1983

Deterrence Processes as Minimal Order

Harry H. Almond Jr.

Follow this and additional works at: https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law

Part of the Law Commons

Recommended Citation
Available at: https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol4/iss2/5

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of International and Comparative Law by an authorized editor of DigitalCommons@NYLS.
DETERRENCE PROCESSES AND MINIMUM ORDER

HARRY H. ALMOND, JR.*

I

Nuclear weapons are perceived by peoples everywhere as a major threat to the minimum public order that they share. These perceptions extend beyond the weapons themselves to an almost primitive, atavistic fear of the technologies associated with nuclear and other weapons of great destruction.¹

The instability in the relations among peoples and states may be traced in part to the uncertainties over the breakdown of their decision processes. These processes are unable to cope with the unfamiliar and complex problems of managing rapidly advancing technologies and related applications.² Because the technologies of weapons and destruction are interrelated with the technologies of peaceful application, they tend to have a synergistic effect on each other, with one providing useful knowledge for the advancement of the other's "state of the art." But the uncertainties in the decision process lead to tensions and expectations that the highly destructive force of the weapons will lead to uncontrolled international coercion.³

* Professor of International Law and Strategic Studies, National War College, Adjunct Professor in National Security Studies, Georgetown University, Washington, D.C.; B.S., Yale University; M.Ch.E., Cornell University; J.D., Harvard Law School; LL.M., Ph.D. with distinction, London School of Economics and Political Science.

The comments, observations and assessments that appear in this paper and the presentation as a whole are the personal work of the author and not to be attributed in any way to the United States Government, its agencies or officials.


3. Stated simply, "[p]ossession of nuclear weapons . . . may be used as an instrument of blackmail or coercion. A country with a nuclear edge may implicitly or explicitly threaten the use of nuclear weapons to enforce its demands in regional crises or low-level confrontations." L. Dunn, supra note 1, at 77.
Ambiguous perceptions create confusion in decision and policy. With the resulting insecurity, we are currently witnessing a race to assure security, but pursued largely by the unilateral, uncontrolled decisions of the major adversaries. The insecurity of states is not readily alleviated by efforts at "mutual security"—the trends even among democratic states toward "absolute security" are clearly evident. But totalitarian and authoritarian social orders have throughout history been concerned with security above all other goals, and particularly the security of their elites. They have, accordingly, directed their policies toward power, but have directed those policies specifically toward making power serve the value of security, and not the other values of the social order.

It is no exaggeration to state that the fundamental global challenge today is to establish minimum public order, taking full account of the advancing military and related technologies; the difficulties in reaching common policies; and the far-reaching problems associated with communications and the communication processes that, so far, have been inadequate for shaping a global order process. The current decision environment, only partially shaped by the presence of nuclear weapons, is characterized by communications through threats, hostile actions and subversion. Even without nuclear weapons, such an environment would frustrate the shaping of minimum order.

The global challenge, moreover, is not solely concerned with the strategic nuclear weapons possessed by the major adversaries. It is also affected by the proliferation of nuclear weapons, as an increasing number of states acquire the weapons and the technologies for producing

4. See R. Jervis, Perception and Misperception in International Politics (1976) [hereinafter cited as Perception and Misperception]. Jervis exhorts the decisionmaker to "avoid the common error of assuming that the way he sees the world is the only possible one." Id. at 409. He recommends that decisionmakers articulate their own underlying assumptions, play devil's advocate to their own ideas and policies and discern their common misperceptions. Id. See also R. Jervis, The Logic of Images in International Relations (1970) [hereinafter cited as International Relations].


them. In addition, the major adversaries are acquiring as part of their stockpiles, the uncontrolled, less devastating nuclear weapons. As these accumulate, the obstacles to eliminating them increase. The past practice of states shows that disarmament, or even partial reductions of arms, are reluctantly implemented, and then only for brief periods of time. The disarmament of Germany following the First World War, in the Treaty of Versailles, was quickly reversed within the following decade.

States, in their relations in the past, and we expect for the future, have been engaged in competitive processes associated with power, which is identified by some as a "power struggle." These are familiar, perhaps even innate processes, in communities of states or organized political entities facing scarce resources.

Because nuclear weapons—particularly the nuclear weapons that would provide destruction of "strategic" or urban targets—create and check the threats of the other states that possess them, the environment of decision and policy that they share and shape is strongly affected by these weapons. The threats may be effectively employed for influence, providing strategic advantage. They may be effectively countered by a process of checks and balances which shifts the competition for power and influence into other channels, including the use of military measures with lesser weapons. Or, of course, they may be the precursors of armed attack and armed conflict, which may lead to the outbreak of nuclear war.

Nuclear weapons exist, and it is unlikely that under current conditions we can expect nations to disarm themselves entirely of such weapons. Even if nations disarm themselves of the most destructive nuclear weapons, the lesser nuclear weapons, along with others identified as weapons of "mass destruction," and the conventional weapons, which are far superior in destructive force to those used in the Second World War, would remain untouched. Accordingly, the minimum order

8. Efforts to control tactical or theater-range nuclear weapons have not proved successful. See Bundy, Kennan, McNamara & Smith, Nuclear Weapons and the Atlantic Alliance, 60 FOREIGN AFF. 753, 756 (1982) [hereinafter cited as Bundy]; N.Y. Times, Nov. 15, 1983, at A14, col. 1.

9. Treaty of Versailles, June 28, 1919, 1919 Gr. Brit. T.S. No. 4 (Cmd. 153); 225 Parry's T.S. 188 (not entered into force for the United States). The treaty provided, inter alia, for the limitation of German territorial claims, id. arts. 27, 118, and detailed restrictions on German military, air and naval power, id. art. 159.


presently established is one in which there is a balancing of weapons and threats to ensure a deterrence equilibrium based upon the major nuclear weapons.\textsuperscript{13}

The deterrence equilibrium is characterized by its stability, and the deterrence processes that lead to that equilibrium are characterized as stabilizing or destabilizing.\textsuperscript{14} The effectiveness of the equilibrium is

\textsuperscript{13} The pre-nuclear balancing process was based primarily on the ability of a military power to take and hold territory, whereas the contemporary balance of power centers on deterrence by threat of retaliation. See G. Snyder, \textit{Deterrence and Defense} 41-48 (1961). \textit{See also} H. Bull, \textit{The Control of the Arms Race} (2d ed. 1965). In order to maintain the military balance of power, Bull notes that “deterrence requires that each side has a strategic weapons system that is sufficiently effective to deter the other side.” \textit{Id.} at 60. The author argues that “it is possible to view the proper concern of arms control as the preservation and perfection of the strategic nuclear balance, rather than as an attempt to dismantle it while leaving the world without security against nuclear war.” \textit{Id.} at 61. Thus, nuclear stockpiles may be reduced “[s]o long as the retaliatory forces on each side do not fall below the requirements of a sufficient deterrent force,” because the balance of power exists between the two powers independently of the relative state of their armaments.” \textit{Id.} at 52.

\textsuperscript{14} See G. Snyder, supra note 13. Snyder provides an analysis of the balancing of power and deterrence, stating that two balancing systems, “the strategic balance of terror and the truncated tactical balance of power,” now operate simultaneously.

The balance of terror is primarily a \textit{deterrent} balance rather than a \textit{defensive} balance. That is, a “balance” is said to exist when a potential aggressor faces the prospect of retaliatory damage sufficient to deter him, not when he faces the prospect of defeat or frustration of his aims. Conceivably, a balance of terror could exist in the defensive sense, if the forces on both sides were so invulnerable that the side which absorbed the first blow could still retaliate with sufficient force to destroy or prostrate the attacker. But the forces required for winning the war after being attacked would be considerably larger in number and probably different in kind than the forces required to deter the attack.

The tactical balance of power, on the other hand, centers primarily on the function of defense. A balance of power exists when the defending side has enough forces to defeat the attacker or at least to prevent him from making territorial conquests. Deterrence is the consequence of this defensive capability, not of a capacity to inflict unacceptable costs. In the tactical balance, the requirements for deterrence and for effectively fighting a war more or less coincide; this is not the case in the balance of terror.

\textit{Id.} at 42-43.

In Y. Harkabi, \textit{Nuclear War and Nuclear Peace} (1966), the author points out the relationship between the use of weapons and deterrence as policy matters, the interaction of the role of diplomacy in accommodating changing technology:

If in the past the threat to use arms—in other words, deterrence—was a corridor to war, today deterrence itself is the central factor. This is the Copernican revolution of contemporary strategy: it is no longer the actual use of weapons, but the threat to use them, that is of primary importance. Deterrence is not a secondary factor which turns upon the use of arms, but the use of arms turns upon deterrence. War-making potential is intended to validate deterrence.
the outcome of expectations, that if major nuclear weapons are used, the resulting destruction would be intolerable for all of the adversaries. The effectiveness of the "arms control" policies, processes and agreements with respect to other weapons is dependent entirely upon the deterrence equilibrium and processes centering around the major nuclear weapons. This is for two reasons. First, because all of the other weapons with lesser destructive force would be tolerable. Second, because all of the weapons other than major nuclear weapons have the military utility that would make them desirable in the stockpiles of military commanders. The ultimate standard in the practice of states applicable in law and policy, regarding both the permissibility of weapons in wartime and the identification of weapons that require the strictest controls under the arms control agreements, is that of military utility. Such utility is measured, of course, by a showing that such weapons will not lead to indiscriminate attacks.

[The] proximity of strategy and diplomacy is also reflected in the influence of frequent technological changes in the means of warfare upon diplomacy. Innovations in weapons, their destructive power, ways of employing them and the advantages they afford are reflected both in changing doctrines of strategy and in new international situations which in turn create new problems for diplomacy. Technological changes and new inventions are not always dictated by the needs of strategy, policy and diplomacy, for technological development has its own momentum. Technology probably influences diplomacy more than diplomacy influences technology. Diplomacy must strive to keep pace with technological change, adjusting to it and utilizing it both for its general needs and in solving the problems created by technology itself.

Id. at 2-3.

15. The concept of deterrence, as discussed in this paper, is limited to the issue of weapons balancing. It should be noted, however, that deterrence also plays a significant role in the context of more general, foreign policy issues. See generally A. GEORGE & R. SMOKE, DETERRENCE IN AMERICAN FOREIGN POLICY (1974). The authors argue that policymakers must seek to integrate the strategy of deterrence with the other, more traditional means of influencing and controlling the conflict potential in the relations between states. Id. at 590. According to the authors:

[t]he challenge to U.S. Foreign policy remains, therefore, one of finding a longer-term image of a desirable world order—a genuine international community—which will be acceptable domestically and which can enlist cooperation among the nations; and of finding all the mechanisms of inter-nation influence, emphatically including inducement strategies, that can take us to this goal.

Id. at 613.

16. Y. HARKABI, supra note 14, at 1-8. The author observes that, in nuclear strategy, military doctrine must be shaped to accommodate the potentials that appear in new weapons. These weapons cause uncertainty because they have not been tested in armed conflict, and even when tested, have not been used against major adversaries possessing comparable weapons. Id.

17. Current arms control agreements cover nuclear weapons, their testing and deployment, along with biological weapons, environmental modification techniques and
Legal orders among states—the global legal orders—share much in common with legal orders within states. Both, divorced from the power processes, are unrealistic, and divorced from the social processes, are meaningless. Our expectations concerning order of all kinds include expectations that order will be supported by law and the legal processes. We, thus, expect that minimum order will embody a shift from the state policies of self-interest and power-seeking toward community policies that apply coercion against community standards.18

Legal orders relating to weapons are necessarily directed to the use, or ultimate use of those weapons, and they necessarily embrace both 1) the constraints on threats, hostile conduct and hostile policies among states and 2) the strategies including, but not limited to, military strategies that might disrupt that order. Minimum order in the minimal sense can of course be identified at the extreme with licensed violence, or in the ordering processes applicable during times of war or armed conflict. Leading strategic thinkers, at least since von Clausewitz,19 have recognized that war is simply a continuation of political intercourse, with the addition of other means,20 but consistent perspectives require recognition that during war, belligerent states must maintain their communications. While such communications are most intimately associated with their closely shared interests relating to war, they are also the means to maintain, support and draw upon a minimum order that they both share and expect to be effective.

Accordingly, the minimum order and its associated legal process are in evidence as long as states communicate with each other over common policies and goals.21 Unless their separate aims are the total


19. Carl von Clausewitz was a Prussian military general who wrote several volumes detailing his theories on the subject of war. See C. von Clausewitz, ON WAR (1966). See also THE LIVING THOUGHTS OF CLAUSEWITZ (J. Greene ed. 1943).

20. C. von Clausewitz, supra note 19.

destruction of each other following the Biblical edicts of Deuteronomy 20 or Joshua 6:16. Minimum order is possible because it is assumed they will not have resorted to naked power—to maximizing destruction itself.

Communications and an effective communication process are critical for maintaining order during wartime and also during the pendency of arms control agreements. The intensity of the communications tends to vary during such periods, but such communications are essential to establish the basis for the application and development of customary international law. Minimal communications are critical to the effective operation of arms control processes. It has already been noted that the strength of the minimum order upon which all states may draw, depends upon their use of communications to mitigate a shared environment or strategy that promotes confrontation and encourages disputes and armed conflict. While conflict, even armed conflict among states, still appears to be inevitable, the challenge is to provide for communications processes operating at all times and capable of providing an effort parallel to that of the belligerents or adversaries during peacetime, promoting the minimum order and extending it to a global, social and legal order.

This section will explore in greater detail some of the assumptions for the establishment of minimum order, founded upon the existence of nuclear weapons, and the unlikelihood that they will be eliminated from the arsenals of states. Although tenuous, there is some continuity between what the relationship among the adversaries is—i.e., a relationship embodied in an agreement exclusively and strictly con-

22. Deuteronomy teaches in pertinent part:
But if it makes no peace with you, but makes war against you, then you shall besiege it; and when the Lord your God gives it into your hand you shall put all its males to the sword, but the women and the little ones, the cattle and everything else in the city, all its spoil, you shall take as booty for yourselves; and you shall enjoy the spoil of your enemies, which the Lord your God has given you. Thus you shall do to all the cities which are very far from you, which are not cities of the nations here. But in the cities of these peoples that the Lord your God gives you for an inheritance, you shall save alive nothing that breathes, but you shall utterly destroy them . . .

Deuteronomy 20:12.

Joshua teaches in pertinent part: "And at the seventh time, when the priests had blown the trumpets, Joshua said to the people, 'Shout; for the Lord has given you the city. And the city and all that is within it shall be devoted to the Lord for destruction. . . ." Joshua 6:16.

23. M. McDougal & W.M. Reisman, supra note 18, at 1016-17.
fined to the weapons that are covered—and what their relationship ought to be—i.e., that which is based upon stability in the face of all order-disrupting conduct that might lead to a breakdown in the very agreements they have concluded.26

There is an assumption of self-interest underlying these agreements similar to Adam Smith's assumption concerning competitors in the marketplace.27 The competitors for power are assumed to be aware of and act according to their perceptions that the weapons, i.e., the major strategic nuclear weapons, must not be used under any circumstances because the resulting destruction would be intolerable, and the targets are likely to include large urban areas. This self-interest coincides, of course, with the current legal restraints on the indiscriminate use of weapons, and on their use against targets that are not legitimate military targets.28

It is further assumed that the adversaries during the period that

28. The principle of economy of force has been examined in depth by Myres McDougal and Florentino Feliciano. This principle is said to apply because it is in the best interests of commanders and states to avoid excessive use of force. See M. McDougal & F. Feliciano, supra note 7, at 27. In turning to the juridical notions of sanctions and enforcement, McDougal and Feliciano indicate that a further balancing occurs as part of state practice and is reflected in the principle of military necessity:

Sanctions for enforcement raise perhaps the only issue, in application, which requires special elaboration. The opinion has been so often urged that the law of war is not law at all that it may be worthwhile to observe that the effective sanction which supports the law of war is the same sanction which supports all law: the common interests of the participants in an arena. The common interest which sustains the law of war is the interest of all participants in economy in the use of force—in the minimization of the unnecessary destruction of values. Unnecessary destruction of values constitutes uneconomical use of force not only because it involves, by definition, a dissipation of base values which yields no military advantage; it will also, by operation of the condition of reciprocity, result in the offending belligerent sustaining a positive disadvantage in the shape of at least an equal amount of destruction of its own values. By stimulating hatred in the enemy and strengthening his will to resist, it will in addition frequently compel the expenditure of much larger amounts of force than would otherwise have been necessary to secure the same objective. Economy in the use of force is thus a matter of shared interest in self restraint, and it is this general sanction which finds its detailed expression in all the varying procedural modalities of collective measures for redress by international organizations, including the employment of all instruments of coercion, of war crimes trials during or after war by international or national courts and military commissions, of retribal procedures in the course of hostilities, and of diplomatic negotiations or interpositions with respect to claims for damages.

Id. at 53-54.
deterrence is being maintained will act rationally. In other words, that
self-interest will be a rational directive in their decision policies, and
that they will be constrained, in part, by the legal processes that lead
to restraint on the use of highly destructive weaponry. 29

Stress may be given then, to the developing minimum order, to the
legal processes that necessarily serve it and to the ordering principles
associated with law and policy oriented to global social processes. Fi-
nally, stress may be given to mutual and self-restraints that impose
standards upon competitiveness, or at least upon the measures that
seek power or influence inconsistent with the minimum and developing
order itself, and inconsistent with community policies. 30

Strategic policy and decision choices among states, in one sense,
do not differ from those appearing among competitors in the market-
place, but in the competition among states there is the added pressure
from global policies that states will not simply trade off between maxi-
mizing opportunities and minimizing risks. In incorporating the global
order into the decisionmaking process, the timing of strategic moves
will be based on anticipated changes in the nature of the global com-
munity and, importantly, will also take account of considerations for
promoting the community itself. In assessing the potential competitive
confrontation from other states, nations, in their self-interest, will rec-
ognize the greater value of the minimum order itself. All of these are,
to be sure, a formidable array of assumptions. 31

(1962). The authors state:

The kind of balancing of common interests long regarded as best serving the
most comprehensive community of mankind both emphasizes the primacy of in-
clusive interests over exclusive interests, requiring only reasonableness in accom-
modation between conflicting inclusive interests, and honors and protects asser-
tions of exclusive interests, when in conflict with inclusive interests, only when,
and to the degree that, such honoring and protection will contribute more to the
common good.

Id. at 37-38.

30. A leading jurist in the Soviet Union, Grigori I. Tunkin, argued that the legal prin-
ciple of “peaceful coexistence” is the keystone of the international law that applies be-
tween states of differing ideologies. See G. TUNKIN, THEORY OF INTERNATIONAL LAW (W.
Butler trans. 1974). According to Tunkin “[t]he primary element of peaceful coexistence
consists in the fact that, despite the very sharp struggle between states with opposed
social systems, it precludes armed conflicts and ensures peace and the development of
cooperation among them in the interests of strengthening world peace.” Id. at 39.

31. The Agreement on basic principles of United States and Soviet relations, as set
out in the “Moscow Communiqué” of May 1972, includes the ambiguous undertaking to
achieve “peaceful coexistence.” The second provision of the Communiqué declares:

The USA and the USSR attach major importance to preventing the develop-
ment of situations capable of causing a dangerous exacerbation of their rela-
tions. Therefore, they will do their utmost to avoid military confrontations and
The future currently rests in the decisions and choices that will be made or substantially abetted by the United States and the Soviet Union. Even from the earliest stage in their relations, these two leading states have been hostile, in part due to competition itself, and in part to the outcome of ideologies and cultural bases which are themselves antagonistic. Both continuously insist that they are attacking each other's social system and the underlying values of that system, but one is clearly totalitarian in its outlook and the other, identified with the long Western journey into democratic processes.

Although we have associated the decisions on military matters with the military commanders (in spite of von Clausewitz), Professor T.C. Schelling points out that with nuclear weapons, the decisions are made through the "political processes":

Nuclear weapons make it possible to do monstrous violence to the enemy without first achieving victory. With nuclear weapons and today's means of delivery, one expects to penetrate an enemy homeland without first collapsing his military force. What nuclear weapons have done, or appear to do, is to promote this kind of warfare to first place. Nuclear weapons threaten to make war less military, and are responsible for
to prevent the outbreak of nuclear war. They will always exercise restraint in their mutual relations, and will be prepared to negotiate and settle differences by peaceful means. Discussions and negotiations on outstanding issues will be conducted in a spirit of reciprocity, mutual accommodation and mutual benefit.

Both sides recognize that efforts to obtain unilateral advantage at the expense of the other, directly or indirectly, are inconsistent with these objectives. The prerequisites for maintaining and strengthening peaceful relations between the USA and the USSR are the recognition of the security interests of the Parties based on the principle of equality and the renunciation of the use or threat of force.

8 WEEKLY COMP. PRES. DOC. 943-44 (June 5, 1972).

32. According to Duchacek:

Lenin excluded the possibility of any permanent peace while capitalism existed. He labeled peaceful alliances between capitalist countries mere preparations for the inevitable intercapitalist wars of the future. It is impossible to prove or disprove whether Lenin fully believed in his own theory. But from the standpoint of revolutionary tactics Lenin rightly insisted on depicting capitalism as the unreformable prisoner of its economics and therefore as an undiluted evil and an incurable warmonger. The concept that capitalism may rationally change and become peaceful and socially responsible rather than blind in its profit-seeking drive could not fit the needs of an all-out revolutionary struggle; one does not start building barricades against an enemy who can reform himself. The insistence on the total evil of capitalism could, therefore, have been less a result of economic theorizing than of the practical revolutionary need to keep the masses in an uncompromising mood.

the lowered status of "military victory" at the present time. Victory is no longer a prerequisite for hurting the enemy. And it is no assurance against being terribly hurt. One need not wait until he has won the war before inflicting "unendurable" damages on his enemy. One need not wait until he has lost the war. There was a time when the assurance of victory—false or genuine assurance—could make national leaders not just willing but sometimes enthusiastic about war. Not now.

... It is a tradition in military planning to attend to an enemy's capabilities, not his intentions. But deterrence is about intentions—not just estimating enemy intentions but influencing them. The hardest part is communicating our own intentions. War at best is ugly, costly, and dangerous, and at worst disastrous. Nations have been known to bluff; they have also been known to make threats sincerely and change their minds when the chips were down. Many territories are just not worth a war, especially a war that can get out of hand. A persuasive threat of war may deter an aggressor; the problem is to make it persuasive, to keep it from sounding like a bluff. 33

The hostility between the United States and the Soviet Union commenced with the Bolshevik Revolution. 34 The Litvinov Agreements, 35 concerned with the projection of Soviet policy through revolutionary movements, promised that the Soviet Union would not:

permit the formation or residence on its territory of any organization or group . . . . which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions. 36

However, John Gaddis has noted that "by design" the pledge said

---

34. The Allied forces, including the United States, backed the White Russian counterrevolutionary forces against Lenin's Red Army after the Bolshevik Revolution in October 1917. See generally J. Cudahy, Archangel: America's War Against Russia (1924).
35. 11 Bevans 1248 (1974). On November 16, 1933 the "Litvinov" agreements were entered into force. These agreements consisted of a series of letters between Maxim M. Litvinov, People's Commissar for Foreign Affairs, Union of Soviet Socialist Republics, and Franklin D. Roosevelt. In the Litvinov agreements the United States "decided to establish normal diplomatic relations with the Government of the Union of Soviet Socialist Republics and to exchange ambassadors." Id. at 1248. The Soviet Union agreed to respect the integrity of the United States. Id. at 1249.
36. Id. at 1249.
nothing about the Comintern, in the belief that if it were mentioned specifically the Russians could evade the agreement by simply changing the organization's name. Litvinov, in turn, made it clear that he did not regard the Comintern as covered by the agreement in the first place.87

A fundamental theme in United States-Soviet relations since its beginnings has been the weakness of their communications and their misperceptions of each other.88 The superpowers have a tendency to communicate in a threat-oriented environment and thereby to constitute that as their shared environment. Soviet-American relations are also characterized by the mutual use of "coercive diplomacy," and the tendency to pursue further signals through addressing themselves internally and to conduct a substantial amount of their communications through weapons production, testing and deployment. This theme has had its effects on the arms control processes, shifting them from the hoped-for shared expectations to become part of a congeries of policies and instruments to be used in the influencing and power process.89

The constitutive elements arising from the communications processes of the two states can readily be identified, and the weaknesses in these processes might best be associated with current realities. We can readily point to the Standing Consultative Commission40 in the SALT41 agreements and the potentials and possibilities that are

38. See W. McNEILL, AMERICA, BRITAIN & RUSSIA: THEIR COOPERATION AND CONFLICT 1941-1946 (1970). According to the author, Americans have tended "to think that international politics were, or at least should be, a matter of legal right and wrong" rather than as a struggle for power between conflicting interests. Id. at 326-27. See also C. BARNETT, THE COLLAPSE OF BRITISH POWER (1972). According to Barnett, a similar perspective led the British to place their "faith in parchment" and "belief in moral force" in joining the League of Nations following the First World War. Id. at 242.
reposed in that institution. Or, we can just as easily identify other com-

7404 [hereinafter cited as SALT I].

For the SALT II agreement, which failed to gain congressional support, see SALT II, signed June 18, 1979 (not entered into force), reprinted in S. Exec. Doc. No. Y., 96th Cong., 1st Sess., 37-45.

The agreements, communiques and declarations that appeared in 1972 with SALT I are sometimes identified as the documents of détente. The SALT I agreements provided the Soviet Union with the equality it required to be secure, while also providing for deterrence and stabilization processes. These instruments and the associated record are conveniently assembled in SALT HAND BOOK (KEY DOCUMENTS AND ISSUES 1972-1979) (R. Labrie ed. 1979).

One such instrument, the Agreement on Prevention of Nuclear War, signed in Washington on June 22, 1973, includes an undertaking, restating Article 2(4) of the United Nations Charter, to refrain from the use of force, to improve relations and to provide for “consultation”:

The United States and the Soviet Union agree that an objective of their policies is to remove the danger of nuclear war and of the use of nuclear weapons.

Accordingly, the Parties agree that they will act in such a manner as to prevent the development of situations capable of causing a dangerous exacerbation of their relations, as to avoid military confrontations, and as to exclude the outbreak of nuclear war between them and between either of the Parties and other countries.

The Parties agree, in accordance with Article I and to realize the objective stated in that Article, to proceed from the premise that each Party will refrain from the threat or use of force against the other Party, against the allies of the other Party and against other countries, in circumstances which may endanger international peace and security. The Parties agree that they will be guided by these considerations in the formulation of their foreign policies and in their actions in the field of international relations.

If at any time relations between the Parties or between either Party and other countries appear to involve the risk of a nuclear conflict, or if relations between countries not parties to this Agreement appear to involve the risk of nuclear war between the United States of America and the Union of Soviet Socialist Republics or between either Party and other countries, the United States and the Soviet Union, acting in accordance with the provisions of this Agreement, shall immediately enter into urgent consultations with each other and make every effort to avert this risk.

Id.

The documents of détente, while evidencing a concern for shared responsibilities and improved relations, have remained prescriptions, treated by the parties as hortatory rather than mandatory.

For reference to other arms control agreements and brief accounts of the negotiations processes, see ARMS CONTROL AND DISARMAMENT AGENCY, ARMS CONTROL AND DISARMAMENT AGREEMENTS: TEXTS AND HISTORIES OF NEGOTIATIONS (1980, 1982) (includes some texts that have not been ratified, such as SALT II, the Threshold Test Ban Treaty and the PNE Treaty—i.e., the Treaty on Underground Nuclear Explosions for Peaceful Purposes (and Protocol)).
munications fora: the meetings of the delegations; the meetings of heads of government or of their foreign ministers; their use of United Nations fora and their attempts to reach arms control agreements on a variety of weapons. The more fundamental policies of the two states, however, remain unaffected by their interactions and encounters in these fora, notwithstanding the attempts at détente. In order to assure the ultimate victory of communism, Soviet military writers, such as Admiral Gorshkov, identify the military capabilities to be made available to Soviet policy-makers as all those capabilities required by the "mission" as determined by the political leadership. That "mission" has repeatedly been identified as the stamping out of the social orders and those responsible for preserving social orders, enveloped in the "class struggle":

In the search for the lines of development of our fleet we started not by simply copying the fleet of the most powerful maritime power of the world. The composition of the fleet, its weapons, ship design and the organization of its forces were primarily determined by the tasks which are set before the armed forces and hence before the fleet by the political leadership of the country, its economic potential and by the conditions in which the fleet will have to solve these tasks.

The weaknesses in the communications process have not, however, prevented the emergence of an arms control strategy and strategic environment shared by the two major powers and by other states. This is a strategy of "reality," or a compulsory strategy for the two sides, because it flows from the interaction and interdependence of their own decisions. As Professor Thomas C. Schelling indicates, it is not a military strategy:

The term 'strategy' is taken, here, from the theory of games,

42. See S. Gorshkov, The Sea Power of the State (1976). The author states:
For the Soviet Union, the main goal of whose policy is the building of communism and a steady rise in the welfare of its builders, sea power emerges as one of the important factors for strengthening its economy, accelerating scientific and technical development and consolidating the economic, political, cultural and scientific links of the Soviet people with the peoples and countries friendly to it.
Id. at 1-2.
43. Id. at 281.
44. The term "strategy" refers to the decisional environment among states, composed of the claims and counterclaims, that is frequently expressed in the separate actions, decisions and policies of the participants. For analyses of the Marxist-Leninist perceptions of the laws of war, see J. Lider, The Political and Military Laws of War (1979); J. Lider, Military Theory (1983).
which distinguishes games of skill, games of chance, and games of strategy, the latter being those in which the best course of action for each player depends on what the other players do. The term is intended to focus on the interdependence of the adversaries' decisions and on their expectations about each other's behavior. This is not the military usage.\(^4^6\)

Because the interaction of the decisions and policies compels continuous change with respect to the strategy and the strategic environment, (a decision and policy related environment) the shared order we can realistically expect as long as the adversaries concentrate their attention primarily upon weapons, military capabilities and the use of force, is indeed minimal, uncertain and unstable.\(^4^6\)

The communications processes between the United States and the Soviet Union have strongly stressed—toward Europe and the Third World—the threats that the other side has, because of the weapons that side deploys and because, through implication, it is most likely to be the first to use such weapons—particularly for the purposes of aggression. A leading Soviet publication, The Threat To Europe,\(^4^7\) identifies the threat as stemming from the United States, and then from NATO, lulled by the United States into the false security of the American presence in Europe. It concludes with a call for peace movements with an assurance for support for those movements by the Soviet

46. According to Thomas Schelling:

There is, then, something that we might call the "inherent propensity toward peace or war" embodied in the weaponry, the geography, and the military organization of the time. Arms and military organizations can hardly be considered the exclusively determining factors in international conflict, but neither can they be considered neutral. The weaponry does affect the outlook for war or peace. For good or ill the weaponry can determine the calculations, the expectations, the decisions, the character of crisis, the evaluation of danger and the very processes by which war gets under way. The character of weapons at any given time determines, or helps to determine whether a country's preparations to receive an attack look like preparations for attack itself; it determines or helps to determine how much time is available for negotiation on the brink of war; and it determines or helps to determine whether war itself, once started, gets altogether out of control or can be kept responsive to policy and diplomacy.

To impute this influence to "weaponry" is to focus too narrowly on technology. It is weapons, organization, plans, geography, communications, warning systems, intelligence, and even beliefs and doctrines about the conduct of war that together have this influence. The point is that this complex of military factors is not neutral in the process by which war may come about.

T. Schelling, supra note 33, at 234.
Union. The purpose of the movements is to compel dismantling of
American military capabilities and conventional weapons in Europe.

Concern for the future of the European continent is growing in
all countries of Europe. People are wising up to the true, not
fancied, danger hanging over them and consisting in the looming
new round of nuclear missile arming, stockpiling of mass
destruction weapons, and a mounting risk of nuclear conflict.

A massive movement is rising in Europe against the threat
of nuclear war and for peace—a movement of unprecedented
scale and power.

Meetings and marches, powerful international demonstra-
tions, and international conferences involving people from dif-
ferent sections of the anti-war movement are taking place all
over the continent.

Soviet sponsorship of programs such as this, from the past practice
of that and other states, would be premised upon the perception of
interests and benefits to be gained. But in view of Soviet past practice
since the Second World War, it is difficult to associate that nation's
goals with those of forming a global community committed to the val-
ues of human dignity.

48. Id. at 73-74.
49. Id. at 73.
50. Examples of the consequences of Soviet use of force to further these goals are the
crises in Afghanistan and Poland. See Holloway, Foreign and Defense Policy, in A.
Brown & M. Kaser, supra note 2, at 49-57. Soviet leaders and many proponents of the
Soviet system believe that communism can only survive if it expands. See, e.g., Ulam,
Russian Nationalism, in The Domestic Context of Soviet Foreign Policy 3-17 (S.
Bialer ed. 1981). See also Konstitutsii (Constitution) art. XXVIII [hereinafter cited as
U.S.S.R. CONST.], which states:

The U.S.S.R. steadfastly pursues a Leninist policy of peace and stands for
strengthening of the security of nations and broad international co-operation.

The foreign policy of the U.S.S.R. is aimed at ensuring international conditions
favourable for building communism in the U.S.S.R., safeguarding the state
interests of the Soviet Union, consolidating the positions of world socialism, sup-
porting the struggles of peoples for national liberation and social progress,
preventing wars of aggression, achieving universal and complete disarmament,
and consistently implementing the principle of the peaceful coexistence of states
with different social systems.

In the U.S.S.R. war propaganda is banned. See Union of Soviet Socialist Republics,
16 Constitutions of the Countries of the World 25 (A. Blaustein & G. Flanz eds.
1984).

51. See G. Tunkin, supra note 30. Professor Tunkin argues that notions of commu-
nity belong to “bourgeois” jurists and not those trained in Marxist-Leninism. Id. at 239.
According to the author, a world-state cannot be achieved through law because "law,
including international law, emerged not as a result of an increase in community among
There is no clear showing in the practice of the United States and the Soviet Union that either has renounced force, or will renounce it, nor that a renunciation as such would have any significance in assuring more peaceful relations between them, let alone assuring or improving their security. Four German authorities, responding to proposals in the United States that the United States seek with the Soviet Union a renunciation of the first use of nuclear weapons, were led to the following observation:

A renunciation of the first use of nuclear weapons would certainly rob the present strategy of war prevention—which is supported by the government and the opposition in the Federal Republic of Germany, as well as by a great majority of the population—of a decisive characteristic. One cannot help concluding that the Soviet Union would thereby be put in a position where it could, once again, calculate its risk and thus be able to wage war in Europe. It would no longer have to fear that nuclear weapons would inflict unacceptable damage to its own territory. We therefore fear that a credible renunciation of

people, but as a result of the division of society into classes and the formation of new class contradictions” which is “a phenomenon peculiar to class society.” Id. at 27.

52. See generally id. Professor Tunkin contends that the Soviet Union supports the principle of nonaggression. Id. As defined by the author, however, the Soviet Union has renounced only the “aggressive” use of force while reserving the right of self-defense and the right to engage in “just wars” of national liberation. Id. See also Volkogonov, The Soviet Army: A Factor in Peace and Security, SOVIET MILITARY REV. 3 (Feb. 1984). In assessing the “truly internationalist nature” of the Soviet military, the author concludes that the “defense of the socialist countries is closely connected with rendering multifarious assistance to national-liberation movements, progressive regimes and the emerging states” intended to “halt the export of the imperialist counter-revolution.” Id. For a discussion of the application of the laws of war to guerilla warfare, see Bozeman, Covert Action and Foreign Policy in INTELLIGENCE REQUIREMENTS FOR THE 1980’S: COVERT ACTION 15-23 (R. Godson ed. 1981).

53. In a message to the United Nations on June 16, 1982, the Soviet Union pledged that they would not be the first to use nuclear weapons. In response, the United States State Department said the pledge “gives no assurance that an aggressor would not in fact resort to the first use of nuclear weapons during a conflict or crisis,” and that it was “unverifiable and unenforceable.” N.Y. Times, June 17, 1982, at A8, col. 1.

According to the authors of INDEFENSIBLE WEAPONS, as of the spring of 1982 there was a clear trend of increasing danger of nuclear war. Two of the reasons stated were “an increasing tendency toward first-strike capability, temptation, and policy;” and “talk of fighting and winning a ‘tactical’ or ‘limited’ nuclear war, especially in the United States.”

R. LIFTON & R. FALK, supra note 1, at 7-8.

the first use of nuclear weapons would, once again, make war more probable.\footnote{55}

While these same men believed that it would be in the interests of all nations to reduce the dependence on a threatened use of nuclear weapons,\footnote{56} they also believed that this could not occur until some other balancing element or deterrent had replaced such weapons.\footnote{57}

\footnote{55} Id. at 1160. The authors attempt to refute the position detailed in Bundy, \textit{supra} note 8, which asserts that the no first-use proposal is conditioned upon the development of appropriate conventional forces sufficient to deter the Soviet Union from adventurism and sufficient to protect the allies if war breaks out. \textit{Id.} at 759. The proposed shift to a conventional defense would include a survivable, second-strike nuclear capability, although it is clearly expressed that nuclear weapons must be disarmed because "as long as the weapons themselves exist, the possibility of their use will remain." \textit{Id.} at 766.

\footnote{56} Kaiser, \textit{supra} note 54, at 1170. \textit{See also} Genscher, \textit{Toward an Overall Western Strategy for Peace, Freedom and Progress}, 61 \textit{FOREIGN AFF.} 42 (1982). Hans-Dietrich Genscher, former Foreign Minister of the Federal Republic of Germany, takes the view that détente has a shared meaning, or has a policy context, that is clearly understood and accepted by those who use the term. \textit{Id.} The author claims that Europeans, and especially the West Germans, seek through détente to "establish and preserve a modus vivendi in a divided Europe." \textit{Id.} at 44. The expectations associated with the European view of détente, and based upon a working or operating policy to achieve its ends, are that the basic (presumably "ideological") conflict between East and West will be set aside, "bridges of dialogue and cooperation" will be shaped, and, in the long term, "an evolutionary process in Eastern Europe and the Soviet Union itself, leading to greater freedom for people in the East and to a genuine peace order in Europe" will be fostered. \textit{Id.} at 44. The author notes that the United States and Canada are intimately involved in this process because they are parties to the Final Act of the Conference on Security and Cooperation in Europe concluded at Helsinki in 1975. \textit{Id.}

In H. LASSWELL \\& A. KAPLAN, \textit{supra} note 10, the authors state that political symbols are symbols that function to a significant extent in power practices. \ldots Political symbols are by definition those which have a peculiar relevance to political science. They function directly in the power process, serving to set up, alter, or maintain power practices. \ldots All political symbols \ldots have causes and consequences in power relationships. \textit{Id.} at 103-04.

\footnote{57} Kaiser, \textit{supra} note 54, at 1170. The authors argue that the renunciation of the first-use of nuclear weapons would serve to undermine the present strategy of war prevention. \textit{Id.} at 1162. For a discussion of the policy arguments in favor of a no first-use position, see Bundy, \textit{supra} note 8, at 759. The authors argue that a no first-use policy would not pose unacceptable risks as long as the NATO powers strengthen the adequacy of conventional forces and maintain a survivable second-strike capability. \textit{Id.} at 764. \textit{See also} Gottfried, Kendall \\& Lee, \textit{No First-Use of Nuclear Weapons}, \textit{Sci. AM.}, March 1984, where the authors argue that a no first-use policy would "enhance the security of all nations." \textit{Id.} at 33-41. For a compilation of the diverse views on this subject, see \textit{The Apocalyptic Premise} (E. Lefever \\& E. Hunt eds. 1982). \textit{See also} L. FREEDMAN, \textit{The Evolution of Nuclear Strategy} (1983). The author reviews Soviet perceptions of deterrence and concludes that, unlike the situation in the United States, there are few institutional limits on the military in the Soviet Union. \textit{Id.} According to Freedman, the
But communications concerning the use of force and weapons are also stunted because there is no showing that the two major states have a common understanding or working perception with respect to what force is permissible, or for what purposes, or when it might be initiated, or how long it is to be applied. These uncertainties apply with respect to the deterrence of aggression by weapons other than the

Soviets maintain "a strong predisposition to encourage the accumulation of weapons out of the ideological need to demonstrate that the outcome of any war would be more favorable to socialism than imperialism" and a "belief that the more military power possessed, the stronger its deterrent effect." Id. at 271-72.

On the balance of power issue, see generally H. LASSWELL, WORLD POLITICS AND PERSONAL INSECURITY (1965). Professor Lasswell argues that the balancing of power "can maintain peace despite the expectation of violence," if certain conditions are fulfilled. Id. at 44. These conditions are "a. If variations in power (fighting effectiveness) can be accurately measured; b. If variations in fighting effectiveness are convertible and distributable among participants in the balancing process; c. If variations in power are visible in the early stages of their development; d. If the estimating process can be sentimentalized." Id. According to the author, the threat of violence from nuclear or conventional forces would produce the same result. Id.

58. A good example of this lack of common understanding is the McCloy-Zorin Agreed Statement of Principles of September 20, 1961, reprinted in DOCUMENTS ON DISARMAMENT 439 (1962). The principles were recommended as a joint statement of the United States and the Soviet Union as "guidance for disarmament negotiations when such negotiations are resumed." Id.

The pursuit of a joint effort on the basis of these principles began to fall apart when the Soviet Union sought to eliminate the following clause from the agreement: "Such verification of disarmament measures should ensure that not only agreed limitations or reductions take place but also that retained armed forces and armaments do not exceed agreed levels at any stage." Delegate McCloy declared that this was a "key element in the United States position . . . . that whenever an agreement stipulates that at a certain point certain levels of forces and armaments may be retained, the verification machinery must have all the rights and powers necessary to ensure that those levels are not exceeded." Id. at 442.

Delegate Zorin responded:

The Soviet Union favours the most thorough and strict international control over the measures of general and complete disarmament. While strongly advocating effective control over disarmament and wishing to facilitate as much as possible the achievement of agreement on this control, the Soviet Union is at the same time resolutely opposed to the establishment of control over armaments.

It appears from your letter that the United States is trying to establish control over the armed forces and armaments retained by States at any given stage of disarmament. However, such control, which in fact means control over armaments, would turn into an international system of legalized espionage, which would naturally be unacceptable to any State concerned for its security and the interests of preserving peace throughout the world. The position of the United States on this question, if it insists on the proposal described above, will inevitably complicate agreement on a programme of general and complete disarmament, on the general principles of which we have agreed.

Id. at 443.
major nuclear weapons, and also with respect to deterrence and moderation that might be attempted with respect to destruction occurring during armed conflict.\textsuperscript{59}

There is no reliable evidence in the practice of these states to show that either or both of them believe that the use of all nuclear weapons is prohibited,\textsuperscript{60} or that the use of the less destructive weapons would

\textsuperscript{59} See Report of the President's Commission on Strategic Forces (Apr. 6, 1983) (commonly referred to as the Scowcroft Commission Report). According to the Commission:

There can be no doubt that the very scope of the possible tragedy of modern nuclear war, and the increased destruction made possible even by modern non-nuclear technology, have changed the nature of war itself. This is not only because massive conventional war with modern weapons could be horrendously destructive—some fifty million people died in “conventional” World War II before the advent of nuclear weapons—but also because conventional war between the world’s major power blocs is the most likely way for nuclear war to develop. The problem of deterring the threat of nuclear war, in short, cannot be isolated from the overall power balance between East and West. Simply put, it is war that must concern us, not nuclear war alone. Thus we must maintain a balance between our nuclear and conventional forces and we must demonstrate to the Soviets our cohesion and our will. And we must understand that weakness in any one of these areas puts a dangerous burden on the others as well as on overall deterrence.

Deterrence is not, and cannot be, bluff. In order for deterrence to be effective we must not merely have weapons, we must be perceived to be able, and prepared, if necessary, to use them effectively against the key elements of Soviet power. Deterrence is not an abstract notion amenable to simple quantification. Still less is it a mirror image of what would deter ourselves. Deterrence is the set of beliefs in the minds of the Soviet leaders, given their own values and attitudes, about our capabilities and our will. It requires us to determine, as best we can, what would deter them from considering aggression, even in a crisis—not to determine what would deter us.

Our military forces must be able to deter war even if the Soviets are unwilling to participate with us in equitable and reasonable arms control agreements. But various types of agreements can, when the Soviets prove willing, accomplish critical objectives. Arms control can: reduce the risk of war; help limit the spread of nuclear weapons; remove or reduce the risk of misunderstanding of particular events or accidents; seal off wasteful, dangerous, or unhelpful lines of technical development before either side gets too committed to them; help channel modernization into stabilizing rather than destabilizing paths; reduce misunderstanding about the purpose of weapons developments and thus reduce the need to over-insure against worst-case projections; and help make arsenals less destructive and costly. To achieve part or all of these positive and useful goals, we must keep in mind the importance of compliance and adequate verification—difficult problems in light of the nature of the Soviet state—and the consequent importance of patience in order to reach fair and reasonable agreements.

\textit{Id.} at 2-3.

\textsuperscript{60} See A. ULAM, DANGEROUS RELATIONS 48-49 (1983). According to the author, it is the policy of both powers that nuclear weapons operate as a deterrent toward the other
DETERRENCE & MINIMUM ORDER

necessarily lead to a major nuclear war, or that the lesser wars would necessarily escalate to a war with nuclear weapons that have major destructive force. There is also no reliable evidence to show that the states believe the use of either conventional weapons that might lead to great destruction, or of mass destruction weapons must or can be deterred, avoided or prevented. There are also no common perspectives relating to aggression, its definition, or the enforcement measures to be used to deter or prevent aggression, through community processes.

Furthermore, there is no showing in their practice that the two sides believe they must share responsibility, or have some form of duty to share responsibility in establishing global social and legal orders, or in replacing the checks and balances of nuclear weapons as the major source of equilibrium. There is a more substantial showing in the

side's use of the weapons and, thus, the use of nuclear weapons must be advocated in certain situations or any deterrent threat would be meaningless. Id.

61. See The Harvard Nuclear Study Group, Living With Nuclear Weapons 55-59 (1983). The authors argue that nuclear war could result from the escalation of a confrontation involving conventional weapons into an exchange of tactical nuclear weapons. Id. at 56-57.


63. See Kaiser, U.S.-Soviet Relations: Goodbye to Détente, 59 Foreign Aff. 500 (1980), in which the author argues that the Soviet Union assumed that through détente the United States and the Soviet Union would either share in the management of global affairs or would divide the world up between them:

In the Soviet perspective the beginning of détente was irrefutable proof that the “correlation of forces” in the world had shifted to the Soviet Union’s advantage. For the Soviets détente was meant to provide not just the appearance of superpower equality, but the reality too. The idea that the United States and the Soviet Union could some day share responsibility for managing the entire world, perhaps even divide it up between them, appeals enormously to Soviet leaders. Originally, détente looked in Moscow like a first step toward just such an arrangement.

Id. at 501.

64. In Odom, Whither the Soviet Union, Wash. Q. (Spring 1981), the author argues that “Soviet refusal to contribute to a stable world order is not simply the product of devious diplomacy; it is rooted in the structure of Soviet politics. International stability is a danger to the Soviet Union . . . .” Id. at 30, 32.

If one assumes that the Soviet Union is a revolutionary power then the existing world order cannot satisfy it because “only absolute security—the neutralization of the opponent—is considered a sufficient guarantee, and thus the desire of one power for absolute security means absolute insecurity for all the others.” H. Kissinger, A World
practice of both sides that their perspectives concerning even the most elemental features of the future order are different in all fundamental respects relating to human rights and dignity.\textsuperscript{65}

Participants in the communications process, even with respect to human rights for example, may be divided into two groups: 1) those who favor the "economic" rights—the communist states, who insist upon attaining totalitarian order and economic-oriented security goals as the precondition to establishing the "human" rights of human dignity and 2) those who insist on the interaction of human rights and human dignity and the preeminence of those rights that are directly associated with promoting human dignity.\textsuperscript{66} In the Report of the Committee on Human Rights presented at the International Law Association meeting at Belgrade in August, 1980, a draft entitled "International Law Association Model Code of Minimal Rules of Procedure for International Human Rights Fact Finding Missions" was submitted.\textsuperscript{67} In assessing the situation in lesser developed but emerging nations, the draft concluded that:

\begin{quote}
in the absence of an institutional framework which ensures that those who exercise public power and dispose of public resources are accountable to the majority of the people, or conversely where the majority of the people cannot effectively participate in the making of major decisions, there is little likelihood of any significant improvement in the economic well-being of the majority of the people.\textsuperscript{68}
\end{quote}

In citing the Report with approval, one author has declared that

\textsuperscript{65} See M. McDougal, H. Lasswell & L. Chen, \textit{ supra} note 21, at 78-79. The Marxist-Communist approach to human rights takes the position that human rights pertain not to the individual but to the collectivity. \textit{Id.} According to the authors, "[T]he concern of [Marxist-Communist] literature for humanity extends to the human being conceived as an abstract 'species being'; it does not run to particular 'individuals with separate inalienable rights.'" \textit{Id.} at 77.

\textsuperscript{66} See G. Tunkin, \textit{ supra} note 30, at 79-83. Although Professor Tunkin acknowledges that a "close link exists between a state's ensuring basic human rights and freedoms and the maintenance of international peace and security," he concludes that "securing human rights remains and will remain basically the domestic affair of states," with international protection merely an auxiliary means of securing human rights. \textit{Id.}


\textsuperscript{68} \textit{Id.} at 104 n.60. The Report also noted that serious violations of civil and political rights in developing nations are sometimes "sought to be justified by reference to the supposed exigencies of economic development." \textit{Id.} at 102. The Report concludes that such justifications are misleading and serve to obscure the significant links between civil and economic rights. \textit{Id.}
it is to the credit of the conference to have clearly established the double interdependence which exists between the security of States and the personal security of their individuals, and on the other hand, between the quality of international relations and the general respect for human rights. 69

The linkage between human rights and the security of states, both internally and externally, was not only clarified, but was expressly identified as the critical component of détente from the preambles to the Final Act in Helsinki. 70

The communications process between the United States and the Soviet Union necessarily entails processes of misperception; first, because they are not open processes, and second, because information itself becomes a policy-oriented instrument in the competitive process between the two states. A reading, for example, of Soviet writings reveals very little on deterrence, 71 but shows great stress on war-fighting and the development of capabilities required for war. 72 The sub-

69. Id. at 123 n.60. The Report references the statement to Ghebali, L'Acte Final de la Conférence sur la Sécu- rité et la Coopération en Europe et les Nations Unies, 21 Annuaire Français de Droit International 73, 110 (1975).


The Soviet leadership with its military and political segments has no wish to embark on nuclear war, an outlook which seems to have wide popular support, and in this sense ‘war-avoidance’ is fundamental to Soviet policies. But that immediate transposition of a Western term is somewhat misleading. The essence of Soviet deterrence is not the ‘avoidance’ of war but the ‘prevention’ of war—thus giving Soviet deterrence a positive, active cast. Here actual military capability has a prominent role—Soviet deterrence as restraint of the imperialists: there is mutuality of deterrence in recognizing that both sides have the overwhelming capability to inflict ‘unacceptable damage’ if nuclear war were to be initiated by any act of rational (or supposedly rational) calculation, but this cannot be construed as accepting the posture of hostage and thus denying any initiative to the Soviet Union, even to the point of forcing surrender upon her. A natural and inevitable scepticism pervaded the Soviet view of MAD not only because this ran counter to the principle of avoiding dependence on a potential adversary for Soviet security, but more importantly because Soviet specialists perceived that the real issue was not MAD, as such, but rather that mutual deterrence in broad terms was being modified as the US moved away from deterrence via punishment and into greater emphasis on ‘compellence’, all with the aim of ensuring that ‘US deterrence of the Soviet Union [will be] “more efficient” than Soviet deterrence of the United States’.

Id. at 247 (citation omitted).

72. See, e.g., S. Gorshkov, supra note 42.
stantial difference in the requirements of weapons for deterrence, where relatively smaller numbers are sufficient, and the requirements for war, where the commanders have as their mission the total destruction of the enemy, can only create the most serious misperceptions.

III

A closer look at the perspectives of the United States and the Soviet Union is required both to establish the possibilities of and limitations on arms control, and to enhance the possibility of introducing innovative means for additional participants to assure more effective decisions regarding the use of force.

It is evident that the policy goals of the Soviet Union are all-embracing, so that our expectations concerning its policies, strategies and military capabilities regarding the design and use of strategic instruments are that they will be suited to attaining such goals. Moreover, the practice of the Soviet Union reveals a differing perspective concerning permissibility, legality and legitimacy of actions. Accordingly, Soviet attempts to influence states have taken a more ambitious tone. Under Soviet practice, nearly all measures become acceptable if they are workable for achieving influence.

Clearly, the shaping process that the Soviet Union seeks to impose is one that would weaken resistance to Soviet policies and enable it to achieve its goals at low cost. But regardless of what those goals might be—expansion of communism, internal security of the social order, absolute protection of the power and control in the hands of Soviet elites, territorial expansion, or a mix of all of these and others—the Soviet actions and decisions suggest that the Soviets seek to dominate the decision flow among states at every level. In reacting to this challenge in kind, the possibilities of democratic states achieving order and human dignity in conformance with their expectations under the United Nations Charter remain remote, complex and subject to uncertainty and risk.

73. In order to understand the perspective of the Soviet Union, several factors must be taken into account. First, the Soviet leaders have an intense fear of being encircled by capitalist nations. See Holloway, supra note 50, at 37-43, 49-53. Second, many Soviet leaders and writers believe communism can only survive if it expands. See supra note 50 and accompanying text. Finally, the Soviet leadership believes that by participating in the victory over Germany, it has the right to take part in shaping the post-war international order. See D. Holloway, The Soviet Union and the Arms Race 81-108 (1983).

74. See supra note 50 and accompanying text.

75. U.N. Charter arts. 1-2. The stated purposes and principles of the United Nations include, inter alia, the preservation of: peace and security; sovereign equality; self-determination; and international cooperation. Id.
Frustration with United States policies that lack a realistic perspective of the challenge led Adam Ulam to declare:

It is easy to see how discussion of foreign policy has been riveted to famous “challenges”: there was first the “challenge of the world community,” epitomized in those extravagant hopes in the U.N.; then in a different and much more real sense there was a “challenge of Communism.” But even here a common-sense notion became warped through rhetoric: instead of considering the rival to be the U.S.S.R. with its problems, its strengths, and its weaknesses, we persisted in seeing “godless Communism” or “international communism.” There was little disposition between 1945 and 1950 toward a realistic picture of the Soviet Union, to see through the Soviet bluff to what should have been the obvious truth: that Soviet vulnerabilities then made her a “paper tiger” if there ever was one, instead of that ominous dragon ready to uncoil and seize Eastern Europe. In the fifties, the preponderance of force on the American side was no longer so great, but a realization of its own vast assets and of the already perceptible splits and growing conflicts within the Communist world would have enabled the United States to engage in a profitable give and take with Russia instead of those illusory exercises of Geneva and Camp David. The problem of making the Russians achieve what they half wanted—a comprehensive agreement with America on several areas of international tension—became more and more difficult. But even after the Cuban crisis, an event which should have been a lesson as to how easy it was for the two countries to come close to agreement as well as to nuclear war, American diplomacy wanted not to strike a bargain with the Soviets but to force them to acknowledge what in American eyes were self-evident moral truths.76

Professors Myres S. McDougal and Florentino P. Feliciano have assessed the challenge of law among states as the challenge for order, and with that order, the protection of goal values:

The maintenance of public order—when public order is conceived in its minimal sense as community control and prevention of private violence—is commonly and appropriately regarded as the first indispensable function of any system of law. The securing of a public order—understood in a broader sense

as embracing the totality of a community's legally protected goal values and implementing institutions—which seeks, beyond an effective community monopolization of force, the richest production and widest sharing of all values, is today also commonly projected as appropriate aspiration by most mature territorial polities.\textsuperscript{77}

The challenge with respect to a future global order—social and legal—is a future policy oriented task. This challenge, for both the United States and the Soviet Union, is their fundamental challenge. Because it appears in a competitive power process, both sides have been seeking increasing recourse to military measures, to assert their own policies, so that the mutuality of effort, interest and policy is severely limited.\textsuperscript{78}

The full significance in this competitive process is clear, because the Soviet Union has insisted upon its value-oriented policies and has shown very limited compromise, both in negotiations and with respect to its conduct in general, based upon firmly established “Marxist-Leninist” principles. Because the strategic environment is a shared environment, there is a strong possibility that in these interactions, assuming that there is little or no compromise in Soviet policies, the United States will be placed at a strategic disadvantage. Soviet perspectives, so far, show that all social orders and social order policies, and all legal policies or assumptions of legal order, even those of communist, “socialist,” or Marxist states, that are inconsistent with Soviet perspectives and hegemony, must not be permitted to survive. In fact, survival of all such other orders regardless of their threat to the Soviet Union, would be deemed inconsistent with the security and well-being of the Soviet Union, creating an insecure and unstable framework for values affecting her security.\textsuperscript{79}

American perspectives tend to be directed toward gradual and ac-

\textsuperscript{77} M. McDougal & F. Feliciano, supra note 7, at 121-22.

\textsuperscript{78} See supra note 73, at 49-53, 90-98; see generally N.Y. Times, Nov. 8, 1983, at A1, col. 6 (Afghanistan and Grenada are recent examples of the Soviet Union and the United States reverting to military measures in the pursuit of their own policies).

\textsuperscript{79} Eastern Europe is often cited as the best example of the Soviet Union prohibiting social or legal orders that are inconsistent with Soviet perspectives and hegemony to survive. See A. Ulam, supra note 60, at 284-86; The Soviet Union and the Arms Race, supra note 73, at 52-53, 99-101. In arguing the Soviet position on the future of capitalism, Nikita Khrushchev once stated:

About the capitalist states, it doesn’t depend on you whether or not we exist. If you don’t like us, don’t accept our invitations, and don’t invite us to come and see you. Whether you like it or not, history is on our side. We will bury you.

Reprinted in J. Bartlett, Familiar Quotations 1032 (1968) (statement on Nov. 18, 1956 at reception for Wladyslaw Gomułka at the Polish Embassy in Moscow).
DETERRENCE & MINIMUM ORDER

commodating change—with change primarily in the decision process and less emphatically in the allocation of authority and control. While these tendencies have been shifting, the Soviet challenge appears in a number of Soviet “principles” now widely familiar, even if still ambiguous. We have become gradually aware of the full import of such Soviet principles as peaceful coexistence; the legal and political principles associated with a “socialist commonwealth,” and the law of that commonwealth; the Soviet law and expectations ascribed to détente; the denunciation of much of the “bourgeois” law—both domestic and international; the denunciation of a “universal” international law and “community” elements and the assertion that international law can be fragmented, and will continue to separate out, until replaced by a communist social order and, ultimately, the disappearance of all law.  

IV

Two perspectives are used to determine the legality of nuclear weapons. One perspective is associated with the expectation that all uses of such weapons are illegal and under this perspective, the weapons would be prohibited by customary international law. This is the perspective that applies to dum-dum bullets, perhaps to the lethal chemical gases—but with some dispute over the meaning of “lethality”—and to other lesser weapons. This view parallels the perspective that regards attacks deliberately directed to nonmilitary objectives as prohibited.

The second perspective is that nuclear weapons are not illegal per se, but that their use contrary to the law of war may not be legal or permissible. This is the general perspective, applicable to all weapons

80. See supra note 51. For a comprehensive study of Western efforts to seek greater public order, or community, see W. Kuehl, Seeking World Order (1969) (the author outlines the consultive systems emanating from the Congress of Vienna (1814-15) to more than 350 international conferences during the 19th century).

81. See G. Tunkin, supra note 30, at 123, 239, 260. According to the author, “in preclass society, there was no law, and law appears only with the emergence of class contradictions, with the disturbance of the tribal community.” Id. at 239.


83. See Mallison, The Laws of War and the Juridical Control of Weapons of Mass Destruction in General and Limited War, 36 Geo. Wash. L. Rev. 308 (1967). In view of prior practice, treaties and customary international law, the author concludes that nuclear weapons are not to be considered per se illegal. Id. The legality of nuclear weapons
and their use during wartime, imposed through customary international law, and assessed through the practice of states in armed combat. The fundamental guiding principle is that of military necessity, most appropriately framed in the Nuremberg Tribunals.84

Because the experience of states is limited with respect to nuclear weapons, there is no empirical basis upon which to determine how states will perceive the use of such weapons during periods of actual combat. Because such weapons can be used against legitimate military objectives consistent with the law of war and the overriding principle of military necessity, they are subject solely to the application of that principle.85

The conditions for application will and must, however, vary with the conditions of combat. The law of war is an emerging law, applicable to the changing military and combat environment, and more specifically to the weapons, methods of attack, nature of combat and size of

in use, however, must be decided in accordance with the laws of war as applied to actual combat. Id. See also V. Sokolowskiv, Soviet Military Strategy (H. Scott ed. 1975), where the author discusses the military utility of nuclear weapons from the Soviet perspective. Cf. Weston, Nuclear Weapons and International Law: Prolegomenon to General Illegality, 4 N.Y.L. Sch. J. Int’l & Comp. L. 227 (1983).

84. See 8 Law Reports of Trials of War Criminals 34, 65-66 (1948):

Military necessity has been invoked by the defendants as justifying the killing of innocent members of the population and the destruction of villages and towns in the occupied territory. Military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life and money. In general, it sanctions measures by an occupant necessary to protect the safety of his forces and to facilitate the success of his operations. It permits the destruction of life of armed enemies and other persons whose destruction is incidentally unavoidable by the armed conflicts of war; it allows the capturing of armed enemies and others of peculiar danger, but it does not permit the killing of innocent inhabitants for purposes of revenge or the satisfaction of a lust to kill. The destruction of property to be lawful must be imperatively demanded by the necessities of war. Destruction as an end in itself is a violation of international law. There must be some reasonable connection between the destruction of property and the overcoming of the enemy forces. It is lawful to destroy railways, lines of communication, or any other property that might be utilized by the enemy. Private homes and churches even may be destroyed if necessary for military operations. It does not admit the wanton devastation of a district or the willful infliction of suffering upon its inhabitants for the sake of suffering alone. See also M. Greenspan, The Modern Law of Land Warfare 279-80, 313-15, 409 (1959) (discussion of the principle of military necessity); Department of Navy, Law of Naval Warfare § 220(a) (1955). The principle of military necessity “permits a belligerent to apply only that degree and kind of regulated force, not otherwise prohibited by the laws of war, required for the partial or complete submission of the enemy with the least possible expenditure of time, life, and physical resources.” Id.

85. M. McDougal & F. Feliciano, supra note 7, at 77-78.
armed forces. Although these factors have quantitative impacts, they also have their qualitative effects on the changing and accommodating law.

In a series of observations concerning nuclear weapons, Professors McDougal and Feliciano have indicated that the reciprocal tolerance of states directly involved in combat in which nuclear weapons are introduced, is the critical element in establishing the practice to be associated with the use of such weapons:

The only weapons whose use has resulted in incidental value deprivations obviously superfluous and grossly disproportionate to the ensuing military advantage have been characterized as nonpermissible and effectively outlawed. Since such weapons are by definition militarily inefficient—value deprivates necessitate the expenditure of force—the compromise in favor of military necessity is obvious.

In particular, it may be noted that the argument about the supposed nonpermissible character of nuclear weapons is derived principally by analogy from earlier prescriptions about poisonous gas, poisoned arms and other weapons causing disproportionate suffering. Analogies are important, however, only so far as the policies they suggest are relevant; and analogies here suggest only the requirements, again, of compromise between military necessity and humanitarianism. In the context of the contemporary world arena, a very strong case would have to be made to establish that no possible uses of nuclear and thermonuclear weapons could conceivably be within the scope of military necessity for objectives legitimate by standards making reference to human dignity. The very difficulty in securing explicit agreement about the effective control of such weapons must suggest expectations of their military effectiveness and the perils of relying upon any alleged limitations derived from analogies. The rational position would appear to be that the lawfulness of any particular use or type of use of nuclear and thermonuclear weapons must be judged, like the use of any weapon or technique of warfare, by the level of destruction effected—in other words, by its reasonableness in the total context of a particular use.86

These observations, with respect to the military utility of weapons, extend also to the utility factor in the arms control agreements. For those agreements to be effective, the expectations of states are that in

---

86. Id. See also M. Greenspan, supra note 84.
reserving the right to resort to the use of force for some obviously legitimate purposes, they will reserve the further right to use those weapons whose military utility suits them for such situations. An arms control agreement for weapons that are useful as the means of wielding "legitimate" force is simply illusory.

For the purposes of this analysis, it must be concluded that nuclear weapons are lawful, but that their lawfulness in use is determined, as with other weapons, under the application of the law of war. As declared in United States v. List, citing an earlier International Military Tribunal decision:

This law [international law in general, but including the law of war in the context of the citation] is not static, but by continual adaptation follows the needs of a changing world. Indeed, in many cases treaties do no more than express and define for more accurate reference the principles of law already existing.

This ambiguity was described by one of the defending lawyers in the Nuremberg Cases: "International law is always dependent on historical development and has changed many times in the course of time, becoming both broader and narrower. . . ."

V

Under the framework of inquiry established by Professors McDougal and Lasswell and their associates, the policies of states that are directed to sanctioning goals such as deterrence, draw us into the legal

87. See M. Greenspan, supra note 84.
89. Id. at 1241 (quoting 1 TRIALS OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 221 (1947)).
90. See United States v. Flick, 6 TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS 164 (1950) (opening statement by Dr. Siemers representing defendant Weiss). See also statement by Judge Sears in United States v. Flick. Id. According to Judge Sears, changes in the technology of war "make plain the necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt or the extent thereof may not be determined theoretically or abstractly. Reasonable and practical standards must be considered." Id. at 1208. Although customary international law must be flexible enough to meet changing conditions, the retroactive application of new rules is not justified where it would conflict with a rule of fundamental right and justice. See United States v. List, 11 TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS 757, 1241 (1950).
91. See Moore, Prolegomenon to the Jurisprudence of Myres McDougal and Harold Lasswell, 54 VA. L. REV. 622 (1968) (also referred to as the New Haven School of Law, Science and Policy approach).
processes that support those policies. Even with their differences, the United States and the Soviet Union are concerned with minimum order— with a sufficient degree of shared social process in a community that serves both of them as well as others. Moreover, while such an order might, in an extreme case, show the preferred and almost exclusive pattern of basic goal values to be dominated by the power value and the processes to be dominated by the power processes, it is apparent that the current public order system extends beyond this. The two states are not engaged in an armed conflict.

Deterrence and balancing processes are variants on the influencing processes among states and their influencing processes are identified with power and the claims on power.92 The fundamental issue for the Soviet Union is, in reality, the power of the United States.93 The fundamental goals of the Soviet Union, according to Walter Laquer, cannot be satisfied short of revising its present perception of United States power, probably because it is a threat to the entire social fabric of communism itself.94

A policy and legally oriented approach to the arms control issue, and one that offers the best alternatives for global security, is geared toward the functional elements of influence and power, and the functional elements associated with law and the legal processes.95 Even if


93. See Laquer, What We Know About the Soviet Union, 75 COMMENTARY 21 (1983).

94. Id. In the words of the author:
But it remains the case that although the Soviet Union does not want nuclear war, it does want “real security,” and this, given the Soviet mentality, means that the Soviet Union has to be the strongest power in the world, not just stronger than America but stronger than all its potential enemies taken together. It means retaining the initiative in world affairs, and it means expanding Soviet influence wherever possible. The Soviet Union not only has to be the strongest power, it also has to be perceived as such.

The problem as far as the Soviet Union is concerned, then, is not Reagan's "aggressive language" but America's power. America would be suspect, a potential enemy, even if its President were a member of the Committee on East-West Accord. Indeed, even a Communist America would be a potential antagonist, perhaps even a more dangerous one, for unimpeded by liberal restraints and public opinion, its leaders could pursue a foreign policy with the strength commensurate with its real power. Détente, as many Americans interpret it, is possible, but only with an American leadership willing to give up its interests outside the Western hemisphere.

Id.

95. See, e.g., McDougal & Reisman, supra note 92, at 103-18.
A jurisprudence of international law which would effectively serve the needs of both scholars and specialists in decision, and indeed of all who would under-
the assumption is that the Soviet Union is not seeking predominance in global affairs, that assumption, can be continuously tested by this framework, so that declarations or assumptions of this nature can be made to fit the realities and performance of that nation.

Once we turn to influence as the dominant element of deterrence, it is evident that the balancing process is expected to restrain both states from exerting influence through measures that would disrupt or destabilize the minimum order, or in a more progressive sense, that would block efforts toward strengthening it. The sanctioning goals of deterrence and prevention—differing because the format provides for negative features that cause the calculations of risks and burdens to enter into calculations for opportunity, while the latter provides for confidence measures, or measures to reduce provocative conditions—are seen to work together. A shared policy for minimum order must include efforts to maintain stability, which is not an easy task for hostile adversaries. Accordingly, a sanctioning goal must include measures that restore stability when it is lost or being lost, and again, this requires efforts for communications that exceed those attempted in the past arms control agreements.

The influence element of deterrence has a broad scope because the values implicated in deterrence are seen to be primarily concentrated on power and the power process itself, and the competition here must be stabilized. But there is also weight to deterrence, in the sense that the decisions to use the major nuclear weapons determine the effectiveness and the legal enforceability of the arms control agreements. Moreover, the element of "domain" of the deterrence must be considered,

stand and affect the processes in which they live, must, accordingly, be comprised of a systematic, flexible, and configurative approach, exhibiting a number of major features: (i) It must adopt an observational standpoint in identification with the whole of humankind, distinguish the standpoints in inquiry of the scholar and of the decision-maker, and in aid of enlightenment, as well as of decision, develop a theory about law, and not merely of law. (ii) It must create a map of inquiry, both comprehensive and selective, for effectively relating authoritative decision to the larger social and community processes by which it is affected and which it in turn affects. (iii) It must postulate, and make commitment to, a comprehensive set of goal values for world public order, which can be made explicit, in social process terms, in whatever degrees of abstraction and precision may be required in inquiry and decision. (iv) It must identify the whole range of intellectual tasks relevant to problem-solving about the interrelations of international law and world social process, and it must specify economic and effective procedures for each of these tasks. Each of these features may be given brief further specification.

because the proliferation of nuclear weapons and nuclear capabilities would lead to a proliferation of potential participants in the use of such weapons, and this would unquestionably involve the major states if their conflicts intensified.

These elements indicate the direction and the effectiveness of arms control and arms control agreements. They enable us to perceive the limitations and the future needs for policy. Each is intimately related to the legal processes because we are seeking a minimum order which is characterized by law and the legal processes. The present equilibria of deterrence balancing are tenuous and unstable, first because weapons are involved, and second because policies associated with weapons, both for threat and for use in combat, are involved. This instability, which reaches its highest when war breaks out and control is at a minimum in the order that has been created, continues during deterrence, where control is more reliable and effective, but still falls short of global security needs associated with stability.

Accordingly, "since the legal process is among the basic patterns of a community, the public order includes the protection of the legal order itself, with authority being used as a base of power to protect authority."

Both states share, with respect to authority, substantial interests in the United Nations Charter; the United Nations and its agencies and fora; the treaties and agreements that they have entered into and, notwithstanding Soviet claims concerning customary interna-

96. See T. Schelling, supra note 33. The author argues that weapons are not natural, but are important elements of the policy influencing process. Id. at 234. According to former Secretary of Defense Harold Brown, the continued negotiation of arms control agreements is vital to the national security interests of all states in order to avoid the devastation that would surely result from global nuclear conflict. See Remarks of H. Brown at the Convocation Ceremonies for the 97th Naval War College Class (Dept. of the Navy, Aug. 20, 1980), excerpts reprinted in N.Y. Times, Aug. 21, 1980, at A9, col. 1. For a full text of Secretary Brown's Address, see Off. of Assistant Secretary of Def., News Release No. 344-80 (Aug. 20, 1980). Because the overriding objective of strategic forces is to deter nuclear conflict, and deterrence requires stability, Secretary Brown argued that three requirements must be met in order to achieve strategic nuclear stability:

First, we must have strategic nuclear forces that can absorb a Soviet first strike and still retaliate with devastating effects. Second, we must meet our security requirements and maintain an overall strategic balance at the lowest and most stable levels made possible by our own force planning and by arms control agreements. Third, we must have a doctrine and plans for the use of our forces (if they are needed) that make clear to the Soviets the hard reality that, by any course leading to nuclear war, they could never gain an advantage that would outweigh the unacceptable price they would have to pay.

Id.

tional law, a substantial common interest in the authority associated with and identified as law.

Public order expectations alone, under deterrence processes, provide insufficient assurance or security for that order. Those processes are aimed at weapons, and as stressed in this paper, aimed at weapons covered by the agreements and no more. Clearly, widening efforts at arms control operating through deterrence can be recommended, since minimum order will be promoted if other sanctioning processes can be introduced and shared.

The widening perspectives that might be expected to lead to more effective sanctioning processes are expressed in the agreements associated with SALT I. Two categories of agreements were then concluded: one category addressed the nuclear weapons balance; the other, areas of cooperation that might be pursued by the two countries.

The Basic Principles of United States and Soviet Relations expressed a common policy of refraining from "unilateral advantage." The Agreement on Basic Principles of Negotiations on Strategic Arms Limitation calls for substantial limitations, beyond those of the strategic nuclear weapons of SALT I, with adequate verification, and measures to prevent "accidental or unauthorized use of nuclear weapons." An earlier agreement, the Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War, compliments the two agreements just noted, by calling for measures to reduce the possibility of accidents that might lead to warfare between the two sides.

These three agreements, and the other arms control agreements in general, contain provisions that extend beyond the deterrence processes to prevention as a sanctioning goal. Although the deterrence processes and goals are identified with conditions that increase the cost of undesired conduct, and though such negative constraints promote preferred conduct of other states, the prevention processes are also aimed at reducing or eliminating the provocative conditions upon which the use of nuclear weapons might be justified. This is an extremely difficult process between adversaries such as the United States

98. SALT I, supra note 41.
101. Id. at 24 U.S.T. 1475.
and the Soviet Union. At present, it is largely pursued through confidence-building measures.

Confidence-building measures include the procedures and processes by which the parties facilitate their communications and improve the reliability of the communications processes. Once these gain strength, it is expected that their relations may proceed on a more reliable basis, and that they might find an increasing number of arenas in which their interests are shared or reciprocal and promoted by parallel or common policies.\textsuperscript{103}

Under present conditions, however, the problem of confidence-building remains a serious obstacle to the communications process. This problem was reflected in the Helsinki Accords.\textsuperscript{104} While the Accords seek to balance the policy demands of the Soviet Union (to "regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe")\textsuperscript{105} and those of the West (to further the mixed claims for human rights and human freedoms along with the determination to make détente a continuing process),\textsuperscript{106} at least one of the documents relates to confidence-building measures as related to questions of security and disarmament.

The confidence-building measures contained in the Accords provide for: prior notification of both major and minor military maneuvers "in a spirit of reciprocity" to enable the exchange of observers to at-
tend the maneuvers, as well as prior notification of major military movements to be made at the discretion of the parties.107 With respect to disarmament, the Accords provide that "the participating States recognize the interest of all of them in efforts aimed at lessening military confrontation and promoting disarmament which are designed to complement political détente in Europe and to strengthen their security."108 The section captioned "General Considerations" further noted "the complementary nature of the political and military aspects of security,"109 and the growing interrelationship of security throughout Europe and adjacent regions.

All of these measures appear in the Final Act to the Helsinki Conference. They are increasingly identified as significant guidelines to the practice of states. The Act, however, clearly states that it is not to be "eligible for registration under Article 102 of the Charter of the United Nations,"110 and hence not to be considered a treaty or international agreement.

Confidence-building measures of this nature tend to be hortatory—at best guidelines of principle and aimed at future policy. More specific measures, where the states expect implementation or execution through appropriate decision processes and actions, appear, for example, in the SALT I agreements.111 Some are directed at establishing the line of communications so that high level spokesmen of the United States and the Soviet Union can be in direct contact.112 Such agreements are part of the Direct Communications Link, or "Hot Line," with the first such agreement dated Geneva, June 20, 1963.113

Another confidence-building measure appears in the "safeguards" arrangements exemplified by the Agreement between the United States and the International Atomic Energy Agency for the Applica-

107. Id. at 1298-99.
108. Id. at 1299.
109. Id.
110. Id. at 1325.
111. See SALT I, supra note 41. SALT I allowed each party to use the technical means of verification at its disposal "in a manner consistent with generally recognized principles of international law." See ABM Treaty, supra note 41, art. v.
112. See infra note 113. Improvements were made concerning the Hot Line pursuant to the Agreement on Measures to Improve the USA-USSR Direct Communications Link, Sept. 30, 1971, United States-U.S.S.R., 22 U.S.T. 1598, T.I.A.S. No. 7187, and the Amendment to Agreement on Measures to Improve the USA-USSR Direct Communications Link, Mar. 20, 1975, United States-U.S.S.R., 26 U.S.T. 564, T.I.A.S. No. 8059.
tion of Safeguards in the United States. This arrangement provides increased confidence in the application of the Treaty on the Non-Proliferation of Nuclear Weapons, by implementing the requirements of Article III of that treaty.

Article XIII of the Anti-Ballistic Missile Treaty (ABM Treaty) goes even further in seeking to eliminate provocative conditions and to improve the communications flow. This article provides for a Standing Consultative Commission of the United States and the Soviet Union.


115. Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161. Article III paragraph 1 states that “[e]ach non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards under International Atomic Energy Agency guidance for “the exclusive purpose of verification... with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosives.” Id.

Paragraph 2 admonishes against providing “source or special fissionable material” or equipment or processing material unless the Treaty safeguards are in place. Id.

Paragraph 3 states that the safeguards should not hamper peaceful nuclear activities, and paragraph 4 states that “[n]on-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article. . . .” Id.

116. ABM Treaty, supra note 41. Article XIII states:

1. To promote the objectives and implementation of the provisions of this Treaty, the Parties shall establish promptly a Standing Consultative Commission, within the framework of which they will:

(a) consider questions concerning compliance with the obligations assumed and related situations which may be considered ambiguous;
(b) provide on a voluntary basis such information as either Party considers necessary to assure confidence in compliance with the obligations assumed;
(c) consider questions involving unintended interference with national technical means of verification;
(d) consider possible changes in the strategic situation which have a bearing on the provisions of this Treaty;
(e) agree upon procedures and dates for destruction or dismantling of ABM systems or their components in cases provided for by the provisions of this Treaty;
(f) consider, as appropriate, possible proposals for further increasing the viability of this Treaty, including proposals for amendments in accordance with the provisions of this Treaty;
(g) consider, as appropriate, proposals for further measures aimed at limiting strategic arms.

2. The Parties through consultation shall establish, and may amend as appropriate, Regulations for the Standing Consultative Commission governing procedures, composition and other relevant matters.

Id.

117. Id.
and, though the actions of the Commission are merely advisory, it provides the Commission with far-ranging competence to consider the strategic environment that the two nations share. Moreover, because such matters must be closely monitored, the practice of the Commission will increasingly draw upon delegates closely instructed, so that their “advice” becomes an important communication, with law-making implications, for the two governments.

Two of its “powers,” one relating to dismantling the ABM systems and the other relating to considering questions involving “unintended interference with national technical means of verification,”118 are of particular importance to the application of the Treaty itself.

Article XII, to assure compliance with the ABM Treaty, declared that the parties would be using their own measures—the national technical means—and that they would not interfere with each other in such use, and that they would not deliberately conceal activities that would cause suspicion of noncompliance with the Treaty. Article XII, which is monitored by the Standing Consultative Commission, contains assurances that protests and demands—a negotiating and communicat-

118. Id. art. XIII, § 1(c). Verification raises issues of access and communication. Adversaries must establish satisfactory security measures, while also assuring themselves of their adversary’s compliance. Because verification extends deeply into the security of each of the adversaries, it leads to conflicting policies. Protection against interference in internal security decisions must be balanced against the need to inquire into the adversary’s arms control measures. Consequently, each is concerned with the technical means of verification and espionage. See A. DEAN, TEST BAN AND DISARMAMENT: THE PATH OF NEGOTIATION 49-62 (1966); NEGOTIATING SECURITY 41-42, 45-47 (W. Kincade & J. Porte eds. 1979); THE HARVARD NUCLEAR STUDY GROUP, supra note 61, 89-90, 107, 197-99; A. McKNIGHT, ATOMIC SAFEGUARDS 182 (1971).

For an account of Soviet law on the topics of verification and espionage, see generally H. BERMAN & P. MAGGS, DISARMAMENT INSPECTION UNDER SOVET LAW (1967). Soviet law prohibits air photography by foreigners, as well as espionage, which is defined as:

[a] transfer or the stealing or collection for the purpose of transfer to a foreign state or foreign organization of information constituting a state or military secret . . . or . . . [the] transfer or collection on assignment from a foreign intelligence service of any other information for use to the detriment of the interests of the USSR.

Id. at 30.

These issues were raised and left unresolved in the “Open Skies” proposal made by President Eisenhower at the Geneva Summit on July 21, 1955. For a review of that proposal, see W. ROSTOW, OPEN SKIES: EISENHOWER’S PROPOSAL OF JULY 21, 1955 (1982). Cf. Herken, The Poker Game of Arms Control (Book Review), Wash. Post, Jan. 23, 1983, (Book World) at 1 (Herken criticizes Rostow’s account of the open skies policy as a cynical drama to cover an attempt by the United States to gain overflight access to Russia for tactical purposes).
ing process—will be continuously entertained to reach the objectives of the Treaty.\textsuperscript{119}

Compliance processes, such as those just mentioned, are not found in the other arms control agreements. Under other arms control pacts, contracting parties have access to international fora, including the Secretary General of the United Nations, to air their complaints.\textsuperscript{120} The history of past arms control accords suggests that the fundamental weakness in moving toward minimum order—tenuous communication links—can be improved and measures can be adopted to overcome some of the problems created. Clearly, however, minimum order in the global, high participatory sense will require measures extending far beyond these past efforts. At the present time however, the progress that can be made toward providing reliable communications must proceed in stages.

The sanctioning processes of deterrence and prevention, and the goals that each seeks, may be supplemented by the processes associated with restoration, rehabilitation and reconstruction.\textsuperscript{121} These are,

\begin{enumerate}
  \item For the purpose of providing assurance of compliance with the provisions of this Treaty, each Party shall use national technical means of verification at its disposal in a manner consistent with generally recognized principles of international law.
  \item Each Party undertakes not to interfere with the national technical means of verification of the other Party operating in accordance with paragraph 1 of this Article.
  \item Each Party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with the provisions of this Treaty. This obligation shall not require changes in current construction, assembly, conversion, or overhaul practices.
\end{enumerate}

\textsuperscript{119} ABM Treaty, supra note 41, art. XII. This article states:

\begin{enumerate}
  \item For the purpose of providing assurance of compliance with the provisions of this Treaty, each Party shall use national technical means of verification at its disposal in a manner consistent with generally recognized principles of international law.
  \item Each Party undertakes not to interfere with the national technical means of verification of the other Party operating in accordance with paragraph 1 of this Article.
  \item Each Party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with the provisions of this Treaty. This obligation shall not require changes in current construction, assembly, conversion, or overhaul practices.
\end{enumerate}

\textsuperscript{120} See, e.g., The Antarctica Treaty, opened for signature Dec. 1, 1959, 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71. The Antarctica Treaty declares that Antarctica is to be used for peaceful purposes only, and that the Treaty is established under the purposes and principles of the United Nations Charter. \textit{Id.}

\textsuperscript{121} See Reisman, Sanctions and Enforcement, in M. McDougal & M. Reisman, supra note 97, at 381. Professor Reisman notes that the “objectives of sanctions should constantly be linked to the needs of public order. . . . Hence an element of the legitimacy of any sanction is its contribution to constitutive, regulative, enterprisory, or supervisory operations in support of preferred public order, by means of corrective, deterrent, rehabilitative, and reconstructive strategies.” \textit{Id.} at 393-94. See also R. Arens & H. Lasswell, In Defense of Public Order: The Emerging Field of Sanction Law (1961). The authors, while limiting their inquiry to domestic law, point out elements that affect the relations among states: “[s]evere sanctions are officially used internally against violators of community prescription; and they are also used against external targets in the name of norms shared by the world community.” \textit{Id.} at 146. The “objectives” or goals of sanctioning include prevention, deterrence, restoration, rehabilitation and reconstruction. \textit{Id.} at 199-202. The last three are most often identified in global terms with the
to be sure, of less significance in the present context, and their outlines can barely be seen. These concepts were applied to defeated nations following World War II, because a wider range of policies was needed then to bring those nations into the global community of states.

Today, however, there is a clear need to repair, on a continuing basis, the fragmentation and breakdown in the relations of the United States and Soviet Union and of other states. There is a need to rehabilitate values destroyed by states resorting to violent military measures outside their borders. There are also the longer range needs to reconstruct and reorganize the processes for moving toward minimum order. The proposal of Senator Jackson serves these goals, as well as others.

aftermath of major wars when the expectation is to return the nations engaged in misconduct to a global and peaceful community. The distinction of the two operative sanctioning goals—deterrence and prevention—is, according to the authors, found as follows:

In order to distinguish the fact situations which in the main are preventive from those where the dominant objective is deterrence, we sum up the former by saying that the accent is upon positive advantages, including the removal of provocative conditions; in the latter case, the accent is upon precluding acts of nonconformity by underlining the cost of deviation.

Id. at 200-01.


The Center would be a permanent organization at a location agreeable to both sides. It would have areas where the Soviet and American representatives would meet and consult together, and also areas where they could work and confer in private. The American staff would be linked to Washington by secure American-controlled communication links, and the Soviets would be tied to Moscow through their own communications system. The Center would be open, fully staffed, every hour of the day and every day of the year.

The two staffs should include technical advisers and military representatives knowledgeable about such matters as command, control and surveillance systems, force deployments, readiness testing procedures and the like. However, the center's basic mission would be neither technical nor military. The decisive issues of nuclear war or peace are and always will be political and diplomatic, and the Center's staffing should reflect this fact.

The Center would be instantly alerted when there were any war-threatening developments. It would supplement, and work in tandem with, the modernized hotline. The superpower dialogue in time of crisis could thus become vastly more effective. The two sides at the Center would consult by actually talking with each other face-to-face across the width of a conference table, and each side would report its assessment as quickly as possible to the tops of their governments. As needed, Soviet and American experts on the kind of problem threatening the peace could meet with each other without any bureaucratic delays. The two teams would be known quantities to each other, and this could assist in understanding and in judging the credibility of their counterparts.

The Center could work on crisis prevention as well as crisis resolution. It might draft proposed codes of nuclear conduct for the two superpowers. Each side might agree to refrain from doing things—undertaking certain types of force
As the former Director of the Arms Control and Disarmament Agency, Eugene V. Rostow, declared in his departure statement, our values are very much at stake:

If our people, our allies and our friends lose faith in the wisdom, the energy, the imagination and both the firmness and intelligent flexibility of our arms control efforts; if it is not obvious to them and to us that the absence of agreements is the fault of the Soviets and not of the United States, two consequences will surely follow: It will be impossible to achieve worthwhile agreements with the Soviets and our alliance systems will be in grave peril.

Under the statutes, we have a vital role in accomplishing this task of negotiation and education.\textsuperscript{123}

The Arms Control and Disarmament Act of 1961\textsuperscript{124} was aimed at ridding the world of "the scourge of war." That goal was clearly long-range, yet always critical, because of the impact on our values. This view was expressed by President John F. Kennedy in his Commencement Address before American University on June 10, 1963:

Today, should total war ever break out again—no matter how—our two countries would become the primary targets. It is an ironic but accurate fact that the two strongest powers are the two in the most danger of devastation. All we have built, all we have worked for, would be destroyed in the first 24 hours. And even in the cold war, which brings burdens and dangers to so many countries, including this nation’s closest allies—our two countries bear the heaviest burdens. For we are both devoting massive sums of money to weapons that could be better devoted to combating ignorance, poverty, and disease. We are both caught up in a vicious and dangerous cycle in which suspicion on one side breeds suspicion on the other, and new weapons beget counterweapons.

In short, both the United States and its allies, and the Soviet Union and its allies, have a mutually deep interest in a just and genuine peace and in halting the arms race. Agreements to this end are in the interests of the Soviet Union as well as ours—and even the most hostile nations can be relied

upon to accept and keep those treaty obligations, which are in their own interest.

So, let us not be blind to our differences—but let us also direct attention to our common interests and to the means by which those differences can be resolved. And if we cannot end now our differences, at least we can help make the world safe for diversity. For, in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children’s future. And we are all mortal.125

Deterrence is part of the power and influencing process the goal of which is minimum order.128 As one means to that end, deterrence is aimed primarily at reducing the possibility of nuclear war. Clarification of this process, undertaken earlier in this section, enables us to perceive international law as one of its major components.

International law “is best regarded as a process of authoritative decision in which the members of a community collectively—through the careful articulation of shared demand and expectations and the employment of many different institutions and intellectual procedures—seek to clarify and secure their common interests.”127 What we identify first in law is authoritative decision itself—i.e.,

decisions that identify and characterize authoritative decision-makers, state and specify basic community policies, establish appropriate structures of authority, allocate bases of power for sanctioning purposes, authorize procedures for the making of different kinds of decisions, and secure the performance of all the various kinds of decision . . . necessary to the effective administration of community policies.128

125. 1963 PUB. PAPERS 459, 462 (1964). President Kennedy called for a reexamination of the American attitude toward the Soviet Union and issued “a warning to the American people, not to fall into the same trap as the Soviets, not to see only a distorted and desperate view of the other side, not to see conflict as inevitable, accommodation as impossible, and communication as nothing more than an exchange of threats.” Id. at 461.

126. Deterrence as a means of influencing the conduct of another party is not necessarily limited to adversaries, but may be employed as a means of influencing the conduct of allies as well. This may be viewed as deterrence through “denial of reward.” In this way, the United States may influence her allies and nations friendly to her by threatening that a particular type of conduct will bring about reductions in her economic or military assistance to them. See Y. HARKABI, supra note 14.


128. Id. at 281-82. Professor McDougal refers to decisions of this type as constitutive decisions, “with reference obviously somewhat broader than the more traditional word ‘constitutional.’” Id. at 282.
Decisions made by this process are those that control and regulate the value processes within the community\(^{129}\)—that establish the effectiveness, enforceability, or controlling element that characterizes the "control" element\(^{130}\) in law and the decision flow\(^{131}\) identified as law. In the current relations among states, the value processes are primarily those of power, and the concerns of control through law are directed toward international coercion, and to establishing when such coercion is permissible or impermissible pursuant to community policies and standards.\(^{132}\)

Because the processes of law take place in a policy-oriented framework, the policy content in law is a further component to be identified.\(^{133}\) The United States and the Soviet Union, for example, are compelled to share arms control policies in the arms control agreements they have negotiated, unless they intend the agreements to decay or remain hortatory.\(^{134}\) Accordingly, they expect compliance, or at least the minimal compliance that establishes the ordering goal and the order expected from the agreement. As stressed at length, these are matters in which at least minimal communications must be maintained, and communications, of course, are critical for law, the legal processes and the establishment of constitutive processes as well.\(^{135}\)


\(^{130}\) The control element in law is defined as the "participation in effective decision-making, in making the choices which are in fact put into effect in a consequential number of instances. . . ." Id. at 203.

\(^{131}\) Professor McDougal observes that "[a]ny comprehensive inquiry about the law, past or future, of a community must accordingly take into account the entire flow within that community of both constitutive and public order decisions." McDougal, *supra* note 127, at 282.

\(^{132}\) See McDougal & Reisman, *The Prescribing Function in the World Constitutive Process: How International Law is Made*, in M. McDougal & M. Reisman, *supra* note 97, at 181. The authors emphasize a preference for non-coercive strategies, insisting that coercion be used as a last resort and then only in the common interest. Id. at 217.

\(^{133}\) Id. at 191-92.

\(^{134}\) In making an international agreement, the general objective of the parties is to "project a common policy with respect to a future distribution of values." M. McDougal, H. Lasswell & J. Miller, *The Interpretation of Agreements and World Public Order* 16 (1967). Once an agreement has been reached, the conduct of the parties is significant to determining their continuing consensus about the content of their shared commitment. Id. at 20. The disposition of the parties to adhere to the accord and carry out the policies embodied in it, may depend on the consonance of their demands, the importance each party attaches to the values at stake in the agreement and the degree to which the common policies encompassed in the treaty accord with general community aspirations. Id. at 16-17.

\(^{135}\) Professors McDougal, Lasswell and Miller describe agreements and prescriptions as the culmination of a sequence of communications. Id. at xii-xix. While some
Moreover, the parties must accept, and the global community must support, arms control law in the agreements, thereby affording them authoritative policy and content. As mentioned above, our concern is directed toward structures of authority—toward the "continuing arrangements of the structures—by which power is shaped and shared within the community." In terms of the legal processes involved in arms control law, it is evident there have been continuing attempts to adapt to changing circumstances. These efforts can be seen in the treaties and other strategies of the two states and in their decisions and actions. In short, the practice of both of them and of other states has been intended to stabilize weapons, and with that stabilization, to assure the minimum order.

The trend is to make deterrence policies, along with policies identified with prevention, expand into a growing global, community process and policy. Attempts at stabilization by weapons-balancing alone is ineffectual, because of changes in the weapons and asymmetries in the weapons balance. Consequently, the participants are

---

scholars would prefer to interpret agreements with reference only to the written text, these scholars prefer a contextual approach whereby the meaning of the text is ascertained through an examination of the sequence of communications preceding and succeeding the adoption of the written language. Id.


137. In the 1970's, for instance, advancements in nuclear weapon technology precipitated agreements reflecting the common concern of the United States and the Soviet Union with the minimization of the risks and economic costs of the arms race. The HARVARD NUCLEAR STUDY GROUP, supra note 61, at 90-99. See, e.g., ABM Treaty, supra note 41; Interim Agreement, supra note 41.


139. The principle of deterrence has historically served as a basis of military strategy for the defense of states. Nuclear deterrence in present conditions is, however, different from deterrence with conventional weapons. In the event a state chooses to exercise its option to resort to nuclear force the effect will be immediate, total and global. See NUCLEAR WEAPONS—REPORT OF THE SECRETARY-GENERAL 110 (1980) (based on the Report of
compelled to save their minimum order by reaching beyond the major strategic nuclear weapons, into conventional weapons and, ultimately, into a genuine attempt to promote community controls over international coercion.\textsuperscript{140}

Clarification of this process does not tell us that the United States and the Soviet Union will forego their competition and proceed in this direction. It simply indicates that if they do not pursue such policies, the policies they presently espouse are very likely to erode, with attendant breakdown in the minimum order. Conflict and hostile uses of force will then inevitably be stressed in their relations.\textsuperscript{141}

the Group of Experts on a Comprehensive Study on Nuclear Weapons prepared at the request of the United Nations General Assembly, 35 U.N. GAOR, Annex (Provisional Agenda Item 48(b)) ch. 4, U.N. Doc. A/35/392 (1980) [hereinafter cited as REPORT OF THE SECRETARY-GENERAL]. It is therefore only possible to continue to live with nuclear weapons if the weapons balance is maintained at all times. \textit{Id.} at 183.

Its importance notwithstanding, the stability of the weapons balance is decidedly difficult to ensure. As long as the arms race continues, the threat of one or another power gaining a significant technological advantage will remain. Additionally, the various instances of false alarms and computer malfunctioning present the real possibility of nuclear war precipitated by human or technical error. \textit{Id.} Given these potentialities, it is highly questionable that minimum world order can be maintained primarily on the basis of weapons balancing. \textit{Id.} at 185.

140. For an approach to a balancing process that relies upon conventional weapons and the armed forces in NATO, see Canby, \textit{Military Reform and the Art of War}, 7 \textit{INT'L SECURITY REV.} 245 (1982). Canby first argues that defense spending is not a measure of military capability. \textit{Id.} The author notes that "the Warsaw Pact spends less on defense than NATO . . . yet it has many more combat forces and is significantly stronger." \textit{Id.} According to Canby, NATO's military inferiority is purely self-inflicted: "[i]t is a case of dated doctrine causing too few combat units, misuse of technology and manpower, and poor strategy and integration with allies." \textit{Id.} at 264-65. Canby proposes to restructure the armed forces and to realign the defense posture to enable NATO to respond to and deter Soviet attacks so that NATO can attain a military balance without increased costs "in a manner which adds to an existing, if tenuous, nuclear deterrent." \textit{Id.} at 255.

See also Beres, \textit{Nuclear Strategy and World Order: The United States Imperative}, 8 \textit{ALTERNATIVES: A J. OF WORLD POL'Y} 139 (1982). The author advises the United States to take measures to reshape the world order by renouncing its build-up of nuclear weapons, pursuing the nuclear freeze and no first-use policies, and by other unilateral disarmament measures. \textit{Id.} While Beres also expects actions by the Soviet Union, his advice and recommendations for action are limited to the United States. \textit{Id.}

141. The discontinuation of the intermediate-range nuclear missile (INF) talks between the United States and the Soviet Union illustrates the need for effective community controls over nuclear weapons to prevent the further erosion of minimum world order. On Nov. 23, 1983 the Soviet Union broke off the INF talks in response to the arrival of Pershing 2 missiles on West German territory. NATO plans to deploy 108 Pershing missiles and 96 cruise missiles on West German territory to counter the Soviet deployment of 243 SS-20 multiple-warhead missiles targeted on Western Europe and 117 mobile SS-20s aimed at Asia. \textit{See N.Y. Times}, Nov. 24, 1983, at A14, col. 6.

The Soviet Union considers the deployment of these missiles as an attempt by the
The primary purpose of this article was to provide clarification of the emerging policy with respect to minimum order, and specifically, the strategy adopted currently among states to establish a minimum order by checks and balances with respect to the major nuclear weapons.142

Certain trends in state practice cannot be ignored. The deterrence process that the states have established is an influencing process, and part of their competitive struggle in a power arena.143 Since states have

United States and NATO to upset the presently existing balance of nuclear forces in Europe. See N.Y. Times, Nov. 25, 1983, at A18, col. 5 (text of the statement issued by Yuri Andropov as reported by Tass). The Soviet Union has declared that the NATO deployment will be countered by Soviet missiles targeted against the United States and its allies: “Americans will inevitably feel the difference between the situation that existed before the deployment of their missiles in Western Europe and the situation after deployment, when they will be faced with a new level of threat commensurate with the threat they are posing for the U.S.S.R.” N.Y. Times, Nov. 24, 1983, at A14, col. 5.

142. For a discussion of checks and balances with respect to the power of decision-makers acting in groups or “power centers” within governments, see The Federalist No. 10 (J. Madison) (which addresses the balancing of factions); Id. Nos. 47 & 51 (J. Madison) (which address the separation of powers).

A number of community prescriptions have been established with respect to nuclear weapons. See, e.g., Treaty Banning Nuclear Weapons in the Atmosphere, in Outer Space and Under Water, supra note 17; Treaty on the Non-Proliferation of Nuclear Weapons, supra note 115; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, supra note 138, art. IV, which provides that “States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.”

143. See H. Bull, supra note 13. The author provides a framework for analyzing arms control and disarmament under a theory of balance of power. The author suggests that if the present nuclear stalemate cannot be replaced by the abolition of nuclear weapons, “it must be carefully considered what kinds and levels of armaments enable it to persist. It is clear that the system of deterrence requires that each side has a strategic weapons system that is sufficient effectively to deter the other side.” Id. at 61. Bull argues that under a theory of balance of weapons power “it is possible to view the proper concern of arms control as the preservation and perfection of the strategic nuclear balance, rather than as the attempt to dismantle it while leaving the world without security against nuclear war.” Id. at 62. The author points out that the strategic nuclear balance tends to insure that neither adversary can resort to strategic nuclear weapons as long as the checks and balances remain effective. Id. at 46.

For an analysis of the struggle among states in the context of their competing interests in the seas, see A. Mahan, The Influence of Sea Power Upon History: 1660-1783 (1957). The author states:

[The profound influence of sea commerce upon the wealth and strength of countries was clearly seen long before the true principles were detected. To secure to one's own people a disproportionate share of such benefits, every effort was
long grown accustomed to using a variety of strategic instruments of policy to achieve their own, exclusive goals, it would be illusory to ignore the significance of military measures as the most important of these instruments during any period in their relations, especially where confrontation and hostility prevail. 144

Conditioning factors applicable to their behavior, and to their expectations, are: (a) that states will continue to fashion a variety of military measures, and use them to achieve dominant policy goals; (b) that these goals are exclusive, aimed at the security of the state that is implementing them, with minimal attention to establishing global order through community processes and (c) that they will tend to adopt and adapt arms control and deterrence policies to serve these dominant policies and policy goals. 145

made to exclude others, either by peaceful legislative methods of monopoly or prohibitory regulations, or, when these failed, by direct violence.

Id. at 1.

144. See, e.g., A. Smith, supra note 27. Adam Smith criticized England's Act of Navigation as an impairment of British trade and commerce, but he argued that the Act was justified as a defense measure. Id. at 485-87. Adam Smith also stressed the importance of a standing army as an effective instrument of policy, stating that "it is only by means of a well-regulated standing army that a civilized country can be defended . . . . It is the instrument which executes and maintains all his [the sovereign's] other regulations." Id. at 228-29.

The terms "strategy" and "policy" are used at times interchangeably. Policy is defined by Lasswell and Kaplan as "a projected program of goal values and practices; the policy process is the formulation promulgation, and application of identifications, demands, and expectations" concerning future relations. H. Lasswell & A. Kaplan, supra note 10, at 71. Under this conception, policy combines the planning process and the execution of the plans. The use of the term strategy by von Clausewitz shows that a similar meaning is to be attached but the term is limited by him to its application during wartime:

Strategy is the use of the engagement for the purpose of the war. The strategist must therefore define an aim for the entire operational side of the war that will be in accordance with its purpose. In other words, he will draft the plan of the war, and the aim will determine the series of actions intended to achieve it: he will, in fact, shape the individual campaigns and, within these, decide on the individual engagements. Since most of these matters have to be based on assumptions that may not prove correct, while other, more detailed orders cannot be determined in advance at all, it follows that the strategist must go on campaign himself. Detailed orders can then be given on the spot, allowing the general plan to be adjusted to the modifications that are continuously required. The strategist, in short, must maintain control throughout.

C. von Clausewitz, supra note 19, at 177.

145. See H. Kissinger, Years of Upheaval (1982). According to Kissinger:

Military men cannot be expected to think creatively about restraining the arms race; nor is it desirable that they do so. Their duty is to keep the nation strong; their assignment must be to prevail should all else fail. Military men who become arms controllers are likely to neglect their primary mission. It is the politi-
Viewed from the broadest perspective, the arms control and deterrence policies cannot serve the goals of states, and particularly their security, as long as those policies and the processes they establish promote competitive processes likely to erupt into a major armed conflict. Moreover, it is apparent that even if such conflicts are commenced with an expectation that they will remain in "control," because of 1) limited objectives or the intention of one or both of the belligerent sides to "limit" the weapons to be used, or 2) the particular methods of warfare, it is probable that such conflicts will escalate into nuclear warfare. Past practice among states is abundantly clear in showing that even the strongest of belligerent states has been unable to

...cal leadership that must strike the balance on which restraint may be based. . . .

Id. at 1175.

Military force alone cannot achieve effective security. See Y. HARKABI, supra note 14, at 184. In the words of the author: "[W]ith two nuclear powers confronting one another, military force is no guarantee of survival. Security by means of military strategy must therefore be supplemented with actions designed to moderate and limit the conflict and minimize the dangers arising from the very existence of nuclear weapons and the arms race." Id. States must exercise mutual restraint in the process of reaching arms control agreements through the balancing of their concern for weapons (defense) with their concern over minimum order (deterrence). See also G. Snyder, supra note 13. According to Snyder:

The central theoretical problem in the field of national security policy is to clarify and distinguish between the two central concepts of deterrence and defense. Essentially, deterrence means discouraging the enemy from taking military action by posing for him a prospect of cost and risk outweighing his prospective gain. Defense means reducing our own prospective costs and risks in the event that deterrence fails. Deterrence works on the enemy's intentions; the deterrent value of military forces is their effect in reducing the likelihood of enemy military moves. Defense reduces the enemy's capability to damage or deprive us; the defense value of military forces is their effect in mitigating the adverse consequences for us of possible enemy moves, whether such consequences are counted as losses of territory or war damage. The concept of "defense value," therefore, is broader than the mere capacity to hold territory, which might be called "denial capability." Defense value is denial capability plus capacity to alleviate war damage.

Id. at 3-4.

146. In order to be effective, arms control agreements must provide for a shared policy of deterrence because the enforceability and effectiveness of such arms control pacts depends on both the unilateral actions of the adversaries as well as the continuing development of shared perspectives concerning limits on the competitive processes and the need to protect against international coercion. See generally B. BRODIE, STRATEGY IN THE MISSILE AGE (1959); B. BRODIE & F. BRODIE, FROM CROSSBOW TO H-BOMB (1962); Friedberg, A History of the U.S. Strategic Doctrine, 3 J. STRATEGIC STUD. 37 (Dec. 1980); Gray, Strategists: Some Views Critical of the Profession, 26 INT'L J. 771 (Autumn 1971); Lodal, Deterrence and Nuclear Strategy, 109 DAEDALUS 155 (1980); R. McNAMARA, THE ESSENCE OF SECURITY (1968).
control the outcome of the wars in which it was engaged, and even if that control is in part established, the "political" outcomes were not within their control.\textsuperscript{147}

There is an emerging perception shared among states, that their primary task must shift to shared, minimum order goals for the public order itself, and that such an order must be constituted on ordering processes in which they share common or community policies and community goals.\textsuperscript{148} This perception is induced, at least in part, by a growing awareness that a minimum order constituted by the balancing processes of weapons is inherently unstable, and readily destabilized.\textsuperscript{149} Accordingly, strong support should be afforded those preventative measures that alleviate or eliminate provocative conditions as identified in a variety of agreements requiring more effective application, and in the development of institutional processes that promote communications among states. The suggestions relating to reinforcing the

\textsuperscript{147} See, e.g., R. Conot, \textit{Justice at Nuremberg} (1983); W. Shirer, \textit{The Rise and Fall of the Third Reich} (1960). See also United States v. List, 11 \textit{Trials of War Criminals before the Nuremberg Military Tribunals} 757 (1950). While the law of war changes with practice, the uncertainties of war may account for the uncertainties of the law. See Thucydides, \textit{The Peloponnesian War} (R. Warner trans. 1954). In the words of the author:

\begin{quote}
The longer a war lasts, the more things tend to depend on accidents. Neither you nor we can see into them: we have to abide their outcome in the dark. And when people are entering upon a war they do things the wrong way round. Action comes first, and it is only when they have already suffered that they begin to think. . . . And so we urge you, now, while we are both still free to make sensible decisions, do not break the peace. . . .
\end{quote}

\textit{Id.} at 81-82. Ultimately, the decision to go to war reflects either the desire to subjugate one's opponent or fear of being subjugated by him. \textit{See} N. Machiavelli, \textit{The Discourses} 226 (L. Walker trans. 1950).

\textsuperscript{148} See generally M. McDougal & F. Feliciano, \textit{supra} note 7; M. McDougal, H. Lasswell & L. Chen, \textit{supra} note 21; M. McDougal & W.M. Reisman, \textit{supra} note 18. The approach taken by Professors McDougal, Lasswell and their associates is significant because it requires an ongoing clarification of minimum order goals with respect to changing community expectations. The need for ongoing clarification of minimum order goals with respect to the changing community expectations is also cited as a priority by experts on business management such as Peter Drucker. According to Drucker:

\begin{quote}
Objectives (based on policy) are always based on expectations. And expectations, at best, are informed guesses. Objectives express an appraisal of factors that are largely outside the business and not under its control. The world does not stand still. Objectives are not fate; they are direction. They are not commands; they are commitments. They do not determine the future; they are means to mobilize the resources and energies of the business for the making of the future.
\end{quote}

\textit{Quoted in} G. Starling, \textit{The Politics and Economics of Public Policy} 231 (1979).

\textsuperscript{149} See, e.g., S. Dreil, \textit{supra} note 1; L. Dunn, \textit{supra} note 1. \textit{See also} G. Starling, \textit{supra} note 148, at 314, where the author examines the problems involved in the assessment of technology as a policy tool.
competence and powers of the Standing Consultative Commission are among such actions to be recommended here.

Perspectives among states address what they believe are the "realities" in their behavior and the "realities" they perceive in the conduct and actions of their adversaries. In this process, the actions of states and the trends evidenced in the decision flow of states that constitute or lead to their fundamental policies, are critical elements in their practice. The competition among the major states, and the others as well, forces us to be cautious in our expectations concerning limitations on international coercion and the effectiveness of community controls.

Yet, international coercion is the critical element in the establishment of minimum order. Permissive coercion, identified as coercion pursued under community processes and policies, would serve the global order to shape its movement toward community goals. These goals are, unquestionably matters of choice, and the preferred goals are those that would promote human dignity across the broadest scale of human actions.

It must be concluded that two issues regarding international coercion remain "open": (1) there is no clear set of controls that can be exercised to prevent impermissible coercion and (2) there is no widely accepted standard to enable states to distinguish between permissible and impermissible coercion across transnational or within territorial borders.

150. See supra notes 40 & 116.

151. Severe difficulties arise in maintaining and shaping friendly relations among hostile adversaries such as the United States and the Soviet Union. Many of these are difficulties of perception. Corrective measures for such difficulties are not easily identified. In response to the charge that the Soviet Union was behind the attempt to assassinate the Pope, former American Ambassador to the Soviet Union, Malcolm Toon, suggested the following steps be taken by the United States: characterize the Soviet Union as a state exercising brutality; maintain formal ties, but seek to reduce areas of tension; modify traditional relationships to reflect realities—i.e., that we are not friendly states; terminate Pugwash and similar activities; reduce media support for the so-called "independents" such as Arbatov; close down offices with Bulgaria; and consult with NATO on such subjects as above. See Wash. Post, Jan. 19, 1983, at A19.

152. See M. McDougal & F. Feliciano, supra note 7, at 60.

153. Professors McDougal and Feliciano have noted that "[i]n characterizing certain . . . coercion as permissible, the community seeks quite rationally to utilizes coercion as an instrument of order by authorizing its use for community police actions, and acknowledges the still low degree of organization attained by permitting individual and collective self-defense as a response to unlawful coercion." Id. at 60-61.

154. In the United Nations Charter, for instance, a deliberate choice was made to allow highly ambiguous characterizations of coercion. Although the past fifteen years have seen considerable agitation for a more precise definition, there is still fundamental disagreement over the utility of such a refinement. Id.
At this stage, we face the two primary sanctioning processes: prevention and deterrence. The deterrence processes have increased the societal cost of resorting to coercion, which has enabled states to shape gradually what is permissible under community processes. With respect to these processes, the recommendations must be toward the development, promotion and maintenance of both mutual and separate interests such that each state has too large a stake to risk the outbreak of warfare involving high intensity violence. While our technologies offer us military capabilities, weaponry and delivery systems that promise ever increasing destructive capabilities, our technologies also offer and provide us with the enormously improved capacity to increase our stock of values, and thereby to hold in check the threat of warfare through the imposition of costs.

Moreover, the resources, time, effort and talents (skills) that are invested in the production of values, are far greater than the investments in the capabilities to destroy them. A rational pattern of expectations might be promoted, because for deterrence purposes, this would mean that the risks and costs of destruction grow far more rapidly than the benefits to be achieved by unleashing a destructive war.

Prevention as a sanctioning goal, and the prevention processes have been identified with reducing or eliminating provocative conditions. In the specific context of the arms control agreements, a variety of measures could be characterized as part of the prevention processes, and almost all of them identified with improved and more reliable processes and exchanges of communications. Further promo-

155. See Y. HARKABI, supra note 14. In the words of the author, deterrence consists of "persuading the deterred that his own interest compels him to desist from committing a certain act." Id. at 9. In order to effectuate a policy of deterrence, the threat of retaliation must be sufficient to override any gain that the deterred anticipates. Id. In the context of relations between the major powers, the damage threatened by resort to nuclear retaliation is so extensive that it is likely to override any anticipated gain. Id.

156. See G. SNYDER, supra note 13. The author notes that "[A] balance of terror exists between two nuclear powers when neither can strike first at the other without receiving a completely intolerable retaliatory blow in return. A balance does not exist when one power, in striking first, can eliminate all but a tolerable portion of the opponent's capacity to strike back." Id. at 41. Since theories of nuclear strategy have never been tested in the context of actual war between nuclear powers, conventional military doctrines must be continually reassessed in order to close the gap between technological progress and traditional military doctrines. Id. at 48. See also Y. HARKABI, supra note 14. According to Harkabi: "Technology probably influences diplomacy more than diplomacy influences technology. Diplomacy must strive to keep pace with technological change, adjusting to it and utilizing it both for its general needs and in solving the problems created by the technology itself." Id. at 2-3.

157. See R. ARENS & H. LASSWELL, supra note 121, at 200-01.

158. See supra notes 40, 112-13, 116 and accompanying text.
tion of these goals through innovative, timely and readily acceptable (or, as some argue, "negotiable") processes are needed. Competing states can continue to pursue competition in a variety of ways as they gain the security and the minimum order processes that enable them to shift away from working on security itself.\textsuperscript{159}

In recommending improvements in the communications networks and processes, the closest attention must be given to past trends in the communications patterns that have emerged between the Soviet Union and Western nations. It would be folly to ignore the fact that the practice, with respect to both official and unofficial communications, has been characterized by a growing sense of insecurity, and by clear indications of suspicion, deception and the improper use of information and reporting, particularly by Soviet official publications and spokesmen.\textsuperscript{160} It is equally clear that the Soviet Union has conducted espionage on an unprecedented scale, and that attempts to uncover common grounds of agreement and understanding with respect to international treaties have been frustrated in the process.\textsuperscript{161}

Accordingly, the recommendations for improved communications, taking full account of these practices, must be aimed at the minimal levels of order; to the assurance of order itself at those levels; and, while those are maintained, to seeking to reshape the communication strategies currently appearing in Soviet practice, which are clearly aimed at destabilizing the West and its allegiances.\textsuperscript{162} Evidence of Soviet practice abounds: the official internal statements to the periodic congresses within the Soviet Union;\textsuperscript{163} the statements applicable to the "socialist commonwealth";\textsuperscript{164} and the "justifications" given for Soviet conduct in Hungary, Czechoslovakia and Afghanistan.\textsuperscript{165} Even the

\textsuperscript{159} See generally H. Bull, supra note 13, at 39 (background to the balance of power theory as it relates to the nuclear arms control and the opportunities for adversaries to continue a buildup in certain arms categories while still maintaining international stability).

\textsuperscript{160} See generally H. Kissinger, supra note 145 (discussion of Soviet behavior and statements after SALT I that soured American expectations and détente).

\textsuperscript{161} See, e.g., N.Y. Times, Nov. 22, 1981, at A4, col. 3, where Senator Moynihan attributes the Soviet's purchase of secret American surveillance satellite plans as the major reason that the second arms control treaty failed to gain Senate support.

\textsuperscript{162} See N.Y. Times, Mar. 18, 1981, at A4, col. 3 (West German officials voice concern over Soviet attempts to influence German public opinion against deploying nuclear medium range missiles).

\textsuperscript{163} See N.Y. Times, Feb. 24, 1981, at A6, col. 1 (Brezhnev's keynote address to the 26th Soviet Communist Party Congress).

\textsuperscript{164} See N.Y. Times, Aug. 24, 1981, at A1, col. 6 (Soviet Union warns Eastern Bloc to be faithful to Soviet style Communism).

\textsuperscript{165} See N.Y. Times, Mar. 11, 1983, at A3, col. 2 (statement by Tass political analyst responding to President Reagan's hostile remarks as justification for Soviet support of
Constitution of the Soviet Union should be mentioned, since it embraces the unique Soviet "requirement" that the "class struggle" be eliminated through a strategy of support for "wars of liberation."166

The prevention and deterrence processes are mutually reinforcing. Both are served by the measures that each develops. Both, for example, are served by the more rapid growth in the production of values among states, and both are served by the shift toward opportunities for the promotion of the values of human dignity. Neither process is served by the belief that states are "moral" entities as such, persuaded, influenced or compelled to act through morally oriented manifestos. But they are served through a realization that we must be agile in adopting flexible attitudes that can balance the gradual development and assurances of security with the gradual elimination of weaponry for war-fighting.167 Although these are time consuming and perhaps long-range tasks and goals, we can also pursue other strategies serving both the deterrence and prevention processes. In this way, when the balancing process tends to fall apart, we can find the means to restore and rehabilitate that process through promoting the common and reciprocal interest in preserving values.168

Recommendations for future action and decision can be described only in the broadest terms. In view of the conclusion that the deterrence equilibrium is the sole basis upon which adversaries have currently premised their minimum order, and because this is an equilibrium of force, weapons and force capabilities, the equilibrium is inherently unstable.169 The alternatives associated with the adversaries

the Afghanistan government).

166. See U.S.S.R. Const., supra note 50.

167. Such attitudes reinforce the prevention objective by placing emphasis on the positive advantages of removing provocative conditions in the world. The deterrence process is served by recognition of the underlying costs, in terms of world public order and human dignity, that would be incurred by deviation. See R. ARENS & H. LASSWELL, supra note 121, at 202-03.

168. The processes of restoring and rehabilitating values are not synonymous. Id. Restoration is pertinent where norm-violations have occurred or are occurring, whereas rehabilitation applies to circumstances in which nonconformity has already appeared and, in general, lends itself to a wider variety of contexts. Id.

169. It has been apparent since the 1961 McCloy-Zorin Agreement that divergence of approach and interest has characterized negotiations between the United States and the Soviet Union. See REPORT OF THE SECRETARY-GENERAL, supra note 139, at 161. Furthermore, there is no showing in the practice of the two major states that they can impose upon each other obligations, duties or understandings based upon the "spirit" of negotiated arms agreements. See G. SMITH, DOUBLETALK 20-21 (1980). Ambassador Smith notes that the practice of the states is the deciding element in determining what their expectations are, as well as what they expect of the law they are to share, and that the states have not moved in parallel with the objectives and principles of the arms agreements. Id.
themselves include improved and more reliable communications networks and communications processes. The institutional base, presently in the Standing Consultative Commission, must be strengthened in two ways: first, by promoting a stronger and more assertive reach into the foreign policies associated with strategies seeking minimum order, and therefore to stabilize the existing minimum order against disruption by strategies outside the arms control agreements and second, by establishing the institution so that it can and will operate as a reliable communications source during conflicts, including conflicts between the United States and the Soviet Union.

The United States, however, must separately attend to its own external bases of power, and build them with other like-minded states. Alliances aside, the time has long passed when the United States could insist that it need not depend upon other states. Western nations must consider appropriate measures to improve economic and trade relations and to assure adequate energy sources—and the necessary

170. See C. McIlwain, CONSTITUTIONALISM: ANCIENT AND MODERN (1947). The author notes that legal principles have "developed slowly as a rationalization of existing and only partial remedies; remedies have not been a means devised to enforce principles antecedent." Id. at 48.

171. See supra notes 40, 116-19 and accompanying text.

172. The traditional bases of power may be identified as the resources, people and institutions of a state. See Mc Dougall & Lasswell, The Identification and Appraisal of Diverse Systems of Public Order, 53 Am. J. Int'l L. 1 (1959). The subsidiary bases of power external to states include alliances, regional blocks, effective access and claims within common areas (outer space, Antarctica and the high seas) and strategic relations with underdeveloped nations. Id. Within the framework articulated by Professors Mc Dougall and Lasswell, the participants, arenas, bases of power and policies are linked by interdependent factors that lend to clarification of outcomes, decisions and policies. Id. Consideration of Soviet initiatives and policies within this framework lead to the conclusion that support for "just wars of national liberation" is viewed by the Soviet Union as an exception to the general policy of deterrence and limits on aggression. As so defined, "just wars" enable the Soviet Union to exploit military measures as strategic instruments of policy designed to weaken the West and to permit the Soviets to enlarge its alliances to promote its own security. See generally G. Tunkin, supra note 30.


174. Henry Kissinger, for example, has discussed the need for a political strategy to improve economic relations. See Kissinger, Trading With the Russians, New Republic 14-16 (June 2, 1982). Speaking on East-West trade, Kissinger remarked:

Whatever the merit of the original theories, it is now clear that trade and credits can moderate Soviet conduct only if the Kremlin fears that intransigence will cost it the economic benefits it seeks. Yet that is what is most insistently rejected by the domestic interest groups in all countries that gain from East-West trade and by the Western governments that they influence.

Id. at 41. After discussing the inequality of bargaining power between East and West (in
financing—to develop a common economic base. A separate effort more closely associated with the problems of Latin America must be made, drawing upon other developed nations in the West. A long-range program for making available the means for developing skills, organizational capabilities and policies for the Third World is needed to enable those countries to draw more closely upon their own talents and skills to participate in global relations. Without firming the economic base along the broader lines suggested here, the Western states will find that their power and influence continues to erode as more states are drawn more deeply into the Soviet orbit. Should that occur, the nuclear weapons maintaining the deterrence balance will serve that deterrence goal, but the minimum order goals would be gradually supplanted by global processes too large to be influenced by the West, or to be subjected to the preferential claim of Western values.

favor of the East), Kissinger concluded that “[i]n these circumstances it is easy for the Kremlin to play countries, and even industries, against each other, obtaining benefits not justified by the economic balance of advantage, much less by political circumstances.” Id.
