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SPECIAL ATTENTION TO THE READER

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INTRODUCTION TO INTERNATIONAL LAW

A lecture delivered
at the Naval War College
on 20 August 1958 by

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International law suffers both from its friends and its enemies. Its enemies include the geopoliticians, who hear nothing but the surge and crash of great international forces; the Kennanites, who rebel against a "legalistic" approach to international affairs; and the specialists in international relations, who, not knowing very much about the subject, lump international law, as conceived by Hugo Grotius, with the League of Nations, the United Nations, and the control of the white slave trade. The similarity between some of the friends of international law and most of its enemies is that they overstate the pretended case for international law. It is then all too easy to demonstrate that, despite the claims made for international law, the world is still in a deplorable state. The truth lies somewhere between the contentions of those who find no place for international law in the savage world of interstate relations and those who believe that the millenium can be achieved with a heavy infusion of international law and good will. What is the correct view must be left to each of you to determine at the end of this brief introductory course.

It is quite clear that man has not been able to legislate war and aggression into defeat or even into retreat, although the institutions which the international community has developed exercise some restraints on the use of force. Customary law cannot cope adequately with the need for peaceful change. If a nation needs more territory or larger markets, the law cannot provide them. It cannot make an unhappy people happy, it cannot turn arid desert into a flowering paradise, it cannot bring international tranquility and understanding where discord reigned before. Indeed,

it might be safe to say that international law has been most successful in dealing with minor matters and with the slighter causes of international friction. Probably it shows a greater facility in preserving the status quo than in doing justice.

Within these severe limitations, international law does play an important part in minimizing possible sources of international friction and in making it possible for nations and their people to live together peacefully in an increasingly crowded world. This is not to say that it is the only force making for these conditions. Merchants do not perform their contracts only because the law grants a remedy against them if they do not. The Uniform Code of Military Justice and the law of the State of Rhode Island are not the only restraints which keep you from resorting to physical violence against those you dislike or with whom you disagree. So also in the international sphere, enlightened self-interest, certain considerations of morality, the desire for stability, and fear of retaliation work with the precepts of international law to maintain international order. Actually, it is impossible to separate international law from these other forces, for the law which governs the relationships of States has its origins in self-interest, morality, the quest for stability, and fear of the consequences of conduct departing from international standards.

International law — or the law of nations, as it is sometimes called — performs two major services. The first of these is to insure stability. The second is the creation of arrangements for future avoidance of conflict and dispute.

I must speak first of the law's function in the preservation of stable international relationships, for this is the principal concern of the customary law which has grown up over the course of the centuries. One of the greatest legal thinkers of our age, Hans Kelsen, who served for a year as Professor of International Law here at the War College, has written a book on the "General Theory of Law and State." He speaks in page after page of a

"basic norm" upon which all international law and all national legal systems depend. One waits anxiously for this key to the legal universe as one reads through several hundred pages of profound and not altogether easy prose. Finally, on page 369, one finds the basic principle upon which all else depends — "The States ought to behave as they have customarily behaved." At first reading this statement sounds didactic, unhelpful, perhaps even foolish. It is certainly anticlimatic. But a little thought will, I think, persuade you that this is a useful key to international law. But why, in a dynamic universe, should we behave as we have in the past? We do so because if we allow our conduct to fall into certain patterns, we avoid some of the clashes between States which would arise if each point of contact presented a fresh issue to be fought out. If persons having to pass through a farmer's field keep to the path and if the farmer refrains from planting his crops in that path, there will be scant possibility of any dispute between pedestrians and the farmer. If people constantly take different paths across the field and the farmer blocks off various paths, bad feelings and even violence can be anticipated. Other reasons as well dictate that we should act within the legal limits which have grown up through force of custom in the past. If we react differently in different instances of the same factual situation, our conduct becomes inconsistent and irrational. Plain laziness may be another reason why we should continue to act as we have acted before. If a conflict of interests in the past was solved only with much pain and difficulty, there is no reason why the battle should be refought each time the identical conflict of interest arises.

This psychological explanation of why we find it expedient to conform to the pattern or rights and duties previously established leaves unanswered the question how these rights and duties arose in the first place. Some of them are based on principles of justice not unlike those underlying the laws of various countries. The responsibility a State has for the injury which one of its employees inflicts on an alien, for example by taking his property

without compensation, is a reflection of what most systems of law have considered to be just dealing over the course of the years. In other instances, the role of justice is somewhat less clear. There is no great principle of right dealing which calls for a territorial sea of three miles instead of two or four. The limit was historically more or less arbitrarily established and was not even, as many people think it was, equivalent to the range of cannon in the eighteenth century. An international boundary is not, except in terms of politics, "just" or "unjust"; it simply *is*. The respect which the law demands for the distinction between what is mine and what is thine can, however, be said to reflect just dealing. A third area of international law is the result of the adoption of policies for the regulation of international intercourse. Of this nature are the immunities enjoyed by diplomats and consuls. Justice might demand that if an ambassador were introducing narcotics into the State to which he was accredited in violation of its law, he should be prosecuted in the courts of that State. But it is considered that the conduct of international relations will be facilitated by giving the ambassador complete freedom from suit. Any other rule might make it difficult for him to carry out his representative functions.

I spoke several minutes ago of the second role of international law as being the framing of institutions and arrangements which will permit nations, in their relations with other States, with international organizations, and with aliens, to avoid conflict and to create the conditions under which political and social and economic security can be achieved. It might be more correct to speak of this as a role of the international lawyer, for this is essentially a creative function. Those charged with the making of a new law must also know what principles and rules and organizational forms and controls have worked in the past, for, as Santayana has reminded us, those who forget the past are condemned to relive it. This is no more than to say that the lawyer or layman who is drafting a treaty should have a grounding in customary

international law. Amongst the problems with which we will deal in seminars during the next ten days, you will recognize some problems which ask you to declare what the proper result would be under the existing law and others in which you are asked to think creatively about what should be the future of the law.

In what I have to say about the origins and purposes of international law, I do not mean to underestimate the importance of international politics — of power politics. Statesmen and lawyers from the Latin American States not infrequently complain that the principles of responsibility for injuries to the persons and property of aliens which can be derived from the numerous cases decided by arbitral tribunals reflect the fact that marines and gunboats made it possible for the United States to force arbitration of these cases on terms favorable to the United States. The most recent example we have had of the way in which politics molds international law was in the Geneva Conference on the Law of the Sea. As to each proposal made at the Conference, the question of each State was: How will this affect my political and economic interests? Saudi Arabia and Israel were worried about how the provisions on bays and on passage through straits would affect Aqaba and the Straits of Tiran. The CEP Powers — Chile, Ecuador, and Peru — were concerned with the maintenance of a 200-mile territorial sea. Iceland wondered how the fishing grounds of its coast would be affected. Panama wished to protect its position as a refuge for shipping seeking a minimum of regulation. Failure to agree on the breadth of the territorial sea, admittedly a most important matter, should not obscure the fact that, in spite of these political differences, some sound conventions were hammered out. As you read these, I think you will be persuaded that they represent a sound and just balancing of interests and that they should and will be adopted by a substantial number of States.

A healthy political realism is useful. It should not lead you to cynicism. States do conform to international law even though abiding by the law in a particular case may cost them money or

be adverse to their interests. The record of compliance with the judgments of international tribunals is excellent. States do pay international claims arising out of violations of international law committed by their officials, members of their armed forces, and their employees. The United States, for example, has paid for the foreign vessels which it requisitioned, consistently with international law, during the Second World War. Egypt has paid full compensation for the nationalization of the Suez Canal, as international law probably required it to do. Each time that a State acts in accordance with international law, it makes it easier for that State to demand conformity with international law by other States.

The durability of law is attested by the fact that it survives even in time of war, when the belligerents have cast off those restraints which normally keep them at peace. There is virtually no law governing the conduct of hostilities themselves, but as we move further from the scene of battle and conditions become somewhat more stabilized the law increasingly becomes able to perform its humanitarian mission of protecting the victims of war from unnecessary devastation and suffering. Even the total war of today does not require the extermination of the part of the civilian population that does not take part in hostilities, the wounded and sick, and prisoners of war, the protection of whom is not only compatible with the efficient conduct of hostilities but is also conducive to victory in the political struggle of which the use of force is only one aspect. A large part of the law of the sea is devoted to striking a balance between the demand of the belligerents to carry on their economic blockade and the need of the neutrals to maintain their trade. The important changes wrought in the law relating to contraband and blockade as the result of two World Wars will be considered in some detail in connection with the seminar problems on the economic blockade, which are designed to draw attention to the new developments in this field. Over and above these two functions of regulating the conduct of the belligerents

toward the victims of war and neutral nations and their trade, the law of war, in dealing with such subjects as armistices and surrenders and negotiations between belligerents, provides procedures for bringing hostilities to a close short of total annihilation of one or both of the contending parties. I assume that those of you who may have some mental reservations about a battle fought between two scorpions in a bottle may not be unsympathetic to these purposes of the law of war. The law of war has often been violated, but every instance in which it has been observed has brought about a mitigation of violence, often measurable in terms of human lives saved, and this without prejudice to the efficient conduct of war.

To many, lawyers and nonlawyers alike, it seems incredible that a body of rules purporting to govern the conduct of nations but providing no sanctions or punishment for their violation should be called law at all. It is not altogether fair to speak of international law as a sanctionless body of law, for the great numbers of cases in which damages have been awarded and paid and in which individuals have been punished for criminal violations of the law of nations bear witness to the contrary. The single category of cases in which civil damages have been most commonly granted are those arising out of wrongs done by States to aliens. Criminal penalties, leaving aside such exceptional offenses as piracy, have been reserved for violations of the law of war, which resemble the normal crimes punishable under national legal systems to such a degree that some countries have even tried war criminals under their ordinary penal codes. Yet a third type of satisfaction exists in international law — the apology or rendering of honors or other admission of violation of the law. One should not scoff at these symbolic acts. They constitute outward and visible signs of what should be the correct relationships between the parties and the proper principle of law to be applied in the future.

But, you justifiably object, what force is there to compel a State to pay the damages which have been assessed against it,

or to render up its nationals for trial by a foreign court, or to admit the impropriety or illegality of its conduct in a particular case? Admittedly, there is no international sheriff armed with power to see that judgments are enforced or that the parties appear before an international tribunal in the first place. But it is easy to overemphasize the importance of the sanction. A superior court has no forceful means at its disposal to compel obedience to its mandate by a subordinate court. If a court directs a command to the executive which goes unheeded, what means has it of compelling that obedience? You may remember the words attributed to President Jackson: "Well, John Marshall has made his decision, now let him enforce it!" A comparative statistical analysis of the number of divisions available to the Pope and to the United States Supreme Court would not be difficult to make. And if a hillbilly called to high political office voices contempt for the law of the land and allows the mob to rule within his jurisdiction, can the sanction of employing loyal troops solve this problem of subversion? Sanctions, as we commonly think of them, seem to belong to the normal day-to-day enforcement of the law. The great edifice of our constitutional system is held together not by the fear of duress if the law be violated, but by a common devotion and loyalty to the law by those charged with its making and its application.

Moreover, as I mentioned some minutes ago, it is not the law alone, in the form of a fear of criminal penalty or of civil damages, which secures compliance with law. Morality, taboos, social pressure, the views of the community, and religion are amongst the forces allied with the threat of penalty or damages in securing compliance with law.

It would thus appear that the sanction behind the sanction in national law is the sense of the community that it should be governed by the rule of law. It is that basic sanction which is very largely lacking in the international sphere. It is not altogether absent, however, for if it were the world would be in a state of anarchy. The extent of the conviction in favor of subjection to law

varies from country to country, from international relationship to international relationship, from legal principle to legal principle, and from case to case. With many countries of the world, the United States has a vast network of agreements, which are carried out on a routine basis, although differences of views as to interpretation may arise from time to time. The United States can carry on discussions with Great Britain or France or Switzerland or Japan in terms of international law, and both parties can make themselves understood. We — and I speak here of a responsibility all Americans bear through our senators — are, on the other hand, unwilling to concede to the International Court of Justice compulsory jurisdiction over disputes with those States with which we have the closest affinities of law, tradition, interest, and security. In their public pronouncements, our principal ministers are fiercely dedicated to the rule of law and in steadfast opposition to international sin. In its actual conduct in particular cases, this country frequently shows itself as zealous to preserve its sovereignty — which is a polite way of saying being a law unto itself — as other major powers.

In the present state of international law, it is not surprising that the law should not be uniformly interpreted, even in theoretical terms, throughout the world. Legal rules sometimes exist on a regional basis. A clear example is the principle regarding political asylum in embassies which prevails in Latin America but only to a very limited extent elsewhere. More obvious to the eye is the peculiar nature of Soviet international law. This cannot be explained solely in terms of Marxist theory. The Soviet view of international law is without doubt a servant of the policy of the U. S. S. R., and, as such, it serves a most important defensive function. If you were to compare the international law of modern Russia with that which prevailed in the rest of the world in the late eighteenth and early nineteenth centuries, I think you would be struck by the similarity. Soviet international law is strongly isolationist and places great emphasis on State sovereignty; that

is, on freedom from interference by other States. This shield against legal controls permits the U. S. S. R. to carry out its policies through internal subversion and through political pressures, while international law is used to ward off legal attacks on the U. S. S. R. and the nation within which the subversion is being practiced. There are other aspects of Russia's attitude toward international law which stem from the history of Russia and would remain unchanged if the U. S. S. R. were to join the Free World tomorrow. For example, one of the cardinal principles of Soviet foreign policy has always been to maintain the Black Sea as a private swimming club, with outsiders barred at the Turkish Straits. If the Russians are difficult about this point, it is not the corrupting influence of Communism which has made them so.

This is not the time nor am I the person to speculate about the way in which the world may be made subject to the rule of war. Some suggest that the creation of a true world law binding on all States and enforced against them must await the creation of a world government. An important blueprint for the centralization of some governmental functions on the international plane has recently been made in a study by Mr. Grenville Clark and Professor Louis Sohn. There are others who maintain that law has in the past been necessary before the State or a government could be created. According to this view, we must promote the observance of law between States before we can hope to see any form of international government. Perhaps the correct view is that government and law, inextricably related as they are, must march together.

Having spoken of the origin and force of international law, I must now turn to some description of international law as it exists today, with particular emphasis upon the sources of international law. There is some criticism, I might add, of the term "international law" itself, for it is complained that the body of law with which we must concern ourselves in these days is a larger one "which regulates actions or events which transcend national frontiers." Professor Jessup, whose description this is, and a

number of other authorities prefer to employ the term "transnational law." Historically, international law has been said to be that body of law which governs the relationships of States. Nevertheless, the impact of the law of nations has always been felt by individuals. If Nation A owes Nation B a duty to protect the latter's citizens when they are in the territory of State A, the duty may be owed to Nation B, but it is the national of State B who is protected or injured, as the case may be. If one State owes another nation a duty not to subject the soldiers of the latter to the jurisdiction of its courts for line-of-duty offenses in time of war, it is the individual soldier or sailor who ultimately benefits from that immunity. But the International Court of Justice and many international lawyers continue to pay lip service to the old view when they say that a State bringing a claim against another for an injury to its national does so because of an injury to its interests, not because of the injury to the alien. In our day, when international relationships have grown more complex and States have to deal with other nations, with foreign corporations, with alien individuals, with public international organizations, with private international organizations (like the International Committee of the Red Cross or the International Air Transport Association), it is probably more correct to say that international law governs the relationship of a State or public international organization with some person or body of persons or entity foreign to it. The law in this area is still in the process of formation. Only a few years ago, the International Court of Justice was able to conclude that the United Nations had international standing to present a claim arising out of the death of Count Bernadotte, the United Nations Mediator in Palestine. The Court noted that the organization was sufficiently endowed with the characteristics of international personality that it had been able to conclude agreements on the international plane in the past.

The sources of international law are conveniently described for us in Article 38 of the Statutes of the International Court of Justice, which deals with the law to be applied by that tribunal.

I will have a few words to say about each of these and some related observations about where to find the law. The first of these sources of law is "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states," by which is meant treaties to which the litigating states are parties. Treaties may be bilateral, binding on two States, or multilateral, if three or more States are parties. The term "international legislation" is sometimes used to describe "the process and the product of the conscious effort to make addition to, or changes in, the law of nations," the definition being that of Judge Hudson, who has edited a notable collection of such treaties. International legislation, as thus conceived, must be distinguished from the laws adopted by national legislatures. It is of the essence of national legislation, whether enacted by a direct vote, as in a town meeting, or through representatives of the people, that a properly enacted statute or resolution or ordinance should bind even those who were opposed to its adoption. The situation is quite different with respect to treaties, for, with rare exceptions, they bind only those who have consented to become parties to the agreement. In this respect, they are more like contracts than like statutes. I said " with exceptions" because some provisions of the United Nations Charter, to take one example, purport to govern the conduct of nonmembers of the organization. In other instances, conventions — a term often applied to multilateral treaties — have been drawn up which declare that they are declaratory of customary international law so that we may look to them as evidence of the customary law binding on nonparties to the conventions. A number of the defendants in the German war crimes trials maintained that since the Regulations annexed to Convention No. IV of The Hague of 1907 were not in force between the parties to the conflict, the criminality of their conduct could not be adjudged in terms of those Regulations. To this contention, the tribunals replied that the Hague Regulations and certain provisions of the Geneva Prisoners of War Convention of

1929 as well were declaratory of customary international law and it was therefore possible to look to them as the best statement of customary law.

You can gain some idea of the importance of the treaty-making process from the fact that since the establishment of the United Nations that organization has published well over 200 volumes, each exceeding 400 pages in length, of treaties registered with that organization. This great repository of treaties is the United Nations Treaty Series, the publication of which is required by Article 102 of the United Nations Charter. Under that Article, all treaties and international agreements entered into by members of the U. N. must be registered with the Secretariat and published, under the penalty of incapacity to invoke that treaty or agreement before any organ of the United Nations. It replaces the League of Nations Treaty Series, which ran to 205 volumes before the demise of that organization. For treaties concluded before the League came into existence, there are only unofficial international collections, the most notable of which is that bearing the name of de Martens.

For treaties to which the United States is a party, we have a convenient index in an annual publication called *Treaties in Force,* which lists by countries and subjects the international agreements currently in force. Our treaties and executive agreements are presently printed in two forms. The first of these to appear is an individual print of the agreement in the *Treaties and Other International Acts Series.* These individual prints, which are like "slip laws" of our public laws, are then cumulated in handsome blue volumes which a malicious bureaucrat decided to call *Treaties and Other International Agreements.* Before the *Treaties and Other International Acts Series* was initiated, in 1945, there were two separate series of publications: one the *Treaty Series,* and the other the *Executive Agreement Series.* And to confuse matters somewhat more, before 1950 the agreements which are now compiled in the *Treaties and Other International Agreements Series*

were published in the *United States Statutes at Large*. Since 1945, over 2,500 treaties and other international agreements have been published. And this figure does not take into account various classified agreements, such as those relating to the use of base facilities and the types of weapons which may be employed from our overseas bases. Even if we were to include these agreements, we would still not have a complete rendering of the international obligations and rights of the United States. The United States is bound by certain declarations made by this country, by the statements of its officials charged with the conduct of our foreign relations, by arrangements on the working level (such as the agreements reached in the Joint Committee under the Japanese Peace Treaty), and by such acts as affirmative votes in the North Atlantic Council.

In order to determine the meaning of a provision of a treaty, it is often necessary to have reference to the drafting history or *travaux préparatoires* of the agreement. In the case of a multilateral convention, this will include the debates in the conference which drafted the treaty, the proceedings of the various commissions of the conference, and the reports prepared by the commissions and the conference. The International Court of Justice has shown itself reluctant to rely on the drafting history of an agreement in order to ascertain its meaning, but it has turned to the *travaux préparatoires* in order to support the conclusion it has already reached.

The second source of international law mentioned in Article 38 of the Statute of the Court is "international custom, as evidence of a general practice accepted as law." The evidence of international custom is to be sought primarily in State practice. It has often been said in the past that the conduct of a State cannot be genuinely creative of law unless it be undertaken because the State believed this course of action was the proper or obligatory one. I think that it is safer to say that State practice, without regard to its motives or intent, creates customary law, provided it be acquiesced in by other nations and is not regarded as improper. It is in order to

prevent the hardening of a country's claims into law that other States make protests, as, for example, against the claim to a territorial sea of 200 miles or to the sudden closing of a bay on the asserted grounds that it is a historic bay constituting national waters of the claimant. The claim of Norway to a territorial sea of four miles drawn from straight base lines was recognized by the International Court of Justice because of the fact that Norway had long asserted its right to those waters and other States had acquiesced in this claim. It is this translation of practice into customary law to which I referred earlier when I spoke of the law's search for stability through adherence to a pattern of conduct established in the past.

We search for evidence of international custom in diplomatic history, in collections of diplomatic documents, and in the writings of scholars who have written of these matters. In the case of the United States, the great source record of our diplomatic history is the series *Foreign Relations of the United States*, in which is printed the important diplomatic correspondence of this country. Publication of this record follows about fifteen years after the events recorded. The practice of the United States and of many other countries is more conveniently found in Hackworth's *Digest of International Law*, the eight volumes of which are one of the most important sources for anyone interested in international law.

The third source mentioned is "the general principles of law recognized by civilized nations." This provision makes national legal systems a source of law for the creation of international law, especially in those cases where there are yet no applicable principles of the law of nations. Unjust enrichment and respect for acquired rights have been said to be two of the principles carried over from municipal law — as international lawyers confusingly call national law — into the law of nations.

The fourth subparagraph of Article 38 of the Charter lists two final sources. The first of these is "judicial decisions." The

most important of these are the judgments of the Permanent Court of International Justice, renamed the International Court of Justice at the time of the adoption of the Charter just to show people that the Court had never had anything to do with the League. These are printed in collections of judgments of the Court. The decisions of arbitral tribunals also constitute "judicial decisions" for this purpose. The word "arbitral" as applied to these courts is somewhat misleading, since they render their decisions on the basis of law and not as an attempted compromise of the conflicting demands of the parties to the arbitration. There are many individual volumes reporting the decisions of various arbitral tribunals. The most useful general collection is that published by the United Nations, *Reports of International Arbitral Awards.* The opinions of national courts on questions of international law are also entitled to considerable weight, even though in some instances these tribunals may be expected to take a somewhat more partisan view of the law than would an international tribunal. An annual volume, bearing the title of the *International Law Reports* (formerly the *Annual Digest and Reports of Public International Law Cases*), collects these decisions of national courts.

The second of the two "subsidiary means for the determination of rules of law" listed in subparagraph 1(d) of Article 38 is "the teachings of the most highly qualified publicists of the various nations," or, more simply, scholarly writings. So vast is the amount of treaty law, State practice, and judicial decisions that we must rely upon learned writers to synthesize this material and reduce it to manageable proportions. The scholar of the law also fills the valuable functions of criticizing the law, of attempting to clarify its ambiguities, of suggesting the filling of gaps, and of charting the progress of the law for the future. In this country, the leading text is that of the late Charles Cheney Hyde, *International Law, Chiefly as Interpreted and Applied by the United States.* In Great Britain and throughout the Commonwealth, international lawyers took to the two volumes of Oppenheim, periodically rewritten and supplemented by Judge Lauterpacht.

This rapid survey of the origin and application of international law would not be complete without some reference to the effect given customary international law and treaties in the law of the United States. I think that it is probably safe to say that international law and treaties enter into the decision of hundreds of cases in our courts every year. International law is part of the law of this country and is routinely applied in our State and Federal courts. Treaties are, under the Constitution, part of the "supreme Law of the Land" on an equal footing with the Constitution and the laws of the United States. It is a consequence of the fact that statutes and treaties are on the same level that a treaty prevails over a prior inconsistent treaty, without, of course, impairing the binding force of the treaty internationally. In this latter event, the Congress makes implementation of the treaty impossible and thereby causes a violation of the treaty by the United States.

If the courts of the United States find it easy to give internal effect to international law, the position of the Executive Branch of our government and the Congress as regards the function of law in the conduct of foreign affairs is in marked contrast. The crucial test of the sincerity of a State's devotion to the rule of law is whether that State is willing to submit its international disputes to the compulsory jurisdiction of the International Court of Justice in the Hague. The Statute of the Court provides that individual cases may be specially referred to the Court or that States may recognize as compulsory the jurisdiction of the Court in all legal disputes concerning the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation; and the reparation to be made. The United States has accepted the jurisdiction of the Court, but with several limitations, the most important of which excepts matters within the domestic jurisdiction of the United States, as determined by the United States. If this country does not wish a particular case to go to the Court, it has only to say that the case is one within the domestic jurisdiction. It would not be unfair to construe this statement as

meaning that the United States accepts the jurisdiction of the Court except as to those cases in which it does not wish to accept the jurisdiction of the Court. A notable example of the unwillingness of the United States to submit its disputes to judicial settlement is the *Interhandel* Case. The fundamental substantive issue in this case is whether certain property seized by the United States during World War II is German, and thus enemy property, or Swiss property. The Swiss Government maintains that the property in question is actually Swiss, and that the United States is obliged to submit the matter to arbitration under our treaties with that country. Here are two countries with similar economic systems, with like devotion to the rule of law, with similar democratic institutions. There is no pitting of the Free World against the Communist World here, no great political issue, but solely a lawyers' question of whether there is an obligation to arbitrate and whether the property in issue belongs to Swiss nationals or German. It is hard to conceive a case more narrowly legal in nature. And yet the United States seems to be unwilling to submit even the issue of our obligation to arbitrate to judicial settlement. Our fulminations about the refusal of the U. S. S. R. to accept the jurisdiction of the Court as to a number of claims arising out of destruction of our military aircraft seem ludicrous in light of our own record as a possible defendent before the International Court of Justice.

Despite such lapses, I suppose that one of the values which we are attempting to defend against the absolutist world is the rule of law in the international sphere as well as in our various national ones. Our quest for legality and order will inevitably suffer if we forget how to apply law in our relations with our friends, and perhaps in our relations with those with whom we are less friendly as well. Quite aside from this moral commitment which we have made, the restraints which international law place on our own conduct are in our best interests. International relations are made easier by a system which has mapped out where one State's jurisdiction ends and another State's begins. In the explo-

sive atmosphere of our contemporary world, a spark in the wrong place and at the wrong time could spell disaster. The person who acts inconsistently with law may thus do a tremendous disservice to his own cause and to his own country. This seems to me to be one of the most important single reasons why naval officers must acquaint themselves with the body of law which governs the foreign relations of their country. The study which you will make of international law during the coming days should help you to identify the danger areas, to distinguish the real restraints of the law from those which exist only in theory, and to understand a problem put in legal terms. It is the hope of all of us who have come here to share our knowledge of international law with you that you will come to recognize in the law of nations a shield and a sword in the battle we wage for an orderly and peaceful world.

BIOGRAPHIC SKETCH

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THE NATION — STATE SYSTEM: A SOURCE OF CONFLICT

A lecture delivered
at the Naval War College
on 16 September 1958 by
Professor Charles O. Lerche

Gentlemen:

The subject which has been assigned to me today is *The Nation-State System: A Source of Conflict.* This has been a difficult lecture to prepare, because I hope I will be able to establish here this morning that this title speaks the literal truth: the nation-state system (the society of states in which the United States forms a part) is a system which itself engenders international conflict; the conflict that arises out of it is not only inevitable but literally indispensable, because the system could not function without it.

From this proposition, if you can be persuaded to accept it, stem a couple of rather important conclusions.

The traditional American notion, which you have already heard discussed here on a number of occasions, is that the normal state of international affairs is one of happy harmony, and that crisis, conflict and war are abnormal and evil situations which, with enough effort of will, we would be able to eliminate. This whole idea is fundamentally illusory as long as we retain the state system. If Americans are particularly desirous of creating this kind of a world they cannot do so without making wholesale changes in the system, because as we have it it is one in which we will have to live with conflict forever.

The second conclusion is that, given the nation-state system, the most we can hope for in any effort to limit or do away with

the constant diet of crises on which we feed is to establish some kind of workable outer limits on state action and on the intensity of conflict. In that way, the conflicts we are called upon to face as a nation would be kept within the bounds of safety and tolerability; that is, the conflicts would be worked out within limits which guarantee our own survival no matter what happens, and which nevertheless give us some hope of accomplishing our own ends. I have been saying "our own ends" and "our own survival" in talking about the United States, but I think the same generalizations would apply to any other country or any other people who live within the system.

I have tried to give my conclusions at the beginning, in violation of all of the normal academic rules, because I think that what I will be saying will be more easily evaluated (and almost certainly criticized) if it is heard against this backdrop of my general premises.

What are my reasons for contending here this morning that the nation-state system, or the society of states, is in itself by its logic and its construction a source of constant international conflict? I have isolated three reasons which, together, lead me to this conclusion.

The first reason arises from the nature of this international society itself. By and large, we can apply to it the same criteria that we apply to most societies. It is a relatively incomplete society — incomplete, that is, in the dimension of institutional structure. States have constant relations with each other, but we do not find the kind of predictability of routinized relationships that obtains in individual social life. As individuals, living as we do within institutional patterns, much of our behavior is predictable and we can base our actions on the relatively safe assumption that this kind of behavior will take place.

I can, in other words, have violent disagreements with Professor Gyorgy (and I do), but I can prosecute these agreements in

relative certainty that in the heat of the argument he will not hit me over the head with the nearest ash tray, no matter how much he may want to do so; he is sufficiently a creature of habit and social being that he will restrain himself. So it is my contention that in the international order we do not find this level of predictability of behavior or this articulated institutional structure which would make it possible in these terms to assume an orderly routine of relationships. Since we have such a relatively primitive social structure, a greater and different responsibility is imposed upon the individual member of the society.

Substantially what I am saying is that each individual state in unorganized international society is forced to a much greater degree of self-reliance or self-help than is the individual in an organized society of private beings. The international order is still largely a matter of every man for himself. The individual state gets only that share of its desires which it is strong enough or clever enough (or both) to obtain. On the other hand we, as individuals, have a certain body of rights guaranteed us by our society, and our enjoyment of these rights is independent of our physical capacity to enforce them. This is not true in the international order, so the state is forced to depend upon its own efforts — and, ultimately, upon *only* its own efforts — for the accomplishment of its goals. Out of this situation there is bred (as I will try to suggest in a moment) what we call "international conflict."

Once a conflict starts, the international order contributes further to this system of semiorganized chaos because the society provides no brakes or limits on how far a conflict may go. How intense any particular international disagreement becomes is essentially a function of the extent to which the interests of the parties are involved. Conflict comes to a stop, in the last analysis, when the parties have decided, for whatever reason, that they have fought long enough (and I use the word "fought" here in the broadest — not purely military — sense).

In private society, again, we are entitled to have our disagreements but the society tells us that there are certain limits as to how far we may rightfully go in prosecuting them. It draws a very sharp black line denying Professor Gyorgy the right to hit me over the head with that ash tray. It is not only because he, himself, does not want to do it; even if he did want to, society has mechanisms either to stop him or punish him for doing it. None of this obtains in international society.

A second reason why the nation-state system is productive of international conflict stems from the motivations of the individual state in the system. Perhaps the term "anarchy" is a little bit too strong to use accurately to describe the international order. Nevertheless, the assumptions under which the individual state must operate — and the motivations for action which the system demands the individual state must have — are not really dissimilar from those which an individual would have if he lived in an anarchy in which everyone has wants, needs and urges. The individual seeks satisfaction; all he has to accomplish this with is his own strength and his own wit. He therefore goes about to get as much as he can of what he wants.

I submit that basically this is the way that every state in the international order views its own problem. It is motivated by something which I have called here "national interest," which is its own version of the continuing end and purpose which it is trying to serve. This is, as I have said in an earlier lecture, an egoistic concept in that each state's national interest is derived by reference only to factors within the state. It takes account of the international order, but only in terms of the way its own purposes relate to that international order.

The whole notion of national interest is based upon perhaps an invalid — certainly an irrational — but nevertheless very widely-held notion that the state is its own excuse for being. Most states and most people assume that it is axiomatic that the United

States should always (as a continuing operation) seek to maximize its security, maximize its well-being and maximize its prestige.

If the state, then, has a supremely egoistic drive and a parallel necessity of guaranteeing by its own effort as much of its purposes as it can, then it is by necessity constantly confronting its fellows as it pursues its own ends. When you look at *a* state (not necessarily any particular state) as a member of the state system, and ask: "Logically and rationally, how far will it go in trying to satisfy its urges or its national interests? Is there any natural stopping place? How much security, for example, does a state want?" — I submit that it is impossible to suggest any logical place for the search for security to stop other than that illusory locus of absolute security. The state wants all the security it can get, up to the point at which it is absolutely secure (so that nobody anywhere is in a position to threaten it).

If every state is seeking this goal, obviously there is not enough security to go around; there is going to be somebody who is not secure. Therefore, I contend that each state is pursuing a set of objectives which — in logic and frequently in practice — are absolute; that is, they are not relative to anything else but instead are thought to have validity in themselves. So each state establishes ultimate objectives which all cannot achieve. Somebody is bound to be insecure as long as we have the state system; somebody is bound to be at least a little less well off than he wants to be. As long as this obtains, the dimension of competition affects the relationships of states.

The assumptions of the state and the state system lead one to this generalization: in logic, considering a state an as entity, there is no necessary pre-existing community of interest between any two states. What do I mean by that? I mean simply this (and I think it is quite fundamental): if two new-born states were to approach each other in a vacuum, each would look upon the other as just one more competitor for these absolute goals

for which both are destined to search. The normal assumption of a state is that every other state is its actual or potential competitor, adversary, or enemy. Each state, then, operates on the assumption that it is living in a hostile world, a world which normally presents its challenges and dangers as often as it does its opportunities, and that the motivations of other states are the same as its own: each state is out to do in the other. One man's meat in this case is another man's poison; one state's security logically is another state's insecurity. As one state's relative security rises, the other states' relative security decreases.

Take the United States and Great Britain. Was the United States, in the last analysis, made more secure when Great Britain acquired a nuclear capability? In terms of the immediate, short-run operation of massing the "Free World" against the Soviet Union, it was desirable from our point of view that Britain acquire the ability to deliver a nuclear punch. But what happens if there were to be a loud bang tomorrow and all of Russia (and every Russian) were to disappear from the face of the earth? How would American security then be affected by British nuclear capability? Would the United States be more secure or less secure?

You resolve these dilemmas over time spans or by means of some other priority-establishing device. For instance, the United States willingly built up Soviet power during World War II, although there were many people who pointed out that we were only strengthening a future opponent. The immediate goal of American policy required that the Soviet be made stronger, and we were perfectly willing to mortgage the more distant future in the pursuit of short-run goals. In this way many specific disagreements are submerged in the interest of gaining cooperation in the attainment of shared goals of higher priority. At bottom, however, the absence of a pre-existing, automatic community of interest provides a large share of state motivation. Whatever the state obtains, it gets for and by itself; it cannot count on the system helping it in any purposive way. The normal assumption of the

state as it views its fellows is one of competition — and competition, as soon as it becomes active, becomes international conflict.

This brings me to the third of the causes of conflict: the nature of the interstate relationship. I have already alluded to some aspects of this in discussing the nature of international society and the motivations of the state in the society. Now let us look again at the interstate relationship, not necessarily in terms of the U. S. and the Soviet Union — although I submit that the principles apply here as well — but just in relation to those two poor states who are always fighting each other in courses in international relations, State "A" and State "B". These states approach each other with a high degree of wariness, whether they have a long history of relations or whether their relations have just begun. The first condition of state existence or state policy is that a state first look to its own continued existence, to its own self-preservation. This means that the first order of business in foreign policy, in the broadest sense, is defense; if a state must first devote itself to continuing its existence and its self-preservation, it must then — as its first implementing action — try to protect itself against such threats to its existence as come from the outside world.

There has been a good deal of writing in recent years on the general subject of "strategy," and one of the more interesting ways of approaching the problem of making strategic decisions has been by way of the mathematical theory of games, with analogies drawn (with almost embarrassing frequency) from the literature of poker. In facing a strategic decision the game theorists, however subtle their mathematics may be and however contradictory their conclusions, agree quite well that strategic thinking as illuminated by games theory is fundamentally conservative and defensive. Your primary goal in playing poker, as each hand comes to you, is to stay in the game. To do that, you base your strategy

initially on the necessity of guaranteeing your survival as a player; only after doing that can you seek to maximize your opportunity for greater success.

If you do this as a strategist — whether you are playing poker or playing world politics — you must then make as the bases of your strategic calculation two assumptions: (1) That your opponent has, from your point of view, the worst possible motivation. You must assume that he is out to destroy you (that is, he wants to drive you out of the poker game or to obliterate you from the face of the earth) and you must do what you can to protect yourself against that possibility. Then, with what you have left over by way of surplus capability, you have the opportunity to try to move affirmatively against him. (2) That your opponent or enemy will pursue what is, from his point of view, the most advantageous strategy possible. You dare not base your strategy on the assumption that your opponent is a fool, but have to assume that he knows as much, or more, about your situation and the strategic problem as you do; in other words, you must prepare yourself against the worst possible outcome.

I do not think that we need mathematics to demonstrate the soundness of these premises. The manner in which one protects himself against the enemy's strategy and action may be open to a good deal of discussion, and it may be that the best defense is a good offense. But, nevertheless, from the point of view of sound strategic thinking I think this assumption is the only practicable and safe way to begin to solve the problem of guaranteeing the continued existence of a state. What I am saying is this: a fundamental assumption of disharmony and conflict underlies the relations of any two states. When State "A" and State "B" confront each other, regardless of the situation, each bases his strategy on the assumption that the most likely outcome — and the one to be guarded against most of all — is the development of conflict from the course of their relationship.

In implementing policy decisions, as notions of interest are hammered out and then compared by means of negotiation, given pairs of states do discover that the assumption of total hostility or total disagreement does not in fact stand up, and that there are areas of agreement between them. To the extent that these concepts of interest overlap, it is possible to develop cooperative, joint, or at least harmonizing policies. Given appropriate limits of area and of time, coincidence and harmony of interest can obtain in the cases of particular states. The United States and Canada, not too long after the abortive invasion of the Kentucky militia in 1812, discovered that as each viewed the world there was a significantly large area of coincidence of interest, and out of that was hammered a long-standing common policy covering this area. But I do not think that any Americans any longer are lured into thinking, as far as Canada is concerned, that because we agree on so many things we agree on all, or that we may safely predict that Canada and the United States will agree on any specific point we might mention. Interest changes and evolves in response to internal factors. These factors usually change slowly, but can on occasion shift with great rapidity. As soon as enough change occurs on the part of either or both states, conflict and disagreement replace the pre-existing harmony.

To make my point as clearly as I can: Conflict and disagreement between states are not only normal, but natural. What is accidental, temporary, and almost abnormal in international affairs is coincidence or agreement between states. The logic of the state system and the mere fact of statehood in a world of sovereign states (I think this is the first time I have used the word "sovereign") imposes this kind of thinking on all states as the price of survival. It may be that the world will leave you alone for 120 years, the way the United States was left alone. This was not because our policy was good, as opposed to the bad policies of Europe, or for any other reason than the sheer accident that the interest of the United States clashed with the interests of the other states of the world so peripherally, so infrequently and

so unimportantly that deep conflicts of interest simply did not develop.

What I have been trying to sketch out here are certain characteristics of the international system and the behavior of states in that system that presuppose a relationship of international competition and conflict as a necessary condition of interstate relations. If you wanted to rearrange the relations of states in such a way that competition and conflict would not be normal (but would instead be the abnormal, eccentric, and immoral things American mythology insists they are), then you would be obliged not only to call upon the members of the state system for a variety of self-denying ordinances, but would also need fundamental changes in the system itself.

This is the role that all of us — whether we approve or disapprove, whether we are optimistic or pessimistic — assign to international organization. The United Nations, for example, is attempting to establish an international order in which both the motivations of states and the dynamics of the society are markedly different. The principal new element in such a new order would be the creation of some central source of strength and support to which individual states might appeal for assistance in securing their rights; this appeal, furthermore, would be given in some hope that the assistance would actually be forthcoming. Despite the preservation of the facade of sovereignty, such a system would be one in which major changes in our present international order would have been made.

As I look at it, it seems that we have made a real beginning at these changes — "we" being in this case, I suppose, mankind. I am sometimes teased by my colleagues for my optimism; I am the person, they say, who believes in mankind. When Margaret Fuller of the Concord Transcendentalists at least confessed that she "accepted the universe," Thomas Carlyle is reported to have commented: "Gad, she'd better!" I suspect that we had all better

accept mankind, because mankind is here to stay (we all hope). I think that one gets in no more intellectual difficulty, and at least discovers some new areas of discourse, if he occasionally thinks in terms of the human species rather than always in terms only of the national state of which he happens to be a member.

So I would suggest that we have made a very small but real beginning at minimizing and controlling these forms of international conflict within the system of states. We have a long way to go. It is all too obvious to any of us that conflict is still with us, and there is no absolute guarantee (any more than there ever has been) that conflict at least between major states will stay within the bounds of safety. But, nevertheless, the beginning has been made. Indeed, you can argue, as many people have, that the question of the survival of civilization as we have come to know it is really a question of whether we can construct these limits in time and whether in the meantime we can afford to permit states to prosecute their disputes in the old-fashioned free-wheeling way.

This problem of limiting conflict, or at least of escaping its destructive potential, has been made a good deal more acute in the last 150 years. One thing which perplexes all students of international relations is that the system of states and the assumptions, the obligations, and the imperatives of statehood were all laid down in the sixteenth and seventeenth centuries. The so-called "normality of war" as an instrument of national policy was a perfectly conceivable thing when wars were fought with armies of 15,000 men. The peasants usually got devastated, but outside of that nobody much got hurt. Men built a very neat system using "force" and "war" as the *ultima ratio regii* and assuming that the international order would continue forever, even relying on war as the ultimate method of settling conflict. This system grew to maturity by the end of the eighteenth century. The assumptions, the logic and the techniques of international intercourse were quite well established by that time.

With the coming of the French Revolution, something new was added. Up to this time, international conflict was really the conflict of the kings and the courts who lived in the states of Western Europe. A nation's foreign policy was the policy of the king. War was fought by the king for his personal purposes. With the French Revolution, and the birth of what we call "modern nationalism," the whole nature of international relations underwent a rather sizeable shift.

Foreign policy became "democratized" in all countries. You all know how Revolutionary France survived against the enemies who were ringing it by the device of the first modern mass army. In order to make this army possible, the leaders had to sell the idea that France's foreign policy was not the foreign policy of just a handful of government officials but was the concern of every single Frenchman. Every enemy of France was an enemy of every Frenchman, and every purpose of France was the purpose of every Frenchman. Building upon their success in winning acceptance of this idea, they were able to call upon the efforts of all French citizens to serve the ends of France. This is the kind of nationalism which has spread until today it encompasses the whole world.

Nationalism, then, imposed certain duties on the mass of the people, of which three are the most important. First, the duty of military service; second, the duty of submitting to heretofore undreamed-of levels of taxation; third (and by no means the least important) the duty of commitment in their individual lives to the accomplishment of a political purpose. How far this has gone, even in America, can be illustrated briefly by athletics. The Olympic games have become a mockery; the 400-meter race has become a facet of the cold war, and American defeat by Russian teams in almost any sport are now matters of acid comment in the press and in the halls of Congress. We are called upon to mobilize our national effort to recapture the citadel of athletic supremacy from which we have been ousted by the Communists. This is foreign policy gone berserk.

As a counterpart to the new duties the individual citizen assumed as a consequence of the new nationalism, he took over the exercise of a new privilege or right: the power to play a real role in determining his nation's foreign policy. We know that the conditions of state life require the statesman constantly to assume that he might be required to fight a war to accomplish his policy. When an individual citizen realizes that he is liable at any time to be called on to die for his country and that he is liable all the time for a good share of his income and his attention in the service of his country, I suspect that it is not unnatural for him to argue that he ought to have something important to say, one way or another, about what action his government is taking in his name. Here, mass consensus as the indispensable base of a successful foreign policy appears for the first time. Governments learned that they dared not risk repudiation by their own people.

Today, every nation-state in which there is a politically conscious and articulate mass of people must rest its policy upon such consensus as exists. In today's world, our analysis of international conflict must be flexible enough to take account of the peculiar twists that mass participation in foreign affairs produces.

Probably the most important effect of democratization on international conflict is the frequent shift of attitude from one of cold and crass calculation to one of frenzied emotionalism. Anger and hate often dominate thinking instead of the cooler judgments of statesmen. All peoples are taught that they must not only disagree with the people of the state opposing them, but that they must also hate them; they become "the enemy." All red-blooded people know what you do with the enemy: you defeat him. You don't deal with him; you don't compromise with him; you simply destroy him! It was this attitude which Lord Beaconsfield inveighed against so futilely at the end of the nineteenth century when he was being reproached for his government's policy of abandoning the Balkans to the horrors of the Turks. He spoke in the House

of Commons one of the clichés which is frequently repeated but very infrequently understood: "Great Britain has no eternal friends; it has no eternal enemies. All it has is eternal interests." He was hooted down as a conspicuous immoralist. This was unpatriotic — people have enemies, and the object of conflict is victory.

So we must recognize that international conflict today, in all situations involving democratized foreign policies, rests on a hair trigger of mass emotional reaction. The old assumptions about the role of force in international conflict or the methods of prosecuting that conflict have been invalidated to a significant extent. You will read and you will hear lectures about the concept of "limited war," which means that you can apply force with almost surgical precision, just using enough to gain your objective, and then you can stop. This argument usually ignores the fact that the foreign policy that you are trying to implement in this way has been democratized. As soon as you apply a limited amount of force, the enemy may confront you in turn with a greater amount of force, and you find yourself faced with the danger of losing this carefully limited war. At this point all sorts of tremendous popular pressures are built up. I say "you" because this is especially an American problem, but it is one all governments face. Analytically, it can be argued that, as in chess, you have made a move that has been countered by the enemy; logically, if the objective is not worth any greater effort you retire, regroup, and try again somewhere else. If the decision rested with an absolute monarch, such a move could be made even today. Great Britain built its reputation of "losing every battle except the last one" during the era before its foreign policy became democratized. Today, even in Great Britain, when a general loses a battle, he is sacked, the Prime Minister goes out of office, and the country goes into a frenzy. What might happen in the United States needs, I think, little comment.

I submit that all the old classic assumptions about the relationship of force to international conflict need to be sharply conditioned (I am resisting the temptation to say "abandoned"). The

deeper a people gets involved with fighting another people, the more high-keyed mass emotions become and the more likely that popular consensus, smelling blood, will demand pushing the struggle further and further. The democratic foreign policy process makes it more likely that statesmen on both sides will lose control of the intensity of the conflict; many a statesman has been pushed further than he wished to go.

Actually, the factors that influence the intensity of a struggle between democratized foreign policies are frequently very minute, almost always irrational, and almost normally bear only a tangential relationship to the real issues as seen by the respective policy maker.

One other point about democratized foreign policy that needs to be made is this: a statesman that does not wish to push a conflict to the point of war has, in theory, two alternatives — he may either compromise the dispute or suspend it without decision. Once again, though, we see that national ego, once involved in a conflict and committed to the success or failure of national policy, complicates the task of breaking off the dispute short of totality. Questions of "friendship" or "enmity," issues of moral "right" and "wrong"—always as seen through the national group's own spectacles — do not permit of partial resolution or indefinite postponement. When his people are convinced that they are absolutely in the right and their enemy is absolutely in the wrong (in the sense of *sin* as well as of *error*), the statesman has the ticklish job of justifying either a compromise with evil or a stalemate that permits the sinner to go free to sin again.

So the role of the diplomat, as well as that of the soldier, has become fantastically multiformed today. The consequences of including the mass citizenry in all states in the foreign policy process are clear to see. An adjustment of international disagreement on a basis of mutual tolerability is increasingly difficult to arrange.

Instead of being compromised at a convenient point, conflicts involving national hates and loves tend to drift to either of two other directions.

In the first place, they may evolve rather rapidly into "crush or be crushed," "we or they" terms. At this point the policy choices open to the respective governments become distressingly few in number and all of them disagreeable in the extreme. On the other hand, if the statesmen refuse to push the struggle so far — or if, after having gone to this point, both states recoil in dismay at the forbidding prospect presented by the "we or they" analysis — the conflict may instead be insecurely stabilized at what I call "the point of maximum reciprocal frustration." By this latter term I mean a stalemate: the situation which arises when the conflicting states each have gone as far as each dares, each has enormous pressures on it to go further, and neither will take the risk. Each frustrates the other, and the resulting level of tension is just at the maximum that can be endured. This outcome of a conflict at least avoids the explosion inherent in "crush or be crushed," but its inherent instability seems beyond question. It may, indeed, blow up at any moment.

I was engaged recently in a discussion of this formulation of the cold war with several of your number. One point of view that received pointed expression in this connection was that there was no hope of reducing the tension level of American-Soviet relations, and that the most the United States could hope for was an indefinite sustaining of the status quo. Hopes for an eventual reduction of tensions are in this view either sheer illusion or "wishful thinking" — an offense that in contemporary America seems to rank with matricide. While I would not subscribe to this thesis myself, at least in all its implications, I hold no necessary brief for the beneficent results that would follow any major negotiating attempt by the United States. I do contend, however, that the closer to the threshold of intolerability that a conflict is stabilized, the more likely it is that it will eventually boil over into an all-out struggle for total stakes.

There is only one more major point to make, and essentially it involves a restatement of some of the ideas I have been discussing: the relationship between international conflict and war. I think of international conflict as a continuum, ranging from one extreme, where you find relatively mild disagreements (and attempts to reconcile them), to the other, where you find all-out war. War is different in degree but not different in kind from any other form in which international conflict is prosecuted. No real analytical distinction can be drawn between a diplomatic dispute, a propaganda battle, "cold war," or an all-out, hot, fighting, shooting, bleeding, and dying war. All stem from the same causes; all have essentially the same objectives.

The decision to use the instruments of war in foreign policy is based on the same cost-risk calculation that precedes the selection of any other "instrument of national policy." War is an expedient choice when two preliminary judgments produce the right answers. There must be, in the first place, an objective for the attainment of which the use of war is appropriate; that is, the objective is sufficiently important to warrant the known, predictable, and riskable costs that war will entail. Second, if such an objective exists, there must be a good enough possibility of success (that is, the odds must be attractive enough) to make the enterprise worthwhile. Some such comparison of gains and losses enters into every decision to go to war: the situation must offer you a good enough risk and a good enough possibility of success to make it a worthwhile enterprise. I submit that the same kind of thinking underlies the prosecution of any other instrument of international conflict.

I am saying a number of things, but one in particular I want to stress. As I view the nation-state system, in international society as we know it today, conflict, disagreement and the active prosecution of such disagreement by states is as close to an inevitability as anything human can be. But I deny that this judgment is capable of complete and infinite extension to the point of arguing that war, or indeed any use of armed force, is inevitable or ines-

capable. Conflict arises out of the nature of the system itself. If a state is to exist in the international system, its rulers must face the fact that they will be forced to prosecute many conflicts. But any individual war is the result of some statesman's deliberate decision.

There have been statesmen who have launched wars simply because their corns hurt or for other frivolous reasons. This does not prove that war is inevitable, however, because you cannot logically predict that every statesman whose corns hurt will in fact start a war. I submit that war is a matter of human choice, but that conflict is a pre-existing condition of state existence.

To put any doubts to rest, I am not saying that war is dead and gone forever. In another context, I might be persuaded to argue differently — but at this moment I am not dealing with the question as to whether war is impossible; we know that today it is all too possible. I am not even judging whether it is likely or unlikely in our present situation. I contend only that the changes in the character of international conflict with which we have been confronted in the last 50 years (and some of which I have been trying to talk about) have made the decision to resort to war as a normal tool of foreign policy a much different kind of decision than it was in the eighteenth century.

If you accept the two preconditions I suggested earlier as making war an attractive enterprise, how many objectives can a statesman stipulate today whose accomplishment automatically is worth the initiation of a total war? When you get past sheer human survival and continued national existence, it gets rather difficult to prolong the list. How many situations can a statesman create as between powers of nuclear capability in which the odds favoring the country initiating the war are good enough that it can win at a tolerable cost? I am not denying that either of these two conditions might obtain in the contemporary world; I am merely saying that they are a great deal more difficult to create

than they used to be, for the margin of error has been drastically reduced.

This is why I am not at all convinced that clear thinking, logical analysis, and an adequate prescription for the future of American foreign policy are particularly advanced by the constant use, misuse, and abuse of the term "cold war" to describe Soviet-American relations. This phrase carries the clear implication that this is a real war — not something weak like an "international conflict," but a *war* in the good, classic, democratized sense. The vocabulary of the cold war (*advance* and *retreat*, *victory* and *defeat*, *allies* and *neutrals*, *battlegrounds*, *maneuvers* — all of these paramilitary concepts that get into our discussion of the political relations of the Soviet and American blocs) tends, it seems to me, to create a certain largely unjustified, and certainly a very dangerous, dimension of inevitability to the notion that the conflict will spiral ever upward and upward until it finally erupts in a catastrophe. I am not saying here that a Soviet-American war is impossible; I am saying only that to insist that it *is* inevitable is to condemn ourselves to it. To quote a better man than I, "Those who will not learn from history are condemned to repeat it."

Thank you!

BIOGRAPHIC SKETCH

Professor Charles O. Lerche

Professor Lerche received his A.B. degree from Syracuse University in 1937, his M.A. degree from Fletcher School in 1938, and his Ph.D. degree from the University of North Carolina in 1941.

He was a part-time instructor at the University of North Carolina while working toward his Ph.D. degree. After serving three years in the United States Army, he returned to teaching as an assistant professor at the College of William and Mary. In 1948, he went to the University of Utah for one year as assistant professor and thereafter spent five years as associate professor and chairman of the department of political science at Knox College. Since 1954, he has been an associate professor of political science at Emory University in Georgia.

Professor Lerche has primarily taught in the fields of international politics, American foreign policy and Middle East politics. He has also had experience, however, as educational consultant to the Service Pipe Line Company and as associate director and director of the Ford Foundation Faculty Seminar on Teaching of International Politics. He has, in addition, been a radio and television commentator and has been engaged in considerable adult-education activity.

He has written numerous articles for professional journals, and is the author of *Principles of International Politics, The Foreign Policy of the American People,* and *Readings in International Politics* (with Margaret Lerche).

After he completes his tour at the Naval War College in December 1958, Professor Lerche will go to Sweden, where he will be visiting professor of international relations at the University of Uppsala for the remainder of the academic year under a grant provided for by the Smith-Mundt Act.

RECOMMENDED READING

The evaluation of books listed below include those recommended to resident students of the Naval War College. Officers in the fleet and elsewhere may find them of interest.

The inclusion of a book or article in this list does not necessarily constitute an endorsement by the Naval War College of the facts, opinions or concepts contained therein. They are indicated only on the basis of interesting, timely, and possibly useful reading matter.

Many of these publications may be found in ship and station libraries. Books on the list which are not available from these sources may be obtained from one of the Navy's Auxiliary Library Service Collections. These collections of books are available for loan. Requests from individual officers to borrow books from an Auxiliary Library Service Collection should be addressed to the nearest of the following special loan collections:

Chief of Naval Personnel,
(G14)
Department of the Navy
Washington 25, D. C.

Commandant ELEVENTH Naval
District (Code 154)
937 North Harbor Drive
San Diego, California

Commandant FOURTEENTH
Naval District (Code 141)
Navy No. 128
Fleet Post Office
San Francisco, California

Commander Naval Forces,
Marianas
Nimitz Hill Library, Box 48
Fleet Post Office
San Francisco, California

U. S. Naval Station Library
Attn: Auxiliary Service Collection
Building C-9
U. S. Naval Base
Norfolk 11, Virginia

Title: *Foreign Policy in World Politics.* 420 p.

Author: Marcridis, Roy C., ed. Englewood Cliffs, N. J. Prentice-Hall, 1958.

Evaluation: This book is a comparative study of foreign policy-making and of the foreign policies of various countries throughout the world. The countries chosen are both significant and representative ones. Each one of the country studies, prepared by an individual scholar having intimate knowledge of that country, includes treatment of: (1) the historical background; (2) the characteristics of the foreign policy-making process; and (3) the substance of the country's foreign policy. The historical section attempts to identify the main factors that have conditioned the role of the country in international affairs. The next section comments on the country's organization for foreign policy-making and the various forces which influence its policy. The final section in each study seeks to find the answers to the following two questions: (1) How does the particular country define its contemporary foreign policy interests and objectives? (2) By what means does it pursue these foreign policy interests and objectives? In addition to the nine country studies, there is included a chapter entitled "Theories and Problems of Foreign Policy." This chapter attempts to justify the analytical approach to foreign policy, used in this book, as opposed to the more usual ideological approach. At the heart of this analytical approach is the proposition that policy rests on multiple determinants — including the state's historic tradition, geographical location, national interest and purposes, and security needs. To understand a foreign policy, it is necessary to analyze a host of such factors.

Title: *Japan's Postwar Economy.* 262 p.

Author: Cohen, Jerome B. Bloomington, Ind., Indiana University Press, 1958.

Evaluation: In this timely book, Professor Cohen places the Far East in proper perspective for the reader, and then proceeds to unravel the many problems that contribute to the economic health of a country. This he does by delineating the importance of investment, consumption and trade on an economy and, in the case of Japan, introducing factual data which he readily analyzes for the reader. His analysis, however, does not take over entirely, as the reader is able to draw his own conclusions and relate them to the basic problem. Aside from the fact that

Japan is our most important ally in the Far East, the United States has deep interest in the Japanese economy as an important factor in our world trade ($1.4 billion per year). As to this economy, Professor Cohen states: "The Japanese economy is like the Japanese language — far too involved and complicated to fit any one set of conclusions." In describing Japan's remarkable recovery, the author traces the internal disciplines which have been employed, the importance of foreign trade, the competition with other countries, and the necessary suppression of the living standard. The press of population is accorded proper treatment, as Japan has the greatest density of population per arable acre of any country in the world. The rise of trade unions, the infiltration of communism, and polarization of the union movement are well-described. The return of the giant combines (Zaibatsu) of manufacturers, banks, mine and chemical companies is particularly well-developed, as is its relation to the Japanese psychology and the tendency to ruinous competition in the absence of regulation. The author had the foresight to include two highly controversial subjects, viz: Japanese trade with Communist China, and the import of low-priced Japanese textiles into the United States. He concludes with the outlook for Japan. Here, he summarizes the limiting factors which will determine Japan's future as well as the possible mistakes in U. S. foreign policy which could result in errors most difficult to rectify.

Title: *Foreign Policy and the Free Society.* 116 p.

Authors: Millis, Walter, and Murray, John Courtney, S. J., et al. New York, Oceana Publications, 1958.

Evaluation: This stimulating little volume is the result of an investigation by the *Fund for the Republic* to determine what a free society is and how it may be maintained. Composed of two articles and the recording of discussions among outstanding people such as Reinhold Niebuhr, Henry R. Luce, and A. A. Berle, Jr., it is eminently readable; however, one should have an idea of the essence of the current controversies over the use of force in international relations in order to appreciate fully the variety of views expressed. Most valuable in the book is Father Murray's article in which he describes the unique characteristics of the Soviet Empire, and, particularly, the belief and the use of doctrine (Marxist) by the Kremlin leaders. Mr. Millis' article is an exposition of the two general courses — war or peace — open to the United States, and an estimate of the present position

on the continuum between the two. He avers that those advocates of the "peace" course have the more hopeful attitude. The discussion section roams over the entire broad area of relations between the U. S. and the U. S. S. R. The various opinions and the reasoning of the participants highlight the lack of consensus about the reasons and meaning of conflict, the future development of Communism, the goals of the United States, and the methods of attaining our goals while remaining a free society.

Title: *The March of Conquest.* 460 p.

Author: Taylor, Telford. New York, Simon and Schuster, 1958.

Evaluation: A very interesting and complete treatment of the 1940 German campaigns in Western Europe. The author points out that it was in the sphere of strategic decision-making — where it is usually supposed that the dictatorships are "more swift, flexible, and cold-blooded than the democracies" — that the Reich was found wanting. The great riddle confronting the Germans following the victories in the West was: What now? How to end the war? This, they never solved. The first portion of the book describes the tactical considerations involved in the German victories of 1940, while the final two chapters provide an insight into the practical things to be done in the formulation of national (or world) strategy. The writer explains the tactical proficiency of the German military in cause-and-effect terms, but holds that this proficiency — even combined with the political prowess of Hitler — was incapable of substituting for the strategic vision and statesmanship that were so notably lacking in the German leadership. Especially well done are the exposure of the basic flaws in the Nazi strategy and the delineation of the reasons for the complete helplessness of the Germans to cope with the strategic riddles of 1940 and later.

Title: *The Sino-Soviet Economic Offensive in the Less Developed Countries.* 111 p.

Author: United States Department of State. Washington, D. C., U. S. Government Printing Office, 1958.

Evaluation: This is a detailed study by the Department of State of the extent of Communist Bloc aid to "neutral" and other non-Communist countries, including Iceland, Greece and Turkey. It argues that economic aid has political intent

but is usually offered without strings; that is, there is no political *quid pro quo*. The ultimate purposes of such aid are to tie the recipient countries closer to the U. S. S. R., to weaken "capitalism" and Western influence, and to propagate "socialism." In short, the purpose is to improve the prospects of eventual world Soviet domination. It is argued that the U. S. S. R. — especially with the aid of Czechoslovakia and East Germany — can provide a wide variety of manufactured goods (particularly machinery), raw materials, technicians, and arms. No attempt is made to evaluate either the long-run importance of this aid to countries which receive it or the degree of sacrifice entailed by the Soviet Bloc. There is a description of the terms of aid, nature and volume of the products involved, the methods of finance (loans, not aid), interest rates (low), prices and value, and repayment terms, all of which are generally favorable by comparison with Western aid. Also, there is a discussion of the growing volume of international trade, its pattern, composition and motivation. The larger part of this booklet (Part II) deals with the "Bloc Offensive" in individual countries and regions such as Egypt, Syria, Yemen, Sudan, Africa, Burma, India, Latin America, Iceland, Yugoslavia, etc. In each case there is a thumbnail sketch of the economic and political conditions leading to Soviet economic penetration as well as a description of the kind and volume of aid given.

PERIODICALS

Title: *Amphibious Warfare.*

Author: Yeager, H. A., Rear Admiral, United States Navy.

Publication: NATIONAL DEFENSE TRANSPORTATION JOURNAL, July-August, 1958, p. 32-35, 62-63.

Annotation: A timely and informative article on modern amphibious warfare. Included therein are answers by Major General C. A. Roberts, United States Marine Corps, to the question: What is "Vertical Assault?"

Title: *Strategic Importance of the Baltic Sea.*

Author: Bidlingmaier, T. Gerhard, Commander, United States Navy.

Publication: U. S. NAVAL INSTITUTE PROCEEDINGS, September, 1958, p. 23-31.

Annotation: This article evaluates the comparative need for control, by NATO or the Soviet, of the Baltic Sea and Danish

Straits, as an essential link in maintaining lines of communications during peace and war.

Title: *The Struggle for Latin America.*

Publication: FOREIGN REPORT, September 4, 1958, p. 1-4.

Annotation: Sets forth Russian and Chinese Communist economic and political penetration into Latin America.

Title: *Moscow, Peking, and Arab Nationalism.*

Author: Deutscher, Isaac.

Publication: THE REPORTER, September 4, 1958, p. 13-16.

Annotation: The discrepancy between Moscow's and Peking's reactions to events in the Middle East indicates differences in the Russian and Chinese attitudes towards Pan-Arab aspirations.

Title: *Vandenberg . . . Space Base, U. S. A.*

Author: Baker, Norman L.

Publication: MISSILES AND ROCKETS, August 25, 1958, p. 20-25.

Annotation: The United States' first and largest combined training-operational long-range missile base is described.

Title: *Russia's Baltic Naval Command.*

Publication: THE WEEKLY REVIEW, August 29, 1958, p. 4.

Annotation: Brief data on the composition of the Russian Baltic Fleet.

Title: *The Seaway's Hidden Building Boom.*

Author: Chase, Edward T.

Publication: ARCHITECTURAL FORUM. September, 1958, p. 98-100, 184, 188.

Annotation: The St. Lawrence Seaway provides for the World's longest penetration (2,342 miles) of a land mass by ocean-going ships. This short article outlines the impact of the Seaway on commerce and industry.

Title: *Navy Break-Through in Ship Propeller Design Termed Greatest in 30 Years.*

Publication: ARMY NAVY AIR FORCE JOURNAL, August 1958, p. 3.

Annotation: Development of new "super-cavitating" propeller for ships is comparable to development of jet propulsion for aircraft.

Title: *Soviet Missile Submarine Threat Detailed*

Author: Brownlow, Cecil.

Publication: AVIATION WEEK, September 1, 1958, p. 18-20.

Annotation: A special panel of scientists and educators report to the Subcommittee on Military Applications of the Joint Committee on Atomic Energy on their findings covering the Soviet threat, outlining the extensive ASW program needed to counter this threat.

Title: *Views of the Department of State on Creating A Permanent United Nations Emergency Force.*

Author: Wilcox, Francis O.

Publication: THE DEPARTMENT OF STATE BULLETIN, August 25, 1958, p. 324-327.

Annotation: Gives the background and states the issues to be considered and steps to be taken in creating a permanent United Nations emergency force.

Title: *Morocco — Where U. S. Will Lose Powerful Air Bases.*

Publication: U. S. NEWS & WORLD REPORT, September 19, 1958, p. 68-69.

Annotation: Tells why the loss of the vast base complex in Morocco could gravely weaken U. S. retaliatory power.

Title: *Future of Manned Bombers.*

Author: LeMay, Curtis E., General, United States Air Force.

Publication: ORDNANCE, September-October, 1958, p. 202-205.

Annotation: General LeMay discusses the reasons that while missiles will complement and partially supplant aircraft, they will not replace them in the foreseeable future.

Title: *Communist Infiltration in the Middle East.*

Publication: THE LISTENER, August 28, 1958, p. 293-295.

Annotation: A survey compiled by the B. B. C. Foreign News Department covering "Red" activity in the Middle East since 1955.

Title: *Britain's Postwar Naval Policy, Part II.*

Author: Schofield, B. B., Vice Admiral, Royal Navy, C. B., C. B. E.

Publication: THE NAVY (Great Britain), September, 1958, p. 267-272.

Annotation: Second part of a discussion of the new look in the Royal Navy, brought about mainly by budget cuts. Concludes that Britain's contribution to NATO will be primarily an antisubmarine one.

Title: *The Inchon Operation.*

Author: Krulak, Victor H., Brigadier General, United States Marine Corps.

Publication: SHIPMATE, September, 1958, p. 8-14.

Annotation: A review of the background, planning, preparation, amphibious movement and landings of the Inchon Operation in the Korean War.

Title: *Foundations of Peace.*

Author: Dulles, John Foster.

Publication: THE DEPARTMENT OF STATE BULLETIN, September 8, 1958, p. 373-377.

Annotation: A discussion of three policies that purport to effect peace: concessions, "power politics," and adherence to principles of justice.

Title: *Can We Stay in Europe?*

Author: Eliot, Major George Fielding.

Publication: ORDNANCE, September-October, 1958, p. 206-209.

Annotation: A discussion of why the United States must develop an invulnerable retaliatory force away from population cen-

ters and with sufficient firepower to nullify surprise attack. The author outlines five reasons why sea power should be the basis for this deterrent force.

Title: *Bases of U. S. Foreign Policy.*

Author: Mosely, Philip E.

Publication: THE NEW LEADER, September 15, 1958, p. 3-5.

Annotation: Reviews the assumptions on which American foreign policy has been based for the past several years, and assesses their applicability and shortcomings in today's situations.