

SINO-SOVIET DISPUTE OVER MILITARY AND WORLD REVOLUTION

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The breakup of the Communist camp as a result of the Sino-Soviet dispute in the 1960's has been one of the most striking developments in our recent history. Lewis Coser has described this breakup as "an event of world historic importance that may well rank with such crucial turning points as the break between the Western and Eastern Church, the Reformation, or the halting of the Islamic onslaught on Western Europe in the eighth century."¹

There is no general agreement among scholars as to the origins of the dispute. Some trace it back to the early period of the revolutionary struggle of the 1920's when the Chinese appeared to reject Soviet leadership as well as the Soviet strategy of revolution; others maintain that the dispute began in secret after the death of Stalin, intensifying during 1956 and 1957, when Khrushchev denounced Stalin and advocated the peaceful transition to socialism and the policy of "peaceful coexistence," and culminating in a public break in the early 1960's.²

While there may have been disagreement as to the origin of the Sino-Soviet conflict, the dispute nevertheless is real and involves two primary sources of conflict: (1) nationalism and the general incompatibility of the nations' respective national interests and (2) ideology and the general disagreement concerning the theory and practice of Marxism-Leninism. Each of these two issues reflects different historical traditions, cultural legacies, current world distribution of power, and also different stages of development of communism in each of these states and different tactics and experiences in the conduct and achievement of revolutionary change. As Triska put it so aptly:

The issues between the USSR and Communist China stem from the facts that while one has had time to develop its economy, the other has not; one is being satiated, the other is hungry; one has arrived, the other has barely departed; one is accepted, whereas the other is still

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¹L. COSER, CONTINUITIES IN THE STUDY OF SOCIAL CONFLICT 226 (1967).

²See L. COSER, *supra* note 1, at 223-44; W. GRIFFITH, THE SINO-SOVIET RIFT 16 (1964); SOURCES IN MODERN EAST ASIAN HISTORY AND POLITICS 293-321 (T. McNelly ed. 1967); D. ZAGORIA, THE SINO-SOVIET CONFLICT: 1956-1961, at 42 (1962); Holst, *External Conflict and Internal Cohesion: The Sino-Soviet Case*, in COMMUNIST PARTY-STATES 337 (J. Triska ed. 1969).

rejected; one has matured, the other is an upstart; one shows healthy respect for the present order in the world which it has helped establish, the other challenges it³

Given these differences in the social, political, military, and economic achievements of the two nations, it is natural to expect that serious, ideological differences will develop in three areas: (1) organization, decision-making, and leadership of the world Communist movement, (2) interfraternal relations within the Communist camp with respect to the comradeship, economic and military assistance, and the degree of independence and interdependence among the different Communist party states, and (3) the question of peaceful coexistence and nonpeaceful transition to socialism and the role of violence and armed struggle in the achievement of world revolution.⁴

In this paper we shall be concerned mainly with the last of these three doctrinal issues. Our purpose will be to suggest at least a framework for more ordered thinking on the relationship between law and minimum world order and social change in the context of the Sino-Soviet dispute. The primary question to be answered is: What can be done to promote collaborative tendencies between human systems and subsystems of government and to reduce the tendency towards violent competition, thereby creating the conditions necessary for law to function as a restrainer of force in international affairs?

REVOLUTIONARY IDEOLOGY: SUBSTANCE AND PROCESS

Before discussing the nature of the Sino-Soviet ideological dispute, it is essential to develop a common understanding as to the meaning, structure, and process of revolutionary ideologies. As used here a revolutionary ideology may be defined as a systematic set of ideas with action consequences which

define a man's new position in the world (his relation to life, society, history), the ultimate nature of society, the meaning, the purpose, and the general order which determine the course of history . . . to transform the world into a way of life that implements itself in a new society in which every cultural phenomenon is molded in terms of their image of man and vision of history.⁵

³J. TRISKA & D. FINLEY, SOVIET FOREIGN POLICY 19 (1968).

⁴See A. GYORGY & G. BLACKWOOD, IDEOLOGIES IN WORLD AFFAIRS 126-28 (1967); Scalapino, *Communism in Asia: Toward a Cooperative Analysis*, in THE COMMUNIST REVOLUTION IN ASIA nn, 42-43 (R. Scalapino ed. 1965).

⁵Ismael, *Development: A Process of Social Change and Revolutionary Transition: The Theory of Nadim Bitar*, 25 MID. E.J. 91, 92-93 (1971).

Hence, one of the most important properties of revolutionary ideology is that it provides the people and organizations that adhere to it a unity to their ideas.

Ideologies reflect a dichotomous image of the world. The first image is one of the existential world, usually described in revolutionary terms as the world of tradition and routine. The second image is of the projected goal culture, the future world of bliss.⁶ These images make up what may be called the structure of ideology. They are the *doctrinal*, the “pure” manifestations of ideology containing “the conscious systematization to which the ideology aspires.”⁷

Ideologies also contemplate a process and a procedure by which doctrinal aspirations are to be attained—the vehicular or transfer culture by means of which the people may pass from the traditional to the modern, new order: the future bliss. This is the practical ideology, the rational instruments for action needed to transform the doctrinal or pure ideology into action. While pure ideologies and practical ideologies may be different, they are very closely related. Without pure ideology, the ideas of practical ideology cannot be legitimated. Without practical ideology, an organization or a people cannot transform its world view into consistent action.⁸

Hence, the relation between reality and ideology and between structure and process is dialectical. When the conditions which gave birth to specific revolutionary ideology are radically changed, the ideology itself must change or be totally destroyed. Since there is a direct relation between the structure of an ideology and its process, it follows that a change in the pure ideology will lead to a change in the practical ideology. Therefore, ideologies bear within them the seeds of their own transformation and negation. “They come into being, develop, change, achieve and exhaust themselves, decline and die,”⁹ for once they accomplish their goal culture, they lose their reason for existence, and new symbols and images take their place. This metamorphosis occurs particularly in the case of ideologies that have modernization and development as their goal. These ideologies, once successful, give way to the more generalized ideology of science and technology which is characterized by material abundance, rapid urbanization, educational facilities, military strength, and a social system that can constantly innovate with-

⁶Wallace, *Revitalization Movements in Development*, in *THE CHALLENGE OF DEVELOPMENT* 448 (R. Ward ed. 1967).

⁷F. SCHURMANN, *IDEOLOGY AND ORGANIZATION IN COMMUNIST CHINA* 21 (1966).

⁸*Id.* at 23.

⁹Ismael, *supra* note 5, at 94.

out falling apart. Technical and scientific ideologies are evolutionary and orderly while revolutionary ideologies are not. "In the first, technics are based on each other, they increase and multiply, and the law of their change is geometrical. In the second, we always face new beginnings, through a process of continual flux and through radically changed circumstances."¹⁰

Revolutionary ideologies are always accompanied by total conflict and violence, for revolutions usually seek to create a totally new order, and their ideology tends to express intense distinctions. Revolutionary ideology "tries to rearrange socio-cultural phenomena in its own image of man, society and history, and thereby rejects for its world everything which does not fit such a vision."¹¹ Rapid revolutionary change always produces tension since the transition may require the replacement of sacred codes of behavior by secular enlightenment in respect to guidance in human affairs.¹² In other words, revolutionary change becomes a process which operates under crisis circumstances; it becomes a type of warfare, the degree of which is determined by the magnitude of the change desired and by the speed with which the change is to be effected.

This dynamic phase is followed, however, by the transformation of revolutionary ideology into tradition. The ideology's functions, previously served by violence and the use of force, become establishmentarian. Indirect control rather than direct prohibition becomes possible.¹³ The institutionalization of a system of rewards and deprivations replaces the direct control promoted by terrorism and violence. In other words, coercion and the threat and use of force decline as cooperation among the participants in the new order increases.

It is in this context that we are now able to understand the differences between the Chinese and Russians on the issues of war and peace, as these differences seem to reflect different stages of their respective revolutionary accomplishments.

SINO-SOVIET DISPUTE OVER WAR AND PEACE ISSUES

In little over half a century since its uneasy beginning, the Soviet Union has developed into one of the great world powers. Its military strength, economic power, political suasion, and its level of technological achievement reflect the phenomenal achievements of its revolution.

¹⁰*Id.*

¹¹*Id.*

¹²See generally Spengler, *Theory, Ideology, Non-Economic Values, and Politico-Economic Development*, in TRADITION, VALUES AND SOCIO-ECONOMIC DEVELOPMENTS 1, 3 (J. Spengler & R. Braibanti eds. 1961).

¹³I. HOROWITZ, THREE WORLDS OF DEVELOPMENT 449 (1966).

Yet, having achieved this height of power and status, its revolutionary zeal has mellowed and moderated. A semblance of a balance between aspirations and achievement, between mobilization and institution-ization, has been reached, both at the national and international levels. The system has reached a takeoff-point, and a new attitude towards government, politics, law, and order has emerged. Politically and sociologically there has emerged a new style of Soviet behavior, a concern with maturity in human affairs. The Soviet Union has moved from "the adulation and adoration of the Stalin era, to the capricious and even boorish qualities of the Krushchev era[;] the new Soviet technical elite has had to wince, grin, and bear it. But with the Brezhnev-Kosygin regime, the term 'businesslike' has become the byword in Soviet political behavior."¹⁴ Or as described by Triska:

Conditions inside the Soviet Union have moderated Soviet attitudes abroad. Concepts of friend and foe, war and peace, victory and defeat have acquired new meanings. The Soviet Union now plays a vital part in a world balance of power which it helped establish and which it respects in its own way as much as its bourgeois partners do, even if that means the recognition of neutralism and neutrals (including Communist neutralism in Yugoslavia). The USSR has traveled a long way since 1917, is proud of its journey, and in many ways announces that it has "arrived". It is a powerful "have-nation", conscious that it has vested a great deal of its capital in what it has achieved in contrast to what it may achieve. It is unlikely today to take willingly any major risk which will endanger its present position in the world.¹⁵

Communist China in contrast to the U.S.S.R. is still in the primitive stage of accumulation, comparable to that of Russia in the 1920's, with a strong puritanical spirit and messianic features which marked the early years of the Bolshevik Revolutionaries. It is a have-not nation, not yet recognized by the world's greatest power or by the world community. Because it is a young nation, its leaders lack confidence and experience in the modern world setting. It is nevertheless impatient, revolutionary, and competitive; it is a nation with great potential and an awareness of its future role in the world.¹⁶

Unlike Russia, China can claim a rich past, though humiliated and destroyed by a series of wars perpetrated by the West. The impact of this tradition and its destruction is of singular importance to understanding China's history and its current ideological bent. It created

¹⁴*Id.* at 156.

¹⁵J. TRISKA & D. FINLEY, *supra* note 3, at 18.

¹⁶L. COSER, *supra* note 1, at 234-35.

Chinese nationalism out of Confucian culturalism. It . . . instilled in a proud and once powerful people the determination to end their country's status as a semi-colony and to achieve its recognition as a sovereign equal. The Chinese Communists drove to power by capturing this nationalist sentiment.¹⁷

Hence, China's unique Maoist ideology is not only peculiarly adapted to China's needs as a developing nation,

it is also in tune with the ideological needs of many members of the intelligentsia in the underdeveloped countries. It can hence serve the Chinese penetration of the world Communist movement, especially in the underdeveloped nations.¹⁸

These differences in levels of development and historical experience explain the different stand that each of these two giant Communist nations takes with respect to the use of force in the achievement of world revolutions and the support of national revolutionary movements. Unhappy with the Soviet line of peaceful transition to socialism, the Chinese in 1957 insisted that the use of violence is the only way to achieve the ultimate goal.

The bourgeoisie will not step down from the stage of history voluntarily. This is a universal law of class struggle. In no country should the proletariat and the Communist Party slacken their preparations for the revolution in any way. They must be prepared at all times to repulse counter-revolutionary attacks and, at the critical juncture of the revolution when the working class is seizing state power, to overthrow the bourgeoisie by armed force if it uses armed force to suppress the people's revolution (generally speaking, it is inevitable that the bourgeoisie will do so).

In the present situation of the international Communist movement, it is advantageous from the point of view of tactics to refer to the desire for peaceful transition. But it would be inappropriate to overemphasize the possibility of peaceful transition.¹⁹

By 1965 the issues of peace and war were more sharply defined. Lin Piao, the Minister of National Defense, stated the argument against peaceful transition and the Russian policy of peaceful coexistence in

¹⁷Cohen, *Chinese Attitudes Toward International Law—and Our Own*, 1967 A.S.I.L. PROCEEDINGS 108, 110.

¹⁸L. COSER, *supra* note 1, at 234.

¹⁹Editorial Departments of *Renmin Ribao* (People's Daily) and *Hongqi* (Red Flag), *The Origin and Development of the Differences Between the Leadership of the CPSU and Ourselves—Comment on the Open Letter of the Central Committee of the CPSU 58-62* (1963), reprinted in SOURCES IN MODERN EAST ASIAN HISTORY AND POLITICS, *supra* note 2, at 301-02.

detail.²⁰ He charged the Russians with betraying the revolutionary peoples. In differentiating between the Russian and the Chinese revolutions, he stressed their distinguishing characteristics. Although both revolutions were led by the working class with Marxist-Leninist parties as the nucleus, the Russian revolution took place in imperialist Russia, while the Chinese revolution broke out in semicolonial, semifeudal China. The October Revolution was an urban revolution, while the Chinese revolution was a rural one where the Communists won nationwide victory through the conquest of the hinterland and the ultimate encirclement of the cities. This rich experience of China, it is argued, should become the model for all the countries of Asia, Africa, and Latin America. To quote Lin Piao:

It must be emphasized that Comrade Mao Tse-tung's theory of the establishment of rural revolutionary base areas and the encirclement of the cities from the countryside is of outstanding and universal practical importance for the present revolutionary struggles of all the oppressed nations and peoples, and particularly for the revolutionary struggles of all oppressed nations and peoples of Asia, Africa, and Latin America against imperialism and its lackeys.²¹

This view is representative of Chinese Communist thought that world revolution must be organized first in the poor, rural nations of the world and from there proceed to victory over the rich countries. Under such circumstances, Latin America, Africa, and Asia are considered the testing ground. Again quoting Lin Piao:

Taking the entire globe, if North America and Western Europe can be called "the cities of the world," then Asia, Africa and Latin America constitute "the rural areas of the world." Since World War II, the proletarian revolutionary movement has for various reasons been temporarily held back in the North American and West European capitalist countries, while the people's revolutionary movement in Asia, Africa and Latin America has been growing vigorously. In a sense, the contemporary world revolution also presents a picture of the encirclement of cities by the rural areas. In the final analysis, the whole cause of world revolution hinges on the revolutionary struggles of the Asian, African and Latin American peoples who make up the overwhelming majority of the world's population. The socialist countries should regard it as their internationalist duty to support the people's revolutionary struggles in Asia, Africa and Latin America.²²

²⁰Lin Piao, *Long Live the Victory of the People's War*, 8 PEKING REV., Sept. 3, 1965, at 24, reprinted in SOURCES IN MODERN EAST ASIAN HISTORY AND POLITICS, *supra* note 2, at 309.

²¹*Id.*

²²*Id.*

It is in this area of support to wars of national liberation movements that the Russians and the Chinese seem to have most disagreement. The Chinese consider the Russians to be revisionists, because preaching peaceful coexistence has the effect of diverting the "oppressed nations from their struggle against imperialism and [sabotaging] their national-democratic revolution, all in the service of imperialism."²³

As a result, the Chinese see themselves as the major revolutionary force in the world. As the greatest of the world's underdeveloped countries and the first to have undergone a total social revolution, they see themselves as carrying the burden for world revolution. Their world view today is marked by the struggle of socialism against imperialism. The central value of their ideology is the notion of struggle.²⁵ Hence, peaceful coexistence and peaceful settlement of disputes are impossible, and conflict and the use of force are inevitable.

CHINA AND THE LEGAL CONTROL OF FORCE

The question to be asked at this point is how should we approach this contradiction between China's outlook on the use of force and the need to maintain a minimum world order?

One way of resolving this question is to describe Chinese behavior as uncivilized and contrary to the prescriptions of international law. To support this argument, selected principles of the United Nations Charter may be invoked. Of particular application are those provisions that require states to refrain from the use or threat of force, except in individual or collective self-defense against armed attack,²⁵ and to settle their disputes by peaceful means.²⁶ The provisions of the Charter provide a clear indication that "[w]ar, in the sense of equality of the belligerents and application of the law of neutrality equally to both, seems on principle to be outlawed."²⁷

Further evidence that China's behavior is unlawful is the Kellogg-Briand Pact,²⁸ which outlaws aggressive wars and which renounces war as an instrument of foreign policy. It calls upon states to settle their

²³*Id.*

²⁴F. SCHURMANN, *supra* note 7, at 39.

²⁵See U.N. CHARTER art. 2, para. 4 and art. 51. For a good discussion of the operation of Article 2(4), see Franck, *Who Killed Article 2 (4)? or: Changing Norms Governing the Use of Force by States*, 64 A.J.I.L. 809 (1970).

²⁶U.N. CHARTER art. 2, para. 3.

²⁷See Wright, *International Law and the American Civil War*, 1967 A.S.I.L. PROCEEDINGS 50, 56.

²⁸Treaty with Other Powers Providing for the Renunciation of War as an Instrument of International Policy, Aug. 27, 1928, 46 Stat. 2343, T.S. No. 796.

“disputes or conflicts of whatever nature or of whatever origin they may be,”²⁹ by peaceful means. Additional arguments to condemn China’s behavior may be based upon the principles incorporated into the Charter of the Nuremberg Tribunal³⁰ or the 1954 Draft Code of the International Law Commission of Offences Against the Peace and Security of Mankind.³¹

The sad truth is, however, that the legal approach has not proved effective and in fact may have complicated the issue and potentially increased the possibility of conflict and the use of violence. It has emphasized formalism and a legal apparatus which separates the legal from the political, social, economic, and historical elements of world society. Priority has been given the lawyer, as if to say that law has a life of its own. Such an artificial separation of law from its source (society) may result in a procedure by which the legal structure is examined to the partial or even total exclusion of social dynamics. While there may be an element of safety in the use of the traditional and the enduring, it is doubtful that an approach that seeks order will lead necessarily to a decision which serves justice. The principles and procedures of law must be measured by the degree of their correlation to objective circumstances. A heedless sacrifice of reality will not enable the law to restrain the use of force. On the contrary, instead of produc-

²⁹*Id.*; see Wright, *The Meaning of the Pact of Paris*, 27 A.J.I.L. 39 (1933).

³⁰See CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL, Aug. 8, 1945, art. 6, 82 U.N.T.S. 284, 286. For a detailed discussion of the meaning and application of the Charter, see I. BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 167-213 (1963).

³¹The Draft code listed offenses related to the issues of aggression which may be summarized as follows:

1. Acts of aggression, including the use of armed force for purposes other than national or collective self-defense.
2. A threat by the authorities of one state to resort to aggression against another state.
3. Preparation for the use of armed force against another state for purposes other than national or collective self-defense.
4. The organization, encouragement, or toleration of armed bands operating against another state.
5. Undertaking or fomenting civil strife in another state.
6. The undertaking or encouragement of terrorist activities in another state.
7. Violations of the obligations of treaties restricting or limiting armaments, military training, fortifications, and so on.
8. The annexation of territory belonging to another state or of territory under an international regime by means contrary to international law.
9. Intervention in the internal or external affairs of another state by means of economic or political coercion in order to obtain advantages of any kind.

International Law Commission, *Draft Code of Offences Against the Peace and Security of Mankind*, art. 2, Int’l L. Comm’n, Report, 9 U.N. GAOR Supp. 9, at 9, 11, U.N. Doc. A/2693 (1955).

ing a world ruled by law, law becomes a rationalization for the party that happens to utilize the greatest amount of violence at a given time.

The second consideration respecting a strictly legal approach is that it may lead to a simplified acceptance of Chinese rhetorical statements as authentic policy without taking into account the context or reasons for these statements. Professor Jerome Cohen described such a possibility very eloquently.

[S]cholars are superfluous if their only task is to do a scissors and paste job on current Chinese statements, for clipping services and propaganda organizations bombard us with reminders of Peking's recent hostility. Scholarship, after all, should tell us how the past became the present and why. Otherwise we may mistake [China's] present attitudes as eternally fixed and be deterred from attempting to encourage moderation of those attitudes.³²

Third, the legal approach may make it difficult for international lawyers to make legal judgments on the issue and to substitute an adjudicatory for an adversary orientation. Hence, Chinese behavior and the use of force by China might be construed as unique and inherent in Chinese mentality and ideology. One might also forget that China's policy on the use or threat of force and its support of national liberation movements and armed struggle are also accepted as legitimate behavior by other powers and enjoy a recent tradition in the West as well. One has to recall the role and status of governments in exile during World War II. The heroic imagery used to describe anti-Nazi terrorism and freedom resistance movements should be fresh in our minds. More recent examples are incidents of anti-Communist terrorism; counter-insurgency operations by the Western powers and especially the support the United States gave to the overthrow of the Arbenz regime in Guatemala; and United States support and training provided the anti-Castro exiles who proposed to liberate their country by violent means and failed in the Bay of Pigs fiasco.³³

Fourth, a purely legalistic approach to the understanding of Chinese behavior would tend to favor incumbent regimes and the incumbent order without regard to the justiciable or non-justiciable nature of these regimes.³⁴ The stress on the identification of legitimacy, and thereby the right of self-defense of incumbent governments which themselves may

³²Cohen, *supra* note 17, at 112-13.

³³Barnet, *United States Involvement in Foreign Civil Strife Since World War II*, 1967 A.S.I.L. PROCEEDINGS 69; Falk, *The Beirut Raid and the International Law of Retaliation*, 63 A.J.I.L. 415, 423-24 (1969).

³⁴I. BROWNLIE, *supra* note 30, at 420-21.

have acquired their legitimacy by force of arms,³⁵ tends to rigidify the law and obstruct peaceful change. Law becomes a source of rigidity and instability.³⁶

Finally, perhaps the most important shortcoming of the legal approach to war-peace issues is its insistence that the possibility of conflict and violence is outside the world social system and, therefore, that conflicts are necessarily destructive of world order. The legal approach places a definite premium on social equilibrium at the expense of social change and without regard for social equality. This approach, furthermore, tends to become a metaphysical representation of the dominant ideological matrix to which a nation must conform if it is to avoid the onus of being considered a deviant or an unconnected isolationist.³⁷ Such an approach, as applied to China, would deny it the right to deviate from the established order, even though that order may not be responsive to its legitimate interests and even though China may have been deprived of the choice concerning the conditions and direction of its past or future. To obey the dominant ideological matrix may mean, in the case of China, to accept the status of the dominated have-not nation. Should China attempt to change the established order, other than in conformity with the interests of governments in control, China will likely be considered an aggressor.

It follows that the approach which overemphasizes legalism, and thus insulates the law from social context and social dynamics, cannot claim validity. Such an approach can neither eliminate nor reduce the incidence of violence. Neither can it explain the reasons for the use of violence and the relationships among law, violence, and social change.

The possibility of adopting valid norms to restrain the use of force presupposes a minimal degree of compatibility between the law and its social context.³⁸ The impositions of such norms upon the dominated does not of itself endow the norms with validity. Legality of a norm and its legitimacy are by no means synonymous.³⁹ Procedural and structural aspects of a legal norm may have a broad consensus of values; however, the substantive norms of social and political relationship—the

³⁵See Falk, *The International Regulation of Internal Violence in the Developing Countries*, 1966 A.S.I.L. PROCEEDINGS 58-59; Falk, *Janus Tormented: The International Law of Internal War*, in INTERNATIONAL ASPECTS OF CIVIL STRIFE 185, 240-48 (J. Rosenau ed. 1964).

³⁶L. PYE, ASPECTS OF POLITICAL DEVELOPMENT 190-212 (1966).

³⁷See T. PARSONS, SOCIOLOGICAL THEORY AND MODERN SOCIETY 466-89 (1967); Horowitz, *Consensus, Conflict, and Cooperation*, in SYSTEM, CHANGE, AND CONFLICT 265-79 (N. Demerath & R. Peterson eds. 1967).

³⁸See Jaguaribe, *World Order, Rationality, and Socio Economic Development*, in CONDITIONS OF WORLD ORDER 208 (S. Hoffman ed. 1968).

³⁹H. NIEBURG, POLITICAL VIOLENCE: THE BEHAVIORAL PROCESS 54 (1967).

matter of rights, duties, obligations—carry no such agreements. They are the common grist of international politics.⁴⁰ Legality is an attribute of sovereignty; it is an abstraction which confers the authority of the state on those who act on its behalf, and on their actions, as well as on the code of law which regulates behavior. In this context, “[l]egality is the technicality of formal consistency and adequate authority.”⁴¹

Legitimacy reflects the vitality of the underlying consensus which endows the world system of law and those responsible for its operation with whatever authority and power that they possess. This endowment of authority operates not by virtue of legality, but by the reality of the respect that the participants in the world political system pay to the institutions and behavioral norms of that system. Legitimacy is therefore earned by those whose management of the power of the world system represents and reflects community interests and concerns.⁴²

Legitimacy cannot be claimed or granted by a mere technicality of the law. It can be secured only by the operation of a world order that cultivates and meets old and new expectations, mediates conflicting claims and interests, and aids the process by which the values of the individual actors are allocated in the enactment, enforcement, and observance of law. In this sense, not all laws are legitimate, although they may be considered legal. “Laws that were once legitimate may still retain legality after losing legitimacy.”⁴³ In the absence of legitimacy, the orderly enforcement of norms, otherwise legal, will be impossible, because their observance depends entirely upon coercion by the dominant group.

A valid juridical order (that is, a legitimate order) must therefore be “founded on appropriate institutional developments and grow out of a degree of compatibility among the leading interests.”⁴⁴ Compatibility of interest must be measured in terms of the compatibility between the capacity for values and resources to be allocated within the world political system and the claims made by the actors to the resources of the system. Since there is never complete concordance among actors within the system on the nature or measure of resources and values to be allocated, conflict and even violence may ensue. Those with established interests will consider any challenge to their interests an attack on the system itself. The frustrated participants who attempt to increase their

⁴⁰*Id.*

⁴¹*Id.*

⁴²See Jaguaribe, *supra* note 38, at 209.

⁴³H. NIEBURG, *supra* note 39, at 54.

⁴⁴Jaguaribe, *supra* note 38, at 209.

share of gratification will encounter resistance from the incumbent, dominant interests. This process has been described by Lewis Coser:

Levels of aspiration as well as feelings of deprivation are relative to institutionalized expectations and are established through comparison. When social systems have institutionalized goals and values to govern the conduct of component actors, but limit access to these goals for certain members of the society, "departures from institutional requirements" are to be expected. Similarly, if certain groups within a social system compare their share in power, wealth, and status honor with that of other groups *and* question the legitimacy of this distribution, discontent is likely to ensue. If there exist no institutionalized provisions for the expression of such discontents, departures from what is required by the norms of the social system may occur.⁴⁵

The departure from the established norms may be either minor or drastic, depending on the gap between aspirations of the frustrated group and the level of achievement that the dominant system will allow. Since the output of any social system consists of rewards and deprivations in relation to resource allocation, it is possible to measure the level of frustration in terms of the degree of alternation between the rewards and the deprivation that the system will allow. The greater that degree of alternation, the more valid the system becomes, as a semblance of equality is achieved. As the system becomes responsive to the constituency, the need for coercion is minimized.⁴⁶ If, on the other hand, the system of rewards and deprivation is discriminatory, and any group within the system is consistently deprived with no hope of receiving substantive rewards, the legitimacy and validity of the system may be seriously questioned, and the need to use force or the threat of it often becomes a necessity.

The great English liberal John Morley once said:

If [the men who are most attached to the reigning order of things] had a larger faith in the stability for which they profess so great an anxiety, they would be more free alike in understanding and temper to deal generously, honestly and effectively with those whom they count imprudent innovators.⁴⁷

Those nations most vocal in support of the existing juridical order and who "profess so great an anxiety" for the maintenance of a rule of law and the legal constraint of force have not been "more free alike in understanding and temper" and have not attempted to deal generously

⁴⁵L. COSER, *supra* note 1, at 31.

⁴⁶See I. HOROWITZ, *supra* note 13, at 434-35.

⁴⁷J. MORLEY, ON COMPROMISE 263-64 (1917), *quoted in* L. COSER, *supra* note 1, at 35.

or honestly with a China whom they count as an imprudent innovator endangering world peace. The United States, one of the most important leaders in this reigning juridical order, is yet to give recognition to this giant of nations which represents one-fourth of the world's population. And yet recognition is an ultimate measure of understanding, because it is the one act in international law which legitimizes existence and which helps integrate nations into the world juridical order.

The United Nations, the representative of the world community and the defender of the Charter which outlaws the use of force in the settlements of disputes and whose main function is the maintenance of peace, has not yet made peace with China. Yet nonrecognition and denial of membership in the United Nations have serious implications for China's outlook on world order. Commenting on the question of Chinese participation in the world organization, Myres McDougal and Richard Goodman have said:

Any decision on the Chinese participation question will have extraordinary value impacts. Immense power is at stake. A participation decision will determine whether and how one quarter of the world's population will share in world community processes of authority, and it will affect the resource-base—material, institutional, and strategic—of international organizations. It will influence the range and type of decisions which world organizations can make in implementing and clarifying the common interest. . . .

Immense power is at stake even outside the institutions of the United Nations. A permanent Security Council seat is a symbol of Great-Power status, with trappings of legitimacy, authority and control over extensive resources. A transfer of the seat, with its attendant symbols, could work important changes in the world power configuration. Some Western countries, and certainly many non-aligned countries, might revise their economic, military and political alliances. Southeast Asian political leaders would certainly face disturbing policy choices. Communist governments and parties may reorient themselves in the Sino-Soviet dispute.

Power, further, is not the only value at stake. A transfer of China's United Nations seats could affect the advancement of human rights, the development of international law, the distribution of wealth by international agencies, the allocation of capital between the developed and lesser developed countries, the evolution of labor standards, and the dissemination of knowledge bearing on health, meteorology, food production and peaceful uses of atomic energy.⁴⁸

⁴⁸McDougal & Goodman, *Chinese Participation in the United Nations: The Legal Imperative of a Negotiated Solution*, 60 A.J.I.L. 671, 672 (1966); cf. Chiu & Edwards, *Communist China's Attitude Toward the United Nations: A Legal Analysis*, 62 A.J.I.L. 20, 45-49 (1968).

Ironically, these statements by two leading international lawyers were given as reasons for not admitting China to the United Nations except on terms which the Chinese deem incompatible with national self-respect.

Is it any wonder that the Chinese leaders maintain a strong sense of outrage and cynicism towards the existing world juridical order? It is this sense of outrage over the deprivations they are suffering which leads them to encourage and condone the use of violence as a means of changing the world order in an effort to making it more responsive and just. In this quest they have natural allies among nations of the Third World. Legal superstructures must evolve as a consequence of development and modernization. Otherwise, legal restraints such as those provided by the Charter and interpreted and applied by the dominant actors on the world scene, which now include the Soviets, may well require the abandonment of the revolutionary impulse toward development and modernization, and thus a more equitable distribution of world resources which is a prerequisite for the achievement of a valid juridical order. Illustrative of the relationship between socio-economic development and peaceful accommodation is the Soviet experience and change in attitude towards international law and peaceful coexistence.⁴⁹

CONCLUSION

Ideology may have unified Chinese goals and aspirations, but ideology did not create them. They are an element of China's awareness of its own condition. While Chinese Communism may be accidental, China's aspirations and frustrations are real and natural. They are part of a worldwide historical movement of the new nationalism and the revolution of rising expectations. It will be dangerous and self-defeating to ascribe Chinese behavior to an evil ideology, or to a power hungry violent man, or to the result of isolated conspiracies or plots. Many other millions in the Third World who are not Communists share this same outlook. The only difference is that they may be either too weak or unwilling to do much about it. China is both willing and capable of acting to change its lot in the world community. Its use of violence against an unresponsive world represents China's struggle toward social reintegration and legitimacy. That struggle enables China to test the

⁴⁹For a comparative discussion of Soviet and Chinese views on international law consult the following: Chiu, *Communist China's Attitude Toward International Law*, 60 A.J.I.L. 245 (1966); Chiu, *Certain Legal Aspects of Communist China's Treaty Practice*, 1967 A.S.I.L. PROCEEDINGS 117; Johnston, *Treaty Analysis and Community China: Preliminary Observations*, 1967 A.S.I.L. PROCEEDINGS 126.

political legitimacy of the existing world order and to influence the process of bargaining and adjustment with its adversaries.

Recognition of the relevance of violence in the process of change does not condone it or encourage it. The incidence of violence should be "looked upon as society's early warning system, revealing deep-rooted political conflicts which are gathering strength beneath the surface of social relations."⁵⁰ Accommodating the deep conflicts may lead to moderation and cooperation. Neglecting them, and insulating the status quo against timely and responsive change, may increase the incidence of violence and make formal legal restraints irrelevant, and even unjust.

⁵⁰H. NIEBURG, *supra* note 39, at 7.