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DUE PROCESS OF REBELLION

LUIS KUTNER*

Liberty is a boisterous sea. Timid men prefer the dead calm of despotism.**
Rebellion to tyrants is obedience to God.***

For some 3,500 years, man has been at war nine hours out of every ten. During the past twenty years, mankind has survived 379 armed conflicts. Beginning with the American and French Revolutions, the dominant characteristic of the contemporary world has been revolution. The Soviet, Chinese and other contemporary revolutions are extensions of what may be regarded as a revolutionary tradition. The purpose of these revolutions is not merely to replace one authority with another, but to change the underlying social system.¹ The underlying ideology of these revolutions encompasses such universal values that revolution in one country challenges the status quo elsewhere and posits a change in the international system.² Clearly, revolution or acts of rebellion in one state involve questions of international law such as intervention or non-intervention by other states or by the international community, the right of national self-determination, the rights of de jure and de facto govern-

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** From a letter which is of great significance in the history of the freedom of the press. Publisher Woodfall was prosecuted for seditious libel; the jury brought in a verdict of "guilty of printing and publishing only." After a second trial, Woodfall was freed on payment of costs. J. BARTLETT, FAMILIAR QUOTATIONS 1002b (13th ed. 1955).

*** Motto on Thomas Jefferson's seal (circa 1776).

¹ See generally H. ARENDT, ON REVOLUTION (1961).
² Revolution in World Politics 5-10 (M. Kaplan & N. Katzenbach ed. 1962).
ments, and the rights of individuals who have committed—or are affected by—acts of rebellion or revolution.

The focus of this work is upon the international protection of the rights of both active and passive participants in revolutionary action. The basis for such international protection lies in the recognition of the right to rebel under certain circumstances and upon a consideration of the international consequences of revolution. Specifically, parts I-VI examine the origins and effect of conventional international law concerning rebellion. Part VII discusses various suggestions for the establishment of international tribunals and the Writ of World Habeas Corpus.3 The internal causes and characteristics of revolution are discussed in detail in part VIII, followed by prominent examples of 20th century social revolutions. In the final portion, the author urges the application of due process principles by existing and proposed international tribunals.

I. THE ORIGIN OF THE CONCEPT OF LEGITIMATE REBELLION

Political writers from antiquity have stressed the need for obedience to law and the horrors of anarchy. However, private action to overthrow a tyrant has been considered justified. In the republican city-states of Greece, the tyrant was a usurper; thus, it was considered as honorable for a citizen to stake his life in an attempt to remove the usurper as it was for him to sacrifice his life to repel the invader. Though at first "tyranny" referred to the method by which the tyrant came to power, the term later came to refer to the nature of the rule.4 To Plato, the distinguishing characteristic of the tyrant is his egocentric and licentious disregard of the welfare of the people he rules. In Plato's view, the mechanical test of legality or constitutionality is not the fundamental issue; what is more important is the ruler himself and the nature of his rule. Similarly, Aristotle regarded tyranny as a perversion of monarchy


in which the leader exercises irresponsible rule over subjects against their will, with a view to his own private interests rather than the interests of the persons ruled. Tyranny is marked by the arbitrary and irresponsible power of a single individual. Neither Plato nor Aristotle seriously considered arguments for tyrannicide or resistance of the tyrant; these considerations were developed by later writers.

Cicero and the Stoic philosophers stressed the importance of natural law, derived from right reason, in binding the commonwealth. Although opposed to the dissolution of the Roman Republic, Cicero justified the assassination of Julius Caesar under the natural law. Seneca, who saw the depths to which political degeneration could descend under the tyranny of Nero, recommended tyrannicide as the only cure. Although the Roman jurists recognized that what pleases the prince has the force of law, they also developed the doctrine that even imperial power is subject to the law’s control. The sharp distinction between the lawful ruler, who seeks the common good, and the tyrant, who ruling by force, seeks first his own ends, was fundamental in both Greek and Roman political thought.

Early Christians, following Paul, adhered to the belief that government is made necessary by the depravity of man and insisted upon the Christian duty of obedience to the ruler, who was considered to be God’s instrument for repressing evil. Such commandments as “[t]he powers that be are ordained by God” and the injunction to “submit yourselves to every ordinance of man for the Lord’s sake” were the guidelines for early believers. Augustine stressed that the authority of all rulers is derived from God and hence is subject to obedience. Though recognizing that one who kills another in obedience to God’s direct command is not guilty of sinful murder, the direction of Augustine’s writing upholds the divine right of kings. According to Augustine and Gregory the Great, God sends good kings as well as bad, and those who murmur against the rulers murmur against God. However, one early church father, Isidor of Seville, distinguished between kings and tyrants and urged that the title “king” belongs to him who governs rightly and is lost to those who govern unrighteously. Pope Nicholas I stressed that obedience is required to him who is truly a king.

Medieval thinkers were particularly concerned with the problem of

6. Id. at 10-11.
resistance to authority. Though the king's rule was acknowledged to be absolute, it was still subject to the law. To Bracton, this meant that the king may not alter or abolish the law. He must not change the traditional form of government; his judgments of right must follow the rules laid down by custom; and he cannot take the property of his subjects (except as penalty for crime) without their consent. Other scholars stressed adherence to the ethical and rational principles derived from natural law. Divine law was also held to limit the king. The king derives authority from the community and acts on the community's behalf. Any check on his authority can only come through private resistance by individuals or groups. Within this context, the tyrant can be differentiated from the king. The tyrant bases his authority not on law, but on force. While the king assumes a likeness of divinity, the tyrant takes on the likeness of the devil. Wycliff, however, believed that the tyrant must be obeyed, with punishment to the ruler coming in the hereafter. Aquinas and Occam asserted the right to disobey those commands which were either contrary to fundamental law or outside the scope of the ruler's legitimate authority. Strong currents of medieval thought supported the view that the king who misuses his power may be resisted forcefully. The idea of contractual obligations between king and subject was first explicitly expressed by Manegold of Lautenbach. Though Aquinas regarded sedition as a moral sin, he did not consider it seditious to resist a tyrant. Rather, it is the tyrant who, in violating the law, commits sedition. But Aquinas, citing ancient and hence inapplicable precedents, opposed private action against a tyrant who has a legitimate title to rule, urging instead appeal to higher authority. Some writers sought an institutional check by appeal to the Pope. Marsiglio of Padua urged the establishment of an independent agency of the people to discipline the ruler.

Clearly, while the doctrine of tyrannicide was not predominant in medieval thought, it was consistent with the main tendencies of medieval political theory. The king, as protector of the common good, is bound by the principles of nature which objectively define this common good. The resister of the law-defying tyrant acts not for the protection of his own private values, but for protection of the entire community. Tyrannicide and resistance function as an institutionalized check upon the ruler. Though ultimate authority stems from God, immediate authority comes

9. Id. at 19.
10. Id.
11. Id. at 31.
12. Id. at 26-27.
from the common will of the community. No one denied that a private person may resist and take the life of a tyrant without title; the problem arose with regard to the right of a private person in relation to a titled ruler who becomes a tyrant by abuse of power.

In the early modern period, characterized by the centralized authority of the kings, the trend was toward absolutism. Though Luther had contempt for the dignity of princes, he denounced resistance. Calvin was also opposed to the resistance of authority, but followers such as John Knox urged resistance where religious belief was threatened. John Knox condoned Protestant resistance to Mary Tudor and Mary Stuart. Resistance was also condoned when the French persecuted the Huguenots. Thus, the development of Protestant thought ranged from a theory of passive obedience to theoretical support for the right and duty of resistance. The growth of the resistance theory was basically a response to the political situation in Scotland and France. Those who supported resistance relied upon the earlier medieval body of thought.

Two significant 16th century humanists who justified rebellion were John Buchanan and Etienne de la Boetie. Buchanan, in defending the deposition of Mary Stuart, argued in his De Juri Regni and Seotos that the authority of kings is established by the consent of the people, resting on a social contract which encompasses the king's acceptance of the rule of law. The law, like the king's authority, is derived from the community; thus, those who confer authority on the king can limit that authority as well as punish kings who exceed that authority. When the king dissolves the bonds of authority, no obedience is owed to him. Under these circumstances, a rebellion is justified and a private person may kill the law-defying king. La Boetie's Discourse on Voluntary Servitude departed from Aristotelian and medieval conventions by digging at the roots of tyranny. He found psychological reasons for the roots of tyranny in the fact that custom gradually wears away man's natural love of liberty and leads to his submission to servitude. Tyranny, then, is supported by a hierarchy of those who benefit from the tyrant. La Boetie's cure for tyranny lay in passive resistance, the refusal of the subjects to consent and obey.

Two Jesuit writers who justified tyrannicide were Suarez and Mariana. Mariana's De Regis Institutione, published in 1599, included a bitter denunciation of tyranny, urging that the people from whom a king
derives power may overthrow him. According to Mariana, there is no question that a usurper—a person who assumes authority without a valid title—may be killed by anyone since he is a public enemy. Where, however, a rightful king abuses his authority, his power must be tolerated more patiently. If the king destroys the commonwealth, plunders private fortunes, or holds the laws and religion in contempt, a representative body must warn him. If the king refuses to heed the warning, this body can depose him and there exists a justification for his death. If the ruler prevents the convening of a public assembly, this in itself is conclusive evidence of his tyranny, and the king can be overthrown. Before taking any action, however, the liberator should first consult "learned and grave men." Mariana's book was burned in France. Mariana's views departed from those of Suarez and the traditional Jesuit and Catholic approach in that Mariana was not concerned with the right of the Pope to absolve subjects from their allegiance, thus tending to be more secular and conventional. In France, the Jesuits were denounced as disturbers of the public peace, while in England, Presbyterians, as well as Jesuits, were similarly denounced.

During the 17th and 18th centuries, the concept of the social contract was formulated in English thought by Hobbes and Locke. To Hobbes, the sovereignty of the state is based upon the social contract, which ends the war of one-against-all in the state of nature. Authority is considered necessary for individual security. An individual may not breach his contractual obligations—especially the obligation to obey the sovereign—unless the state threatens to take his life. Thus, a prisoner condemned to death has the natural right to attempt an escape. Locke, however, perceived the individual as having certain rights in the state of nature which are retained subsequent to the formation of the social contract. Where these rights are infringed, as by the denial of property, a right to rebel exists. The right of rebellion is based upon a two-party relationship between the people and their government. Locke's concept influenced the framers of the Declaration of Independence who justified the revolt of the American colonies.

The defense of the right of tyrannicide and of rebellion throughout the 17th century was essentially conservative in that the object was to

16. Id. at 68-71.
17. Id.

http://scholar.valpo.edu/vulr/vol7/iss1/1
destroy an improper innovation and restore former values to the community, not to clear the way for new social organization. The justification for tyrannicide and rebellion was the vindication of commonly shared and well-rooted values. In the 17th century, the issue arose within the context of conflict between emerging absolutist monarchs and the older traditions. At first, many thinkers considered enlightened absolutism as derived from the divine right to eliminate feudal anarchy and religious wars. Subsequently, there was an emerging awareness that the new absolutism leads to the development of tyrannical traits and oppression. However, the feeling developed that the mere killing of the king does not solve the problem of a tyrannical system. The community must not only resist, but also establish new constitutional institutions. Within this context, Locke conceived that a tyrannical system causes authority to revert back to the community, thus giving the people the right to revolt. The American colonists were clearly the heirs of this tradition. To Jefferson, resistance against tyranny is not merely justified but at times positively essential to the maintenance of human liberty. But, as with Locke, mere resistance to a tyrant is not considered adequate; thus, the participants in the American Revolution deliberately constructed a constitution based on a theory of representative government with checks and balances to restrain power. The concept of separation of powers was considered fundamental to the protection of freedom.

The French Revolution, like the American, emphasized the symbol of the tyrant. Particularly, the Jacobins and the leftwing revolutionaries believed themselves to be the successors of the old Romans who had fought for the liberty of the Republic. The debate concerning the execution of Louis XVI centered upon the symbol of the tyrant. Merely killing the tyrant was an insufficient measure. Tom Paine declared: "Execute the king but not the man!" Thus, by the end of the 18th century, thinking turned away from theories of tyrannicide and individual resistance and toward theories of revolution. Under the new theories of revolution, the use of force by the entire community is the avenue through which people can eliminate unbearable abuses. By so doing, the people can increase individual and social happiness by crushing the

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21. Jefferson, in reacting to Shay's Rebellion, stated: God forbid that we should ever be twenty years without such a rebellion... What country can preserve its liberties, if their rulers are not warned from time to time that the people preserve the spirit of resistance? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural nature.

II MALONE, JEFFERSON AND HIS TIME xvii, 165-67 (1951).


23. Id. at 110.
whole corrupt regime. The people can also create a new and better constitution in which representative government, separation of powers, and the definition of inalienable human rights serve as institutional checks against the very possibility of tyranny.\footnote{Id.}

In the 19th century, new concepts of tyranny emerged. Bentham, who rejected natural law concepts, defined tyranny in terms of degrees of unhappiness. When, according to his hedonistic calculus, the amount of unhappiness exceeds the amount of happiness, one has the right to resist authority and to rebel. While Bentham believed that representative government effectively serves to harmonize the self-interest of the rulers with the self-interest of the ruled, he feared that the unenlightened masses can themselves become tyrannical. The true tyranny of human ignorance, stupidity and superstition is, of course, invisible. An anarchist such as Tolstoy condemns the entire social structure as immoral since it is founded on force. To Marx, tyranny is derived from the laws of economic evolution and the class structure. Many of Marx's followers opposed acts of individual violence and revolt, believing rather in the laws of economic determinism.

The old tradition of tyrannicide was retained in Italy where liberal writers protested against the petty tyrants who emerged during the struggle for freedom and unity. The Italian tradition furnished the motivating force for other revolutionary movements. During the French Revolution, the doctrine of tyrannicide was espoused by Babeufism and also by Blanqui, who, in 1824, sought to seize power through revolt of an armed minority and thus establish the dictatorship of the proletariat. Between 1837 and 1870, the Blanquists participated in 13 uprisings. Interestingly, Blanqui's concepts were later revived by Lenin. Nineteenth century anarchists such as Bakunin and Kropotkin regarded both the political and economic systems then existing as tyrannous, thereby justifying individual revolts. A similar tradition of putschism existed in central Europe. In contrast, the responsible leaders of Marxism repudiated putschism. For example, Lenin conceived the role of the intellectual as including a duty to expose the tyranny of the prevailing system—not only as it pertains to the proletariat, but as it affects all classes.\footnote{See generally V. LENIN, \textit{STATE AND REVOLUTION} (1916). The Marxist position is summarized in S. HOOK, \textit{MARX AND THE MARXISTS: THE AMBIGUOUS LEGACY} (1951).}

With the advent of the German resistance to Nazism, there developed a new social concept of revolt. To groups of German Catholics and
Protestants, the bestiality of the Nazi regime created a moral obligation to organize conspiracies for revolt which culminated in plots to assassinate Hitler. Theologians such as Max Pribilla and Otto Dibelius reiterated the traditional doctrines as to the right of resistance and revolt when the state exceeds the bounds of morality.

The dictatorships of the 20th century represent the emergence of a new and systematic form of tyranny, differing from the 18th century absolute monarchies and the Napoleonic Empires. In some ways, the tyrannies of these recent dictatorships are similar to the tyrannies of the city-states of antiquity and the Renaissance. The similarities include: (1) personal rule unbounded by law; (2) military despotism based on private armies; (3) continuous ventures into dangerous diplomatic situations with the risk of war; (4) luxury and ostentation typifying the life style of the dictator and his "gang"; (5) bounteous remuneration for the obedient servants of the system; (6) intimidation of the people; and, (7) suppression which leaves no possibility for the expression of opinions contrary to the dictatorship for the organization of popular forces to effectuate change. The depravity of the moral structure is the element common to both the old tyranny and the new totalitarianism. The modern tyrannies, however, making use of contemporary technology, exhibit a higher degree of moral depravity. Nevertheless, there have arisen a number of dictatorial regimes which may be regarded as more enlightened, such as that of Kemal Ataturk in Turkey. The new tyranny differs from the old only by espousing a doctrine such as Fascism or Communism. The general aim is to make total the annihilation of the individual personality. There are, however, significant differences between tyrannies, e.g., between Fascism and Bolshevism. The latter has not engaged in some of the excesses of systematic murder characteristic of the former.

Colonialism is still another context wherein revolt against authority has found justification. Gandhi, beginning in the 1920's, led organized campaigns of passive resistance to disobedience against what he and the

27. O. Jaszi & J. Lewis, AGAINST THE TYRANT 203 (1957). Debelsius, however, takes a lukewarm position, contending that the resister would involve himself in guilt. Pribilla is more outspoken in justifying rebellion to Nazism.
28. Id. at ch. xix. However, there were many parallels between Stalin's and Hitler's totalitarianism. See generally H. Arendt, THE ORIGINS OF TOTALITARIANISM (1952). Significantly, Fidel Castro, in his famous defense speech at the Moncada Trial in Santiago De Cuba in 1953 made reference to the classical arguments regarding the resistance to tyranny in justifying his revolt against Batista. F. Castro, HISTORY WILL ABSOLVE ME (1969).
Indian Congress Party regarded as the imposition of immoral rule by Britain in India. Influenced by Thoreau and Tolstoy, as well as by Hindu tradition, Gandhi based his resistance on principles of non-violence as governed by Satyagraha and Ahimsa to effect a change in the heart and mind of the oppressor. These methods, with modification, were applied in Africa and in the civil rights struggle in the United States. Although unsuccessful, the late Albert Luthuli led a series of civil disobedience campaigns against the system of apartheid in South Africa.29

Many of the colonial revolutions such as those in Palestine, Indonesia, Cyprus, Indochina and Algeria were of a violent nature. A system of guerrilla warfare and terrorism was employed to expel the colonial power. The struggle for national independence in Asia and Africa is being stimulated by ideologies of nationalism and popular sovereignty. These philosophies, originally imported from the West, have achieved universal application.30

Clearly, the justification for rebellion and revolution is derived from a tradition of political thought having roots in antiquity. This tradition was adapted to Christian principles by medieval theologians and further refined in the course of the Reformation and the struggle for popular sovereignty in the 16th and 17th centuries. The principles were transformed in the 19th and 20th centuries in order to promote the overthrow of institutions deemed tyrannous and the establishment of constitutional systems based on popular freedom conducive to the development of human dignity. The rise of totalitarianism in the 20th century has created situations wherein revolt may become morally obligatory. The struggle for independence by oppressed peoples has also created situations in which rebellion is justified.

II. FORMS OF REBELLION

Power is defined as the capacity of a group or an individual to modify the conduct of other individuals. The organized and sanctioned power in a society is designated as “authority,” having the capacity to make binding decisions for the community.31 This capacity is the function of popular consent—active or passive acceptance by the population. This consent is frequently related to the objectives pursued by an elite

30. See generally The Revolution in World Politics (M. Kaplan & N. Katzenbach ed. 1962).
31. The discussion in this section is based generally upon A. Janos, The Seizure of Power and Popular Consent (1964).
on behalf of the community. Sometimes this consent is granted when
the elite is regarded as legitimatized by moral or metaphysical consider-
ations. Where these sources of consent are absent, the elite engaged in
pursuing social objectives must rely on force exercised by armies, police
units and other instruments of coercion. Hence, authority is a balance
of force and consent with respect to a set of social objectives. Though
an element of force is needed, consent is also needed for the functioning
of social institutions. The seizure of power is the seizure of a balance of
coercion and consent which involves not only the capture of the instru-
ments of force in society but also the winning of a certain degree of
popular acceptance. The objectives of the elite must conform to changes
in society. Where values and social expectations change, the structure
of authority undergoes crises, of which revolution is the most extreme
form. Revolution involves the termination of state authority and presup-
poses the collapse of both consensus and organized force. Once the
instruments of force disintegrate simultaneously with, or as a result of,
popular rebellion, revolution is likely. The revolutionary seizure of
power involves the destruction of the old power base and the establish-
ment of a new one. There need not be a mass rebellion. The key to
success is massive alienation from the old government. The strategy for
revolution was well developed by the Bolsheviks and subsequently by
Mao Tse Tung.

While revolution involves the complete disintegration of state insti-
tutions, the coup d'état involves the seizure of these institutions with the
new authority evolving from the old. The loyalties of the effective power
instruments of the state are transferred from one group or individual to
another, with a gap being created between formal and effective power
in society. Subsequently, the holders of formal power are forced to
withdraw or be eliminated. Often, the existing heads of state are coerced
to sanction their own demise by signing a document or by submitting
to a vote of confidence extorted behind closed doors. The process may
not be sudden or dramatic, and it is often even orderly. One type of coup
d'état is the palace revolution in which a small group of conspirators
removes one of its number by arrest or assassination. A palace revolu-
tion occurred when Mussolini was deposed in 1943 as a result of a
conspiracy involving King Victor Emmanuel, the members of the Fas-
cist Grand Council and a number of high ranking military officers.
Another recent palace revolution occurred in Soviet Russia, leading to
the ascendancy of Khrushchev and subsequently of Brezhnev and Kosy-
gin. Another type of coup is characterized by conspirators who, while
unable to gain control of the state apparatus, nonetheless represent
important factions within society, such as the army, which factions
enable them to move in response to popular dissatisfaction. The crucial element in this form of coup is the threat of civil conflict which may be regarded as a greater evil than the ascendancy of the political opponent. The coup does not develop suddenly, but involves extensive plotting. An alternative approach lies in infiltration, which is the placement of trusted individuals in strategic positions in an attempt to change the loyalties and goals of established organizations. This approach is used by the Communists of Eastern Europe.

In contrast to a revolution in which popular support is achieved first, followed by the seizure of the state apparatus, a coup entails first the seizure of authority and then the gaining of popular consent. The participation of the military alone is insufficient for gaining popular support. An aura of legitimacy, such as the inclusion of cabinet ministers and members of parliament, is needed. An attempt is usually made to coerce approval from political leaders. Parliamentary institutions may be taken over by rigging the elections.

Putschism is the term applied to a crude and unsuccessful attempt to seize power. Such an attempt, as was undertaken by Blanqui, was criticized by the Bolsheviks who eschewed the mere occupation of the chancery and stressed the importance of acting only when conditions favoring a seizure of power were present. Nevertheless, the sudden putsch has been attempted in countless instances and romanticized by some writers. A comic example is Hitler's beer hall putsch in Munich. Sometimes an attempt is made to capture one instrumentality, such as the effort by Chilean Nazis in 1938 to take only the radio station.

Until World War II, the popular image of revolutions was closely connected with barricades, urban masses and storming politics. The success of the partisans in Europe and the victory of guerrilla movements in Asia have popularized terrorism and mobile guerrilla warfare. Though there have been a number of successful campaigns, there have also been some failures. The success of guerrilla warfare lies in combining military techniques with the establishment of base areas of popular support in the mobilization and creation of revolutionary authority, as was well perceived by Mao. The authority of the state cannot be seized by military power alone. Putsches often result in failure because they emphasize the destructive and ignore the constructive aspects of the seizure of power.

The forms of rebellion which have been undertaken have had international consequences. The international community and the states which comprise it must determine whether intervention is to be undertaken to determine the course of a particular revolutionary situation. Questions arise involving recognition of a change of government, the
status of insurgents and the rights of individuals who have been affected by acts of rebellion or who are or have been rebels.

III. Intervention

In considering the question of intervention in domestic civil strife, a distinction must be made between doctrinal norms and actual practice. The principles of national self-determination and the sovereign equality of all states, as asserted by the United Nations Charter and the equivocal lexicon of statesmen, presuppose that every state has a right to determine its own form of government, its own economic system, and its own ideology, free from outside interference. For example, the United States self-righteously refused to recognize the Manchuko regime, which had been created by Japan in Manchuria in 1933, claiming it constituted the imposition of a regime by a foreign power.\(^{32}\)

This element in the international law of rebellion is derived from the doctrine of sovereignty, but it can readily be seen that its actual derivation emanates from the doctrine of “true” rebellion in the traditional sense. However, the duty does not require each state to suppress all activities of private persons within its jurisdiction which may be inimical to the interests of a foreign government, for to so hold would be tantamount to denying the right of rebellion altogether. Modern rebellions are often launched by nationals of one state (who presumably have the right to rebel) while on the territory of another state. Thus, when the Russian Revolution broke out, Trotsky was in New York and Lenin in Switzerland. Each had not ceased during his years of exile to devote himself to the cause of the revolution; to have required the American and Swiss governments to suppress the activities of these men in the name of international law would have turned international law into a scheme of mutual insurance for existing governments. States are merely under an obligation to prevent subversive activity against foreign governments which assumes the form of armed attack or crimes against life and property. Thus, on the occasion of the assassination of King Alexander in Marseilles in 1934, the Council of the League of Nations declared: “It is the duty of every State neither to encourage nor to tolerate on its territory any terrorist activity with a political purpose.”\(^{33}\) On the other hand, political action which takes the form of conspiracy and propaganda is not ordinarily considered the responsibility of the government on whose territory it occurs in the absence of governmental aid or incitement.\(^{34}\)

\(^{32}\) I Hackworth Digest of International Law 335-38 (1940).


\(^{34}\) An exception exists in the Geneva Convention on the Use of Broadcasting in the Cause
This element of the law of nations has also been enacted by the United States and codified as 18 U.S.C. § 960 (1964):

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at Peace, shall be fined not more than $3,000 or imprisoned not more than three years, or both.

The enactment of similar legislation in other nations should be an institutional goal of due process of rebellion since it restricts the capacity of nationals of one state, or government acting through them, to "impose rebellion" on the people of another. However, it is not the understanding of the Department of State that the statute is applicable to regimes unrecognized by the United States. In the case of *The Three Friends*, however, the Supreme Court appears to have conceded—if only arguendo—that a prior diplomatic recognition was necessary to invoke the prohibition of the statute. Dicta in the case of *The Carondolet* may also support this position. *The Carondolet* involved an alleged violation of R.S. § 5283 (the predecessor of 18 U.S.C. § 960) by the fitting out of a vessel to aid one unrecognized faction against another unrecognized faction. The court said:

The United States can hardly be said to be "at peace" in the sense of the statute, with a faction which they are unwilling to recognize as a government; nor could the cruising, or committing of hostilities against such a mere faction be well said to be committing hostilities against the "subjects, citizens, or property of a district or people" within the meaning of the statute.

If this be an accurate statement of the law, it is apparent that remedial legislation may be necessary to close a significant loophole in the U.S. Code which invites acts contrary to the law of nations and to the concept of Peace, to which 21 states became parties. This Convention prohibited broadcasting detrimental to good international understanding. See M. Whiteman, Digest of International Law (1965) for a resume of the pact. See also Preuss, *International Responsibility for Hostile Propaganda against Foreign States*, 28 Am. J. Int'l L. 649 (1934).

35. 166 U.S. 1 (1897).
37. Id. at 800.
of "fair" or "true" rebellion, a concept which, this article argues, must be protected.

Due process of rebellion makes it possible that nations may enact by general consent a code of self-restraint in dealing with the phenomenon of revolt so that domestic rebellion may be limited. The progress of the technology of rebellion and the increasing capability of leadership to incite others to join a rebellion have been rapid enough to create some confusion in the application of the older "rules." As an example, one may cite the blurring of the traditional line between hostile propaganda by a state and hostile propaganda by a private person. Before the rise of modern totalitarianism, it was assumed that a state acted as a matter of course only through governmental organs openly identifiable as such. But this assumption is invalid in a state where a single party or group has established a monopoly of power and reduced the nominal government to an "executive committee." In such a state, all the organs of expression of opinion, as well as those of political organization, express the will of the ruling extra-governmental force. In such circumstances of organic connection among all the manifestations of collective life, it makes little sense to attach culpability for internationally hostile acts to the government only. Political party newspapers, and even the acts of private persons, must be regarded as expressing the will of the state. Although this principle has been recognized by certain writers, it cannot yet be said to be a doctrine of international law. Its application is hindered by the unwillingness of totalitarian states to abandon the pretence of individual and group pluralism. The People's Republic of China, as an instance, maintains a parliament in which several parties, as well as the overwhelming majority of Communists, are represented. It is a characteristic of totalitarian states to assert that a perfect freedom is achieved within their borders and that the strictures demanded by the ruling group are really imposed by the people, collectively and individually, as an exercise in consensus. Such claims are not subject to verification or disproof before any international tribunal, yet accepting them at face value often leads to absurdities.

When the Mayor of New York, Fiorello LaGuardia, made an attack on the head of the German government in a public address in 1937, that government complained and the government of the United States issued an official apology. The apology was apparently given on the theory that international law prohibits such remarks by officials

even if the official holds a merely local office under a federal system.\textsuperscript{39} Obviously, statements made by an American official in LaGuardia's position cannot reasonably be equated with statements made by an official of the then existing German government. Yet, international law contains no doctrine with which to distinguish such cases.

A similar difficulty exists in the case of propaganda disseminated by radio and television. It has been contended that broadcasts hostile to a particular state and receivable in that state are hostile acts within the meaning of the traditional prohibition of international law. This is equally true when those broadcasts are said to be only for national distribution. One writer compares them to invasions and urges that they be so regarded,\textsuperscript{40} while another authority asserts that the airways should be considered as a res communis omnium, free for any lawful purpose.\textsuperscript{41} As of this writing, there appears to be no ruling precedent or universally accepted doctrine which would clarify such matters as the allocation of the burden of proof concerning whether the broadcast was intended only for local distribution. Attempts to adopt a multilateral convention defining the obligations of nations in regard to this have not been successful, and for that reason an important part of the law defining "legitimate" rebellion continues to be obscure.

IV. CONVENTIONAL LAW REGARDING LOCALIZATION OF REBELLION

Thus far, little attention has been given to the efforts by states to achieve "localization" of rebellion, which is an essential element of due process of rebellion. There are, however, many agreements of varying degrees of binding force through which states have attempted to preserve the internal character of rebellions. Of primary importance, perhaps, is the Resolution of the General Assembly of the United Nations adopted on November 17, 1950, under the title "Peace Through Deeds." This convention reaffirms that, whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign power, or otherwise, is the gravest of all crimes against peace and security throughout the world.\textsuperscript{42}

\textsuperscript{39} Van Dyke, \textit{The Responsibility of States for International Propaganda}, 34 AM. J. INT'L L. 58 (1940).
\textsuperscript{40} Fenwick, \textit{The Use of the Radio as an Instrument of Foreign Propaganda}, 32 AM. J. INT'L L. 339 (1938).
\textsuperscript{41} Lauterpacht, \textit{Revolutionary Propaganda by Governments}, 13 TRANS. GROT. SOC. 143 (1928).
However, as previously noted, much of the relevant law needed to determine whether, for example, a broadcast is aggressive in character is nonexistent. To the extent that the Resolution refers to the traditional forms of "aggression," it is merely declarative of the pre-existing international law. The Resolution of 1950 adds little, therefore, to the earlier Resolution, "Essentials of Peace," which called upon states to refrain

43. G.A. Res. 290 (IV) (1949). The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance With the Charter of the United Nations states inter alia:

[T]he strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to assure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security. . . . No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law. . . . No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.


In view of the above declaration of principles, the following excerpts from Vicker, The Ideology of Black September, Wall Street Journal, September 7, 1972, at 12, are instructive:

"Violence will purify the individuals from venom; it will redeem the colonized from inferiority complex; it will return courage to the countryman."

So says a pamphlet printed by Al Fatah, the militant wing of the Palestine Liberation Organization, the catchall organization which will engage unceasing war on Israelis and on anybody else who might get in the way. The definition of the "enemy" is extremely broad and could cover just about everybody except an ultra-radical Maoist in the eyes of a particularly radical Al Fatah branch, such as the Black September Movement, which is claiming responsibility for the slaughter of the 11 Israelis at the Olympic games.

Some of the statements voiced by Al Fatah come straight from Frantz Fanon, the radical writer who has inspired a whole generation of guerrillas to believe that violence purifies the soul. Ho Chi Minh, Che Guervara and Mao are its heroes. Al Fatah's aims are total revolution, not only against Israel but against the whole capitalist system. . . .

"Victory will be achieved by the masses," declared an intense young Iraqi recently on the campus of the American University of Beirut. . . .

"In the political struggle, any weapon is a valid weapon as long as it is in the hands of the people," the spokesman continued. He made it clear that this included plane hijacking, sabotage, bombing or anything else which fitted the plans of Arab guerrillas. . . .

Ironically, guerrilla raids like that at the Olympics in Munich illustrate frustration more than success for the anti-Israeli underground. Israel's success in protecting its borders makes activity within that country a risky matter indeed. So strikes have developed far from the focal point of battle in the Mideast.

Such guerrilla tactics are difficult to prevent. Police forces just aren't big enough except in police states in the socialist world to protect every installation, every plane and every domicile against isolated acts of violence. . . .
from "fomenting civil strife and subverting the will of the people in any state."

It is unfortunate that a more precise concern for the present day meaning of the crime of abetting internal strife was not shown by the General Assembly. The issue is of more than academic importance. In considering the approval of the North Atlantic Treaty, Article V, which deals with the question of armed attack on the signatories, the U.S. Senate Committee on Foreign Relations was presented with exactly this problem. The Committee concluded:

Obviously, purely internal disorders or revolutions would not be considered "armed attacks" within the meaning of Article V. However, if a revolution were aided and abetted by an outside power such assistance might possibly be considered an armed attack.4

The report further states that each case must be considered on its own merits, which is, of course, tantamount to a refusal to propose a clarifying rule.

Other attempts have been made to formalize the obligations of states with regard to what might be considered the problem of preserving the territorial integrity of revolution. Article VII of the Convention on Territorial Asylum, signed in Caracas, Venezuela, on March 28, 1954, provides that:

Freedom of expression of thought, recognized by domestic law for all inhabitants of a State, may not be grounds of complaint by a third State on the basis of opinions expressed publicly against it or its government by asylees or refugees, except when these concepts constitute systematic propaganda through which they incite to the use of force or violence against the government of the complaining State.45

While seven states have ratified this agreement, the United States has not, and the ratification of this or a similar protocol presents another area in which immediate measures may be undertaken to strengthen the international law guaranteeing due process of rebellion.

Those guerrillas of the future are apt to be even more deadly than those of today. For if violence remains their credo, they probably will be equipped with weapons much more advanced than those in the hands of today's Fedayeen.

For further comment on the Olympic incident, see TIME, September 18, 1972, at 22.

44. SENATE COMMITTEE ON FOREIGN RELATIONS, REPORT ON THE NORTH ATLANTIC TREATY, S. EXEC. REP. NO. 8, 81st Cong., 1st Sess. 13 (1949).
The United States has not, by means of any binding agreement, clarified its position with regard to the fomenting of civil strife through propaganda. The United States is signatory to an agreement formalizing the dominant international law pertaining to a state's duty to refrain from permitting armed attack to be launched from its territory. That document was signed in Havana, Cuba, on February 20, 1928, and is commonly called the Convention on Duties and Rights of States in the Event of Civil Strife. As of 1965, each of the 21 American republics, with the exceptions of Chile, Guatemala and Venezuela, had ratified this Convention, which provides in part that the contracting parties shall use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundary, or sailing from their territory for the purpose of starting or promoting civil strife.46

Other Articles of this Convention bind the contracting parties to disarm rebel forces crossing their boundaries and to forbid any traffic in arms, at least until the rebellious force has been recognized.

Big powers, guided by considerations of national self-interest, have often found it necessary to intervene in the internal affairs of other nations. The United States has often been so involved. As Quincy Wright observed:

The United States has been involved in civil strife on some 200 occasions if one includes minor incidents on its own territory such as Shay's Rebellion, the Whiskey Rebellion, Nat Turner's Rebellion, the Seminole War, the Black Hawk War and other Indian hostilities; and interventions in civil strife, often to assure free elections, in foreign countries such as Nicaragua, Panama, Cuba, Haiti, Dominican Republic, Honduras, Samoa, China, Russia, Lebanon, and others, as well as six greater wars: the American Revolution, in which the United States fought for its own self-determination; the Civil War in which it fought to frustrate the self-determination of the Confederacy; the Spanish-American War in which it fought to assure self-determination for Cuba; the Philippine insurrection in which it fought to frustrate self-determination; and wars in Korea and Viet Nam, in which it is controversial whether it has fought for self-determination of the southern half of these

countries or to frustrate self-determination of the whole.  

The United States commitment to nonintervention in the Western Hemisphere is an obvious example of noncompliance with a well-established norm. When the Latin American colonies struggled for independence in the early 19th century, the United States’ policy included the granting of de facto recognition to exclude European influence from the hemisphere. This was followed by the Monroe Doctrine in 1823. The United States first began to interfere in the internal affairs of these nations in the 1880’s with the professed contemplation of excavating a canal to link the Pacific and Atlantic. The goal was to control the Caribbean, a policy which in part led to the Spanish-American War and armed intervention in Cuba’s struggle for independence. Control of the Caribbean area was facilitated by the establishment of a system of protectorates in which the United States intervened both militarily and diplomatically. In most cases armed intervention took place subject to treaty arrangements such as the Platt Amendment with regard to Cuba. There were, however, instances, such as uprisings in the Dominican Republic and Haiti, in which the United States intervened without legal justification. Woodrow Wilson unsuccessfully attempted to eliminate the intervention policy. His Pan American Pact was essentially an effort to multilateralize the Monroe Doctrine and to establish multilateral machinery for intervention in Mexico. When this failed, Wilson, fearing German influence, attempted to manipulate support for the candidates of his choice in the Mexican leadership struggle. Later his primary concern was to maintain stability. Between World Wars I and II, European influence was minimal; thus, more respect could be given to territorial integrity. There were interventions in Nicaragua and Honduras which resulted from previous treaty commitments to the existing regimes. At the Montevideo Conference in 1933, the United States committed itself to the principle of nonintervention and by 1941 had eliminated all of its protectorates and its interventionary rights (excepting Panama).

With the threat of World War II in the late 1930’s, the principle of nonintervention was greatly strained. More subtle means were applied to assure stability of various Latin American governments. Through American military missions, arms were distributed in order to influence the Latin American military establishments. Efforts were

made to counteract German and Italian influence and thereby bind the military to American influence. The military missions put a cover of respectability over functions which had formerly been undertaken by the marines. Military bases were obtained by utilizing Pan American Airways as a negotiating front. Prior to World War II, actual civil strife in Latin America was rare; the War of Independence, the Cuban Revolutions of 1868 and 1895, and the Mexican Revolution in 1910 were exceptions. Most political instability was merely an intra-elite struggle of factions or individuals seeking control and was quickly concluded with little loss of life or property. Rarely was United States intervention consciously designed to assure the victory of one side or the other. Its purpose was to end situations which endangered the life and property of American citizens and to abate conditions which could eventually produce non-American intervention in the Western Hemisphere. A constant search was undertaken for alternatives to intervention. The Latin American doctrine of complete nonintervention failed to account for the needs of hemispheric security. With the absence of multilateral alternatives, the strict nonintervention principle had to be abandoned. As one commentator states:

International law has played an ambivalent role in Latin American civil strife and American involvement in it. Early in the War of Independence confusion over the status of colonial insurgents resulted on the one hand in their continued access to American weapons markets after Spain had been excluded, and on the other, in their slaughter by the Spaniards as traitors to the Crown. International standards of government recognition were pitifully inadequate to deal with the emerging constitutional government. U.S. non-compliance with traditional norms amounted to needed legislation rather than violation. International authorization of intervention for pecuniary claims led to an asymmetrical legal situation that was a constant threat to American security in the early years of the 20th century. American intervention was a unilateral attempt to correct that asymmetry. By traditional norms, U.S. intervention in cases not involving treaties was "illegal." In effect this was just one aspect of the outmoded special concepts of traditional international law. This same criticism can, in fact, be made of the later principle of nonintervention. Limitations of intervention from the Kellogg Pact to the U.N. Charter simply fail to contemplate the transnational location of vital interests. But it is important to note that the international legal system did prove flexible enough to accept radically novel claims from
both the United States and the Latin American countries.49

In the post World War II period, the United States emerged as the dominant national power to challenge the spread of Soviet and, later, Chinese influence. Though this challenge has many of the aspects of traditional big power rivalry, there is also an ideological element which is revolutionary in nature and affects the structure of the international legal order.50 The Russian Revolution has, like the earlier French Revolution, transcended national boundaries and affected the established institutions of other states. The situation is similar to that which faced Europe after the French Revolution. With the Declaration of Pilnitz in 1791, the Emperor of Austria and the King of Prussia pledged themselves to restore the French monarchy by joint force.51 The Holy Alliance and the Protocol of Troppau in 1820 asserted the policy of European monarchies, as led by Metternich, to oppose the revolutionary upheavals of established governments. The Truman Doctrine and American policy after World War II reflect a similar policy. On the other hand, the revolutionary justifies the use of violence and intervention as a means to defend against what he regards as a threat to his position, to rectify long standing grievances, and to proliferate what he considers the universal values of his ideology. Within this context, internal strife becomes readily subjected to external intervention.52

The United States has committed itself to stop revolution.53 The pattern was established by the Truman Doctrine, under which the United States intervened in Greece to defend the monarchy from an army of Communist-led insurgents. Intervention may be by military means or by other methods such as economic aid or psychological support.54 After the intervention in Greece, the United States again intervened militarily in Lebanon in 1958 when, in response to a telegram from President Chamoun, a contingent of 14,000 marines was dispatched to help defend against revolutionary activity instigated by Egypt and Iraq.55 The marines were subsequently withdrawn after the internal conflict was resolved. In 1965, in response to a report by the American ambassador that American lives were in danger, marines

49. Id. at 69.
52. Id. at 155.
53. Id. at 160-65.
54. Barnet, supra note 50, at 70.
landed in the Dominican Republic to stem a revolution and arrange a political settlement compatible with the interests of the United States. In this case, there was no outside instigation of the revolt.\textsuperscript{56}

The Soviet Union also intervened in Hungary in 1956, justifying its action before the United Nations by claiming that it acted at the request of the de facto government. The United States has subsequently justified its intervention in Viet Nam with a similar argument.\textsuperscript{57} Likewise, the United States attempted to justify its intervention in the Dominican Republic by claiming that it acted at the request of the ruling military junta.\textsuperscript{58} Indeed, a permissible ground for intervention by a state in another’s internal strife is an invitation from the de jure government. However, in order to determine the legitimacy of such requests for military assistance, it is necessary to decide whether the government making the request is in a position to represent the state.\textsuperscript{59} A government in firm possession of the territory of a state may speak for it even if not generally recognized.\textsuperscript{60} There is also a presumption that a government, even if generally recognized, cannot speak for the state if it is not in firm possession of the territory of the state. However, if the de facto government of a territory has been established by aggression, the de jure government continues to have a rightful claim to the territory. But the situation is different where the de jure government has lost authority by virtue of internal revolt.\textsuperscript{61} Text writers have held that in case of rebellion, insurrection or civil war, neither faction may speak in the name of the state as long as the outcome remains uncertain. The United Nations Charter, as an aspect of the principle of self-determination, permits revolution. Therefore, where America has intervened after World War II, the question arises, from a legal standpoint, whether intervention was

\textsuperscript{56} Barnet, \textit{supra} note 50, at 71.
\textsuperscript{57} The similarity between the American and Soviet argument for justifying intervention is noted with extensive quotations by J. Lasley, \textit{My Country Right or Wrong?} 44-50 (1966).

Following the invasion of Czechoslovakia in 1968, the Soviet Union justified its interventionist policy by the formulation of the Brezhnev Doctrine. The doctrine in effect asserts that socialist countries have a special international status which limits their sovereignty, not entitling them to rely on the U.N. Charter or norms of international law for their defense. The socialist countries are forbidden to execute political, economic or social reforms without the consent of the Soviet Union. That which is regarded as a threat to socialism is apt to evoke Soviet intervention; the Soviet Communist Party is the ultimate determinant of what constitutes a threat to socialism. Therefore, the legal head of a socialist government is a mere fiction. On the international level, legal rules are ignored. As formulated, the Brezhnev Doctrine extends beyond the satellite countries to any situation regarded by the Soviet Union as a threat to socialism. Romaniecki, \textit{Sources of the Brezhnev Doctrine of Limited Sovereignty and Intervention}, 5 Is. L. REV. 527 (1970).

\textsuperscript{58} J. Lasley, \textit{My Country Right or Wrong?} 44-50 (1966).
\textsuperscript{59} Wright, \textit{supra} note 55, at 119.
\textsuperscript{60} Id.
\textsuperscript{61} Hall, \textit{A Treatise on International Law} § 94, at 347 (8th ed. 1924).
at the request of a de jure government in actual control of a state's territory. Applying these principles, the United States may be said to have intervened legally in Greece, but some doubt exists as to how much control President Chamoun's government retained in Lebanon. In the Dominican Republic, it is quite apparent that the de jure military junta lacked de facto authority when inviting American intervention. In Viet Nam, the de facto authority of the government of South Viet Nam was in some dispute in that a considerable part of the territory was under the control of the Viet Cong and a series of coups had occurred in Saigon.

Intervention without legal invitation may constitute aggression. Article 2, Paragraph 4, of the United Nations Charter requires all members to refrain from the threat or use of armed force against the territorial integrity or political independence of any state. However, armed force may be justified in exercising the inherent right of individual or collective self-defense under Article 51 or under the authority of the United Nations or another competent international body. Intervention in the form of military reprisals to rectify wrongs when peaceful methods fail, while permissible by international law before World War I, has been forbidden by conventional obligations in the League Covenant, the Kellogg-Briand Pact and the United Nations Charter. If an intervention means exercising self-defense, a determination must be made as to what constitutes "self." Clearly, a state may act in self-defense if an armed attack upon its territory occurs; this could also encompass the threat of an armed attack. But such threats must constitute an immediate danger of armed attack. The "self" might be extended to include not only territory but also agencies of the government and its citizens in foreign territory. Intervention could be limited to defense only and might not be expanded to permit a prolonged occupation or an expansion of territory. The particular state involved makes the initial determination with the ultimate determination being made by the Security Council. The right of self-defense also includes the right to collective self-defense; thus, a state may give military assistance to another state which is threatened or subject to armed attack. Such intervention, even under a collective defense treaty, requires a specific request. Often it is difficult to determine whether a government is in a position to make such a request. The determination of whether a particular intervention is legal involves a consideration of many complex

63. Id.
factors. Quincy Wright has taken the position that a state is not permitted to intervene militarily even on invitation of another government unless the need has arisen chiefly because of foreign intervention, and that such a state must abstain from aiding either faction during a situation of domestic strife.\textsuperscript{64} However, Professor Moore contends that a particular intervention is legally permissible if conducive to international public order.\textsuperscript{65}

The military intervention in the Dominican Republic was undertaken unilaterally by the United States allegedly to protect the lives of American citizens in the course of an armed uprising. Later the United States claimed that the rebels had been infiltrated by Communists and Castroites.\textsuperscript{66} The Organization of American States, acting through its Meeting of Consultation of Ministers of Foreign Affairs under Article 39 of the Charter and subsequently through its Organ of Consultation, called for a cease fire and the orderly evacuation of foreign nationals. The O.A.S. created a five man committee to carry out an on-the-spot investigation. Subsequently, the Organization formed an inter-American armed force (under a unified command) which incorporated the United States forces already in the Dominican Republic. Its sole purpose was to cooperate

in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human rights and in the establishment of an atmosphere of peace and conciliation that will permit the functioning of democratic institutions.\textsuperscript{67}

The action could have been justified legally as an action initiated to prevent a Communist take-over; a resolution of the Tenth Inter-American Conference adopted in 1965 asserted that the domination or control of the government of an American state by the “international Communist movement” would constitute a threat to the peace and would call for the adoption of appropriate action in accordance with existing treaties. The wide competence of the Organ of Consultation under Article 8 of the Rio Treaty would have justified the occupation of the island by an inter-American armed force despite the terms of Article 17, which prohibit intervention in internal affairs. But the neces-

\textsuperscript{64} Id.
\textsuperscript{67} 59 Am. J. Int’l L. 988 (1965).
sary two-thirds vote was not garnered for such a statement. To come under Article 6 of the Rio Treaty, the justification offered by the Resolution must fall within the provision “any other fact or situation endangering peace.” The Meeting of Ministers might regard the extreme measures taken by both sides as a threat to peace. A dictatorship established by the dominant faction might raise the question of the inviolability of human rights. Some of the representatives feared that action by the Meeting of Consultation would be a precedent for intervention in other possible civil wars, while the majority felt that the case, because of its urgency, must be judged on its own merits. Clearly, civil strife can be brought under the control of inter-American regional law only insofar as a threat to the general peace is involved. There is no sanction regarding the violation of fundamental human rights although such a sanction might be inferred where the gravity of the situation constitutes a threat to the general peace.

The American involvement in Viet Nam has been subjected to extensive debate. The official position is that the Viet Cong are agents of the North Vietnamese government and that South Viet Nam is being subjected to external aggression. However, there is evidence that the conflict has many internal aspects. The problem is to develop procedures to determine whether foreign participation in an internal war constitutes “military assistance,” “intervention,” “aggression,” or an “armed attack.” In assessing intervention in Viet Nam, it is also important to consider whether North and South Viet Nam are, in fact, separate states or part of one state. This depends on a consideration as to the effect of the Geneva Agreement of 1954 and subsequent international behavior. The fact that the two states have been recognized diplomatically and are treated internationally as separate entities might give some support to the view that they are indeed different legal entities. The Viet Nam conflict has undoubtedly created some unfortunate precedents in international law because of the unilateral nature of United States involvement and the extension of the war to the North.

68. Fenwick, supra note 66.
71. Falk, supra note 70.
Intervention need not be accomplished directly by the armed forces of another state. There has been resort to unconventional warfare, i.e., guerrilla warfare, escape and evasion, and the conduct of subversion against hostile states in wartime. Unconventional warfare has been used as an aspect of internal strife. At the same time, it has become a weapons system of the hot and cold wars to achieve political and military goals. The Soviet Union's leaders have recognized that traditional warfare with its classical armies has become unfeasible as a means for promoting world revolution, and, thus, peaceful coexistence has been accepted as a basic principle of Soviet policy. The struggle for revolution has, nonetheless, been delegated to the Communist Party, which stands above the government and engages in support of unconventional warfare. The Communists have supported nationalist liberation movements in Africa, Asia and Latin America with the hope of eventually obtaining control. To counter this tactic, the United States has adopted a policy of counter-insurgency which has led to involvement in internal strife.

The United States has engaged in unconventional warfare through the Central Intelligence Agency's interference in internal affairs of states extensively during the past twenty years. For example, in 1953, the United States arranged a coup in Iran to overthrow Mohammed Mossadegh, who had nationalized the Anglo-Iranian Oil Company. The following year, the United States, with the personal participation of Ambassador John Peurifoy, secretly arranged an invasion of Guatemala by two hundred men who had been trained by the Central Intelligence Agency in Honduras and Nicaragua. The purpose of the invasion was to overthrow President Arbenz who had expropriated plantations from the United Fruit Company and appointed persons thought to be Communists to leading positions in the ministries of education, propaganda and agriculture. In 1961, a group of Cuban refugees, with the support of the Central Intelligence Agency, attempted an invasion of Cuba at the Bay of Pigs. In numerous coups, United States intervention was much more subtle. Though the United States may not actually inter-

75. Barnet, supra note 50, at 72.
vene, its inaction, because of its pervasive influence, is in itself a form of intervention. In many cases, the United States manifested an attitude of either covert support for, or acquiescence in, the change of government in a manner which helped the insurgents.

Where a military dictatorship without ties or allegiance to the Communist Party overturned the preceding regime, the United States generally has either been neutral or maintained friendly support, although it has participated in an insurgent operation against the non-Communist Trujillo and Diem regimes. Though the United States has assisted authoritarian regimes in Latin America, it has also helped non-Communist leftist revolutionaries in Algeria and other parts of Africa. On occasion, the State Department and the C.I.A. have supported opposing factions, as in Laos in 1961 and in the Dominican Republic in 1962. Though the United States has militarily followed the rule that it is legal to aid the incumbent government but not the insurgents (e.g., in Viet Nam), it has implicitly rejected this approach in its covert operations (e.g., in Iran). Another rule the United States has followed is the legitimization of outside participation on one side or the other, depending upon the power position of the factions. Thus, when the rebels achieve certain characteristics of government, they may be aided. This is a difficult rule to apply, as the relative positions of the contenders for recognition change from day to day.

Another aspect of intervention in internal strife is the struggle against colonialism. The Organization of African Unity has conducted a campaign of armed intervention by lending support to liberation movements in dependent African territories. This organization of African states has clearly threatened to use force against colonial powers and states practicing segregation (e.g., South Africa). The United Nations has on a number of occasions clearly condemned support for armed bands, as in Greece. The activities of the Organization of African Unity clearly fall within this category. However, the African states regard their actions as lawful. African leaders at the Addis Ababa Con-

77. R. Falk, Legal Order in a Violent World 10 (1968).
79. G.A. Res. 380 (V). The actions of the African States are in clear violation of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty of December 21, 1965, G.A. Res. 2131 (XX), which declares that no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities toward the violent overthrow of the regime of another state, or interfere in civil strife in another state and also condemns colonialism and racial discrimination. The Organization of African Unity activity clearly involves the support for armed bands.

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ference in 1963 equated the struggle against colonialism with self-defense. Though African states have complained to the Security Council that the arms build-ups in the Portuguese territories, Rhodesia and South Africa represent a threat to the security of Africa, the increase in armaments in these territories may also be regarded as a defensive measure to counter the threat of the Organization of African Unity—a position asserted by the colonial powers.

It is doubtful whether the colonial powers would militarily attack the independent African states. The Charter of the United Nations does not outlaw colonialism and may even recognize its legality. But recently, particularly with the Declaration on the Granting of Independence to Colonial Countries and Peoples, there has been considerable support for the position that colonialism is an international wrong which should be eradicated by international intervention. The view had been advanced that colonialism is a form of continuing aggression which may be eliminated by the use of force in the exercise of the right of self-defense. India attempted to justify its invasion of Portuguese-held Goa on the ground that Portugal’s presence constituted a continuing aggression which had been commenced 450 years before. The Security Council refused to accept this argument. Moreover, unlike Goa, the African territories do not form an integral geographical and historical part of another state. Another concept which justifies intervention is that of self-defense against colonial domination or the exercise of the right of self-determination; however, this concept has nothing to do with self-defense as encompassed by Article 51 of the Charter. The element of an “aggressor state” is lacking. Nevertheless, a legal right to decolonization has been deduced from United Nations practice. This practice envisages the elimination of colonialism by peaceful persuasion rather than by armed force.

Another approach has been to assert the right of intervention on behalf of kith and kin, a concept adapted from the right to intervene to protect nationals. The Egyptian government attempted to justify its intervention in Palestine in 1948 by claiming it was entering to protect the Arab inhabitants with whom it claimed to have special ties. The Jewish authorities raised the same plea to justify their activities outside of Palestine. In 1961, a similar argument was raised by India to justify her annexation of Goa. The November 1964 operation of the United States and Belgium in Stanleyville to rescue Americans and Europeans,

80. G.A. Res. 1514 (XV).
81. Dugard, supra note 78, at 171.
justified on humanitarian grounds, was criticized by the Africans as a move to protect whites. But this may be the safest justification for the use of force against colonial powers. A trend has developed recognizing the right to protect racial, religious, linguistic or cultural kith and kin. India has protested the maltreatment of people of Indian origin in South Africa even though they are citizens of South Africa. A moral obligation is asserted. Similarly, in the Cyprus conflict, Greece and Turkey claimed the right to protect those inhabitants related to them by religious and cultural ties. Another example is the Eichmann trial in which a nexus was claimed between the Jewish people and the State of Israel. But it is doubtful if such a right is encompassed by Article 51, and the concept is subject to abuse. There is little support among writers for this concept. On the other hand, means must be available for the enforcement of United Nations Charter provisions for the protection of human rights and the right of self-determination when the United Nations fails to take action. Considerations of humanity form the ultimate basis of the right of self-defense in protection of a state's nationals. The principle may thus be extended to the protection of kith and kin. For intervention on this basis there must be an imminent threat of injury to the peoples to be protected. The intervention must be solely for the purpose of protection, and once this is achieved, the intervening state is obliged to withdraw. Any such action must be reported to the Security Council. The activities of the Organization of African Unity in seeking to eradicate colonialism go beyond these limitations, but, because the ends of the Organization are generally approved, its means are unlikely to be condemned.

A continuing problem of internal strife is that outside intervention may lead to situations threatening international peace. This was quite apparent in the Spanish Civil War when a large number of European states asserted a policy of noninterference and sought to restrict the shipment of arms. Nevertheless, Germany and Italy actively intervened to assist the rebel Nationalist Army while the Soviet Union sent technicians and other assistance to the loyalist Republican forces. The whole system, based on the good faith cooperation of the states involved, proved ineffectual in avoiding intervention.82

In the Congo, the United Nations actively intervened to forestall intervention by individual powers and, thereby, to insulate the conflict from cold war confrontation.83 The causes and features of this interven-
tion were complex. Following independence, Congolese troops revolted and Belgium intervened by sending in its forces. The Congolese government requested United Nations aid. The Security Council deemed the situation a threat to the peace and authorized the sending of United Nations contingents. The precise legal basis for the intervention is unclear; the original aim was the restoration of order and the withdrawal of Belgian troops. The U.N. force was authorized to prevent outside interference in the Congo but was barred from intervening in the Congo's internal conflicts. Following the entry of the U.N. force, the province of Katanga sought to secede, and the role of the United Nations, therefore, became more complex. Secretary General Hammarskjold took the position that the United Nations' role was to preserve order in Katanga but that the Congolese forces were not to accompany the U.N. forces in the seceding province. The Secretary General made an attempt to separate the political function of the U.N. from conciliation. Patrice Lumumba, the Congolese Premier, sought Soviet help but was later ousted and his government collapsed. The U.N. role then proved even more inadequate. The avoidance of civil war became the prime objective, which proved incompatible with the policy of not intervening in internal conflicts. The U.N.'s closing of the radio station and airport in Leopoldville to prevent a popular uprising kept Lumumba from regaining power and preventing the arrest of Lumumba by Joseph Mobutu's men both constituted forms of intervention. The United Nations thus found itself faced with a dilemma. Without a central government, order could not be preserved. A breakdown in the consensus of the United Nations operation occurred when the Soviet Union vetoed a Security Council proposal to widen the United Nations' role in the Congo. The matter was then transferred to the General Assembly where an inconclusive attempt was made to determine the legal authorities in the Congo. The U.N. representatives in the Congo tried to reconcile the opposing Congolese factions, but only ended on bad terms with every faction as a result. To many Asian and African nations and the Soviet Union, Lumumba represented the legitimate government while the Western nations supported Kasavubu. After Lumumba was assassinated, the Security Council urged that the Congolese parliament be reconvened and empowered the U.N. to use its forces as a last resort to prevent civil war. Reconciliation of the factions involving the central government was arranged, but the problem of the seceding Katanga province remained. U.N. forces arrested two hundred mercenaries at Elizabethville; when the U.N. sought to arrest others two weeks later,
armed conflict ensued. The principle of nonintervention was abandoned. Finally, the U.N. forces withdrew from the Congo; the central government was intact and the Katanga secession ended.

The U.N. intervention pre-empted unilateral military assistance to opposing factions. Military assistance had been given previously to opposing factions by Belgium and the Soviet Union. A unanimous General Assembly resolution (with the Soviet Union, France and Belgium abstaining) asserted the international norm of noninterference. The United Nations withdrew after determining that the danger of big power military confrontation had ended. But the U.N. did become involved in the conflict, despite Article 2, Paragraph 7, of the Charter which forbids the U.N. to intervene in matters which are essentially within the domestic jurisdiction of a state. Secretary General Hammarskjold, attempting a cautious approach, tried to limit the U.N. involvement by allowing the people to decide freely their own government. Nevertheless, a big power polarization did occur and hindered U.N. efforts. The U.N. was engaged in a difficult and thankless task and met with such disapproval from many of its members that a financial crisis resulted from its intervention.

Although the norm of nonintervention and the right of national self-determination is constantly reasserted by statesmen and texts on international law, the interdependence of international society makes intervention in internal conflicts inevitable. The problem is to minimize such intervention so that nations may be able to master their own fates. At the same time, possible big power confrontations which can cause a threat must be avoided. The ability of the United Nations to function as an instrument to insulate unilateral intervention is frustrated by the realities of international rivalry.

Big power rivalry, as in the Middle East, has made a mockery of the international legal norms.\textsuperscript{84} Internal and regional conflicts are exploited to serve big power interests. The peoples affected must assert themselves by seeking the establishment of international norms to permit them to determine the nature of their societies. These norms may be implemented through Security Council and General Assembly resolutions and buttressed by the establishment of an ad hoc or permanent International War Crimes Tribunal which could be empowered to hear and make determinations as to the legality of acts of intervention. The precedent for the establishment of such a tribunal is to be found in the

\textsuperscript{84} In the Middle East, both the Soviet Union and the United States have actively exploited the Arab-Israeli differences as well as internal strife within the Arab states in order to promote their own interests and to seek domination of the region. Scheer, \textit{The Nasser Thesis}, RAMPARTS, Nov. 1967 and Jan. 1968.

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Nuremberg War Crimes Tribunal. Individuals and groups who believe themselves to be adversely affected by acts of outside intervention would be permitted to file complaints. The tribunal would be able to make an impartial determination as to the legality of the act of intervention, whether it be by conventional or unconventional warfare or by other means.

In this context, it should be noted that the big powers have, in the past, sought to limit their involvement in big power conflicts by developing certain rules of the game. The world powers seek to avoid the escalation of small wars beyond certain thresholds. One such rule, for example, is the prohibition of the use of nuclear weapons. These rules might be judicially developed by an ad hoc or permanent international tribunal.

V. Recognition

When a government is created through civil strife, the international community becomes involved through the process of recognition. When a government gains authority legitimately, foreign states automatically accord it recognition; however, in the case of a coup d'etat, opportunity sometimes arises to delay or refuse recognition. The reactions of foreign powers may be an important, and sometimes crucial, problem which conspirators of coups must face. However, many coups d'etat have occurred in which the usurpers have not had to seek recognition. A recognition problem emerges only when the office traditionally accredited to receive foreign representatives is unoccupied or when a new body claims the right. For example, Mussolini, after coming to power, did not have to seek foreign recognition because he left the existing monarchy intact, allowing it to continue receiving the foreign diplomats.


The United States withheld recognition of the Greek regime following an attempted coup by King Constantine to overthrow the military government, but after six weeks State Department spokesman Robert J. McClosky stated in announcing the resumption of diplomatic relations that:

The United States continues to regard King Constantine as the Greek chief of state—relations between the King and the Government in Athens are an internal Greek matter, about which it is not for the United States Government to comment.

New York Times, Jan. 24, 1968, at 1, 8. This position was taken even though the King had fled his country.
The term "recognition" has been applied both to the recognition of states and to the recognition of governments. The problem with regard to the former has arisen with the breaking up of other states or colonial empires. A new state comes into existence when a community acquires the following characteristics: (1) an organized government, (2) a defined territory, and (3) such a degree of independence from control by another state as to be capable of conducting its own international relations. Whether a new state has actually begun to exist is a question of fact to be determined by every other state. This determination may be difficult, especially when part of an existing state is endeavoring to secede forcibly from the rest. In such a case, a premature recognition would be an unwarranted interference in the internal affairs of that state, while nonrecognition may also constitute a form of intervention, such as in the secession of Biafra from Nigeria. Nonrecognition of a new state is normally concomitant with acknowledgment that the territory thereof is rightfully within the sovereignty of a third power so that the conflict is one of factions.

The major traditional doctrines of recognition are the constitutive and the declaratory doctrines. The constitutive doctrine holds that a state becomes an international person only and exclusively through recognition. Hence, a new state may acquire rights and duties in international law only when recognized by other states. The constitutive theory has been criticized as logically unsound and morally objectionable. A new state would exist as to states which recognized it but not as to those states which did not, thereby creating a problem in the legal system as to practical relationships. Furthermore, the recognition of governments cannot be dealt with on the same footing as the recognition of states, as governments cannot be "constituted" by the recognizing state, though they can be admitted to the rights possessed by the pre-existing state. The constitutive theory is morally objectionable in that nonrecognition of a state would mean that its citizens would not be afforded the protection of international law.

Opposite this theory is the declaratory approach. This approach holds that international law is an objective system which dictates the conditions under which a state becomes a member of the international community so that the rights and duties of a state remain independent.

91. Comment, supra note 89, at 860; J. Briery, supra note 90, at 138.
of formal recognition.\textsuperscript{92} A state may exist without being recognized; if it exists in fact, irrespective of whether it has been formally recognized by other states, it has a right to be treated by them as a state. Under this theory, the function of recognition is to acknowledge as a fact something which was uncertain—the independence of the body claiming to be a state—and to accept the usual courtesies of international intercourse.\textsuperscript{93}

The recognition of a state implies the acceptance by one state of another into the legal framework of international law. The recognition of a government, on the other hand, is the acceptance of the lawful agent of that state. The establishment of diplomatic relations is, therefore, the creation of formal means of communication between the governments of two states. Absentation from diplomatic intercourse may imply political, and possibly total, nonintercourse between two states but need not imply nonrecognition. The breach of diplomatic relations can imply nonrecognition only when the government in one of the states has never been recognized by the government in the other, and this is only at the governmental, and not the state, level. The entry into diplomatic recognition may imply approval of a new government while withholding representation may imply disapproval. One international legal authority has proposed that American nations might express collective disapproval of antidemocratic revolutions within the Western Hemisphere by withholding or restricting diplomatic representation.\textsuperscript{94} However, in the past this approach has proven ineffective without embargoes. Furthermore, if effective, this approach would violate national sovereignty without regard to established criteria as to what is a desirable government.\textsuperscript{95} The political effect of diplomatic nonrecognition is dubious.

The granting of recognition by a state involves the making of fac-

\textsuperscript{92} Comment, supra note 89, at 861; J. BRIE RLY, supra note 90, at 140.

\textsuperscript{93} Comment, supra note 89, at 862.


\textsuperscript{95} One writer commented on the refusal to grant recognition to governments, under the Stimson Doctrine, which had been imposed by external force: "The mere blowing of horns is of little value unless the blowers are prepared to follow up their notes in some effective manner." WILLIAMS, Some Thoughts on the Doctrine of Recognition in International Law, 47 HARV. L. REV. 776, 791 (1934). The nonrecognition of Rhodesia is another example of the doctrine's ineffectiveness as a democratizing force.
tual determinations tempered with considerations of policy. Although in making a decision as to the granting or withholding of recognition a state will seek to buttress its position by directing attention to certain factual considerations, politics is a predominant factor. Even proposals to establish a centralized process of recognition by taking the position that admission to the United Nations would constitute recognition would still not eliminate the political factor. This has been demonstrated by the question involving the seating of Communist China.

The problem of recognition arises in the area of private law with the application of the law of an unrecognized government in foreign tribunals. Generally, where the act is brought into question, e.g., by an adjudication as to change of status or rights and duties of persons or ownership of property physically under the control of an unrecognized government, the courts will enforce the foreign act. This is the case even though the government is not officially and formally recognized for political purposes by the foreign office of the forum state. Though a foreign government may not be recognized by the political arm, it may have de facto existence which is judicially cognizable. However, where the judicial determination involves property or actions situated outside the jurisdiction of the unrecognized foreign government, considerations of domestic policy apply. Domestic courts are thus being asked to enforce foreign law, not merely to recognize the enforcement of it by the foreign state. If transactions take place within a nonrecognizing state, based on legal titles existing there at the time of the transaction, it would seem unjust for the retroactivity of recognition to invalidate these transactions and the titles created by them. But if at the time of granting of political recognition the title to the property remains in the foreign state, its corporations or its citizens, the new government can take actions regarding it.

98. Comment, supra 89, at 872.
100. Comment, supra note 89, at 878.
Another type of situation involves the capacity of an unrecognized government to bring suit. Generally, an unrecognized government is denied the right to bring suit. If no government is recognized politically the result is apparently a blocking of the assets of the state, leaving them in the hands of whatever private custodians may have possession. If a government is officially recognized by the foreign office, that government will be able to dispose of such assets regardless of whether it is in actual control of the state's territory.

VI. BELLIGERENCY

Where armed civil strife occurs, the factions will have the status of belligerents. The principle was recognized in the American Civil War, with Lieber's Codes, that both sides must apply the laws of war. This is specifically provided by the Geneva Convention of 1949. The de jure government must treat captured rebels as prisoners of war. Insurgency is a question of fact distinguishable from politically motivated riots, mob violence and revolt which has not raged beyond the control of the de jure government by the magnitude of the hostilities and the consequent uncertainty of the result. As in the Civil War, belligerency implied that foreign states must assume the obligations of neutrality. These obligations involve impartiality between the recognized government and the rebels, abstention from official aid to either side, and prevention of military expeditions from their territory to aid either side. However, belligerency in the Civil War also implied that both the recognized government and the rebels enjoyed the belligerent right to visit and search merchant vessels of all states on the high seas and to capture them if they carried contraband. The United States reluctantly accepted the recognition of belligerency by Britain, France and other states while making it clear that intervention would violate international law and would be bitterly resented. The result of the American Civil War was to identify civil war with international law and to clarify international law regarding this area.

In a rebellion where the operations have reached the dimensions of an actual war, with the rebels organized under a government which controls a certain territory and is capable of exercising the laws of war and with other states unable to ignore the situation, the rebels have been

104. Id. at 51.
recognized as belligerents.\textsuperscript{105} The effect of the recognition of belligerency is that the recognizing state accepts for itself all the consequences which follow from a war, claiming the right of a neutral and according the rights of belligerency. Both factions are accorded the rights of states for the duration of the hostilities. In the Spanish Civil War, though Britain and other states refused to recognize the existence of belligerency, there was difficulty in adhering to this principle consistently, as was the case with the Non-Intervention Agreement.\textsuperscript{106}

The United Nations Charter requires member states to refrain from the use or threat of force except in individual or collective self-defense against armed attack or under U.N. authority. The Charter requires that states do nothing to assist the violator of these obligations or to hamper the defense efforts of the victim. War, in the sense of equality of belligerents and the equal application of the law of neutrality, seems, in principle, to be outlawed. If hostilities occur, the U.N. should actively negotiate for a cease fire. Where civil strife occurs, the U.N. must act to contain the conflict if there is a threat to international peace. Neither the U.N. nor individual states may be free to recognize belligerency under these principles; in fact, no such belligerency has been recognized since the American Civil War.\textsuperscript{107}

However, the Geneva Conventions of 1949, dealing with prisoners of war, do apply to civil strife. Article 3 of the Geneva Conventions applies to unconventional warfare. Prior to the Geneva Conventions, Article 17 of the Hague Convention V (1907) had provided that troops belonging to a government or authority not recognized by an enemy are entitled to be treated as lawful combatants.\textsuperscript{108} Guerrilla forces are afforded protection. A common provision of the three Geneva Conventions of 1949 relating to the wounded, sick and shipwrecked or armed forces, and to prisoners of war, provides that irregular armed forces belonging to a party of a conflict, including organized resistance movements, are recognized as lawful combatants only if they comply with the

\textsuperscript{105} J. Brierly, supra note 90, at 141.

Traditional international law distinguished among three types of internal disorder: rebellion, belligerency and insurgency. Rebellion was defined as a sporadic challenge to legitimate government, while both belligerency and insurgency indicated a sustained challenge to legitimate authority. Belligerency established a common set of rights and duties between external states and the belligerents and between the belligerents themselves. Insurgency was used as a catch-all phrase, determined by the quantity of resistance to the established authority. L. Kozsch, The Concept of War in Contemporary History and International Law 230 (1956).

\textsuperscript{106} Smith, Some Problems of the Spanish Civil War, Brit. Y.B. Int’l L. 17 (1937).

\textsuperscript{107} Wright, supra note 103.

\textsuperscript{108} Greenspunh, International Law and Its Protection for Participants in Unconventional Warfare, in Zawodny, supra note 73, at 30-41.

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following four conditions: (1) they must be commanded by a person responsible for his subordinates; (2) they must wear a fixed distinctive sign recognizable at a distance; (3) they must carry arms openly; and, (4) they must conduct their operations in accordance with the laws of war.

For a resistance movement to qualify for legality, it must be "organized"—a term defined by the Geneva Conventions. Implied is a central authority of the movement to which the individual bands composing it are subordinated and responsive. However, this requirement may not be strictly construed, as resistance workers and guerrillas operate in loosely organized small bands. Many bands may spring up spontaneously. It is questionable whether the enemy will be able to ascertain whether their prisoners did belong to any organized movement. The prisoner may provide the information but is bound under Article 17 to disclose no more than his name, rank, date of birth, serial number, or if he has no such number, equivalent information. A prisoner providing such information will have established that he is a member of an organized movement. But members of a resistance movement may not be willing to provide the necessary information. The refusal to provide the minimum information specified may only be punished disciplinarily. A broad view of all the factors involved must be taken in weighing the status of a prisoner to determine whether he is a member of an organized movement.  

The irregular forces must be commanded by a person responsible to his subordinates. The commander must exercise effective control over those under him and must be answerable under international law for failure to exercise appropriate measures of control within his power. Although the commander may receive his authority from an organized government, often he derives his position of leadership from the force of his own personality, a position of authority previously held or from election by his troops. The wearing of a distinctive sign by members of a guerrilla band may be difficult to reconcile with the very nature of such warfare, as one of the chief strengths of guerrilla warfare is the ability to merge with the general population.

The Geneva Conventions of 1949 require that resisters aspiring to the status of lawful combatants wear a fixed distinctive sign which will announce their status to the enemy. This condition could be fulfilled by

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109. An Israeli military court has held that the Popular Front for the Liberation of Palestine does not qualify under the protection of the Hague and Geneva conventions. The Kassem Case, 4 HUMAN RIGHTS J. 536 (1971).
wearing a complete uniform; a fixed distinctive sign sewn on otherwise normal clothing might suffice. The resister or rebel should be distinguishable from the civilian population. Where an enemy uniform is used, it should be stripped of distinctive signs. Weapons must be carried openly; thus, a concealed pistol or hand grenade would be an infraction of this rule. The guerrillas must be instructed in the laws and customs of warfare and must be warned by their superiors against the use of "treachery, denial of quarantine, maltreatment of prisoners of war, wounded and dead, improper conduct towards flags of truce, pillage and unnecessary violence and destruction." Killing and wounding by treachery include acts of assassination. The use of poison and poisoned weapons is prohibited, as are all arms, projectiles or material calculated to cause unnecessary suffering. Under no circumstances may prisoners be killed for the sake of mere disposal.

In countering guerrilla activities, the opposing forces must strictly abide by the rules of warfare. Reprisals may be recognized only within narrow limits.\textsuperscript{110} Prisoners of war and civilians may not be used as hostages,\textsuperscript{111} and torture and cruelty against them are forbidden.\textsuperscript{112} The evacuation of the population as a means of countering guerrilla warfare may be undertaken only under strict safeguards which protect the welfare of the displaced inhabitants.\textsuperscript{113} Article 5 of Geneva Convention III, 1949, provides that only a competent tribunal may determine the status of persons accused of being unlawful combatants. It is not for the capturing troops to judge the captives' status. The matter must be left to a competent higher military authority who, in turn, must refer the case to a competent tribunal if the prisoners are charged with being unlawful combatants. Summary execution is absolutely forbidden. Article 7 makes it illegal to coerce a guerrilla to join the enemy forces. Both the guerrillas and the opposing forces are subject to punishment for war crimes.

Article 3 of the Geneva Conventions of 1949 is applicable regardless of whether the rebels have belligerent status. Participants in unconventional internal warfare must comply with minimum standards of humanity. According to these regulations, noncombatants, prisoners,
wounded and sick, regardless of race, color, creed, sex or social standing, must be treated humanely. Their murder, mutilation, cruel treatment and torture are forbidden. The taking of hostages, outrages on personal dignity, and sentences and executions without previous judgment by regularly constituted courts affording universally recognized judicial guarantees are also forbidden. Both the government and the rebel side are under a legal obligation to apply these provisions; they are also urged in Article 3 to bring into force, by special agreements, the other provisions of the four Geneva Conventions. The International Committee of the Red Cross is authorized to intercede with the parties to implement these provisions. Though Article 3 represents an advance in the humanization of internal conflicts, there are numerous indications that even these minimum standards have been ignored.

One approach to assure standards of humane treatment in internal civil strife as encompassed in the Geneva Conventions is the establishment of ad hoc or permanent International War Crimes Tribunals or Regional International Courts of World Habeas Corpus empowered to hear and make determinations as to the rights of individuals. Recourse to the tribunals would be permitted through the Writ of World Habeas Corpus. Individual rebels or rebel groups as well as their adversaries could, by use of this Writ, appeal to such a tribunal for an impartial determination of their rights. Such right of appeal would be permitted after the exhaustion of all available domestic recourse. If the individual affected had been adjudicated by a competent domestic tribunal, but still felt he had been denied his due process rights, such a tribunal could make the final determination. The international tribunal would be empowered to conduct on-the-spot investigations and to provide counsel and other assistance necessary for invoking the Writ of World Habeas Corpus. Where evidence of blatant deviation from international standards of humanity is indicated, the tribunal might also function to determine guilt as to war crimes or possible genocide. Alternatively, reference could be made to a specially constituted Advisory Ad Hoc War Crimes Tribunal.

Such a tribunal could also determine whether an individual was in fact an insurgent. A bizarre instance illustrating this problem involved the Santa Maria case. Captain Galvano—claiming that he was an insurgent acting on behalf of General Humberto Delgado, the chief rival

of Portugal's leader, Salazar—declared himself to be taking the first step in a revolt against the dictator by forcefully seizing a ship, the *Santa Maria*. Galvano claimed the Portuguese colony of Angola was awaiting his arrival. In the course of the seizure, a member of the crew was killed and the captain was put under arrest. The crew was terrorized although Galvano was kind to passengers as he looked for a port where they could disembark. Galvano finally sought asylum in Brazil, claiming to be an insurgent. He asserted this status only after seizing the ship. The status of insurgency is conceded to any citizen who believes that the government of his country is tyrannical and should be overthrown, but there must be some status of actual insurgency. The futility of the military effort in seizing the *Santa Maria* might in itself seem to condemn the act. However, the resulting beneficial propaganda might serve to justify the seizure, notwithstanding the fact that the vessel was unarmed and incapable of military action. That in itself could have been the beginning of revolution. But international law offers no valid precedent for the use of armed force in prosecuting a nonmilitary objective. The Brazilian authorities were affected by internal factors in making a determination. An impartial rule of law determination could have best been made by an international tribunal.

VII. THE ROLE OF INTERNATIONAL PROTECTION OF HUMAN RIGHTS AND WORLD HABEAS CORPUS

In addition to the Geneva Conventions, concern for the international protection of human rights is to be found in the United Nations Charter and the Universal Declaration of Human Rights along with the draft covenants of the Human Rights Commission. Before World War II, international expression for protection of human rights was found in the rules of war. Those rules were expressed in the Hague Conventions, in the right of humanitarian intervention where foreign nationals were mistreated, in the movement to outlaw slavery and slave trading and the protection of women, and in the conventions of the International Labor Organization which established minimum standards for the protection of workers. The Minorities Treaties after World War I sought to confer protection on national groups residing within the states of eastern and central Europe which were established as a result of the break up of the Austro-Hungarian Empire. The League of Nations Mandate System provided for the protection of inhabitants of the mandate territories. However, the major impetus for the human rights movement came with the oppressions of the Nazis during the 1930’s, the
goals of the allies during World War II and the precedent of the Nuremberg Trials.  

The Preamble of the United Nations Charter asserts that it is the task of the United Nations to reaffirm faith "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small." Article 1, Paragraph 3, declares that one of the purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for all without distinction as to race, sex, language and religion.

When this is coupled with Article 56, requiring that "all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55(a)," some text writers have contended that member states are obliged to protect the fundamental human rights of their subjects. But these fundamental human rights were left undefined.

Article 2, Paragraph 7 of the Charter, which precludes the United Nations from interfering with matters which are "essentially within the domestic jurisdiction of any state," may not be invoked to preclude action on these matters. This is because the members of the United Nations have obliged themselves to the promotion and protection of human rights. In many instances, as in South Africa, the denial of human rights creates situations which constitute a threat to international peace. In these cases, the nonintervention clause may not apply. Clearly, a situation involving rebellion or internal civil strife may well constitute a threat to peace which could involve the action of the United Nations. In the modern world, it is virtually impossible to delineate matters of exclusively domestic jurisdiction.

The Universal Declaration of Human Rights defines "fundamental rights and human freedoms," setting forth a common standard of action for their promotion. It was unanimously adopted by the General Assem-

bly at its third session in Paris. At that time, it was believed to have only moral force with a Covenant to be drafted later and submitted to the members for acceptance. But the document has subsequently increased in legal weight. The General Assembly has come to treat it as a statement of universal principles. In adopting the Declaration of the Granting of Independence to Colonial Countries and Peoples in 1960, 1961 and 1962, the General Assembly asserted that "all states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration." The words "shall observe" indicate a legal imperative. The measure passed the United Nations General Assembly three times without a negative vote. The Universal Declaration has become the yardstick for measuring the progress of governments and peoples and has been incorporated in regional treaties and in the constitutions of new states. The Declaration was a factor in stimulating two regional conventions: the 1950 European Convention on Human Rights and the Draft Inter-American Convention on Human Rights.

The United Nations has also encouraged the protection and promotion of human rights through the drafting of covenants. Various treaties have been adopted—beginning with the Genocide Convention which has been in force since 1951—which bind the parties to prevent and punish within their territories the destruction of any national, religious, or ethnic group. Other United Nations conventions now in force involve the rights of refugees, stateless persons, the political rights of women, the nationality of married women and slavery. Also in force are International Labor Organization conventions concerning forced labor and discrimination in employment and a UNESCO convention on discrimination in education. Conventions on other aspects of human rights are at various stages of completion.

Although the United Nations has conferred substantive rights upon the individual, it has failed to provide him with the means for asserting these rights. The outmoded concept still persists that the individual is not a subject, but only an object, of international law and, therefore, lacks standing to petition or seek recourse from an international tribunal. The individual has had to rely upon the state of which he is a national to act for him. However, the granting of the right of individuals to sue another state directly for the redress of injuries caused by the

121. Id. at 10.
action of that state is not entirely without precedent. For example, the Treaty of Versailles established Mixed Arbitral Tribunals between each allied state and Germany to adjudicate claims for compensation made by allied nationals for injuries to their property rights in Germany. Also, the German-Polish Upper Silesia Convention, concluded in 1922, provided for an Arbitral Convention which heard private claims protecting minority rights. Groups had a direct right to bring complaints. Furthermore, the International Labor Organization provides for representation of individuals through labor or employer groups. Groups were represented at the Mandates Commission of the League of Nations and the Trusteeship Council of the United Nations.123

A stride toward conferring standing upon individuals was taken with the adoption of the European Convention on Human Rights which established a Human Rights Commission and Court. An individual who has been denied his rights may, after the exhaustion of all available domestic remedies, make application to the Commission. The Commission will examine the matter and seek to resolve it by consultation. It may also issue a report and then refer the matter to the Court which may also hear matters referred to it by a contracting party against which an application has been filed. An individual may make application to the Commission by presenting the case in person or by inducing a government to act on his behalf. Though an individual may not present his case before the Court, he is permitted to communicate his views.124

World Habeas Corpus would constitute the major breakthrough by permitting the implementation of the Universal Declaration of Human Rights and other international treaties, conventions and pronouncements pertaining to the rights of the individual. The proposal for World Habeas Corpus envisages the establishment of a world tribunal and seven regional tribunals reflecting differing cultural and legal systems. Individuals who are unlawfully detained or restricted in their movement would, upon the exhaustion of all domestic recourse, be able to invoke the Writ of World Habeas Corpus to seek review by the proper regional tribunal with final appeal to the World Court.125 The writ of habeas

123. These developments are discussed in W. Friedmann, Changing Structure of International Law ch. 4 (1964).
125. International protection would be rooted in diverse patterns of law by dividing the world into nine circuits: (1) Communist-Oriental; (2) U.S.S.R.-Eastern European; (3) Western European; (4) Islamic; (5) Southern African; (6) Non-Communist Oriental; (7) Austral-Oceanic; (8) Latin American; (9) Anglo-American. Each circuit would be composed of seven judges, of whom at least
corpus has long been accepted as a hallowed remedy in the common law tradition for judicial recourse by an individual who has been arbitrarily deprived of his liberty. The writ has also been adopted in other forms by other legal systems. For example, in Latin America, Amparo has emerged as an analogous remedy.\(^{126}\)

The movement for international protection of human rights, as well as proposals such as World Habeas Corpus, emerges from the tradition of the Enlightenment and the American and French Revolutions which asserted the rights of the individual to security of person and to political participation. Subsequently, social rights were also encompassed with the emergence of the concept of the welfare state. This tradition conceives of mankind in universal terms. Dictatorial and authoritarian governments everywhere are challenged. The principle of national self-determination, which has been encompassed within this tradition, will no longer tolerate the continuance of colonialism in any form. A society based upon racism is considered equally abhorrent. In essence, the international human rights movement and the efforts to establish World Habeas Corpus tribunals are revolutionary. Domestic rebellion and revolution, insofar as they threaten world peace, are to be limited because they constitute a threat to the functioning of the international system.\(^{127}\)

The primary function of the human rights movement and the proposal for World Habeas Corpus is prophylactic as related to rebellion and revolution.\(^{128}\) By encouraging established governments to manifest respect for human dignity, to provide for social welfare, to follow the principles of due process of law, to confer equal rights on all citizens, and to encourage popular participation and national self-determination,

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127. Falk, supra note 51; Kutner, supra note 117.

128. This point is developed in Falk, supra note 51, at 174-75. The international community is seeking to develop mechanisms for peaceful change. Mendlovitz & Falk, Toward a Warless World: One Legal Formula To Achieve Transition, 73 YALE L.J. 399 (1964).

http://scholar.valpo.edu/vulr/vol7/iss1/1
revolutions will be forestalled. When a government does not adhere to the rule of law, the individual citizens will feel insecure and will feel little civil obligation toward their government. Dictatorial and arbitrary rule has led to revolts which have threatened international order. For example, the bloody conflict in Viet Nam is to a great extent attributable to the French suppression of national self-determination and the dictatorial nature of the Diem regime. The tyranny of Trujillo in the Dominican Republic gave rise to the internal unrest which necessitated the landing of marines. The outrages of Batista led, in turn, to the rise of Castro. The apartheid policies of the Union of South Africa and the white rule in Rhodesia have created international tensions in Africa. The human rights movement and World Habeas Corpus provide an alternative to rebellion and revolution in curbing arbitrary government and in establishing the rule of law.

No international right of revolt exists as such. The Universal Declaration of Human Rights as adopted by the General Assembly limits individual rights in Article 29(2):

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The Declaration on the Granting of Independence to Colonial Countries and Peoples, as adopted by the General Assembly, does not explicitly permit or condone rebellion as a means to end colonialism and practices of segregation and discrimination. The human rights movement adjures anarchy in envisioning individual rights within the context of a legal order. The European Convention on Human Rights is even more explicit in limiting individual rights because of the necessity of maintaining public order.

Human rights and World Habeas Corpus are primarily concerned with the effect upon individual liberties resulting from efforts to forestall revolts, with controlling attempted revolts, and with the consequences of a revolution.

Many states faced with the problem of political instability have followed the practice of preventive detention—the detaining of persons deemed dangerous to the state who may be likely to create political unrest or engage in rebellion.129 Though such action may be necessary

where established institutions for political change are still in an evolutionary process, the practice of preventive detention is subject to abuse. Because the action is administrative in nature, the writ of habeas corpus or analogous remedies may not be available to the individual who is affected. The Writ of World Habeas Corpus would provide the needed remedy to review the nature of the detention and its justification. The Writ of World Habeas Corpus would also be available to review the detention of an individual who has criticized or expressed opposition to his government through speech or by publication. In some states, the exercise of free speech or free press may constitute an act of rebellion. However, the Universal Declaration of Human Rights and other international declarations already expressly grant the right to freedom of thought and expression as well as the right of assembly. These are basic human rights; an individual detained for exercising these rights should have recourse to World Habeas Corpus. The international tribunal would consider each case on its merits in determining whether the individual’s activities did in fact constitute an act of rebellion.

Some governments, in order to forestall rebellion, have restricted the movement of their citizens or other individuals, thereby infringing upon the freedom of movement and the right to leave and enter a country. The right to freedom of movement has also become a recognized human right in international law. Where it is infringed, the Writ of World Habeas Corpus could be invoked as a means for determining whether the governmental action was arbitrary. Here again, a human right may be balanced with the need for maintaining public order.

A government, whether by suppressing a rebellion or by consolidating its position following a successful coup, might act to restrict freedom of assembly, association, press, or religious freedom and thus infringe upon recognized internationally protected human rights. Individuals detained for exercising these rights should have recourse to an international tribunal by the summary remedy of World Habeas Corpus.

Where an individual is detained for actually engaging in an act of rebellion, such as an attempted coup or putsch or other insurgent action, he is entitled to a fair trial. But under such circumstances, there is a

tendency to be less sensitive to civil liberties. Traditional judicial safeguards may be revoked, as during the American Civil War when protection of the writ of habeas corpus was limited because of the exigencies of military rule. In precisely such a situation, the Writ of World Habeas Corpus would also determine whether the punishment, when considered in light of the acts committed, was inhumane. The possibility of exile as an alternative to imprisonment or execution might be considered.

133. Ex Parte McCardle, 74 U.S. 506 (1869). Earlier, in Ex Parte Milligan, 71 U.S. 2 (1866), the Court upheld the issuance of a writ of habeas corpus ordering the release of an individual detained by military authorities in the course of the Civil War. The writ was defied and subsequently Congress changed the law which had deprived the Supreme Court of jurisdiction. This was reflected in the decision in Ex Parte McCardle, supra.

During World War II, the Supreme Court refused to issue writs of habeas corpus and, in effect, upheld the mass detention of Japanese on the West Coast. Korematsu v. United States, 323 U.S. 214 (1944); Ex Parte Endo, 323 U.S. 283 (1944).

In Northern Ireland, likewise, suspected terrorists have been detained pursuant to the Civil Authorities (Special Powers) Act (N.I. 7, 1922) and the Public Orders Act (N.I., 1951) and regulations issued in conjunction therewith. The Home Secretary is, in effect, authorized to detain any person he suspects of terrorist activity. A Northern Ireland court has held the writ of habeas corpus may not issue. See H. Calvert, Constitutional Law in Northern Ireland, A Study in Regional Government 380-87 (1960); Edwards, Special Powers in Northern Ireland, 1956 Crim. L. Rev. 7. Pursuant to this authority over 300 persons were detained in Northern Ireland following the perpetration of terrorist acts. The Times (London), Aug. 10, 1971, at 1, col. 1. For comments on the legal aspect, see Berlins, Stormont's Last Resort Against Terrorism, The Times (London), Aug. 9, 1971, at 12, col. 4.

In Latin America, political instability has resulted in the suspension of Amparo and other guarantees. For example, in Brazil, the military (which, in truth, runs the government) has detained and tortured opponents of the regime, including journalists. Heren, Use and Abuse of Power in Brazil, The Times (London), Oct. 8, 1971, at 12, col. 1. Generally, Latin American constitutions contain protections from arbitrary detention. Canago, Claim of Amparo in Mexico: Constitutional Protection of Human Rights, 6 Calif. Western L. Rev. 201 (1970). Zamudio, Latin American Procedures for the Protection of the Individual, 9 J. Int'l Comm. of Jurists 60 (1968). However, as one commentator observed:

All of the Latin American countries have elaborate bills of rights. It is apparent that the courts of these states are faced with heavy responsibilities in interpreting and applying the law as it relates to civil rights, especially if the constitutional elements of such rights remain couched in 19th century terms. For the most effective functioning of the courts in these matters, there are three conditions which are probably fundamental: the judges must have a concern of their own broad responsibility, the affected public must be conscious of the role of the judiciary, the court must establish a rapport with other branches of government, and mutual tolerance and respect must exist among the several branches. It surely must be apparent that these conditions do not exist in certain Latin American states, and to the extent that they are absent democracy is thereby hurt or retarded.

Fitzgibbon, The Pathology of Democracy in Latin America: A Political Scientist's Point of View, 44 Am. Pol. Sci. Rev. 118 (1950). In Latin America, one almost never encounters a judicial veto or even restraint of a presidential decree or legislative enactment even though the courts have broad power of constitutional review. This is reflected in the Latin American tradition of the Cadillo, that law emanates from the ruler. The tradition of an independent judiciary is lacking. A.N. Christensen, Strong Governments and Weak Courts, in The Evolution of Latin American Government, A Book of Readings 469-77 (A.N. Christensen ed. 1951).
Although international law may not sanction rebellion as such, an international tribunal in considering a case of rebellion in determining the disposition of a Writ of World Habeas Corpus could consider the circumstances of the particular revolt. An act of rebellion against a democratically constituted government could be considered differently from a rebellious act against a dictatorial regime which has manifested little regard for individual rights or has pursued a conscious policy of racial segregation.

Though adherence to law is a basic international norm, instances arise where civil disobedience is justified, such as those in which the laws disobeyed are in themselves in violation of international law. The Nuremberg principles may make such disobedience imperative. Similarly, situations may arise in which a particular government stands in total contempt of international standards, thereby justifying revolt. An international tribunal could also consider whether violence was used in furthering the rebellious action. International law condemns the wanton use of violence in international relations. Similar condemnations could apply to internal strife if it appears that the conflict may well expand to the international arena. On the other hand, rebellion carried on by the use of such nonviolent techniques as civil disobedience, noncooperation and boycotts or general strikes may constitute less of a threat to international peace.134

Another aspect of rebellion is the right to political asylum. Subsequent to a successful coup or revolution, some individual may be compelled to flee because of fear of reprisal. Individuals who engage in rebellious activity may also leave their country seeking asylum elsewhere. International law, through the Universal Declaration of Human Rights and through treaties and declarations pertaining to the rights of refugees, has established the right to asylum as an international human


Classical democratic theory recognised but one alternative to the state of normal politics—revolution. The only forms of protest it sanctioned in times when things were not so bad as to warrant the overthrow of the government were speaking out against the government and voting for the opposition. In our day, however, some citizens of democratic states have begun to practice a third type of protest which if not a form of normal politics is also a type of revolutionary activity—civil disobedience. Civil disobedience is a form of political protest in which the protesters break a law in order to draw attention to their cause. Although civil-disobedients intentionally violate the law, they are not common criminals. They do not try to evade punishment.

An individual may enjoy the hospitality of asylum if he refrains from engaging in political activities. Where an individual's right to asylum is denied, such as by expulsion or deportation, he should have the right to invoke the proposed Writ of World Habeas Corpus. When, as in the case of Moise Tshombe, an individual who enjoys political asylum is kidnapped, he (or those acting on his behalf) should be permitted to invoke the Writ of World Habeas Corpus to seek his release from detention.

Related to the right of asylum is the basic human right to nationality. As demonstrated by the 1967 coup in Greece, the regime in power may seek to avenge itself against opponents who are situated outside its jurisdiction by depriving them of their nationality or citizenship. Such an action is clearly arbitrary. Since the denial of nationality may deprive an individual of his ability to travel or to acquire a passport, he may be


The concept of political offenses as a limitation on extradition began with the treaty between Belgium and France in 1834. I.A. Shearer, Extradition in International Law 168 (1971). American courts have put a premium on acts of violence and terror in determining what constitutes a political offense. In the case of In re Ezeta, 62 F. 972 (N.D. Calif. 1894) a federal court defined a political offense as any offense committed in the course of furthering civil war, insurrection or political commotion. This principle was followed in Karadzole v. Artukovic, 247 F.2d 198 (9th Cir. 1957) in denying a Yugoslav demand for extradition of a Croatian alleged to have collaborated with the Nazi occupation. The principle was also followed in Rami v. Diaz, 179 F. Supp. 459 (S.D. Fla. 1959). But in Jimenez v. Aristeguieta, 311 F.2d 547 (5th Cir. 1962), cert. denied, 375 U.S. 48 (1963), a Venezuelan request for extradition was granted where the accused, who had been President of Venezuela, was indicted for allegedly embezzling public funds; no violent activity was charged by the Venezuelan government. See Shearer, supra at 180-81.

An example of British government practice with regard to asylum was shown in a reply to a question in Parliament by the Foreign Secretary regarding intervention to protect the interests of an English subject. The subject was the wife of the Burmese Foreign Minister who had been placed in solitary confinement by the Burmese government following the overthrow of the U Nu government. The former foreign minister had been denied trial and counsel. The British Foreign Secretary replied that efforts would be taken to protect the wife's interests and, although Britain could not intervene officially, the Burmese Ambassador had been told to inform his government that the husband would be granted asylum in Britain if released. E. Lauterpacht, British Practice in International Law 129 (1967).

136. This principle was dramatized by the Petition for a Writ of World Habeas Corpus for Moise Tshombe which was presented to the United Nations via the Human Rights Commission, July 27, 1967.
regarded as being detained. Such an individual should be permitted to invoke the Writ of World Habeas Corpus so that an international tribunal may determine his status.\(^{137}\)

The use of World Habeas Corpus and the enforcing of human rights within the context of rebellion do constitute an intervention into an internal political controversy. However, because of the nature of international society, with its myriad of extranational and supranational institutions, internal strife—rebellion and revolution—cannot be insulated from international ramifications. Where international interests encompassing the protection of human rights are involved, a limited type of international intervention becomes imperative.

Rebellion and revolution result from a tradition which has its philosophical roots in antiquity. The justification for revolt against arbitrary rule and the usurpation of authority has been recognized since time immemorial. In the 19th and 20th centuries, this justification has been encompassed in the revolutionary tradition which stems from the American and French Revolutions. This tradition has become a part of the human rights movement.\(^{138}\) Though international declarations solemnly assert the right of national self-determination, world powers have intervened in the internal strife of other nations to affect the course of revolt in order to promote national self-interest. Such intervention may thwart popular sovereignty. However, occasions may arise in which such intervention is justified to further the needs of international order since revolution, by its very nature, may threaten established institutions. International norms involving intervention may best be implemented by adjudication of an ad hoc or permanent War Crimes Tribunal which would militate against unilateral intervention.

Revolution involves the international community by raising the problem of recognizing new governments and the external application of their laws. Where civil war arises and a state of belligerency is recognized, the rules of war apply.

Rebellion and its consequences involve problems of human rights. In dealing with guerrilla operations and in coping with insurrection, the governing authorities as well as the insurgents are obliged, under the Geneva Conventions, to adhere to standards of humanity. Insurgency

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137. Kutner, \textit{supra} note 131, at 628. Rebellion or revolution may affect family privacy resulting in the separation of family members, a matter which should also be considered by an international tribunal through the Writ of World Habeas Corpus. The right of individual privacy may also be involved.

138. "That is the revolution that is coming... It could be a revolution in the nature of an explosive political regeneration." W. DOUGLAS, POINTS OF REBELLION 96-97 (1970).
results in crisis situations in which respect for individual rights may be suspended, thus giving rise to arbitrary action. International norms of human rights may thereby be negated. World Habeas Corpus, by permitting access to regional international judicial tribunals, provides a means for the individual who is detained arbitrarily to assert his rights.

VIII. THE CHALLENGE OF REVOLUTION

Revolution has become endemic, characterizing contemporary international and domestic politics and challenging international law. The concept of revolution arose in ancient Egypt with the earliest recorded description of change through violence occurring in 1962 B.C. Though ancient Egyptian inscriptions denounced revolution as an impious defiance of divine will, it has come today to be accepted and even idealized as a way of life.139

A. The Concept of Revolution

Four main strands may be detected in the present concept of revolution: (1) Marx and de Tocqueville regarding the economic aspect as controlling, with Marx regarding revolution as an outgrowth of human misery and de Tocqueville viewing it as resulting from prosperity, or "the revolution of rising expectations"; (2) Crane Brinton and Chalmers A. Johnson regarding social pressures as the cause of revolution, resulting from the failure of society to meet the demands put upon it; (3) such scholars as Talcott Parsons and Robert Merton regarding individual alienation as the cause of revolution; and, (4) such classical political thinkers as Aristotle, Machiavelli and Locke regarding revolution as a political phenomenon.

A conceptually precise definition of the concept of revolution satisfactory to all scholars is not possible. Although obviously change and conflict are involved, there is disagreement about the nature of the change and conflict. The term "revolution" was originally used to describe the rotation of celestial bodies following natural, inexorable laws, and during the Renaissance it referred to the interference of superhuman, uncontrollable forces in world events.140 In the 17th century the term took on political implications, referring to a return to some pre-established point—impliedly to some preordained order.141 Accordingly, the Restoration of the English monarchy in 1660 was a revolution while

141. Id.
the upheavals of the 1640's constituted a rebellion. In the 18th century, the term gained new meaning with the appearance of the "revolutionary" romantic hero, the individual whose actions can alter the course of history. To Hannah Arendt, the concept of revolution involves the connection of novelty and freedom.

To other scholars, however, revolution is "the acceptance of violence to bring about change." Scholars at the Princeton University Center of International Studies, who have undertaken research on revolution, have applied the term "internal war" to "attempts to change by violence, or threats of violence, a government's policies, rulers, or organization." With this terminology, there is less need to distinguish between revolution and counterrevolution, and considerable emphasis is given to the role of violence.

Other writers regard revolution as implying broader changes. To them revolution entails a fundamental change in the social order, the nature of the state, and the functions of the government. To Hannah Arendt, the modern concept of revolution is identified with the French and American Revolutions. She believes that while the American Revolution involved liberation and the granting of equality before the law, the French Revolution encompassed what she terms "the social question"—the elimination of human misery and poverty. It is the latter, which found continued expression with the Russian Revolution, which has been most influential in shaping the revolutionary tradition. She attributes this development to the fact that the American Revolution was not directly relevant to the European situation; though poverty existed, the New World was not confronted with the

143. Neumann, The International Civil War, in 1 WORLD POLITICS 335 (1949).
144. H. ARENDT, supra note 142.
146. INTERNAL WAR I (H. Eckstein ed. 1964). Chalmers Johnson uses four criteria for distinguishing the types of revolution: (1) the targets of the revolution, whether the regime, the form of government, or the community; (2) the identity of the revolutionaries, whether the elite, the masses, or the elite-led masses; (3) the goals or ideology; and, (4) the timing, whether spontaneous or calculated. On the basis of these criteria, he identifies six types of revolution: (1) the Jacquerie (the mass peasant uprising); (2) the Millenarian Rebellion (the mass peasant uprising plus charismatic leadership); (3) the Anarchistic Rebellion (the attempt to restore an already shattered society, as in the Vendee Rebellion, 1793-1796); (4) the Jacobin-Communist Revolution (spontaneous social revolution, as in France or Russia); (5) the Conspiratorial Coup d'Etat; and, (6) the Militarized Mass Insurrection (the calculated nationalist and social revolution utilizing guerrilla warfare, as in China from 1937 to 1949, in Algeria from 1954 to 1962, and in North Vietnam from 1945 to 1954). C. JOHNSON, supra note 145, at 27-28.
147. Yoder, Current Definitions of Revolution, 32 AM. J. SOC. 441 (1926).
148. H. ARENDT, supra note 142, at 26, 36, 43.
degree of want and misery which prevailed in the Old. While the American Revolution focused on the ideal of freedom, the French revolutionary tradition stressed liberation and the establishment of a new society. Arendt, however, criticizes the French Revolution for its failure to focus on the American revolutionary tradition.

B. The Pattern of Revolution

The historian Crane Brinton contends that he has found a pattern to revolutions as a result of his study of three specific revolutions: the Cromwellian Revolution in England, the American Revolution and the Russian Revolution. He characterizes the French and Russian Revolutions as social revolutions; the American, he contends, was basically nationalistic.

In Brinton’s case studies, prior to each revolution the society was characterized by the rising expectations of an emerging class challenging the privileged ruling class. In Brinton’s model, which is based upon his case studies, the government is confronted with financial plight and administrative inefficiency. The intellectuals have become alienated, tending to reject the established order and conceive a new and better society. Resistance to authority, which is both spontaneous and planned to some degree, occurs. With the occurrence of a certain event, the old regime is overthrown and a “honeymoon” period follows wherein all factions coalesce. However, this coalition is soon challenged by extremist groups and a crisis of “dual sovereignty” occurs. The extremists assume power and a reign of terror ensues—the fever point of the revolution—followed by a reaction, or “Thermidor.” Brinton believes most nations must at some time undergo a period of turmoil or revolution. He finds that the revolutions he has studied resulted in the settling of the worst abuses and inefficiencies of the old regime though the average person encountered little change in his daily life. A revolutionary tradition is established with the “sting out of the radical ideas and slogans of earlier days.” These ideals remain as a part of the rhetoric of tradition, e.g., “Liberty, Equality and Fraternity.”

C. Preconditions

Chalmers Johnson, who identifies revolutions with violent change, contends that they occur in response to a desire to redirect the system

151. Id. at 36.
152. C. Brinton, supra note 149, at 250-52.
in the absence of normal evolution. Revolution occurs because of a disequilibrium in the system, or a "dysfunction." For a revolution to result, the level of dysfunction must exceed the capacity of traditional or accepted means of society to deal with the situation. The revolution will occur unless the elite abdicates nonviolently. The dysfunctions, even when confronting a stubborn ruling elite, will not of themselves produce a revolution unless there are factors—the "accelerators of dysfunctions" or triggers—which catalyze the already existent revolutionary level of dysfunctions. Though not of themselves the bases of the revolution, they will provide the sufficient immediate cause of the following revolution.

Harry Eckstein distinguishes between "preconditions" and "precipitants." The latter refers to an event which actually initiates violence, while the former refers to the circumstances making revolution possible. For an "internal war" or revolution to occur, precipitant events must set it off; these events will not set it off unless the preconditions of the revolution are already present in the society.

Preconditions may include the element of foreign control, e.g., by an alien dynasty. In modern times the motivating force against foreign control has been nationalism. Today most subject peoples of imperial states have gained their political freedom. Foreign economic control, however, is more pervasive because of the concentration of economic resources in the United States, the Soviet Union and Western Europe, which causes the revolt of the developing "have not" countries. Unrest will be produced under certain given conditions as, for example, in Hungary in 1956 when a revolutionary environment existed. The precipitant or trigger in that instance was the unrest then occurring in Poland. A source of frustration in colonial areas may also be the crumbling of communal solidarity and ways of life among tribally organized peoples. This weakening of solidarity often results from the imposition of Western norms and produces disorientation.

Economic conditions may be another factor causing revolution. Although a deteriorating economic situation may produce unrest, it will not necessarily produce revolution. On the other hand, an advancing

153. C. JOHNSON, supra note 145, at 8.
154. Id. at 12.
156. C. LEIDEN & K. SCHMITT, supra note 140, at 39.
157. Id. at 40.
159. C. LEIDEN & K. SCHMITT, supra note 140, at 42-44.
economic growth rate did not forestall revolutions in France or Russia. Revolution may be produced by economically successful people who believe that further advance is blocked by existing conditions.\(^{160}\) In preindustrial societies, rapid economic change of itself may cause social dislocation and possibly revolution.

Political agitation and the appeal of political slogans may produce unrest.\(^{161}\) Individual unrest must, however, be transformed into integrated mass unrest before meaningful political activity can occur. In almost any modern society there is some separation of economic power from political and social power. It is only when these forms of power become highly disparate and combine with other sources of discontent that a revolutionary situation is created. Political concessions, e.g., the broadening of suffrage or the easing of entry of new groups into political office, are easier to grant than social or economic reforms.

Thomas Molnar, a critic of what he regards as modern revolutionary thought with its source in the Enlightenment, contends that the Enlightenment philosophers and their successors sought to construct a new state and an ideal society with a "totalitarian temptation."\(^{162}\) Attacking the established order, including the church, the revolutionaries shaped the mental-moral climate which caused the French government to doubt its own legitimacy. Thus, the French government became increasingly timid and hesitant before the philosophers' onslaught; Louis XVI began to doubt his own authority. A similar progression of events, according to Molnar, occurred in Russia.

To Molnar, the French Revolution had two roots: Rousseau's totalitarian democracy and Hegel's idealism, both of which presupposed a "state of corruption to be transcended by one of purity."\(^{163}\) Through revolutionary thought, a means is postulated to secure the passage from the old system to the new.

The promise of the revolutionary doctrine is, then, predicated on the denial of stable forms, whether of art, institutions, or the meaning of words, and on the denial of time, of the necessary and beneficient interval between conceiving and executing projects. The doctrine promises everything for "tomorrow," whether the classless society, the end of all wars, riches for all men, or a more human mankind. Hence, the destruction of the

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160. Id.
161. Id. at 44.
163. Id. at 54.
old becomes an urgent matter, an historic duty. Shirking this duty, let alone obstructing the avenue of progress, is a major crime, in fact the only sin the revolutionary recognizes.164

The revolutionary ideas are transmitted to the leaders of society, the reading public. The most naturally attracted are the wealthy classes. Respectability of the revolution in our time, Molnar contends, is achieved by the gradual penetration of modern radical ideas into the middle class.165 These ideas are propagandized through the mass media.

An important prerevolutionary condition is the weakening of the existing regime; it becomes increasingly unable to resolve the problems facing it.166 For example, the prerevolutionary French regime faced continuing financial crises and was unable to summon sufficient resources to cope with them. Similarly, in Russia, the Romanov regime was drifting in the early days of the 20th century, devoid of imagination and assuming a weary air of defeatism. Even now, developing nationalistic states manifest weak governments which spawn a spate of coups, e.g., the governments of U Nu in Burma, Sukarno in Indonesia and Kasavubu in the Congo.

Connected with government weakness is the disintegration of the ruling elite.167 The ruling class often proves to be divided and inept, losing its cohesion and ability. Important segments of the intellectual community become alienated and shift their allegiance.

D. Revolutionary Action

To some degree, violence is the midwife to every revolutionary birth.168 Incumbents may surrender to a mere threat of force if the regime is weak or if the insurgents are well prepared; if the threat is not effective, violence breaks out. Revolutionary activity may be initiated by gradually intensifying disputes between large and competing groups within the existing power structure. These disputes are frequently clothed in legal or constitutional terms. If the disputants cannot agree upon suitable compromises or palliatives, violence leading to a sudden overthrow or to civil war may ensue. This characterized the English Revolution of the 16th century and the French and American Revolutions. Another type of revolutionary birth is the coup d'etat, exemplified by Peron's rise to power in Argentina.

164. Id. at 55-56.
165. Id. ch. 3.
166. C. LEIDEN & K. SCHMITT, supra note 140, at 46.
167. Id. at 49.
168. Id. at 56.
Many instances have occurred in which revolutionary acts have failed to force policy changes or to overthrow governments. A significant failure of a coup was the attempt by German army officers to assassinate Hitler and overthrow his Nazi regime in July 1944. Mass peasant uprisings seem particularly doomed to failure.6

Those who mount a revolution must destroy the old system and hamstring its elite. But they must also reconstruct and build. Accordingly, revolution entails the twin elements of destruction and reconstruction. This was particularly true of the Chinese revolution. The Manchus fell to the temporizing regime of Yuan Shi Kai, which in turn was overrun by Mao Tse Tung and the Chinese Communists. In all these stages something had to be destroyed, compromised or nullified. The monarchy was abolished, the class structure altered by the execution of the landlords, family life and social mores attacked, and the mechanism of military service used to uproot the individual from his traditional context. These phases were cumulative, with little remaining of the Chinese system of 1900. Several generations of destruction had to be balanced by ideological consolidation and political rehabilitation, which has constituted the task of Mao since 1949. Reconstruction has taken the form of the amelioration of material conditions, a regeneration of ideological justifications (the Red Guard purge) and a frenzied effort to rebuild.17

The destruction-reconstruction dyad is well symbolized by the inevitable treason trials which are held during or following virtually every revolution and the equally common attempts to draft new constitutions. With the former there is rejection of the past and a new beginning is made. Changes appear to be grandiose, but are really symbolic. The revolutionary government seeks to demonstrate dramatic progress by symbolic acts which are of limited substance.171 The mass is transubstantiated into “the people” with the establishment of “people’s republics” and “people’s democracies.” The opposite, however, is the case when revolutionary action is used as a pretext to wield centralized authority.172 Other symbolic acts include the abolition of titles and a variety of other names and labels. Frantic efforts may be undertaken to eliminate rats or flies as a symbol of revolutionary progress. Revolutionary Egypt symbolized revolutionary progress by building the Aswan Dam and nationalizing the Suez Canal.

169. Id. at 61.
170. Id. at 63-66.
171. Id. at 68.
172. Id. at 65.
The revolution gradually exhausts itself. There may be recuperation. Possibly there is the interruption of counter-revolution. Although order ultimately returns, chaos and uncertainty remain for many years. A tendency exists to embrace varied programs and adventures as revolutionary goals. Some revolutionaries regard the success of their revolution as presaging a world revolution. The struggle between Trotsky and Stalin was over the question of "permanent revolution" versus "revolution in one country."\(^{173}\) Hitler sought to infect Europe with his revolution. Castro seeks to export his revolution to the rest of Latin America. Most revolutions produce dictatorships of some sort.\(^ {174}\) Successful revolutions also encourage future attempts at revolution.

No revolution is immune to the world environment. Revolution in a given area may be fostered by other governments and inspired by examples elsewhere. The tactics of Mao Tse Tung, in conducting guerrilla activity and rallying peasant support prior to extending the revolution to the cities, inspired similar tactics by Che Guevara and Regis Debray in Latin America.\(^{175}\)

**E. Leadership**

Though revolutions do not arise from conspiracy alone, certain types of individuals must appear to articulate the problem, focus the discontent, suggest alternatives and rationalize the need for change. The agitators need to have the education to create ideology or to transform the specific complaints into generalized criticism. Other more daring types of leaders must plan for violence, lead the actual attack on the regime and carry the rebellion through to victory. Still other types must consolidate the new order and carry out some of the promises made in the earlier stages. The personnel turns over as the revolt progresses although occasionally a rare person appears who combines all these ideal qualities of leadership.\(^ {176}\) The leaders, if not fanatics, should be men of firm determination, considerable self-esteem and confidence in the rightness of their cause. The consolidators must be men of stability, political acumen and flexibility. In general, revolutionary leaders are usually men of political maturity, but not yet old enough to be assimilated into a ruling elite. Usually, the middle class is their origin as the upper classes are normally satisfied with the society and the lower classes lack the skills necessary to create a revolutionary movement. The rank and file and the leaders are generally politically frustrated.

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173. *Id.* at 68.
174. *Id.*
175. *Id.* at 69.
176. *Id.* at 94-95.
The followers, like the leaders, do not come from the peasant class; rather, the middle class forms the backbone of most revolutions. Students are often prominent among revolutionary elements, especially in the developing countries. The military is conspicuous in coups though middle class civilians may play an important role in that form of revolution.

F. Ideology

Revolutions require guidance and justification.\textsuperscript{177} These take the form of ideology, "the conversion of ideas into social levers."\textsuperscript{178} All revolutionaries must justify what they have done by describing their motives in selfless terms. The French and Russian Revolutions have been the major sources of ideology. The great ideological document of the French Revolution was the Declaration of the Rights of Man. In Russia, there is no lack of pre- and postrevolutionary guidance and justification. Marxian ideology has proved to be a rich vein of revolutionary doctrine. Many other ideologies have produced revolution; however, most revolutions are undertaken in the name of the people, with their objectives couched in terms appropriate to peasants and urban workers.

Many revolutions produce a nationalist ideology.\textsuperscript{179} Much of nationalism in underdeveloped areas is nothing more psychologically than shared, semi-articulated discontent based on real or fancied grievances conveniently directed against outsiders who have exploited "the natives." Nationalism requires a target: a colonial power, a dominant foreign economic interest, an old regime that can be considered as a thing apart. Nationalism is easier to formulate where there is a shared community of language or culture, but can arise with little community to aid it, as in black Africa. However, some nationalistic ideologies, such as Arab nationalism, are \textit{sui generis}.

Finally, on many occasions, the revolution will develop a makeshift ideology—arguments which make sense at the moment and satisfy the populace but result in little, if any, cohesive scheme for postrevolutionary organization.

G. Tactics

Terrorism and guerrilla activity as means of revolt have long been romanticized. Although the term "guerrilla" is derived from the Spanish struggle for independence in 1808, the tactics have been applied since

\footnotesize{\begin{itemize}
  \item \textsuperscript{177} Id. at 99.
  \item \textsuperscript{178} Id. at 100.
  \item \textsuperscript{179} Id. at 105.
\end{itemize}}

Produced by The Berkeley Electronic Press, 1972
antiquity.\textsuperscript{180} Terrorist groups which engaged in armed insurrection against the Tsarist regime by attacking individual Tsarist officials in the 19th century justified their actions as a means for stirring up revolutionary consciousness. Che Guevara and Castro adopted precisely the same tactics.\textsuperscript{181} The recently published \textit{Anarchist Cook Book} contains recipes for making bombs on the kitchen table;\textsuperscript{182} the original recipe was formulated in detail by Johan Must over 70 years ago. The same recipes are applicable today. The only additions to Must’s work are chapters on the use of electronic equipment and on drugs.

Though Marx, in 1848, seemed to condone terrorism, he and Engels later came to regard such activity as senseless, believing street and guerrilla fighting as only of short duration.\textsuperscript{183} A new tactic in revolutionary activity was adopted by Mao Tse Tung. In the 1920’s, after the Kuomintang destroyed the Communist party apparatus in the cities, Mao was forced to undertake his famous Long March to Yenan. During that time, he formulated new revolutionary tactics; whereas Marx and later Lenin had focused on the proletariat situated in the cities, Mao turned to the peasants.\textsuperscript{184}

Mao proceeded to engage in guerrilla activity while at the same time rallying the peasants. He combined guerrilla war with the ideology of Marxism. In 1927, Mao set forth the prerequisites for an armed and independent regime: (1) a sound moral base, (2) a first-rate party organization, (3) a Red Army of adequate strength, (4) a terrain favorable to military operations and (5) economic strength sufficient for self-reliance.\textsuperscript{185} He urged the re-education rather than the killing of prisoners. In a lecture to Algerian leaders in 1960, Mao stated:

\begin{quote}
[Prisoners] should not be killed. It is a mistake to believe that by physically eliminating agitators or enemy personnel you can serve a revolutionary cause.\textsuperscript{186}
\end{quote}

Mao justified his struggle:

\textsuperscript{180} P. Calvert, supra note 139, at 104. Significantly, BBC news commentators have referred to the Irish Republican Army in Northern Ireland as "terrorists" while referring to the Al Fatah and to similar groups in Africa as "guerrillas." Hortsius, \textit{The Words in Our Lives: Mission in Ireland}, Maariv, Oct. 29, 1971, at 36 (in Hebrew).
\textsuperscript{181} Locquer, \textit{The Cookbook of Little Wars}, Maariv, Sept. 19, 1971, at H (in Hebrew, Rosh Hashonah supp.).
\textsuperscript{182} J. Must, \textit{The Anarchist Cookbook} (2d ed. 1971).
\textsuperscript{183} Locquer, supra note 181.
\textsuperscript{184} Id.
\textsuperscript{185} A. Fremantle, \textit{Mao Tse Tung: An Anthology of His Writings} xxxiii (1962).
\textsuperscript{186} Id. at xviii.
War, the monster of mutual slaughter among mankind, will be finally eliminated through the progress of human society, and in no distant future. But there is only one way of eliminating it, mainly to oppose war by means of war, to oppose counter-revolutionary war by means of revolutionary war, to oppose national counter-revolutionary war by means of revolutionary war, and to oppose counter-revolutionary class war by revolutionary class war. There are only two kinds of war in history, just and unjust war. All counter-revolutionary wars are unjust, all revolutionary wars are just.\textsuperscript{187}

Lifton notes that Mao, particularly after assuming power, sought transcendence, risking all, even death, to achieve his revolutionary society.\textsuperscript{188} A sense of immortality is noted in Mao’s speeches:

All men may die, but death can vary in its significance. The ancient Chinese writer Suzuia Chu said, ‘Though death befall all men alike, it may be heavier than Mant Tai or lighter than a feather.’ To die for the people is heavier than Mant Tai, but to work for the fascists and die for the exploiters and oppressors is lighter than a feather.\textsuperscript{189}

Mao inspired his people, stressing the power of the mind as all powerful:

What is the greatest force? The greatest force is that of the mind of the popular masses. What should we fear? We should not fear heaven. We should not fear ghosts. We should not fear the dead. We should not fear the bureaucrat. We should not fear the militarist. We should not fear the capitalist.\textsuperscript{190}

Mao’s greatest accomplishment has been to change Marxism from a European to an Asiatic form. He enabled Marxism-Leninism to give expression to Chinese history.\textsuperscript{191} Maoism has, accordingly, exercised appeal as revolutionary ideology in the developing countries. This ideology has been combined with nationalism.

In the nationalist struggles, particularly against colonial powers, terrorism and guerrilla warfare have been effectively applied. The experience in one struggle serves as a precedent in another. Guerrilla struggles and terrorism indicate a definite pattern. The first of these strug-

\textsuperscript{187} Id. at 77.
\textsuperscript{188} R. Lifton, Revolutionary Immortality (1968).
\textsuperscript{189} Id. at 67.
\textsuperscript{190} Id. at 69.
\textsuperscript{191} J. Spanier, World Politics in an Age of Revolution 357 (1967).
gles, the first "war of liberation," occurred with the Irish struggle and has flared up anew in Ulster. Terrorist methods have been applied in Palestine, Malaysia, Indonesia, Cyprus, Algeria and Indochina. The pattern is enacted when a plan of sabotage and systematic assassination and terror is undertaken. Members of the native population who do not cooperate are subject to punishment by the terrorists. Western democratic governments are particularly vulnerable when they pursue a policy of suppression against terrorists in colonial areas because the methods of suppression (especially when dramatically presented on nightly television) evoke opposition and disgust, producing domestic unrest. Ultimately, the colonial authority is forced to give way.192

On the other hand, when enlightened administration has been undertaken to meet the demands and needs of the populace, as in Malaysia and the Phillipines, governments have succeeded in isolating the terrorist movement.193 Terrorist activity which induces a regime to take suppressive measures thereby threatens the functioning of the rule of law and due process. As has occurred in Northern Ireland, usual trial procedures may not be able to function and it becomes necessary to order the detention of terrorists. Where terrorists are brought to trial, security may require that the accused not be confronted with certain incriminating evidence. However, even in such situations, the rudiments of due process must be applied to assure ordered liberty. The Writ of World Habeas Corpus might well play a role in this context.

In Cuba, Fidel Castro and his small band of guerrillas waged a campaign against the Batista regime. Following the perpetration of certain actions, Batista reacted by arbitrarily and cruelly infringing on human rights and ignoring principles of due process. Batista thus alienated the middle classes and paved the way for Castro's takeover.194

The Cuban Revolution was followed by the propagation of a new theory of guerrilla warfare for Latin America by Guevara and Regis Debray. Guevara, in attempting to formulate an ideology for the Revolution, stated that the guerrilla fights in the vanguard of a revolution. He contended that the Cuban Revolution proved three fundamental points: (1) that popular forces can win a war against an army; (2) that it is not always necessary to wait for all the conditions for a revolution to exist because the insurrectional focal will create them; and (3) that in underdeveloped areas, the countryside must be the fundamental lo-

193. B. Crozier, supra note 192.
cale of the armed struggle. Insurrections should be waged in countries which have the clear appearance of arbitrary government and abolition of constitutional principles.

Regis Debray advanced the contention that Latin America was ripe for revolution because the existing system was maintained solely by the armed forces of the oligarchies in power which were supported by United States imperialism. Debray felt that the problem was how to destroy those forces and prepare the means for seizing power and constructing the new socialist society. Debray further contended that the political task involved the development of seasoned political leadership, following which the existing state should be drawn into the battle. According to him, the guerrilla struggle politicized the masses, ultimately leading to the final act. Debray criticized traditional Communist Party tactics which opposed violence.

In the Third World, disciples of Lenin adhere to the Leninist postulates that the modern capitalist economy is based on imperialist control and exploitation. They further accept the Leninist idea that a small dedicated band of tightly organized revolutionary fighters should be at the head of a rising movement or should comprise the midwives of mass revolt.

Social revolution has become characteristic of the 20th century. While the United States, Canada and Western Europe experienced revolution in the 18th and 19th centuries, the nations of Eastern Europe, Asia, Africa and Latin America had yet to undergo social revolution. The revolutionary ideas of the Western countries influenced the intelligensia in semifudal societies. The sons of the lower and middle classes could only advance through joining either the army or the bureaucracy, both of which had become instruments to oppress the lower classes. Alienation of the intellectuals was therefore to be anticipated; the result has been the revolutionary ferment. With the exception of the Mexican Revolution, the rise of the Kuomintang in China and the rise of Kemal Ataturk, external events were utilized to gain power.

Some revolutionaries, by applying Mao’s theory that control of the countryside through guerrilla activity leads to the fall of the cities, have reasoned that control of the Third World will lead to the fall of the

197. Locquier, supra note 181.
advanced and more urbanized nations. However, it is doubtful that revolutionary domination of any Third World countries will have a direct impact on such countries as the United States.\textsuperscript{199}

The most recent phenomenon has been the rise of the urban guerrilla, as in Uruguay. The idea of urban guerrilla warfare has also had proponents in the United States,\textsuperscript{200} where the most extreme forms of such warfare have been the exploits of such groups as the Weathermen faction of the Students for a Democratic Society.

IX. RECENT EXAMPLES OF THE PRACTICE OF REVOLUTION

As noted above, the 20th century has experienced a substantial number of social revolutions. This section of the article will examine some prominent instances of recent social revolution, starting with the Mexican Revolution in 1910.

A. The Mexican Revolution

The first social revolution of the 20th century occurred in Mexico in 1910 with the overthrow of the Diaz dictatorship.\textsuperscript{201} Civil war then wracked the country for ten years as the revolutionaries struggled against supporters of the old regime. Dissension broke out among the revolutionaries themselves. Though individual acts of brutality and slaughter were common, widespread terror was seldom a feature.\textsuperscript{202} The revolution was the result of a variety of factors. Under Diaz, foreign capital had come to dominate the country, which, in part, caused the small middle class to experience frustration. Also, 90 percent of the population was illiterate, the old order had become increasingly rigid and the rate of progress had slowed.

The revolution began in 1910 with Francisco Madero's armed uprising against Diaz; by the spring of 1911, the dictatorship of Diaz had collapsed. Madero established a provisional regime and conducted fair elections. After his election to the presidency, Madero was unable to maintain complete authority. He and his vice-president were overthrown and assassinated by the military coup of General Victoriano Huerta. Thereafter, Huerta assumed the role of dictator. President Wilson refused to recognize the Huerta regime, but rather supported the conservative Venustiano Carranza by sending troops into Mexico on two occasions. Carranza was able to oust Huerta, but in 1920, Carranza

\textsuperscript{199} Locquer, \textit{supra} note 181.
\textsuperscript{200} M. Oppenheimer, \textit{The Urban Guerrilla} (1969).
\textsuperscript{201} C. Leiden \& K. Schmitt, \textit{supra} note 140, at 115.
\textsuperscript{202} Id.
DUE PROCESS

fell and was succeeded by Alvaro Obregon. Agitation and unrest flared among the lower classes with the peasants being led by Emiliano Zapata. Though he was assassinated in 1919, Zapata’s plan for the return of the land to the villagers was formally adopted as a national policy and included in the Constitution of 1917. Stability with only limited reforms ensued during the 1920’s. During the presidency of Lazaro Cardenas in 1935, millions of acres of land were parcelled out to the peasants, thereby ending the hacienda system. Labor was given a permanent position in national affairs and wage and health benefits were raised. In 1938, Cardenas nationalized the oil industry following a bitter quarrel with its foreign owners. The nationalized oil industry became one of the primary symbols of the Mexican Revolution and Mexican nationalism.

Following Cardenas, Mexican presidents have followed a more conservative line, stressing economic growth. Though the reform programs have continued, a disproportionately great share of the new wealth has accrued to the business community and commercial farm operators. While overall living standards have risen, the lot of the peasantry is still wretched and the gap between rich and poor has widened.

The United States involved itself in the Mexican Revolution. Although President Taft favored the Diaz regime, he quickly recognized Madero, who had been supported and assisted by the sympathetic border population. After Madero took the reins of government, the United States Ambassador to Mexico opposed Madero and sought to undermine Washington’s confidence in his administration. Although his exact role in the fall of Madero’s government is disputable, the Ambassador did support Huerta, who led the coup and succeeded to power. President Taft held up diplomatic recognition of Huerta’s regime until his presidency expired. Taft’s successor, Wilson, felt that Huerta symbolized all that was wrong with Latin American governments; nevertheless, he offered to mediate between Huerta and Carranza. Wilson desired to persuade Huerta to hold an election in which Huerta would be ousted; when these efforts failed, Wilson lifted the arms embargo in force against Mexico and then used a minor incident involving United States naval forces in Tampico harbor to justify United States military occupation of Veracruz. The port was Huerta’s main source of revenue; with it occupied, Huerta weakened and subsequently fled the country. Wilson thereafter withdrew his forces from Veracruz.

203. Id. at 121-24.  
204. Id. at 125.  
205. Id. at 133.
After some indecision, Wilson recognized Carranza as de facto president. Despite Mexican attacks on United States citizens and a punitive United States military expedition into Mexico in 1916, relations between the two countries remained fairly stable. When Obregon overthrew Carranza, Wilson left the matter for his successor, Warren G. Harding. Disputes over claims and property rights growing out of the revolution continued to plague United States-Mexican relations until the late 1930's; the most serious issue was Mexico's expropriation of the oil industry in 1938.206

B. Turkey

Turkey had experienced, prior to World War I, a revolutionary uprising against the Sultan in the 19th century and the Young Turk Uprising in 1908.207 Following World War I, when Istanbul was occupied by allied troops, Mustefa Kemal Pasha revolted against the Sultan. Kemal, a general who had been sent to the interior, consolidated his troops and challenged his government to demand the end of foreign occupation. He also demanded the convening of regional and national conferences to determine the future of a new nationalistic Turkey. A congress which demanded, among other things, the creation of a national assembly was convened in Siva. Frightened by these moves, the government resigned and a new government was created. Although the new government created a national assembly, the existence of such a chamber was short lived because of the intervention of allied troops. Shortly afterwards, a Grand National Assembly was convened in Ankara with Kemal at the helm. The Turks succeeded in expelling the Greek troops and forced the allied powers to recognize the nationalist government of the General Assembly. Invitations to the Lausanne Peace Conference were sent to both the nationalist government and to what remained of the Sultan's regime. Kemal reacted to this affront by deposing the Sultan. At the Lausanne Peace Conference, a treaty was signed re-establishing the complete and undivided Turkish sovereignty in almost all the territory included in the present Turkish Republic.208

206. Id.
207. The modern Turkish revolutionary period began with the overthrow of the Sultan, Abdul Aziz, in 1876. He was succeeded by Murad V, thought to be a supporter of constitutionalism, but who shortly went insane. Under Abdul Hamid II the country returned to despotism. B. LEWIS, THE EMERGENCE OF MODERN TURKEY (1961). In 1889, a group of army students formed a society, which later came to be comprised of the Young Turks, and forced the Sultan to restore the old constitution in 1908. The Sultan was deposed by the society in 1909. In 1913, Enver Bey overthrew the constitutional government in a coup and was dominant until the end of World War I. E. RAMSUAR, THE YOUNG TURKS: PRELUDE TO THE REVOLUTION OF 1908 (1957).
208. C. LEIDEN & K. SCHMITT, supra note 140, at 141-45.
The Capitulations, long resented by Turks as a symbol of inferiority and subservience, were abolished. Thus Turkey, alone among the defeated powers of World War I, was successful in rising from her own ruins and in rejecting the dictated peace imposed on her by the victors.

Kemal, after his victory over the Greeks, faced no serious challenge to his leadership. During this period, he instituted wide ranging reforms and encouraged opposition parties. He abolished the Caliphate, religious education and religious orders. He pressed for Western clothing and Westernized the country with the adoption of the Gregorian calendar, the Swiss Civil Code and penal and commercial codes based upon European models. At that time he took the name of Ataturk.

Under Kemal, the ideology was based on several principles: republicanism, nationalism, secularism, populism, statism and revolutionism. The first three concepts are self-explanatory. Populism meant the destruction of privilege and re-emphasis of individual equality of opportunity. Statism denoted the intervention of the state to promote economic development, while revolutionism signified that the revolution was meant to be a continuing one.

In honest elections in 1950, the opposition party, the DP, assumed power. Though initially popular, once in control the party became oppressive and stifled opposition parties. In response to the oppression, the army initiated a coup in 1960, arresting the DP leaders. The army junta, termed the National Unity Commission, initiated reforms. A new constitution which stressed individual rights was adopted and a constitutional court to check political parties and the constitutionality of legislation was established.

In the period of 1960-61, the army held gigantic trials of former DP leaders. A total of 592 persons were charged with crimes; their trials were attended by 1068 witnesses and 150,000 spectators. The government requested the death penalty 228 times, but had its request granted in only 15 instances. Three of these 15 defendants were eventually executed. Also, life imprisonment was imposed on 31 of those brought to trial; lesser prison terms were given to 402; and 133 of the former members of the party were able to win acquittals. The principal defendants were the former President, Celal Bayar, the former Prime Minister, Adnan Menderes, and various cabinet members. Though most of
the charges involved such serious offenses as inciting riots, destruction of newspapers and corruption of elections, some charges were ridiculous, e.g., that President Bayar had forced a Turkish zoo to purchase a dog that had been a state gift to him from the Afghan government. These former leaders were sentenced to death, but later the sentences were commuted to life imprisonment. A popular demand for amnesty arose and, by 1966, most of the defendants, including Bayar, were released.213

The National Unity Commission called for elections to return the government to civilian control in 1961. Four political parties entered those elections. A coalition government was formed because no party was able to garner a majority.

Recently, because of student unrest which has been marked by the kidnapping and murder of the Israeli Consulate General, the army has pressured the Turkish Parliament to assert more authoritarian control.214 A split has developed between the Justice Party, which represents the more conservative farm elements and the religious groups, and other army supported groups which seek modernization. The army, although dissatisfied with the speed of reform, does not seek to remove the civilian leaders and itself rule directly. Essentially, the struggle is over the type of government Turkey is to have in the future.

The external impact of the Turkish Revolution has been minimal although attempts were made to emulate the Turkish model in Iran and Afghanistan.215

C. China

The most significant post-world War II revolution was the assumption of power by the Communist regime in China. In essence, it was a continuation of an earlier revolution. Partly because the cities had come under foreign control by the beginning of the 20th century, a strong nationalist sentiment developed and led to the overthrow of the Manchu dynasty. The Communist Party, although not then in power, thrived in the cities during the 1920's and for a time was aligned with Chiang Kai Shek and the ruling Kuomintang. A split then occurred and Chiang drove the Communists to resort to a guerrilla campaign. The central factor which enabled the Communists to assume power was the Japa-

213. Id. ch. 2.
nese invasion which caused the weakening of the Kuomintang position. By the same token, the invasion strengthened the Communists and its aftermath led to their ultimate victory.\textsuperscript{216} When the revolution lost its force in the 1960's, Mao attempted to maintain its fervor through the Red Purge, which was an attempt to rally the masses to adherence to revolutionary principles by the purging of moderate or conservative elements from public life. The attempt did not fully succeed and the army was able to reassert its position.\textsuperscript{217} The full significance of the Chinese Revolution is yet to unfold.

\textbf{D. Egypt}

A significant Middle Eastern revolution unfolded in Egypt. Through most of that country's recent history, Britain has played a major role. In 1882, Britain occupied Egypt and, by the beginning of World War I, had established a protectorate. Although Egypt formally became independent in 1922, Britain continued to exercise considerable influence in part through the retention of its armed forces on Egyptian soil.

In general, Egyptian politics have not been marked by much violence although some riots, demonstrations and assassinations have occurred. For example, the most notorious incident of bloodshed occurred in 1906—the Denshaway Incident—when British officers engaged in pigeon hunting were molested by villagers. In the ensuing melee, one villager and one officer were killed while other villagers were wounded. A state of panic in the British community resulted. The incident ended when the guilty villagers were severely punished. Also, in a 1952 incident, British troops battled Egyptian police in the Canal Zone, resulting in 43 Egyptian deaths. The next day, the worst riot in Egyptian history occurred as mobs took over Cairo, burning and looting foreign shops and establishments, including the famous Shepherd's Hotel.\textsuperscript{218}

The revolution which changed Egypt's modern history took place during the reign of King Farouk. The King's authoritative position had been gradually weakened by general governmental corruption and by Egypt's loss of the 1948 war to Israel. Consequently, in the summer of 1952, a small band of junior army officers under the leadership of Colonel Abdul Nasser was able to effectuate a swift coup. The insurgent

\textsuperscript{216} Solomon, \textit{The Characteristics of the Chinese Revolution}, in \textit{The Nature of Revolution}, supra note 150. Professor Brinton stated that the Chinese Revolution appears to be developing the same pattern as did the Mexican. \textit{Id.} at 13-14.

\textsuperscript{217} Medzini, Book Review, Jerusalem Post, Nov. 12, 1971, (Magazine Section), at 12.

\textsuperscript{218} T. Little, EGYPT (1958).
army group was backed by the popular Major General Mohammed Naguib, who joined the band in requesting former Prime Minister Ali Maher Pasha to form a new government. In response to this situation, the King conceded and was persuaded to abdicate. Subsequently, General Naguib replaced Ali Maher as Prime Minister and Egypt was proclaimed a republic.\textsuperscript{219} Little bloodshed occurred in the wake of the coup.\textsuperscript{220}

The most important factor in promoting the coup was the British presence. Britain continued openly to occupy the country despite the granting of independence in 1922 and the signing of the Anglo-Egyptian Treaty of 1936, which called for the diminution of the British role. In 1942, for example, the British Ambassador ordered King Farouk’s palace surrounded by tanks in order to force the King to dismiss one government and form another. After World War II, British forces retired to the Canal Zone, but their presence remained threatening. Egyptian nationalism was continually frustrated.\textsuperscript{221} The Muslim Brotherhood, therefore, emerged preaching return to the purity of Islam and a rejection of all foreign influences. In addition, Egypt at that time was a land of economic frustration and misery—peasants and workers had little, while in contrast, a small group of rich absentee landowners and industrialists thrived, removed from the masses. Furthermore, corruption prevailed in all walks of life.\textsuperscript{222} All of these factors coalesced to assist the insurgents.

Following the coup, a power struggle occurred between Naguib and Nasser with the latter emerging triumphant. Nasser began to institute changes in the old system, including the suppression of the Muslim Brotherhood and the suspension of parliamentary government and free elections. Social reforms were instituted; e.g., land reform was begun and eventually destroyed the economic base of the former ruling class. The Suez Canal was nationalized and became an important source of foreign exchange until the events of June 1957.\textsuperscript{223} Following the British, French and Israeli invasion, foreign properties were sequestered. In 1960, an economic nationalization program was instituted. Finally a new revolutionary party was formed.\textsuperscript{224}

The ideology of the revolution, as expressed in the National

\textsuperscript{220}. \textit{Id}. at 160.
\textsuperscript{221}. M. Zayid, \textit{Egypt's Struggle for Independence} (1965).
\textsuperscript{223}. \textit{Id}. at 166-69.
\textsuperscript{224}. \textit{Id}.
Charter, set forth the guiding principles of the movement. These principles included the "[d]estruction of imperialism and its stooges among Egyptian traitors," the "[e]nding [of] feudalism," the "[e]nding [of] monopoly and the domination of capital over government," the "[e]stablishment of social justice," the "[b]uilding of a powerful national army," and the "[e]stablishment of a sound democratic government." The Charter emphasized that these principles could be implemented because the national struggle had created "[a] will for revolutionary change," "[a] revolutionary vanguard," "[a] deep consciousness of history and its effect on contemporary man on the one hand and of the ability of man in turn to influence history on the other," "[a] mind open to all human experiences, from which it benefits and to which it contributes with no fanaticism or complex," and "[u]nshakable faith in God, His Prophets and His sacred messages which He passed on to man as a guide to justice and righteousness." Socialism and nationalism were proclaimed. "The war on imperialism and domination" was to be continued.225

Nasser developed charisma; until his death, he towered over all other Arab leaders. Because of the overwhelming difficulty in solving domestic problems, Nasser engaged in international adventures. He exacerbated the conflict with Israel leading to Egyptian defeats in 1956 and 1967. He also became involved in a meaningless conflict in Yemen. Since Nasser's death, the revolution appears to be assuming a new course under Anwar Sadat's leadership.226

E. Cuba

The recent revolution which has had the greatest effect on the United States took place in Cuba. Violence has long marked Cuban politics; the Cuban government during Batista's reign had rested on force.227 Typical prerevolutionary conditions existed in pre-Castro Cuba: a small depressed peasantry, particularly in Oriente Province; a large urban lower class on the margin of existence; an unstable, ine-


226. Mansfield, Egypt After Nasser, THE WORLD TODAY, June 1971, at 302. A significant development was the conspiracy trial of revolutionary figures for plotting the overthrow of the regime. Most prominent among the defendants were former Vice President Ali Sabry and former War Minister Mohammed Fawzi; both were sentenced to life imprisonment. Eight of the accused were said to have been acquitted and a number of others were given light sentences. Jerusalem Post, Dec. 10, 1971, at 1, col. 1.

cure, violence-prone middle class seeking to imitate middle class modes of life; and middle and upper classes that seemed almost totally oblivious to lower class problems. The government was dictatorial and ridden by corruption; education and health programs were elite-oriented; and many vital sectors of the economy were controlled by foreign interests. Intellectuals and political leaders had long resented United States domination. Public opinion, though disapproving of the Batista regime, was generally apathetic.

In 1956, Castro prepared to invade Cuba with assistance from exiles in the United States. He planned to use an old yacht, the Granma. In the meantime, a group of armed partisans, not knowing that the Castro group was at sea, arose in revolt in Santiago. At the same time, students struck the University of Havana. These revolts were quickly crushed. Forewarned, military units spotted the Granma and killed or captured all but twelve of Castro's original complement. This remnant fled to the mountains of Cuba where Fidel and his brother Raul organized a guerrilla campaign. Some resistance to Batista developed in the cities, but there was never a mass movement. Castro's continuing revolt forced Batista to desperate acts of suppression. Only in 1958 did a widespread disintegration of the elite occur. The success of the revolution lay in the ability of Castro and his band to drive the dictator to desperation.

The revolution entered a moderate phase when Castro assumed power. A civilian cabinet composed of old time Batista opponents was created, but the real power lay with the rebel army. Batista's supporters were completely eliminated from the government, and some of the more notorious officials were tried before Revolutionary Tribunals. Hundreds met summary execution. Worldwide and national disapproval of the trials forced their discontinuance in May 1959.

The legal basis of the new regime was the Constitution of 1940, as amended by the Fundamental Law of February 1959. In effect, the social and economic provisions remained in force while the political sections were "temporarily" held in abeyance. By the end of May, a period of radicalization had taken place—the Agrarian Reform Law was enacted, the Communist People's Socialist Party (PSP) emerged as the only legal political party, the labor union leadership was purged and replaced by Communists, and the 26th of July movement was downgraded because it contained strong anti-Communist elements. The moderates in the cabinet were replaced by radical leftists, some of whom had

228. C. LEIDEN & K. SCHMITT, supra note 140, at 186-89.
been PSP members. In 1962, Castro turned against the old line PSP leadership.229

A significant achievement of the revolution has been the elimination of illiteracy, though academic training was accompanied by indoctrination. There has been vast and rapid redistribution of the national wealth. Beginning with the Agrarian Reform Law of June 1959, land has been progressively nationalized and organized into state collective farms. Most domestic and foreign-owned businesses have been expropriated, as has been the property of the upper and middle class families. In addition, the regime has embarked on a program of planning, industrialization and diversification. However, goals have failed to be met and retrenchment has ensued.230

Tensions with the United States arose, at first as a result of the summary trials and executions. Later, relations began to decline seriously because of the promulgation of the Agrarian Reform Law. Hostility between the United States and Cuba was accompanied by Cuba’s rapprochement with the Soviet Union. Stages in the shift of Cuba’s alignment progressed from the Cuban confiscation of property to the United States abolition of the Cuban sugar cane quota, the renewal of Cuban-Soviet diplomatic relations and, finally, to the inauguration of Cuban-Soviet trade agreements. The shift in alignment resulted in the breaking of diplomatic relations with the United States and the abortive Bay of Pigs invasion. A factor which further aggravated United States-Cuban relations was Castro’s desire to spread his revolution to the Latin American continent.231

Whether Castro was initially a Communist is a matter of conjecture. Theodore Draper has contended that, though Castro had made contact with the Communists in seeking support for his revolution, he probably adopted the Communist ideology only after assuming power in order to justify his revolution. He needed a program and the Communists provided one.232 Actually the Cuban Communist Party had supported Batista. Castro’s famous “History Will Absolve Me” speech at his trial was moderate in tone calling only for a return to constitutional liberty and limited reforms.233 There is evidence that Castro

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229. Id. at 189-95.
230. Id. at 195.
231. Id. at 200-02; B. Goldenberg, The Cuban Revolution and Latin America (1965).
232. T. Draper, supra note 194. Castro’s ideology has been characterized as a program of social reform well within the framework of traditional left wing ideology. B. Goldenberg, supra note 231, at 6.
adopted a more radical attitude in his subsequent guerrilla days. Gradually, he became more committed to a radical program. By the summer of 1959, Castro and the Communists formed an alliance; later, this alliance became a fusion. In retrospect, Castro has formulated a program of social reform within the framework of traditional left-wing ideology.

The Cuban Revolution has led to a power rivalry between the United States and the Soviet Union involving them in the missile confrontation and in an ongoing rivalry in the Caribbean. Castro, convinced that he could not achieve his revolutionary goals without breaking from United States domination, turned to the Soviet Union. The latter assumed a power position from which it could offer economic and military assistance. Castro was able to solicit such aid successfully without upsetting the Cuban people because of the rising nationalism and anticolonialism—sentiments which have deeply affected Latin Americans. Accordingly, the United States has found that it can no longer brandish the big stick. United States action—the Bay of Pigs invasion, the missile confrontation and the Dominican Republic intervention—demonstrated United States concern with security as opposed to adverse public opinion which results from intervention. These events indicate some circumstances in which the United States will tolerate no actual or potential interference from outside the hemisphere. Since the missile crisis, relations between the United States and the Soviet Union have settled into a pattern. The United States is embargoing virtually all trade with Cuba and is pressuring its allies to limit their commercial exchanges. The Soviet Union therefore continues as the island's primary trading partner.

Both because of American pressure and because of Castro's avowed policy of supporting paramilitary activity in various Latin American countries, Cuba was expelled from the Organization of American States and most of the Latin American states have broken relations with her. Recently, however, this pattern was broken with Chile's resumption of diplomatic relations and Castro's visit to that country.

234. C. Leiden & K. Schmitt, supra note 140, at 198. Castroism has been described as "a leader in search of a movement, a movement in search of power, and power in search of an ideology." T. Draper, supra note 195, at 132-33.

235. B. Goldenberg, supra note 231.


Castro's support of violent revolutionary action has run counter to the policies of old line Communist Party leaders and, at times, to Soviet policy.238

F. Hungary

Revolution has also occurred behind the Iron Curtain. Unrest in East Germany and Poland were instrumental in producing a revolution in Hungary in 1956.239 A rift had developed between the Communist regime led by the Stalinist-inclined Racozi and the people who expressed strong nationalist sentiments. Passive resistance by the peasantry forced out the old regime and led to the emergence of Imre Nagy. However, the agitation began to snowball and in October 1956, spontaneous mass armed rebellion erupted. The participants engaged in brick throwing in front of the central headquarters of the national broadcasting office and the police responded by hurling tear gas. Both sides fired shots and suffered casualties. At first, the mobs had no thought of bringing down the government; however, the harsh and uncompromising stand of the officialdom, coupled with a bayonet charge by the police, ignited a general conflagration.240 Within a matter of hours, the rebels gained control of the city and, as the news spread through the countryside, the Communist Party simply melted away while local groups assumed control with little violence. Only after the revolution had been won did its leaders, particularly Imre Nagy, assume command. As a mass uprising, almost leaderless in its initial attack, the Hungarian Revolution was an astonishingly complete success. It was crushed only with the overwhelming weight of foreign armed force.241

The Russian armed intervention was dictated by concerns of power politics rather than by the fate of one group or another in Hungary. The lasting victory of the revolution in Hungary would have threatened the stability of the other satellite regimes; also, a Hungary allied with the West would have adversely affected Soviet security interests. Moreover, any American intervention or counterintervention would likewise have been dictated by something other than an abstract attachment to the liberation of peoples subjected to Communist control.

The Soviet intervention and the accompanying Western apathy


239. For accounts of the Hungarian Revolution, see generally A. Heller, No More Comrades (1957); F. Vali, Rift and Revolt in Hungary (1961); P. Zinner, Revolution in Hungary (1962).

240. P. Zinner, supra note 239, at 238, 243, 360.

241. Id. at 349.
reoriented the thinking of the peoples of Eastern Europe by demonstrating the national and international limits for the challenging of Communist domination. Amelioration of the satellite condition could only be achieved through the tacit consent of Moscow. Eastern Europe was thus pacified.\textsuperscript{242}

The Hungarian Revolution was of further significance in that it demonstrated that even a totalitarian regime was vulnerable to revolution.\textsuperscript{243} In 1848, Marx contended that a revolution should have the philosopher at its head and the proletariat as its heart. In 1956, this dream became a reality; the intellectual struggled for the right to truth and the proletariat sought the right to freedom—the real freedom of the working class. Together they defeated a despotism supported by a foreign power. As in 1848, nationalism was combined with liberalism.\textsuperscript{244}

The Hungarian Revolution was essentially a rebellion of Communist Party members.\textsuperscript{245} The struggle was for freedom to seek truth and a return to the ideals of 19th century liberalism.\textsuperscript{246} It was a reaction against the purge trials of the Stalinist Hungarian regime in an effort to establish a regime based on truth and on principles of due process.

\textbf{G. Czechoslovakia}

In 1968, Russian tanks again rolled into a neighboring country, Czechoslovakia, and once again the West reacted apathetically. Liberalizing pressures had forced the Stalinist-minded Novotny to resign. He was succeeded by Dubcek, a liberal Communist who attempted to introduce liberal reforms leading to humanistic socialism. More rights were granted to the people and economic reforms which called for the decentralization of industry were introduced. There were hints that expression would be permitted to non-Communists. At the same time, the Czech regime carefully sought to stress its attachment to the Soviet orbit. It did not seek to establish any particular relationships with the West.\textsuperscript{247}

To a Trotskyite writer, the situation in Czechoslovakia represented a struggle for change. Yugoslav methods were adapted to the situation with greater freedom intended for the worker than in Yugoslavia.\textsuperscript{248} The

\begin{itemize}
\item \textsuperscript{242} Id.
\item \textsuperscript{243} Aron, The Meaning of Destiny, in TEN YEARS AFTER (T. Aczel ed. 1966).
\item \textsuperscript{244} Id.
\item \textsuperscript{245} Polyani, The Message of the Hungarian Revolution, in TEN YEARS AFTER (T. Aczel ed. 1966).
\item \textsuperscript{246} Id.
\item \textsuperscript{247} P. Windsor & A. Roberts, Czechoslovakia 1968: Reform Repression and Resistance (1969).
\item \textsuperscript{248} Frank, Czechoslovakia, in New Revolutionaries 159-75 (T. Ali ed. 1969).
\end{itemize}
bureaucratic rule was threatened when mass support developed, pressing Dubcek for broader reform. The people were not content with mere liberalization at the whim of the leader or party functionary. The change had significant repercussions in Eastern Europe, threatening the very existence of the bureaucratic power structure and, therefore, necessitating Soviet intervention to preserve the status quo. The cause for the intervention was not against a non-existent danger of return of capitalism but against the situation in which the Kremlin could clearly see the beginning of an anti-bureaucratic revolutionary struggle not in its interest.

The Soviet intervention may seem mystifying in light of the careful efforts the Czech regime undertook to keep away from Western entanglements. However, the reforms appeared to threaten the stability of the neighboring governments. Moreover, the Soviet Union feared that the liberalization might eventually lead to Czechoslovakia’s turning Westward, particularly towards Western Germany—an eventuality which, because of security considerations, the Russians could not permit.250

The Czech Revolution is particularly notable because of the apparently spontaneous passive resistance and surge of national sentiment following the Soviet occupation. This resistance proved quite effective in frustrating Soviet aims at the start of the occupation and in forcing the Soviets to permit Dubcek to reassume power for a time.251 Significantly, non-violent techniques, rather than violence and terrorism—which are self-defeating in the long run—were effectively adapted as the means of revolt.

**H. Worldwide Revolution**

In recent years there has been, on both sides of the Iron Curtain, a growing worldwide revolt against authority, particularly among the young. One writer has characterized this development as a revolt against anti-humanistic institutions and modes of conduct and thought.252 The humanist idea, as derived from the Renaissance, conceives of the individual as autonomous in his self-expression when existing in a harmonious order.

Some believed that advances in technology and modernization it-
self would both lead to subjugation of the individual by bureaucratic and authoritarian controls. However, recent revolts and protests may well have challenged these assumptions. For example, the downfall of the Stalinist Party Secretary Novotny in Czechoslovakia, the 1968 McCarthy campaign in the United States, the near overthrow of President DeGaulle in France, the beginning of intellectual ferment in the Soviet Union and the campus uprisings worldwide all point to a refusal by the individual to succumb to these new pressures.

By its very nature, modernization functions as a liberating force. Bureaucratic institutions develop to a climax and then are toppled with the toppling of one system leading domino-like to the toppling of others. Since 1945, a worldwide desire to gain the benefits of the scientific revolution has existed. With these scientific developments, greater efforts to secure human rights have taken place. The struggle has expressed itself in various forms of protest and revolt and may encounter temporary reverses, such as in Hungary, Greece, Brazil, Korea and Spain or as in the return of suppression in Czechoslovakia. Protest has dramatically emerged in the Soviet Union with the emergence of an underground press and other modes of expression. The recent and continuing efforts of the Russian Jews to emigrate may be regarded as another expression of this protest.

Revolutions generally have transnational effect. The symbolism of one revolt is often reflected in another, e.g., the images of Guevara and Ho Chi Minh. This has been demonstrated by the student revolts in many countries. Indeed, in many countries the college student has been the catalyst for protest and revolt. Increasing student unrest and the rise of the New Left both indicate a growing protest against the bureaucratic depersonalization of the university as well as against other aspects of contemporary society. This form of protest reacts against affluent materialism and the machine. Only a minority, seeking to stimulate the masses to protest against the evils remaining in society, may participate in revolt. One continuing issue of protest has been the fact that minority groups have not yet joined the ranks of the relatively affluent and are not yet a part of the establishment. The protesters also seek to dramatize the immorality of tolerating evil, viz., segregation, violence in Viet Nam and the threat of thermonuclear annihilation.


X. Revolution and Due Process

In some societies, the conditions may be such as to lead to a revolution; in others, it is possible—provided the established institutions are responsive—to initiate reforms. But protest continues. The challenge is to provide responsive institutions at both the municipal and international levels. The proposal for World Habeas Corpus fits into this framework by providing legal redress for expression of individual protest.

Clearly, the potential for revolt is universal. The boundary between international and internal war is vague, and the predilection for external involvement in internal wars has transcended historical epochs. An affinity exists between internal and international violence. The rebels may seek redress in the establishment of a new order which will also challenge the equilibrium of the international system.

Within the next few years, the prospects for an internal or civil war in various countries (e.g., India, Spain, Cyprus) are greater than are the prospects of a war between the Soviet Union and the United States. Revolution threatens domestic society as much as war threatens the international. While the contention has been that a domestic society is more capable of preventing its subjects from committing destructive violence than the international society, this has not been borne out by recent events. At one time major rivalry in world affairs was undertaken primarily by warfare between states; now it has suddenly become a matter of warfare within states. The old doctrines of international law concerning intervention and belligerency have lost relevance. New objective tests must be devised. A supranational authority must regulate intervention.

Revolution, in seeking change, challenges the international law. A particular tension is created with regard to human rights. On the one hand, suppression of acts of rebellion, particularly terrorist acts, involves the abrogation of human rights. On the other hand, when the new regime attains power, it too, tends to abrogate certain human rights to maintain power vis-a-vis the adherents of the old regime. In this situation, the rights of the individual—particularly the procedural rights—are infringed. In such circumstances, the chances are much

258. Id.
259. Id.
greater that the individual will be arbitrarily detained. At the same time, the effectiveness of a system of World Habeas Corpus tribunals would be placed under strain. A regime bent on maintaining its position might be less inclined to respond to Writs of World Habeas Corpus. If, however, a World Habeas Corpus tribunal were to react timidly in such an instance, its credibility would be compromised.

Accordingly, when a government is threatened or unable to maintain order, it is inclined to suspend principles of due process. The challenge to a regime might well give rise to what has been termed the "political trial" wherein the accused is characterized as a villain and a gangster, a person bent on the destruction of the established order while partisans of the accused characterize the regime as evil and oppressive. In such a trial, procedures for due process might be trampled upon.

Due process, on the other hand, is indivisible. It cannot be conveniently manipulated to suit one's purposes. A denial of due process in some instances erodes established liberty and opens the breach for tyranny, threatening all. As one writer noted:

Whatever his convictions, be they extremist or moderate, left wing or right wing, every man is exposed to the threat of arbitrary judgment, of acts or procedures which are contrary to the fundamental rules guaranteeing the values which alone make life worth living.

Even those who scorn these principles may one day owe their own safety to them.260

The detention without due process of alleged terrorists in Northern Ireland or the mass execution of alleged Communists in Indonesia and the Sudan cannot be viewed with equanimity by the international community. The validity of verdicts in political trials in which procedures of due process are trampled upon, as in Leningrad and Broges, is highly questionable. The reactions against such trials result not from political, but from human, motivations.

As a prophylactic measure to assure adherence to principles of due process, arrangements should be made to assure the presence of outside observers at political trials. Such observers could be sent by such organizations as the International Commission of Jurists or Amnesty International or by the Human Rights Commission. Representatives of a proposed World Habeas Corpus tribunal could attend such proceedings.

The observers would, prior to the trial, meet with the judge, the prosecuting and defense counsels, the accused and the investigating officials. An investigation would be made to assure that the accused had been extended adequate pre-trial due process procedures. The observers would also attend the trial to see that it was fairly conducted. Observers might be permitted as a matter of national courtesy.

Clearly, in an emergency situation, principles of due process may have to be adapted to the needs of security. Article 15 of the European Human Rights Convention permits derogation of its provisions in times of public emergency threatening the life of the nation. Article 4 of the Covenant on Political and Civil Rights likewise provides for detention under emergency conditions. However, as a report of the Ad Hoc Committee of the Right of Everyone to be Free From Arbitrary Arrest and Detention of the Human Rights Commission has indicated, the need for the application of emergency procedures should be clearly established, and those exercising the authority to make the decision regarding individual detention should be independent from the police and the military.

Even in emergency situations, those elements of due process essential to ordered liberty must be retained. Article 14 of the Covenant on Political and Civil Rights provides the basis for procedural due process: that the accused be promptly informed of the charges against him; that he have adequate opportunity to prepare his defense; that he be tried by his peers; that, absent special circumstances, he be tried in the presence of his accusers; and that he or his counsel have the opportunity to confront and cross examine them. Nevertheless, due process “is not

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261. Martin-Achard, supra note 260.

In suppressing acts of rebellion or terrorism by detention, the governing authority may also resort to torture as a means of obtaining intelligence information. This has been practiced in Greece, Brazil, India, Northern Ireland and Viet Nam. In Greece and India, the practice of beating prisoners on the heels is followed. Hern, Interrogation Methods Around the World, The Times (London), Nov. 18, 1971, at 5. In Viet Nam, Viet Cong prisoners are tortured by the South Vietnamese. The Green Berets carried out interrogation through operation Phoenix. Id. In South Africa, in accordance with the terrorism act under which police are authorized to detain anyone indefinitely without charge, 20 people have died while being interrogated during detention. Police claimed that they were unaware even of the existence of these persons and the press in South Africa has been forbidden to publish anything whatsoever relating to these arrests. The deaths have occurred under strange circumstances, such as that of the death of a man found hanging in a cell by a belt; the man’s wife stated that he was not wearing a belt when arrested. Another man allegedly fell from a window. Levin, South Africa’s Power to Abuse Power, The Times (London), Dec. 9, 1971, at 14.
a technical conception with a fixed content unrelated to time, place and circumstance." Due process represents "a profound attitude of fairness between man and man, and more particularly between the individual and government." Accordingly, a tribunal, in applying principles of due process, should consider

[The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment.]

Where, as in Northern Ireland or in Gaza, an individual accused of terrorist activity may not be told some of the details of the charges against him nor the identity of his accusers because of security considerations, the question of whether such evidence must be kept confidential might properly be a matter of judicial determination. The judge should have access to the confidential information in chambers to determine whether, or to what extent, it may be conveyed to the accused. The judge would weigh the security interests involved and would establish procedures to convey the information to the accused or his counsel in a manner that would not compromise the security of the state.

Both international observers of trials and tribunals of World Habeas Corpus would accordingly apply standards of due process. Norms of conduct essential to maintain ordered liberty would be the prime standard. An inquiry would be made, with due regard to the particular situation and to the principles of the established legal system, as to whether there was adherence to the standards of fairness. For the proceedings to be offered the imprimatur of the tribunal, the regime must have manifested a sensitivity to due process.

XI. CONCLUSION

Revolution is a continuing phenomenon in the modern world. The question is not whether this phenomenon is to be approved or disapproved. Such an attitude is akin to King Canute's ordering the tide to reverse its course. Revolutions are to be anticipated in many countries


264. Id. at 163.
throughout the world: Egypt, Iraq, the Sudan, Morocco, Paraguay, Greece, Spain, Thailand, Turkey and a host of other countries. Prerevolutionary conditions exist in many parts of the world.

Revolutions threaten international peace. In a state of revolution, rebellion and anarchy, human rights cannot prevail. Though the concept of human rights focuses upon the individual and his relationship to the state, limiting the authority of the sovereign, a framework of rational authority is essential. The absence of either social order or authority negates the concept of human rights. In a revolutionary situation, the notion of World Habeas Corpus or of due process is meaningless. Anarchy leads to the rule of the jungle—not to human rights. Human dignity is negated. Such an order may well be conducive to the triumph of unlimited authority—tyranny and the police state, which are in themselves threats to peace.

Man, from time immemorial, has been concerned with the problem of authority. As indicated in ancient Egyptian inscriptions, in the classic writings of the Greeks and later, in the Middle Ages, as well as by modern philosophers, legitimate authority is not to be lightly overthrown. To the ancients it was an act of impiety. Nevertheless, circumstances very probably will arise—and, indeed, have arisen—where such revolt is to be justified. The tyrant who flaunts the principles of due process may properly be overthrown. A rebellion against Hitler or Stalin would have been justified. In many other instances the issue is not clear cut. The international community has approved rebellion against colonial authority, but today not many colonies remain.

Nevertheless, as has been noted, prerevolutionary conditions exist in many parts of the world. In some instances these conditions approach tyranny—as was the case with regard to Batista—or the circumstances create such frustrations that revolution is to be anticipated.

To envision a supranational authority which would quash unjustified rebellions or revolutions is inconceivable. The Congress of Vienna and the Holy Alliance under Metternich attempted such a course in the 19th century; the result was disastrous.

On the other hand, the international community cannot be expected to and, indeed, should not encourage revolution. Such an ap-
approach would negate international order. Revolution cannot be condoned. Supranational insitutions must not, however, be wedded to the status quo. Prerevolutionary conditions must be anticipated and efforts must be made to establish effective institutions to initiate social change by peaceful means. The effective implementation of the covenants on Human and Political Rights and of Social and Economic Rights would in themselves be a significant mechanism for peaceful change. The proposal for World Habeas Corpus is a most effective antidote for tyranny.

World Habeas Corpus, along with a World Ombudsman, provides an effective means for peaceful change in that the individual is made the subject of international law. He becomes an actor with the right to petition and to seek legal recourse. He is given an alternative to violence and rebellion, e.g., with regard to apartheid in South Africa or racial segregation in Rhodesia.

Supranational institutions must also deal with the fact of revolution after it has occurred. Some rebellions, as in Rhodesia, cannot be accepted by the international community for they are contrary to the shared norms of the world community. In other circumstances, as in Hungary and Czechoslovakia, the failure to prevent the quashing of a rebellion remains a blot on the international conscience. Generally, international institutions must permit revolutions to run their course while seeking to humanize them. Where human rights are flaunted, World Habeas Corpus would be used as a humanizing factor.