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# On The Prevention of Violence†

ROBERT A. FRIEDLANDER\*

*[T]hey that take the sword shall perish with the sword. . . . Matthew 26:52.*

Not without reason has the twentieth century been called an “Age of Conflict”<sup>1</sup> and “The Century of Total War.”<sup>2</sup> In a controversial and widely debated essay written at the end of the Second World War, dissident Marxist philosopher Maurice Merleau-Ponty claims that “violence is our lot. . . . Violence is the common origin of all regimes. Life, discussion, and political choice occur only against a background of violence.”<sup>3</sup> Violence is the antithesis of the rule of law. The most recent manifestation of global conflict—domestic and international terrorism—is a war against law and law-ordered society.<sup>4</sup> Throughout modern history, advocates of revolutionary change have argued that the end justifies the means and that violent means are permissible and indeed desirable in order to attain revolutionary ends.<sup>5</sup> This is not only a legitimization of terror,<sup>6</sup> it is also a denial of fundamental human rights.<sup>7</sup>

Few would gainsay the most significant global phenomenon of the

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† Report presented to the Pax Romana Conference, Manila, the Phillipines, December 1979.

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<sup>1</sup> F. CHAMBERS, *THIS AGE OF CONFLICT: THE WESTERN WORLD, 1914 TO THE PRESENT* (3d ed. 1962).

<sup>2</sup> R. ARON, *THE CENTURY OF TOTAL WAR* (1954).

<sup>3</sup> M. MERLEAU-PONTY, *HUMANISM AND TERROR: AN ESSAY ON THE COMMUNIST PROBLEM* 109 (J. O’Neill trans. 1971).

<sup>4</sup> For those committed to the ways of terror-violence, one observer has commented that “[l]aw is a delusion, and nothing can be hoped for from any action taken within the rules of the social contract.” J. REVEL, *THE TOTALITARIAN TEMPTATION* 104 (D. Hapgood trans. 1978).

<sup>5</sup> See, e.g., F. FANON, *THE WRETCHED OF THE EARTH* (C. Farrington trans. 1963); G. SOREL, *REFLECTIONS ON VIOLENCE* (T.E. Hulme trans. 1941).

<sup>6</sup> A. CAMUS, *NEITHER VICTIMS NOR EXECUTIONERS* (D. Macdonald trans. 1972) [hereinafter cited as *VICTIMS*].

<sup>7</sup> South African novelist Alan Paton, a bitter and courageous foe of apartheid, declared: “I regard the rule of law [as] the most fundamental of human rights.” *The Chicago Tribune*, Oct. 26, 1977, § 1, at 2, col. 2.

third quarter of this century, aside from the development of atomic energy, to be the disintegration and destruction of former colonial empires and the emergence of 100 independent states.<sup>8</sup> Yet, as philosopher Sidney Hook pointed out almost 50 years ago, violence inevitably becomes the handmaiden of mass movements of social and political reform.<sup>9</sup> National liberation struggles have often adopted techniques of terror-violence as the most expeditious method for achieving self-determination, and even the United Nations has condoned rather than condemned such measures.<sup>10</sup> Consequently, the authoritative voice of Pope Paul VI, denouncing all forms of terrorism through his annual Christmas message of December 1977,<sup>11</sup> has gone unheeded by those seeking to revolutionize the social and political order.

Twentieth-century violence between and among nation-states not only engendered the modern alliance system but also played a substantial role in the coming of two world wars.<sup>12</sup> Totalitarian violence directed at captive populations and subject peoples was instrumental in the new post-Second World War international legal formulation making the individual a proper subject for public international law.<sup>13</sup> The legacy of the Nuremberg and Tokyo Judgments—and of the Holocaust era—led to the establishment of the International Protection of Human Rights, beginning with the Universal Declaration of Human Rights in December 1948.<sup>14</sup> Contemporary governmental violence has been a major factor in the further development of theoretical human rights guarantees,<sup>15</sup> but the actual

<sup>8</sup> See R. EMERSON, *FROM EMPIRE TO NATION: THE RISE TO SELF-ASSERTION OF ASIAN AND AFRICAN PEOPLES* (1969); H. JOHNSON, *SELF-DETERMINATION WITHIN THE COMMUNITY OF NATIONS* (1967); *SELF-DETERMINATION: NATIONAL, REGIONAL AND GLOBAL DIMENSIONS* (Y. Alexander & R. Friedlander eds. 1980).

<sup>9</sup> Hook, *Violence*, in 15 *ENCYCLOPEDIA OF THE SOC. SCI.* 264, 265 (1935).

<sup>10</sup> Green, *The Legitimization of Terrorism*, in *TERRORISM: THEORY AND PRACTICE* 180-195 (Y. Alexander, P. Wilkinson & D. Carlton eds. 1979).

<sup>11</sup> *The Chicago Tribune*, Dec. 21, 1977, § 3, at 2, col. 1.

<sup>12</sup> See, e.g., M. BEAUMONT, *THE ORIGINS OF THE SECOND WORLD WAR* (S. de Couvreur Ferguson trans. 1978); S. FAY, *THE ORIGINS OF THE WORLD WAR* (1928); P. RENOUVIN, *HISTOIRE DES RELATIONS INTERNATIONALES: DE 1871 A 1914—L'APOGEE DE L'EUROPE* (1955); R. SONTAG, *A BROKEN WORLD, 1919-1939* (1971).

<sup>13</sup> See L. HENKIN, *THE RIGHTS OF MAN TODAY* 89-115 (1978); H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 1-72 (1950). See generally *PROBLEMES DE PROTECTION INTERNATIONALE DES DROITS DE L'HOMME* (K. Vasak ed. 1969).

<sup>14</sup> LAUTERPACHT, *supra* note 13, at 428-34; see *id.* at 399-428. See also I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 463, 445-86 (1966); Moscovitz, *Wither the United Nations Human Rights Program*, reprinted in [1976] 6 *ISRAEL Y.B. ON HUMAN RIGHTS* 81.

<sup>15</sup> U.N. Secretariat, *United Nations Action in the Field of Human Rights*, UN.Doc. ST/HR/2, reprinted in J. JOYCE, *HUMAN RIGHTS: INTERNATIONAL DOCUMENTS* 118-341 (1978); M. CRANSTON, *WHAT ARE HUMAN RIGHTS?* 43-61 (1962); M. MOSCOWITZ, *THE POLITICS AND DYNAMICS OF HUMAN RIGHTS* (1968); *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 505-913 (L. Sohn & T. Buergenthal eds. 1973).

historical record unfortunately demonstrates a contrary trend.<sup>16</sup>

On December 6, 1978, in his White House speech commemorating the thirtieth anniversary of the Universal Declaration of Human Rights, American President Carter pointedly observed: "Of all human rights, the most basic is to be free of arbitrary violence—whether that violence comes from governments, from terrorists, from criminals, or from self-appointed messiahs operating under the cover of politics or religion."<sup>17</sup> The statement is as significant for its bare limitations as it is for its fundamental assumptions. Non-arbitrary, purposeful, selective violence, if it be in the national interest or for a deserving cause (the latter most likely related to a majoritarian concept), is impliedly permissible.

Who decides the justice of a particular cause? Can there ever be a truly just war?<sup>18</sup> And what of the right of self-defense? No civilized human being can deny "that Nazism was an ultimate threat to everything decent in our lives, an ideology and a practice of domination so murderous, so degrading even to those who might survive, that the consequences of its final victory were literally beyond calculation, immeasurably awful."<sup>19</sup> Yet, random and non-strategic terror-bombing during World War II took the lives of thousands of German civilians, many of whom were sacrificed for apparently psychological purposes or were punished under a retributive theory of collective guilt.<sup>20</sup>

Within three decades after the Nuremberg Judgment, the legal justification for that tribunal had come under serious and extensive attack.<sup>21</sup> The Nuremberg trials, if nothing else, were a determined attempt to reestablish the framework for a global rule of law, and this certainly was the import of the International Law Commission's Nuremberg Principles<sup>22</sup> and the subsequent Draft Code of Offenses against the Peace and Security of Mankind,<sup>23</sup> neither of which were ever voted upon by the United Na-

<sup>16</sup> See, e.g., U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, 95TH CONG., 2D SESS. (Jt. Comm. Print 1978); FOREIGN AFFAIRS AND NAT'L DEFENSE DIV., CONG'L RESEARCH SERV., LIBRARY OF CONG., HUMAN RIGHTS CONDITIONS IN SELECTED COUNTRIES AND THE U.S. RESPONSE, 95th Cong., 2d Sess. (Comm. Print 1978).

<sup>17</sup> 79 U.S. DEP'T OF STATE, BULL. No. 2022 (Jan. 1979), at 1; New York Times, Dec. 7, 1978, § A, at 10, col. 1.

<sup>18</sup> See Y. MELZER, CONCEPTS OF JUST WAR (1975); M. WALZER, JUST AND UNJUST WARS (1977). Eugene Davidson comments that "from the Communist point of view . . . a socialist war is always a just war." E. DAVIDSON, THE NUREMBERG FALLACY 19 (1973).

<sup>19</sup> WALZER, *supra* note 18, at 253.

<sup>20</sup> *Id.* at 251-63.

<sup>21</sup> See, e.g., G. BAILEY, GERMANS: BIOGRAPHY OF AN OBSESSION 99-122 (1974); E. DAVIDSON, THE TRIAL OF THE GERMANS 580-94 (1966); O. KIRCHHEIMER, POLITICAL JUSTICE 323-41 (1961); H. PACHTER, MODERN GERMANY: A SOCIAL, CULTURAL AND POLITICAL HISTORY 255-57 (1978); B. SMITH, REACHING JUDGMENT AT NUREMBERG 302-06 (1977).

<sup>22</sup> 5 U.N. GAOR, Supp. (No. 12), U.N. DOC. A/1316 (1950).

<sup>23</sup> 9 U.N. GAOR, Supp. (No. 9), U.N. DOC. A/2693 (1954).

tions General Assembly.<sup>24</sup> But *whose* rules and *what* law?

On December 14, 1974, the General Assembly adopted by consensus a Definition of Aggression.<sup>25</sup> It is a narrow determination at best, concerned only with violations of the classic rights of territorial integrity and political independence as opposed to military force, and even this limited delict must first involve a violation of the Charter.<sup>26</sup> Not only are economic and psychological aggressions totally unrecognized, but third party intervention is deemed to be permissible, and by implication desirable, in matters of self-determination and wars of national liberation. Thus, not only has the world community failed to advance from its original confirmation of the Nuremberg Judgment,<sup>27</sup> but it has in effect sanctioned revolutionary violence promoted by non-aggrieved parties. Small wonder, then, that General de Lattre de Tassigny wryly observed after his arrival in Vietnam that "[h]istory has never been anything but illusions."<sup>28</sup>

Another consequence of the Nuremberg and Tokyo Tribunals and of the war crimes issues deriving from the Second World War was the recodification of the laws of war by the Geneva Conventions of 1949. Since the international outlawry of war as an instrument of national policy by the Kellogg-Briand Pact of Paris in August 1928 lasted barely a decade,<sup>29</sup> and since the atrocities of World War II rekindled a modern barbarism, the expansion and restructuring of the laws of war were an inevitable recognition that state violence could not be eradicated in the post-Charter era.<sup>30</sup> The two Protocols Additional to the 1949 Geneva Conventions, signed in 1977, have by international agreement raised national liberation conflicts and civil wars to the juridical level of inter-state wars. And the legal distinction between terrorist and guerrilla has thus been blurred to the point of meaninglessness.<sup>31</sup> It should not be surprising, therefore, that

<sup>24</sup> Bilder suggests, not altogether persuasively, that widely cited documents such as these (and the Genocide Convention) "have through very broad acceptance assumed the status of customary law binding even on nations which have not expressly agreed to them." Bilder, *The Status of International Human Rights Law: An Overview*, in *INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE* (J. Tuttle ed. 1978).

<sup>25</sup> G.A. Res. 3314, 29 U.N. GAOR, Supp. (No. 31), U.N. Doc. A/9890 (1974).

<sup>26</sup> One author offers a savage critique of the UN effort. J. STONE, *CONFLICT THROUGH CONSENSUS: UNITED NATIONS APPROACHES TO AGGRESSION* (1977). *Contra*, 2 B. FERENCZ, *DEFINING INTERNATIONAL AGGRESSION: THE SEARCH FOR WORLD PEACE* 50-53 (1975).

<sup>27</sup> G.A. Res. 95, 1 U.N. GAOR 55 (1946).

<sup>28</sup> L. BODARD, *L'AVENTURE: DE LATTRE ET LES VIETS* 115 (1967).

<sup>29</sup> Renouvin notes that the Paris Peace Pact implied the legal use of force against transgressors of the League Covenant and the Locarno security treaties. 5 P. RENOUVIN, *HISTOIRE DES RELATIONS INTERNATIONALES: LES CRISES DU XX SIECLE—DE 1914 à 1929*, at 342 (1957).

<sup>30</sup> For an excellent discussion of Bindschedler-Robert, see *Problems of the Law of Armed Conflicts* §§ 1-3, in 1 A. *TREATISE ON INTERNATIONAL CRIMINAL LAW* 295-319 (M. Bassiouni & V. Nanda eds. 1973).

<sup>31</sup> See, particularly, the critique of Dinstein, *The New Geneva Protocols: A Step Forward or Backward?*, in [1979] 33 *Y.B. OF WORLD AFFAIRS* 265. See generally Bassiouni, *Repression of*

a renowned international legal scholar has assumed the contemporary world is on the verge of relapsing "into violence unlimited and [into] neo-barbarism."<sup>32</sup>

There likewise seems to be no general agreement among legalists as to the authorized use of force under the United Nations Charter beyond the right to self-defense provided by Article 51.<sup>33</sup> No one has yet been able to define precisely the meaning of the term "self-defense,"<sup>34</sup> though all too often might has determined right when a state has chosen to exercise that privilege. A distinguished French political commentator has argued that "[p]eace is above all a legal postulate" and hence is "morally indifferent."<sup>35</sup> This strikes at the heart of the very notion of the rule of law. Power politics is a condition of international relations rather than the consequence of positivistic law. Whether it be Emheric de Vattel writing during the climax of the eighteenth-century Enlightenment<sup>36</sup> or John Rawls during the seventh decade of the twentieth century,<sup>37</sup> they and the majority of international jurisprudentialists are agreed that basic human rights, as well as notions of societal good, run counter to the exercise of force and the promulgation of violence. Former United Nations Secretary General Dag Hammarskjöld, however imperfect his vision, devoted himself to the pursuit of an international common law, and viewed the United Nations Charter as the linchpin of a global society: "The Principles of the Charter are, by far, greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people."<sup>38</sup>

*Breaches of the Geneva Conventions under the Draft Additional Protocol to the Geneva Conventions of August 12, 1979*, 8 RUT.-CAM. L.J. 185, 194-218 (1977); Forsythe, *Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflicts*, 72 AM. J. INT'L L. 272 (1978).

<sup>32</sup> G. SCHWARZENBERGER, *THE DYNAMICS OF INTERNATIONAL LAW* 90 (1976).

<sup>33</sup> See generally D. BOWETT, *SELF-DEFENSE IN INTERNATIONAL LAW* (1958); I. BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* (1963); *ESSAYS ON INTERNATIONAL LAW AND RELATIONS IN HONOUR OF A.J.P. TAMMES* (H. Meijers & E. Vierdag eds. 1977); *HUMANITARIAN INTERVENTION AND THE UNITED NATIONS* (R. Lillich ed. 1973); *LAW AND CIVIL WAR IN THE MODERN WORLD* (J. Moore ed. 1974). An overview of the recent literature, particularly on the issue of humanitarian intervention, can be found in Friedlander, *The Mayaguez in Retrospect: Humanitarian Intervention or Showing the Flag?*, 22 ST. LOUIS L.J. 601 (1978).

<sup>34</sup> See D.W. GRIEG, *INTERNATIONAL LAW* 892-897 (2d ed. 1976); E. JIMINEZ DE ARECHAGA, *DERECHO CONSTITUCIONAL DE LAS NACIONES UNIDAS* 397-412 (1958); H. Kelsen, *THE LAW OF THE UNITED NATIONS* 269 (1964); F. REUTER, *DRÖIT INTERNATIONAL PUBLIC* 376-78 (1968).

<sup>35</sup> R. ARON, *PEACE AND WAR: A THEORY OF INTERNATIONAL RELATIONS* 717 (R. Howard & A. Baker Fox trans. 1967).

<sup>36</sup> E. DE VATTEL, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW\* APPLIED TO THE CONDUCT AND TO THE AFFAIRS OF NATIONS AND SOVEREIGNS* 301-03 (J. Chitty trans. 1835) (1st ed. France 1758).

<sup>37</sup> J. RAWLS, *A THEORY OF JUSTICE* 377-82 (1971).

<sup>38</sup> HAMMARSKJÖLD: *THE POLITICAL MAN* 5-6 (E. Kelen ed. 1968).

Violence has adopted many forms during modern times, only some of which are subject to international regulation. Major typologies include: (1) state against state; (2) state against people; (3) people against state; and (4) people against people. The first three categories contain external elements and are proper subjects of public international law or of international criminalization through treaty and convention. The fourth form is primarily domestic, though even here certain activities such as genocide (by one group directed against another) can create an international jurisdiction.

In the first encyclical of his pontificate, *Redemptor Hominis*, dated March 4, 1979,<sup>39</sup> Pope John Paul II strongly condemned all violations of "the objective and inviolable rights of man," among which were numbered "concentration camps, violence, torture, terrorism, and discrimination in many forms." His emphasis seemed to be placed on state abuses and unbridled state power,<sup>40</sup> although he likewise underscored dangers inherent in the disintegration of legitimate authority and the spread of societal dissolution. Whereas the former condition provided the dominant characteristic of the middle of this century, the latter situation has been endemic during the last two decades. It has become almost a truism to say that "[s]ocieties disintegrate from within more frequently than they are broken up by external pressures."<sup>41</sup> Statist repression is one explanation. Frustration of rising expectations is another. Insurrection, rebellion, and revolution are by their very nature violent in some form, seeking an overthrow or a destruction of the established order, a fact trenchantly expressed by Albert Camus' metaphorical observation that "revolutionary times begin—on a scaffold."<sup>42</sup>

Certainly, rebellion and revolution are recognized by international law as legitimate remedies applied against oppressive, exploitative, and even ineffective regimes. There are those who argue that revolutionary violence has not only been "an unavoidable historical necessity" but has resulted in a greater good for the greater number (i.e., the Revolt of the Netherlands, the Puritan Revolution, the American Revolution, and the French Revolution).<sup>43</sup> Even if true, this does not justify present or future violence. Twentieth-century revolutions have increasingly combined ideology and terror with dire results for all factions.<sup>44</sup> Violence comes to have a logic for its own sake, or as Jean-Paul Sartre maintains, "[v]iolence, like

<sup>39</sup> Pope John Paul II, *Redemptor Hominis* (March 4, 1979), reprinted in *The Tidings* (Los Angeles), Mar. 23, 1979, at 8, col. 2.

<sup>40</sup> *Id.* at 9, col. 1.

<sup>41</sup> P. DEVLIN, *THE ENFORCEMENT OF MORALS* 13 (1965).

<sup>42</sup> A. CAMUS, *THE REBEL: AN ESSAY ON MAN IN REVOLT* 111 (A. Bower trans. rev. ed. 1956).

<sup>43</sup> This argument is noted but not supported by B. MOORE, JR., *REFLECTIONS ON THE CAUSES OF HUMAN MISERY—AND UPON CERTAIN PROPOSALS TO ELIMINATE THEM* 28 (1972).

<sup>44</sup> H. ARENDT, *ON REVOLUTION* 51 (1963).

Achilles' lance, can heal the wounds that it has inflicted."<sup>45</sup> It may very well be that violence has become the common denominator of this century's historical development.<sup>46</sup>

With his usual prophetic insight, Leon Trotsky declared at Brest-Litovsk: "Every state is based on violence."<sup>47</sup> In the third quarter of this century, revolution, particularly when directed at actual or alleged colonial oppressors, has come to mean guerrilla warfare, which in turn translates into revolutionary terror-violence.<sup>48</sup> Mao Tse-tung's legendary aphorism that "[p]olitical power grows out of the barrel of a gun,"<sup>49</sup> reflects both his own historic experience<sup>50</sup> and twentieth-century realities. Revolutionary terror-violence committed in the name of popular liberation, whether by urban or rural guerrillas, has invariably consisted of the same techniques—street warfare, assassination, seizing (and killing) of hostages, burning, bombing, pillaging, and torturing (mental or physical).<sup>51</sup> Hannah Arendt writes that no matter how necessary, violence can never be legitimate.<sup>52</sup> Certainly, neither the Left nor the Right have a monopoly on illegitimate violence, as the recent history of Algeria, Latin America, and Southeast Asia clearly demonstrates.

Arguments have been made by Third World legal and political theorists that public international law prior to and following the United Nations Charter has been Western oriented and Western implemented and seeks to maintain the dominance of the colonial and capitalist systems.<sup>53</sup> Soviet scholars have been more cautious during the last generation, but they are severely critical of the old pre-Charter legal norms and emphasize instead the substantive changes brought about by national liberation movements and the emergence of new state sovereignties.<sup>54</sup> Even Soviet scholars of great prominence, such as G. I. Tunkin, have denounced the "predominant bourgeois doctrine of international law" and its reluctance to accept fundamental changes.<sup>55</sup> Third and Fourth World legal and political commentators have been especially harsh in their criticism of the Western concept of minimum world public order, seeing it as a thinly dis-

<sup>45</sup> Sartre, *Preface to FANON*, *supra* note 5, at 30.

<sup>46</sup> H. ARENDT, *ON VIOLENCE* 3 (1970).

<sup>47</sup> *Id.* at 35. "We fight, therefore we are." M. BEGIN, *THE REVOLT*, ch. 2 (1978).

<sup>48</sup> See generally C. DELMAS, *LA GUERRE REVOLUTIONNAIRE* (1965). Other sources are too numerous to mention, for the literature on this subject has been inexorable.

<sup>49</sup> QUOTATIONS FROM CHAIRMAN MAO TSE-TUNG 33 (S. Schram ed. 1967).

<sup>50</sup> S. SCHRAM, *MAO TSE-TUNG* 132-228 (1966).

<sup>51</sup> A. DECOUFLÉ, *SOCIOLOGIE DES REVOLUTIONS* 93 (1970).

<sup>52</sup> H. ARENDT, *ON VIOLENCE* 52 (1970).

<sup>53</sup> See, e.g., Bedjaoui, *Non-alignment et Droit International*, 151 in *RECUEIL DES COURS (HAGUE ACADEMY)* 339, 382-86 (1976).

<sup>54</sup> See generally R. ERICKSON, *INTERNATIONAL LAW AND THE REVOLUTIONARY STATE* (1972).

<sup>55</sup> G. TUNKIN, *THEORY OF INTERNATIONAL LAW* 257 (W. Butler trans. 1974).

guised attempt to sustain the status quo,<sup>56</sup> yet Western critics of the new United Nations majority are just as sharp in their aversion for allowing "agents of subversion, terrorist commandos [to] pass across or through frontiers without being formally condemned by the international organizations or even by the interpreters of international law."<sup>57</sup>

Nowhere have the tumultuous forces of human rights, imperialism, nationalism, war, revolutionary violence, authoritarianism, and Marxist ideology come into greater collision than in Southeast Asia during the last four decades. The Vietnam war, particularly in its American phase, entailed on the part of American legal scholars an agonizing reappraisal of the substantive nature of the contemporary international law, its processes, and its prospects. The resulting cacophony resolved very little, but did reveal in stark coloration the strengths and weaknesses of the international legal system.<sup>58</sup> It also sadly demonstrated that although law is designed as a means of conflict resolution, both remedies and solutions are as much prisoners of events as they are orderly ways of dealing with disorder.<sup>59</sup>

Twentieth-century ideological revolutionary wars and national liberation struggles historically have been more savage than their nineteenth-century counterparts.<sup>60</sup> Indochina's 2,000 year history of violence—war, conquest, and rebellion—does not differ in kind from that of her former European masters. Perhaps the enmities between peoples have been longer lasting and the ethnic hostilities more intense in Southeast Asia, but the record of Eastern cruelty and inhumanity is no worse than that of the Christian West. The failure of peace within the last half century, however, is partially the failure of international law.

The political agreement between the parties assembled in Geneva during July, 1954 was ignored almost from the very start. Because it was obviously a political rather than a legal document,<sup>61</sup> the principle of *pacta sunt servanda* turned out to be ignored by both sides as it suited their purposes. A recent American study has argued that there was no collective obligation to abide by the terms of the 1954 Declaration because all parties had not agreed to agree.<sup>62</sup> A better view is that no one was legally

<sup>56</sup> Bedjaoui, *supra* note 53, at 382-84, 407-14.

<sup>57</sup> ARON, *supra* note 35, at 124.

<sup>58</sup> See THE VIETNAM WAR AND INTERNATIONAL LAW (R. Falk ed. 1968-1976) (4 vols.) [hereinafter cited as VIETNAM WAR].

<sup>59</sup> See the comments of Fisher, *Enhancing Order (and Law) in Future International Crises*, 70 PROC. AM. SOC. INT'L L. 123, 135 (1976).

<sup>60</sup> Perhaps the one exception is the Paris Commune of 1871. See A. HORNE, THE TERRIBLE YEAR: THE PARIS COMMUNE, 1871; P. LISSAGARAY, HISTOIRE DE LA COMMUNE DE 1871 (1970).

<sup>61</sup> Final Declaration of the Geneva Conference on the Problems of Restoring Peace in Indo-China, Geneva, July 21, 1954, reprinted in 1 VIETNAM WAR, *supra* note 58, at 557-59.

<sup>62</sup> G. LEWY, AMERICA IN VIETNAM 9 (1978).

bound since the Final Declaration was neither treaty nor convention but merely a statement of intent. The Act of Paris, signed on March 2, 1973,<sup>63</sup> is another matter. To say that it was negotiated in bad faith by at least three of the parties, and therefore void *ab initio*, does not negate the obvious ineffectiveness of international agreement in putting an end to military conflict and revolutionary violence as compared to force of arms. The Joint Communiqués<sup>64</sup> were in retrospect broadly worded political camouflage making the best of a bad business—that South Vietnam had truly nothing to negotiate and that its American ally was straining to depart in unseemly haste. International law had by this time nothing to offer, and therein lies a lesson.

In Africa, Asia, and the Middle East, national liberation struggles have cloaked themselves in the protective colors of the "Just War." Violence of whatever kind, no matter who are its victims, is justified because of the alleged justness of the cause and the asserted rightness of its goal. Witness the claim of General Vo Nguyen Giap, architect of the Viet Minh triumph: "This is a just war, a national liberation war, or a war to protect the fatherland . . ." <sup>65</sup> Violence thus becomes sanctified in the name of a greater good, and opposition to those raising the liberation banner becomes intolerable and unforgiveable. To react against revolutionary violence is to wage an unjust battle. "Fought by foreigners, it is a war of aggression; if by a local regime alone, it is an act of tyranny."<sup>66</sup> But is the mere claim of liberation enough? What role is left to legality? Who determines who is to suffer and who is to survive? Do victims have any rights? What of the nameless masses who, in the words of Albert Camus, "want to be neither victims nor executioners"?<sup>67</sup>

Another conflict has now enveloped the Indochinese peninsula. It is both external and internal, combining interstate violence on the one hand with intrastate oppression on the other. Vietnam has overthrown Pol Pot's democratic Kampuchea regime, and a government based upon internal violence has finally succumbed to external aggression. China's incursion into Vietnam ostensibly to teach the Vietnamese "a lesson" ended as it began, in uncertainty, but threatens to be resumed at any time. And in Vietnam itself, a fourth conflict (following the French, American, and Vietnamese civil wars) is now occurring, with the Vietnamese government making war upon its Chinese citizenry and perpetrating "blackmail, ex-

<sup>63</sup> Act of the International Conference on Vietnam, Signed at Paris March 2, 1973, *reprinted in* 4 VIETNAM WAR, *supra* note 58, at 864-66.

<sup>64</sup> Four-Party Joint Communique, Signed at Paris on Implementation of Vietnam Agreement, June 13, 1973, *reprinted in* 4 VIETNAM WAR, *supra* note 58, at 867-70.

<sup>65</sup> V. NGUYEN-GIAP, BANNER OF PEOPLE'S WAR, THE PARTY'S MILITARY LINE 16 (G. Boudarel trans. 1970).

<sup>66</sup> WALZER, *supra* note 18, at 196.

<sup>67</sup> VICTIMS, *supra* note 6, at 27.

tortion, and expulsion" upon its people.<sup>68</sup> While the world watched first in horror and then in anger, Asian indifference and rejection of the Vietnamese Boat People finally resulted in the calling of an international conference of sixty-five countries at Geneva in July, 1979, where Vietnam pledged itself to deny official egress to its oppressed Chinese,<sup>69</sup> thereby violating certain fundamental rights proclaimed in the Universal Declaration.<sup>70</sup>

Is international law merely a passive instrumentality to be fashioned by states and regimes into any shape they desire, or is it a meaningful device to protect and enhance human dignity? One widely quoted American scholar has derided international law as being "not supported by effective institutions. As such, it is a program and little else."<sup>71</sup> George Kennan, experienced diplomat and noted historian, considers international law and the "legalistic approach to international relations" to be inherently suspect and warns of over-dependence upon an international juridical system.<sup>72</sup> Political scientist Hans Morgenthau indicates that when law confronts politics, the former inevitably gives way to the latter.<sup>73</sup> Even famed legalist Georg Schwarzenberger, for all his significant contributions to legal theory and practice, takes a pessimistic view of the contemporary international legal system.<sup>74</sup>

Have we then condemned ourselves to a permanent condition of minimally controlled international violence? International law, like its domestic counterpart, stands for impartial restraints on national behavior.<sup>75</sup> If we are a global village, to adapt the terminology of Dag Hammarskjöld,<sup>76</sup> then the international legal system must be something more than a body of lifeboat ethics. World public order is a desirable goal because there truly is no alternative if humankind is to discard lawlessness, violence, and bloodshed.<sup>77</sup>

The historical record is not encouraging. Despite the vast gains made

<sup>68</sup> See Lacouture, *The New Horror*, N.Y. Rev. of Books, Aug. 16, 1979, at 39-40.

<sup>69</sup> For the nature of that oppression, see Held, *How it Works*, N.Y. Rev. of Books, Aug. 16, 1979, at 40.

<sup>70</sup> See Universal Declaration of Human Rights, arts. 12, 13, G.A. Res. 217, 3 U.N. GAOR 71, 73-74, U.N. Doc. A/810 (1948).

<sup>71</sup> J. SHKLAR, *LEGALISM* 129 (1964).

<sup>72</sup> G. KENNAN, *AMERICAN DIPLOMACY, 1900-1950*, at 95-101 (1952).

<sup>73</sup> H. MORGENTHAU, *POLITICS AMONG NATIONS* 243-63 (1948).

<sup>74</sup> See Friedlander, *Power Politics and the Rule of Law: Professor Schwarzenberger Reconsidered*, 24 DE PAUL L. REV. 836 (1975).

<sup>75</sup> R. FISHER, *POINTS OF CHOICE* 84-85 (1978).

<sup>76</sup> HAMMARSKJÖLD, *supra* note 38, at 9-10.

<sup>77</sup> In Ireland, Pope John Paul II made the ringing declaration: "Violence destroys what it claims to defend, the dignity, the life, the freedom of human beings. Violence is a crime against humanity, for it destroys the very fabric of society." *New York Times*, Sept. 30, 1979, § 1, at 28, cols. 2-3. See U.N. CHARTER art. 1, § 1.

in the two decades before the outbreak of the First World War on limitations of armament, the laws of war, arbitration and conciliation, during the years of crises leading up to that disastrous conflict, international law was largely ignored. The interwar period was composed of ineffective and ultimately futile attempts to limit not only armaments but war itself as an instrument of national policy. The League failed, not because of its Covenant, but because no state paid any attention to it. In the United Nations era, global conflict has become the norm, and the United Nations Charter, which at its origin was primarily a collective security document,<sup>78</sup> has been used only once for that purpose (Korea) and probably never again will be so employed. Only in regard to non-state actors and the threat of terror-violence has the United Nations made any progress, and that has been a cautious and sometimes tortuous evolution.<sup>79</sup>

Just as there is truly no substitute for peace, so must there be an end to international violence if humankind is to progress—or even to exist. In the human rights arena alone, there are sufficient treaties, conventions, and declarations (plus the basic principles of the United Nations Charter) to end world violence, if the world community really wished to end that scourge of humanity. Modern science and technology have put Armageddon just around the corner. An equitable and enforceable international legal system is still possible, if there is a sense of justice and a will to enforce. As Jacques Maritain has wisely written: “When men will have a will to live together in a world-wide society, it will be because they have a will to achieve a world-wide common task.”<sup>80</sup> Mere survival is not enough.

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<sup>78</sup> U.N. CHARTER art. 1, § 1.

<sup>79</sup> See 16 U.N. CHRONICLE 74 (July 1979); 16 U.N. CHRONICLE 37 (Mar. 1979).

<sup>80</sup> J. MARITAIN, MAN AND THE STATE 207 (1951).