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STATE SOVEREIGNTY AND COMMON INTERESTS IN THE INTERNATIONAL COMMUNITY[1)]

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I. *Preliminary Remarks*

In 1985 two important events happened almost simultaneously in East and West Europe. One was the presentation of the White Paper on the Completion of the Internal Market of the European Communities and the other was the advent of the Gorbachev government in the Soviet Union. These two events caused, as a consequence, the present drastic changes in the world situations. Firstly, the project of the completion of the internal market of the EC has created a great centripetal force, like a black hole in space, since many non-member states around the EC, even states in East Europe wanted to become members of the EC. Secondly, the appearance of the Gorbachev government, thanks to his personal character, was supposed to lead a peaceful change of the Yalta system, which had continued for almost a half century. Now, one of the two great super powers that had dominated world politics since the end of the Second World War has disappeared, and at present there

[1] It is not certain whether the present international society can be defined to be a "community" or not. Professor René-Jean Dupuy has already discussed this problem in his book. Cf. René-Jean Dupuy, *La Communauté internationale entre le mythe et l'histoire*, ECONOMICA/UNESCO 1986. But in the documents of the United Nations the expression "international community" is rather easily used as a synonym of "international society." Among international lawyers Juge R. Jennings, I. Brownlie and A. Cassese use the expression 'international community' as a synonym of 'international society' on the basis of a character of interdependence among States. Cf. Sir R. Jennings & Sir A. Watts (ed.), *Oppenheim's International Law*, Ninth edition, vol. I & II, Peace, Longman 1992. I. Brownlie, *Principles of Public International Law*, fourth ed. Oxford 1990. A. Cassese, *International law in a devided world*, Oxford 1988. About this point NGUYEN QUOC Dinh already said, "La solidarité des peuples au niveau de l'univers peut être faible. Mais, il ne faut pas confondre l'existence de la communauté internationale (ou de la société internationale) avec le degré de sa cohésion. Aussi bien, à quelque niveau que que ce soit, les expression «communauté internationale» et «société internationale» sont employées auxjourd'hui concurrement. Il est vrai que l' expression «communauté internationale» met davantage l'accent sur la soridarité internationale dont on prend de plus en plus concience et qui ne cesse de progresser dans les faits" NGUYEN QUOC Dinh, *Droit international public*, ler édition, L.G.D.L. 1975, p. 21. See also, NGUYEN QUOC Dinh, Patrique Daillier et Alain Pellet, Droit international public, 4e éd. L.G.D.L 1992, p. 35.

remains just the one great super power with its fabled economic basis. The world is now confronted with various difficult and complicated problems, such as the reconstruction of the world economic and monetary system, the solution of the frequent occurrence of racial, ethnic and regional disputes, the prevention of the destruction of the earth's environment, the prevention of the proliferation of nuclear weapons, the protection of refugees, the eradication of drugs and AIDS, etc.

The central characteristic of these problems is that they cannot be solved by a few powerful states only, but must be solved by the participation of all the states and peoples on the earth, on a truly worldwide scale. We usually try to manage these problems within the present system on the United Nations, which was created just after the Second World War and which was based on the contemporary system of sovereign states of in 1945. The UN Charter itself was elaborated during the Second World War.

The purpose of this short report is to consider briefly whether it is possible or not within the framework of the present system of the United Nations to deal appropriately with these new burdensome problems which we must find a solution for the sake of next generation in the 21st century.

II. *The Present Significance of the Concept of State Sovereignty*

Needless to say, the general concept of state sovereignty is not always clear. But in international law state sovereignty has at least two important meanings. Firstly, it denotes independence in the external relations. That is, the sovereign state is not subject to any other states or organizations without its consent. Secondly, it means exclusive powers within its own territory. No other state cannot exercise jurisdictions over the territories of another state without its consent.[2]

The present structure of international society, that is, the horizontal co-existence of sovereign states without no supreme authority above them, has not undergone any basic change for three centuries and a half since the creation of the system of individual sovereign states by the conclusion of the Treaty of Westphalia in 1648. Even in the system of the United Nations it is only sovereigns states which can have legitimate membership in its organs (art. 2-1 of the UN Charter).[3] And consent among sovereign states is the fundamental principle for concluding international agreements *(pacta sunt servanda)*.[4] No state can be bound without its consent. Sovereign states are supposed to consent to be bound by international agreements if they consider that being so bound is more conducive to their own interests than not being bound. This is the basic character of traditional international law.

On the other hand, the 20th century has been called the age of international organizations. Thus there exist various kinds of international organisations, universal or regional, political or non-political, cooperative or supranational. Within the framework of inter-

[2] R. Jennings & A. Watts, *op. cit.*, pp. 125–126.

[3] According to arts. 2(1) and 4(1) of the UN Charter, the membership of the UN is strictly limited to sovereign states.

[4] See, art. 26 of Vienna Convention on the Law of Treaties.

national organizations and given the present situation of interdependence among states, the traditional sense of state sovereignty, that is, absolute and exclusive sovereignty is not always regarded as appropriate. In fact, as Sir Robert Jennings, the president of the International Court of Justice, correctly indicates, a number of States, in their constitutions, have express provisions for limitations on their national sovereign powers in the interests of international cooperation.[5] In other words, certain sovereign powers of the state may be limited in connection with international organizations and may be conferred upon or transfered to international organizations.

The most extensive transfer of this kind currently existing is that involved in membership of the European Community. Within the framework of the EC even national borders in the traditional sense have already disappeared.[6]

In this sense the concept of the territorial state is also changing. Moreover, the subjects of international relations are no longer only sovereign states: international governmental organizations, non-governmental organizations (NGO), and political groups such as PLO also play extremely important roles on occasion.

As mentioned above, the basic structure of international society has been changing fundamentally since the end of the Second World War in 1945. Nevertheless, all the systems of the United Nations are based on the traditional concept of state sovereignty before 1945. This is supposed to be one of the main reasons of inefficient functioning of the UN.[7]

III. *Dimensions of Common Interests in International Law*

i) National interests and international common interests

Generally speaking, each states has its own interests in preserving the integrity of its territory and also for national prosperity. Of course, each State has various national interests.[8] Also, inside of a state, there exist many groups or organizations which push their own interests. But the integrity of its territory and its national prosperity are supposed to be fundamental national interests of each state.

On the international plane the relations among states are developed through a process of coordination of these national interests. Historically speaking, so-called international law has been formed like customary law or conventional law, that is, treaty law through a process of coordination of the national interests of each sovereign state by common consent. In the real and harsh world of international politics, however, in case of conflict of interests among states, the national interests of large and powerful states usually prevail over those of less powerful ones in the process of negotiation for common consent. Common interests will be created as a result of coordination of national interests, more or less as a result of compromise among states.

Now we will try tentatively to classify common interests in international law.

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[5] R. Jennings, *op. cit.*, p. 125. Cf. Art. 98(2) of the Japanese Constitution.

[6] See, Article of Daniel Vignes for this symposium, "The Dilution of the Member States' Sovereignty and European Regional Integration."

[7] Of course, we should consider the reality of world politics also.

[8] On national interests, see, Joseph Frankel, *National Interests*, Pall Press Ltd., 1970.

ii) Classification of common interests in international law.

The concept of common interests in international law is very abstract and varied. Its expression also varies, as general interests, interests of the whole or international public interests. Recently the expressions like interests of humanity and interests of the earth are also used.[9] It is not certain whether these expressions have the same significance or not. But any rate, the concept of common interests in international law is supposed to stand opposite the national interests of each state and it is supposed to be closely related with the structure of international society.

Needless to say, if international law really functions in international society, interests protected by international law, either customary law or conventional law, seem to be common interests in international society, but they are of a extremely wide variety according to the kinds of international law. Moreover, it may be possible that even interests which should be protected by international law remain no more than ideas. Taking these points in consideration, let us pigeon-hole the concept of common interests in international law as follows.

The concept of common interests in international law can be classified into two categories, according to the subjects to whom interests are attributed: one is common interests among states and the other is common interests for humanity.

1. *Common Interests among States*

This category of common interests is basically realized through the traditional process of coordination of national interests and this too can be divided into two categories. The first is common interests which are common to the bilateral relations between two states or to a small number of particular states. These may be called common interests in particular international law. The second is common interests which are common to all or

FIGURE OF COMMON INTERESTS IN INTERNATIONAL LAW

<table>
<tr><td colspan="3">Common interests in particular international law</td><td rowspan="4">Matters to coordinate mutual jurisdictions or to realize positive interests in bilateral or regional relations among states</td></tr>
<tr><td colspan="3">Common interests in general and universal international law (International public interests)</td></tr>
<tr><td colspan="2">Common interests in part of general and universal international law (jus cogens)</td><td rowspan="2">Matters to realize positive interests by means of multilateral cooperation among states</td></tr>
<tr><td>Vital interests in international Community
1. Maintenance of peace.
2. Protection of humanitarian law & earth environment</td><td>Important matters to maintain the international legal order</td></tr>
<tr><td colspan="2">Common interests for humanity</td><td colspan="2">Common interests among states</td></tr>
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[9] Cf. Edith Brown Weiss, *IN FAIRNESS TO FUTURE GENERATIONS: International law, Common Partimony, and Intergenerational Equity*, The United Nations University 1989.

almost all states in the international society. It may be called common interests in universal and general international law.

a. Common Interests in Particular International Law

The most traditional and the most fundamental function of international law is the coordination of interests, competences and jurisdictions of sovereign states in their mutual relations. But in the case that only a limited number of states are concerned, the extent of common interests which ought to be realized and protected is also limited. Common interests realized by many kind of bilateral agreements on mutual security, economic and technical cooperation or treaties on regional integration, and so on, come under this traditional category of interests.

b. Common Interests in Universal and General International Law (International Public Interests and General Interests)

① Common Interests in the Dimension of International Cooperation within the Framework of Non-Political Domains

From the second half of the 19th century European states began to cooperate with each other in order to manage common administrative matters in non-political fields, such as traffic control of international rivers like the Rhine and the Danube, cooperations in postal and telegraphic communications, the protection of industrial and intelectual property, and cooperation in health administration and in the adjustment of weights and measures, etc. In other words, the European states in this period considered that the function of public service of one state alone were inadequate to manage the administration of these fields.

Then, they recognized their common interests in managing these matters together by creating the common secretariats of administrative unions. As is well known, these were the origins of the present specialized agencies of the United Nations, and the common interests which are realized as objectives of these international organizations in non-political fields are considered to come under this category.

② Common Interests in the Maintenance of International Peace, Security and Legal Order

(i) Maintenance of peace, security and legal order is at all times a fundamental interest for every state in the world. From the historical point of view, in international society in the 17th and 18th centuries which was composed of states basically antagonistic to each other the common interests were very negative and limited to the extent of observing laws of warfare and armistice *(jus in bello)*; but especially since the beginning of the 20th century, with massive and high-powered methods of warfare, the common interests among states have been positively extended to limiting the right of belligerency *(jus ad bellum)*, including the conclusion of the Treaty for the Renunciation of War (Pact of Paris, 1928), prohibition of the use of force (art. 2-4, the UN Charter), and the control and reduction of armaments.

However, national interests concerning the security of individual states are sometimes allowed to prevail over common interests in international society. Therefore, in terms

of common interests in peace and security, reality seems almost always to be far removed from ideals. Since the end of the Second World War, with the appearance and development of nuclear weapons and other weapons of mass destruction, no one can deny the idea that the maintenance of peace and security is a common or general interest for international society as a whole. For example, the article 2(4) of the UN charter provides that all member states shall refrain from the threat or use of force against the territorial integrity or political independence of any state. In the same way the prohibition of the threat and use of force is declared repeatedly by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States of 1970. But in reality the wars and disputes even after the Second World War have been too numerous to mention, such as Korean War, the Vietnam War, the Iran-Iraq War, the Falkland conflict, the American attack on Grenada, the Soviet invasion of Afghanistan, the recent War in the Gulf, and so on. As just mentioned, the principle of prohibition of the threat and use of force is rather easily violated. Moreover, we still cannot find effective measures against the recent outbreak of ethnic and regional strife which have occurred so often since the end of the Cold War. Thus, generally speaking, the realization of common interests in peace and security at general and universal level is still far from ideal.

(ii) The maintenance of international legal order in time of peace is also a common interest for all the states in the world. Observance of international conventional and customary law in the domains of territory, treaties, diplomatic relations, international responsibility, international trade, etc. is a common interest among states.

2. *Common Interests for Humanity*[10]

In international society there are some kinds of interests which directly concern individual persons without the intermediation of the state. These are common interests in the universal human community. One is the protection of humanitarian law or the law of human rights. Another is the protection of the environment of the earth, which recently become a serious problem.

a. Common Interests in Humanitarian Law and the Law of Human Rights

Humanitarian law was originally derived from the international law of warfare. The first piece of legislation is supposed to be the Geneva Convention of 1864 for the Amelioration of the Condition of Soldiers in Armies in the Field, which was adopted under the aegis of Switzerland at the initiative of Henri Dunant, the founder of the International Committee of the Red Cross. This was followed by the Declaration of St. Petersburg of 1868 prohibiting the use of certain projectiles. And after the two Hague Peace Conferences many declarations and conventions concerning humanitarian law were adopted. These were based upon certain fundamental principles, as follows: 1. that even during war the conduct

[10] It seems that H. Grotius had already distinguished the concept of common interests for humanity from common interests among states. Cf. Hugues Grotius (traduit par Jean Barbeyrac), LE DROIT DE LA GUERRE ET DE LA PAIX, Tome premier, Pierre de Coup, Amsterdam 1724, (Publication de l'Université de Caen, Centre de Philosophie politique et juridique 1984), Discours Preliminaire §XVII & §XVIII, p. 12.

of belligerents is subject to the directives of international regulations, violation of which is not justified even by military necessity; 2. that unnecessary suffering and superfluous injury must be avoided; 3. that a distinction must be maintained between belligerents and non-belligerents, between combatants and non-combatants, and between military and non-military targets; and 4. that the law of humanity also applies in cases not regulated by conventional law.

However, since the First World War these principles have been challenged seriously by developments in weapons technology and the advent of total warfare with many traditional rules of war being disregarded or rendered obsolete. Furthermore, the era after the Second World War has witnessed further rapid high-technology advances in the art of war, which have made the distinction between armed forces and civilian population virtually meaningless and especially since the end of the cold war in particular the frequent occurrence of ethnic and regional strife has made the protection of humanitarian law more complicated, as in Bosnia-Herzegovina. In this field four Geneva Conventions and two Protocols were been already concluded in 1949, but the enforcement of these Conventions is not yet ensured.

On the other hand, as to the protection of humanitarian law in time of peace in general, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted at the third General Assembly of the UN in 1948 and has come in effect since 1952. This convention is an example of the growing area of international criminal law which directly affects individuals rather than states.[11] But the Convention was weakened by the lack of international enforcement machinery, failure to create an international criminal court to hear such cases, and by the number of reservations attached by states to their acceptance of the Convention. Therefore, here too, the ideal of the protection of humanitarian law is still very far removed from the reality.[12]

The protection of human rights in a broad sense since the Second World War has also attracted the efforts of the UN and various regional organizations. In 1948 the third General Assembly adopted a Universal Declaration of Human Rights and in 1966 the 22nd GA adopted also two International Conventions on Human Rights by which the UN established several Committees on Human Rights. But they practically lack real powers and must rely upon the publicity generated by their findings. Despite the disappointing results of their efforts it can be said that serious attention to the protection of human rights has been made and many conventions and treaties have been concluded in this field up to now.[13]

b. Common Interests in the Protection of the Environment of the Earth

Since the adoption of the Declaration on the Human Environment in Stockholm in

[11] Piracy has been also for centuries a crime under customary law of nations, and a pirate has always been considered an outlaw and "enemy of mankind" *(hostis humani generis)*. R. Jennings, *op. cit.*, p. 746.

[12] But it is remarkable that the UN has recently decided to organise, an international criminal court in connection with the violation of humanitarian law in Vosnia-Herzegovina.

[13] Concerning protection of human rights in general the European system within the framework of the European Convention on Human Rights is an unique and practical one to the other international system of protection of human rights. Cf. Mark W. Janis & Richard S. Kay, *European Human Rights Law*, The University of Connecticut Law School Foundation Press 1990. On the international system of protection of human rights, see, Karel Vasak (ed.), *The international dimensions of human rights*, Vol. 1 & 2, Greenwood Press/UNESCO 1982.

1972 the protection of the human environment and the global environment has come to be considered a common interest of all[5]mankind. In particular, the Earth Summit (UN Conference on Environment and Development) was held last year (1992) in Rio de Janeiro and Agenda 21 on the Sustainable Development was adopted.[14] This indicates that the problems of the protection of the ozone layer, the tropical forests, and the prevention of greenhouse effects on the earth, etc. are vital matters which will influence the next generation of the earth.

3. *Vital Interests for Humanity*

As mentioned above, we can distinguish two categories of common interests in international society. One is common interests among states, the other is the common interests of humanity. These two categories of common interests are also divisible into another two categories: vital interests and non-vital interests.

Vital interests mean the interests which is indispensable to the existence of human beings, whether they be common interests among states or common interests of humanity. In the category of common interests among states, we might mention the maintenance of peace by means of the prohibition of the threat or use of force, the prohibition of agression, and the non-proliferation and abolition of nuclear weapons. Common interests of humanity include the protection of humanitarian law and the protection of the environment of the earth.

Since the vital interests are indispensable to the existence of mankind, violation against this category of interests should constitute international crimes punishable under the name of international society as a whole i.e. *the international community*.[15] On the other hand,

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[14] In detail see, Stanley P. Johnson (Introduction and Commentary), The Earth Summit. The United Nations Conference on Environment and Development (UNCED), Graham & Trotmant/Martinus Nijhoff 1993.

[15] The concept of the vital interests in the international community is not yet clearly recognized. But no one can deny that maintenance of peace, protection of humanitarian law and protection of the earth's environment are vital interests for humanity. In fact Art. 19 of the International Law Commission Provisional Draft on State Responsibility provides:

2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole constitutes an international crime.
3. Subject to paragraph 2 and on the basis of the rules of international law in force, an international crime may result, *inter alia* from:
   (a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
   (b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;
   (c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and *apartheid;*
   (d) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the sea.

Yearbook of the International Law Commission, 1976, vol. II, Part Two, pp. 95–122.

On the other hand, Prof. Brownlie criticized on this article 19 as follows: It is very doubtful if the evidence adduced by the Rapporteur gives more than very equivocal support for the existence of the category as posi-

according to the degree of emergency, the vital interests may be distinguished from the non-vital interests.

IV. *Means of Realization of Common Interests*

1. *Means of Realization of Common Interests in Particular International Law*

This category of common interests concerns the coordination of mutual jurisdictions or the realization of positive interests in bilateral relations or regional relations among states. Traditionally, the main functions of the positive international law have been to coordinate common interests concerning security, demarcation of national borders, political, economic, and other mutual cooperation, by means of diplomatic negotiation and conclusion of agreements in the traditional way.

But the most recent remarkable case in this domain is, needless to say, the means of realizing mutual economic and political common interests by way of the integration seen in Europe. The movements since the creation of the European Coal and Steel Community in 1952 until the recent conclusion of the Treaty of Maastricht on the constitution of the European Union constitute an unprecedented historical experiment because states which had struggled with each other for centuries decided to try to unify themselves into a single community. We wonder why the European states decided to do this even if it meant limiting their sovereignty? Why does the United Kingdom, apprehensive of any limitations of sovereignty, not withdraw from the European Community? We imagine that the member states of the EC considered it much more profitable to stay within the Community than to leave it even if their sovereignty is limited. What, then, are the interests of the member states which can be obtained within the Community in compensation for the limitation of their sovereignty? Although this question needs further consideration, we will leave it here. *At any rate we can say that if there are some interests which are more profitable to states, it is not impossible for them to be willing to limit state sovereignty.*

2. *Means of Realization of Interests in General and Universal International Law (International Public Interests,* Jus Cogens *and Vital Interests): Functional Limitations in the System of the United Nations*

Problems of realizing this category of common interests are particularly related to the system of enforcement of international law in general. In comparison with the common interests in partciular international law, the character of which is rather concrete and limited,

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tive law. The present writer remains unconvinced of the practical utilitly of the concept of the criminal responsibility of States. It is rather a pity that the issue has been introduced into a set of article which are essentially directed to other problems. State responsibility as a matter of law, and in principle should be limited to the obligation to make reparation, to compensate. I. Brownlie, *System of the Law of Nations: State Responsibility*, Part I, 1983, p. 33.

the realization of common interests in general and universal international law is much more difficult because of its relatively wide and abstract character, except for the well-established international customary law.

At the present time the principal way of realizing the common interests in this category is mainly through the universal functions of the United Nations and the Specialized Agencies and their sub-organs, which were created just after the Second World War.

a. Differences in International Circumstances between 1945 and the Present

Here, we have to recognize that the fundamental differences exist in international circumstances between 1945 and the present.

i. The independence of Asian and African colonies and increase in the number of member states to the UN.
ii. The emergence of international bodies other than sovereign states, such as international organizations, non-governmental organizations (NGO), international political groups (e.g. the PLO), etc.
iii. The increasing economic differentials between industrialized states and non-industrialized states.
iv. The explosive increase of world population.
v. The urgent need to protect the global environment.
vi. The termination of the Cold War and intensification of ethnic and regional disputes.
vii. Remarkable progress in military technologies, etc.

b. The Universal and General Interests which the United Nations has to Confront and to Realize

Next, the universal and general interests which the United Nations must confront at the present and in the future may be enumerated as follows according to the degree of importance and urgency.

1) *Vital interests for humanity*
   i. Maintenance of peace and security by means of prohibition of use of force, including settlement of ethnic and regional disputes.
   ii. Protection of humanitarian law and fundamental human rights both in time of conflict and of peace, including settlement of food and population problems.
   iii. Protection of the global environment.
2) *Fundamental interests (jus cogens) in the international community*
   i. Maintenance of international legal order and rule of law.
   ii. Aid and development to developing countries in Asia and Africa.
3) *International public interests*
   i. Achievement of economic, monetary, industrial, technical, social, sanitary, cultural, scientific and educational cooperation.

c. The Results of the Functions of the United Nations and Their Limits

1) *The positive results of the functions of the UN since 1945*

Generally speaking, we can enumerate the following matters as positive results of the functions of the UN since its creation.

i. The prevention of a Third World War.
ii. The promotion of the independence of colonies.
iii. The codification of international law.
iv. The attempt at protecting international human rights.
v. The provision of a forum where even the third-world countries can express their opinions.
vi. Help in dealing with global problems such as population, the global environment, food and aid, etc.

2) *Reasons for functional limits in the UN*

Although there are the above-mentioned positive results, at the same time there exist several reasons for functional limits in the UN.

i. The existence of the power of veto of the permanent members of the Security Council, which can check matters against their interests. Needless to say, during the Cold War this system had paralyzed functions of the Security Council under Chapter 7 of the UN Charter. This system also makes it more difficult to ammend the UN Charter if it is against the interests of one of these states.
ii. Limitation of membership only to sovereign states. Since the Second World War there have emerged international bodies other than sovereign States, as mentioned earlier. In order for the universal functions to be carried out effectively, it is necessary for them to participate as quasi-regular members.
iii. On the other hand, since the creation of the UN the number of member states has increased more than three times and many organizations and sub-organs have been created, which causes the inefficiency of the functions of the UN.
iv. Weakness of financial basis. The financial basis of the UN has depended on contribution of member states and the sum total is not enough to cover all its functions at present. Above all it is always unstable because of nonpayment.
v. In the Charter of the UN there are some provisions which no longer function, like the ex-enemy clauses (art. 53 & 107) and clauses concerning international trusteeship (arts. 75–85).
vi. To the contrary, peace-keeping operations and peace-keeping forces, which have become the most important function at present, have no clear legal basis in the Charter.

V. *Conclusion: Reform within the Framework of the Present Charter or Creation of a New Global Organization for the Next Generation?*

1. *Proposals on Reform of the UN within the Framework of the Present Charter*

a. Some Proposals on Reform of the UN before the 1980's

Possible reform of the United Nations has been widely discussed from a variety of viewpoints ever since its inception. For example, F. O. Wilcox and C. M. Marcy, two Americans, wrote *Proposals for Changes in the United Nations* in 1955 (Brookings Institution). In this book they already proposed the total reform of the UN from multiple viewpoints. But in the early days, discussion concentrated mainly on problems relating to the veto power of permanent members of the Security Council. After that, there followed Researches on Reinforcement of Effectivity of UN functions by UNITAR in 1965, Proposals on Reform of the UN Systems of Aid and Development by R. Jackson in 1969,[16] and President Carter's Report on Reform and Restructuring of the UN System in 1978.[17]

b. Some Proposals on Reform of the UN after the 1980's

At the 40th General Assembly in 1985 the Japanese government proposed to reform the administrative and financial systems of the UN. Following the Japanese proposal a group of 18 high-level intergovernmental experts was organised and it delivered a Report on Efficiency of the Administrative and Financial Functioning of the UN in 1986, which proposed reform of the structural problems of the Secretariat, the personnel management and the budgetary and financial problems.[18] There were many other proposals and reports such as Norwegian Prime Minister Brundtland's Report on Environment and Development in 1986[19] and 37 Government Leaders' Report on the Stockholm Initiative on Global Security and Governance in 1991,[20] etc.

Needless to say, the most remarkable report was Secretary-General Boutros-Ghali's An Agenda for Peace in 1992. He proposed peace construction after the Cold War by means of preventive diplomacy with global watch and early warning, peace making with peaceful settlement of disputes (improvement of utilization of the ICJ) and peace enforcement unit, peace keeping and peace building. He also proposed in his report improvement

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[16] R. Jackson, *A study of the capacity of the United Nations development system*, UNDP/5, Geneva 1969, 2 vols.

[17] *The President's Report on Reform and Restructuring of the UN System*, Department of State Publication 8940, 1978.

[18] *Report on the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations*, GAOR 41st See, Supple. NO. 49 (A/41/49), 1986.

[19] Gro Brundtland (ed.), *World Commission on Environment and Development, Our Common Future*, Oxford University Press, London 1987.

[20] *Common Responsibliity in the 1990's: The Stockholm Initiative on Global Security Governance*, April 22, 1991.

of humanitarian aid, restructuring of the Security Council, cooperation with regional organisations and reinforcement of powers of the Secretary General.[21]

2. *Proposal on Creation of a New Global Organization*

In 1989 a French expert Maurice Bertrand published *The Third Generation World Organization* (UNITAR, Martinus Nijhoff Publishers).[22] In this book he proposed that the United Nations should be totally reorganized in order to create the Third Generation World Organization on the basis of the experiences of the UN. The main points that were proposed by Boutros-Ghali's Agenda for Peace were already indicated in his book. He also suggested the necessity of developing a World Constitution, because the institutional framework of the UN Charter and the basic instruments of the specialized agencies are now unfit for confronting the present serious global problems.

3. *Conclusion*

a. Necessity of Creating a New Global Organization

We are now in the last decade of the 20th century and are confronting a time of historical reform of the international political, economic and legal order. The characteristics of the world after the Cold War are not yet clear, but at least it seems that the days of hegemony by one or two superpowers were already over. The days called *pax britannica* or *pax americana* will not come again. *Pax japonica* will not come either. At present the United States remains the only superpower, but its status is not absolute because of its economic weakness.

For the time being, at least, the 5 permanent members of the Security Council and the G7 states, that is, a total of 9 States, the United States, Russia, China, the United Kingdom, France, Germany, Italy, Canada and Japan will practically lead the international political and economic order, being influenced by some regional organizations and groups, such as EC, NAFTA, ASEAN, etc.

The necessity of reconstructing the international legal order after the Cold War has been discussed above. What we must consider in this case are, firstly, how to recognize what common interests should be sought and realized, and secondly, to determine how they are to be realized. The common interests themselves have been classified above. Their realization in particular international law (in bilateral or regional relations among states) is achieved and enforced by bilateral treaties or regional organizations of cooperation or integration.

On the other hand, the realization of general and universal interests (international public interests, fundamental interests, vital interests) has been sought within the framework of the system of the United Nations, specialized agencies and its sub-organs by means of adoption of resolutions and multilateral agreements or treaties. We have already con-

[21] Boutros Boutros-Ghali, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping, Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992*, UN, New York 1992.

[22] Cf. Maurice Bertrand, *Refaire l'ONU: un programme pour la paix*, Edition Zoé, Geneve 1986.

sidered a balance sheet of functional results of the United Nations System. We consider that the present system of the UN has structural and functional restrictions which will prevent it from responding effectively to the new international circumstances after the Cold War and for the next century, which we have also mentioned above.

As for reformation of the UN, there have already been many projects within the framework of the present Charter. On this point too we consider that it is impossible for the UN to correspond effectively to the new international situation for the next generation and in the next century by reformation within the present Charter.

The Japanese government is at present trying to become one of the permanent members of the Security Council, and some governments have already received this favorably. But even if Japan and Germany do become permanent members, it will not be an effective change for responding to a new situation, but only reinforcement of the old system.

Our opinion is that the Japanese government should take the initiative to create a new global organization in a future perspective to respond the new situation of the 21st century as Mr. Maurice Bertrand proposed. Although he said that it is still premature to propose to create a new global organization at this moment, but we think that it is already time to prepare to create such an organization before the next century.

In this century after the first World War with about 8 million of victims the League of Nations were created in 1920 and after the Second World War with about 52 million of victims the United Nations was created in 1945. In 1991 with the destruction of the Soviet Union, the Cold War between East and West terminated. Even though a Third World War has so far been averted, for a number of reasons, there are nevertheless at the present over 18 million of refugees and over 70 million of victims in regional disputes since 1945. We are, moreover, inevitably confronted with a variety of serious global problems such as settlement of the frequent occurrence of ethnic and regional disputes, settlement of problems of refugees, the explosive increase of world population, food, energy and AIDS, protection of the earth's environment, and maintenance of sustainable development, etc.

In these circumstances the above-mentioned 9 states should take the initiative to call a world conference to prepare for and to create a new global organization by the end of this century.

b. Concluding Remarks

By the initiative of the Secretary General a Security Council Summit and Earth Summit were already held in 1992. This year the Second World Conference on Human Rights has been held in Vienna. Next year, the World Conference on Population and Development will be held and in 1995 the World Conference on Women. Moreover, a World Summit for Social Development has already been proposed. As for the violation of human rights in Bosnia-Herzegovina, it has been decided to organize an international criminal court. Considering such trend it is not strange to propose to call a World Conference to create a new global organization which can deal with all these problems as a whole.

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