrity of China, a fellow League member.[71] It was further proclaimed that the newly proclaimed, autonomous state of Manchukuo could not have been formed, nor could it stand, without Japanese force of arms against China. Japan stood condemned of aggression in the body of the League of Nations and in world public opinion. In the meantime the Japanese Army had sliced off a Chinese province, Jehol, and added it to the new puppet state of Manchukuo in January 1933, thus continuing its policy of continental expansionism unchecked. On 24 February 1933 the report of the Lytton Commission was accepted by the League Assembly which recognized China's sovereignty over Manchuria, denied the independence of Manchukuo and Japan's claims to have acted defensively in Manchuria, and called upon the League member states to recognize Manchukuo neither *de jure* nor *de facto*.[72] The previous day, on 23 February 1933, the Japanese delegation had walked out of the League, signifying Japan's withdrawal from that organization due to the unfavorable report of the Lytton Commission and pending League action in condemning Japan as an aggressor nation.

The London Naval Agreement of 1930 had called for the naval powers to hold another naval conference in 1935, prior to the scheduled expiration of the Washington naval limitation treaty. Preliminary discussions were held by Britain and the United States in June of 1934 and later in October, when Japan joined the talks. The British demanded greater cruiser strength and were ready to bargain to that end. The Japanese wanted naval parity with the other powers and the abolition of all heavy cruisers, aircraft carriers, and battleships as "offensive" fighting ships, along with the adoption of a total tonnage limitation without regard to classes of ships included in a nation's fleet makeup.[73] The United States desired to reduce tonnages allotted, but in the same ratio as had been decided upon at the London Naval Conference. The United States claimed that the ratios laid down at Washington and London had established an "equality of security" that would be disrupted, thus upsetting the other treaties created at Washington, should any other formula be devised.[74] The Japanese said that any "equality of security" had disappeared with the changing nature of naval warfare. The preliminary discussions ended in December of 1934, having produced no result.

A strong resentment had grown in Japanese naval circles, as well as among the citizenry, against any form of limitation whatsoever. Japanese naval leaders thought they could no longer ignore the growing factor of naval mobility that would enable navies to concentrate and operate in waters close to the Japanese home islands.[75] Furthermore, the Vinson-Trammel Naval Appropriations Act, passed in the United States in March 1934, provided a naval construction plan that would build the U.S. Navy to full treaty levels by 1942—a new, even more potent threat to Japanese naval superiority in the western Pacific. On 29 December 1934 Japan informed the other naval powers that she would no longer consider the naval limitation agreements reached at Washington in 1922 or at London in 1930 as binding upon her, when they lapsed on 31 December 1936.

Japan announced her Pan-Asiatic doctrine on 17 April 1934, when a spokesman for the Foreign Office stated what was to become known as the Amau Doctrine. Its fundamental principles were:

> (1) Japan considers herself as primarily responsible for the maintenance of peace and order in East Asia, along with other Asiatic powers, especially China.
>
> (2) The time has passed when other powers or the League of Nations can exercise their policies for the exploitation of China.
>
> (3) Japan intends in future to oppose any foreign activities in China which she regards as inimical and she alone can judge what is inimical.[76]

The Japanese Ambassador to the United States explained that "Japan must act and decide alone what is good for China. Legitimate foreign interests should consult Tokyo before embarking on any adventure there."[77] He assured the United States that Japan, at the same time, intended to live up to the Nine Power Treaty commitments! Clearly, with the new "Asian Monroe Doctrine," the Japanese Fleet and other armed forces would have to be greatly strengthened to guarantee its implementation, thereby, ensuring that no encroachment would be made in the "new" Asia by the Western Powers, singly or in concert.

One final attempt was to be made toward a naval agreement. In December 1935 a naval conference was held in London. The Japanese again demanded naval parity as they had at the preliminary conference in October of 1934. When the United States, Britain, Italy, and France refused to agree, the Japanese delegation walked out of the con-

ference on 15 January 1936, thus ending the principle of naval limitation in the Pacific when the Washington and London Naval Agreements lapsed on 31 December 1936.[78] The world was moved one irreversible step closer to the world disaster that was to engulf the entire Pacific in 1941. The system of treaties concluded at Washington in 1922 was a dead letter, both in the failure to realize true naval limitation and in the failure to activate the provisions of the Four Power Pact and Nine Power Treaty to preserve the new order for the Far East and to preserve the East Asian status quo decreed at Washington in early 1922.

Conclusion. There are more than a few reasons why the powers' meeting at Washington in 1922 failed to achieve the "new order" for the Far East based on Woodrow Wilson's vision of a new diplomacy and the principles laid down in the League of Nations Covenant. The signatories to the Washington treaties indeed thought that they had succeeded in establishing a new balance of power in East Asia that was so constructed as to preclude future conflict or wars in the Far East. All international problems of the Far East were to be solved by peaceful means. The major naval powers of the world had been limited in size and strength. Each power had agreed to cooperate in helping a weak and struggling China to achieve national unity and modernity in order to take her rightful place among the major nations of the world. No nation was to gain special advantage—either territorial, economic, or military—in China, at the expense of China or any other treaty signatory. The principle of the open door, espoused for so many years by the United States, was reaffirmed in the contents of the Nine Power Treaty. The Anglo-Japanese alliance, that had served to check Russian interests in Asia in the past, now posed a possible threat to U.S. interests in the Pacific, since the alliance could be invoked against the United States. The Anglo-Japanese alliance was abrogated and replaced with the Four Power Pact which called for its signatories to consult in the event any Pacific controversy could not be solved through normal diplomatic channels. With the achievements of the Washington Conference in mind, the student of Asian affairs and politics must ask himself why the hoped for "new order" in the Far East was so short-lived, if ever actually achieved? What were the reasons for the failure of the Washington treaties to bring stability and order to the Far East?

The Washington Naval Armament Limitation Treaty carried the seeds of its own failure. The naval powers agreed to limit capital ship construction and aircraft carriers to specific tonnage limits in the ratio of 5:5:3 for Britain, the United States and Japan, respectively. Italy and France accepted a ratio of 1.75 as we have seen. The paramount failure of the Naval Armament Limitation Treaty was in not extending the 5:5:3 ratio to cruisers, destroyers, and submarines. In effect, the treaty had only achieved naval limitation in two classes of ships, the battleship and aircraft carrier. Cruisers were limited as to their size and armament, but were not limited in number. As the 1920's drew to a close, naval conferences held in London and elsewhere attempted to extend the principle of naval limitation to auxiliary vessels and submarines, but failed to do so. As a result, only a partial measure of naval limitation was ever achieved. Naval races, with their attendant national anxieties, continued in the building of cruisers, destroyers, and submarines in the late 1920's and early 1930's.

The Washington Naval Limitation Treaty was based on rough naval tonnage ratios as they existed in 1921. Naval powers retained their same relative measure of strength when ranked with each other. Each power emerged

with what Norman Davis chose to call "an equality of security." Japan remained the unchallenged naval power in the western Pacific, secure in the knowledge that its fleet was adequate for defense against Britain or the United States and that neither of her major naval rivals had fortified bases in the western Pacific from which to prey on Japan. Japan, in turn, could carry out her designs in the Far East without fear of a major military intervention on the part of the treaty powers. Britain gained a sense of security for her possessions in India, knowing that Japan was checked as an expanding naval power. The United States gained security in that Japan could not pose a serious threat to the U.S. Pacific coast or Hawaii as long as Japanese naval power remained limited. A sense of "equal security" did not persist, however, either in the physical or psychological sense. The limitation on battleships and aircraft carriers only turned naval officers to devising new weapons and tactics for cruisers, destroyers, and submarines, the classes of vessels which had no restraints or limitations put on them, either at Washington or later at London or other naval limitation conferences. The planning of naval strategists in the United States for a possible war in the Pacific with Japan and the similar planning by Japanese naval officers for an eventual naval conflict with the United States caused concern in the diplomatic circles of both countries. Japan feared U.S. hostility reflected in U.S. naval maneuvers that were designed to repel a Japanese Fleet attack and to carry war into the western Pacific. Similar fears were raised in the United States over Japanese Fleet preparations. From a military point of view, each navy was only preparing itself for the event of hostilities with its other major naval and oceanic rival in the Pacific. Plans were drawn up to meet capabilities of the other maritime nations and did not take into account the political intent of the other nations or the actual possibility of a war between the two in the near future, although that could not be easily discerned by the diplomats.

The Soviet Union was a major Asian power—about whose power and position in the Far East, Japan was continually worried. The failure of the Western Powers and Japan to invite the Soviet Union in 1922 or later to become a signatory of the Nine Power Treaty left the Soviet Union outside the pale of the new Asian order, and, therefore, with a free hand to conduct such policy measures as Moscow saw fit to employ. Soviet influence in China is well documented and was known to the Nine Power Treaty signatories. As long as the Soviet Union remained an outsider to Western and Japanese cooperation with regard to China policy, no fully coordinated policy aims with regard to China could have been carried out.

The demonstrated reluctance of the adherents to the Four Power Pact and Nine Power Treaty in dealing with Japanese expansionist policies on the mainland of Asia clearly pointed out to China, as well as to Japan, that no great weight could be placed in the treaties to maintain the balance of power in the Far East. A weak China, torn by civil strife, placed perhaps too much faith in the ability and willingness of the Western Powers to protect her territorial and political integrity from an expansionist Japan. Had the Western Powers mustered sufficient military strength in East Asia to dissuade Japan from further conquests in Manchuria or China after the Mukden incident of 1931, the course of East Asian history might have been somewhat different from what it turned out to be. As a result of Western inaction, other than feeble and uncoordinated diplomatic protests and the announcement of the Stimson Doctrine of nonrecognition of Japanese conquests, Japanese aggression was allowed to continue in China. The Nine Power Treaty proved no more than a toothless

paper tiger in deterring Japan's conquest of Manchuria or preserving the integrity of China.

Another factor entering into the background of the collapse of East Asian stability is a psychological one. Beginning with the Versailles Treaty, in which a clause spelling out equality for all races was ruled out by the Western Powers, Japan felt as though she was an inferior in the eyes of Westerners. The passage of the immigration act of 1924 in the United States, which discriminated against Japanese, dealt another blow to the pride of Asian races—particularly the Japanese. The acceptance of an inferior naval ratio at the Washington Conference and the forcing of an inferior naval ratio on Japan at the London Naval Conference further aggravated conditions, until, by 1934, Japan sought full naval parity almost as a matter of racial and national pride. It is not surprising that in this atmosphere of implied and deeply felt racial discrimination that Japan should turn from a spirit of cooperation with the Western Powers in East Asia to a doctrine of Pan-Asianism expressed in the Amau Doctrine, or Asian Monroe Doctrine, announced in 1934.

Perhaps the greatest failure of the statesmen meeting in Washington in 1922 was the attempt to preserve the status quo in the Far East—an area that was in revolt against the status quo in an attempt to emerge into the modern world. The old special privileges enjoyed by the Western Powers and Japan in China would have to be relinquished in bringing China to a position of national strength and unity. The Washington treaties, on the other hand, stood to preserve and protect the special privileges each of the signatories had on the mainland of Asia rather than to recognize and provide for their abolition. Anti-imperialist sentiment, approaching epidemic proportion in China, and the failure to provide for peaceful change rather than a preservation of the status quo in East Asia doomed to failure the efforts to establish a "new order" for the Far East based on the preservation of the status quo, preservation of special privilege in the affairs of China, and a system of collective security that was not only restricted in scope, but toothless in application.

Finally, the failure of China to put her own house in order, gain a measure of national unity and strength sufficient to protect her own interests in East Asia, and play an equal role among the other Nine Power Treaty signatories hastened the demise of the "new order" in Asia. As long as China was weak internally, she was a ripe temptation to Japanese expansionist factions and proved an easy prey for her island neighbor. A strong, self-supporting China was necessary to the establishment of a new balance of power in the Far East. The failure of China to emerge as a strong nation greatly weakened the Far Eastern system as envisioned by the Washington Conference statesmen and, together with the other reasons mentioned, brought down the house of cards so carefully built in 1922.

BIOGRAPHIC SUMMARY

Lt. Comdr. William S. Johnson, U.S. Navy, is a graduate of the U.S. Naval Academy (1963) and of the Naval Destroyer School and holds a master's degree from the Fletcher School of Law and Diplomacy. His primary operational experience has been in destroyers, the most recent being as operations officer in the U.S.S. *Perry* (DD-844). Taking a special interest in national security affairs, Lieutenant Commander Johnson served as special assistant to the Deputy Chief of Staff for Plans, Policy and Operations, Staff of the Supreme Allied Commander Atlantic, and is currently a candidate for his Ph.D. degree at the Fletcher School.

FOOTNOTES

1. Chitoshi Yanaga, *Japan Since Perry* (Hamden, Conn.: Archon Books, 1966), p. 359-361.
2. *Ibid.*, p. 372.
3. *Ibid.*, p. 361.
4. *Ibid.*, p. 364-366.
5. John C. Vinson, *The Parchment Peace—The U.S. Senate and the Washington Conference 1921-1922* (Athens: University of Georgia Press, 1955), p. 23.
6. *Ibid.*, p. 36.
7. In fact, from November 1918 to November 1921, Britain had built only one submarine. H. Wilson Harris, *Naval Disarmament* (London: George, Allen, and Unwin, 1929).
8. Vinson, p. 25-26.
9. C. Leonard Hoag, *Preface to Preparedness* (Washington: American Council on Public Affairs, 1941), p. 17.
10. Thomas A. Sargent, "America, Britain and the Nine Power Treaty," Unpublished Ph.D. Thesis, The Fletcher School of Law and Diplomacy, Medford, Mass., 1969, p. 55.
11. Tatsuji Takeuchi, *War and Diplomacy in the Japanese Empire* (Garden City, N.Y.: Doubleday, Doran, 1935), p. 228.
12. *Ibid.*, p. 227.
13. Vinson, p. 27-29.
14. *Ibid.*, p. 29.
15. Sargent, p. 65-66.
16. *Ibid.*, p. 75.
17. Walter H. Mallory, "Security in the Pacific," *Foreign Affairs*, October 1934, p. 83-84.
18. Vinson, p. 137-138.
19. *Ibid.*, p. 138.
20. Takeuchi, p. 233.
21. *Ibid.*, p. 234.
22. The figure cited may be found in Harris, p. 15-24.
23. Vinson, p. 153.
24. *Ibid.*, p. 30.
25. Sargent, p. 58.
26. Takeuchi, p. 233.
27. Vinson, p. 153-154.
28. R.J. Bartlett, *The Record of American Diplomacy*, 4th ed. (New York: Knopf, 1964), p. 490.
29. *Ibid.*, p. 489.
30. Vinson, p. 171.
31. *Ibid.*, p. 173.
32. Bartlett, p. 493.
33. P.H. Clyde and B.F. Beers, *The Far East—a History of Western Impact and Eastern Response*, 4th ed. (Englewood Cliffs, N.J.: Prentice Hall, 1966), p. 287.
34. Sargent, p. 148.
35. Akira Iriye, *After Imperialism* (Cambridge, Mass.: Harvard University Press, 1965), p. 32.
36. *Ibid.*, p. 34.
37. Clyde and Beers, p. 292.
38. *Ibid.*, p. 298.
39. Iriye, p. 84.
40. *Ibid.*, p. 61.
41. *Ibid.*, p. 68.
42. *Ibid.*, p. 88.
43. *Ibid.*, p. 37.
44. *Ibid.*
45. T.A. Bisson, *America's Far Eastern Policy* (New York: Macmillan, 1945), p. 28.
46. *Ibid.*, p. 29.
47. Reijiro Wakatsuki, "The Aims of Japan," *Foreign Relations*, July 1935, p. 584.
48. Harris, p. 35.
49. *Ibid.*
50. *Ibid.*, p. 38.
51. *Ibid.*, p. 40.
52. *Ibid.*, p. 42.

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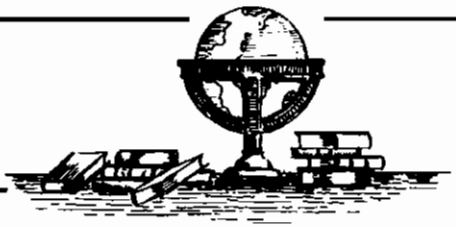
53. Takeuchi, p. 285.
54. *Ibid.*, p. 288.
55. *Ibid.*, p. 291.
56. *Ibid.*, p. 292.
57. *Ibid.*, p. 298.
58. *Ibid.*, p. 303.
59. *Ibid.*, p. 305.
60. *Ibid.*, p. 306.
61. *Ibid.*, p. 309.
62. *Ibid.*, p. 313.
63. *Ibid.*, p. 320.
64. *Ibid.*, p. 321.
65. Kichisaburo Nomura, "Japan's Demand for Naval Equality," *Foreign Affairs*, January 1935, p. 199.
66. Bisson, p. 30.
67. *Ibid.*, p. 31.
68. *Ibid.*, p. 33.
69. Clyde and Beers, p. 320.
70. For a detailed account of the Shanghai incident from a military point of view, see H.H. Hutton-Smith's "Lessons Learned at Shanghai in 1932," *United States Naval Institute Proceedings*, August 1938.
71. Yanaga, p. 562.
72. *Ibid.*, p. 563.
73. P.H. Clyde, *A History of the Modern and Contemporary Far East* (New York: Prentice Hall, 1937), p. 748-749.
74. *Ibid.*, p. 749.
75. Nomura, p. 203.
76. C.C. Wang, "The Pan-Asiatic Doctrine of Japan," *Foreign Affairs*, October 1934, p. 59.
77. *Ibid.*, p. 59.
78. Bisson, p. 45.

Ψ

The practical value of history is to throw the film of the past through the material projector of the present onto the screen of the future.

B.H. Liddell Hart: Thoughts on War, i, 1944



RESEARCH IN THE MAHAN LIBRARY

LETTERS AND LECTURES OF CAPTAIN LITTLE

Commander A.D. McEachen, U.S. Navy

The Naval War College was launched in 1884 in an atmosphere of hope that the clear and present need for serious study of the science of naval warfare would overcome any obstructions placed in the path of the school's progress. Rear Adm. Stephen B. Luce furnished the imagination, insight, and ingenuity that carried the school from concept to reality between the time he first formally proposed a Naval War College in 1883 and the time the college had completed its first year of existence under his presidency in 1885.

Luce provided the foundation upon which Alfred Thayer Mahan, and others, quickly built. Mahan, the college's second president, enriched the curriculum with his famous series of lectures on naval strategy in 1887. These were read annually and were ultimately published under the title *Naval Strategy*. In his lectures on naval history, Mahan developed fully his famous thesis that principles of strategy and tactics could be drawn from history. The lectures formed the basis for his monumental book, *The Influence of Sea Power Upon History*.

The continued application of the basic educational philosophy of Luce and the doctrines of strategy and tactics of Mahan at the Naval War College can be credited, in large part, to one of their colleagues, Capt. William McCarty Little. A graduate of the Naval Academy in 1866, Little progressed in his naval career through successive shipboard assignments until an accident resulted in the loss of an eye, and he was forced to retire. He thereupon took up residence in Newport, renewing and strengthening a close friendship with Admiral Luce, himself a Newporter, and at the time engaged in establishing the Naval War College. Little's first official connection with the college was in 1887, and the register of officers for that year lists him as a staff member.

It is generally accepted by scholars that Little was an inspirational figure whose enthusiasm and foresight helped to carry the college through the difficult trials of its early years. His most outstanding contribution, however, was in the area of naval war gaming. The earliest reference to gaming at the college appears in the Bureau of Navigation Report of September 1887 which notes that of the 146 lectures scheduled for the 4-month period September-December, six were to be given on naval war games by Lt. William McCarty Little. The association with the Naval War College as a war gaming specialist, continued intermittently over the next 28 years.

A fascinating insight into Little's character and intellect is provided by some of his letters in the Naval Historical Collection of the Naval War College Library. These were presented to the college not long ago through the Naval War College Foundation by Mr. Edward

Boit of Newport, a grandson. They cover the years 1891-1894, one of two periods that their author was absent from the college (the other was 1898-1899, when he returned to active duty).

In 1891, through the efforts of Admiral Luce, Little was assigned to the U.S. diplomatic legation in Spain as naval attache on special mission to the Columbus Centennary. Many of the letters which he wrote in this capacity were extensive reports to William E. Curtis, Chief of the Bureau of American Republics in the Department of State. They denote a keen sense of duty and qualities of thoroughness and careful management—fine traits, incidentally, for war gaming. Regrettably, few of the letters related to that activity.

While Little was in Spain the naval war game, which he had introduced in the eighties, was delved into more deeply by the Naval War College staff, and rules were developed for the conduct of games by students. In 1894, under the auspices of President Henry J. Taylor, the game took its place in the curricular program. Quite appropriately, the leading disciple of the technique returned to the country and to the staff of the college in that year. For the next two decades he would devote himself to refining and making the general concept of naval war games more meaningful.

During the Spanish-American War, studies at the college were suspended and Little was recalled to active duty, serving for almost 2 years as the executive officer of the Newport Naval Training Station. He returned to the War College upon the resumption of instruction in 1900 and shortly thereafter, through the intercession of Luce, was promoted to the rank of captain, retired. He was then assigned to the staff of the college, designated "in association."

For the remaining 15 years of his life, Captain Little enjoyed a close working relationship with both Luce and Mahan, who were also retired and periodically served "in association." The period also saw the further perfection of war games largely through his untiring efforts and direction. They were phased into the principal study program at the college and provided a means to simulate the results of the "main problem" for the year.

From the vantage point of time and experience, Little could look back upon almost 30 years of Naval War College progress. His reflections on the development and significance of the naval war game, the applicatory system, and the philosophy of orderly planning were contained in three lectures which he delivered during his last years of service. The lectures are in the college archives which form part of the holdings of the Naval Historical Collection Branch of the Library.

The treatise on the naval war game covers the Prussian origins of the game, the British adaptation to the maritime environment, and ultimately the purpose of gaming at the Naval War College. The object of the naval war game, Little declared, was "to afford a practice field for the acquirement of skill and experience in the conduct or direction of war, and an experimental and trial ground for the testing of strategic and tactical plans." He also wrote on the relevance of the war game to systematic planning for naval warfare, acknowledging the estimate of the situation as the first step of the game to be followed by the systematic development of operations orders. The test of plans and strategies was judged as the essence of game play.

The relationship between planning and war gaming was closely related in Little's thinking. In the 1913 course he gave a lecture on naval planning which he entitled "The Philosophy of the Order Form." In presentations of 12-13 August, he adapted a theme earlier put forth by Mahan and declared: "In war the common sense of some, and the

genius of others, sees and properly applies means to ends; and naval strategy, like naval tactics . . . is simply the proper use of means to attain ends."

In his final efforts at communicating his views, Little turned to the subject of military genius. In a lecture entitled "The Genesis of the Masterpiece of a Genius," he referred to Napoleon's first campaign in 1796, describing the principal elements of the French general's genius and quoting: "I am always thinking. . . . It is not genius which reveals to me suddenly, in secret, what I shall say or do in emergency unforeseen by others, it is my reflection. . . . I am always at work." William McCarty Little too was always thinking and always at work. He was constantly alert to new ideas and how they might best be applied. A truly selfless person, he dedicated himself to making the naval war game the important tool that it has become and to keeping the philosophy and doctrines of Luce and Mahan alive and healthy at the Naval War College.

GIFTS AND ACQUISITIONS

A recent addition to the library's oral history collection is a copy of "The Reminiscences of Vice Admiral Bernard L. Austin, USN (Ret.)" completed by the U.S. Naval Institute just this year. The transcript, numbering 543 pages with index, is the result of a series of taped recorded interviews conducted between August 1969 and January 1971. It is restricted, and qualified researchers are obliged to obtain permission to cite or quote from Admiral Austin. The volume is especially significant to the Naval War College since Admiral Austin was president here from 1960 to 1964.

Two fine naval museum items were presented to the college through the Naval War College Foundation by Capt. Francis L. Robbins, USN (Ret.), of Middletown, R.I. One of these is a model (57 inches x 70 inches) of the French 74-gun ship-of-the-line *Vengeur du Peuple*, in service during the last decade of the 18th century. The *Vengeur* was sunk in the fleet engagement with the British on 1 June 1794, but its heroic struggle against overwhelming odds earned it a lasting place in French naval history. The model is believed to be 150 years old. Also from Captain Robbins has come a naval-style Japanese samurai sword reputed to be nearly 400 years old.

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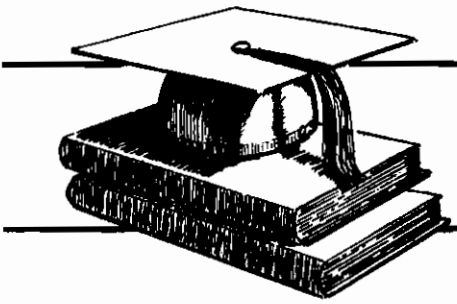
My library
Was dukedom large enough.

William Shakespeare, the Tempest



PROFESSIONAL READING

Brown, J.C. and Stuebner, R.L., Jr. *American National Security Policies: a Selective, Working Bibliography.* University Park: Pennsylvania State University Press, 1971. 111p.

The bibliography, the fifth and last of a series published by the Pennsylvania State University Libraries, is designed to serve as a useful research tool for the student of national security affairs. Despite the limitations inherent in this type of project and the small staff with which they had to work, the authors have admirably filled what heretofore had been a void in reference materials available in the field.

No bibliography can be more comprehensive than the body of scholarship it is designed to survey. Thus, while Brown and Stuebner's work generally emphasizes books and periodical literature as source material, certain sections such as Arms Control and Disarmament include many government documents and hearings where private research is not available. In a similar fashion the number of entries included under topics like Ideologies, Nationalism, Foreign Aid, and Insurgency and Counterinsurgency reflect the boom in literature relating to U.S. policy problems in the Third World in recent years. This quantity of material, however, has only been developed at the sacrifice of continued research in the fields of U.S. defense policy in Europe, the Americas, and Japan, a situation which Brown and Stuebner's compilation amply documents.

In conclusion, this bibliography is a useful and constructive first step toward cataloging the best literature of the past decade in the various fields of national security, and as such both highlights worthy scholarship and draws attention to areas requiring further study.

JOHN D. CASWELL
Ensign, U.S. Naval Reserve

Fair, Charles. *From the Jaws of Victory.* Simon and Schuster, New York: 1971. 416p.

Successful military commanders have always been held in fascination by students of warfare, if only because they succeeded. At times commanders who may have lost battles or wars are studied and admired because of the competence they displayed. Charles Fair has produced a study of the real losers: the stupid and the incompetent military commanders.

The first loser is Crassus, who apparently equated skill at making and keeping money with military competence. His ultimate defeat was richly deserved in terms of the extraordinary blunders he committed. Other commanders singled out are Phillip VI of France, "an ill-educated idiot with some skill at intrigue and none at all in battle," and Phillip II of Spain, of the Armada fame, "a well educated idiot who somehow became convinced he had a gift for great strategic combinations and . . . remained so in the face of most alarming evidence to the contrary."

Following in chronological order, the reader is treated to fascinating descriptions of, among others, the campaigns

of Charles XII of Sweden against Peter the Great of Russia. Despite Peter's unstable personality and the medieval condition of Russia and her armies, Charles was unable to succeed in the end, even though he frequently beat the Russians. The author describes him with a great deal of sympathy as the "fatal flaw" type. Charles was competent enough to have known he could not ultimately win in Russia, but he followed his own will o' the wisp instead.

Napoleon is described as a man who simply had to succeed or at least find some outlet for his tremendous psychic energy, otherwise he might have gone mad. Despite his boundless energy and bravado, Napoleon is depicted as a man who depended on the inspiration of the moment to extricate him from military difficulties.

These losers and their campaigns are treated with wit in a lively style and with appropriate erudition. The result is a charming book, which makes good reading. However, it is a great deal more. The mordant style masks a more serious purpose: a history of warfare from the days when the clash of armies may or may not have had a great effect on the populace to the ghastly all-inclusiveness of modern war. The conclusion is that bad generals are the penance society must pay for its ills.

This explains why the most scathing comments and greatest scorn are reserved for the Civil War generals. McClellan is depicted as the first of the "image" generals. He was far more concerned with public relations and with what people thought of him than he was with pursuing Lee. Hence his procrastination, his failures, and his ultimate removal by Lincoln from command of the Army of the Potomac.

The acme of the incompetent general is none other than Ambrose E. Burnside. Few historians would disagree. Burnside's blunders at Antietam and later at Fredericksburg are blamed for prolonging the Civil War at least another 2 years. The source of Burnside's difficulties is seen as his inability to comprehend a developing tactical situation and to alter his previously conceived plans in the face of the impossibility of their execution. The book is appropriately dedicated to him.

World War I produced several notable failures as generals. The author singles out the literary Sir Ian Hamilton, who dithered while the ill-fated Gallipoli expedition proceeded from difficulty to calamity. Sir Douglas Haig, commander of the British forces in Flanders, is listed as a loser for his dogged insistence on frontal assaults on the German lines, with little success and no reason to expect it. Naturally, the casualties were exceptionally high.

The shortcomings and the blunders committed by the reasonably competent commanders, as well as the stupidities and disasters perpetrated by utterly incompetent generals are explained in terms of the personal characters of the men themselves. These are interesting insights, but they are somewhat limited. The book is good because of its charm and erudition. But it is also a bad book, because it raises issues which the author fails to develop. The student of military history can learn from the mistakes of other generals when the mistakes are not seen solely in terms of limited personalities or even intelligence.

A real chance has been missed by the failure to analyze what precisely the mistakes were. Burnside lacked tactical flexibility. Phillip II lacked strategic realism. Crassus got himself into an untenable position. McClellan misplaced his emphasis by an over concern with his image rather than defeating Lee. The reason these men committed these mistakes certainly can be attributed to their own individual personalities. The mistakes and blunders of these losers can be and should be generalized.

Finally, Charles Fair adds President Johnson and General Westmoreland to

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his pantheon of military losers. Unfortunately, this particular chapter is marred by an excess of emotion and bias. It includes all sorts of extraneous matter which has nothing to do with the criticism of the conduct of the war in Vietnam. Certainly the strategy, and indeed the tactics, President Johnson approved and the way General Westmoreland executed them are not above criticism. However, this point is not made as well as it could be. Historians are usually not at their best when writing about contemporary events.

The publisher's intent is obviously to take advantage of current antimilitary sentiment. Nevertheless, the value of studying other people's mistakes—particularly in a book as lively and as interesting as this one—can be enjoyable and even useful, providing the reader remains conscious of the author's abiding prejudices.

B.M. SIMPSON, III
Lieutenant Commander, U.S. Navy

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Reading is to the mind what exercise is to the body.

Sir Richard Steele, The Tatler

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