American Foreign Policy and International Law

Eugene V. Rostow

Repository Citation
Eugene V. Rostow, American Foreign Policy and International Law, 17 La. L. Rev. (1957)
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol17/iss3/10
American Foreign Policy and International Law

Eugene V. Rostow

My topic today is the political element in international law, and its significance, both to law, and to legal education. I didn’t suppose, when the theme was chosen for me, long ago, that I should be talking in the midst of an international crisis entirely dominated by the politics of international law, or the law of international politics. My effort, however, will be to map the background of the crisis, not to offer simple and comforting solutions for our difficulties in the Middle East and Eastern Europe.

I

Let me start with some rather obvious general propositions which frame the analysis I propose to sketch out.

First of all, I assume, I shall not have to defend at any length the thesis that international law, like any other branch of law, has a political content, and exists in a political context. International law is the system of order for the society of nations. It is a field of force in which contending interests and ideas strive for — and occasionally find — a transitory equilibrium. International law is not an abstract and immutable code, to be treated reverently by a few anointed successors of Grotius and Pufendorf, and invoked only to curb the evil impulses of statesmen. On the other hand, however, international law is law, in every meaningful sense, despite the absence of a single sovereign, or rather, despite the multiplicity of its sovereign commands. International law is not expressed in the mold of law as a convention or formality. It is law because it represents the authoritative consensus at any time of the propositions which, in the light of their goals, help to fix the scope and expression of competing national purposes, and equally, to fix the modalities of international cooperation.

Large areas of international law are now being dissolved and reformed, and much of its most important content is being born. The reason for this fact is obvious: the political forces and the
dominant ideas which determined the contours of international law in the past are in motion, and often in violent motion. New social needs, and newly insistent ideas of right and wrong, are pressing against the pattern of historical custom.

International law in its traditional forms developed in the seventeenth and eighteenth centuries, and went through a period of relatively gradual evolution during the nineteenth and early twentieth centuries. The hundred years after 1815 considerably changed the map of the world, and to a certain extent they also changed the law which courts and chancelleries accepted as governing the relation of states, both in peace and in war. But that age, which now seems so peaceful and so civilized, was also a period of relative stability in the states-system itself — in the concept of the state, and the permissible limits of its powers, and in the basic relationship of states and peoples to each other.

The two world wars of this century, however, have released forces which destroyed the old order of things — the old order within which this nation emerged, and managed to grow and survive. The Austrian, Russian, Turkish, and German Empires were broken up, to be succeeded in the name of national self-determination by many weak states, often a temptation to aggression. In the case of Russia and Germany, the old empires were also succeeded by powerful and ambitious home governments, harboring bitter resentments at defeat, and strong desires for revenge. And now, in a cycle accelerated by the Second World War, we are witnessing the breakup of the British, French, and Dutch Empires — together with the related system of protectorates, mandates, and special spheres of influence and responsibility, which served as the cement of the old structure.

Whatever else may be said of the fading system of empire, it must be conceded in retrospect that it drew many isolated and autonomous cultures into a single world, and, all things considered, into a relatively coherent and interdependent world, during the eighteenth and nineteenth centuries, and the early part of this century. For long periods of time, imperialism preserved a semblance of order and stability in international affairs. The Empires brought the powerful ideas and techniques of Western life to every corner of the globe. Ancient cultures like those of Islam, India, and the Orient were set on a new course, and primitive cultures were equally exposed to the explosive impact of European
life. The response of the non-European world to the promise and the power of Western science, methods of organization, and social outlook has not, of course, been uniform. For all non-European countries, their contact with the West was, and remains, a process of action and reaction, of attraction and repulsion—a continuing process of incalculable moment. As Christopher Dawson has recently remarked, this experience cannot realistically be considered merely one of revolt against the influence of an alien, European civilization; rather, it is a more complex cultural movement, involving the extension of Western civilization and of Western international society into the extra-European world. If wisely conducted, this movement can lead to a consensus among all peoples on certain values which they may share, despite their cultural diversity. Alternatively, it may lead to bitterness, destruction, and revolt.

We who are brought up in the spirit of 1776 tend instinctively to scorn every aspect of imperialism, and automatically to support any rebel against imperial power who wraps himself in the mantle of George Washington, and demands freedom for his people. This almost universal American reaction to the colonial question sometimes interferes with clear thought, both in our scholarship and in our politics. For all its many faults, the imperial system served a function in its day, as our own history testifies. We can hardly expect to cope with our own world unless we understand the pressures which the old international system set in motion all over the world. Nor will our international law serve society even as well as the international law of the imperial age unless it develops politically acceptable methods for carrying out certain responsibilities to the family of nations which imperialism did meet, for better or for worse.

A second and distinct factor in the political universe of international law is the emergence of the Soviet system and the world Communist movement, and their prodigious growth and spread since 1917, and especially since 1945. This system, using as its tools both Western science and technology, and Western socialist ideals of justice, humanity, and the rights of man, rep-

1. Dawson, The Relevance of European History, 6 History Today 606, 612 (Sept. 1956): "Thus it seems to me impossible to avoid the conclusion that the new Asia and Africa which are emerging with such revolutionary suddenness do not represent simply the reaction of Asiatic or African culture against the influence of an alien civilization, but rather the extension of Western civilization and Western international society into the extra-European world."

2. Id. at 611-12.
respects one phase of the historical process to which I have just referred — the adaptation of an appealing western tradition to the history and needs of non-European cultures. The Communist world today has been swaying and fumbling, internally, under the impact of the de-Stalinization movement, with its powerful appeal to the premises of Western law. The old conflict in Russian life between East and West, between the Europeans and the Orientalists, between the pull of law and the tradition of despotism, has been revealed in a new form. The pendulum has swung to both extremes in recent months, and is now of course back on the side of Stalin and Ivan the Terrible. Whether Peter the Great will have another turn soon remains to be seen. What we know, however, is the simple fact that the enormous mass of power organized under Communist rule is led by able and determined men, who command formidable resources, both material and intellectual. They control gifted populations, whose skills are concentrated on the tasks which the Communist leaders deem most important — namely, upon problems of military technique and technology. They have achieved a rate of capital accumulation far greater than our own, and will soon command an industrial base greater than our own, and more completely mobilized for military purposes. Their schools and universities are dominated by first-class talents, and are graduating large numbers of imaginative, well-trained, and productive men and women.

Recent months have seen dramatic and significant developments in the Soviet Union. The present leaders of the country, revolted by the tyranny and despotism through which Stalin had controlled his bureaucracy, and his people, have paid limited obeisance to the tradition of law, and they have been enthusiastically followed in Poland and Hungary, at least, among the satellites. This movement may be reversed; indeed, events in Hungary may already have reversed it. Even if de-Stalinization partially survives the Hungarian cataclysm, a new Napoleon, or a new Hitler or Stalin, may succeed in capturing the machinery of totalitarian power in the Soviet system, before saner men can establish a regime of law under Communism.

From the point of view of the security and foreign policy of the United States, our initial reaction to de-Stalinization was dangerous. We tended to welcome this development not only for its own sake, but as a move towards peace. But the requirements of peace go beyond the achievements of partial or minimal le-
gality in the Soviet Union and its satellites. The Germany of the Kaisers, the Russia of the Czars, and Imperial Japan before World War II were all states in which the relationship of citizens to each other, and to the State, was governed by settled rules and procedures of law. The world will not be safe, and we will not be safe, until the growth of law within the Soviet Union and its associated and satellite states includes not merely order but freedom. The legitimate fear which makes us and the world insecure will not be dissipated until the existing monopoly of power in the hands of the Communist Party is ended — until the public life of the Communist states has been so modified as to destroy the threat of aggression now dangling over the heads of all people, including those under Communist rule. Indeed, an orderly and "legal" New Model Communism may be a far more formidable foe for us in Asia than the brutal regime of Stalin. Such a Communist movement could offer the Orient economic progress without the gross and obvious forms of tyranny and deceit which now characterize the atmosphere of Communist politics.

The outcome of the ideological struggle within the Communist world is still unknown. American foreign policy must continue to rest on a recognition of the fact that the Communist movement is strong, aggressive, hostile, and determined, and that it does not lack opportunities for gain, from Formosa to Egypt.

II

As the result of the breakup of the old imperial order, and the rise of Communism, the world balance of power is tipping badly against us. The conditions of our security as a nation, which concerned the United States only sporadically in the nineteenth century, have now become the central theme of national policy, framing and coloring all the other problems of our national life. The pressure of this anxiety is deeply felt in many areas — in the continuance of the draft, so alien to our history; in the level of taxation, with its drastic impact on our social structure, and on the pattern of incentives in our working lives; in the complexities of the loyalty-security program, which casts serious shadows over the constitutional relationship between the individual and the state; and in the renewed urgency with which we have tackled the difficult social problems of achieving full constitutional equality of status for the Negro.
The old order, which was the determinative matrix of the old public international law, is gone, beyond recall. Yet a new order has not yet emerged. The old public international law still functions, in large part, but it is in constant collision with new ideas, usages, and customs, and something new is clearly coming out of its chrysalis.

The essence of our problem of national security, I submit, is to help transform the international chaos we now confront into a stable and just system of international law. The liberation of people formerly under colonial rule, and the rise to modern power of China and Russia, are historical events full of hope, and of danger too. There is no need to stress the risks of direct expansion by China or the Soviet Union. The plight of the newly liberated peoples of the world presents problems as grave. Many of the formerly dependent areas of the world, newly endowed with nineteenth-century rights of sovereignty, are economically stagnant. Some are growing slowly, at a time when the industrialized nations of the West, and of the Soviet bloc, are growing very fast indeed. In many cases, the cutting of imperial ties has diminished the flow of capital and of entrepreneurship without which growth is impossible. The break-up of the world financial system, which has never recovered from the War of 1914-1918, has removed the possibility of a new flow of private capital on an adequate scale, save for the most urgent, high-risk needs, such as oil and ores. Even that weak possibility has been further diminished by acts of expropriation: acts presumably legal, in one sense or another, but hardly encouraging to investors. And governmental loans, or loans through international lending institutions, are not yet available on a scale sufficient to promote growth. Nor can internal financing be organized in most underdeveloped countries, except on totalitarian terms of forced saving, or by destructive techniques of inflation. In country after country freed from colonial status, every indispensable ingredient of growth is missing. Many such countries lack the social structure, the level of education, the governmental services, the system of law, and the resources in capital, skill, energy, and experience which are needed to make a program of growth and development a possibility. Unless international action is taken soon, and imaginatively, these countries face the fate of Costaguana, or worse.

The problems which these facts present for our country, and for all free countries, are not exclusively, nor perhaps even primarily, economic. The yearnings of people to conquer poverty, and to improve their material lives, are real and strong. But the peoples who are tasting new freedoms are also flexing their muscles politically. In many areas, their politics have no assured roots in tradition, and no close ties to the sanctions of law. Dictatorship, aggression, exploitation, and regression are common phenomena among the newly formed countries of the world, in many of which strong forces are at work, seeking a return to ancient local modes of despotism and tyranny, or to an imitation of some of their modern forms. Local freedom for autocracy, corruption, and stagnation is not "freedom" within the broad intendment of the United Nations Charter. The United Nations owes the newly Westernized countries of the world far more than a flag, the trappings of sovereignty, and a seat in the General Assembly. There is a great risk—perhaps the greatest risk facing our foreign policy—that unless effective action is taken soon by the United Nations, these strong local forces in many "underdeveloped" countries will become firmly allied with international Communism, in the name of nationalist and anti-"colonial" sentiment.

As we view the tide of nationalism which has engulfed large parts of the world, and the threat of Communist imperialism, backed by the ominous and even commanding rate of military and economic growth in the Soviet Union and in China, it becomes clear that even the narrowest and most limited concept of our security as a nation gives us an overriding national interest in achieving a new law of nations, capable of preserving freedom, and of organizing the conditions of human progress, for vast areas of the earth which are or may become the potential prey of Communism. Only such a conception of our foreign policy could assure our security as a nation, and permit us to seek the other legitimate goals of our foreign policy, without a crushing and even impossible degree of permanent mobilization.

It is obvious for international as for municipal law that freedom without order is anarchy. Yet neither freedom nor order is enough. They cannot bring peace or progress unless they are set within a framework of law. For freedom is inconceivable without law, and law is inconceivable without order. The task of protecting our national security, and the task of peace, are thus both
no more and no less than the task of achieving law — a civilized and acceptable law, a law of order and a law of justice — in the relations among states and among peoples.

When President Wilson electrified the world with his great call for peace without victory, almost forty years ago, he stressed two ideas — the self-determination of peoples, and the creation of a League of Nations to keep the peace, and to strive for justice. The self-determination of peoples without a strong world organization, he saw, would be self-defeating. And so it turned out to be. The old order crumbled after World War I. But the League of Nations was impotent without American membership. The new states-system gratified ancient nationalist dreams, but did not satisfy even the most elementary requirements of order in the world, upon which an effective system of international law might have been built. The people and statesmen of the first post-war era failed utterly in their responsibilities. The Axis powers were allowed to destroy the balance of power. Britain blundered, and so did all the other leaders of the old Entente. The result was the Second World War — the Unnecessary War, as Churchill rightly calls it.

Now, once again, the statesmen of a post-war generation confront some old equations, under new conditions. The problem for our foreign policy, more urgent than ever, is still the same: to help create a new order of law out of the ruins of the old.

Before talking about some of the crucial tasks of international law in this sense, let me clarify a preliminary point that often arises: the relationship between law and force, between relying on our own military strength and on our alliances, between power politics and the presumably pure ideal of law.4 I assume, or rather I hope, that the United Nations and its developing constitutional practices will continue to be the focal point around which the international law of the future will crystallize. But the United Nations are not in any sense a substitute for national diplomacy or national military strength. Confronting difficult international problems, we can never fall back on the empty formula of passing responsibility to the United Nations. The United Nations does not exist, and is not designed to exist, save as an expression of the collective will of its members. As a method of protecting national security, the United Nations is not an al-

4. This paragraph, and several which follow, borrow from a book review, 53 Yale L. J. 796, 796-800 (1944).
ternative to our system of alliances, and our own military strength, but a principal means through which those alliances, and that strength, can express themselves diplomatically, and otherwise. Like any other system of law, the United Nations is not a substitute for force, but the sum total of the rules through which the sanction of force can and should be used. To the extent that it is accepted, it can, again like other legal systems, permit the law to be enforced with minimal or token forces, and relieve most citizens of the necessity of being armed to the teeth, like medieval barons. But the United Nations does not displace the conception of an international balance of power. Rather it embodies and declares the balance of power which exists at any moment.

Much of our thought about world problems is plagued by this issue, which is perhaps the worst single aspect of our Wilsonian legacy. The problem is variously defined as a supposed choice between “power politics” and “idealism,” between “domination of the Big Powers,” and “equality for small nations,” between American virtue and European vice. The words and ideas get almost hopelessly enmeshed. They provide one of the last arguments of the isolationists, in the form of the doctrine that we should be too proud, as we are too pure, to become entangled in the dirty power politics of the world — a curious and extraordinary idea to prevail among Americans, whose domestic politics have always been human, not to say earthy, in their practical compromises and adjustments. It is an extraordinary idea in another sense as well. The course of world politics has always involved the United States in general world wars, and presumably always will. It is hard to understand how we can be expected to look after our vital national interest in controlling this phenomenon by ignoring the political events which govern it.

However, the issue is planted deep in the public mind. Many speakers and writers automatically fall back on hard words for “power politics,” as witness the current debate over the Middle East. The phrase is hard to define, because the supposed choice between power and other kinds of politics doesn't exist. What alternative basis is there for political action, short of natural or canonical law? How can the rules, customs, and legal norms which govern the use of power conceal the fact that power is the final constituent of social organization, and that the main preoccupation of law, municipal and international, is to control the
exercise of authority in ways which fulfill accepted social and ethical purposes? The uses of power are governed in each case by the whole content of the culture in which men assert their authority. However much the exercise of power is circumscribed by history, courts, elections, charters, constitutions, or other mechanisms of control, there is no evading the fact that it is power we are talking about, and power which has the last word. Nothing can alter the fact that there are large and small states, states with and without military power. Power is exercised differently by different countries, according to their cultural habits, just as the ultimate police power within a state is differently used in Switzerland, say, and Roumania, in Haiti and in Vermont. Canada, the small neighbor of a great power, faces different military risks than Belgium. The imaginary alternative between power and another basis for political action is false, and the prevalence of the idea conceals and confuses real issues.

Yet the idea has a persistent appeal. A recent and characteristic statement of Prime Minister Nehru, and some of the declarations made before the Assembly of the United Nations on events in Hungary, betray the weakness of this view. The Prime Minister said, "As we stand today, . . . all these pacts and alliances are completely out of place. . . . They are unnecessary. We have developed a very strong protection (world public opinion) against a country which acts wrongly. Why not adopt this protection instead of these armies and armaments and so on?"5 And before the United Nations, Mr. Krishna Menon, the Indian delegate, remarked, "We do not believe that the basis of any modern government, of any civilized government, can rest on the power of arms from outside. We ourselves have a long experience of the capacity of people to resist that intervention, and when the peoples of a country, irrespective of the amount of physical force that is applied against them, are determined to say 'no,' those people are bound to succeed."6 While Mr. Menon's comments have great significance, where national movements of liberation are pitted against British, French, or American armed forces, they have little meaning where military power is exercised as the Russians, Chinese, and Nazis have been willing to use it.

The existence of the United Nations, and the hopes we share for its success, are not yet in any sense a substitute for our sovereign responsibilities as a nation to restore and fortify the Western Alliance, which has been so badly weakened during the last few years, and to regain the lead in the armaments race. The United Nations has not yet superseded the old system of national states and national sovereignty, although its development has begun to qualify some of the rights of sovereignty which were freely acknowledged in earlier centuries. If the members of the U.N. are loyal to the precedent of their success in Korea, it should be possible to enforce the ban of Charter against aggressive war with the backing of smaller and smaller national armaments. But we have hardly reached the point where this rule is self-enforcing.

If force is an indispensable element of law, it is not the whole of it. The consensus of the United Nations membership expresses more than the dominant power of its ruling coalitions. It expresses also the conviction, or the aspiration, that force can be used only in conformity with the principles of the Charter. The decisions of the United Nations respond to a sense of existing force, and also to the power of certain ideas, whose appeal derives jointly from the desire of men for decent rules of law, and an acute sense of the universal risk of modern war if the existing balance of power is allowed to swing too far in any direction.

III

Viewing the United Nations in this context, what can be said of its main functions, as part of the process of achieving an acceptable system of international law?

In the time remaining to me, I should like to concentrate on two essential tasks of international law — first, the negative but indispensable task of order — of containing Communist aggression, and dealing with other forms of aggression, so that the non-Communist world, at a minimum, will be protected in its freedom. I shall have a few words to add about the even more difficult problem of Hungary — the problem of projecting the great principle of the Korean precedent to a state which was allowed to fall into Communist hands after 1945. The second, and equally important, function of international law is the more positive and constructive one, of fulfilling for all the peoples of the world,
and especially for those who have not yet themselves mastered twentieth century techniques and procedures, the basic promises of the United Nations Charter.

A. During this last decade of trial and error, much has been gained in the slow, faltering development of the United Nations as an instrument for protecting at least the free world against aggression. The United Nations was launched as a new League of Nations, seeking to profit both in its structure and in its strategy from the failures of the old League. Unlike the League, it was set up apart from the peace treaties which were expected to liquidate the Second World War. Several of these peace treaties have not yet been achieved. The United Nations has many functions, and many useful fields of work. But its primary task, upon which all the others depend, is that it succeed, in President Taft's phrase, as a League to Keep the Peace.

In this realm, much has been accomplished, and much has not been accomplished. Like any other statement of law, expressing general aspirations, the United Nations Charter is a living organism which can survive even though its precepts do not always instantly prevail. No body of law ever develops steadily or altogether logically. It must grow from case to case—from the resolution of conflicts, one after another, in the light of accepted principles. Both the Magna Carta and the Constitution of the United States have sometimes been honored in the breach for periods when their full enforcement was beyond the will or the capacity of the enforcing authorities. The members of the United Nations did not prevent the East European satellites, or China, or part of Indo-China, from being subverted to Communism, by procedures which had the form, save for recent events in Hungary, of civil war or internal coup d'état. In the case of Poland and other East European countries, these events took place in defiance of the agreements of Yalta and Potsdam. On the other hand, United Nations' action did succeed in protecting Iran against dismemberment, and South Korea against invasion from without. And Western diplomacy, backed by some military measures, saved Greece and Turkey from being destroyed, and deterred the Soviet Union from crushing the Tito revolt in Jugoslavia. Now, against the background of the United Nations' achievement in Korea, the nations of the world confront a dual crisis in the Middle East and in Middle Europe—a crisis which in many ways tests and projects the Korean precedent, and dem-
onstrates the powerful hold it has on the imagination of all peoples, and the strength with which it challenges the international law of the nineteenth century.

The crisis in the Middle East stems directly from the failure of the great Western powers either to understand the causes of war in the Middle East, or to act in time to eliminate them. The United Nations acts, as I said a few moments ago, not of its own will, but only when its members press effectively for action. For several years, Egypt has been openly committing what would have been regarded in the nineteenth century as acts of war or close to acts of war—acts of war against Israel, in denying Israel the use of the Suez Canal, and through armed raids over the Armistice demarcation line; acts of war against France, in the training and support of armed rebels in French North Africa; and acts of great provocation and hostility against Great Britain, both through the seizure of the Suez Canal, and in other ways. Egypt indulged in large military expenditures, and openly announced ambitious plans for military aggression. Egypt ignored a succession of Security Council resolutions on these and related issues, and the Western powers failed to raise them before the Assembly, when Security Council action proved unavailing. Conventional diplomacy, through the United Nations and otherwise, not only failed to stop these acts of war, but made the situation worse—by helping to force the British out of the Suez Canal zone; by driving the Egyptian government, and the Syrian government, into the hands of the Soviets; by failing to take due note of the Egyptian government's announced purpose of destroying Israel, and uniting all of North Africa and the Middle East into a gigantic Arab Empire; and finally by so conducting the Suez Canal negotiations as to destroy the relationship of political trust, and indeed even the conventional diplomatic contacts, between our government and those of its chief allies. The result was a reversion to self-help, on the nineteenth century model, on the part of Israel, France, and Great Britain. This was followed, in world opinion, by a violent reaction—an assertion of preference for action by and through the United Nations, backed in this case by sinister threats from the Soviet Union.

Thus we confront a dramatic clash between nineteenth century international law and the post-Korean international law of our times—a crisis with many threads, a crisis which will help determine and fix the international law under which we live, a
crisis in which the powerful ideas behind the Korean precedent are being tested, it is true, but also one in which that momentous event in law will in turn help to shape the outcome of events. Here, as in other settings, the law can hardly enforce itself. To prevail, it requires the loyalty to law, the understanding, and above all the will to act, of the nations which believe in law, and especially of the United States. We have suffered a series of diplomatic defeats in the Middle East — very serious defeats. But as a nation with great inherent strength, and as the nation with the most to gain from the successful development of an accepted system of international law, we should come forward with all our influence to press for a cordial restoration of the Western alliance, and for a comprehensive peace settlement in the Middle East — not merely a restoration of the unhealthy and illegal conditions which prevailed last month, but a lasting resolution of the whole complex of conflict which produced the recent explosion.

When we turn to the Hungarian problem, we see the Korean precedent in another perspective. At first glance, the facts are simple: the Hungarian government, duly recognized, and a member of the United Nations, asked that body for help, alleging that acts of aggression were violating its sovereign rights. Hungary had been attacked by armed forces of the Soviet Union, stationed on Hungarian territory for quite different purposes, under a treaty which the government of Hungary said it wanted to denounce. After a week of brutal slaughter, a puppet regime was installed in Hungary, despite the continuance of a general strike.

There are other vantage points from which this cycle of events should be examined. Until now, all tests of the capacity of the family of nations to repress or conciliate situations of war have taken place beyond the mysterious boundaries marked by the presence of Soviet troops in 1945. These are not boundaries of the Soviet Union, nor even of a Soviet sphere of influence, in any sense we have accepted, juridically or otherwise. We have always contended that the agreements of Yalta and Potsdam called for free elections in Eastern Europe — elections which have not yet occurred. And the United Nations Charter is not in form at least linked to the boundaries marked by the presence of various armies in 1945, but speaks in the universal language of equal sovereignty, and equal protection, for all states, large and small. However, Hungary is close to the Soviet Union. Despite
the survival of democratic Finland, Norway, and Sweden, which are also close to the Soviet Union, the emergence of a democratic regime in Hungary would represent an alarming defeat for Soviet policy, which would have far-reaching consequences in all the satellites, and perhaps in Russia itself. Such a prospect might well provoke dangerous reactions of great fear in the Soviet government, which could only be relieved by imaginative and effective diplomacy. In Hungary, for once, unlike the cases of China, Greece, Korea, and Iran, we faced an episode which the Soviets did not start, and did not want started. Although the Soviets have shown no scruples about trying to cross the line of 1945 in raids against us, we have so far been totally unwilling in any way to venture across that line ourselves, save in the Yugoslavian case.

Moreover, the Hungarian crisis came at a moment when the Western Alliance had been allowed to disintegrate, and probably came about in its present form only because the Alliance had been allowed to disintegrate. It came, that is to say, at a moment when a wisely conceived and concerted diplomatic response from the West was unavailable, even if the will to respond existed. When fighting started in Hungary, the great issue was whether the Russians would dare to use their own troops—or rather would dare to move new, uncontaminated troops into Hungary, to repress the Hungarian protest. We can safely guess that counsels in the Soviet Union were divided on the subject, for the use of Soviet troops in Hungary signalled the end of the de-Stalinization policy, the end of the brief renaissance of law in the Soviet world, the revival of the power of the secret police—and a great blow to the Communist parties and to Soviet diplomacy in Europe, Asia, and Africa. At that moment, our Secretary of State announced that whatever happened in Eastern Europe, we would not use force to help the satellites regain their freedom—surely one of the most ill-advised statements in the history of diplomacy. Even if it were true, it was hardly the thing to say, while the Soviet government was trying to decide whether to risk using its own troops in Hungary. In due course, the Soviets moved new divisions into Hungary, and put them to bloody work. Many alternative diplomatic approaches to the Hungarian crisis on our part can readily be imagined, designed to dissuade the Soviets from this fatal step, and to combine deterrence with legitimate

reassurance. So far as is publicly known, the three great Western powers took no such steps.

Thus we must remark a new and ominous development in American foreign policy. The fear of atomic war seems to paralyze our diplomacy, but not that of our rivals. This was not the case when our foreign policy rose to the challenge of the Berlin airlift, to aggression in Korea and Iran, and to threatened aggression in Jugoslavia and Turkey. The Great-Power stalemate rests on the reality that, given present conditions of scientific knowledge, the Soviets could not hope decisively to win a full scale war, and could well have their regime destroyed at home if a full scale war broke out. This calculation cannot be considered to keep us from taking legitimate action to protect our interests. We have repeatedly taken such action during the post-war decade without provoking atomic war. Our willingness to take such risks is the only force that could in the long run prevent the present precarious balance of world power from deteriorating further, and thus making full scale war almost inevitable.

You will recall Oppenheimer's metaphor that atomic weapons convert the relations of the United States and of the Soviet Union into the relations of two scorpions in a bottle, each afraid to sting for fear of being stung in turn. Now the Soviet has moved in Hungary, and threatened to move in the Middle East, confident that our fear of atomic war would make us impotent. This is not a posture from which we can for long expect to defend our vital security interests. Mutual restraint between us and the Soviet Union, as in the conduct of the Berlin airlift and the Korean War, must rest on far deeper factors of comparative strength, and of mutual interests in avoiding large-scale war, than those revealed by the Hungarian case. A continuance of our attitude of resignation, such as that so far displayed in regard to Hungary, can only invite further experiments, and ultimate disaster. Until we have rebuilt our alliances, and developed a common Western policy, both with regard to the Middle East and Middle Europe, there is little we can do. Our diplomacy failed to deter Soviet aggression in Hungary, or Soviet intervention in the Middle East. Indeed, it did not even try to do so. Neither diplomacy nor military action is available at the moment to undo the consequences of these failures. We must start thinking about the future from these bleak and even tragic facts.
Yet all is not lost, even in Hungary. Vigorous and concerted diplomatic action, if it can be organized, could well prevail, given the force of the movement for de-Stalinization within the Communist bloc, and all the human and political factors which that immense explosion represents. These were great events, and we should be able to call upon them, as facts which may in the end permit co-existence, or even a Soviet retreat. In any event we must do everything we can to seek this end, for the alternatives are dark indeed. But such a course will not come about without Western unity, Western determination, and Western loyalty to the principle of Korea, which, as President Truman properly said, alone could prevent a Third World War. The Soviet government should be made privately to understand that it would be extremely difficult for the Western Powers, and the United Nations, to refrain from such action as was taken in Korea if the Hungarian pattern were to be repeated in Poland, East Germany, or Czechoslovakia.

B. I should like to speak briefly about the other side of the medal — the problems of the United Nations which arise in the sphere of economic and social development.

Behind the facade of progress and integration in the world, there is an ominous fact, which must become a central issue for cooperative international action: The poor countries, by and large, are getting poorer, while the rich are getting richer. The standard of living of the average human being in the world is probably lower now than it was twenty-five years ago, and perhaps lower than it was in 1900. While some few nations are rapidly raising their standards of living, the poorer nations, with large and rising populations, are standing still, or growing much more slowly. While we think of the world as ever more closely integrated, by air transport and improved communication, the mechanisms of international economic integration are weaker today than they were in 1914. The free movement of goods, capital, and of people — the forces which permitted the United States and Canada to grow rapidly, before the first World War, and since — are severely restricted. The break-up of empires has further limited the flow of capital for development, and helped to destroy the political foundations which could permit such movements to take place. Yet the world must be put together again, or it will blow up. A widening gap between the standards of living of the rich and the poor is wrong among
the peoples of the world, as it would be wrong among our own people. It represents a failure of policy, a challenge to our sense of justice and decency. If allowed to continue, such a gap will become an explosive force in world politics, of potentially overwhelming importance.8

But how can the society of nations help to organize effective programs for economic development if many countries are without an entrepreneurial, managerial or governmental middle class, without modern educational systems, without capital or habits of saving, without statistics or essential economic facilities, such as transport, communication, and public health? Many countries which need help in development lack the social or governmental machinery which is indispensable to modern economic life. How can development programs succeed without the support of a large-scale international flow of public or private capital, and without a regime of law, and a structure of expectations, which could permit a revival of the international private capital market? How can development in this sense succeed if some of the great creditor countries, notably the United States, fail to carry out the commercial policies required to make certain promising lines of development worthwhile, and self-sustaining? These are all real and rather unpleasant barriers to progress, which the world-wide epidemic of nationalism, chauvinism, and xenophobia tends to make worse.

I wish to suggest this thought: that if we are to be serious—and we should be very serious, for strong reasons of self-interest—about helping to organize the conditions of progress in the non-industrialized areas of the free world, we shall need not only an adequate program of capital grants, but a complicated program of human and technical assistance, which would help the so-called “underdeveloped” countries get into a position where they could actually use capital imports effectively, and where they could attract capital, in competition with other potential users of funds. We shall need foreign advisers, technicians, and experts—sometimes, in extreme cases, where local government has really broken down, experts with the power to act. International law, like other systems of law, must make provision for bankruptcy. To be politically acceptable, and to avoid latent fears of colonialism, such programs should be conducted where possible under United Nations auspices. For there will be no

great movement of economic growth and development in many of the non-industrialized parts of the free world unless the Western countries, and the United Nations, take over and succeed in performing some of the vital developmental functions which the old imperial regimes carried out during the nineteenth century.

IV

I have tried to sketch out the political setting in which the international law of our times is being hammered out, transforming, or rather qualifying, the old international law. I have pointed to two great areas — the control of the use of force in international relations, and the problem of organizing economic development in underdeveloped countries — which will demand a great deal of us in the years ahead.

What bearing do these tasks have on the work of the law schools? That, after all, is part of what I was asked to talk about today.

In the first place, I believe that just as every lawyer should study constitutional law, even though he is never going to have a constitutional case, so he should study public international law, for the sake of his formation as a lawyer. To master his own role and function, every lawyer should understand the place of what he does in the grand design of the whole legal system. To this end, he should be familiar with the machinery, the key ideas, and the procedures through which our rights, obligations, and status as a nation are fixed.

More than that, given the present international position of the United States, there are now international elements in many business transactions, and many problems — taxation, labor, estates, antitrust, banking, and commerce of all kinds — often have international ramifications, so that private international law and comparative law are much more practical subjects than they used to be, in the so-called bread and butter training of lawyers.

But these are secondary aspects of the problem, in my judgment. The great role which the law schools should play in the development of international law in the immediate future is intellectual and scholarly, and is part of their responsibility as centers of study. The alarming state of international law con-
fronts the United States with a challenge — a grave challenge involving our very survival as a nation. The successful realization of the goals of our foreign policy through international law will require the highest quality of creative thought our culture can muster up. Without such bold and inventive thinking, our foreign policy may well fail, despite the moral quality, the loyalty, and the political instincts and judgment of our people and their government. Our universities, and our law schools, should be able to contribute much to the development of a new international law which could protect the nation, and provide for all peoples the elemental protection of an opportunity to pursue their own salvation. The threatened position of our nation in the world makes great demands upon those whose job it is to think about the future of international law, and to train lawyers who will be ready to take their places in the practice or in the government — in the trenches where the new international law will be made. The study of these problems requires an understanding of history and of politics, and a sound judgment as to the limits and risks of the possible in international relations. The challenge of international law today offers our lawyers, our law schools and our people, a great moment. The character of the task recalls Holmes' remark, that in this realm, the price of error is death.