

I suspect that one of the reasons you invited me today was that I might at least remember perspectives which would be neither American nor of those in the Group of 77. Now, I returned to Czechoslovakia after 22 years of absence in 1990, and I concluded that I was really American rather than Czech, but nevertheless I will try.

This is my third visit to the University of Georgia Law School since I taught here in the 1970s, but this is my first visit when Dean Rusk is not around to chat with. The topic of this colloquium reminded me of one of my early discussions with him in the mid 1970s about the Middle East and particularly Jerusalem. Dean Rusk suggested that there are conflicts and problems which must be left to the succeeding generations to solve. One day, he believed, an agreement would be reached which would appear to be unworkable, but which would end the mindset of inevitability of armed conflict and set the stage for the resolution of conflicts which sometimes appear to be intractable. In other words, Dean Rusk believed that there were problems which did not lend themselves to quick solutions, certainly not the solutions by armed intervention.

In a sense, Dean Rusk talked about region building, or nation building, as a very slow process, and it seems to me that one of the key issues for the United Nations and the world community is to separate conflicts which should be subject to long term solutions, to patient and persistent diplomacy, from situations which require immediate and forceful intervention to fulfill the promise of collective security.

I think that conflicts which were the intended subject of Chapter VII of the U.N. Charter still exist. Iraq and Kuwait, of course, represent a good example of the existence of such conflicts. I have a certain fear regarding the current discussion on "peacemaking" as opposed to "peacekeeping" in the current ideas of nation building. My fear is that the proposition of peacekeeping, one of the original goals of the United Nations in 1945, may be somewhat lost, not just in ideas about peacemaking, but simply in approaches to current problems along the lines of peacemaking or nation building.

For instance, I am not sure that I agree with Professor Kirgis that the Security Council did not tell us what the international peace implications

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were in case of Haiti. Now, I am looking at the Security Council's Resolution 841 (1993), and there I read that the Security Council is also recalling the statement of February 23, 1993, in which the Council noted with concern the incidence of humanitarian crises, including mild displacements of population or aggregating threats to international peace and security. *Deploring the fact that despite the efforts of the International Community, the legitimate government of President Jean Bertrand Aristide has not been reinstated.* There you have it. Whether or not such concerns are the proper subject of intervention under Chapter VII is quite a different matter.

When I have the image of those Haitians huddling in those makeshift boats toward the United States, I could ask with a heavy dose of sarcasm whether their arrival in the U.S. represented a "threat to the peace, breach of the peace or act of aggression." What I am afraid of is that the tremendously expansive notion of collective security, implicit in peacemaking, nation building, and intervention for democracy, particularly in the Security Council's decision making under Chapter VII, can drown the original purpose of the United Nations, long before any consensus on new issues for collective intervention can be reached. The original purpose, or at least one of the main purposes, was the security of nations large and small (of course, 'security' being security of independent, small, nations in particular) which perhaps now the United Nations has some opportunity to safeguard.

If you look, for instance, at the effort of the Central European countries—the Czech Republic, Poland, Hungary, and Slovakia—to join NATO, and if you look at the situation of the Baltic republics, or perhaps some other of those states which became members of the United Nations very quickly, such as the former republics of Yugoslavia and the Soviet Union, I suggest that the original idea of collective security remains alive and necessary.

The resurgence of nationalism in both the industrialized world and other countries suggests that for most members of the international community, the proposition that international law must be proven rather than presumed, that international law must be made, rather than functionally created along the lines of United States constitutional law, remains viable. The basic ideas of non-intervention in internal affairs and of independence of states should be kept in mind by the United Nations and should not be drowned in the ideas of peacemaking and nation building.

When I look back on 1990 and subsequent events I think about Fukuyama's article entitled "The End of History" and his suggestion that liberal democracy has triumphed, that, playing on the Marxist concept of history,

liberal democracy is the culmination of the development of mankind. Of course, in terms of the international community, perhaps in the mindset of those who are a little bit more futuristic than I would like, it means simply that the United Nations, led by the United States, will assume a proactive role and arrange the way the world looks, and the way it naturally should look. I am not sure about that, and I do not see much evidence that most nations are ready to subscribe to this idea.

In the 1960s when I was in Czechoslovakia, I participated in negotiations involving what was originally a Czechoslovak initiative, and what resulted in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Perhaps, because of that experience, after 1990 I revisited all kinds of United Nations General Assembly resolutions which had unmistakable imprints of Soviet influence. When doing so, and as I was invited to this colloquium, I decided, along the lines of my remarks, to try some reformation of the definition of aggression, which would facilitate consensus on maintenance of collective security and which would not contain escape clauses designed to justify military intervention.

Article 1: Aggression is the first attack against a territory of a state, by irregular or regular armed forces of another state, or irregular armed forces sponsored by the aggressor state.

Article 2: In the event an act of aggression occurs against a member of the United Nations, the Security Council shall, at the request of the government of the victim state, declare that an act of aggression has occurred, and shall declare that the United Nations are at war with the aggressor state.

Article 3: Upon the declaration of war, the Security Council shall use, or shall authorize the use of armed forces against the aggressor state to restore the territorial integrity and political independence of the victim state.

As you can see, this is a fairly minimalist concept. In a sense, this is, I believe, the original concept for collective security which was built on the ashes of the League of Nations Covenant, on the ashes of such documents as the "Treaties of Locarno" for instance, and a variety of self-defense treaties before World War II. Of course, in a sense, it is reflected in the Charter.

Secondly, you can see that there is a significant departure from the current definition of aggression because I would propose that the decision of the

Security Council be made only in case any aggression occurs, first of all against the territory of the victim state, but also only if the victim state is a member of the United Nations. I consider this to be extremely important in current circumstances because membership in the United Nations certainly creates a recognition of a state which, at least theoretically, divorces that recognition from premature recognition by some states or groups of states.

Premature recognition, I think, appeared for instance in the case of Slovenia or Croatia, and probably in Bosnia; that premature recognition probably contributed significantly to the current conflicts in those areas. Of course, quite apart from the situation in former Yugoslavia, I am thinking about the territory which was once the Soviet Union, and I am thinking about the problems of minorities. I do not think that it is in the interest of the international community, or the United Nations, or any particular state, to suggest that any minority which occupies any particular territory simply has a right to statehood. Therefore, my proposal would eliminate essentially the current causes of civil unrest from any kind of protection of the international community by *military* intervention.

My thinking is premised on two propositions. The first one is that there is no evidence which would suggest that independent nation states are no longer the cornerstone of the community of nations. If anything, the aftermath of the demise of the Soviet empire has demonstrated that the idea of a nation state is inherent to people.

The second proposition is that nation states cannot be "built" by foreign interventions. To build a nation state takes time, and, undoubtedly due to human imperfections, has usually been accompanied by international conflicts. In fact, we are not really talking about nation building. We are talking about nation state rebuilding. That is a concept open to interventions motivated by efforts to install governments beholden to the intervenor, that is a concept inimical to independence of nation states.

I am not, of course, oblivious to the need for an international response to massive violations of human rights, or to desperate needs of people caused by such violations. Humanitarian aid, however, represents a question of the will of industrialized nations to fund relief efforts, rather than an issue of military interventions. Massive human rights violations may justify a host of collective responses. While humanitarian intervention should not be dismissed on account of the prohibition of use of force, it should also not be read into Chapter VII of the Charter, unless the conditions of Chapter VII exist, including genuine internationalization of the problem. Since I approached this colloquium as a speaker with some experience in living in

a small country, I must necessarily conclude with the thought that the history of mankind shows that people of nation states in which others *feel comfortable* to intervene with armed force do not have lasting tolerance to such interventions.

