I

HOW NATIONS BEHAVE

How does international law influence the policies of nations? In particular, I inquire whether, and when, and why, nations observe or violate norms of international law. The questions have principal significance in regard to the traditional law of “abstention” based in custom or in treaty, less to the new law of co-operation for common welfare. To answer these questions one may accept the traditional determinant: whether an international judicial tribunal in an appropriate proceeding would conclude that the behavior under scrutiny violated an international norm or obligation.

The Reality and Influence of Norms and Obligations

At risk of some simplifications, I largely avoid the differences in perspective on the reality and significance of international norms. Accepting the important insights which see international law as “policy oriented”, as a “comprehensive process of authoritative decision” largely by the nations themselves, for these lectures, at least, I assume what all nations assume in their relations inter se: that there are norms and that it is meaningful to speak of their observance or violation. However disputed are some asserted norms, others are generally accepted; however uncertain many norms may be at the periphery, they have an established core; however ambiguous is language—say, in a treaty—it usually has a substantial area beyond dispute. That a legal obligation is unclear will, of course, be important to our hypothetical judicial determination, and to how nations behave in regard to that obligation. That in some cases the actor may not think of its action as violation, but may be asserting a

modification or rejection hoping that it will be acceptable, is an aspect of the complex character of law observance in a universe in which actors also exercise legislative impact. This, I insist, is hardly a prevalent complication. It has particular relevance to major political issues, some relevance in regard to some norms that are challenged or in flux, almost no relevance to many established norms or to the mass of treaty obligations. Usually, it is meaningful to speak of violation or compliance. There are many instances where a state is admittedly in violation of an international obligation, as, for example, when the Congress of the United States purposefully imposes a tariff, or subjects aliens to military service, in derogation of earlier treaty undertaking. The United States also virtually pleaded guilty in the first U-2 incident, in 1960. While nations, generally, still deny their violations of international law, often the denial merely falsifies the facts—as when Hitler claimed self-defense against Poland, or North Korea alleged that the South Koreans had initiated hostilities. Often, when a nation seeks to justify its actions by asserting that international law is or ought to be something else, the justification in effect admits violation, especially when the actor cannot reasonably expect that its proposed norm would be acceptable; in any event it takes the risk that its proposed norm might be rejected and its action taken as a violation. Sometimes, indeed, an actor, reaching quickly for some justification for a charged violation, might prove quite unhappy if its action became a general norm. Occasionally, the justification for violating a treaty is a polite confession—by some implausible reading of the agreement, or a far-fetched invocation of rebus sic stantibus. The difficulty of judging compliance in exceptional cases, I repeat, does not prevent us from studying compliance in the abundance of instances.

Of course, one cannot deal with norms, and with their observance or violation, in misleading simplicity. While international law does not divide neatly into degrees of crime with graduated penalties, or into felonies, misdemeanors, and petty offences, or even into crimes and torts, there are yet norms and norms, obligations and obligations. There are also violations and violations. He contributed an

5. Compare Whitney v. Robertson, 124 U.S. 190, 194-95 (1887); and see note 14 infra.
important insight who first suggested a spectrum of compliance or violation.

The ways in which law influences behavior are also less than simple. International law influences behavior, obviously, when it helps to deter violations. It may keep nations from doing what they may otherwise deem to be in their interest. Or, obligations may impel nations to do what they might otherwise not do—say, come to the assistance of a treaty ally, or adopt sanctions at the behest of the United Nations. If an international norm does not deter completely, it may at least delay violative action until the national needs are clear, until other alternatives are rejected, or exhausted.

International norms will also determine choice among alternatives. With more than one way of achieving a desired policy, nations will not readily choose the one that violates, or more clearly or deeply violates, an international norm or obligation. They will tend to choose the lesser violation in the spectrum of violations, sometimes even at substantial sacrifice in what they had wished to achieve.

If international law influences what nations do, it will influence also what they say. One may be cynical about the rhetoric of nations and their proclamations of respect for law; even Hitler pretended that he was acting consistently with Germany's international undertakings, at the time of his most terrible violations. Still, one need not dismiss rhetoric or justification. Even when the invocation of international law is mere cant, or hypocrisy, it is significant that nations feel the need to pay this homage to virtue, to maintain an image of themselves as law observing. That nations feel obliged to justify their actions under international law, that justifications must have plausibility, that plausible justifications are often unavailable or limited, inevitably exert some influence on how nations will act. And which of possible justifications a nation decides to invoke may have political significance, and may

6. Bolivia, Chile and Uruguay complied with the resolution of the Organization of American States calling for severance of relations with Castro's Cuba, although they had voted against the resolution. 51 Dep't State Bull. (1964) p. 181; only Mexico, which claimed that the resolution contravened Article 96 of the United Nations Charter, refused to act upon it. N.Y. Times, Aug. 4, 1964, § 1, p. 9, col. 2-4.
also determine the effect of the action on existing law and on the norms of the future. (I shall suggest the significance of different justifications in particular when we deal with Cuba.)

Do Nations Observe International Law?

Allowing for the complexities of the role of norms in international relations, one may yet ask: do nations observe international law? One frequently encounters the opinion that international law is so widely disregarded as to be largely irrelevant to the behavior of nations. In part, this attitude reflects gross mistake as to the reaches of international law. To the layman, at least, the world he sees in his journals appears tense, troubled, and disorderly, and he assumes that there must be relevant law requiring order but that it is being disregarded. In fact, the state of international law is still primitive, the relations and actions of nations to which the law speaks are few, and many deplorable acts are not violations of law because there is no relevant law. Sometimes the law or its application is uncertain. The inadequacy of the law's domain is a weakness in the international order, but while intimately related it differs in cause and in consequence from deficiencies in observance of existing law.

Even those who are aware of the law's limited reach often share the common impression that the field of international relations is sown with violated customary norms and broken treaties. This too is error. Violations of law attract attention and there is a tendency to judge compliance with law by counting the violations, or—without counting them—from a general sense of the prevalence of violation. But the validity of a legal system is hardly to be judged by the number of violations alone, not even by the number of violations not suppressed or rectified. It would be necessary to examine also the extent to which legal considerations influence decisions in the foreign offices of governments, which are not reflected in unambiguous, overt actions. Surely one must consider the "negative" evidence, the record of law observance—decisions not to violate, failures to violate, decades of diplomacy in which a nation does not even consider violating some norm or obligation. One must count, too, not only the considered decisions of governments but also the operation of law
on the working levels of foreign ministries, where legal counsel daily suppress or modify proposals they deem illegal before they reach the level of decision, where political officers themselves fail to propose or even to think of measures which they know would probably be unlawful.

The mistaken impression of lawlessness may derive also from a tendency to think of international law only in terms of major dramatic events. But international law does not consist only, or principally, of major tenets and major undertakings whose violations shake the framework of international society. In largest part, international law is routine, undramatic, uncontroversial, "unpolitical"—I do not say unimportant—the stuff of daily intercourse between nations. Devotion to international law, as has been said of patriotism, is not a hankering for heroics; it is a daily sober loyalty, and in their daily practice nations generally obey the law and carry out their obligations.

It is fair to say that most nations observe most principles of international law and most of their international obligations most of the time; it is probably the case, even, that almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time. That statistical summation is not to suggest that international law is healthily law-abiding. On the one side, violations are not fungible and they must be weighed as well as counted. Almost total observance of international law, even, might not be enough if the exceptions were crucial: for an obvious example, one nuclear aggression by a major power might render meaningless all the observances of all norms and obligations by all the nations of the world. The massive record of "non-violations", also, is not to be taken, without more, as statistical proof that international law has governing influence in the affairs of nations. It may be relevant, perhaps critical, to ask too why particular violations have not occurred. Obviously, for non-violation to have meaning, there must be capacity to commit the violation and the interest to do so, perhaps too the temptation or provocation. The failure, say, of the United States to commit aggression against Canada "takes place" every day of the year; I would not for that reason insist on including a statistic of 365 observances of the United Na-
tions Charter—any more than, as an individual, one would claim credit for being law-abiding every day that one does not steal or commit murder. Surely, to press the point to its farthest, distant Yemen, without major air force or missiles, cannot meaningfully be said to be observing the norm of respect for the territorial integrity of Canada when it does not violate Canadian air-space. Where the capacity and the temptation to violate law exist, it may also be relevant to ask—though often difficult to answer—whether the actions and reactions of nations might have been the same if there had been no norm or undertaking. But, however one may discount the record of general observance, it should not be denied. Nor should one overlook its major negative importance: if it were not so, it might indeed be a mocking exaggeration to speak of international law at all.

Why Do Nations Observe Law?

While non-compliance is the exception, all nations have violated international law at some time, and all will, no doubt, violate again. Our purpose is to attempt to understand what causes nations to comply or to violate. It is commonly suggested that nations will comply with international law only if it is in their interest to do so; they will violate if the advantages of violation outweigh the advantages of observance. Of course, if national interest and advantage are defined broadly enough, this may be true, and may indeed be a truism. Its generality, too, renders it almost meaningless. The fact is that advantages of compliance or violation will look different to different nations, and even to the same nation at different times, about different principles of law in different contexts. Costs and advantages, moreover, may suggest international considerations. A nation’s observance of international law will be importantly influenced also by internal forces and impulses.

Domestic Influences in Law Observance

Attitudes towards international law reflect a nation’s constitution, laws and institutions, its history and traditions, its values and “style.” Indeed, allowing for the dangers of metaphor and the particular
inadequacies of analogy from individual to national behavior, it seems permissible to suggest that some nations are more law-abiding than others by national “morality” and “character”. In some countries men who constitute their government, and the people they may represent, seem sensitive to the stigma—the “guilt”—of violation of international law.

Through much of its history the conduct of the United States, for example, has reflected internal forces impelling observance of international law. Born in the heyday of the law of nature, conceived in “decent respect for the opinions of mankind,” it found itself the first modern “new nation” and sought protection for its new independence in the law of nations. Geographic isolation and natural wealth only enhanced its respect for the conservative influence of law in support of international order. Federalism, separated branches of government, a written constitution judicially enforced, helped to develop a respect for law, legalism even, which has pervaded national life. Whether it be virtue or vice, the people of the United States have had moral, perhaps moralistic, attitudes toward their relations with other nations, and respect for international law has been included in that morality. These attitudes have persisted even into our day. A powerful and affluent nation, the United States may sometimes be restive under restraints, including the restraints of law; it may sometimes be reluctant to submit to new law (say, human rights covenants) or to international adjudication; it may seek to transform legal questions into political ones to be determined in the light of its own foreign policy; but it does not lightly violate accepted norms, customary or conventional. Major violations by the United States have

10. A well-known criticism of these attitudes is in Kennan, American Diplomacy 1900-1950 (1951) pp. 93-99.
been rare. Surely, it did not threaten the political independence or territorial integrity of others even while it had a monopoly of atomic power. Only under pressure of ideological conflict and in respects crucial to the Cold War has the behavior of the United States been seriously challenged: it apparently courted blatant violation at the Bay of Pigs in Cuba in 1961; many have condemned as unlawful the “intervention” in the Dominican Republic in April 1965.

Particular national values and traditions will also mold attitudes towards law, or towards a particular law or obligation. In general, democracies (Western style) tend to observe more than others. Free institutions make it more difficult for a government to risk violation in the hope that it will not be detected—say, the mistreatment of an alien, or conducting a nuclear test in violation of an agreement not to do so. The United States, in particular, seems unable to do anything clandestine, to keep a secret (especially from its own people), or to deny a fact. (Recall the U-2 incident over Russia in 1960). Open societies are also less likely to be tempted into certain violations—say of rights of aliens or of foreign diplomats—by any compulsion to maintain a curtain of secrecy. And societies in which citizens enjoy basic rights are likely to treat aliens too at least as well as international law requires. The nation which attributes importance to the individual citizen will also be concerned to avoid acts towards aliens which would subject its citizens to retaliation abroad.

International law will also enjoy the support of those forces in a democracy which check abuses of government. An opposition party, an independent and ubiquitous press, various pressure groups, all vigilant to criticize the government, may also seize on violations of international law, in particular those of substantial political import. Some international norms and arrangements also enjoy the support of a special “constituency” which seeks to assure that the government will observe them; for example, the international trade community is concerned for good relations generally, for compliance with international law, particularly for the observance of commer-

13. In an earlier day, a famous observer said: “America allows its statesmen to say irritating things and advance unreasonable claims, but not for 40 years to abuse its enormous strength.” J Bryce, The American Commonwealth (2d ed. 1897) p. 605.
cial treaties and trade arrangements. On the other hand, where national prides, passions, prejudices are engaged, opposition parties, impending elections, a hostile press, pressure groups, organized and vocal segments of public opinion, may be forces for violation of international law rather than compliance. Such domestic pressures, it is believed, helped persuade the Indian government to take Goa by force. Within the Arab States, it is generally accepted, there are pressures which inveigh for action against Israel regardless of the United Nations Charter or the Palestine Armistice Agreements. In the United States, too, there are domestic pressures to act strongly against "international communism" which might impel the government to be less than scrupulous about international law, as at the Bay of Pigs.

(Sometimes officials behave in fear of public opinion although in fact the public may have no opinion on the issue). National predilections, even principles, are not of course limited to major and dramatic issues. In the United States, for example, one may now find a strong reluctance to afford aliens better treatment than citizens or to allow resident aliens to avoid obligations borne by citizens—sometimes even in the face of treaty obligations. Thus, Congress insisted on forfeiting the right of resident aliens to become American citizens if they refused military service, although this policy probably violated treaty provisions.\textsuperscript{14}

A major influence for observance of international law is the effective acceptance of the law into national institutions and national life.\textsuperscript{15} When international law or some particular norm or obligation is accepted, national law will reflect it, the institutions and personnel of government will take account of it, the life of the people will absorb it. With acceptance comes observance, then the habit and inertia of continued observance. That a nation accepts international law will be reflected in its constitution, in its laws, in the organization of its Department of Foreign Affairs and other departments.


of government, in a myriad of arrangements and practices. That
the United States and Canada have accepted the border between
them, and the principle that it shall not be violated, is built into
border arrangements, the regulations of immigration agencies, pass­
port practices, and the expectations of the citizens of both countries.
Violations of the border, or denunciation of international agreements
about border control, would require uprooting these arrangements,
changing laws and rules and practices and habits. In more compi­
cated ways, accepted international arrangements—whether the
Universal Postal Union, or NATO, or a fisheries convention—
launch their own dynamic, their own inertia, their own bureau­
cracy with vested interests in compliance, their own resistances
to violation, to interference and frustration. Indeed, if a nation does
not successfully incorporate its obligations into its institutions, or if
its institutions are not effective, it risks unwitting violations due to
failures in administration.

National observance of international law will also be influenced
by particular national laws and institutions. In the United States, for
example, international law is part of the law of the land, without
need for legislative or executive intervention to make it so; inter­
national law can be invoked in an appropriate case in the courts,
national and local, and the courts will give effect to the internation­
al norm unless the political branches of the national government
have clearly acted to reject the particular rule.16 Treaties too, by
the express terms of the Constitution, are law of the land, and, if
self-executing, will be given effect by the courts without further action
by the legislature or the executive.17 Courts will apply treaties even
in the face of earlier domestic law to the contrary; only if the Con­
gress has subsequently passed a law clearly inconsistent with the
treaty, or perhaps if the President has denounced the agreement, will
the courts feel free to disregard a treaty provision.18 Some principles
of international law, for example minimum rights for aliens and their
property, are also guaranteed by the Constitution, and the alien receiv-

16. The Paquete Habana, 175 U.S. 677, 700, 708 (1900); see also Tag v. Rogers,
es in the courts of the United States far more protection than international law requires, even against the President and the Congress.  

If some national institutions further the cause of compliance, others may hinder it. In the United States international law may suffer from the separation of branches in the national government. The national executive and legislature, in particular, were separated and balanced in order to prevent tyranny, at some price in efficiency. Unlike parliamentary systems, that of the United States does not assure a single government policy, does not guarantee that President and Congress will look in the same direction, whether in domestic or foreign affairs. The President can negotiate treaties only to find that the Senate will not consent to their ratification. If a treaty is ratified the Congress may refuse to enable the United States to live up to its obligation, by failing to enact necessary implementing legislation. Or, the Congress may pass legislation inconsistent with the international obligations of the United States. A court, also, may render a decision which the makers of foreign policy helplessly regret and which an international tribunal might deem a violation of international law.

Federalism too has its price. In the United States, in theory, there are no “states rights” in regard to foreign affairs. International law is binding on the states. With insignificant exceptions, the United States can enter into any treaty that does not infringe the constitutional liberties of its citizens, and a treaty is the law of the land for the states as for the nation. But, in practice, states may sometimes infringe treaty obligations of the United States and there is not always an effective remedy, juridical or practical, to make them comply.

20. Mr. Justice Brandeis dissenting in Myers v. United States, 272 U.S. 52, 293 (1923): “The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power.”
21. The most famous example is the Treaty of Versailles.
24. Several years ago, a state, in order to promote local products, required mer-
Similarly, the United States may find itself liable for violations by local authorities, intentional or negligent—say, failure to accord adequate protection or the requirements of justice to aliens.  

The impact of political personalities, their personal power and tenure, should also not be minimized. Presidents, prime ministers, and foreign secretaries will differ in the degree of their commitment to international order. (President Johnson’s handling of the United States action in the Dominican Republic in 1965 may reflect in part attitudes toward international law and obligation different from President Kennedy’s in regard to Cuba in 1962.) Special commitment, too, to a particular rule or agreement, say by President Kennedy to the Test Ban Agreement, makes it to that extent less likely that the United States would breach it during that President’s tenure or perhaps even while his party continues in power. That a President, or Secretary of State, or important congressional leaders, initiated, sponsored, fought for, NATO or the UN, will help assure their continued support for the obligations undertaken. It has been suggested, for example, that one can purposefully enhance the likelihood of compliance with a disarmament treaty by requiring heads of state personally to commit their prestige to the agreement.

Other facts of national life will also have their influence. In the United States an important influence for compliance with international law is the role of lawyers in the life of the country. The spir-

chants to advertise that they were selling Japanese goods—a requirement which the United States admitted was in violation of a most-favored-nation clause in the Treaty of Friendship, Commerce and Navigation between the United States and Japan. See the exchange of notes between Japan and the United States, 34 Dep’t. State Bull. (1956) p. 728. If a merchant had violated that requirement and been convicted by the State authorities for this violation, the conviction would have been reversed and the treaty given effect by the Supreme Court of the United States. But no merchant challenged the State’s requirement, and it appeared that there was no effective way of compelling the State to remove the offending statute from its books and to desist from threats to enforce it. Political persuasion by the State Department was not effective for some time.


ritual fathers of the United States were principally lawyers; many of its leading Presidents were lawyers; lawyers have usually dominated both Houses of Congress. Many of the Secretaries of State—the best and the worst of them—were trained in the law. Whether the Secretary of State is a lawyer or not, he has a Legal Adviser backed by a substantial staff. Major issues of foreign affairs come for discussion to the President’s Cabinet of which the Attorney General is a member. The Attorney General is also chief legal adviser to the President, and sometimes enjoys a special relationship to him. Outside the government, particularly through professional associations, lawyers exercise important influence on their government and that influence tends to support international law.

The influence of law officers, particularly of the legal adviser to a foreign office, deserves special emphasis. In the United States the Legal Adviser of the State Department regularly attends the staff meetings of the Secretary of State and takes full part in their deliberations. His role is varied and his influence substantial. His staff of sixty lawyers daily advises and guides the political officers in the light of international law. That may not be the lawyer’s role in some other countries. It is not only the cynic about international law, but frequently the political officer of a foreign office, who thinks that the only job of the lawyer is to justify what the politician decides to do. When a decision has been made, it is, indeed, the lawyer’s task to argue his government’s case as well as it permits. But in the first instance it is the job of the lawyer, too, to remind the politician of the responsibility of the government to the needs of international order. The legal adviser will tell the decision-makers whether proposed action conforms to international norms, how deep an inroad it would make, how difficult it would be to justify under law and how likely that the justification would be accepted, which of alternatives is a lesser or less clear violation. And the wise politician will listen, if only because he knows that violation of accepted rules disturbs interna-

tional order and brings corresponding responses and consequences that have to be weighed.

Most of my examples reflect the situation in the United States. Even for the United States, its attitudes and record on law observance have varied with times and circumstances. Other countries have their different traditions and styles, their institutions, personalities, domestic pressures, passions and prejudices and principles. Some newer nations may not yet have traditions and institutions which shape attitudes to international law; they may not yet have an abundance of lawyers, and the conduct of their foreign relations may not enjoy the benefits of expert and continuous legal advice.

Law in Foreign Policy

I have been emphasizing the relevance to the observance of international law of internal forces in a nation's life; now I consider the demands of foreign policy and international relations. This dichotomy, for emphasis and clarity, should not suggest that domestic and foreign considerations are nicely separable. A nation's view of its international interests, and the foreign policy it pursues, are intimately related to national qualities and domestic forces. It would not be easy to determine how much it is due to national "character" and domestic influences, how much to foreign policy and the elements which contribute to foreign policy, that the United States could not violate its solemn unambiguous undertakings as easily, say, as could Hitler's Germany. On the other hand, the internal forces which impel a nation like the United States to comply with law may themselves be, in some measure, the result of a long history during which that nation learned to favor international law because the law supported its foreign interests.

To speak of the place of international law in foreign policy may over-emphasize their separateness. From one perspective, international law is the oft-forgotten, taken-for-granted foundation and framework of all relations between nations and all foreign policies. The fact of diplomatic intercourse assumes agreed international law, tacitly accepted and routinely observed, about the status of states and their diplomats and nationals, about territory and property, about state
responsibility, and state conduct tortious or permissible. The principle of international law that agreements are to be kept reflects what nations assume and rely on daily in the myriads of understandings and arrangements of varying formality that are the stuff of international intercourse. At the same time, I have said, many of the relations between nations are not in fact regulated by law or agreement, leaving nations free to pursue their policies without restraint. In this sense, large areas of foreign policy appear independent of international law, leaving the law only a small place in national policy. To inquire into the place of law in foreign policy is to emphasize also that nations largely decide for themselves whether they will agree to an extension of law or what they will put into agreements enjoying the sanction of law, whether they will observe or violate existing law or obligation and disrupt the routine and disappoint the expectations of international intercourse.

In general, it should be clear, those relations of nations which are governed by international law cannot be isolated from the totality of their relations. All international laws and obligations are forces in international relations. The attitudes of a nation in regard to international law or to a particular norm, the obligations it will undertake, those undertaken that it will observe, are integral to its foreign policy. This is obvious in regard to some laws, like the laws against unilateral force, and in regard to some obligations, like those of the North Atlantic Treaty or of the European Community agreements. Although less obvious, it is no less true, say, in regard to international laws pertaining to the treatment of aliens, or to undramatic agreements about small subjects. Indeed, one might learn much about a nation’s foreign policy by examining the pattern of its treaties of friendship, commerce and navigation, its arrangements about trade, or aid, or co-operation, which are the sinews of its international relations. The mass of international norms and obligations which I have called “unpolitical” are so only in degree, and as distinguished from those few which directly involve international peace and stability, or the security, integrity and independence of nations. At bottom, all norms and obligations are “political,” their observance or violation are political acts, part of a nation’s foreign policy. Even unintentional violations, or violations committed by lower offi-
cials, while perhaps not political in motivation, may have political consequences.

Observance of international law and obligation is a common foundation of almost every nation's foreign policy and the common assumption of relations between nations. A nation's foreign policy depends substantially on its "credit", on maintaining the expectation that it will live up to its international obligations. A nation's foreign policy may also sometimes put a special premium on law observance generally, or on adherence to a particular norm or obligation. A nation may have particular concern to behave properly—e.g., Germany, after Hitler left it with much to live down. A small nation, especially insecure and vulnerable, may be particularly cautious—e.g., Israel, although such a state too may violate law if an important interest appears at stake. (Occasionally a state may be particularly unconcerned about law, e.g., Communist China, at least while it was content to be isolated and almost outlawed.) For nations concerned for international order, compliance with international law establishes a comfortable position from which to insist that others do the same. In special political contexts—say for those nations reluctant to take sides in the Cold War, or between Israel and the Arab states—scrupulous adherence to international law affords protection from pressure by either side. Nations like the U.S. and the U.S.S.R., deeply engaged in competition for the good will of governments and peoples, would weigh carefully the cost of some violations—say of the nuclear test ban. A nation's foreign policy may depend heavily on its reliability for living up to some particular international obligation—as in United States undertakings not to intervene in Latin America. Very differently, United States policy to deter an attack by Soviet Russia against Western Europe depends on persuading the Soviet Union (if not General de Gaulle) that the United States will live up to its obligations to come to the assistance of NATO countries, even at risk of nuclear destruction in the United States.

While observance of law and obligation are integral to every nation's foreign policy, law will have a different place in the foreign policy of different nations and of the same nation at different times. Since international law was largely developed by the nations of west-
ern Europe and their offspring in the Americas, these nations have learned to attend to this law in their foreign relations; they are also more likely to be content with their product. Since law is generally a conservative force it is more likely to be observed by those more content with their lot. Since law is a basic element in international order, it is more likely to be observed by those with a greater stake in order and stability. At the end of the Second World War, order seemed the principal concern of all nations; change, including change in international law, was to be achieved by general consensus and orderly process. In our times there are nations to whom order and stability may be second to other values, for example the end of colonialism, or radical economic and political transformations. The communist nations, in principle, have actively sought instability as a prelude to a different international order, although communist nations too have differed in the intensity and the means with which they pursue or exploit disorder. Differences among nations in concern for order or quest for change will influence especially their attitudes towards norms and obligations crucial to order and political stability, like those barring the use of force, or "intervention"; but they will influence too attitudes towards law and law observance generally, for order is indivisible and respect for law cannot survive major exceptions. In turn, the climate of international order will influence law observance: in stable times or areas, individual nations are less likely to disturb the order by important violations, while an atmosphere of disorder will encourage the nation whose interests tempt it to violate.

The "Accounting" of Cost and Advantage of Law Observance

Whatever the place of order and law generally in a nation's foreign policy, nations will usually observe the law and perform their international undertakings. Sometimes they will violate. Internal impulses and pressures apart, one may accept the cynic's formula that nations will violate when it is to their advantage to do so, when the cost of observance is greater than the cost of violation. That, of course, is the beginning of inquiry, not the end of it. One has to know, then, what nations consider cost and advantage in their inter-
national relations, what are the weights accorded by them to different advantages and costs at different times.

The costs and advantages of observance or violation of law can only be assayed in the context of a nation's foreign policy and the totality of its relations with other nations. A violation by one state against another will disturb their relations, in degree depending on the character of their relations and the nature of the violation. A nation will not lightly violate important law vis-à-vis another with whom it is eager to maintain friendly relations. Of course it will refrain from attacking the other; it will also respect its territorial integrity, its air space, its diplomats, its visiting citizens, its property, its vessels at sea; it will, generally, carry out what it has promised to another friendly nation. On the other hand, a nation will be pro tanto less concerned about the impact of a particular violation where relations are not very cordial and there is no interest in improving them, though it may still wish to avoid having a minor irritant become a major dispute.

A major inducement to comply with law, then, is a nation's desire to maintain friendly relations with another. Still, friendly nations, even close allies, have some adverse interests which may lead to breach of international obligations; and, on the other hand, enemies, in cold war or even during military hostilities, have common or reciprocal interests causing them to observe obligations towards each other. One may assume that between friends the violation will usually not be important enough to destroy the friendship; between enemies the compliance will not be in a matter important enough to be of major usefulness to the other side. In these cases—and they are many—it may be possible to isolate a specific issue from the totality of relations and weigh particular factors which determine why friendly nations violate or unfriendly nations comply. There are also nations without special relationship who will act at arm's length with each other and who, in regard to many international obligations, may violate or observe principally on the basis of cost and advantage narrowly conceived.

Faced with the opportunity and temptation to violate a norm or obligation, a government will usually be able to determine cost and advantage. The advantages of violation are generally comprehensible:
the violator knows what he hopes to gain, although he may sometimes miscalculate the benefits anticipated, or prove unable to obtain or retain them; France and Great Britain had to withdraw their forces from Suez; Iran could not readily market the oil it nationalized. The cost of violation is often more difficult to establish. Apart from consequences to international order, to over-all relations between violator and victim, there may be costs in prestige, influence, credit and credibility, with serious consequences to national interest. The United States may purposely “nail itself” to its commitments to NATO or Berlin by solemn, reiterated pledge and by various guarantees and “hostages”, so that friends and enemies alike will recognize how costly it would be for the United States to fail to meet those undertakings.28

Usually, the principal cost is the “sanction” or response to be anticipated. Sometimes the consequences might have come even if the action had involved no violation of law—say, when the allies went to war against Hitler. This reflects that international norms, if they are to live, must coincide with the interest of nations. In fact, however, the consequences often come because a norm or obligation has been violated. The victim and other nations feel impelled, free, justified to respond to violations which disturb established order, which breach commitments and disappoint expectations.

Unlike municipal law, for violation of most international norms or obligations there is no judgment or reaction by the international society. It is unusual for nations generally to join in response to a violation even of a norm widely accepted—say, Egypt’s alleged infringement in 1961 of the immunities of French Diplomats; communal action—e.g., through the United Nations—can be expected for violation of only few, major norms and agreements.30 Even for these there are limits to the response, since many reactions—

29. N. Y. Times, Nov. 27, 1961, § 1, p. 8, col. 4-6; Nov. 28, 1961, § 1, p. 4, col. 3-5; Nov. 29, 1961, § 1, p. 3, col. 5-6.
e.g., war, economic sanctions—may also hurt those that impose them as well as other nations. The international law of welfare, on the other hand, may involve interdependent programs, and violation may well evoke communal reaction—for example, in GATT, ICAO or the World Bank, even more in the European Community. One special international “response”, where available, may also deter the would-be violator; in January 1965, it was reported, Great Britain abandoned its intention to cancel an agreement with France to develop the Concorde airplane when the French Government threatened to go to the International Court.31

Whether or not others will also react, the principal “cost” of a violation will usually be the response of the victim. Some response by the victim may be anticipated for every breach, whether from a wish to punish, or to deter further violations, or recoup what was lost, or only from considerations of prestige or in reflection of domestic pressures. The response will vary with the violation and may range from mild protest even unto war. Responses will tend to be proportional, to “fit the crime,” especially where violations are isolated and the victim wishes to continue friendly intercourse. Apart from the fact that international law itself limits the victim’s responses, nations do not go to war for minor infractions, or lightly rupture diplomatic relations, or treat the violator’s citizens as hostages, or terminate commercial intercourse, or even denounce treaties unrelated to the violation. A common response is retaliation in kind, and if the anticipation of such retaliation seems too high a price it will effectively deter violation. For that reason, in large measure, obligations which operate symmetrically between nations are rarely violated. A government will respect the privileges and immunities of the other’s diplomats because violation could readily produce retaliation against its own diplomats. The corollary may be that norms that do not operate reciprocally in fact, and do not lend themselves to simple retaliation, may not be as readily observed. That Communist countries, especially under Stalinism, did not permit their citizens to travel abroad meant that their governments did not have to fear retaliation if they harassed Western visitors, or denied

them justice or effective diplomatic protection. The protection of foreign libraries may be weaker in countries which do not have libraries abroad; countries where mob action against foreign embassies is unlikely do not afford their own embassies in some other countries the added protection that lies in the threat of retaliation. Of course, the response of the victim is not necessarily limited to direct retaliation. For failure to protect an embassy there will be a claim for compensation. From a myriad of arrangements and relations between two nations, a victim can always find some form of retaliation, even one more-or-less related to the violation. When the United States was persuaded that Hungary had denied justice to the crew of an airplane forced down in its territory in 1951, the United States discontinued the travel of American tourists to Hungary and closed two Hungarian consulates in the United States.\footnote{32} A would-be violator must consider also costs deriving from any special dependence on the victim. Nationalizations of American properties which the United States considered unlawful led to cancellations of economic aid.\footnote{33} And, apart from how the victim government may respond, some violations bring undesirable consequences in the world market-place: nations that violate the rights of aliens will suffer the cost of discouraging tourism and foreign investment.

Like customary law, treaty violations too have their spectrum of possible responses. Minor breaches of particular provisions may bring little more than protest. Substantial breach of a treaty will generally result, at least, in the termination of the treaty by the other party and the loss of its advantages to the violator. As with customary norms which operate symmetrically, agreements which afford substantial reciprocal advantage are therefore less likely to be breached. Breach of important treaties of general concern may bring other unwelcome responses not only from the victim of the breach but from his friends or others. Violation of the nuclear test ban, by either the Soviet Union or the United States, would cost substantially in world opinion. It would mean that the other super-power would

\footnote{33} See the “Hickenlooper Amendment,” 76 Stat. 260-61 (1962), 22 U.S.C. § 2370 (e) (Supp. IV, 1962). Aid to Ceylon was canceled under this legislation. It was restored after the Government of Ceylon agreed to an acceptable measure of compensation for the nationalized property. See Chapter II below, p. 223.
feel free to test. It would mean a new intensification of the Cold War. The other side would accelerate the arms race, increase its military budget, step up research and development of new weapons, tighten its alliances. Obviously, only a substantial advantage from testing would seem worth the price. The breach of some new major disarmament agreement might cost even more—perhaps war.

International agreements sometimes make explicit the cost or consequences of a violation, or even provide special costs to discourage violation. In olden days a breach of obligation might mean death to hostages, although that did not deter violation, if the hostages were worth the gain. The use of hostages in various forms has been suggested today as an inducement to comply with important undertakings. To give hostages of the ancient kind would surely be deemed uncivilized. But there are in fact hostages inducing compliance with important arrangements when, say, tens of thousands of persons of Greek origin lived in Turkey. In a different sense, United States troops in Berlin serve as hostages to guarantee United States compliance with its undertakings to defend the city.34

The lesson of cost and advantage of treaty observance is not single or simple. The Korean Armistic offers several, for students of international law as well as for makers of national policy and negotiators of treaties. In the Armistice negotiations both sides sought an end to hostilities, and a provision to that effect is the heart of the Agreement.35 If either side had resumed hostilities, the Armistice Agreement would of course have been destroyed. Because neither side wished to resume hostilities, the provisions ending hostilities are now more than 12 years old, having survived the failure of political negotiations,36 breaches of other provisions in the Armistice Agreement, major political changes in the world around Korea.

The Armistice Agreement also provided for exchange of all pris-

34. United States troops may indeed have been placed in Berlin principally to make it very difficult for the United States not to respond to Soviet aggression, and thus to make it likely that the Soviet Union would be deterred from any attack. See Schelling, op. cit. supra note 28, at 539.
oners who wished to be repatriated. The Chinese Communists and North Koreans long resisted the principle of voluntary repatriation but ultimately accepted it as the price of an armistice and because it was a source of embarrassment to them in world opinion. The repatriation of prisoners was carried out immediately and there remained no question of continuing compliance. The United Nations Command has indeed repeatedly accused the Communists of failing to account for large numbers of prisoners, particularly South Koreans. But the United Nations Command knew at the time of signature how many prisoners the Communists were prepared to return. In entering into the Armistice, ending hostilities, exchanging the prisoners listed, the U.N. Command knew that the Communists could continue to withhold any other prisoners they may have without fear of costly disadvantage. The U.N. Command would have difficulty proving that there were in fact other prisoners; it had no prisoners left who could be detained in retaliation; it would not on this ground resume hostilities.

Different again is the lesson of a third provision in the agreement, an undertaking by both sides not to introduce into Korea new personnel or equipment except as replacements; the provision was to be monitored by the Neutral Nations Supervisory Commission established in the Agreement. For geographic, military and political reasons, this provision did not in fact operate symmetrically for both sides. The United Nations Command had far greater interest than did the Communists in maintaining that provision as well as the effectiveness of the inspection system. It was also subject to greater political restraints deterring violation of the provision against reinforcement or any frustration of the inspection system. For the Communist powers, the expectation that if they built up their forces in violat-

39. Korean Armistice Agreement, art. II, A (13) (d), op. cit. supra note 35 at 24. The Communist negotiators resisted a related provision prohibiting the rehabilitation of airfields, which could readily have been monitored by aerial observation. See Report of U.N. Commission for Unification and Rehabilitation of Korea, op. cit. supra note 38, at 6.
tion of the Agreement the U.N. Command might eventually do likewise was no deterrent at all.\textsuperscript{40} That if the Communists frustrated the inspection system it might eventually cease to operate behind the U.N. lines as well, was also no high "cost" to the Communist powers.\textsuperscript{41} The Communists might also have guessed, correctly, that for political reasons, in the United States and within the United Nations, Communist breach of the provision against reinforcement would not lead to invalidation of the Armistice Agreement as a whole and resumption of hostilities. Nor did the Communist powers have reason to fear other sanctions: vis-à-vis most countries both North Korea and Communist China were already virtually outlaws, while they would surely continue to enjoy the assistance of the Soviet bloc. On the whole, then, there was little inducement to the Communists to abide by this provision and it soon appeared that they were not doing so.

As in this instance from the Korean Armistice the costs of violations are often easy to anticipate, and they may appear worth the price and be insufficient to deter violation. One kind of violation in particular is frequently not deterred by cost: the action which has a single purpose and is quickly accomplished—say, a single bombing attack to accomplish a single mission—presents a \textit{fait accompli}; pressure cannot be applied to discontinue or undo, the advantage often cannot be taken away, whatever censure or sanction may follow.

If known cost may not deter, significant uncertainties of cost may encourage violation. Computing the cost of violation must include assessment of the likelihood of being caught. Mistreatment of aliens behind an iron or bamboo curtain may never be known. In the absence of effective verification, important arms control provisions might be violated without detection. There may also be critical uncertainties as to the consequences of being caught in a violation,


\textsuperscript{41} In 1956, the U.N. Command refused to allow the Neutral Nations Supervisory Commission to continue to operate behind its lines, claiming that the Communists had repeatedly frustrated its operations in North Korea. See Report of Unified Command on Neutral Nations Supervisory Commission in Korea, U.N. Gen. Ass. Doc. A/3167, August 15, 1956.
the likelihood and character of the response by the victim, by his friends, by the members of the U.N. Specific mechanisms for dealing with violations, specific consequences provided for in advance, will help reduce uncertainty of cost as a factor in the balance of advantage.

The uncertainties of "cost" of a violation are increased when the norm or obligation itself is not wholly certain. To the extent that nations observe out of respect for law, and respect—or fear of—the community that observes it, an established rule is more likely to be observed than one in doubt or controversy or in process of change. A rule widely adhered to is more likely to be observed than one challenged by a substantial segment of international society. Sometimes if one nation, particularly an influential one, sets a precedent of deviation, others may even better the instruction: the United States claimed the Continental Shelf for the limited purpose of exploiting its resources but the action precipitated claims by other nations of complete territorial jurisdiction to wide areas of sea. Where there are bona fide differences as to whether there is violation, even the victim's response may be less likely or less strong—and less of a deterrent. Treaties, too, though once clear, may acquire uncertainty of obligation. An old treaty, although still technically in effect, may be out-moded; treaties of long duration, also, may be no longer reasonable or fair. If the advantaged nation will not re-negotiate, the other may be tempted to terminate the treaty, even if our hypothetical court would not deem it a proper case for invoking rebus sic stantibus.

At times, even if the law appears clear enough, a nation may be tempted to risk violation because it hopes to establish uncertainty or even to modify the law. The risk that its proposed modification in the law would not be accepted and its action deemed a violation would be weighed, in relation to the consequences which such violation might bring, against the advantages gained from the violation. In regard to India's invasion of Goa, for example, the Indian Government took the position that its action was not a violation of the

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U.N. Charter. It could hardly be sure that its interpretation would be accepted; presumably it anticipated that many would deem that it had violated the law, and it considered what response it might then face within or without the United Nations. Indian statesmen may have considered, too, whether the advantage of seizing Goa outweighed the damage to the principle against the use of force, to the Charter as a whole, to international law, to India's reputation and role in world affairs. They had to consider whether the interpretation of the Charter which would justify its action was in the long term interest of India and of the nations of the world in which it will live. Indian officials must have found Goa worth the price; or perhaps domestic pressures offset a "deficit" in such accounting.43

"Tacit Agreements"

In recent years political scientists have been writing of "tacit agreements", particularly in regard to international competition in armaments.44 The tacit agreement is not a new phenomenon; what is new perhaps is the recognition that it exists and that it has some of the characteristics of an expressed agreement. Nations have always recognized that their unilateral acts have influence abroad. If one nation built up its armies, its neighbors might do likewise. If one raised tariffs it could expect responding or corresponding action from others. In many circumstances one might also say that there was a tacit agreement between nations not to build up armies or raise tariffs. Specifically, it may be suggested, there was a tacit agreement between the United States and Great Britain (later with Canada) not to fortify the frontiers between the United States and Canada. There was perhaps a tacit agreement during the Second World War that neither side would use chemical warfare. It is not unrealistic to say that there was a tacit agreement that if the United Nations Command in Korea did not bomb across the Yalu River, the Communist Chinese would not bomb U.S. bases outside of Korea. Currently, there may be a tacit agreement

43. Goa is discussed further in Chapter II, p. 229 below.
between the U.S. and the U.S.S.R. not to aggravate tensions in Berlin, or not to accelerate the arms race by major increases in military budgets. Many believe there is a real if tacit agreement between the U.S. and the U.S.S.R. not to give nuclear weapons to other nations, including their respective allies.

If one accepts the reality of tacit agreements one must also recognize their special characteristics. A tacit agreement has no official recognition, and often one cannot say with confidence that it exists. It does not entail difficult negotiation or drafting, needs no ratification or proclamation; it can be terminated by either side at will. The tacit agreement has no recognized obligation, no status in international law, and international lawyers have given it no heed. But the reality of such agreements in the political life of our times suggests that some thought be given to the calculus of compliance with such agreements. Briefly, even more than with overt agreements, the principal inducement to compliance is the desire to have the agreement continue. Unlike express agreements, however, their violation usually brings no legal liability, political onus or sanction, or stigma in world opinion. In important instances, however—especially where a tacit agreement may be viewed as a temporary substitute for a formal one—the differences between these and formal agreements may be smaller. Abandonment of the tacit agreement not to spread nuclear weapons might bring condemnation and consequences perhaps not much less than if there were overt agreement.

Co-operatieve Law for Common Welfare

One must speak specially of observance of the international law of co-operation for the common welfare that has bloomed in our time. This law too, of course, is not all of a kind. There are differences in the institutional patterns and relations established. (Compare, for example, the World Health Organization, the European Community and GATT.) There are differences in the kind and onerousness of the undertakings involved. (Compare the obligations of member-

ship in WHO with those in the Common Market.) In some instances undertakings are reciprocal and mutual, though the advantages of the arrangement may still be different for different nations. (Consider the Universal Postal Union; the International Labor Organization also has different kinds of significance for the Soviet Union, for the United States, for other countries with different domestic institutions and economic structures.) There are arrangements which, while nominally equal and mutual, obviously operate primarily for the advantage of the disadvantaged—as in the World Health Organization and the Food and Agriculture Organization; others are explicitly designed for different kinds of participation, principally to channel assistance from some nations to others, as in the International Atomic Energy Agency or the Alliance for Progress.

The international law which these programs represent is also subject to an accounting of the cost and advantage of participation and non-participation, of withdrawal, violation, compliance. But the accounting looks different from what it is in regard to the traditional international law of "abstention," and it is different too in the different co-operative arrangements. It is difficult to conceive that any nation would find any advantage in withdrawing from the Postal Union, or in violating any of the undertakings involved and risking possible stern reactions from other members. In their different way, the European Community agreements, too, have powerful forces inducing members to carry out their undertakings: they are recent agreements of common interest establishing rights and obligations which have been built into national institutions; important domestic groups have vested interests in maintaining the treaty; the parties to the agreement are closely interdependent and they are vigilant to preserve their rights; there is machinery for enforcement and for determining the obligations; violation would bring quick and certain response. Even isolated violations of these undertakings are not likely, and the few that occur reflect irresistible domestic pressures; important violations could not be indulged without full appreciation of the consequences, far beyond the immediate issue, for the institutions and for what they represent in the life of these nations and of Europe. On the other hand, the interest of the U.S. or of the U.S.S.R. in carrying out undertakings
in the International Atomic Energy Agency, and the costs of abandoning them, are indirect and subtle, and open to question by national "budgeteers", isolationists and others.

Political Norms and Agreements

All international law and obligation, I have stressed, are part of international relations, and a nation's behavior in regard to them is integral to its foreign policy. There are, however, obligations of special political character, which may directly involve national security or sovereignty or the international political order. The interests at stake and the passions they may engage suggest different domestic forces influencing their observance, as well as modifications in the accounting of cost and advantage of violating them. I have left for special treatment the norms concerning the use of force and the obligations of so-called "political treaties."

The Law against Unilateral Force

It was not cynicism which prompted the suggestion that nations observe international law in unimportant matters but not in important ones. Perhaps the author sought to subsume in that phrase our entire calculus of cost and advantage. The statement may also emphasize, as I have said, that the bulk of international law, routine and undramatic, is observed; when major interests are at stake the temptation to violate is difficult to resist and we may even approach the limits of the law's relevance. Perhaps, in part, the comment referred to the crucial anomaly of international law before our times which set up rules about international conduct in time of peace but did not forbid nations to commit the ultimate "aggression" against international order, the resort to war. That paradox has its expla-

nations, principally in the failure of early attempts to distinguish just wars (to be permitted) from unjust wars (to be outlawed). And indeed, despite its anomaly, one cannot say that the law did not work. Nations were not prepared readily to incur the various onera of war, and accepted the regime of international law for peaceful relations. Perhaps, indeed, nations were more likely to observe the international law of peace knowing that if their interests were too gravely jeopardized they could go to war to vindicate them, and establish a new basis for new relations in a revised international order with different international obligations.

Still, the anomaly troubled many, as did the increasing destructiveness of war, and there were recurrent attempts to make law to prevent or control the resort to war. The most earnest ones came after the First World War, in the Covenant of the League of Nations and the Kellogg-Briand Pact. Their fate is well known. After the terrible Second World War peoples were determined to try again and the stone which builders of international law had long rejected became the head stone of the corner. Today the principal norm of international law is the prohibition against unilateral use of force in Article 2 (4) of the United Nations Charter:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

The scope of that provision and its limitation are still debated, as we shall see in later chapters. But few would deny that the Charter intended to outlaw war. Unlike the limited restraints in the Covenant of the League of Nations, unlike too the Kellogg-Briand Pact, the Charter's prohibition on unilateral force was to apply universally: members were bound by it; they were to see to it that non-members also complied. For the first time nations tried to bring within the realm of law those ultimate political tensions and interests that had long been deemed beyond the reach of law. Implicit in this norm was the general acquiescence by all nations in the territorial and political status quo, at least their renunciation of war and exter-

47. U.N. Charter art. 2, para. 6.
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Political Treaties

The extraordinary political significance of certain international agreements gives these too a special place in any examination of national behavior. If the considerations promoting compliance or violation apply at all to these treaties, they apply with an important difference. I refer to political treaties, particularly to dispositions in treaties of peace, to various treaties of "protection" and special political arrangements and influences, to military alliances, at least of an older kind.

The suggestion that nations did not observe "important" international obligations may have referred also to these political treaties. Generally, in Judge de Visscher's phrase, the treaties were hegemonial in character. The agreements at Vienna, Paris, Versailles, and those following the last World War, are treaties in form, and courts and lawyers and writers have persisted in considering them as such. In fact, they partook more of the character of legislation, by the victors for vanquished nations and for others affected by reordering after major war. The treaty form was used because it was the only means available. The arrangements hardly had the qualities generally associated with agreement. There was often duress not consensus, no meeting of equals to negotiate exchange. Dispositions and obligations were frequently unilateral, not *quid pro quo*. Colonial arrangements too were often imposed by force and were unequal in the rights and obligations conferred. Like other political treaties they related to basic interests—survival, security, independence, freedom of peoples and groups.

Of such treaties too one might say that would-be violators would compute the calculus of cost and advantage. But particular considerations we have mentioned look quite different. The assumptions of *pacta sunt servanda* ring differently, and *rebus sic stantibus* also has special meaning. (Twenty years ago Professor Jessup suggested that as applied to some political treaties the doctrine of *rebus sic stantibus* is pernicious.) As Hitler showed, however, the vanquished cannot be expected to tolerate particularly Draconian provisions when it is able to do something about them. Other nations, and "world opinion," are not always ready to support indefinitely such imposed

regimes; even those who imposed them will not always continue to maintain them and to respond to their violation—again, as Hitler proved. Among the victors, too, the regime imposed by these treaties is of a special political quality, as in Germany and Berlin after the Second World War. Those agreements, imposing fundamental order, could not survive basic conflict of interest. One side or the other may indeed be the first to “violate the agreement,” but compliance and violation lose meaning when an agreement to co-operate to maintain order in Europe has lost viability.

In our day, the other group of political treaties—colonial arrangements—also suggests different principles of compliance. Treaties of protection and other quasi-colonial relationships (United Kingdom-Egypt, France-Tunisia), treaties of capitulation and extra-territoriality (United States-Morocco), treaties conferring near-sovereign power in the grantor’s territory (United States-Panama Canal Zone)—these are agreements as to which even the “ascendant” party has been compelled to recognize that these pacta were not servanda, whether because of some superseding principle of “self-determination,” or some new doctrine denying enforceability to unequal treaties, or because rebus no longer stantibus. Among the things that are no longer so is international opinion which is now intolerant of quasi-colonial status. Whatever our hypothetical court might say of the legal obligation to comply with these treaties, nations have been unable to insist on compliance and have been compelled to abandon or renegotiate these agreements.

Even voluntary, peace-time arrangements of political character are susceptible to ready violation or rejection with changes in a nation’s political orientation. A new government bent on “non-alignment” took Iraq out of the “Baghdad Pact.” Changing roles and relationships in South Asia have altered the character of Pakistan’s participation in CENTO. The European Community can readily command observance of the various agreements in detail, but it could hardly remain recognizable if a major member—say, France—should turn its back on its basic philosophy.

Political treaties, too, have responded particularly to the new forces in international relations which have prevailed in our time. I shall say more of their observance in the next chapter.