THE NON-USE OF FORCE IN INTERNATIONAL LAW

edited by

W. E. BUTLER

Professor of Comparative Law, University of London
Director, Centre for the Study of Socialist Legal Systems, University College London

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EDITORIAL INTRODUCTION

The papers published herein are revised versions of contributions originally presented to the II Anglo-Soviet Symposium on Public International Law held on the premises of the Institute of State and Law, USSR Academy of Sciences, at Moscow on 21—24 May 1988. The Symposium, as in the case of its predecessor,[1] was arranged under the auspices of the Centre for the Study of Socialist Legal Systems in the Faculty of Laws, University College London, and of the Soviet Association of International Law.

The Judgment of the International Court of Justice in the *Nicaragua* case, the adoption by the United Nations General Assembly of the Declaration on the Enhancement of the Effectiveness of the Principle of Non-Use of Force in International Relations, and the arms control agreements concluded between the Soviet Union and the United States all combined to make the non-use of force as a principle of international law an exceptionally timely subject. "Force" for these purposes was construed broadly to encompass economic as well as military relationships in both their contemporary and historical dimensions.

The Symposium also entertained "invited" papers on subjects of the author's choice and briefer reports. Two of the last, "World Order in the International Community" by N. F. Turina and "The Periodisation of the History of International Law" by Professor D. I. Fel'dman, were not submitted. Contributions by Professor A. P. Movchan ("The Codification and Progressive Development of International Law") and Dr N. N. Voznesenskaia ("On Joint Ventures") will be published in a future issue of *Coexistence*.

For material assistance in arranging the Symposium, the British participants owe thanks to University College London. The Soviet contributions have, except for the paper by Danilenko, been translated from the Russian by Professor W. E. Butler. All others have been edited from English language texts submitted.

W. E. Butler

Note

1. W. E. Butler (ed.), *International Law and the International System* (Dordrecht. M. Nijhoff, 1987).

W.E. Butler (ed.), *The Non-Use of Force in International Law*, pp. 3–15, ISBN 0–7923–0293–1

ON THE HISTORY OF INTERNATIONAL LAW IN ENGLAND AND RUSSIA

W. E. BUTLER

We live in an era of radical, revolutionary restructuring — terminology which the political leaderships of both the United Kingdom and Soviet Union are applying, albeit in very different ways, to describe fundamental readjustments to the previous order of affairs.[1] It is also an era of "new thinking" about international law, an era in which we seek as never before to avert the potential tragedy of nuclear holocaust or accident, to create a more stable basis for international cooperation.[2] At an Anglo-Soviet symposium dedicated in large part to the non-use of force in international relations, it may seem eccentric, even anachronistic, to speak about the history of international law in Anglo-Russian relations. But the Anglo-American family of legal systems is based on an historical system of law — we are accustomed to viewing the present and future against the fabric of the past. While this may lead to excessive caution and restraint, to a set of mind sometimes suspicious of "new thinking" simply because it is new, it also inclines us to accentuate those elements of stability that unite us — not least those general humanitarian values we share with all mankind.

Soviet revolutionary experience and values have led international legal doctrine in the USSR to accentuate the differences between the "old international law" and the modern for wholly understandable reasons. And in our day few lament the disappearance of capitulations, colonialism, and other outmoded institutions, even though for Britain those have been exceptionally costly adjustments. Nor would the fair-minded international lawyer fail to acknowledge the contribution of Soviet policy to the process. But to dwell exclusively on the changes that have occurred is to obscure those yet more powerful common interests and values that bind us together as an international community, and to ignore the history of international law or to treat it purely as a transition from evil to good is to profoundly fail to comprehend the forces at work in the international system and the origins of those rules and institutions that bind us.

The history of international law in this sense is that of a living law continuing to develop. Granted that major alterations in the international system have produced momentous changes in the substance and forms of the law of nations — 1945, 1917, 1815, 1648, and earlier — unlike

Roman law or Imperial Russian law, the law of nations has never been "repealed" and supplanted by an entirely new legal order. Rather new rules and institutions have supplanted or augmented antecedent rules, a combined process of partial modification and cumulation over time. The oldest treaty in force for the United Kingdom is a Treaty of Perpetual Alliance between King Richard II of England and John I, King of Portugal, dated 9th May 1386. The Falklands War had lawyers scurrying to re-examine claims to territorial acquisition from the sixteenth and seventeenth centuries. The International Court of Justice has considered cases relative to the East Indies that required not merely an examination of early documents but an inquiry into the origins of the international legal system. African states and other third world countries base their boundaries on early treaties, of course, but also upon their emergence as entities capable of entering into relations with subjects of international law. The Soviet Union, despite some Western impressions to the contrary, never rejected, in State practice, international law as such, merely those principles considered to be incompatible with the new international order. Indeed, it is probably impossible to find any State that has rejected international law in its entirety, although certain legal theorists doubt whether it is truly law.

In taking a positive and constructive approach in this paper to what unites us as international lawyers on a bilateral level, one may point to those periods of our history when diplomatic relations have been particularly close, indeed when bilateral standards of State practice have made substantial and enduring contributions to the development of the law of nations. Familiar examples would include the Act of Anne (1708) defining ambassadorial immunity and originating in the civil arrest of the Russian minister in London for alleged non-payment of debts; the Armed Neutralities of 1780 and 1800, which owed much to British attitudes towards neutral vessels and goods. V. M. Aleksandrenko and Iu. Tolstoi are prominent among those international lawyers who have documented periods or types of Anglo-Russian State practice. Aleksandrenko's two-volume study of Russian diplomatic agents in London during the eighteenth century, based on archival sources in both countries, remains the leading work on the subject.[3] Iurii Tolstoi's survey of the first four decades of relations between England and Russia (1553—1593) is of considerable interest for international lawyers.[4] The present writer has suggested on another occasion that the history of Anglo-Soviet international legal relations might serve as an exemplar for a Grabar-type work on the history of international law.[5]

But diplomatic relations are official inter-State relations. The question was: what unites us *as international lawyers* on a bilateral level quite apart

from a devotion to and a professional engagement with a system of law governing both of our countries and comprising, in one way or another, part of English and Soviet domestic law? Do we operate as parallel actors in a larger intellectual concern, or are there direct intellectual links available to help us identify shared values and concerns more readily?

Doctrinal links

Doctrinal links may fall roughly into four categories; (1) research or lecturing visits of a more or less extended nature by international lawyers to or from the Soviet Union and the United Kingdom; (2) translations of doctrinal writings; (3) joint symposia on other shared intellectual undertakings; (4) original and substantial works by an international lawyer from one system about the history or development of international law in another country and based on research in the country long-studied.

Research or Lecturing Visits. It seems to be the case that no international lawyer from the Soviet Union in the United Kingdom has ever served as a visiting professor and actually offered a course on international law or regularly participated in teaching such a course in one another's universities or research institutes. Research visits are of comparatively recent origin with respect to international law (as distinct from Soviet law, which has a history of its own in this respect). From the United Kingdom the present writer began to make such visits from 1971 both to the Faculty of Law, Moscow University, and to the Institute of State and Law of the USSR Academy of Sciences. There have been several that appertained primarily to international law. Under the Direct Link between University College London and the USSR Academy of Sciences Dr Richard Plender also visited to pursue international legal research.

Coming in the other direction, several Soviet international lawyers have spent extended periods in England under the exchange programmes to pursue their research. Most have arrived through the British Council (Dr V. Rudnitskii and Dr E. Rul'ko (Kiev) and Professor V. S. Mikhailov (Vladivostok)), and the remainder under the Direct Link with University College London (Dr N. Krylov and Dr A. Svetlanov-Lisitsyn) from the Institute of State and Law.

No international lawyer from either country has undertaken a higher degree in the other country.

Formal public lectures have taken place, but these cannot be said to have occurred with frequency. Professor G. I. Tunkin delivered and published a University Lecture in Laws at University College London (1977),[6] and a variety of less formal seminars and lectures have been

presented as opportunity permitted (Professors I. Blishchenko, A. L. Kolodkin, G. I. Tunkin, and others). Professor Butler and Dr Plender have given informal seminars in the Soviet Union.

Other occasions do, of course, bring British and Soviet international lawyers to one another's capital. But those attending diplomatic conferences or serving international institutions or embassies have rarely cultivated contacts with the academic world, regretfully, to the mutual loss of both.

Nor are these rather low levels of research and lecturing visits an historical anomaly. The splendid example of S. Desnitskii apparently was not followed up by Russian students interested in international law, who preferred to frequent the German, French and Italian universities instead. A few Russian international lawyers are known to have visited England in the nineteenth century. The first of these to achieve a European reputation was D. I. Kachenovskii, of Kharkov University. An admirer of the British parliamentary system, he spent the better part of 1859 in London observing two sessions of Parliament and attending a broad variety of public lectures and meetings. He lectured twice himself; the first, to the Juridical Society in London, treated the present state of international jurisprudence.[7] His proposal that international lawyers around the world unite in an appropriate professional society was warmly received and played a part in the eventual formation of the Institute of International Law. In his address to the London Peace Society, Kachenovskii discussed an early Russian proposal for perpetual peace advanced by V. F. Malinovskii.[8] He returned to England in 1861, reporting on both visits to Britain extensively to his colleagues at home.

F. F. Martens was present in Cambridge, England, during August 1895 to receive an honorary LL.D on the occasion of the Congress of the Institute of International Law. The Public Orator drew attention to Martens' study of English and Russian policies in Central Asia and the splendid volume on Anglo-Russian treaty relations in his capital study of Russian international treaties.[9] It is likely that he was present in Britain on other occasions, but his biography remains to be researched.

V. E. Grabar made at least five trips to England in connection with his research on the history of international law. Several Russian diplomats produced significant works on the law of nations and wrote and/or published them in England: P. P. Shafirov,[10] F. Veselovskii,[11] V. F. Malinovskii,[12] and A. A. Geiking (Heyking).[13] I. K. Gamel' (J. C. Hamel) eventually moved to England, where he died in 1861. A medical doctor and full academician, he discovered in 1839 at Oxford University a manuscript account of the Embassy of Sir Dudley Digges to Moscow (1618). His published account aroused considerable interest, and he wrote

a number of articles on Anglo-Russian relations during the 1850s and a book on the subject in English.[14]

No visits of international lawyers from England to Russia are recorded before the 1917 October Revolution. Jeremy Bentham, who did write on the subject of international law, spent nearly a year in Russia in 1785—86. The Russian translation of his work on codification is credited with introducing the words "international law" into the Russian language.[15]

Brief mention should be made of Sir Paul Vinogradov, the first Russian to be appointed to a chair of law in England, for he published an important article on historical types of international law.[16] Lakier[17] and Vernadskii[18] appear to have written their works without coming to Britain.

Translations of Doctrinal Writings. Russian and Soviet international legal scholarship published in the USSR in the English langauge; Anglo-American studies of Russian and Soviet approaches to international law; and Russian and Soviet studies of Anglo-American international legal doctrine are important but separate matters beyond the scope of this paper. Translations or original works of Russian or Soviet international lawyers published in Britain, and *vice versa*, are much less common and must rank among the highest compliments that can be tendered in the field.

Of modern Soviet doctrinal works published in Britain pride of place must be awarded to G. I. Tunkin's *Theory of International Law* (1974).[19] It is regarded as the most influential and thoroughly argued work on the subject ever produced in the USSR, fundamental to an understanding of the Soviet approach to international law since 1956, and a learned and significant addition to the major treatises on the subject. In the field of private international law, M.M. Boguslavskii's *Private International Law: The Soviet Approach* (1988) has been chosen by a practitioner as the most useful Soviet monograph available on the subject.[20] V. E. Grabar's monumental *History of International Law in Russia 1647—1917* is scheduled for publication later this year. The first Soviet monograph on international law published in England appears to be A. N. Trainin's study of responsibility for war crimes (1946).[21]

The first original work in the Russian language on international law, P. P. Shafirov's *Discourse* on the causes of the Northern War between Russia and Sweden (1717), was published in London in 1722, although Shafirov's authorship at the time was unknown. F. P. Veselovskii left a series of pamphlets, several published in London, treating matters of international legal interest arising out of Anglo-Russian relations (1717—21). Towards the end of the century V. F. Malinovskii wrote the first half of his work on war and peace at Richmond, near London, and completed

it some years later at Belozersk; extracts were published in 1859 by the London Peace Society. Kachenovskii's own monograph on the law of prize found an English translator and appeared at London in 1867.[22] The Russian Consul in London, A. A. Heyking, published a substantial manual on Russian Consular Law (1912) at London.

As regards modern English treatises published in the Soviet Union, it must be said that Soviet publishing houses have systematically selected the leading titles. Amongst general treatises the sixth edition of L. Oppenheim (1948—50)[23] and the second edition of Ian Brownlie (1977)[24] appeared on public international law and the first edition of Martin Wolff (1947)[25] and the tenth edition of Cheshire and North on conflicts of law.[26] Two editions of Higgins and Colombos on the law of the sea,[27] Shawcross and Beaumont on air law,[28] D. P. O'Connell on State succession,[29] and Ernest Satow's manual on diplomatic practice have been translated,[30] all to a very high standard. On the whole, English international lawyers have been translated as frequently as others, perhaps only recently being surpassed by continental writers.

Before 1917, the Russian translations of Jeremy Bentham, Sir William Blackstone and Adam Ferguson contained chapters in the law of nations and Sir Godfrey Lushington's manual of naval prize law appeared (1869).[31]

Joint Symposium. Collaborative joint symposia between British and Soviet international lawyers are a product of the 1980s. The initiative came from the maritime lawyers led by Professor A. L. Kolodkin. Five Anglo-Soviet symposia on the Law of the Sea and International Shipping were held alternately in Moscow and London between 1983—88 and the sixth is to be held in September 1989 at London.[32] At English initiative this cooperation was extended in 1986 to public international law generally. The first Anglo-Soviet Symposium on Public International Law held at London in 1986[33] was followed by the second in 1988 and a third in 1989. The possibilities of individual collaborative research are being explored by an international lawyer from Scotland and from the USSR.

It is through the joint symposia, in fact, that the English and Soviet international lawyers have come to know one another first hand. The frequency of these occasions, especially with respect to the law of the sea, has given the two parties a level of professional and personal acquaintanceships unrivalled by any other Western country and perhaps may be said to represent the first direct intellectual interchange ever to take place in this field between our respective countries.

Country Studies of International Law. Individual international legal scholars from one country who have dedicated themselves to the history

and development of international law in the other are extremely rare. Their work is a kind of intellectual link of its own, the more so when they do not confine themselves to "interpreting" one country's approach to the other but make original contributions to the discipline as a whole.

Of Russians who have devoted themselves to the development of international law in Anglo-Soviet relations, the principal figures have been mentioned. But one individual stands apart in three respects: he devoted a significant portion of his scholarly endeavours to the history of the law of nations exclusively on England; his work in this respect was and remains a pioneering venture and is wholly unknown to most international lawyers in England and in the Soviet Union; and his scholarly activities and interests make him a connecting link not merely between England and Russia but also between the pre-revolutionary Russian and Soviet periods of international law.

Vladimir Emmanuilovich Grabar (1865—1956) was an accomplished scholar of unusual breadth and erudition, University Professor at Tartu and Moscow Universities, academician of the Ukrainian Academy of Sciences, and legal adviser to both the Russian and Soviet govenments. He is known to the modern Soviet generation of international lawyers chiefly for his remarkable study of the history of international law in Russia, a volume soon to be published in English with many emendations and additions.

His true passion, however, lay in the nearly 30 books and articles written between 1888 and 1947 on the history of international law in the Middle Ages and before. It was an interest first manifest in his prize-winning student paper on the legal status of foreigners among the Ancient Jews. The key work was his magister dissertation on the elements of international law in the writings of jurists between the twelfth and fourteenth centuries, for Grabar never accepted Hugo Grotius as the "founder" of international law. To his mind the doctrine or science of international law came into being much earlier; Grotius was merely one in a long line of important publicists dating back to pre-mediaeval times.

For his doctoral dissertation Grabar turned to Britian, examining the writings of early and long-forgotten jurists in England and Scotland. The dissertation was completed but reportedly destroyed when the German army captured Iur'ev in 1918. The manuscript had made its impression, however, and on 18 June 1918 the Council of Petrograd University conferred on Grabar the degree of doctor of international law, a second doctorate *honoris causa* being conferred by Moscow University in 1943. The dissertation was entitled "The Science of International Law in England Before the Reformation." An outline that remains in the Grabar

archive may represent the more or less finished scope of the thesis and in any event is of considerable interest to the English historian of the subject. The main points are as follows:[34]

THE HISTORY OF INTERNATIONAL LAW IN ENGLAND
I. Pre-Reformation Period

Preface
Methodological Significance of the Work
The English School of International Law

Introduction
Roman Law in England as *Jus Gentium*

Section I

1. The spread and the study of Roman Law in England before the Reformation. The absence of extreme views on natural law.
2. Ways in which Roman Law penetrated into international relations.
   (a) the absence of a strict demarcation between private and public legal relations:
      law of marriage and succession
      ownership of land
      contracts
   (b) holding of highest State posts by civilists:
      King's Council — Chancellor
      Invitations to civilists to give opinions (reprisals, arbitration court)
   (c) role of civilists in diplomacy. English diplomatic personnel
   (d) Admiralty and mercantile courts

Section II

Individual Questions of International Law in English Practice
Before the Reformation

1. Sovereignty, independence
2. Precedence of States
3. Succession to the Throne
4. Ambassadorial law, congresses, and questions of precedence

[4.] Law of the Sea
5. Reprisals
6. Law of War
7. Law of prize
8. Private international law
9. Criminal law and extradition of criminals

Section III

Natural Law (Law of Nations) Applied in Inter-State Relations

Study thereof primarily as theology
Natural law in the lectures of English jurists
Aleksandr Galesskii (Hales)
Support for natural law by opponents of Roman Law
Support for natural law by independence movement (Winckler, Hookham)
Application of natural law in inter-state relations
Transformation of natural law into a national law (Peacock)
Conclusion: Demarcation of international law as being ... of another period (Hooker, Gentili)

Grabar's researches on international legal doctrine in England brought him to that country on several occasions. Archival records indicate that he worked in London during the summer of 1896; on 18 June 1898 and again on 13 January 1899 he was in residence at 2 Montague Place, Russell Square, in London, close to the British Museum; in 1908—9 he resided at "The Irvington" on 20 Bloomsbury Square, WC (1/10/— for the week of 29 June to 6 July 1909). At the British Museum he occupied Seat No. 8 and made visits to Oxford and Cambridge. Amongst others, he consulted the English admiralty historian, R. G. Marsden, about legal opinions written by Alberico Gentili and his fellow civilians.[35] From 26—29 July 1911 Grabar attended the First Universal Races Congress held at the University of London. Most of the year 1913 Grabar spent in Europe, including the period 19 March—10 April where he spent his time in the British Museum transcribing some medieval volumes of relevance for the law of nations and attended the Third International Congress of Historical Studies, 3—9 April 1913.

Certain portions of the doctrinal dissertation were published including a survey of English doctrinal writings from the twelfth to fourteenth centuries,[36] a study of reprisals under Edward II,[37] the international legal views of John Wycliffe,[38] and an analysis of the commentary of a Scottish

jurist, John Mair.[39] None of these works is known outside Russia, having been published exclusively in Russian or Ukrainian. They all explore a heritage ignored or forgotten in Britain and deserve translation.

All of these works together, including many others treating early international legal doctrine in France and Germany, represent merely a tiny fraction of Grabar's intellectual concerns and researches in the history of international law. From the legacy of documentation deposited in the Tartu University Archive, it is evident that Grabar laboured for seventy years transcribing and ordering extracts from the most obscure mediaeval sources in many languages with a view to preparing a universal history of international law. For the student of international legal history, Grabar's archive constitutes a unique and unsurpassed repository of data on the pre-Grotian era of international law and Grabar himself, a remarkable link between our two cultures.

Conclusion: Grabar on the non-use of force

But this is an Anglo-Soviet Symposium having as its principal focus the non-use of force in international relations. Grabar, it is equally appropriate to recall, was a leading authority on the law of war. His inaugural lecture at Tartu University (1893) was devoted to the subject of "The Law of War and International Law," and he wrote a number of other works on the subject. During the First World War he so angered the Russian General Staff by the objectivity of his opinions (pointing out precisely how both sides were guilty of violations) regarding prisoners of war that he was obliged to retire for health reasons under the protection of the Ministry of Foreign Affairs. When the Germans occupied Tartu (Iur'ev) in 1918, they were confronted by a diminutive international lawyer who informed them that their behaviour was contrary to international law.

When on 11 March 1918 the local German command suspended the operation of all Russian courts, Grabar drafted a protest pointing out that the area was occupied not by conquest, but under a Treaty of Peace according to which the German authorities were merely to restore order. Under the 1907 Hague Convention, Grabar wrote, Russian law was still in effect because the territory had not been ceded to Germany. Even if a new state were formed under German protection, there could be no basis for closure of the Russian courts without the consent of the Russian Government, and in any event new courts could be formed only by a new government and not by provisional military authorities. "I regard all of these actions as a violation of international law," Grabar protested. His Protest was sent to the Headquarters of the Eighth German Army for

transmission to the Imperial German Chancellery, with copies to the Russian Government and the Spanish Consul. Grabar drafted similar "aides-memoire" on behalf of the University Council objecting to various measures proposed by the Germans as contrary to the law of war.

Grabar's view of the role of international law in precluding the non-use of force in international relations are as apt today as they were 95 years ago. "The science of international law," says Grabar,

> is the science of peace. Its task is to consolidate peace on earth, having eliminated war from the domain of inter-State relations. This task imparts a profound philosophical meaning to the science of international law. Although its concern is war and peace, war is a manifestation of sensual aspirations and the dominance of force, whereas peace is the dominion of reason and law. The great enlightenment task of our science is to prepare the way for the ultimate triumph of peace, i.e. of reason and law. Sooner or later reason will always triumph in the struggle — have no doubt . . .[40]

When will that time come? Grabar quoted the colleague whose writings he most admired, V. A. Nezabitovskii:

> We live in a time when things are accomplished with astonishing speed that recently seemed impossible. Perhaps the time is imminent when the dream of a permanent peace will come to pass . . . education is leading and will lead us to peace.

That we continue as international lawyers to cherish the same objectives of our discipline as have most of our predecessors is but one of the general humanitarian values we share. Our failure to have achieved that common aspiration so far can only lead us to welcome new thinking, new initiatives, and new approaches as to how we might improve upon the record of the past.

Notes

1. For a thorough Soviet account, see M. S. Gorbachev, *Perestroika i novoe myshlenie dlia nashei strany i dlia vsego mira* (1987).
2. V. N. Vereshchetin and R. A. Müllerson, "Novoe myshlenie i mezhdunarodnoe pravo," *Sovetskoe gosudarstvo i pravo*, no. 3 (1988), pp. 3—9.
3. V. N. Aleksandrenko, *Russkie diplomaticheskie agenty v Londone v xviii* v. (1897).
4. Iu. V. Tolstoi, *Pervyi sorok let snoshenii Rossieiu i Anglieiu 1553—1593* (1875).

5. W. E. Butler, "Russian Legal Sources in Britain," Paper delivered to Anglo-Soviet Symposium on Legal History, April 1988.
6. G. I. Tunkin, "The Contemporary Theory of Soviet International Law", *Current Legal Problems*, xxxi (1978), 177—188.
7. D. I. Kachenovskii, "On the Present State of International Jurisprudence," *Papers Read Before the Juridical Society*, III, pt. 2 (June 1859), pp. 99—111; pt. 5 (August 1862), pp. 553—576.
8. Kachenovskii, "Dissertation on War and Peace by Basil Mahnofsky, St. Petersburgh, 1803," *Herald of Peace* (June 1858), pp. 71—72.
9. *Cambridge University Reporter* (2 October 1895), p. 16.
10. See Butler (intro.), P. P. Shafirov, *A Discourse Concerning the Just Causes of the War Between Sweden and Russia: 1700—1721* (1973).
11. Butler, "F. P. Veselovskii and the Law of Nations", *Israel Law Review*, xx (1985), 167—174.
12. Note 7 above.
13. A. A. Heyking, *A Practical Guide for Russian Consular Officers and Private Persons Having Relations with Russia* (1904; 2d ed, 1916).
14. J. C. Hamel, *England and Russia* (1854).
15. V. E. Grabar, *K istorii literatury mezhdunarodnogo prava v Rossii, 1647—1917* (1958), p. 188.
16. P. Vinogradov, "Historical Types of International Law," in the *Collected Papers of Paul Vinogradoff* (1928), II, pp. 248—318.
17. [A. B. Lakier], *Obzor snoshenii mezhdu Anglieiu i Rossieiu v xvi i xvii stoletiiakh* ([1854]).
18. I. V. Vernadskii, *Politicheskoe ravnovesie i Angliia* (1855; 2d ed., 1877).
19. G. I. Tunkin, *Theory of International Law*, trans. W. E. Butler (1974).
20. M. M. Boguslavskii, *Private International Law: The Soviet Approach*, trans. D. Winter and W. B. Simons (1988).
21. A. N. Trainin, *Hitlerite Responsibility Under International Law* (1946).
22. Kachenovskii, *The Prize Law* (1867).
23. L. Oppenheim, *Mezhdunarodnoe pravo* (1948—50).
24. I. Brownlie, *Mezhdunarodnoe pravo* (1977).
25. M. Wolff, *Mezhdunarodnoe chastnoe pravo* (1947).
26. G. Cheshire and P. North, *Mezhdunarodnoe chastnoe pravo* (1984).
27. P. Higgins and C. Colombos, *Mezhdunarodnoe morskoe pravo* (1953 and 1975).
28. Shawcross and Beaumont, *Vozdushnoe pravo* (1957).
29. D. P. O'Connell, *Pravopreemstvo gosudarstv* (1957).
30. E. Satow, *Rukovodstvo po diplomaticheskoi praktike* (1961).
31. G. Lushington, *Morskoe prizovoe pravo* (1869).
32. See A. L. Kolodkin (ed.) *Pravovye i ekonomicheskie problemy regulirovaniia mezhdunarodnogo sudokhodstva* (1984); id. (ed.), *Legal and Economic Aspects of Regulating International Navigation* (1985); W. E. Butler (ed.), *The Law of the Sea and International Shipping* (1985); W. E. Butler (ed.), "IV Anglo-Soviet Symposium on the Law of the Sea and International Shipping," *Marine Policy*, XII (1988), 177—324.
33. W. E. Butler (ed.), *International Law and the International System* (1987).
34. Grabar Archive, Tartu University, F. 38, s. 150.
35. Grabar Archive, F. 38, s. 306.
36. Grabar, "Poniatie estestvennogo i mezhdunarodnogo prava v angliiskoi literature xii—xvi vv," *Iuridicheskii vestnik*, kn. 2—4 (1917), pp. 5—30.
37. Grabar, "Repressalii v Anglii pri Eduarde II," *Uchenye zapiski RANIION*, III (1929), pp. 213—235.

38. Grabar, "Mezhdunarodno-pravovye vozzreniia Dzhona Viklifa," *Voprosy istorii*, no. 8—9 (1946), pp. 75—90.
39. Grabar, *Pitannia derzhavnogo i mizhnarodn'ogo prava v komentariakh Dzhona Mera do Sententsii Petra Lombardare* (1927).
40. Grabar, "Pravo voiny i mezhdunarodnoe pravo," *Uchenye zapiski Imperatorskogo Iur'evskogo universiteta*, no. 4 (1893), p. 45.

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THE PRINCIPLE OF NON-USE OF FORCE IN CONTEMPORARY INTERNATIONAL LAW

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In the contemporary world the major sources of barbaric behaviour — the killing of civilians, the destruction and expulsion of whole communities — result from the use of force and a reluctance to use available means of peaceful settlement of disputes. The preponderance of international lawyers show a culpable lack of interest in the precise modalities of peaceful settlement, in spite of a habit of pontificating about 'peace' and the 'right to peace' in the abstract. The war between Iran and Iraq, which has caused appalling losses of life and waste of resources, stemmed from a set of issues which were obviously susceptible to settlement on the basis of international law and available procedures.

Against this background, the significance of the law relating to the use of force by States may be affirmed. It is still the case that civilised governments insist on explaining their own decisions to use force in terms of international law and in evaluating the policies of other States on the same basis.

The constraints on the use of force by powerful States against weak neighbours are to a considerable degree self-imposed, and the law provides the necessary framework for policy-making. This much is obvious, but the list of the specific contexts in which the law relating to the use of force plays an important role is impressive. The leading contexts are as follows:

(i) The recognition of States and governments whose existence is believed to derive from an unlawful use of force. The refusal of recognition to the "Turkish Republic of Northern Cyprus" has been explained in terms of the illegality of the Turkish intervention of 1974 and its aftermath.

(ii) The administration of arms supply agreements in cases where weapons are supplied on condition that they be used "for defensive purposes" only.

(iii) The drafting of treaties concerning arms control. From time to time proposals have specified a prohibition of the use of nuclear weapons "except in defence against aggression".

(iv) Major issues of State responsibility may relate to the legality of the use of force and the question of justification for the use of force.

(v) Analogous questions may confront the International Court in proceedings on a request for the indication of provisional measures in accordance with Article 48 of the Statute of the Court.[1]

(vi) The legality of sanctions such as destination embargoes.[2]

(vii) The formation of rules of engagement for naval vessels as an aspect of naval staff planning. The late Professor O'Connell has pointed out that in the context of drafting rules of engagement for missile firing vessels "legal consideration must concentrate on what constitutes an 'armed attack', or 'hostile act', by a missile-armed vessel in conditions of limited hostilities, and what measures of self-defence are proportional to the risk of destruction".[3]

(viii) The important questions relating to the essential validity of treaties in cases in which one party had secured another party's consent by means of the illegal use or threat of force.[4]

(ix) The use of force by States involves the special question of the responsibility of individuals[5] and perhaps of States themselves[6] for crimes against peace.

(x) The application of provisions of constitutions which expressly prohibit the threat or use of force as means of settling international disputes.[7]

(xi) The explanation of national policies in response to questions in parliamentary assemblies.[8]

(xii) The application of Article 6 of the Charter of the United Nations, which provides as follows:

> A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council.

The use of force by States is a topic of international law which is in many respects classical, since, even before the *jus ad bellum* became significant, the occasions and modalities respecting resort to "war" and "hostile measures short of war" were a normal part of the contents of any general treatise. However, the treatment of the subject in the political practice and the literature of the period since 1945 exhibits a number of curiosities.

Not least among these are curiosities of method. A number of writers have taken the view that certain aspects of 'the customary law' have survived the regime of the United Nations Charter, and, in particular, that the right of anticipatory self-defence subsists in spite of the wording of Article 51. The problem of method which then presents itself is as follows.

Unless the Charter provisions on the use of force count for nothing, the argument for some survival of rules of customary law must involve some careful articulation of the relationship between the Charter and the particular "external" rule. Thus a process of assimilation or incorporation must take place, since otherwise the 'customary law' becomes a freely available excuse for the use of force. In practice States use the provisions of the Charter as the framework of reference.

Other curiosities of method occur. Thus reference to "the customary law" nearly always takes the form of an episodic reference to the *Caroline* incident and the related correspondence of the years 1838—1842.[9] The practice of the intervening period is ignored and no attempt is made to justify what is *prima facie* eccentric, namely, a use of a doctrine from the period before the *jus ad bellum* had developed.[10] If "the customary law" is still relevant, it must be that of 1945, immediately prior to the Charter, and not that of 1842. In any case the subsequent practice of the parties to the Charter must now be considered as the logically dominant practice, and States generally have shown a marked disinclination to recognise the legality of the use of force as an instrument of policy, except in very clear cases of emergency action. A further eccentricity of writers is to develop a set of references to a special issue, such as humanitarian intervention, with little or no attempt to relate the treatment to the mainstream of materials on the use of force by States.

To the eccentricities of writers must be added the vagaries of political decision-making. The materials relevant to the use of force have had three accessions:

(i) The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (General Assembly resolution 2131 (XX), adopted by 109 votes in favour, none against, and 1 abstention, on 21 December 1965).

(ii) The Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), adopted without vote, 24 October 1970).

(iii) The Definition of Aggression (General Assembly resolution 3314 (XXIX), adopted without vote, 14 December 1974).

These instruments cannot have a legislative effect but they are a part of the subsequent practice of the member States of the United Nations and must be given appropriate weight for the purpose of interpreting the provisions of the Charter. However, this second level significance is reduced by the wordiness and rotundity of the drafting, which results in a degree of circularity and question-begging. However, the general effect of these resolutions is affirmative of the *status quo* of the Charter. Perhaps

the only more or less radical tendency is the emphasis placed by the Declaration of Principles of 1970 on the relative legality of assistance to peoples taking action in pursuit of the exercise of their right to self-determination (see the complex formulations which elaborate upon "the principle of equal rights and self-determination of peoples" in the Declaration, and also the provisions of the "General Part" of the instrument).

The key provisions of the United Nations Charter are paragraphs 3 and 4 of Article 2, which Article contains the formulation of the *Principles* which bind 'the Organisation and its Members'. These two paragraphs provide as follows:

> 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
>
> 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

In his classic work,[11] Lord McNair, President of the ICJ from 1952 to 1955, refers to the provisions of the Charter, and after setting out the paragraphs quoted above, continues:-

> This treaty, the Charter, now (June 1961) accepted by no less than ninety-nine States, is the nearest approach to legislation by the whole community of States that has yet been realised. Our submission is that those of its provisions which purport to create legal rights and duties possess a constitutive or semi-legislative character, with the result that member States cannot 'contract out of' them or derogate from them by treaties made between them, and that any treaty whereby they attempted to produce this effect would be void. Many of these rights and duties are binding upon member States not only as between themselves but also as between each of them and the United Nations, for instance, the two paragraphs of Article 2 quoted above; paragraph 4 certainly and paragraph 3 probably are binding upon members, whether the other State which is the victim of force, threatened or used (paragraph 4), or which is involved in the dispute, is a member of the United Nations or not. It is, indeed, very probable, having regard to the provisions of the General Treaty for the Renunciation of War of 1928[12] and to the development of the rules of customary law referred to above, that an international tribunal would now hold that the provisions of the two paragraphs of Article 2 referred to above are declaratory of customary law and bind all States, whether they are members of the United Nations or not.

The significance of the Charter as a landmark is recognised by McNair and many others, but the significance of the period 1928 to 1945 is often not sufficiently appreciated by writers. The provisions of the Charter were preceded by the Kellogg-Briand Pact, which together with its reservations and the relevant subsequent practice, prefigured the régime of the Charter to a considerable degree.[13] The Charter was thus the beneficiary of a considerable quantity of diplomatic and legal experience and this is reflected in the drafting of paragraph 4 of Article 2 in particular. As McNair points out, the landmarks are as follows:[14]

> (a) in 1919 the Covenant of the League, which placed certain limitations upon resort to, or threat of, war;
> (b) in 1928 Articles 1 and 2 of the Kellogg-Briand Pact (or Peace Pact of Paris);
> (c) on 11 March 1932 the Assembly of the League of Nations adopted the following Resolution:
>
> The Assembly . . . declares that it is incumbent upon the Members of the League of Nations not to recognise any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris.
>
> (d) in 1945, Articles 2 and 51 of the Charter of the United Nations;
> (e) in 1949 the observations of the International Court of Justice on 'the manifestation of a policy of force', in its judgment in the *Corfu Channel Case* (*Merits*).[15]

After 1928 and again after 1945 the focus was upon the use of force by organs of the League of Nations or the United Nations and the particular justifications for the use of force by individual States. The diplomatic history shows plainly that the resort to force except in case of self-defence or collective self-defence was generally denied to States. The Second World War was fought essentially to vindicate this principle.

It is often assumed that the legal régime of the United Nations Charter is inimical to the use of force in general. This assumption is far from the truth, though it receives some spurious support from the fact that collective measures (by the organs) have not been very effective as a consequence of political contingencies. In fact the Charter represents a system of public order and is thus concerned with the question of the allocation of powers in respect of the threat or use of force as an instrument of policy. Moreover, as might be expected, the concept of a system of *public*

order involves a structure predisposed to a quasimonopoly of the use of force. The preamble and the provisions of Article 1 of the Charter (concerning the Purposes of the United Nations) give prominence to "collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression and other breaches of the peace". The preamble states that the United Nations are determined "to ensure ... that armed force shall not be used, *save in the common interest*" [emphasis supplied — IB].

The language of Article 2(4) emphasises the general prohibition of action by individual States and no amount of inelegant casuistry can prove otherwise. Justifications for the use of force by individual States must, in the framework of the Charter, be specific and in a strict sense exceptional. Such a conception of public order is natural and well suited to the era of missiles and nuclear weapons.

The régime of the Charter recognises the legality of the use of force by individual States in certain circumstances. Leaving aside the question of action against ex-enemy States (Articles 53 and 107), and the possibility that a single State may be mandated to use force on behalf of the Organisation,[16] the justifications for such use of force within the existing legal régime appear to be the following:

(i) Self-defence in accordance with the provisions of Article 51 of the Charter.

(ii) Collective self-defence in accordance with the same provisions.

(iii) Defence of third States (in so far as this may not be identical with collective self-defence).

(iv) Action authorised by the competent organ of a regional arrangement or agency recognised as such for the purposes of Chapter VIII of the Charter.

(v) Action within the territory of a State with the express consent of the government of that State.

Before attention is given to the controversies relating to this simplified list of justifications, it is necessary to survey what may be called the high ground of international policy, backed by a massive diplomatic consensus drawn from all groupings and regions. The high ground consists of three principles:

(i) The inadmissibility of the acquisition of territory by the threat or use of force.[17]

(ii) The invalidity of claims to secession and statehood by entities the existence of which stems from an illegal use of force by another State against the State adversely affected by the secession.[18]

(iii) The principle that international disputes shall be settled by peaceful means.

The régime of the Charter has been the object of some acute controversy and the principal foci of debate can be readily identified. With one exception — the issue of "humanitarian intervention" — the foci are all related to the concept of self-defence. A number of writers and some governments have advanced the view that Article 51, being a form of reservation, incorporates the 'customary law' of self-defence into the Charter.[19] It is far more likely that the concept is both preserved and at the same time transformed *into a concept which fits into the régime of the Charter.* The difficulty with the "customary law" argument stems from the fact that it is expressed in a form which relates to the nineteenth century practice and in that practice the concept of self-defence was not differentiated from a broad right of self-preservation. On this view Article 51 ceases to have the rôle of a reservation or reference to a particularised title of justification and the "reservation" becomes a permission which overrides the general principle set forth in paragraph 4 of Article 2. The tail then wags the dog.

However, there is a more moderate thesis which does not espouse the extreme view that the nineteenth century doctrine still subsists and at the same time would not restrict self-defence to the protection of State territory against direct forms of armed attack and blockades of ports or coasts. Waldock,[20] Bowett,[21] and McNair[22] all take the view that the use of force to protect the lives of nationals abroad is lawful self-defence within the régime of the Charter. This title was invoked by the United States in respect of the *Mayaguez* incident (1975)[23] and the invasion of Grenada (1983),[24] and by the Government of Israel to justify the Entebbe raid (1976).[25]

The present writer does not believe that protection of nationals is accepted as a justification for the use of force.[26] In practice the issue is rarely faced in its pure form. On certain occasions the justification is discounted by the admitted facts. Thus in the Grenada episode of 1983 it appears that the only physical hazard to the lives of United States nationals arose as a consequence of the invasion. Indeed, other States (such as Canada), whose nationals were on the island, were not consulted before the invasion. It hardly needs to be pointed out that the operation was not terminated after the evacuation of the United States civilians. In other cases, such as the Entebbe raid and the Indian intervention to end atrocities in East Bengal, other States appear to have waived the illegality but did not give positive recognition that the actions were lawful. In practice, rescue operations are carried out with the consent and co-operation of the government of the State which is the *locus in quo.* In other circumstances the hazards are very considerable. During the Entebbe operation three hostages, seven terrorists, one Israeli soldier and twenty

Ugandan soldiers were killed; and yet this was a case in which the rescue planning was very professional and the circumstances were in general relatively favourable.

Another, and more significant, controversy concerns the legality of anticipatory self-defence. A number of writers[27] have supported its legality, even within the legal régime of the Charter, on the basis of the survival of the customary law — the reservation of the 'inherent right' of self-defence in the wording of Article 51 — in the particular version of the formula employed by Secretary of State Webster in 1842 during the correspondence relating to the *Caroline* incident.[28] Webster required the British Government to show the existence of:

> ... necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorised them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.

It is the case that the supporters of anticipatory self-defence represent a minority view among publicists. Even those few governments which have invoked anticipatory self-defence have been far from consistent in their own practice. Thus the United States Government has on some occasions relied exclusively upon the wording of Article 51, with its reference to an "armed attack;"[29] whilst invoking the broader doctrine in respect of the intervention in Cambodia in April 1970.[30]

The logistics of the doctrine of anticipatory self-defence are shaky indeed. In particular, it is virtually impossible to apply the principle of proportionality to such actions. In practice Rules of engagement are based upon the armed attack model. As a matter of political reality, actions which are 'anticipatory,' in the sense that they are not in reaction to a prior attack but are claimed to be in anticipatory self-defence, have other political objectives. Without such other attractions, the risk would not be worth taking. Moreover, the factual basis of claims may be difficult to assess without knowledge of guarantees given by third States. The Israeli claim that anticipatory action was taken against Egypt in 1967 cannot be assessed without an investigation of the assurances given by the United States to Israel and Egypt respectively. If, as may have been the case, Egypt was warned that any attack on Israel would lead to immediate United States intervention, the need for Israeli action would be difficult to justify.

An ultimate difficulty lies in the fact that the Webster formula defines necessity only in terms of itself, which is like saying that a piece of string must be long without specifying criteria of length. On occasion it is suggested that the need to prevent attack justifies continuous aerial trespass and even occupation of territory. By such means is the concept of anticipatory action discredited by its partisans.

The aspect of the concept of self-defence which is most often ignored in practice is that of proportionality. It is a necessary part of the very concept of self-defence and yet it is very difficult to apply in practice. The United States practice in the matter of armed reprisals has shown a certain blurring of the distinction between proportionate self-defence and reprisals. This more flexible practice has related to the use of force in response to attacks launched from bases in foreign States unable or unwilling to prevent the use of their territory as a base for aggressive operations against neighbouring States. However, the distinction of principle between acts of reprisal and self-defence has not been challenged.[32]

Beyond the various controversies related to the concept of self-defence lies the issue of humanitarian intervention, which attracted some attention in the literature in the early 1970s.[33] There is little or no reason to believe that humanitarian intervention is lawful within the regime of the Charter.[34] The concept is distinct from that of protection of nationals, although in functional terms there is clearly an overlap. There is virtually no modern State practice to support the thesis that such a right exists. The Stanleyville operation of 1964 is invoked as a precedent by advocates of the right, but in fact the Congolese Government had consented to the operation and thus it was based on the title of consent given by the territorial sovereign.[35] In the case of the intervention in the Dominican Republic in 1965, also cited in this context, no reference was made to humanitarian action as a legal justification.[36]

The policy behind the concept of humanitarian intervention calls for careful examination. The very idea of the use of force within the territory of another State for humanitarian purposes involves an obvious paradox. In most conditions what will be involved is a major military operation in inhabited areas with concomitant risks to the civilian population. No warning will be given and there will be little chance of the evacuation of civilians from the combat zone. Unlike the case of self-defence, there is no consensus on the conditions in which humanitarian intervention would be justified. Moreover, the political reality is to be faced. The use of force by way of humanitarian intervention would undoubtedly follow the pattern of non-forcible sanctions by States on the basis of a policy of protecting human rights standards. The indications provided by the pattern of such non-forcible sanctions are not encouraging. Double standards are rampant.

On the index of human rights policies followed by those powers able to import 'sanctions', humanitarian intervention would be highly selective and nearly always dictated by political and strategic interest. The major power will not intervence in their political allies, except when a threatened or actual change of regime endangers their political interests. Humanitarian intervention will in practice be old-fashioned hegemonial intervention.

The picture overall is complex and there are inevitable difficulties in applying rules to facts which are often either genuinely confused or obscured by a haze of news management which is itself a carefully prepared element in the implementation of aggression. The role of the law remains although, as in the nineteen-thirties, it is played down by those who are displeased with the constraints it places upon their favourite political horses. The law also remains an important aspect of the staff-planning within the armed forces of a number of powers.

The period under review contains many strands and three of these must be recalled in this conclusion. The first is the appalling threat of nuclear warfare, a question which in reality is more one of morality and common sense than it is one of law. The second is the tendency of States to invoke the law even at the expense of creating pseudo-precedents which an opponent might use for his own purposes. The third is the difficulty of applying the concepts of "armed attack" and the "use of force" to the complexities of irregular warfare and the incorporation of militias and partisan groups into the command structures of regular armed forces.

Notes

1. *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, Order of 10 May 1984, *ICJ Reports* (1984), p. 169.
2. See I. Shihata, "Destination Embargo of Arab Oil: Its Legality Under International Law," *AJIL*, LXVIII (1974), 591—627; E. V. Rostow, "The Illegality of the Arab Attack on Israel of October 6, 1973," *AJIL*, LXIX (1975), 272—289.
3. See D. P. O'Connell, "International Law and Contemporary Naval Operations," *British Yearbook of International Law*, XLIV (1970), 62—63; and O'Connell, *The Influence of Law on Sea Power* (1975), pp. 70—71.
4. See A. D. McNair, *Law of Treaties* (1961), pp. 206—211, 215—218; and Article 52, 1969 Vienna Convention on the Law of Treaties.
5. See I. Brownlie, *International Law and the Use of Force by States* (1963), pp. 150—213.
6. See the work of R. Ago, Special Rapporteur, *Yearbook of the International Law Commission*, II (1976), pt. 1, pp. 26—54 (paras. 72, 79—155).
7. See S. Oda and H. Owada (eds.), *The Practice of Japan in International Law* (1982), pp. 294—296, 303—304, 312—314.
8. *Ibid.*, pp. 372—403; and "United Kingdom Materials on International Law," *BYbIL*, XLIX (1978) and following volumes, Parts 13 and 14. Vol. LIII (1982), pp. 498—559, contains a great deal of material on the Falklands Islands conflict.

9. Note 5 above, pp. 40—43, 250—261.
10. See further Brownlie, "Recent Appraisals of Legal Regulation of the Use of Force," *ICLQ*, VIII (1959), 707—721 (a critique of J. Stone, *Aggression and World Order* (1958) and D. Bowett, *Self-Defence in International Law* (1958)).
11. Note 4 above, p. 217.
12. Otherwise known as the Kellogg-Briand Pact or the Pact of Paris (present author's note inserted).
13. Note 5 above, pp. 66—111, 216—250.
14. *Ibid.*, p. 210.
15. *ICJ Reports* (1949), p. 35.
16. As in the case of S. C. Res. 221 adopted 9 April 1966. *ILM*, V (1966), 534, which called upon the Government of the United Kingdom "to prevent by the use of force if necessary the arrival at Beira of vessels reasonably believed to be carrying oil destined for Rhodesia ..." See further J. E. S. Fawcett, "Security Council Resolutions on Rhodesia," *BYbIL*, XLI (1965—66), 118—121.
17. See S. C. Res. 242 (1967), 22 November 1967; and 338 (1973), 22 October 1973.
18. See S. C. Res. 541 (1983), 18 November 1983, on the unilateral declaration by Mr. Denktash purporting to create an independent State in northern Cyprus; Parliamentary Assembly of the Council of Europe, Res. 816 (1984) on the situation in Cyprus.
19. See H. Waldock, "The Control of the Use of Force by States in International Law," *Recueil des cours*, LXXXI (1952), 455—514; Bowett, note 10 above; J. Brierly, *The Law of Nations*, 6th ed. by H. Waldock (1963), pp. 397—402.
20. Waldock, note 19 above, pp. 466—467.
21. Bowett, note 10 above, pp. 87—105.
22. McNair, note 4 above, pp. 209—210.
23. *Digest of United States Practice in International Law* (1975), pp. 423—426, 777—783, 879—886.
24. Davis Robinson letter dated 10 February 1984 to Professor Edward Gordon; statement of Kenneth W. Dam on 2 November 1983. in M. Nash, "Contemporary Practice of the United States Relating to International Law," *AJIL*, LXXVIII (1984), 201.
25. Security Council Meeting, 9 July 1976; *ILM*, XV (1976), 1228—1231 (Statement of Mr. Herzog).
26. Note 5 above, pp. 289—301.
27. See the writers cited in *ibid.*, pp., 269—278.
28. *Ibid.*, pp. 42—43; R. Y. Jennings, "The *Caroline* and McLeod Cases," *AJIL*, XXXII (1938), 82—99.
29. Department of State Memo. dated 4 March 1966, on "Legality of United States Participation in the Defense of Viet-Nam," *ILM*, V (1966), 565.
30. Statement of Department of State Legal Adviser, J. R. Stevenson, 28 May 1970, in *ILM*, IX (1970), 840; *Department of State Bulletin*, LXII (1970), 765. Also see R. Falk (ed.), *The Vietnam War and International Law* (1972), III, pt. 1.
31. Note 23 above (1979), pp. 1749—1752.
32. See, in particular, R. Lillich (ed.), *Humanitarian Intervention and the United Nations* (1973), noting bibliography at p. 229. Also see R. Higgins and M. Akehurst in H. Bull (ed.), *Intervention in World Politics* (1984), pp. 38—40, 95—118, respectively.
33. Brownlie, note 5 above, pp. 338—342; Lillich, note 32 above, pp. 139—148.
34. M. Whiteman, *Digest of International Law*, V, pp. 475—476; XII, pp. 209—215.
35. *Ibid.*, XII, pp. 733—749.