

whatever they do. The editorials from *Pravda* are always part of the Soviet scholars' preparation for international conferences. Yet, the Soviet Government is facing difficulties greater than it has faced since the collectivization drive of the 1930's and the second World War of the 1940's. Under such circumstances it is conceivable that some value can be found for the West in the proposed joint research on "peaceful co-existence," but it must necessarily fall within strict limits. Any Western proposal that might be thought by Soviet scholars to undermine the Soviet position in that part of the world in which she has established her supremacy will be resisted. "Peaceful co-existence" as the Soviet lawyers think of it means as a minimum the condition necessary to keep non-Soviet power from penetrating into the Soviet orbit. It may also mean the relaxation of barriers to Soviet propagation of her ideas and influences across the frontiers of her orbit. There is yet little to suggest that Soviet members of international organizations intend to advance research projects which seek to explore the opportunities for co-operation without thought to improving the position of the Soviet camp at the expense of other camps.

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#### THE LEGAL ASPECTS OF "NEUTRALISM"

It is an extraordinary reversal in the affairs of nations that we are witnessing these recent years. A generation ago a majority of the American people were proclaiming not only the right of the United States to remain aloof from any collective efforts to prevent the war then threatening in Europe, but the duty of Congress to forbid American citizens to do the things that neutral states had always had the right to do, lest by chance the act of individuals might come to influence public opinion, or, it might be, the United States would be led against its will to defend its neutral rights and be drawn into war as a result of maintaining its right to stay out of it. To many of the neutrality advocates of 1935-1939 it was not only futile as a practical matter to attempt to fortify the League of Nations as an agency of collective security, it was logically impossible to distinguish between right and wrong in international relations. The subtleties of national policy in Europe were too complex to tell who was the aggressor and who the victim. The only policy for the United States was to follow the advice of Washington and of Jefferson and to keep out of it all.

In strange contrast with all this, responsible spokesmen for the Government of the United States, and doubtless a corresponding body of public opinion, have been of recent months blaming certain states not for wanting to keep out of war but for wanting to keep out of collective security, such as it has developed since the establishment of the United Nations in 1945. A new term, "neutrality," has been created to describe the position of such states, and it will doubtless be entered in the lexicon of international affairs as soon as lexicographers are more sure what it means. At any rate, it does not mean what "neutrality" meant in 1914 or in 1939.

When the Charter of the United Nations was signed at San Francisco in

1945, it was clearly the belief of the great majority of the delegates that collective security was a workable system, that the combined strength of the international community, as called upon by a decision of the Security Council, would be able to keep the peace. There might, indeed, be difficulties in securing a decision of the Security Council, inasmuch as five of its members were given the right of veto. But difficulties were, in this case, not doubts, certainly not doubts widely entertained; and the general understanding was that peace could be maintained by collective measures to suppress acts of aggression.

But within less than five years it was clear that there was no such unity in the Security Council as to justify the anticipation of concerted action to maintain the peace. Not only had the United States and the Soviet Union developed between them such sharply divergent policies, but new instruments of destruction had been invented which gave an almost decisive advantage to a surprise attack—instruments so devastating in their effects that a state which was unfortunate enough to be the victim of aggression, or to go to the aid of other victims of aggression, might be completely wiped out in the course of being rescued or assisting in the rescue of others. Certainly, that might well be the fate of states lying in the path of the great Power from which the act of aggression might be expected to come. The price of resistance to aggression might thus be too heavy to pay. Bravery in such a case would be little more than patriotic suicide. Hurtful as it might be to national pride, it would be better to survive in the hope that one day the act of aggression might be outlived or overcome by moral forces from within. In other cases, where the menace of a devastating attack might appear less threatening, domestic problems could be so acute as to prevent the state from taking sides in the war without the risk of disrupting its national economy and possibly encouraging outbreaks of domestic violence.

Thus the policy of "neutralism" developed, and one may imagine the neutralist government saying to itself: "We are loyal members of the United Nations, but things have turned out differently from what we expected. Under the new circumstances there is nothing left for us to do but to stand aside and not take part in the struggle between the two contending great Powers of the United Nations. The security we had in mind when we ratified the Charter was a collective security, in which the community as a whole would be so strong that no single state would dare challenge its decisions. The situation has now become one in which the rule of *rebus non sic stantibus* clearly applies. We may be acting unwisely from a political point of view; but whether acting wisely or unwisely we do not consider that we are violating the pledge that we gave in ratifying the Charter."

Is, in fact, neutralism in violation of any legal obligations under the Charter? The Charter makes the Security Council primarily responsible for the maintenance of peace; and by the following article the Members of the United Nations agree to accept and carry out the decisions of the Security Council. But inasmuch as the Security Council has been unable to come to a decision in respect to any of the successive issues that have

arisen in connection with the maintenance of the peace, it would appear that the other Members of the United Nations not involved in the immediate issues of the "cold war" are legally free to declare themselves neutrals without violating their obligations under the Charter.

Can neutralism be condoned in the presence of a decision of the General Assembly condemning a particular Member of the United Nations for conduct in violation of the principles of the Charter? Is, indeed, a resolution of the General Assembly of any binding force? Is it no more than a recommendation, to be followed or not according to the convenience of the particular Member? The answer would seem to depend upon the terms of the resolution. On November 3, 1950, the General Assembly adopted a resolution that, in the case of failure of the Security Council to act, the General Assembly should consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including the use of armed force when necessary, to maintain international peace and security. The resolution, known under the title, "Uniting for Peace," was adopted by a vote of fifty-two to five, with two abstentions. Did it thereupon bind not only the Members voting against it, but the two Members abstaining? Were the two Members free to follow a neutralist policy and not consider themselves under any obligation to carry out the measures proposed by the General Assembly, on the ground that its recommendations were of no legal value? The answer would seem to be that the resolution constituted a binding obligation upon one and all.

On November 2, 1956, the General Assembly adopted a resolution introduced by the United States urging the parties involved in hostilities in Egypt to agree to an immediate cease-fire; calling upon the parties to the armistice agreements to withdraw their forces behind the armistice lines; and recommending that all Members refrain from introducing military goods into the area of hostilities and from any acts which would prevent the implementation of the resolution. It would appear that the third item of the resolution created an obligation under the Charter for the Members of the United Nations not parties to the conflict. That the obligation was not of equal legal force with one resulting from a decision of the Security Council to the same effect may be conceded, without at the same time denying the existence of the obligation. In international agreements, such as the Charter of the United Nations, where the sanction for non-fulfillment of obligations is left to the future decision of the Members themselves, there may be obligations of greater or less binding force, yet all be of a legal character, being obligations under a treaty.

In the case of the resolution of November 3 directed against the use of force by the Soviet Union against Hungary, the call to the Members of the United Nations to co-operate with the Secretary General in the execution of his functions and to co-operate in making available such supplies as might be required by the Hungarian people created such vague and general obligations as to raise no present issue of fulfillment of the duties called for by the resolution.

Beyond the obligations created for the Members of the United Nations by decisions of the Security Council or by recommendations of the Gen-

eral Assembly are, of course, the obligations created by the agreement of the Members to abide by the general purposes and principles proclaimed in the Charter, such as the principle of the self-determination of peoples, respect for human rights and fundamental freedoms, and the duty to refrain from the use of force. Here we are dealing with such broad obligations as to make it difficult in many cases to pass upon the conduct of states which hesitate to take sides between the two contending Powers in the "cold war" that has been in progress for the past eight years or more. The term "moral obligation" might be used to describe the conduct called for in such cases where there is no judicial procedure established to give judgment with respect to the observance of the rule, so that the decision becomes a matter for the discretion of the individual state; and the claim of one party that there is a moral obligation to take sides may in good faith be rejected by the other party. The distinction between Communist imperialism and democratic self-government is clear enough to the Western world, but not so clear to many of the Middle and Far Eastern states. Communism, as the West sees it, is condemned not because of its economic and social objectives in themselves, but because of its denial of human liberty, because of its methods of terrorism and intimidation, because it seeks to attain its objectives by measures which destroy moral values of far greater importance than any economic gain could justify. Imperialist Communism denies the right of self-determination, the basic condition of the sovereign equality which is one of the first principles of membership in the United Nations.

To many of the peoples of the Middle and Far East, Communism appears in a somewhat different guise. To the masses who have never known free government the promise of a higher standard of living is sufficiently alluring to offset the methods by which it is brought about. The Western concept of individual initiative and of controlled capitalism does not fit in with their experience of colonial or semi-colonial government. In most cases their economic need is sufficiently great to risk their political future. When, therefore, the Western world asks them, "Are you with us or are you against us in this 'cold war'?", the reply might be that the line between Communism and democracy is not so clearly drawn as to make the choice a simple one between black and white.

The political situation within the United Nations appears to be changing rapidly, so that observations with respect to the political aspects of "neutrality" may be out of date before publication. But the legal aspects of the problem continue to be of importance, involving as they do questions of interpretation of the Charter, particularly in respect to the obligations created for the Members by recommendations of the General Assembly.

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#### ARTIFICIAL SATELLITES: A MODEST PROPOSAL

Announcements in 1955 by officials of the United States and the Soviet Union of plans to launch artificial satellites into outer space for the purpose of scientific investigation during the International Geophysical