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An Introduction to the Role of Law in the World Community

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AN INTRODUCTION TO THE ROLE OF LAW IN THE WORLD COMMUNITY

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by

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I. WHY STUDY INTERNATIONAL LAW?

If we postulate that the moon is made of green cheese, I suppose that logic would compel us to conclude that green cheese is that of which the moon is made. Now, by analogy, if we assume that international law is a fraud, or is nonexistent, or at the very best is a smoke screen behind which to conduct power politics, then we can come to a number of easy and quick conclusions concerning many diverse and difficult problems. In the same way, if we make the opposite assumption and postulate that international law is a complete and perfect system, with adequate institutional structure and always effective sanctioning devices, then we can also come to some easy and quick conclusions on diverse and difficult problems. My comments will not recommend either one of these opposite and, I believe, equally fallacious assumptions. I will recommend a different course which will provide considerable analysis and some answers. They won't be easy and quick answers because it is essential to seek better answers than can be obtained through either one of the two fallacious assumptions just mentioned.

The first step in our analysis should be to inquire concerning the importance of International Law to naval officers. It is gratifying to me as a lawyer to note that the Naval War College recognizes it as an important subject, and accords it substantial time in

a crowded curriculum. I think it is also important that the annual International Law Study at the War College is related to a number of other subjects in the curriculum. As one who is responsible for international law teaching and research activities in a law school, I am favorably impressed by the thorough approach and method employed by the War College in the study of international law. Like many of the law schools, the War College places heavy reliance on small seminar instructional groups. The great value in this is that it allows students to actively participate in the discussion and analysis of legal issues. This method of instruction is so demanding in terms of numbers of instructors that it would be unworkable if reliance were placed only on the current occupant of the Chair of International Law and on the Naval War College law specialist staff member. It is the presence and the indispensable assistance of fifteen international law consultants from the universities, the armed services, and the Departments of Defense and State that makes possible the present effective instructional program during the annual International Law Study. Without them the War College would be compelled to go from the present partial use to the exclusive use of lectures. This would certainly weaken an instructional program which is provided for the mature and experienced individuals who comprise its student body.

Many years ago Admiral Mahan wrote:

> "In a country full of lawyers and politicians, with a government possessing a President, Secretary of State, and a large corps of ambassadors and foreign ministers, it may be asked doubtfully why naval officers should give time to international law. The reply is that in this extensive system of functionaries the naval admiral or captain is incidentally one; and that, in international law as in strategy and tactics, he

> must know the doctrine of his country. In emergencies, not infrequent, he has to act for his superior, without orders, in the spirit and manner his superior would desire. If in war, the war may be complicated by a dangerous foreign dispute arising from action involving neutral rights; or, on the other hand, a neutral unright may be tolerated to the disadvantage of the national cause. In peace, injudicious action may precipitate hostilities; or injudicious inaction may permit infringement of American rights, of persons or of property."

Some may think that Admiral Mahan's views have now been rendered obsolete by modern communications systems. I submit that they are as valid now as when first enunciated. How could a naval officer request instructions concerning an international law situation unless he understands it and can analyze and evaluate its factual elements? The crucial factual elements in an international law problem cannot even be identified, much less analyzed and evaluated, without an understanding of the applicable legal rules, norms, or principles.

II. THE NEED FOR A CLARIFIED CONCEPTION OF LAW.

In addition to recognizing the importance of international law, it is useful to have some idea of what we refer to when we say "international law." At the outset, we may examine some of the modern definitions of the term.

Professor Brierly:

> "The Law of Nations, or International Law, may be defined as the body of rules and principles of action which are binding upon civilized states in their relations with one another."

Judge Moore:

> "By international law we mean the body of rules which regulate the intercourse of nations in war and peace."

Professor Korovin:

> "International public law is the sum-total of legal norms governing rights and duties of the collectivities of the ruling classes—participants in international intercourse."

Notice the heavy emphasis on rules or norms in each of the foregoing definitions. Certainly rules are a factor in international law. In addition, we need to know whether or not the rules can be enforced or sanctioned. If there is no prospect of enforcement of a particular rule now or in the near future, are we justified in stating that the rule is contemporary law? In the same way, note the heavy emphasis on nations, or "collectivities of the ruling classes" as Professor Korovin puts it, in the definitions. Certainly nations are important participants in international law. If we are to have an adequate conception of international law, however, we must inquire as to whether or not they are the only participants. Perhaps the quoted definitions are useful as far as they go but we require a more comprehensive conception.

Some contemporary writers have overemphasized the importance of naked force of power.

Professor Schwarzenberger:

> "To the extent to which international law is a law of power, it fulfills the functions of an extreme society law. It gives the authority and sanctity of law to power and

brute force; without seriously restraining the mighty, it serves them as a handy ideology with which to disguise some of the brutalities which are inherent in any system of power politics."

Professor Gyorgy:

"This last point leads to the most relevant criticism of the legalistic school. Its exponents tend to live in the clouds hopefully anticipating both high moral standards of international conduct and selfless law-abiding patterns of national behavior. It is safe to state that the era of such high expectations irretrievably disappeared on June 28, 1914, when the tragedy at Sarajevo set off the new age of total wars."

Professor Hans Morgenthau has apparently confused the judicial aspects of international law with the entire subject:

"The legalistic approach, by its very nature, is concerned with isolated cases. The facts of life to be dealt with by the legal decision are artificially separated from the facts that precede, accompany, and follow them and are thus transformed into a 'case' of which the law disposes 'on its merits.' Once a legal case has been decided or otherwise disposed of, the problem is solved, until a new legal case arises to be taken care of in similar fashion."

The above quotation also appears inadequate in explaining the operation of the decision-making process in international courts and arbitral tribunals.

In 1625 Hugo Grotius, one of the greatest international lawyers, wrote, ". . . in our day, as in

former times, there is no lack of men who view this branch of law with contempt as having no reality outside of an empty name." This quotation is from his famous book entitled, *The Law of War and Peace*. It is interesting to note that the larger part of the book dealt with the law of war. Two of the outstanding contributions made by Grotius should be mentioned. In an era when nationalism was the coming thing the central problem was to bring kings, in some instances the absolute monarchs of the new national states, under the rule of law. Many of them regarded themselves as superior to the rule of law. Grotius invoked a conception of a higher law, a moral law, with which even a king had to comply. Without this Grotius would, perhaps, have been a writer in political theory, but he would not have been a writer in the social control that we call law. He made another significant contribution which was ignored for about three hundred years and we are thinking about it seriously at the present time. He made a basic factual distinction between just war and unjust war, and so created the basis for a corresponding legal distinction between lawful war and unlawful war. This conception was recalled at the time of the League of Nations and it was articulated with more precision in the Kellogg-Briand Pact of 1928, which outlawed war as an instrument of national aggressive policy. The same idea is spelled out in the Charter of the United Nations at the present time.

Contemporary international lawyers are working to increase understanding of international law and to improve it so that it can better meet the needs of the modern world. Professor McDougal of Yale University wrote in 1953:

> "At the opposite extreme from overemphasis on technical rules, is an attitude increasingly common today which underestimates the role of rules, and of legal processes in general, and overemphasizes the importance

> of naked power. This attitude is sometimes referred to as the 'pure theory of power' as contrasted with the 'pure theory of law.'"

If we are to avoid overemphasis on either rules or power, what kind of an analytical method can best be employed? It is clear that Professor McDougal is satisfied with nothing less than a comprehensive analysis of the entire international legal process including its factual, doctrinal, enforcement, and policy aspects. In other words, the perceptiveness of the analysis must be increased in both depth and scope to meet the complexity and importance of the problem rather than cutting the problem down to the size of an inadequate method of analysis. I acknowledge my intellectual debt to Professor McDougal with pleasure and assume full responsibility for the following comments. To establish firm intellectual foundations, it is necessary to start with a clarified conception of what we mean by "law." Table 1 sets out such a conception by stating three elements or requirements of "law."

Table 1

International law (and municipal law as well) may be regarded as:

(1) A body of rules, doctrines, principles, or norms of behavior,

(2) Enunciated or prescribed by competent government authority, and

(3) Enforced with at least a modicum of effective control.

This table is not designed to set forth some philosophic theory as to what law should be; it is intended rather to emphasize an empirical conception of law as we deal with it in the everyday world. Without element (2) we would have the kind of control exercised by a pirate or a marauder but not law which is

associated with government. In the absence of element (3) we would have illusion or self-deception but not law in the sense of a somewhat effective social control. Note that element (1) recognizes that law is usually prescribed in a body of rules. Lawyers are interested in rules as "sources" of international law. Such sources are conveniently listed for us in Article 38 (1) of the Statute of the International Court of Justice in the following words:

> "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
>
> b. international custom, as evidence of a general practice accepted as law;
>
> c. the general principles of law recognized by civilized nations;
>
> d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

Note that paragraph a. refers to the international legislative or law-making process while paragraph d. refers to the writings of legal scholars. Paragraphs b. and c. are usually associated with the judicial process but they also have an important role in diplomatic negotiations. It should be recalled that in the present stage of development of international law many controversies are resolved through negotiation rather than adjudication.

III. PARTICIPANTS IN THE WORLD COMMUNITY PROCESSES.

In order to continue the analysis, we must now answer this question: to what subjects or participants is international law applicable? In providing an answer we should take full account of contemporary factual reality. No one doubts that nation-states are participants. The real question is what are the other participants and Table 2 provides a listing.

Table 2

International law may be regarded as applicable to all participants in the world community processes and not only to nation-states. In addition to nation-states, the participants include:

1. The individual human being.

2. International public organizations.

   General purpose—United Nations.

   Special purpose—e.g., NATO.

3. International political parties or orders, e.g., International Communist Party.

4. International pressure groups, e.g., "cultural associations" which promote amity with and enmity to particular nation-states.

5. International private associations, e.g., oil cartels and other international business associations.

It seems clear that the most important participant of all is people. There has been a sterile dispute going on from the time of Grotius to the present concerned with whether or not international law applies to people. If you look at it realistically the entire impact of international law is on people, either directly as such or indirectly through nation-states or one of the other four groupings listed in Table 2. It is well to recall that each of the group participants must act through people. Consequently, people are of central importance in international law as they are in any other type of law.

Notice the words *world community* in the initial sentence in Table 2 and in the title of heading III. This is a phrase which has caused a lot of disputation also. Some say that one should not use these words because of the diversities in the world today. They emphasize Free World and Communist World disagreement on elementary matters needed to preserve the world. On the other side, some emphasize the high degree of interaction across national boundaries and say that the words world community describe this. In using the words world community here there is no intention to suggest that we have a perfect system of international law. The purpose is to point up the great and increasing interaction among all peoples throughout the world. This profusion of factual events may be conceptualized as a global process of social interaction containing within it several specialized processes concerning particular values such as wealth (economics), respect (human rights), enlightenment (communications and information), ethics (standards of morality and shared responsibility), and power both formal and effective. The last-mentioned value process, power, is especially relevant to a study of law conceived as an effective social control sanctioned by adequate power, or force, or less coercive enforcement devices. More detail on the world power process will be provided in heading IV.

Let us now examine the other participants in Table 2. Category 2 involves two kinds of international public organizations. The following brief comments will be limited to the United Nations, the general purpose organization. Is it a separate participant or merely a registering device for the views of nation-states? It is increasingly regarded as a separate and full participant even by those who formerly accorded it only reluctant and contingent status. This is indicated by an important opinion of the International Court of Justice in 1949 that the United Nations, like a nation-state, is legally entitled to make an international claim against a nation-state.

Category 3, international political parties, is of tremendous importance because of the view of the Communists that there is a legal dichotomy between the state on the one hand and the International Communist Party on the other hand. The Communist view is that when they enter an international undertaking which binds the state, they are free to do anything they want to, providing they change hats and do it wearing the hat of the International Communist Party. Consequently, a complete analysis requires us to examine the activities of international political parties and their subjection, or lack of subjection, to international law.

Categories 4 and 5 have been referred to by some writers as the minor actors on the international stage. They are mentioned here to obtain a full listing of participants. In some circumstances they can be extremely important.

IV. THE FUNCTION OF LAW IN THE WORLD POWER PROCESS.

Now that we have identified and briefly characterized each participant, it is useful to inquire as to the factual activities of each participant and the legal control of these factual activities. This can be

done by asking a series of questions concerning each participant. How is the participant (the individual or his group) admitted to the processes of formal and effective power? What are the bases of power used by the participant? What are the methods of operation (the practices or strategies) used by the participant? What effects are achieved by the participant? These questions have been employed to analyze the role of each of the participants. The following comments are limited to an outline analysis of the role of the nation-state as a participant. Table 3 sets forth the principal elements of such an analysis based on the questions which were just propounded. This Table is an outline of the main elements of the world process of formal and effective power as applied to nation-states. It is a conceptual framework which facilitates the location of legal problems in the real life context in which they exist. Legal doctrines are not independent entities apart from human processes of interaction. Such doctrines serve human value objectives including the values sought by the groupings of human beings known as nation-states.

Table 3

World Power Process

Nation-States

A. Arenas—Admission.

1. Creation of effective power units.

2. Recognition as formal authority.

B. Bases of Power.

1. People.

2. Territory.

3. Institutions.

(a) Internal structure.
(b) External relations.

C. Practices (methods of operation).

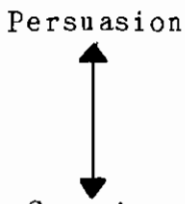
Instruments of national policy:

1. Diplomatic.

2. Ideological.

3. Economic.

4. Military.



D. Effects Achieved.

1. Particular (Jurisdiction).

2. Structural
(Succession of states and governments.)

Before proceeding with an inquiry concerning each of the main headings in Table 3, it is appropriate to emphasize that we are using this Table as a framework for inquiry and not as an inventory of answers. As suggested earlier, this method of analysis is not recommended for obtaining quick and easy answers though it may be helpful in obtaining better answers.

A. *Arenas—Admission:* Is Communist China an effective participant in the world community processes? By not recognizing it the United States has not prevented its existence as an effective power unit. The diverse views of recognition of Communist China give us an insight into the legal doctrines and practices of recognition. Generally speaking, the United States now takes the constitutive view of recognition. This view states, in summary, that only by recognition does a state become a participant, that is, recognition constitutes the state recognized as a state. The United States has had certain dealings with Communist China from time to time including unsuccessful attempts to present international claims and rather protracted diplomatic negotiations with a Communist ambassador in Europe. The United States has accompanied these negotiations and attempted negotiations with express disclaimers of recognition. It might appear to an objective observer, however, that negotiating itself amounts to a degree of recognition.

The British, in contrast, have taken the declaratory view of recognition which, in broad and oversimplified terms, states that recognition is only a "declaratory" act and does not bring into existence a state which did not exist before. This view acknowledges that a state may exist in fact without being recognized.

Some writers have stated that there is a legal obligation to recognize a government with control over people and territory. If there is, it does not appear to be law in the sense of an effective obligation.

We may now summarize by reference to heading "A" in Table III. Communist China is an effective power participant but is now denied admission to some arenas of formal authority.

B. *Bases of Power:* This heading deals with facts concerning people, territory and institutions and their legal control.

How do people go from one nation-state and become admitted to the political and economic processes within another nation-state? How are aliens treated? Is the attempt made, as in most totalitarian societies, to coerce loyalty, or is the loyalty of the people to the state voluntarily given because of their willingness to identify themselves with the objectives of the state? The whole law of nationality then, and of immigration, is relevant here. These topics are frequently referred to as a branch of domestic or municipal law rather than international law. Nevertheless, they are dealt with in the international law books because their impacts across international boundaries are of tremendous importance.

The second heading under Bases of Power, territory, is of particular significance in international law. When the nation-states system arose legal rights and duties were organized and administered on a territorial basis. If one goes beyond that to ancient city-states, and to the little feudal duchies and principalities in Western Europe, the basic organization was a limited territorial area with a castle in the middle and a wall around it. Warfare was conducted on a horizontal territorial basis and particular pieces of real estate constituted primary military objectives.

Historically, international rules concerning acquisition and relinquishment of territory have been of great importance. The problems relating to territorial waters are of great contemporary importance. How far do territorial waters extend from the shore? There has been a wide measure of disagreement on this in recent years as indicated by the numerous national reactions at the two Geneva Conferences on the Law of the Sea. It seems quite clear that all legitimate national interests, and the broad interests of the world community as well, can best be served by the narrowest possible territorial sea and by maintaining the oceans as a great international resource for the use and benefit of all peoples.

Institutional structure, both internal and external, the last major heading under Bases of Power, leads into other topics of international law. Internal structure is of tremendous importance in terms of the building of effective bases of power for operation in the international community. Note the striking contrast between the United States at the present time operating under a federal government which has adequate powers in the military and foreign affairs fields and compare it with the dismal experience under the so-called Articles of Confederation and Perpetual Union. Happily, perpetuity in that instance was limited to just a few years. The wise men who wrote the United States Constitution understood that thirteen competing and almost warring states could have very little effectiveness in the international community.

External institutional structure, such as NATO, constitutes important bases of power and involves difficult legal problems. NATO, according to the Soviets, is a violation of international law, because it is not consistent with what the Soviets say is the basic legal principle of equality of states. NATO, according to the argument, subordinates a country like Luxembourg to a country like the United States. Not

only that, one may add if countries are made so independent that they can't have effective alliances, then you are in the happy position, from the Communist standpoint, of being able to knock them off one at a time.

C. *Practices (methods of operation):* What are the practices or strategies of nation-states? Here we have the largest single body of international law doctrine in any of the four headings in Table 3. Nations operate in terms of four principal instruments of national policy which are listed in the left hand column. The instruments of national policy should not be treated as airtight conceptual or operational compartments. They merge into each other and are usually all used together with varying emphasis on each instrument, whether in time of peace or in war. The two words, Persuasion and Coercion, with the double-headed arrow designed to indicate interaction, are intended to point out and emphasize a continuum between diplomatic or peaceful procedures (persuasion) at one extreme, going through various middle grounds to heavy reliance on the military instrument (coercion) at the other extreme. In this conception of a continuum, using all instruments of national policy with varying intensities, we may regard war as a situation where there is heavy emphasis on the military instrument, and peace as one where there is relatively heavy emphasis on the diplomatic instrument.

Most of the legal rules here are under categories No. 1 and No. 4, Diplomatic and Military. Of course, we have some rules including blockade, contraband, boycott, economic measures short of war, and so on, under category No. 3, and we even have a few rules under No. 2, Ideological. However, when one country can call through its official radio upon the citizens of another country to do themselves a favor and murder their king or president, it would seem to me we might as well face up to it and admit that we don't have many legal limitations on the ideological

instrument of national policy. Many say that this is a very good thing. The argument is that it is better to have a cold war of words than a hot war.

The whole law concerning diplomacy and the making, interpretation, application, and revision of agreements would appropriately be considered under the diplomatic heading. The law of diplomatic privileges and immunities is one of the most effective parts of international law. It is even effective in our dealings with the Communists. Why? Because self-interest and reciprocity operate as sanctions. If they don't treat our diplomats according to the rules, then we do not have to treat their diplomats according to the rules.

There is a vast body of doctrine concerning agreements. We will only refer to the problem of interpretation and application of international agreements. First of all, we sometimes hear something about a so-called plain-meaning rule. It can be suggested that if one is dealing with a very easy problem, the type of problem that everyone knows the answer to, then the plain-meaning rule will provide the meaning of an international agreement. But if one is confronted with a serious, thoughtful problem where there are alternative meanings, one has to abandon the plain-meaning fantasy and use a multifactor analysis of all the relevant factors located in the context of the objectives of the treaty. Sometimes articles, sections, subsections, and even words, take meaning and content from context which they do not have standing alone. For example, in interpreting the United Nations Charter and saying, in effect, "When we are blocked in the Security Council by the Soviet veto we don't have to give up and go home. We can go to the General Assembly and it can, under the famous Uniting for Peace Resolution of the time of the Korean War, take effective action," we are guided by the context of the United Nation's basic purpose to preserve the peace and repel aggression and the principle of

effectiveness in interpretation of the powers granted to the General Assembly under the Charter. The United Nations was designed to be an effective organization and not just a chamber for lawyerlike debates.

The law of war is an important topic during the War College annual International Law Study and the basic principles of that law should be mentioned here. The real reason for a law of war is the basic world community policy, even in times of war, to have minimum unnecessary destruction of human and material values. If a war is anything like World War II or the Korean War, there will be a lot of destruction of both human and material values. In face to face combat there has to be killing. In a non-combat situation, there doesn't have to be killing.

Two basic principles of the law of war, "humanity" and "military necessity," are complementary and neither one may be applied without consideration of the other. "Humanity" is designed to prevent destruction of human and material values unnecessary (that is, irrelevant or disproportionate) to realization of lawful belligerent objectives. "Military necessity" is the legal accommodation of the requirement for efficiency in the conduct of hostilities.

D. *Effects Achieved:* Factually, some nations are looking for security. Security can be viewed negatively, as freedom from wanton aggression and international coercion and, positively, as the opportunity to seek all values in a peaceful and rational context.

Legally, effects can be analyzed under "Jurisdiction" and "Succession." The former is resulting legal control over people, over things, over territory, over national ships, and so on, as a result of a nation-state's participation in the world community processes.

Structural effects relating to the doctrines and practices of state and government succession is a branch of law concerned with insuring a minimum degree of responsibility in successor states and governments. One of the most famous cases here is the Tinoco Case decided in 1923. One Tinoco overthrew the lawful government of Costa Rica in 1917 and, by procedures of force and violence contrary to the Costa Rican Constitution, he established his own government and two years later he in turn was overthrown. The legal government (that is, legal under the domestic law of the Costa Rican Constitution) was restored to power in 1919 and the British Government brought an international claim against the legal government for alleged illegalities committed by the revolutionary government of Tinoco during the two-year period. The case was submitted to arbitration. Costa Rica argued in effect, "We're not responsible for what was done during this period. This man was in power contrary to our domestic, municipal, constitutional processes." The British argument was that he was the effective head of the effective government during the two-year period, whatever the local rules were. The arbitrator held that the new government (the legal government under domestic law) was a successor government and was legally responsible for the acts of the revolutionary government during the two-year period. Without a doctrine like this, and without some enforcement, a state could always avoid its obligations by the simple expedient of changing its form of government and saying that whatever preceded the new government was contrary to local law. This is a good example of a situation where international law takes precedence over local law.

V. SANCTIONS AND THE URGENT NEED TO CONSTRUCT A MORE EFFECTIVE INTERNATIONAL LAW SYSTEM

Some attention has been devoted to sanctions and enforcement problems particularly in connection with the second heading in Table 1. It has been pointed out that without at least some effective control or sanction we do not have law. The importance of the subject justifies further consideration. Some lawyers appear to think that inadequate sanctions are a particular problem of international law. A glance at municipal law should be enough to correct the misapprehension. The general ineffectiveness of criminal law sanctions as preventive deterrents is notorious.

Sanctions may be usefully conceived as anything which tends to induce compliance with law. Probably the most effective sanctions are the ones which induce a mental expectation that more is to be gained in the long run by adhering to the law than by violating it. It is important to emphasize that sanctions are rarely a matter of "yes" or "no." It is very difficult to list a sanction which is completely effective or completely ineffective in particular situations. Sanctions are usually a matter of degree, that is, a matter of "more" or "less." The central task with international law enforcement is to mobilize the entire range of available sanctions (ranging from persuasion through intermediate stages to coercion and including simple force where necessary) on the side of the law and against the law breaker. The difficulty of this task is great in international law because of the necessity of building a more effective and rational international institutional structure than the present extreme nation-state system with its recurring tendencies toward anarchy. The alternative of possible world destruction is so grim that we cannot hesitate in accepting the task and beginning the work.

It is believed that a simple example will reveal some of the complexities of sanctions problems. At the

beginning of the Korean War, the Communists announced that they would adhere to the 1929 Geneva rules concerning the treatment of POWs under international law. The overwhelming evidence in our possession indicates substantial violation by them of the Geneva rules. Nevertheless, the United States continued to observe the prescribed fair standard of treatment for POWs. Why? Table 4 is designed to show some of the principal sanctions to induce compliance by the United States.

Table 4

Some sanctions available to induce the United States to comply with international law concerning treatment of POWs during Korean war:

1. Reciprocity.
2. Obligation to comply with international agreements.
3. Basic standards of morality.
4. Favorable publicity.
5. Efficient conduct of military operations (encourage enemy to desert).

Now let us examine each category in Table 4 in some detail. The first category, reciprocity, is usually regarded as the basic sanction for treatment of POWs according to the international law standard. The assumption is that each side wants fair treatment of its prisoners in the hands of the enemy so it gives similar treatment to POWs in its control. We know that this assumption was not valid as applied to the Communists in Korea. What are the other possible sanctions?

Under category 2, it is widely believed that the United States does not lightly violate an international obligation.

Category 3 involves, among other things, the difference between shooting a man in a combat situation and shooting or torturing a helpless POW.

Category 4, a favorable use of the ideological instrument of national policy, has been important to the United States ever since the Declaration of Independence referred to "a decent respect to the opinion of mankind."

Category 5 involves recognition of the fact that one of the recurring characteristics of the workers' and peasants' paradises is that people (often workers and peasants) try to escape. It would hardly be in the interests of the Free World to prevent these escapes by promising and according brutal treatment to would-be deserters and escapees.

Sometimes when one speaks of sanctions, the discussion goes into something called "world government." This is something that is so general and normatively ambiguous that one is hard put to determine its limits and analyze it. By "normatively ambiguous" I mean that characterizing government as world government attempts to set up some kind of a norm or standard which is so ambiguous that it doesn't describe anything very meaningful. Nevertheless, on occasion otherwise thoughtful and courageous men who have faced enemy fire without fear have become frightened by the mere words "world government." When a person referring to world government is pressed concerning his meaning, he may say that he means limited world government. This is a little more precise and meaningful. It should include an improved international structure and more effective international law sanctions. It is possible to be even more specific and refer to the offer the United States made for limited world government in

1946, which included precise terms. I refer to the Baruch Proposals of 1946 which were specific proposals for enough limited world government to prevent nuclear and thermo-nuclear disaster. They included enough control and enough inspection or sanction to effectively internationalize atomic energy. As you know, the Soviet Union rejected these proposals. In considering the term "world government" it is well to remember that the central objective of the Communists is to establish a world totalitarian government with complete control over matters which could well remain national and local. If we respond that a limited world government with enough sanction and sufficient institutional structure to prevent world destruction is impossible, it seems clear that we then pose no rational limited democratic world government alternative to the totalitarian world government objective of the Communists. It is evident that if improved sanctions lead into limited democratic world government, and so include enough effective control at the world level to maintain peace, the world and its human value processes will be preserved for the use of future generations. This high enterprise would require the effective participation of an organization very like the United States Navy to preserve the rule of law in the world community for a considerable future period. We had better get ahead with the task while time remains.

BIOGRAPHIC SKETCH

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Schools:

University of Washington, 1940, B.A. degree.
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Yale University Law School, graduate student, 1950-51.

Career Highlights:

1942-46 Active duty, U.S. Navy. Served on USS COLORADO (BB-45) through the Central Pacific and Philippine Islands campaigns. Placed on Physical Disability Retired List as LT, USNR as of August 22, 1946 due to wounds received in action during Lingayen Gulf, P.I., Operation.

1948-49 Practice of Law, Seattle, Washington.

1949-50 Member of teaching staff, College of Law, Ohio State University.

1950-51 Sterling Fellowship, Yale University Law School.

1951-57 Assistant Professor and Associate Professor of Law, George Washington University.

1957-58 Chief, Asian-African Branch, U.S. Atomic Energy Commission. While so serving, had principal responsibility on the United States side for negotiation of the United States-Japanese Comprehensive Agreement concerning the Civil Uses of Atomic Energy and initialed it on behalf of the U.S.A.E.C. on April 28, 1958.

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