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Achieving Effective Arms Control: The Lawyers' Perspective

The Committee on International Arms Control and Security Affairs of the Association of the Bar of the City of New York has published its report, with recommendations, background, and analysis, entitled "Achieving Effective Arms Control."¹ The perspective of lawyers, according to the foreword in the Report, are important because the assorted skills of lawyers may be brought to bear to marshal data, establish options for those in charge of policy, and design dispute settlement measures. These are perspectives that are somewhat larger than those proposed by Hans Kelsen, who observed:

Separation of law from politics in the presentation of national or international problems is possible in so far as law is not an end in itself, but a means or, what amounts to the same, a specific social technique for the achievement of ends determined by politics. . . . It is not superfluous to remind the lawyer that as a "jurist" he is but a technician whose most important task is to assist the law-maker in the adequate formulation of the legal norms.²

A reading of the Report quickly indicates the ambiguity in the term "effective": "effective arms control" necessarily depends upon one's

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1. Report of the Committee on International Arms Control and Security Affairs of the Association of the Bar of the City of New York, Stanley R. Resor, Chairman, New York, 1985 [hereinafter Report]. For the texts and brief histories of arms control negotiations, see UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY, ARMS CONTROL AND DISARMAMENT AGREEMENTS (1982 ed.).

2. H. Kelsen, LAW OF THE UNITED NATIONS xiii (1950). Kelsen also notes that in view of the ambiguities in international agreements, the jurist should indicate the alternatives. For a policy-oriented framework of lawyers' tasks, see the landmark article by Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943).

objectives, the extent and time to make them realizable, and one's perspectives, matched, of course, against the perspectives of others in the arms control process. The subjectivities in appraising such matters as these are self-evident. The complexity in this task arises from the innate linkage of strategies and the strategic arena; that is, coupling arms control with security, defense, deterrence, and alliance strategies and with the overriding foreign policy of the nation. These strategies, while including diplomatic, economic, and even ideological, stress military capabilities.

Arms control will not eliminate the need to have weapons that are capable of balancing against threats of rivals, or for aiding in maintaining a balancing of power, based upon checks and balances against aggression of any kind. Such controls can hardly be expected to change national perspectives regarding defense, and the overriding need to have weapons that will provide that defense. However, because the equilibrium that ensures deterrence is a balancing of power, and not simply the balancing of *military* power, strategic facts, in addition to those created by weapons, must be weighed into the strategic and deterrence equilibrium, or arms control will lose its purpose.

Adding to this complexity is the perception that arms control strategy is a *shared* strategy, the outcome of interdependent decisions of the participating states relating to control of aggression. It is now becoming clear that aggression control is far more significant for arms control objectives than is the control of weapons alone. Moreover, in focusing our attention on aggression control, we are forced to focus on the policy element—and are not tempted to reach the “quick fix” that is seemingly possible in weapons control.

Recommendations in the Report are conservative and policy oriented: (a) the United States should vigorously pursue arms control efforts with the Soviet Union; (b) the primary aims are to reduce the risks of nuclear war, stabilize deterrence, and reduce the level of arms competition and military budgets; (c) the United States should strengthen its efforts to improve relations with the Soviet Union—enlarging “areas of cooperation”; and (d) existing limits on the strategic defense system should be preserved. To this end, the United States and the Soviet Union “should formally reaffirm their commitment to the ABM Treaty.”³

Arms control as a process is linked by the committee to United States security. It is recommended that the process should be pursued as a major, if not separate, goal of foreign policy:

To contribute to a steady strengthening of American security, the United States should seek to establish a sustained arms control process that consists of a series of pragmatic steps, including formal agreements, parallel restraints, and individual national actions. The arms control process should serve long-range

3. Report, *supra* note 1, at 7 *et seq.*

security and foreign policy goals of the United States. It should proceed on a broad front of interconnected subjects. It should be guided by principles derived from experience.⁴

The analysis in the Report is brief, providing relatively little material or argument to work over in an ongoing debate. The framework of analysis is that of the risk calculus: arms control proceeds through the checks and balances particularly in strategic offensive weapons aimed at maintaining arms control equilibrium, or "stability of deterrence." The intended outcome—to change the terms slightly—is mutual assured deterrence and retaliation, with each side perceiving that the risks of any conflict leading or likely to lead to the use of strategic offensive nuclear weapons outweigh any of the benefits.⁵

Stability, however, is an ambiguous perspective. It is, like the balancing of the asymmetrical weaponry of the SALT agreements, a balancing of differing foreign policy and strategic perspectives of a totalitarian state against the perspectives of the democratic states. According to Fred C. Iklé, Under Secretary of Defense for Policy:

[M]odern Leninism forces upon us a fierce competition, a continuing, demanding, and dangerous competition. And we cannot compete effectively by pursuing an ideal of stability. . . . Mistaken reliance on stability also affects our approach to the economic and technological competition. We have now achieved a sound consensus within the Alliance that the transfer of militarily significant technologies to the Soviet bloc is not in our interest. You might say we have, at last, learned to protect the natural patrimony of our creative, free societies.⁶

Although this perspective is widely accepted in the arms control community, analysis, particularly by lawyers, must delve much more emphatically into the foreign policy implications of arms control. Our controlling legislation for the establishment and working of the Arms Control and Disarmament Agency declares that arms control and disarmament policy "being an important aspect of foreign policy, must be consistent with national security policy. . . ."⁷ This congressional policy

4. *Id.* at 7. Query whether the "pragmatic" steps are reactive, rather than part of a positive approach to national security.

5. For a perspective of the balancing of power in depth, see H. LASSWELL & A. KAPLAN, *POWER AND SOCIETY* 250-68 (1950).

6. Remarks delivered to the Wehrkunde Conference, Munich, Germany (Mar. 2, 1986), reprinted in DEPARTMENT OF DEFENSE, *DEFENSE ISSUES*, No. 14 (1987).

7. Arms Control and Disarmament Act, Pub. L. No. 87-297, § 2, 75 Stat. 631, 634 (1961) (codified as amended at 22 U.S.C. §§ 2551-2591 (1982)). Section 3 of the Act extends the use of the terms "arms control" and "disarmament" to the functional elements such as verification, inspection and so on. 22 U.S.C. § 2552 (1982). Section 33 contains the provision:

That no action shall be taken under this or any other law that will obligate the United States to disarm or to reduce or to limit the Armed Forces or armaments of the United States, except pursuant to the treaty-making power of the President under the Constitution or unless authorized by further affirmative legislation by the Congress of the United States.

Id. § 2573.

statement establishes the guidelines for arms control, i.e., for the negotiations, for the implementation of the arms control agreements once concluded, and for the objectives and purposes of arms control itself. The Report however concentrates on the weapons and their limitations, while sidestepping the crucial policy issues that underlie weaponry, military planning, capabilities and strategies, and it ignores the overall instrumental element that lies in military policy needed for shaping foreign policy or resisting the attempts of adversaries or others to shape ours.

In proposing that the United States enlarge "areas of cooperation" we are left with grave uncertainties, particularly when we look back upon Soviet practice and aggression from the beginnings of the Bolshevik state. The Report urges us to press ahead with arms control notwithstanding Soviet behavior in such "unrelated areas" as were involved in the various invasions of the Soviet Union into Europe—i.e., into Hungary, Czechoslovakia, Poland, and East Germany—or the invasion into Afghanistan, or subversion on a continuing and global scale.⁸ Such aggressive behavior necessarily has its impacts upon the effectiveness of arms control, upon the strategic environment where controls are applied, and, just as importantly, upon a joint strategy, in terms of curbing aggression, inherent in arms control. Moreover, such behavior shifts our attention to assuring control by adequate defense, hence toward control by unilateral actions.

Cooperation among states, particularly among rivals whose natural environment is to create and seek advantage in a competitive process, is not part of a morality plan, nor judged by moral principles. Bargaining is for concessions from the other side, and principles of one's rivals in current diplomacy are always expected to be the subject of compromise. The claims process among states is expected to produce strategic benefits. As the Hungarian and other crises have shown, the deterrence threat balanced out in the arms control agreements does not eliminate confrontation. The United States must not assume the position that with respect to every threat or claim of the Soviet Union it can defer. And if it does not intend to defer, it must be in a position effectively to counter such threats or claims.

I. Recommendations

The recommendations of the Committee can be briefly summarized.

- The United States should establish with the Soviet Union a "sustained arms control process," i.e., one in which nuclear war will be avoided, or if possible prevented, and in which shared communications about security and weapons

8. Report, *supra* note 1, at 10.

are improved and made more reliable, building on increased use of the Standing Consultative Committee.⁹

- The United States should seek to enlarge the area of relations of the two sides to improve opportunities for cooperation and should also pursue means to prevent military confrontations in the political competition involving the Third World.¹⁰
- The United States should improve the arms control process through encouraging "serious, continuous and confidential communications," adopting a "foundation agreement" limiting strategic offensive weapons, and through promoting "summit meetings" to be held "on a periodic basis with relative frequency."¹¹
- The United States should promote "central nuclear arms control" by pressing for: (a) agreements regarding "weapons in space and defense against ballistic missile attack"; (b) agreements on limiting strategic offensive nuclear weapons; and (c) agreements on reducing theatre nuclear weapons.¹² The parties should reaffirm their commitment to the ABM Treaty.¹³
- Efforts should be made to extend "operational arms control" toward measures expected to lessen the risks of nuclear hostilities inherent in the "technological complexity" of nuclear forces, and in crises and emergencies, and in the "vulnerability of command and control systems."¹⁴ "Continuously operating control centers" are recommended along with improved hotline-communication networks, and confidence building measures.¹⁵
- The arms control process in Europe should be extended and strengthened.¹⁶
- The United States must recognize that "an extremely important element of the arms control process must be a continuing high priority effort to prevent the further spread of nuclear weapons," and "build on its shared interest with the Soviet Union in strengthening the existing nonproliferation regime."¹⁷
- The United States should ratify the comprehensive test ban agreement, resolving the verification problems with the Soviet Union by taking them to the Standing Consultative Commission.¹⁸
- Negotiations for chemical weapons disarmament, that is, as opposed to arms control, the complete elimination of the chemical weapons from arsenals ready

9. *Id.* at 7, 19. The Standing Consultative Commission was established pursuant to article XIII of the Anti-Ballistic Missile (ABM) Treaty. Its competence is limited to considering various problems that might arise between the parties. It does have competence "to consider possible changes in the strategic situation which have a bearing on the provisions" of the ABM Treaty. ABM Treaty art. XIII, e. But, it can issue only advisory opinions, and is dependent upon how far the two sides are willing to entrust serious issues even for its consideration. The Commission meets *in camera* and its findings are not published. The possibilities for increasing the authority and working competence of the Commission depend upon the parties.

10. Report, *supra* note 1, at 9, 10.

11. *Id.* at 11, 12.

12. *Id.* at 12.

13. *Id.* at 13.

14. *Id.* at 18.

15. *Id.* at 19.

16. *Id.* at 20-22.

17. *Id.* at 22.

18. *Id.* at 23.

for military use, should be promoted with a view toward reaching an early agreement.¹⁹

- The problems of "verification" and "compliance" should be overcome, in part by the United States adopting as its governing perspective the will to move ahead in arms control processes without expecting full compliance from the Soviet Union where the risk of noncompliance is "outweighed by the risk of unlimited activities of the type restricted by the agreement."²⁰
- Finally, the United States should demand from its President a lead in consensus building and movement toward a "gradual, realistic arms control process," with greater flexibility in the executive branch in the negotiations and in reaching the gradual levels of control through executive agreements.²¹

The last recommendation contains a proposal to reach arms control objectives through executive agreements, to be approved (pursuant to the Arms Control and Disarmament Statute) by a Joint Resolution, with a majority vote of both houses in Congress, but embracing the larger arms control framework in a "foundation agreement" adopted under the constitutional requirements calling for a two-thirds vote of a quorum (majority) of the Senate in providing the President with advice and consent to ratification.²²

Analysis in depth of the Report's recommendations calls for a close inquiry into the perspectives of both the United States and the Soviet Union with regard to arms control. The argument so often raised, that we can have arms control agreements with a nation that we cannot trust, is tenuous, or at least circular, because we need to have at least the minimum trust—the notion of good faith and of *pacta sunt servanda*—that provides us with some assurance of law-abidance and compliance with agreements calling for cooperation that are to serve arms control objectives.

Cooperation with the Soviet Union presupposes the adoption of a new, cautious but major foreign policy program for the United States. But the setting in which cooperation is now sought cannot be divorced from Soviet conduct: cooperation was sought ever since the Second World War, in establishing the United Nations, in making it work, and in establishing effective and working controls over aggression (the crucial element in the United Nations system). The Soviet Union boycotted the Marshall Plan, forbade its satellites to participate, opposed the Baruch Plan to control nuclear energy, and rejected the McCloy-Zorin Principles, because their requirements for verification were said to be a form of "espionage." Improved communication with the Soviet Union unquestionably is intimately tied to cooperation, but for this we must perceive that they have overcome the long-prevailing practice of deception, disinformation, and deliberate policies, most recently represented in the libel regarding AIDS.

19. *Id.* at 24.

20. *Id.* at 24-27.

21. *Id.* at 136.

22. *Id.* at 134-37.

Commitment to the ABM Treaty raises the current problem of compliance, voiced by the Reagan administration with regard to Soviet radars and with the Soviet strategic defense initiatives that are already substantial. Such a commitment would foreclose a strategy relying upon a defense to the "strategic" offensive ballistic missiles and leave us dangerously exposed to the Soviet exploitation of defensive systems not covered by the ABM Treaty whose technologies readily relate to the development of ABM systems.

Summit meetings tend toward theatre, and, in any event, preferred outcomes would favor good-faith bargaining toward global order goals shared by both countries, with particular stress upon controls over aggression. Since World War II, however, the Soviet Union has successfully pressed for the privilege of the "liberation movements" it supports to be free from the stigma of aggression or war crimes. And we can hardly be sanguine about Soviet attitudes toward aggression and war, or toward international humanitarian law, in view of its aggression in Afghanistan.

The policy of non-proliferation is keystone to effective—global—arms control, and is presently maintained under the Non-Proliferation Treaty (France is not a party), supplemented by the Limited Test Ban Treaty. The Report appropriately mentions these, but fails to consider how that policy is most likely to break down. If states that are now non-nuclear refuse to adhere to the two treaties, or if they renounce it, there is the possibility of widespread development of ballistic and cruise missiles, of arming them with nuclear or chemical or biological warheads, and of using them for small wars that can escalate to the larger, more devastating wars, or for threats. Hence attention must be toward preventing a more extensive reach into the technologies of testing, into developing greater and more discriminate lethality, and into more effective targeting. Moreover, there is the grave danger in the development of simple, but effective delivery systems. In this arena lies the higher probability of United States-USSR success.²³

Comprehensive test ban treaties seemingly advance arms control objectives. On closer analysis, however, such agreements would prevent the United States from modernizing and thereby improving the accuracy of the weapons it has (thus reducing the potential for indiscriminate damage to their use), and from ensuring the reliability of the weapons that it presently deploys.

Total disarmament of chemical weapons will remain illusory in face of the industrial need for lethal chemicals. The goal is also weakened by

23. According to Y. HARKABI, *NUCLEAR WAR AND NUCLEAR PEACE* 35 (1966), "The two great powers, the Soviet Union and the United States, thus have a common interest in that both are allies against all-out nuclear war, but they are enemies in all other forms of conflict."

Soviet insistence on stockpiling the chemicals and agents for "peaceful purposes," including the training of all of its armed forces in military exercises. The amounts needed for these purposes alone are staggering.

The industrial lethal chemicals in themselves provide a substantial stockpile readily unleashed for warheads when that decision is made, so that proposals for disarmament are in danger of losing their effectiveness because they cannot exclude the use of such agents during wartime. Verification of such a disarmament measure is not likely to be effective without substantial and continuing on-site, and deeply invasive, inspection—probably unacceptable to both sides. But many now claim that even on-site, demand inspections may not be capable of verifying compliance, in view of the ease of producing lethal chemical agents in small laboratories. Testing the lethality of such weapons is not readily verifiable, and the growing possibility of rejection of a multilateral treaty by a large number of potential parties concerned with on-site inspection cannot be overlooked.²⁴

The separate issues of verification and compliance go to the heart of the relations of these two competing countries and to the competitive power processes in which they are embroiled. They call for cooperation and reliable communication or the arms control strategy will fail. The prospect for ensuring effective compliance, in turn, the critical element in assuring effective arms control, is increasingly dependent upon reducing the competitive element in the relations of the two sides. Our arms control agreements are accordingly limited to those weapons and weapons-associated activities that we can verify by our own technologies.

While the nonproliferation treaty reflects a hard-core, shared interest of the United States and the Soviet Union, and while the Report clearly points this out, too many of the recommendations deal with unexamined policy and strategic implications. And while a comprehensive analysis into such implications might lead to a lengthy report, most importantly, it would compel us to shift beyond the limitations of the legal perspectives, and consider a policy that the United States must formulate (on a continual basis) to influence, as well as to react to, a powerful and dangerous adversary. In stressing legal instruments such as the treaties and agreements of arms control, there is a strong tendency among lawyers, and appearing in this report, to press toward a kind of finality in terms of "law." Such a tendency is often unable to respond to the dynamism in our relations with this adversary, let alone with the changing strategic circumstances that condition the setting of the arms control treaties.

24. See generally Feith, *Biological Weapons and the Limits of Arms Control*, NATIONAL INTEREST, Winter, 1986/1987.

We must, in future studies, seek out the ways to reach and draft the understandings, along with the institutions and processes, designed to accommodate changing relations inevitable during periods of strategic change. Such studies must address this subject with a view to overcoming the problem of compliance and to strengthening our need for assured compliance. Hence we can recognize the need for flexibility in the treaty language in order to accommodate the flexibility in the relations themselves. If this is not done, then, as our experience with "defensive" weapons, such as the antiballistic missiles (under the ABM Treaty) has shown, the effects of strategic change will be seen in the deterioration of the effectiveness of the agreements themselves.

II. Assessment

Assessment of arms control, both with respect to the objectives of arms control as an end-product and with respect to the process, must be a continuous effort, because arms control is a policy introduced into the changing, competing relations between the United States and the Soviet Union. Expectations change with strategic change, and that change has its impacts upon the legal effects of their agreements. A notable example of strategic change is in the growing impact of qualitative change in weaponry, arising from new technologies, leading to both legal and strategic uncertainty with respect to verification and compliance.

The Department of State in its bulletin, *Gist*, of December 1986 declares that United States strategic goals include "a more stable and constructive relationship"²⁵ with the Soviet Union:

- Securing Soviet compliance with existing agreements;
- Achieving deep and verifiable reductions in nuclear arms;
- Ensuring that the Soviets cease interference in the affairs of sovereign states; . . .
- Promoting an expansion in bilateral contacts and cooperation based on reciprocity and mutual interest.²⁶

Cooperation within an adversarial relationship is expected to be reached if the Soviet Union shows a firm movement toward these goals. In short, the Department of State presupposes that much of the Soviet policy, activity in other states that supports aggression and subversion, and human rights infringement within its territory will be reduced on a positive basis, thereby opening the way to an "open and peaceful international order."²⁷

25. DEPARTMENT OF STATE, *GIST*, Dec. 1986.

26. *Id.*

27. *Id.* These observations are, however, ambiguous in themselves.

Perspectives of the Soviet Union's goals and objectives must be inferred from its conduct and official statements and doctrine. John C. Reppert, summarizing the conclusions of Jonathan Alford, Deputy Director of the International Institute of Strategic Studies in London, identifies the Soviet Union's primary political and military objectives in Europe. These are opposed to what the United States seeks. Reppert, summarizing Alford, observes that there are "six key continuing Soviet objectives in Europe":

They are: (1) preserving the Soviet strategic glacis established in Eastern Europe in the immediate postwar period; (2) preventing resurgence of a German military threat to the Soviet Union; (3) gaining Western, particularly West German, recognition of the existing status quo in Europe, both in order to consolidate the Soviet position in Eastern Europe and to free Soviet energies to meet the Chinese challenge; (4) gradually reducing the U.S. military presence and political influence in Western Europe, provided such a reduction can be obtained without provoking a significant increase in West European, particularly West German, power; (5) preventing the political and military integration of Western Europe; (6) establishing selective bilateral ties with countries of Western Europe in order to gain leverage both within Western Europe and in West European-American relations.²⁸

Perspectives by Sovietologists support the conclusion that cooperation with the Soviet Union is not likely to lead to a softening of the regime toward human rights or human dignity. William Taubman, reviewing sources of Soviet foreign conduct and referring to recent works by Richard Pipes and Seweryn Bialer, notes that the "sobering possibility" with regard to the Soviet economy is that "neither enhanced security and confidence nor more failures and worries . . . are likely to alter the general direction of Soviet foreign policy."²⁹ The Soviet Union "faces not a 'crisis of survival' but only a 'crisis of effectiveness' [and has the] strength and support that equip it to ride out the efforts at economic embargo that the West (invariably divided on the issue of economic sanctions) is likely to be able to mount."³⁰ One author is cited to the effect that these "reserves" of strength and support amount to "an authoritative political culture, . . . which disposes so many Soviet citizens to deem their regime legitimate even though it denies them genuine political participation."³¹

Accordingly, an assessment of arms control and arms control relations with the Soviet Union will necessarily expand into the relations of the two countries, particularly as frustration develops in the democratic states over continued Soviet conduct both with respect to aggression and im-

28. Reppert, *Europe's Defense Today*, PROBLEMS OF COMMUNISM, Sept.-Oct. 1986, at 54.

29. Taubman, *Sources of Soviet Foreign Conduct*, PROBLEMS OF COMMUNISM, Sept.-Oct. 1986, at 52.

30. *Id.*

31. *Id.*

pairment of human rights. Even if there is disagreement about a "linkage" or the perception of policy necessity between Soviet reticence to support a global order infused with democratic values, this critical problem both for foreign relations and law needs to be assessed in shaping alternatives for effective arms control for the future. The Report of the Committee, however, bypasses this larger context, and makes no effort to examine the policy objectives and perspectives of the two sides. Instead, the Report is almost entirely limited to the weapons and to a call for future agreement to be concluded on a continuing basis. Clearly, the arms limiting effort is not to be shrugged off, or its importance denied. But even those of the arms control community who want the major effort to address weapons must examine the changing relations of the Soviet Union and the democratic states in the larger, global context, in order to reach desirable control objectives.

Joseph S. Nye, Jr., in his recent paper "Farewell To Arms Control?," while falling short of analysis of the participants, their strategies, and their decisions through the situations in which they find themselves in depth, observes:

The stability of deterrence is an elusive concept, but it has at least three dimensions: crisis stability, arms race stability and political stability. . . .

Crisis stability refers to the lack of incentive to strike preemptively in times of crisis. . . .

Arms race stability refers to the lack of incentive for either power to expand or modernize its arsenal, and depends in part on reactions to the programs of the other side. . . .

Political stability refers to the effectiveness of deterrence in reducing incentives for major coercive political changes.³²

Stability of deterrence presupposes at least some stability in relations. But as already indicated, trends in the practice of the Soviet Union under the arms control process reveal a growing sophistication in that country's capability in wielding the manipulative elements of its foreign policy against our allies, as well as against us. These trends indicate a shift in the Soviet arms control strategy to make the arms control process inure to its advantage through the use of these low-risk, low-cost policy instruments. An in-depth analysis of the full range of these strategies, the strategic instruments employed and being refined to manipulate United States decisions, and the public opinion in the United States and among its allies and elsewhere cannot be pursued in this review. Yet such an analysis is essential to clarify our perspectives and, most importantly, the perspectives of all of the major participants that are embarking upon arms control strategies, while gradually assimilating them into their foreign policy processes.

32. Nye, *Farewell to Arms Control?*, 65 FOREIGN AFFAIRS, No. 1, Fall 1986, at 9, 10.

The analysis of defense as a strategy thus needs a major effort beyond the preliminary observations made here to establish how we expect to come more closely to grips with effective deterrence during a period of technological and political change. For example, a recent report of *Jane's*, the British authority on weapons and armed forces, reveals that the Soviet Union has vigorously pursued its strategic defense initiative, is currently moving beyond research into testing and development, and is ahead of the United States in the overall technology. Concurrently, the Soviet Union seeks to mold public opinion around the notion that the United States, in pursuing its strategic defense initiative, is engaged upon a course of aggression including the quest for superiority in strategic offensive nuclear weapons.³³

Against this background, the Report recommends that the United States seek to maintain the limits of the ABM Treaty even though the reasonably foreseeable outcome of the Soviet effort would be to exceed those limits. The Report calls further for negotiating additional restraints on testing anti-satellite weapons and on stationing weapons in outer space, even though a major Swedish study³⁴ indicates that the Soviet Union has conducted over thirty-three anti-satellite weapons tests while the United States has conducted only a few, and even though the Soviet Union now has a proven anti-satellite capability.

The Report advises that the United States should refrain from a nationwide defense system against ballistic missile attack because the Bar Committee concluded that such programs carry a "low probability of achieving benefits and high risk of leaving the United States and the Soviet Union worse off than they were before."³⁵ The SDI effort would simply be too costly, the Committee concludes, applying its own scientific judgment that the effort would lead to an arms race, reduce the effectiveness of arms control in general, and never achieve the defensive network "planned." Notwithstanding the major Soviet effort—largely conducted under conditions where U.S. monitoring is impossible or uncertain—the Committee recommends only a "research" effort to maintain United States technical knowledge abreast of emerging technological possibilities and to protect against a "break-out" from the ABM Treaty by the Soviet Union.

The strategic defense initiative extends beyond the strategies of defense or arms control because the technologies required for both of these are

33. JANE'S DEFENSE WEEKLY, July 4, 1987, at 1440; *id.*, Dec. 13, 1986, at 1871; *see also* Abrahamson, *Soviet Style Strategic Defense*, in DEFENSE '87, at 39 (1987).

34. SIPRI-YEARBOOK app. 5A, *Space Weapons*, at 143 (twenty tests discussed). For analysis, *see* MAINTAINING OUTER SPACE FOR PEACEFUL USES 221-26 (J. Tutiya ed. 1984).

35. Report, *supra* note 1, at 56.

so broadly based. But the realities of weapons in general draw on the realities of the technologies that lead to those weapons, give them their capabilities and effectiveness, and lead to their refinement. Just as there are no weapons that have or even promise military utility that can be withheld from combat or other military uses, there are no technologies promising weaponry that can be stilled, or even effectively monitored, among adversaries. To reach to these so-called "qualitative" elements of arms control, we would need agreements concluded in an environment in which states have the mutual assurance of reliable relations and communications, and accordingly in a world of a shared global order in which they have resided their security.

The question of a strategic defense system raises both a "strategy" in the sense that such a system would blunt an attack by missiles if the research proves successful and leads to weapons deployed, and a weapons issue, seemingly inherent in the distinctions between "offensive" and "defensive" weapons. At present the "offensive weapons" are controlled under the SALT I and SALT II agreements and the "defensive" weapons are identified as antiballistic missiles—or missiles directed at attacking strategic offensive weapons.

However, the controls of space deployment of "offensive" weapons appear in prohibitions on nuclear and other mass destruction weapons in Article IV of the Outer Space Treaty of 1967, and in Article IX(1)(c) of SALT II prohibiting fractional orbits around the earth. Weapons of mass destruction are the nuclear, biological, chemical, and radiation weapons—or at least weapons taken from these categories that have the effect of indiscriminate attack. The strategic offensive weapons are not affected by either of these prohibitions.

Defensive and offensive methods of attack create separate, and ambiguous problems, because the same weapons can be used in both modes under normal circumstances. Hence the more reliable distinction for arms control purposes must be to consider the weapons in terms of design, mission or target, tests and development standards, deployment, range, spread of their destructive or lethal force, vulnerability to counterattack, and so on. When this distinction is taken, the technologies up to and including deployment differ, the costs differ markedly, and the plans and policies for the armed forces face differing prospects.

An alternative is to provide for the dewateronization of outer space.³⁶ This approach, however, would call for a comprehensive, workable, verifiable, and compliance-assured program for eliminating all weapons from outer space. The likelihood of establishing adequate and effective verification for this vast, strategic arena is exceedingly remote. And such an

36. See Report, *supra* note 1, at 65.

undertaking would tend therefore to degenerate, largely, into an unenforceable promissory exchange subject to the trust reposed in our adversary.

Deweaponization is far-reaching in another sense. It would amount to all states denying themselves any claim to use any weapon or agent in space, or projecting them into space, for the purpose of self-defense. To be effective, deweaponization would deny self-defense of all national interests, including satellites, in outer space. It would preclude the development and deployment of self-defense measures aimed at protecting targets on earth or in its atmosphere. It would also preclude the launching for self-defense purposes of any objects or weaponry from earth for these purposes, and, in view of the overlaps in technology and application, it would in its full "logic" require the United States and Soviet Union to renounce their claims to transit in outer space their strategic offensive weapons.

Finally, deweaponization would be tantamount to a recognition that the rights of states to respond to aggression or hostile acts by way of self-defense under article 51 of the United Nations Charter and under the relevant customary international law must be waived. And this would in effect lead to modification of the provisions of the United Nations Charter in its application to outer space, perhaps amounting to an amendment of the most critical provision of that Charter, but without observing Charter amendment procedures.

Whether we perceive arms control as a means for providing us with clear, articulated rules for adversary conduct among intensely competing states with respect to their nuclear weapons or nuclear war, or as one of the stages in which we seek to move toward and strengthen public order among those states and the global community as well, our perceptions, and those of the Committee, depend upon the relations between the United States and the Soviet Union. It is frequently asserted that the arms control process can move forward even in the absence of trust and confidence between these adversaries, but this assertion is tenuous, and, in any event, does not mean that we cannot have confidence in the agreements between the adversaries, or the assurance of compliance. Accordingly, our current focus has shifted toward the assurance of compliance. This shift will raise the standards demanded of verification as we move toward qualitative controls.

The stability of deterrence that Joseph Nye believed to be of the essence in the arms control outcomes also depends upon reliable relations as well as reliable agreements. Our expectations as to both agreements and deterrence must be shared with the Soviet Union and a wide variety of official statements reflect this. But the only effective means to establish effective agreements is through a shared program for achieving arms control, and this is clearly impossible between adversaries much of whose weaponry and military planning must be controlled and not published.

While some commentators have been satisfied with tacit consent, tacit controls, and tacit agreement because of the lethality of nuclear weapons, aggression outside the use of the controlled weapons (regardless of how controlled) is widely recognized as a probable future cause of major wars—including nuclear wars.

Moreover, arms control agreements must ultimately lead to promoting at least minimum order between the two sides, that is, the order identified with stability of deterrence or of "relations." If a shared order of this nature cannot be attained, or maintained, they will become illusory. Yet the amount of flexibility or "give" that can be drafted into their provisions or "regime" is limited as long as both sides, or either of them, insist on noninterference with their decision-making, including that which is vital to the control process. Under these circumstances, the limitation provisions in the arms control agreements have been drafted to ensure precision, while other provisions covering future weaponry or follow-on actions are ambiguous, but obviously intended for future clarification and policy development, either through practice or a subsequent agreement.

Hence, little quarrel can be raised with the recommendations of the Committee for seeking at least the "standoff" zones that might make misperceptions of each side's intent less likely, or for the same purpose, the adoption of "sanctuary zones" and confidence building measures. Promissory exchanges of no interference are more tenuous and would more appropriately be designed for the two sides to employ in forums where they can effectively resolve their disputes and promote the lawyer's standard of reasonableness. But these exchanges, as experience with the Standing Consultative Commission has shown, require good faith and substantial delegation of authority to the members of the Commission.

For example, President Kennedy outlined the strategic implications of Soviet moratoria with respect to the nuclear tests in 1961. After the Soviet Union had violated its own moratorium on nuclear tests, Kennedy declared in an address in March 1962:

[O]n September 1st of last year, while the United States and the United Kingdom were negotiating in good faith at Geneva, the Soviet Union callously broke its moratorium with a 2-month series of more than 40 nuclear tests. Preparations for these tests had been secretly underway for many months. Accompanied by new threats and new tactics of terror, these tests—conducted mostly in the atmosphere—represented a major Soviet effort to put nuclear weapons back into the arms race. . . .

Some may urge us to try it (a moratorium) again, keeping our preparations to test in a constant state of readiness. But in actual practice, particularly in a society of free choice, we cannot keep top flight scientists concentrating on the preparation of an experiment which may or may not take place on an uncertain date in the future. Nor can large technical laboratories be kept fully alert on a standby basis waiting for some other nation to break an agreement. This is not

merely difficult or inconvenient—we have explored this alternative thoroughly and found it impossible of execution.³⁷

A Soviet policy of pursuing strategic advantage through ideological means shows that these instruments have been refined and continuously improved. They are aimed at manipulating opinion and decision within the United States and in other countries as well as in their own.³⁸ The frequent visits and the reception accorded Soviet spokesmen in the United States are not reciprocated by comparable visits to that country, even in appearances before carefully selected audiences. The Soviets imply that American weapons are designed for offensive purposes by terming as “arms control” such promissory undertakings as no-first-use of nuclear weapons and no deployment of defensive weapons in outer space. If such proposals were adopted, they would quickly erode our insistence upon the verification process and the related means upon which we rely to assure ourselves of Soviet compliance with the agreements concluded.

While stressing in his study the behavior of states during wartime, Von Clausewitz has observed that combat was the “only effective force in war; and that its aim [was] to destroy the enemy’s forces as a means to a further [i.e., ‘political’] end.”³⁹ Nevertheless, he pointed out that this objective could also be achieved without use of force. The capability to correlate the various strategic instruments of decision-manipulation can operate during arms control negotiations in large measure because arms control depends upon the will of the populace to use its weapons, and that will is vulnerable to manipulation.

Clausewitz further notes that his principle “holds good even if no actual fighting occurs, because the outcome rests on the assumption that if it came to fighting, the enemy would be destroyed.”⁴⁰ But all action “is undertaken in the belief that if the ultimate test of arms should actually occur, the outcome would be *favorable*.”⁴¹ Moreover, Clausewitz’s prin-

37. Speech by President John F. Kennedy, *reprinted in* DEPARTMENT OF STATE, SPECIAL REPORT No. 150, at 6 (Aug. 1986).

38. Soviet proposals that have manipulative effect include, most recently, the proposals for no-first-use of nuclear weapons. A representative (Wegener) of the Federal Republic of Germany speaking to the United Nations General Assembly on November 21, 1984, observed that such proposals had no value because they were not verifiable, and because they duplicated, but isolated only nuclear weapons, the context of article 2(4) of the United Nations Charter, which forbids any use of force. Because Germany does not have nuclear weapons and is threatened by them by the Soviet Union, it has no other choice but “to secure the protection of an ally.” See U.S. ARMS CONTROL AND DISARMAMENT AGENCY, PUB. NO. 126, DOCUMENTS OF DISARMAMENT, 1984, Doc. No. 227, at 824 (1986).

39. CARL VON CLAUSEWITZ, *ON WAR* 97 (M. Howard & P. Paret trans. 1976). The entire chapter, commencing at p. 90, should be read in full to have the full context of these observations.

40. *Id.*

41. *Id.*

ciple reminds us that even if nuclear weapons can be neutralized through the arms control agreements, the larger array of military capabilities are not affected, and their significance is increased. Query whether these "realities" have been superseded by the rise of nuclear weaponry.

Michael Howard, a noted English military historian, identifies "four illusions [that] lie behind the past and current pressures for arms control."⁴² The first, that the number of weapons and arms races, increases the likelihood of war he discounts, arguing that the basic source of tensions among states that might be the cause of war is not the same as their perceptions about the armaments of their opponents. The second, that reductions in weapons would make wars less destructive, has been effectively countered by the ferocity of past wars even when the armies reached their limits in the weapons available. The third, that science and technology lead to greater destruction, Howard claims is an illusion because science and technology improve the means to achieve combat success more effectively and with less destruction. Howard further insists that technologies today are making the large, excessively lethal weapons less desirable while leading to smaller, more discriminating weapons.

Howard's main and fourth point relates to arms control and the relationship of arms control objectives to those armaments:

Finally, there is the illusion that arms control, however one may interpret that concept, provides an alternative, and a preferable alternative, to armament as a means of ensuring international security. In fact, the two activities are totally interdependent. Security is a subjective condition, a state of mind. It is based upon two elements: first, the assumption that no one wishes to attack us; and second, the belief that, even if they have the will and capability to do so, they will be deterred by our evident capacity to resist. Of those two elements, the first is, of course, by far the most important: security based simply on military deterrence is a very poor second-best to security based on mutual confidence, and provides by itself a totally inadequate framework for world order. Armaments may, and should, ensure that, if a potential adversary has the will to attack us, he will be deterred from doing so. But arms control should ensure that, if he does not have the will, he will not be led to develop it through a misperception of our own intentions.

... If I may summarize in a highly simplistic manner, I would say that armaments are about deterrence and arms control about reassurance. Security is achieved by a synthesis of the two.⁴³

We must assume that the United States and the Soviet Union will continue to design their own strategies and policies into instruments that achieve their own policy goals. But the instruments coming to light from Soviet practice must be recognized for what they are: the use of manip-

42. Howard, *Illusions that Fuel Pressure for Arms Control*, 24 ATLANTIC COMMUNITY QUARTERLY 119, 120-21 (1986).

43. *Id.*

ulative instruments of public opinion, with their intended impacts upon the policies and decision-making in the democratic states. Less readily perceived is a firm Soviet policy toward either establishing a capability of threat to be exercised in the future, or a policy of encouraging the democratic states to weaken their defensive capabilities, or both.

An assessment of effective arms control compels us to examine the global situation in which these two countries find themselves and in which they are engaged as principals in the shaping effort. This situation has been characterized by three distinguished observers as a "global war system,"⁴⁴ that is, an intensely competitive process in which the use of military power, military capabilities, and most importantly, effective use of both of these, is the dominant instrument.

Global war perspectives necessarily influence our perspectives about law and what we expect from law, including the law that embraces the arms control agreements. The previously mentioned observers point out: "In the contemporary world community where the expectation persists that differences may be resolved by violence or war, assessments of power are continuous and significant factors in behavior."⁴⁵

Such assessments of power lead to a realistic appraisal of the emergence of law and of the reciprocating processes that shape law. They lead to what we are compelled to expect from agreements made "under law."

The interrelations of control and authority in the global community, as in its lesser component communities, are intimate. It would, of course, be a gross misstatement to say that naked power alone is the key variable or, as students of international relations often say, the *ultima ratio*. Wherever such power operates, . . . it interstimulates with expectations of authority. But it would be equally wrong to ignore naked power in any scholarly inquiry or practical planning for decision-making. Effective power, made authoritative, is a ubiquitous aspect of all social processes, an indispensable component of law.⁴⁶

A major weakness in the Report is its failure to appraise the past practice and trends in arms control practice, perceived as part of our foreign policy and security process.⁴⁷ The long record of Soviet noncompliance is not weighed in the appraisal, nor examined as a trend that will extend into

44. McDougal, Reisman & Willard, *The World Process of Effective Power: The Global War System*, in *POWER AND POLICY IN QUEST OF LAW* 353 (M. McDougal & W. Reisman eds. 1985).

45. *Id.*

46. *Id.*

47. Global order perspectives appear in the United States criteria regarding nuclear-free zones. While such zones preclude deployment of nuclear weapons, they do not affect deployment in adjacent states, thereby making the zone vulnerable to breakdown during combat conditions. The United States criteria for "all participants" to be included in the zone is insufficient to overcome this problem. The United States criteria are set forth by its representative to the United Nations, November 21, 1984. See U.S. ARMS CONTROL & DISARMAMENT AGENCY, PUB. NO. 126, DOCUMENTS ON DISARMAMENT, 1984, Doc. No. 228, at 827 (1986).

the future. The continuing, even escalating, practice of Soviet aggression is ignored. Because both this conduct and practice and arms control must be assimilated in shaping our foreign policy, an appraisal of effective arms control measures without an appraisal of this conduct, or of Soviet perceptions about arms control, defense, and offensive weaponry falls short of the comprehensive analysis needed for recommendations for future and "effective" arms control measures.

We need, for example, an analysis of defense as a critical component in our national security policy and strategy, before we can reach the outcome that defense can rest upon the strategic offensive nuclear weapons standoff.⁴⁸ Such an analysis must account for Soviet perceptions as well as our own. It must consider the vigorous Soviet defense effort and Soviet programs, now well-advanced into direct particle beams and laser technologies. If, as the Soviet Union asserts, such a defensive system provides a "first strike" capability, then the Soviet effort becomes a serious threat that cannot be ignored.⁴⁹

The Committee's report and its conclusions might be compared with those in a report by the John F. Kennedy School of Public Affairs at Harvard.⁵⁰ That report, prepared under the supervision of Albert Carnes-

48. See Nitze, *Arms Control After Reykjavik (We Want to Keep the ABM Treaty; It's the Soviets Who Want to Change It)*, *The Washington Post*, Nov. 9, 1986, at H-2, col. 1. Nitze observes:

The United States need not accept limitations on development and testing activities going beyond those provided by the (ABM) treaty. We also must register both our concern over Soviet ABM-related activities that suggest that they may be preparing an ABM defense of their national territory, and our conviction that the Soviets should dismantle the Krasnoyarsk radar being constructed in direct violation of the treaty.

... The Soviet Union must understand that the United States opposes restrictions on development and testing beyond those that were negotiated, agreed to and codified in the ABM Treaty. With such an understanding, we can move forward toward a comprehensive, stabilizing agreement on a future arms control regime providing for defensive research and testing, strategic offensive reductions and a jointly managed transition to greater reliance on defenses.

49. For a recent review of the invocation of military strategies, see Hines & Kraus, *Soviet Strategies for Military Competition*, *PARAMETERS*, Autumn 1986, at 26. These authors believe that Soviet arms control negotiations are expected to constrain our technological advantage, while supporting Soviet long-term approach to strategy development and strategic competition:

[I]t is very likely that those (in the Soviet Union) reviewing and guiding negotiations have established a fairly complete hierarchy of force development objectives in terms of what post-agreement combinations of active and passive capabilities need to be able to do against the enemy in the context of certain types of operations.

Id. at 30.

The authors stress that the Soviet planner must assure the military commander the widest number of options and capabilities to pursue proposed military missions while denying the United States as much as is feasible.

50. *LEARNING FROM EXPERIENCE WITH ARMS CONTROL—A FINAL REPORT* (A. Carnesdale ed. 1986), submitted to the United States Arms Control and Disarmament Agency. The report is presently in photocopy, but is intended for publication by Ballinger in 1987.

dale, reached a conclusion that was largely pessimistic concerning the effectiveness of control over the arms race, military budgets, and the deployment of the nuclear weaponry:

What is most striking about the arms-control experience is what it did not do. Those who hoped arms control would bring about major reductions in existing or planned [weapons] inventories or slow the introduction of new and more capable technologies have little grounds for satisfaction. Nor do those who looked to arms control as a means for constraining the emergence of a large modern Soviet arsenal capable of destroying a significant proportion of U.S. strategic retaliatory forces.⁵¹

The interplay of arms buildups through modernization and research, followed by arms control agreements that are compelled to preserve the results of these buildups, has simply become a fact of life. Attempts through unilateral restraint in this dynamic situation to promote controls or forbearance have proved meaningless.

While the Carnesdale Report does not explore the Soviet use of arms control strategies to manipulate the foreign policies of the United States, its allies, and others, it observes that during the period of detente:

The Soviets were free to pursue their regional aims and their arms control objectives independently and simultaneously; the United States not only had an interest in promoting arms control progress in its own right, but, owing to the West's fundamental pluralism and divided political authority the Nixon Administration lacked the means to impose linkage on the Soviets.⁵²

The Report continued with respect to the ABM Treaty: "Even the contributions of the ABM Treaty, arms control's chief accomplishment, are of debatable significance and durability. The treaty may merely have codified the postponement of a race in defensive systems until advancing technologies made effective defenses possible."⁵³

III. Conclusion

Policies and recommendations for achieving effective arms control must be judged in terms of policy: the actualization of policy as well as the effective formulation of policy objectives. Judged in these terms, the most critical obstacle that we have been facing in seeking effective arms control agreements with the Soviet Union has arisen from an overriding need to establish and sustain a common policy not only about weapons, and the use of weapons, but about the use of force and the matter of aggression. Failure to achieve such a common policy compels us to assess the arms control period as a period of temporizing. More pertinent to the concerns

51. *Id.* at 10/14.

52. *Id.* at 10/16.

53. *Id.* at 10/40.

of lawyers, this obstacle and this failure compel us to be aware of the limitations of the law of the arms control agreements and the law that makes them effective.

Practice following the Second World War does not suggest change in Soviet foreign policy. Aggression on a continuing basis marks Soviet behavior throughout the world. But the United States, following a brief period subsequent to each act of Soviet aggression has returned to arms control negotiations, suggesting at least, a decoupling of arms control policy and foreign policy. Strong tendencies to argue that we do not need to trust the Russians with regard to the arms control agreements in order to enter into effective agreements lead only to half-truth. Whatever the truth in such arguments, we must be able to trust the Russians to comply with the agreements and to fulfill their terms, or the entire arms control process will unravel.

The critical issues in the relations between the United States and the Soviet Union were highlighted in the personal observations of Richard Perle, Assistant Secretary of Defense for International Security Policy, in a conference at Munich:

To talk . . . of the abandonment of nuclear weapons and the substitution of a conventional deterrent is absurd. Indeed, the very concept of deterring the Soviet Union with conventional weapons, however much they might be improved, however many divisions we might raise and equip (even with advanced conventional munitions), is hopelessly unrealistic. For while conventional defense is both possible and desirable (and expensive), conventional deterrence is a dangerous illusion.

Even if NATO mounted a superior conventional force it could not deter the Soviet Union with its vast nuclear arsenal. . . .

The simple truth is that the verification of an agreement to abolish all nuclear weapons is not difficult, or very difficult. It is impossible and Mr. Gorbachev knows it. Indeed, he counts on it. It enables him to propose eliminating all nuclear weapons with full confidence that the West cannot agree. And he has the added insurance that if we were so foolish as to do so the Soviet Union, which would surely cheat, would wind up with a monopoly of nuclear weapons and the realization of the Leninist dream of a decisive correlation of forces. For this reason alone it is idle to speak of a conventional deterrence or a nuclear-free world.⁵⁴

Foremost in Soviet policy goals, according to a large number of observers, is to compel the United States to leave Europe and NATO. These goals can be achieved through reaching a nuclear-first strike capability, either through superiority in nuclear weapons or through effective defense systems or both. With such a capability, the Soviet Union would be in a position to threaten the West. Even if that capability were never to be

54. Richard Perle's speech was printed in excerpts in the Wall St. J., Feb. 6, 1987, at 20, col. 4. The quotations are taken from that article.

unleashed, its existence alone with the impact of an untestable Soviet "will" to unleash it would be a sufficient threat.

The Report of the Bar Association fails to weigh in the policy components essential for judging the security afforded by arms control, the weaknesses and limitations that are inherent in the arms control processes, or the factors most significant to a competitive power process. Yet nearly every element in arms control is saturated with such policy implications: the asymmetries in weapons and force capabilities tend, for example, to limit the duration of the agreements, so that even the ABM Treaty has become strategically suspect. The military utility of many weapons defies effective control, and weapons, once believed to be indiscriminate, with the application of an advancing military technology have become weapons with high accuracy, target effectiveness, and selectivity, and provide the military commander with additional options in mounting his attack. Perceptions of military utility tend to suppress the continued effectiveness of control—even leading to the denunciation of weaponry—when states are embarking upon a policy of aggression.

Moreover, as mentioned above, Soviet foreign policy practice reveals a growing sophistication in manipulating and influencing public opinion through our own democratic processes. The arenas of influence extend to the negotiations themselves, to the activities preliminary to the negotiations, and to subsequent actions. Summits, such as that staged at Reykjavik, and official statements alike are aimed at such influence. The Soviet arguments put forth are that arms control as such—arms control in a pure form—is the ideal security policy *for the United States*.

To achieve such controls, the Soviet Union has proposed a wide number of draft agreements, all so far rejected because they could not be verified. Such proposals continue to proliferate, however. Some extend to moratoria regarding the testing of weapons, others to undertakings in the nature of unverifiable promissory exchanges for no-first-use of nuclear weapons, still others for the destruction of such weapons, and so on. The Soviet Union strongly supports proposals and "policies" that claim that weapons interfere with domestic economies. It pursues defense initiatives while attacking those of the West. It sends forth an endless stream of "news" and official statements asserting the "peaceful" nature of the nation and its people. It engages in a relentless campaign of libel, e.g., that the United States has disseminated AIDS on a global basis.

Effective arms control for the United States must promote our policy in the large sense, projected by those agreements with a major rival that will promote as effectively as possible United States influence and power. If in pursuing this task, we are compelled to shift our policy goals (if such exist) from seeking through arms control to promote public order and through that order our security, our objectives at least must be aimed at

checking both weapons and decisions that might impair the deterrence and strategic balance between these competing states. These policy objectives, to be sure, speak in terms of national power and its exercise.⁵⁵ But for the United States to perceive its goals in other terms than those embraced by power leads to a dangerous illusion, inconsistent with its most crucial interests, concerning the security of its own peoples or its allies.⁵⁶

55. Public order frameworks for lawyers have been developed in great detail by Professor Myres S. McDougal and his associates at the Yale Law School. *See* H. LASSWELL & A. KAPLAN, *POWER AND SOCIETY* (1950); W. KUEHL, *SEEKING WORLD ORDER* (1969); *see also* M. McDOUGAL, *STUDIES IN WORLD PUBLIC ORDER* (1960); M. McDOUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* (1961); N. SPYKMAN, *AMERICA'S STRATEGY IN WORLD POLITICS* (1942).

56. Former Secretary of State Kissinger, in an analysis of the behavior of some states to "revolutionize" the global order system, observes that legal skills in the traditional sense, cannot serve our diplomacy with such states:

Our belief that an antagonist can be vanquished by the reasonableness of argument, our trust in the efficacy of the process of negotiation, reflects the dominant role played in our diplomacy by the legal profession and its conception of diplomacy as a legal process. But the legal method cannot be applied in a revolutionary situation, for it presupposes a framework of agreed rules within which negotiating skill is exercised.

H. KISSINGER, *NUCLEAR WEAPONS AND FOREIGN POLICY* 60 (abr. ed. 1969). But this is clearly a call for an interdisciplinary, policy oriented approach to law itself.

