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EXCHANGE OF VIEWS
TOWARD PUBLIC ORDER OF THE WORLD COMMUNITY

From ZENGO OHIRA* to Dr. MYRES S. McDOUGAL**

It is a great honor for me to ask you questions on the problem of world peace. Great are my expectations of receiving most stimulating answers because of our friendship fostered ever since I visited you at Yale in the winter of 1955.

My first question is, from the standpoint of the policy oriented jurisprudence, how do you justify the "Cold War" status, which has been introduced since after the World War II. The confrontation between the U.S. and the U.S.S.R. created the so-called polarization phenomenon. On one hand it is the conflict based on ideological differences and on the other it is the military strategic gamemanship of mutual deterrence policy by means of nuclear weapons. The problem of how to regard the Cold War is related to the problem of handling peaceful coexistence, peaceful competition and transition without revolution. This is the basic problem which has not changed even by Mr. Kennedy's death nor by President Johnson's entrance on the scene.

The Cuban crisis of October, 1962, was overcome by the compromise between Kennedy and Khrushchev following the dictates of reason, and peace was ensured out of the verge of war. Since then, a series of measures, such as the completion of Washington-Moskva direct cable, the conclusion of the Test Ban Treaty, and the U.N. General Assembly resolution against launching nuclear head missiles into outer space, were taken so that the tension of the Cold War has been eased little by little. However, it is certainly too soon yet to take an optimistic view about the Cold War being slackened, at this time when the confrontation between the U.S. and the U.S.S.R. has not changed structurally.

As a jurist who wishes for a secure establishment of a peaceful public order, I think it most desirable that a way should be opened between the U.S. and the U.S.S.R. for persuasion and agreement. Though one keeps on having an idealistic anticipation of the World Government, one must face the actuality of the Cold War. Therefore, I would have your view as to how best to bring the present state of the Cold War closer to the way of persuasion and agreement, and also as to where an outlet can be found. Notwithstanding the recent outward phenomena toward the mitigation of the Cold War, the U.S. has not changed her individual as well as collective defense set up but rather put her efforts to modernize her defense force. It is a well known fact before us that the first objective of the U.S. armament policy is peace and not war. However, doesn't the two faced policy of defense and negotiation put

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rather a limitation on negotiation? Then how do you justify, under the World Community perspective, the global defense increase policy of your government?

We must admit that the armed peace in terms of an individual as well as collective self-defense policy, a necessary result of the Cold War, splits the world into the multiple groups of antagonistic communities, to the detriment of our goal. Not being satisfied with this lowest state of the world public order, isn't it desirable to make efforts to ease the tension of the Cold War, by enlarging collective defense system and also by strengthening world peace organizations? Because our Constitution in Article 9 prescribes the renunciation of war, the question of national defense is regarded lightly in Japan by the general public, and there is a trend of making light of the community security. I should like to ask your opinion particularly on this point. It is clear that there is no specific nor effective panacea for easing the Cold War but I believe that efforts should be made towards the establishment of the maximum rule of international law by strengthening the international peace organization. Therefore please give us your opinions on the relations between universal and regional orders for maintaining peace.

Next is the problem of disarmament. Since the formation of the League of Nations there have been three machineries set, namely, disarmament, peaceful solution of disputes and collective security, for maintaining international peace and stability. Collective security is a mechanism which makes war illegal and unites its members in order to defend themselves against aggression. The lawyers world over have concentrated their efforts for the movement of outlawing war for these forty odd years. Also as to the peaceful settlement of disputes, international lawyers have tackled with this problem with zeal, continuously trying to adjust the differences between nations smoothly under the rule of law. Thirdly, since the establishment of the U.N., the problem of the global control of atomic power has been discussed by the international experts enthusiastically.

The problem of disarmament, one of the three posts supporting the world peace, is influential enough even to decide the fate of mankind, on which we, the students of law, must put our foremost effort. Already it seems that international lawyers have confronted the problem of arms-control or disarmament by approaching it indirectly, by means such as of the nuclear test ban, demilitarization of the South Pole area, or the regulations for the outer space. However, isn't it necessary to put our major effort on straightening the way for overall regulations of the force itself and not merely establishing the "minimum order" for the use of force? The negative attitude such as to take up disarmament as a problem of international law only after the conclusion of the disarmament treaty is not worthy of the international lawyers who feel responsible for promoting the world order.

I know that in your universities and other institutes researches on disarmament and arms-control are quite actively carried on and many works on the subject are published. Nevertheless, the studies hitherto made by the specialists in the fields of military science and international politics seem to provide less creative pictures of policy making and lack value consciousness being too faithful in their analysis of the present situation. Therefore, taking this opportunity I should like to ask your opinion on the policy orientation on arms-control and disarmament.

World peace today is the one of armed peace and it is not governed by law. The sense of trust on the present day peace is kept mainly by "mutual deterrence" built upon the balance of nuclear power. The deterrence is not a defense against the already started attack.
It is almost impossible to defend ourselves from nuclear attacks. By deterrence is meant making other party refrain from attacking by letting them rationally calculate the possible damage, having well prepared for reprisals against an attack, and then making it known that the other party cannot begin an attack without taking into account this reprisal. Under this deterrence system, the counterattack against invasion must be prompt and effective. Potential invaders must know beforehand that the counterattack must come immediately and effectively. Even though one receives initial blow by a surprise attack, some nuclear power for reprisal must not be destroyed. The invulnerable system of reprisals must be maintained in order to strike back the second blow. To keep firmly the capacity for striking back the attack in spite of the other party's initial blow is the basic factor for the establishment of the power of deterrence which is caused by the fear of retaliation by nuclear weapons.

Quite unstable is the state of balance of the mutual deterrence based on the power of nuclear retaliation. It is considered that as far as both parties retain rational and logical judgment, the all out war will not start because of the balance of fear of nuclear weapons. However, this balance of fear may well be lost by a change in the military state of either party. Especially when mutual deterrence is put in motion, it means that its purpose has failed and that all is lost. Mutual deterrence exists under the condition that the button can be pushed at any time. In consequence, there is no guarantee for the button to remain untouched. But war is no more considered as a means of national policy.

Therefore, since the use of nuclear weapons is no more possible on either side, isn't it necessary for mankind to make it his new problem to find a way to put the nuclear weapons under international control and adopt the policy of absolute abolishment of their national ownership?

Lastly, my question is on the problem of China. The U.S. holds tremendous influences over Asia, which means she owes heavy responsibility for its future. The Korean War which started in 1950 fixed the political state of affairs in Asia as a whole, and the U.S. dispatch of troops and fleets contributed considerably for the regional peace and security. The talk at Camp David in 1959 and the Cuban settlement in 1962 irritated the Government at Peking so that the confrontation between the U.S.S.R. and red China has greatly increased in intensity.

It is generally considered that, since the Korean War, the U.S. has kept her national policy of “containment” against China Mainland. She will strengthen this policy further as the disputes between the U.S.S.R. and China become more intense. About the problem of the admission of China Mainland to the U.N. membership, also, she has not changed her policy, having given Taiwan the right of representation all along. It is not likely for her to change her national policy in a short time. However, the policy of keeping China outside of the International Community, thus letting her harden her foreign policy, seems unwise from every viewpoint. There would be no justification, under our universalism, to leave China, who controls the continent having the population of more than 650,000,000, unrepresented in the U.N.

In order to promote world peace, it is necessary to deepen the mutual understanding between peoples. Accordingly, to continue such “containment” policy against China Mainland is not only ineffective but seems to drive its own purpose. The human sacrifice caused by the Korean War and the moral responsibility toward Taiwan have certainly meant a limitation on the U.S. policy. Therefore, wouldn't it be wiser to give China her citizenship
in the World Community, setting at the same time rules for her international behavior and putting her under observation of the peoples of the world? So far, from the standpoint of international law it has not been possible to enforce effectively the regulations on her of the Test Ban Treaty and disarmament agreements. Yet, if we keep on having her isolated, her foreign policy will be stiffened till her neighbors in Asia will be exposed to danger. The policy of "containment" against China Mainland will not be successful in the long run. At least we hope that the U.S. will respect the freedom of our promoting trade relations with China. We Japanese deeply lament President Kennedy's death and are quite concerned with the development of the world situation. I should appreciate it if you would tell me the direction of the policy which is in your mind for strengthening the International Community.

From Myres S. McDougal to Dr. Zengo Ohira

Like many others who aspire to identify with the whole of mankind, rather than with particular groups only, I share your overriding goal of a comprehensive, peaceful world public order maintained by a genuine international law—an international law which both safeguards the independence and security of all communities and promotes the human dignity values of all peoples.

The hard conditions under which we must pursue these goals are, however, those of a bitterly disunited world arena in which different groups of states demand very different comprehensive world public orders and brandish in support of their demands weapons of hitherto unimaginable destructiveness. You rightly assert that the United States and the U.S.S.R. directly confront each other in basic world order goals. Despite all its mistakes in particular decisions, the United States is generally and consistently dedicated to the goal we share of a pluralistic world order of freedom, security, and abundance. The Communist blocs, both Russian and Chinese, in contrast, by their insistence upon sacred "wars of liberation" and by their imperialistic practices deny even the indispensable principle of any community order—that unauthorized force and coercion are not to be used for expansion and self-aggrandizement. By the new, distorted definitions which they give to the concepts of aggression, intervention, sovereignty, equality, and so on, the Communists make clear that by "peaceful coexistence" they do not mean genuine peaceful cooperation. The much-heralded "principles of peaceful coexistence" are not, thus, the expressions of a genuine international law designed to protect the common interests of all peoples in a pluralistic arena, but rather an ideological tactic intended to confuse the proponents of a free society and to further the establishment of a centralized monolithic, totalitarian world public order.

Under such conditions, could it be rational for the United States, or any other community desiring to remain free, to do other than act upon the assumption, the so-called "Cold War" assumption, that the Communists really do seek to dominate the world? Can we afford to do other than employ every resource and every instrumentality at our disposal in defense of a free world public order?

The most difficult task which today confronts the free world community is of course that of clarifying, under the hard conditions described above, the immediate measures in policy which will best secure our existing freedoms and promote the eventual movement of the whole of mankind toward a more comprehensive freedom. I cannot believe that either
unqualified disarmament or the unconditioned admission of Communist China to the United Nations can now be among these measures.

First, as to disarmament. As grievous as our present dangers are, any reduction in armaments or defense efforts could, in the absence of appropriate guaranties, increase our dangers by improving the relative power position of the Communists. It could scarcely promote a free world public order for the principal proponents of that order to bare their breasts before antagonists explicitly avowing an intent to destroy that order. Who can guarantee that no one will push the button? The rationality of arms control measures can only be a function of a much more comprehensive community sanctioning process. Pending general community control of major weapons, particular states can scarcely be expected not to be concerned for their own defense.

Second, as to Communist China. The admission of a state to membership in international organizations and to continuous communication, through diplomatic relations, with other states greatly enhances the effective power of that state. Though our ultimate goal must of course be universalism, in the sense of the fullest participation by all peoples in the processes by which they are governed or affected, it does not necessarily follow that the immediate and unconditioned admission of Communist China to the United Nations would serve this goal. By her attacks upon her neighbors—Korea, Taiwan, Tibet, India, and so on—Communist China has demonstrated that she does not accept the most basic principle of the United Nations Charter that violence and coercion are not to be employed as instruments of expansion. The gains to be achieved by her immediate admission to the United Nations would appear to be problematical: can there be any assurance that such admission would bring her under new community control and that she would responsibly participate in negotiations for disarmament and other effective sanctioning measures, such as the extension of the scope of the Test Ban Treaty? The probable losses from her immediate admission to the United Nations would appear to be more certain: the effective functioning of the United Nations might be greatly impeded by the participation of a powerful member not genuinely accepting its basic policies; the small states upon Communist China's borders, and especially Taiwan, might have even their present security diminished; millions of overseas Chinese might be embarrassed by the alternatives of disloyalty to the mainland or of subversion in their adopted countries; and vast new areas of the world might be made more readily accessible to the most militant contemporary agents of Communism.

I make no pretense of having an easy, affirmative answer to your question about what immediate measures offer most promise for moving the world community from its present precarious state toward a comprehensive public order of maximum persuasion and minimum coercion. We have already in the United Nations Charter and other authoritative pronouncements the absolute prohibition upon the use of unauthorized force which you demand. Similarly, the recent revolution in the expectations of much of the world's population has added millions of new voices to the historic demand for an optimum order of human dignity, which seeks the greatest possible production and widest possible sharing of all values. What is still missing are the predispositions of the effective elites of the world to employ their power, authoritative and other, to put the prescriptions of the Charter into controlling practice and thus establish the necessary conditions for the peaceful, cooperative pursuit of all values. The postulate derived from psychology that all men act to maximize their values does, however, give us some hope that the predispositions of the effective elites of the world can be
appropriately changed. What is needed is to make them see that in the contemporary interdependent world they have more to gain and less to lose by genuine peaceful cooperation than by taking to weapons, atomic or other, in unauthorized coercion. The new knowledge about man's nature being revealed by the behavioral sciences and the rapidly developing technology of communication, now augmented by access to outer space, may serve to increase the possibility that men of goodwill may be persuasive before it is too late. The contribution which responsible scholars in international law can make is to expand the resources which they devote to realistic inquiry about the conditions of comprehensive freedom, security, and abundance and to communicate their findings to every accessible audience, official and unofficial. It is in modest discharge of this responsibility that I hope our exchange of views may serve a useful purpose.