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# MYRES S. McDOUGAL DISTINGUISHED LECTURE

## Détente and World Order

JOSEF KORBEL\*

This is the first annual Myres S. McDougal Distinguished Lecture in International Law and Policy, presented at the University of Denver College of Law, April 20, 1976. Sponsored by the Student Bar Association, the International Legal Studies Program, the Denver International Law Society and the DENVER JOURNAL OF INTERNATIONAL LAW AND POLICY, the lecture series will present eminent jurists and scholars addressing topical issues of international law and policy.

### I.

I feel greatly honored by being asked to open this series of lectures in honor of the doyen of international legal studies, Professor McDougal. I really cannot add anything to the accolades except to say that I join with all others in my profound admiration and respect for Professor McDougal. I am also inclined to extend my admiration to all professors and students of international law, whose intellectual stamina and courage as they plow so laboriously the arid lands of international behavior I greatly admire. It is a big task and requires tremendous optimism and idealism.

Now, you all know that the basic tenet, a normative theoretical tenet of international law, going back to Roman law, was and is *pacta sunt servanda* (agreements are to be observed). A cynic might "slightly" change the dictum and say *pacta sunt frangenda* (agreements are to be violated).

One of the fundamental principles of international law in modern times has been the principle of nonintervention in in-

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ternal affairs, and it is this principle which I plan to relate later to the other part of my topic, that is, to the topic of detente and its meaning.

The principle of nonintervention has not always existed as a norm of international law. To give one example, after the Napoleonic Wars and the Congress of Vienna, three big European powers created the Holy Alliance and (entirely in contrast to the principle of nonintervention), its *raison d'être* was, in fact, to legitimize their intervention in the internal affairs of other countries in order to prevent the disruption of the international system which the Vienna Congress had created, and to prevent any upheavals which might disturb the order which the Vienna Congress had established.

However, in the past 50 or 60 years, the principle of nonintervention in domestic affairs has been embodied in many documents of international law. The League of Nations Covenant carried such an article, and the present-day United Nations Charter speaks of domestic affairs as being outside the jurisdiction of this international organization. Yet, in spite of the fact that the principle of nonintervention in internal affairs has been embodied in many international documents, we have witnessed many violations of this principle. I shall refer to but a few.

In the inter-war period the Italian Fascist government intervened all around the Mediterranean, particularly in the Balkan countries, supporting fascist movements in those countries. Nazi Germany, using the German minorities spread throughout the Balkans and Central and Eastern Europe, intervened in the domestic affairs of the respective countries in which these German minorities lived. We now know that in the Nazi period, many prominent French journalists were supported by the Nazi government's money in order to further the ends of German foreign policy. We knew at the time of the civil war in Spain that Fascist Italy and Nazi Germany were openly supporting Generalissimo Franco. We also knew at that time that the Soviet Union supported the Loyalist government of Spain. The democracies, on the other hand, generally abstained from intervening in the internal affairs of other countries. In the case of the Spanish Civil War, they even created a Committee on Nonintervention in an attempt to supervise the policy of nonintervention in the internal affairs of Spain. With

a cynicism that is all too familiar in international affairs, the Soviet Union, Germany, and Italy were members of that Committee of Nonintervention.

It is a tremendous political, legal, and ethical problem whether to intervene in the internal affairs of other countries. An experience from my diplomatic career highlights this problem. I was a young diplomatic officer in Belgrade before the war. This was the Belgrade of the half-fascist Stojadinovic' government with which the democratic Czechoslovakia was allied. This was the Belgrade when publications were subjected to a very strange and vicious form of censorship. No form of preventive censorship was practiced; rather periodicals were permitted to publish whatever they wanted, and then, when the periodical was printed, it was brought before the censor who could then confiscate the entire issue if it contained objectionable material. The whole purpose behind this practice was not only censorship itself but also to cause tremendous economic damage to the editor and the publisher of offending journals.

It was at this time—during 1937—that a man named Niko Bartulovic', who was later executed by the Communist partisans, came to me. He published a very courageous fortnightly called *Javnost*, of which, perhaps, every third or fourth issue was confiscated by the censors. Bartulovic' said to me, "I cannot go on like this any more. I am defending your cause, the cause of democracy. I am defending the cause of the Yugoslav-Czechoslovak alliance and the Yugoslav-French alliance. I need money and I am openly asking you for support." I sent a telegram to my government in Prague recommending such support. Within 24 hours, I received an answer from Foreign Minister Kamil Krofta asking me to tell Mr. Bartulovic' that while we greatly appreciated his services, we could not give him any support because to do so would mean intervention in Yugoslav internal affairs. That was the last time that the periodical *Javnost* appeared. We lost a good friend and the cause of democracy lost a great supporter.

Since World War II, the principle of nonintervention in internal affairs, although embodied in the Charter of the United Nations, has been violated time and time again. And the United States has not been innocent. For example, it tried to influence the result of the elections in Italy in 1948 and has since supported the Italian Christian Democratic party. We

know about U.S. intervention in Allende's Chile and in the Dominican Republic. On the other hand, we know that the Soviet Union supports the Italian Communist Party through Italian commercial firms which have export-import interests in the Soviet Union. Again, we know that both Western Europe and the United States have helped the democratic movements in Portugal; and there are many other instances of the United States and Western Europe intervening in the internal affairs of other countries.

In the case of the U.S.S.R., one must remember that their intervention in the internal affairs of other countries is based upon their Marxist beliefs. It is a matter of Marxist theory, of Marxist duty, to support the international communist movement. Years ago, Vyshinsky wrote a book on international law<sup>1</sup> in which he said (on the whole, probably correctly) that every law is the product of the class structure of a certain society; furthermore, that international law is a reflection of the international class struggle.

On the occasion of the invasion of Czechoslovakia in August 1968, Soviet writers tried to defend the invasion—which was an act of aggression, an act of brutal intervention in the domestic affairs of Czechoslovakia—on legal grounds. On September 26, 1968, *Pravda*<sup>2</sup> explained the invasion as an act of socialist legal right and duty. The article rejected as a “non-class approach” the argument that the occupation violated the principles of sovereignty and self-determination, since every communist party is responsible not only to its own people but also to all socialist countries and to the entire world communist movement. In the Marxist conception, the article continued, the norms of law cannot be interpreted in a narrowly formal way outside the general context of the class struggle in the present-day world. All laws are subordinated to the principles of the class struggle; that is, the article concluded, the class struggle approach to the matter cannot be discarded in the name of legalistic considerations. This article, and other articles, as well as Foreign Minister Gromyko's statement before the United Nations in October,<sup>3</sup> were later dubbed by Ameri-

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1. A. VYSHINSKY, *INTERNATIONAL LAW* (1948).

2. *Pravda*, Sept. 26, 1968, at 4. An english translation can be found in *CURRENT DIGEST OF THE SOVIET PRESS*, Oct. 16, 1968, at 10.

3. *N.Y. Times*, Oct. 4, 1968, at 1, col. 1.

can reporters as the Brezhnev Doctrine, or the concept of "limited national sovereignty."

## II.

It is at this point that I wish to link the problem of nonintervention in domestic affairs to the problem of detente. One might first say what detente is not. It is not a norm of international law. It is not a new concept of world order. It is not a new international system. At best, detente can be defined as a policy (and a vague one at that), which tries to solve the problems which, as a consequence of World War II and the Cold War, have divided the East and West.

We in this country are now, and have for the past few months been, passing through a sort of malaise about detente. The word has a bad taste—and I presume I should extend my apologies to President Ford for even using the word "detente," since he has declared that he no longer intends to use it. But the malaise stems from the fact that we have misconstrued, misconceived, and misinterpreted the meaning of detente, that we have very different perceptions of the meaning of detente than does the Soviet Union.

Americans are prone to cliches; we attempt to cram vast concepts into catchwords or slogans. How many doctrines have we invented? The Truman Doctrine in 1947, the Eisenhower Doctrine in 1958, the Nixon Doctrine in 1972, and now, we sometimes hear about a Ford Doctrine. These are not doctrines, but rather enunciations of a certain policy at a certain time. Similarly, we have succumbed to the lure of another catch word—detente. And we are disappointed.

We must thank General DeGaulle for having brought the term detente out of the obscurity of the French dictionary and on to the scene of international politics. He had a great talent for coining phrases and slogans. He spoke of a policy of detente: from detente to entente, from entente to cooperation. The motivation of this fine sounding formulation was, as he himself put it, to free France and Europe from the influence of the hegemony of the two Super Powers. In seeking to relieve the supposed American pressure on European politics, he sought rapprochement with the Soviet Union, and the Soviet Union was quick to respond.

To recapitulate very briefly, the Warsaw Pact countries held a meeting in Budapest in 1966 at which they launched the

policy of detente. They issued an appeal to the Western European countries to prepare a European Security Conference with certain specific goals. In that appeal, which they repeated every half-year after 1966, they made it clear what their goals were. They wanted the participants of the envisioned Security Conference to proclaim their respect for the principles of nonintervention in the internal affairs of other countries, of respect for national sovereignty and national independence. They wanted that conference to confirm the finality of the division of Germany by the recognition of East Germany (GDR). They wanted the West, at least by way of implication, to recognize that Central and Eastern Europe are within the Soviet sphere of influence. They wanted the conference to deal with problems of mutual East-West trade and with technological, scientific and cultural cooperation. Interestingly enough, the original appeal from the 1966 Warsaw Pact conference was limited to European countries only. The exclusion of the United States and Canada from this proposal was no oversight. Only when the NATO countries had unanimously rejected the proposition did the Soviet Union and its allies "graciously" agree that the United States and Canada might participate.

The reaction of the West to these appeals was very slow. It was only in 1970—four years later—that the West, including Canada and the United States, issued a statement expressing their willingness to participate in such a Conference. The West, however, wanted to add two points to the agenda submitted by the Soviet Union and its allies: (1) to discuss the idea of mutually balanced reduction of forces in Europe (MBFR); and (2) the question of the free flow of ideas between the East and West.

Now, I do not know whether the person who worded the phrase "free flow of ideas" seriously entertained the thought that the Eastern world would ever permit a free flow of ideas. But if he did, the illusion was very quickly dispelled. For although the Soviet Union, with some reluctance, accepted the idea of discussing the mutually balanced withdrawal of forces from Europe in a separate forum, it emphatically rejected any idea of the free exchange of cultural values and ideas. Indeed, since 1970, the Soviet Union has developed a fierce campaign accusing the West of efforts, under the cloak of cultural cooperation and trade cooperation, to infiltrate and subvert the com-

munist system. The Soviets have stated that they will never permit that kind of free flow of ideas.

As a result of these exchanges, the Geneva conference was finally held, which labored for two and one-half years. Last summer it culminated in the Helsinki summit conference (Conference on Security and Cooperation in Europe, or CSCE).

I will not go into the tremendously long and elaborate document of the Helsinki conference, except to say that while my general attitude toward the policy of detente is critical, I think it only fair to say, and important to stress, that some concrete results have come from this process of mutual rapprochement. There exists in Europe a sense of relaxation; tensions have subsided, and contacts—technological, cultural and trade contacts—have developed, particularly in matters of trade between East and West Europe. But all this relates to Europe, that is, to European detente. Thus, while the United States participated in this effort for European detente, there was no detente between the United States and the Soviet Union in their direct relations.

The Cold War continued, even though it must be recognized that President Nixon did bring about a change. In his Inaugural Address in January 1969, he proposed the replacement of confrontation by negotiation in the relationship between the United States and the Soviet Union. Shortly thereafter, SALT I explorations started, and gradually, some very important agreements have been reached within the framework of detente with the Soviet Union. The SALT I agreement was signed in May 1972, an important step, although its durability depends on the signing of SALT II. Further foundations were laid at the meeting of President Ford and General Secretary Brezhnev in Vladivostok in December 1975. At this moment, however, the negotiations are, or appear to be, stalled. They are certainly very complex; no one can say whether SALT II will finally be signed. We have also reached an agreement on prohibiting the use of the seabed for placing nuclear weapons; we have reached a convention on the prohibition of bacteriological warfare; we have reached an agreement on limiting underground atomic tests to 150 kilotons. Just recently, we initialed an agreement limiting nuclear tests for peaceful uses to 150 kilotons. We have reached agreements on scientific and eco-



conomic cooperation, in matters of medicine and the environment, and so on.

In matters of trade, according to the official data of the U.S. Department of State, the trade of the members of the OECD (Western Europe, Japan, Canada and the United States) with the communist countries, between 1970 and 1974, increased three-fold, from \$16.5 billion to \$49 billion. The U.S. share has increased nearly six-fold in the same period—from \$580 million to \$3.2 billion. In matters of technology, according to the same source, the U.S. Government in 1974 issued 156 licenses for the export of technological data and signed some 21 agreements on the flow of technology to the U.S. from the Soviet Union. As you can see, there is considerable validity in the charge that the Soviet Union is the winner in this East-West technology relationship. The Soviet tendency is to expand this trade and technology cooperation because the Soviet Union desires to bridge the technological gap and to help solidify its economic basis. But in the West, whether it be France, Britain, Italy, Canada or the United States, we all seem to be very anxious. We compete with each other in trading with the Soviet Union. Or, as Lenin put it many years ago, “the capitalists in their search for profit will sell us the rope with which we will hang them.”

However, politically speaking, the most important aspect of detente was the summit meeting of President Nixon with General Secretary Brezhnev in Moscow in the spring of 1972. This is the real source of the malaise which we witness today. On that occasion, many agreements were signed, including the most important one—the Agreement on Basic Principles of Mutual Relations between the U.S.S.R. and the U.S.A.<sup>4</sup> As would always be the case on such occasions, these basic principles stated that the relations between the two countries are governed by the principles of peaceful coexistence, that ideological differences are not an obstacle to cooperation by the two powers, that the two powers respect the principle of nonintervention in internal affairs, the principle of respect for national sovereignty and national independence of other countries. They further promised to refrain from the use of force against each other, against each other's allies and against “other coun-

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4. 66 DEP'T STATE BULL. 898 (1972).

tries." The phrase "other countries" is very important, as I shall try to demonstrate in a moment. But we, at that time, seemed to have overlooked the importance of the afterthought of adding "other countries."

The malaise spreading in this country about detente stems from the fact that we fail to understand the Soviet meaning of detente. First, if you have studied the documents, the statements made by Soviet leaders, and the newspapers in the Soviet Union, you would see that their concept of detente is really limited to Europe. Relations between the United States and the Soviet Union are of a special nature—*sui generis*—relations between two Super Powers.

The Soviet understanding of detente, further, does not include detente in ideology. On the contrary, Soviet speakers from Brezhnev down, have repeatedly said that there is no peaceful coexistence in ideology; that is, the ideological struggle continues and the class struggle in fact intensifies. To support this point, I will give a few quotations.

*Izvestia*, November 30, 1975<sup>5</sup> stated that detente gave in fact "a powerful impulse to the national liberation movement of colonial and oppressed peoples." *Izvestia*, on December 2, 1975<sup>6</sup> said: "Detente does not mean, and has never meant, the freezing of the socio-political status quo in the world." *World Marxist View* of September 1975<sup>7</sup> stated that detente refers to interstate relations between capitalist and socialist countries. In the same month *Izvestia*<sup>8</sup> elaborated that detente was a concept of friendly cooperation at the state-to-state level, but with "continuous ideological struggle on all other levels, especially in the realm of the international class struggle." General Secretary Brezhnev, at the 25th Congress of the CPSU in February-March 1976, in describing the inevitable decay of capitalism—for "capitalism is a society without a future"—spoke of the progress of social forces that cannot be stopped. He said, "In helping wars of national liberation we are acting as our revolutionary conscience and our communist con-

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5. *Izvestia*, Nov. 30, 1975.

6. *Izvestia*, Dec. 2, 1975.

7. *Social Progress and Detente*, WORLD MARXIST REVIEW, Sept. 1975, at 58, 61.

8. *Izvestia*, Sept. 4, 1975, at 3. An English translation can be found at Arbatov, *Maneuvers of the Opponents of Detente*, CURRENT DIGEST OF THE SOVIET PRESS, Oct. 1, 1975, at 1, 5.

victions permit us, for detente does not in the slightest way abolish and cannot abolish or change the laws of class struggle.”<sup>9</sup>

I could go on and on in support of my argument that the Soviets have given a specific interpretation to the policy of detente which we have failed to understand. Had we understood it, we would also have understood the Soviet and Cuban intervention in Angola as a continuation of the class struggle, as the continuation of the ideological struggle, and not as an adventurist policy, as Secretary of State Kissinger characterized it recently.

To conclude, then, detente has recorded some positive achievements, but it is limited in scope, nature, and time. At best, in the long run, it is uncertain. It is not a matter of international law—there I can take students of international law off the hook—it is a matter of policy, subjected to different interpretations. Last but not least, the underlying factor of any international negotiations, whether bilateral or multilateral, is the element of trust, an element overriding all other considerations, a highly elusive element in the study of international law, yet ever present in international negotiations. The establishment of at least a modicum of mutual trust between the negotiating parties is a prerequisite to the successful outcome of any negotiations. That modicum does not presently exist in the relations between the East and West, and without it—lacking that essential modicum of mutual trust—detente is based on very shaky ground.

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9. Excerpts of Brezhnev's speech are found in *N.Y. Times*, Feb. 25, 1976, at 14, col. 1.