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Wars of National Liberation: *Jus Ad Bellum*

by Robert E. Gorelick*

The author examines the current debate concerning the right of certain colonial peoples to employ force in seeking to attain "self-determination." His analysis is conducted in light of existing principles of international law, embodied for the most part in various United Nations documents. At the heart of this jus ad bellum debate are the differing interpretations given those principles by the member nations. The author concludes that while the existence of a right to "self-determination" has at least been acknowledged, the question as to the appropriate means to that end remains largely unresolved.

WHILE CERTAIN COLONIAL peoples have been accorded the right of self-determination, it is certain that these peoples are not sovereign states and thus are not subjects of international law in the same way as are States. After international jurists have made great efforts to prove that certain peoples have a right of self-determination, it remains to be seen if they also have a *jus ad bellum*. It is certainly possible that they have been accorded one right by the international community, and not the other.

The question which has been posed has not only been if a people have the right to employ force in attaining self-determination but also whether other States have the right (or even the duty) to aid the people in their struggle. It is clear that if the conflict were to be considered as an internal one there would be no international prohibition to the use of force, but third States would clearly be under the obligation not to interfere in the international affairs of another State and hence could not aid the people in their battle. On the other hand, if the conflict were international, the right of third States to aid the colonial people would be easier to prove, but the right of that people to employ force would be all the more difficult to maintain. This difficulty arises from the prohibition of the use of force as declared in article 2(4) of the Charter of the United Nations.¹

Indeed it would seem that a war of national liberation² is an international conflict. United Nations practice has illustrated that self-

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¹ GOODRICH, HAMBRO AND SIMONS, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS (3d ed. 1969).

² A war of national liberation is defined by its goal—the implementation of a recognized right of self-determination. Consequently, the so-called wars of national

determination is not a matter strictly between the colonizer and the colonized, but is a matter of international concern which does not permit derogation with reference to article 2(7). Rosylin Higgins has written, "it seems academic to argue that as Assembly resolutions are not binding nothing has changed, and that self-determination is a mere 'principle,' and that article 2(7) is an effective defence against its implementation."³ As international law has been concerned with the formation of the right of self-determination, with the conditions of colonial peoples while under colonial domination, with the illegality of the use of force to prevent the realization of the right, and with the conditions of captured combatants of liberation movements, it is natural that the implementation of the principle of self-determination be of vital concern. This argument has been recently confirmed in article 1(4) of the first Additional Protocol to the 1949 Geneva Conventions on humanitarian law applicable in armed conflicts, which clearly states that wars of national liberation must be considered as international conflicts.⁴

I. SELF-DEFENCE AGAINST COLONIALISM

The recognition of wars of national liberation as international conflicts bound the movements of liberation to respect article 2(4) of the United Nations Charter prohibiting the use of force. The only exception to this article which is available to an individual actor is article 51

liberation which aim at the overthrow of a particular government, such as the war in Chad led by the Frolinat or the urban guerilla conflicts of Latin America and Europe would clearly not fall within this category.

³ R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH POLITICAL ORGANS OF THE UNITED NATIONS* 101 (1963).

⁴ Article 1 defines the scope of application of Protocol I relating to international armed conflicts. Paragraph 4 of this article states:

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of the right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

The paragraph referred to is a reaffirmation of common article 2 of the Geneva Conventions of 1949 which reads, "the present convention shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties. . . ."

which guarantees the "inherent right of individual or collective self-defence if an armed attack occurs. . . ." It was then only natural that supporters of liberation movements attempted to use this article to legitimize their struggles against colonialism. The war and victory in Algeria, the invasion of Goa, the frustration caused by continued colonial domination, and the radical position of independent Algeria all provided a catalyst for the development of theories regarding national liberation.

Supporters of the liberation movements were hampered by the reference to "armed attack" as being a precondition for the exercise of the right of self-defence. Many theorists, one of these being Hans Kelsen, favour a strict interpretation of the article. Kelsen argues that self-defence is valid, "only if, and that implies after, an armed attack occurs."⁵ This idea has found support among the Socialist and many Third World States. Often writers attribute particular importance to the word "inherent," arguing that this implies a pre-existing right of self-defence which is accepted by the U.N. Charter. Kelsen accepts this argument and even states that self-defence is part of *jus cogens* and thus cannot be modified by a treaty such as the Charter. Yet he points out that the pre-existing right is perfectly compatible with the Charter provisions concerning armed attack.⁶ This interpretation is accepted by Ian Brownlie, who has written that a broad interpretation of article 51 lends support to the now illegal doctrine of forcible self-help. Thus, many imperialist campaigns, such as the Anglo-French invasion of Egypt in 1956, were justified by claims of self-defence despite the absence of a previous armed attack.⁷ In this sense, self-defence and aggression can be seen as two sides of the same coin.

It might be argued that another right of self-defence exists in customary international law which is available to States, as rights assumed under customary law continue to exist concurrently with the Charter as long as the former do not contradict the principles of the latter. Yet such an argument would be difficult to sustain considering that there exists a specific article which deals with this right. Also, the inclusion of the word "inherent" implies that this customary rule is only codified in the Charter and that the "two rules" are one and the same.

⁵ H. KELSEN, *THE LAW OF THE UNITED NATIONS* 914 (1951).

⁶ *Id.* at 791-805.

⁷ I. BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 255 (1963).

Indeed, as Brownlie points out, by 1945 the customary rule of self-defence was identical to a *stricto sensu* interpretation of article 51, that is that self-defence was only legitimate following an armed attack.⁸

The problem is that as colonialism is regarded by many States as being morally wrong, it is not in itself an armed attack or an imminent use of force. Many Third World States thus attempted to change the very notion of what constitutes a use of force which would justify the exercise of the right of self-defence.

The drive to recognize a war of national liberation as an act of self-defence, led by Ghana, India and Yugoslavia during the meeting of the Special Committee on Friendly Relations in Mexico City in 1965, was torpedoed by the Western States. These States insisted that all decisions of the Special Committee should be taken by consensus instead of by majority vote, which thus gave them a veto power over proposed draft resolutions. This impasse led to a continued stalemate on the principles of the prohibition of the use of force and the right of self-determination. Yet, because the final Declaration was a result of such a consensual process, its legal value was enhanced. During these years there was a growing consensus among the Third World States that article 51 must be given a wide interpretation by the expansion of the definition of "force." By 1966 almost every speech by a representative of an Afro-Asian State in the Sixth Committee debates on Friendly Relations supported this idea.⁹

⁸ *Id.* at 255, 273-74. Even if we accept the concept of anticipatory self-defence, the question of intention to use armed force is still present. On anticipatory self-defence, see R. HIGGINS, *supra* note 2, at 200; Waldock, *The Regulation of The Use of Force by Independent States in International Law*, RECUEIL DES COURS 497 (1952).

⁹ For the debates of the Sixth Committee on the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, see 17 U.N. GAOR, C.6 (753-777th mtgs.) 95, U.N. Doc. A/C.6/SR. 732-777 (1962); 19 U.N. GAOR, C.6 (802-825th, 831-834th mtgs.) 107-258, 279-295, U.N. Doc. A/C.6/SR. 778-836 (1964); 20 U.N. GAOR, C.6 (870-898th mtgs.) 184, U.N. Doc. A/C.6/SR. 837-898 (1965); 21 U.N. GAOR, C.6 (924-942d mtgs.) 157, U.N. Doc. A/C.6/SR. 899-955 (1966).

The Special Committee was established by G.A. Res. 1966, 18 U.N. GAOR, Supp. (No.15) 74, U.N. Doc. A/5515 (1963). Its first session was convened in Mexico City on August 27, 1964. For its debates, see 20 U.N. GAOR, Annexes (Agenda Items 90 and 94), U.N. Doc. A/5746 (1965); 21 U.N. GAOR, Annexes (Agenda Item 87), U.N. Doc. A/6230 (1966); 22 U.N. GAOR, Annexes (Agenda Item 87), U.N. Doc. A/7326 (1968); 24 U.N. GAOR, Supp. (No. 19), U.N. Doc. A/7619 (1969); 25 U.N. GAOR, Supp. (No.18), U.N. Doc. A/8018 (1970).

The Western States rejected outright any such interpretation of article 51. The British delegate pointed out that the Charter was clear as to this point and an expanded definition of what constitutes force would amount to a condemnation of the growing interdependence of the world community, since as interdependence increases, so does the political and economic influence of each State over another.¹⁰ In the course of these debates,¹¹ the Western States were usually supported by the Latin Americans,¹² while the Afro-Asians were supported by the Socialist States.¹³

During the Special Committee debates there was agreement on the prohibition against organizing or encouraging armed bands for invasions into another country and from involvement in foreign civil strife, but there was no agreement as to whether these two principles were applicable when a people was deprived of its right to self-

¹⁰ 21 U.N. GAOR, C.6 (930th mtg.) 180, U.N. Doc. A/C.6/SR. 899-955 (1966).

¹¹ For the debates on Friendly Relations, see note 9 *supra*. For the debates on the Definition of Aggression in the Sixth Committee, see 22 U.N. GAOR, C.6 (1017-1025th mtgs.) 373, U.N. Doc. A/C.6/SR. 959-1025 (1967); 23 U.N. GAOR, C.6 (1028th, 1073-1082d, 1096th mtgs.), U.N. Doc. A/C.6/SR. 1026-1099 (1968); 24 U.N. GAOR, C.6 (1164-1170th mtgs.) 330, U.N. Doc. A/C.6/SR. 1100-1175 (1969); 25 U.N. GAOR, C.6 (1202-1209th, 1211-1213th mtgs.) 139, 197, U.N. Doc. A/C.6/SR. 1176-1244 (1970); 26 U.N. GAOR, C.6 (1268-1276th, 1281st mtgs.) 123, 197, U.N. Doc. A/C.6/SR. 1245-1307 (1971); 27 U.N. GAOR, C.6 (1346-1352d, 1366th, 1368th, 1371st mtgs.) 201, 315, 343, 364, U.N. Doc. A/C.6/SR. 1308-1393 (1972); 28 U.N. GAOR, C.6 (1439-1445th mtgs.) 222, U.N. Doc. A/C.6/SR. 1394-1459 (1973); 29 U.N. GAOR, C.6 (1471-1489th, 1502-1505th mtgs.) 41, 227, U.N. Doc. A/C.6/SR. 1460-1521 (1974).

For the debates within the framework of the Special Committee on the Definition of Aggression, see 24 U.N. GAOR, Supp. (No.20), U.N. Doc. A/7620 (1969); 25 U.N. GAOR, Supp. (No.19), U.N. Doc. A/8019 (1970); 26 U.N. GAOR, Supp. (No. 19), U.N. Doc. A/8419 (1971); 27 U.N. GAOR, Supp. (No.19), U.N. Doc. A/8719 (1972); 28 U.N. GAOR, Supp. (No. 19), U.N. Doc. A/9019 (1973); 29 U.N. GAOR, Supp. (No.19), U.N. Doc. A/9619 (1974).

¹² See, e.g., Columbia, 20 U.N. GAOR, C.6 (893d mtg.) para. 14-18, U.N. Doc. A/C.6/SR. 837-898 (1965); Panama, 18 U.N. GAOR, C.6 (824th mtg.) para. 8, U.N. Doc. A/C.6/SR. 778-836 (1963). See also Latin American draft submitted to the Special Committee on Friendly Relations, which embraces the *stricto sensu* definition of self-defence. 22 U.N. GAOR, Annex Vol. 3 (Agenda Item 87) para. 27, at 10, U.N. Doc. A/6799 (1967).

¹³ See, e.g., Bulgaria, 18 U.N. GAOR, C.6 (807th mtg.) para. 27, U.N. Doc. A/C.6/SR. 778-836 (1963); Ukraine, 20 U.N. GAOR, C.6 (875th mtg.) para. 19, U.N. Doc. A/C.6/SR. 837-898 (1965); USSR, 20 U.N. GAOR, C.6 (883d mtg.) para. 5, U.N. Doc. A/C.6/SR. 837-898 (1965).

determination. Certain non-aligned delegates insisted that the words, "if such acts of intervention involve the use of force without affecting the scope of Article 51 of the Charter," be incorporated into the prohibition, thus implying that these principles were not applicable to wars of national liberation which were wars of self-defence engendering the right of collective self-defence.

Paragraph 7 of the proposed draft resolution submitted by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia suggested that, "[t]he prohibition of the use of force shall not effect the right of people to self-defence against colonial domination in the exercise of their right to self-determination." The proposed draft resolution of Britain, Australia, Canada and the United States denied the legitimacy of all uses of force except by a competent United Nations organ or in the inherent right of self-defence. A joint Italian-Dutch Amendment to this proposal attempted to create a compromise and stated that all states should comply with the Charter and provide for self-determination of dependent peoples in order to prevent the use of force.

This same debate was continued within the context of the debates on the definition of aggression. Within the Sixth Committee, Syria argued that article 51 should be interpreted broadly and that it was thus applicable to people who were oppressed, colonized or expelled from the land of their birth.¹⁴ Indeed, given the flexibility of such a definition, it would be difficult to find a group who could not invoke article 51. A similar call for a broader interpretation of article 51 was often repeated.¹⁵

Madagascar introduced a new nuance into the debates. Without justifying its argument, it propounded the unlikely theory that article 51 had two senses, one that self-defence could be invoked against armed force, and secondly, that self-defence could be used in questions of exercising the right of self-determination.¹⁶

Western States continued their opposition arguing that self-determination had nothing to do with a definition of aggression. They argued that self-defence could only be invoked in international relations, and that relations between a colonizing power and the colonized

¹⁴ 25 U.N. GAOR, C.6 (1204th mtg.) para. 5, U.N. Doc. A/C.6/SR. 1176-1244 (1970).

¹⁵ See, e.g., Afghanistan, 25 U.N. GAOR, C.6 (1206th mtg.) para. 50, U.N. Doc. A/C.6/SR. 1176-1244 (1970).

¹⁶ *Id.* at para. 75.

people were not international. They claimed that only armed force was aggression. Ideological or economic coercion fell within the realm of non-intervention and thus article 51 was not relevant in those situations.¹⁷

Other Afro-Asian States were wary of this reversal of traditional roles which found the non-aligned States arguing for a broad interpretation of article 51, while the Western States sought a more strict reading of the same. These were most notably the Arab States, who feared the Israeli use of the theory of anticipatory self-defence as in 1956 and 1967. These States, led by Egypt, argued that colonialism in itself constituted a use of force. Most States, they contended, misinterpreted the very nature of colonialism. The maintenance of a colonial administration was not equivalent to force in its widest sense, but constituted an armed attack in itself.¹⁸

Another argument within this *stricto sensu* school aimed at a much more limited right of rebellion. Kenya claimed, as did a great number of moderate Third World States, that if force was used to deprive colonial peoples of the right of self-determination, the colonial people would have the right to rebel.¹⁹ This argument, as will be seen, was the interpretation given by the Western States to the provisions in General Assembly Declarations concerning wars of national liberation.

II. COLONIALISM AS PERMANENT AGGRESSION

The argument that colonialism is permanent aggression represents another attempt to surpass the restrictive terms of article 51. Unlike the theories which have already been examined, this school of thought perceived of colonialism not as aggression in the present, but as occurring in the past. The basis of the argument is that at its inception, the colonial regime was installed by armed force and that as long as the effects of this armed force continues, so does the initial aggression. On

¹⁷ In the Special Committee on the Question of Defining Aggression, Mexico took the lead in urging that there could be no such thing as "economic aggression." 23 U.N. GAOR, Special Committee on Aggression, A/AC. 134/SR. 1, at 50.

For the view of the Western States, *see id.* at 125 (United Kingdom); *id.* at 163 (France); *see also* 25 U.N. GAOR, Supp. (No.19) para. 30, at 66, U.N. Doc. A/8019 (1970).

¹⁸ Egypt, 24 U.N. GAOR, C.6 (1168th mtg.) para. 14, U.N. Doc. A/C.6/SR. 1176-1244 (1969); Togo, *id.* (128th mtg.) para. 19.

¹⁹ 23 U.N. GAOR, C.6 (1080th mtg.) para. 45, U.N. Doc. A/C.6/SR. 1026-1099 (1968); *see also, id.* at para. 69 (Pakistan).

the other hand, it might be argued that this territory was acquired by force at a time when this method of territorial acquisition was legal and thus one cannot apply contemporary legal norms *ex post facto*.

This thesis was most eloquently argued by India at the Security Council after the invasion of Goa. The Indian contention was that Portugal had obtained sovereign rights in Goa from an "unabashed application of force, chicanery, and trickery inflicted on the people of India 450 years ago . . . it was a process of pure and simple conquest."²⁰ India maintained that the initial conquest was illegal. India then asked, "if the *vivi*-section of India was immoral and illegal *ab initio* how can it be moral and legal today?"²¹ As concerns estoppel India argued that because of British colonial rule for 425 years it could not contest Portuguese control, but that since independence, India has consistently contested the legality of the Portuguese presence. Thus, India claimed that it had acted in self-defence against the continued aggression of colonialism against the Goan people, who are one and the same as the Indian people.²²

The American representative responded that it was true that self-defence would have legitimized the use of force, but denied that self-defence was applicable because Goa was "a defenceless territory," and as such posed no threat to India. The Americans thus did not even respond directly to the Indian claim of continued aggression, stating only that there could be no double standard in the use of force. If force could not be used to impose a colonial regime neither could it be used to destroy it.²³ The Western States regarded self-defence against an aggression committed 450 years ago, and which was, at the time, legal, as being far-fetched. They instead saw India as having committed an act of aggression against Portugal. The Portuguese representative stated, "In the circumstances the Portuguese Government considered that it was being made a victim of unprovoked aggression."²⁴

The Western refusal to accept the colonial aspect of the problem only served to cloud the issue. Theorists, such as Quincy Wright, have written that despite the controversy over whether the initial conquest of Goa was legal or not, 450 years of general recognition (not necessarily by India-which is only a neighboring State and which had no other

²⁰ 16 U.N. SCOR (987th mtg.) para. 37, at 8, U.N. Doc. A/P.V. 987 (1961).

²¹ *Id.* at para. 39.

²² *Id.* at para. 77.

²³ *Id.* at paras. 89-95.

²⁴ *Id.* at para. 18.

legal relation to Goa, but by the international community) had established a title.²⁵ Wright, in support of his contention, has pointed to the statement of the Indian Commissioner on the Ledakh boundary dispute commission in 1961 relevant to Chinese claims, "It is unprecedented in the history of international relations that after one state has publically exercised full administrative jurisdiction for several centuries over certain regions another state should raise a dispute regarding their ownership."²⁶ Yet this argument overlooks the difference between control over a neighboring area and European classical colonialist control of overseas territories. This difference has been made explicit by Wright himself in another article.²⁷ These overseas territories have a status which is distinct from the metropolitan State. Wright's argument that territorial integrity implies all territories over which the State exercises *de facto* control has been refuted by the entire movement towards decolonization. General Assembly Resolution 1542(XV)²⁸ recognized Goa as a non-self-governing territory and thus Portugal was under the obligation to pave the way for self-government in keeping with article 73 of the United Nations Charter. The question is thus no longer whether Portugal had a legal title to the territory, but whether in the exercise of their right of self-determination the Goans had the right to use force, and whether this right could be assumed by India either from the Charter provisions on collective self-defence or from the argument that Goans are Indians.

If we did accept the original act of colonization as constituting an armed attack in the sense of article 51, we might then ask when the right to respond in self-defence ceases to be a right. Article 51 provides that the victim State must immediately report an armed attack to the Security Council and that after the Council acts to restore the international peace and security this right of self-defence is no longer valid. The measure which has most often been taken by the Council is to call for a cease fire, thus implying that once the violent aspect of the conflict ceases (even if the conflict of interest remains), the victim State no longer has the right to act in self-defence and must attempt to settle the dispute by peaceful means. This seems to imply that as there was no violence in Portuguese-Indian relations at Goa, India had forfeited

²⁵ Wright, *The Goa Incident*, 56 AM. J. INT'L L. 622 (1962).

²⁶ *Id.* at 624.

²⁷ Wright, *Self-Determination and Recognition*, 98 RECUEIL DES COURS (1959).

²⁸ G.A. Res. 1542, 15 U.N. GAOR, Supp. (No.16) 30, U.N. Doc. A/4684 (1960).

its right of self-defence. The obligation of the aggrieved State to "immediately" report a violation to the Security Council implies that the duration of this right is a short one and in any case is less than 450 years.

The argument that colonialism represents permanent aggression was not used much by the anti-colonial States during the debates on Friendly Relations and on Aggression. Its main fault seems to have been the difficulty of providing that military conquest was a *delicta juris gentium* during a time when this method of territorial acquisition was not only legally respectable, but even morally compelling.

The Security Council was divided and unable to pronounce on the Goa incident. In any case, it was clear that the Western States rejected out of hand any attempt to legitimize the use of force by colonial peoples with reference to self-defence. The debates on Friendly Relations were marked by progression towards a homogeneity of thought among the Afro-Asian States, which was represented in the school advocating a broad interpretation of article 51. It was perhaps the ineffectiveness of this argument, given the Western States' persistent resistance, which led to a proliferation of schools of thought evident in the debates on the Definition of Aggression. Thus, a joint draft resolution proposed to the Special Committee on the Definition of Aggression which was submitted by Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia read: "The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) by another State in accordance with Article 51 of the Charter."²⁹

The Special Committee agreed that while other types of aggression existed, only armed aggression was implied in article 51.³⁰ By 1971, while certain individual States in the Special Committee attempted to assimilate self-defence and wars of national liberation, this practice was not upheld in the proposed draft resolutions of the Third World States which attempted only to exempt wars of national liberation from the concept of aggression. The consensus grew toward a new thesis and away from arguments invoking article 51. The new theory stressed that article 2(4) and the definition of aggression was inapplicable to wars of national liberation and that in such cases the use of

²⁹ 24 U.N. GAOR, Supp. (No.20) para. 10, at 6, U.N. Doc. A/7620 (1969).

³⁰ *Id.* at para. 27.

force was legitimate. The basis for this legitimacy was what I shall call the rule of exception.

III. THE RULE OF EXCEPTION

It has been pointed out that the Socialist States supported the Afro-Asian States in propogating the self-defence thesis. Yet on the whole, these Socialist countries, rather than running the risk of enlarging the scope of article 51, led the way in the formulation of this rule of exception. It was argued that a right to revolt existed independently of other legal rights. This right was either seen as a primordial right or as a right which was intertwined with the right of self-determination. The constant repetition of words such as "inherent" or "sacred" in this connection seemed to imply that it was a natural norm (a strange argument indeed coming from the Socialist camp). In the Khrushchev note of 31 December 1963, Chairman Khrushchev called the recourse to arms of an oppressed people, a "sacred right."³¹ This distinction between a just and an unjust war met criticism from the Western bloc. Britain repeated the American contention in the Goa debates rejecting a double standard in the use of force by certain peoples.

While addressing the General Assembly in 1960, Chairman Khrushchev introduced this formula: "We welcome the sacred struggle of the colonial peoples for their liberation. . . . Moral, material and other assistance must be given so that the sacred and just struggle of the peoples for their independence can be brought to its conclusion."³²

This school is marked by moving and poetic speeches, which, nonetheless, are often replete with untenable assumptions which confuse morals with law. It is often argued that as colonialism is a fundamentally evil institution there is a certain inherent justice in its eradiction, even by force. Despite the fact that certain illegal acts might seem inherently just because the end in view might be accepted, this act of expediency in itself does not transform the act into a legal act. Arguments within this school, in that they have not attempted to differentiate between legal and moral rights and give no justification for the existence of a legal right, remain unconvincing on this strictly legal level.

³¹ Manconduit, *La Note Krouchtchev*, [1964] ANNUAIRE FRANCAIS DE DROIT INTERNATIONAL (Centre National de la Recherche Scientifique).

³² 15 U.N. GAOR (869th mtg.) Vol. 1, para. 223, U.N. Doc. A/P.V. 864-907 (1960).

The Latin American States were less hesitant to support the Afro-Asians outside the domain of article 51. The proposed draft resolution of Argentina, Chile, Guatemala and Mexico on Friendly Relations of 1967 outlined a plan whereby colonial rule was seen as illegal and thus the destruction of it would not be a disruption of the territorial integrity of a State. They flatly rejected the argument that colonial peoples had no rights in international law because they were not constituted in their own State units.³³ The Western States maintained the argument that colonial peoples could have no rights and also claimed that no legal system could possibly grant a right to rebel as this would destroy the legal system itself.³⁴ Third World States maintained that as the right of self-determination existed this was proof that colonial peoples had rights in international law. It was further pointed out that where there was a right there was a remedy.³⁵

Since *jus ad bellum* was thus implicit in the very notion of self-determination, some States argued that the right to struggle against colonialism was a "basic principle of the Charter."³⁶ Revolt was considered as an inherent right and thus article 2(4) could not be seen as relevant to wars of liberation. Article 2(4) was viewed as referring to territorial aggrandizement and not to liberation.³⁷ The attempts of the Socialist and Afro-Asian States were thus focused on exempting wars of national liberation from the provisions defining what constitutes aggression.

This argument clearly implies that certain uses of force are illegal while others, which are not directed "against the territorial integrity or political independence of any State, or in any manner inconsistent with the Purposes of the United Nations,"³⁸ are legal. This interpreta-

³³ 24 U.N. GAOR, Supp. (No. 19) para. 113 at 36, U.N. Doc. A/7619 (1969).

³⁴ *Id.* at para. 168.

³⁵ This argument was implicit in the drafting group's report to the Special Committee on the Definition of Aggression. 28 U.N. GAOR, Supp. (No. 19) 18, U.N. Doc. A/9019 (1973).

For such arguments within the Sixth Committee of the Twenty-fifth Session alone, see, e.g., Zambia, 25 U.N. GAOR, C.6 (1208th mtg.) para. 11, at 176, U.N. Doc. A/C.6/SR. 1176-1244 (1970); Mali, *id.* (1207th mtg.) para. 62 at 172; USSR, *id.* (1208th mtg.) para. 7 at 175; Rumania, *id.* (1207th mtg.) para. 15 at 168; Ukraine, *id.* (1207th mtg.) para. 42 at 171; Libya, *id.* (1208th mtg.) para. 12 at 176; Tanzania, *id.* (1213th mtg.) para. 5 at 203.

³⁶ See, e.g., Mali, 28 U.N. GAOR, C.6 (1444th mtg.) para. 14 at 273, U.N. Doc. A/C.6/SR. 1394-1459 (1973).

³⁷ 16 U.N. SCOR (987th mtg.) para. 138 at 28, U.N. Doc. S/P.V. 987 (1961).

³⁸ U.N. CHARTER, art. 2(4).

tion of article 2(4) is certainly contrary to the spirit of the Charter which wished to make all uses of force by individual States illegal aside from cases of self-defence. Such an interpretation could be abused to legitimize aggression by States which claim that their use of force is not contrary to the principles of the Charter. Forcible self-help is clearly illegal in contemporary international law as was demonstrated by the International Court of Justice in the *Corfu Channel Case*.³⁹

IV. GENERAL ASSEMBLY RESOLUTIONS

There has been a virtual deluge of resolutions from the General Assembly, which have agreed with Resolution 2105(XX), asserting "the legitimacy of the struggle by peoples under colonial rule to exercise their right of self-determination and independence."⁴⁰ The repetition of this concept has had more the effect of shouting in air than of creating legally binding norms, because of the simple reason that the Western States have consistently refused to endorse it. These resolutions, while mustering commanding majorities, have consistently lacked Western support.⁴¹

The lack of support for these resolutions is proven by the totally different formulation of the most important General Assembly resolutions entitled Declarations. In these cases the anti-colonialist States were anxious to assure as great a consensus as possible, and thus took into account the opinion of all the States, including the Western ones. The most important Declarations on this subject have been the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among the States in Accordance with the Charter of the United Nations⁴² and the Declaration on the Definition

³⁹ [1949] I.C.J. 36.

⁴⁰ G.A. Res. 2105, 20 U.N. GAOR, Supp. (No.14) 3, U.N. Doc. A/6104 (1965).

⁴¹ The exception has been resolutions which condemn specific and unpopular cases such as Portugal, although even in this case, the United States and the United Kingdom have normally resorted to abstaining rather than voting in favor. See G.A. Res. 2270, 22 U.N. GAOR, Fifth Extra Session, Supp. (No.1) 49, U.N. Doc. A/6657 (1967); G.A. Res. 2395, 23 U.N. GAOR, Supp. (No.18) 63, U.N. Doc. A/7218 (1968); G.A. Res. 2795, 26 U.N. GAOR, Supp. (No. 29) 104, U.N. Doc. A/8429 (1971); G.A. Res. 2918, 27 U.N. GAOR, Supp. (No.30) 81, U.N. Doc. A/8730 (1972); G.A. Res. 3061, 28 U.N. GAOR, Supp. (No. 30) 3, U.N. Doc. A/8028 (1970).

⁴² Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, [hereinafter cited as Friendly Relations] G.A. Res. 2625, 25 U.N. GAOR, Supp. 28, at 131, U.N. Doc. A/8028, (1970).

of Aggression.⁴³

The fourteenth paragraph of the preamble of the Declaration on Friendly Relations reads, "Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality. . . ."⁴⁴

The words "effective application" are indeed the key words to the entire problem of *jus ad bellum*, and their ambiguity does nothing to resolve the basic problem of what constitutes such a method of applying equal rights and self-determination. While the socialist and radical Third World States tended to favor revolt only after the failure of attempts at a peaceful transition, the Western States argued that the peaceful method in the Charter was an "effective application" of self-determination.

The first principle treated in the Declaration is the prohibition of the use of force. The last paragraph of this section reads, "Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful."⁴⁵ Therefore, while the traditionally legal uses of force were affirmed, the scope of article 51 was not altered, which manifests a reaffirmation of the *stricto sensu* school, that is, that self-defence can only be invoked following an armed attack. The entire tone of this section of the Declaration makes it clear that only armed force was envisioned, and thus colonial peoples were not accorded a right to revolt under article 51. The use of force against colonial peoples with the goal of subverting their efforts to claim their independence was condemned.

The fifth principle of the Declaration on Friendly Relations reaffirms the "right" of self-determination, "in accordance with the provisions of the Charter."⁴⁶ This represents a full acceptance of the Western thesis. No right of revolt is granted, but there is a reaffirmation of the prohibition of the use of force against colonial peoples. If

⁴³ Declaration on the Definition of Aggression [hereinafter cited as Definition of Aggression] G.A. Res. 3314, 29 U.N. GAOR, Supp. 31, U.N. Doc. A/9890 (1974).

⁴⁴ Friendly Relations, note 42 *supra*.

⁴⁵ *Id.*

⁴⁶ *Id.*

such force were used, the colonial people have the right to revolt and may receive assistance from other States.⁴⁷

A prohibition of the disruption of the territorial integrity of every State is contained in the Declaration on Friendly Relations. Yet it asserts that the status of colonies differs from that of the metropolitan areas, and therefore, decolonization cannot be seen as a threat to the territorial integrity of States.

During the explanation of votes, it became evident that there would be no consensus regarding the import of the Declaration. The Third World and Socialist States regretted the Declaration's omission of any reference to the Declaration on the Granting of Independence to Colonial Countries and Peoples. Certain delegations deplored the fact that the right to rebellion was not made absolutely clear.⁴⁸ Russia maintained that the right of self-defence was actually recognized by the Declaration⁴⁹ while other States held that this "right" was simply not prejudiced by the Declaration.⁵⁰ Yugoslavia stated that it would have preferred an unequivocal confirmation of the right to self-defence.⁵¹ Syria saw the Declaration as a confirmation of the most radical thesis—that the colonial peoples could use any means to liberate themselves and could receive assistance in so doing. The Latin American States either did not comment, or expressed satisfaction with the relevant sections of the Declaration.⁵² France was still not sure why the issue of force in colonial matters was being discussed, as it was a domestic issue, yet its delegation interpreted the Declaration to mean that if force were used against colonial peoples, the latter would gain a

⁴⁷ The Declaration states, "[I]n their actions against and resistance to such forcible action in pursuit of the right of self-determination, such peoples are entitled to receive support in accordance with the purposes and principles of the Charter." Friendly Relations, note 42 *supra*.

⁴⁸ Mongolia, 25 U.N. GAOR, C.6 (1182d mtg.) 30, U.N. Doc. A/C.6/SR. 1176-1244 (1970); Algeria, 25 U.N. GAOR, C.6 (1181st mtg.) 24, U.N. Doc. A/C.6/SR. 1181.

⁴⁹ For the Soviet view of wars of national liberation, see Ginsburg, *Wars of National Liberation and the Modern Law of Nations — The Soviet Thesis*, 29 L. & CONTEMP. PROB. 910, 910-42 (1964).

⁵⁰ India, 25 U.N. GAOR, C.6 (1183d mtg.) para. 9 at 38, U.N. Doc. A/C.6/SR. 1176-1244 (1970); Afghanistan, 25 U.N. GAOR, C.6 (1182d mtg.) para. 16-17, at 30, U.N. Doc. A/C.6/SR. 1182 (1970); Libya, 25 U.N. GAOR, C.6 (1182d mtg.) 33, U.N. Doc. A/C.6/SR. 1182 (1970).

⁵¹ 25 U.N. GAOR, Supp. (No.18) 75, U.N. Doc. A/8018 (1970).

⁵² Chile, *id.* at 75-77; Argentina, *id.* at 77-79; Venezuela, *id.* at 79-83.

right to revolt and to receive support.⁵³ The second part of the French interpretation was the position of most Western States and seems to be confirmed by the wording of the document.

The Definition of Aggression, like the Declaration on Friendly Relations, was adopted without vote. The sixth preambular paragraph reaffirms the prohibition of the use of force against colonial peoples, "[r]eaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity."⁵⁴ Article 7 represents an affirmation of the rule of exception. Thus, whereas article 3 enumerates acts which characterize aggression, these acts should not be seen as aggressive if used by a colonial people according to article 7, which reads:

Nothing in this definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration of . . . Friendly Relations . . . particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.⁵⁵

Article 7 thus reaffirms the position of the Declaration on Friendly Relations that if force is used against colonial peoples the latter have the right to rebel.

Most Socialist and Third World States saw article 7 as justifying a right to revolt.⁵⁶ Madagascar confirmed that this was the correct interpretation of article 7, but regretted that the right to self-defence was not made explicit,⁵⁷ implying that self-defence was the basis of the right to revolt in view of the "continued aggression" of colonialism.⁵⁸

⁵³ *Id.*

⁵⁴ Definition of Aggression, note 43 *supra*.

⁵⁵ *Id.*

⁵⁶ See Kenya, 29 U.N. GAOR, C.6 (1474th mtg.) 57, U.N. Doc. A/C.6/SR. 1460-1521 (1974); Libya, *id.* (1477th mtg.) 72; Algeria, *id.* (1479th mtg.) 86; Senegal, *id.* (1480th mtg.) 91; Ghana, *id.* (1480th mtg.) 92; Burundi, *id.* (1482d mtg.) 109; Tunisia, *id.* (1482d mtg.) 111; Cameroon, *id.* (1483d mtg.) 120; Egypt, *id.* (1483d mtg.) 122; Sudan, *id.* (1504th mtg.) 243.

⁵⁷ 29 U.N. GAOR, Supp. (No.19) 15-16, U.N. Doc. A/9619 (1974).

⁵⁸ 29 U.N. GAOR, C.6 (1747th mtg.) 58, U.N. Doc. A/C.6/SR. 1460-1521 (1974).

On the other hand, Canada stated that article 7 gave the right to struggle by peaceful means,⁵⁹ a view that was seconded by pre-revolution Portugal.⁶⁰ Britain, taking a more liberal stand, declared that the Definition contained nothing new in this respect and only reconfirmed the pre-existing right to revolt when armed force had been used against the colonial peoples.⁶¹ France once again could not seem to comprehend the relevance of article 7 within a definition of aggression since the former was an internal matter.⁶²

The American delegation saw article 7 as a reaffirmation of the provisions in the Declaration on Friendly Relations, yet pointed out that neither one mentioned the use of force and therefore did not legitimize its use.⁶³ The American representative stated that article 7 could not legitimize a use of force which would, "otherwise be illegal."⁶⁴ This assertion was further supported by the American delegate to the Special Committee who stated that article 7 did not create a right to revolt, but only implied an exception to article 2(4).⁶⁵ The Americans thus seemed to fully embrace the rule of exception thesis, which is also confirmed by the Declaration, that is, wars of national liberation are an exception to the prohibition against the use of force.

V. THE 1977 PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949

International relations since World War II have been dominated by almost continued warfare in what has come to be known as the Third World. The deficiencies of *jus in bello*, even as it has been revised by the 1949 Geneva Conventions, were made apparent by the proliferation of guerrilla warfare. This method of combat was commonly used by movements of liberation, owing to the disparity in military capabilities between the colonial power and the colonized people. The law of armed conflicts, which was designed to regulate traditional

⁵⁹ *Id.* (Canada)

⁶⁰ *Id.* (Portugal)

⁶¹ *Id.* (Britain)

⁶² 29 U.N. GAOR, Supp. (No.19) para. 22, U.N. Doc. A/9619 (1974). *See supra* note 57, at para. 22.

⁶³ *Id.* at para. 24.

⁶⁴ 29 U.N. GAOR, C.6 (1480th mtg.) 98, U.N. Doc. A/C.6/SR. 1460-1521 (1974).

⁶⁵ 29 U.N. GAOR, Supp. (No.19) 24-27, U.N. Doc. A/9619 (1974).

European inter-State wars, was largely unable to adequately regulate this new type of conflict. The growing consciousness of this insufficiency led to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.⁶⁶ This Conference completed its work in 1977 with the adoption of two additional Protocols to the 1949 Geneva Conventions. Protocol I was concerned with conflicts of an international character while Protocol II treated internal conflicts. The importance of these Protocols in relation to colonial peoples is that they will, when ratified, represent a contractual obligation of all parties to the Protocols to recognize and apply the provisions relating to wars of national liberation.

These two Protocols are concerned with *jus in bello*⁶⁷ and only indirectly touch the question of *jus ad bellum*. Issues regarding wars of national liberation dominated the Conference, beginning with the question of whether the national liberation movements should be invited to participate.⁶⁸ The most important issue evident from Protocol

⁶⁶ For an account of the history of humanitarian law up until the time of the Diplomatic Conference, with special reference to wars of national liberation, see Abi-Saab, *Wars of National Liberation and the Laws of War*, 3 ANNALES D'ETUDES INTERNATIONALES 93 (1972); Baxter, *The Geneva Conventions of 1949 and the Wars of National Liberation*, 57 RIVISTI DI DIRITTO INTERNAZIONALE 153 (1974); Meyrowitz, *Les guerres de libération et les Conventions de Geneve*, 6 POLITIQUE ETRANGERE 607 (1974).

For discussion of the problem of humanitarian law and guerilla conflict, see M. VEUTHEY, *GUÉRILLA ET DROIT HUMANITAIRE* (Institut Henry Dunant, Geneva, 1976).

⁶⁷ The study of *jus in bello* and wars of national liberation is much more developed than that of *jus ad bellum*. See Abi-Saab, *Les Guerres de Libération Nationale et la Conférence Diplomatique sur le droit Humanitaire*, 8 ANNALES D'ETUDES INTERNATIONALES 63 (1977); Baxter, *Humanitarian Law or Humanitarian Politics? The 1974 Diplomatic Conference on Humanitarian Law*, 16 HARV. INT'L L. J. 1 (1975); Meyrowitz, note 66 *supra*; Salmon, *La Conférence Diplomatique sur la Réaffirmation du Droit Internationale Humanitaire et les Guerres de Libération Nationale*, 12 REVUE BELGE DE DROIT INTERNATIONAL 27 (1976); Veuthey, *Guerres de Libération et droit Humanitaire*, 7 REVUE DES DROITS DE L'HOMME 99 (1974).

⁶⁸ This question was resolved when the Conference decided, without vote, to invite the thirteen movements recognized by the Organization of African Unity and the movement recognized by the League of Arab States, to participate without vote. On the separate question of the participation of the Provisional Revolutionary Government of South Vietnam, the Conference decided not to accept the presence of the PRG. See Salmon, *La Participation du GRP du Sud Vietnam aux Travaux de la Conférence Diplomatique sur la Réaffirmation et le Développement du Droit Internationale Humanitaire Applicable dans les Conflits Armés*, REVUE BELGE DE DROIT INTERNATIONAL 191 (1976); Meyrowitz, *supra* note 66, at 617.

proceedings was the First Commission's decision to consider wars of national liberation as being within article 1 of Protocol I. This article defined those conflicts which would be considered as being of an international character.⁶⁹

Article 1 of draft Protocol I,⁷⁰ which was elaborated upon by a committee of experts and presented to the Conference in June 1973 in the name of the International Committee of the Red Cross, merely reconfirmed common article 2 of the 1949 Conventions and thus did not include wars of national liberation.⁷¹ No less than six amendments were proposed to this article, five of which advocated the addition of wars of national liberation to the category of international conflicts.⁷² The divergence among these proposed amendments concerned the question of a definition of wars of liberation and not on the issue of their international character. On the other hand, a group of eight States, mostly Western, proposed an amendment advocating the retention of the 1949 definition and the application of the famous "Martens Clause" to those combatants who did not fall within the protected persons category.⁷³

Article 1 was adopted on March 22, 1974.⁷⁴ The fourth paragraph reads as follows:

The situations referred to in the preceding paragraph [which reconfirms common Article 2 of the 1949 Conventions] include armed con-

⁶⁹ Wars of national liberation were also discussed in relation to the question of the status of prisoners of war, in final articles 43 and 44.

⁷⁰ *Protocols Additional to the Geneva Conventions of 12 August 1949, Resolutions of the Diplomatic Conference*. Int'l. Red Cross, Geneva, 1970.

⁷¹ In proposed article 42, the ICRC suggested that if the States so desired, participants in movements aimed at national liberation might be treated as if they were prisoners of war.

⁷² The conflict over the definition of wars of national liberation was at the center of this deluge of proposed amendments. This discussion, while shedding great light on the problem of self-determination in general, is beyond the scope of this article.

⁷³ These States were: Argentina, Austria, Belgium, the German Federal Republic, Italy, the Netherlands, Pakistan and the United Kingdom.

⁷⁴ The vote was seventy in favor, twenty-one opposed and thirteen abstentions. The negative votes were cast by: Belgium, Canada, Denmark, the German Federal Republic, France, Israel, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Portugal, the Republic of Korea, South Africa, Spain, Switzerland, the United Kingdom, the United States and Uruguay.

The following States abstained: Australia, Austria, Brazil, Burma, Chile, Colombia, the Holy See, Greece, Guatemala, Ireland, the Philippines, Sweden, and Turkey.

The final Article was an amalgam of the proposed amendments and the ICRC draft.

flicts in which peoples are fighting against colonial domination and alien occupation and racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.⁷⁵

Opposition was expressed by many Western States to the inclusion of wars of national liberation,⁷⁶ yet it seems doubtful that they will abstain from ratifying the Protocols which, on the whole, are acceptable to these States.

In order to appease the apprehensions of these reticent States, article 4 was added to the Protocol. This article states, "The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. . . ."

This argument has been repeated by Michel Veuthey who has written, "[R]ecognizing the benefit of the application of humanitarian law to an adversary does not imply the recognition of a certain political attribute or legal status. It merely implies the recognition of his status of human being."⁷⁷ Yet this argument is logically inconsistent with the spirit of article 1. If the concern of the delegates to the Conference had merely been to afford a better protection of all individual combatants, a single Protocol would have been drafted. The fact that two Protocols were adopted and that wars of national liberation were included in the Protocol dealing with conflicts of an international character does indeed change the juridical status of the liberation movements.

Colonial peoples struggling for liberation have been confirmed to be international persons. While they do not have the same rights as a sovereign State, they do have certain international rights and obligations, most notably those recognized by the Protocols in the realm of *jus in bello*. The supporters of these movements failed to foresee however, that colonial peoples, being a subject of international law, are bound to respect that law, including the prohibition of the use of armed force. Thus while colonial peoples have gained, at least theoretically, better protection under international humanitarian law,

⁷⁵ Article 1 of Protocol I, note 70 *supra*.

⁷⁶ For an interesting analysis of this opposition, see generally *Abi-Saab, supra* note 67, at 72-77; see also *Salmon, supra* note 67 at 38-49.

⁷⁷ Veuthey, *supra* note 67, at 102 (author's translation).

their last trumpcard in arguing for *jus ad bellum*—that the conflict was an internal one and thus beyond the competence of the international legal system—has been swept away.

VI. CONCLUSION

The resistance of the Western States to any legitimization of the use of force against colonial regimes has deeply affected the development of a *jus ad bellum* in favor of the liberation movements. This resistance has induced the Afro-Asian and Socialist States to adopt several theories relating to the inherent right of self-defence. When it became obvious that the Western States would not accept this argument, a new idea was expounded, which might be called the rule of exception. Realizing that international legal norms are a result of consensus and not confrontation, the Afro-Asian States were entirely aware of the futility of passing General Assembly resolutions which were consistently devoid of the consent of a large and important bloc of States. Hence, as is often the case in General Assembly Declarations, the Afro-Asians endeavored to find a formula which would create the largest possible consensus in an attempt to create legally binding norms.⁷⁸

Most scholars who have studied the legal effects of General Assembly resolutions have reached the conclusion that in certain circumstances these create binding obligations.⁷⁹ It is beyond the scope of

⁷⁸ The lack of juridical significance of resolutions which lack this degree of consensus was made clear at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The General Assembly, without the consent of the Western States, adopted Resolutions 2465 (XXIII), 2548 (XXIV), 2708 (XXV), 3103 (XXVIII) which declared that mercenaries were outlaws and should be punished accordingly. Yet at the Conference, when treaty provisions on this subject had to be drafted with the accord of the Western States, a different formula emerged. Thus, article 47(1) of Protocol I provides that a mercenary shall not have the right to be a prisoner of war, yet he would clearly be entitled to the basic minimum standard guaranteed in article 75. The mere act of being a mercenary is not to be considered as a crime. See Burmester, *The Recruitment and Use of Mercenaries in Armed Conflicts*, 72 AM. J. INT'L L. 53 (1978). See also Note, *The Laws of War and the Angolan Trial of Mercenaries: Death to the Dogs of War*, 9 CASE W. RES. INT'L L. 323 (1977).

⁷⁹ See, e.g., Bleicher, *Legal Significance of Re-citation of General Assembly Resolutions*, 63 AM. J. INT'L L. 444-78 (1969); R. FALK, *THE STATUS OF LAW IN INTERNATIONAL SOCIETY* 174-84 (1970); R. HIGGINS, note 3 *supra*; Dugard, *The Legal Effect of United Nations Resolutions on Apartheid*, 83 S. AFR. J. INT'L L. 40 (1966).

this article to embark upon such an analysis, yet a few remarks about the legal nature of the Declaration on Friendly Relations are in order. It was adopted by a consensus of the General Assembly after seven years of torturous debate in the Special Committee established for the consideration of seven cardinal principles of the contemporary international legal system.⁸⁰ These debates were marked not by a majority voting system, but rather by a system of unanimity. This system of elaboration produced a document which was acceptable to every Member State of the United Nations. This method was preferred to the drafting of such a document by the International Law Commission in the hope of gaining the greatest consensus possible. Its sole purpose was to clarify existing principles of law which, by virtue of the Charter, were already binding on all States.⁸¹

The preeminence of the decolonization issue since 1960, the tremendous volume of General Assembly Resolutions on this topic and the legal nature of the Declaration all served to underscore the extreme importance of the Declaration. One can only conclude that the Declaration on Friendly Relations provides a clear and concise statement of the international community's view of their rights and obligations in relation to the seven principles analyzed therein.⁸²

It might be concluded that while all States have acknowledged the existence of a right of self-determination, the question of the means to that end is still a bone of contention. While the Afro-Asian and Socialist States have argued in favor of an unrestricted right to revolt in the case of wars of national liberation,⁸³ this idea has found little support among the Western States. A certain movement toward the acceptance of such a right can be perceived among the Western States and may lead to the eventual recognition of this right in the same way that the prohibition of the use of force against colonial peoples has progressively been accepted by all States.⁸⁴

⁸⁰ G. A. Res. 1966, 18 U. N. GAOR, Supp. (No.15) 74, U.N. Doc. A/5515 (1963).

⁸¹ Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 AM. J. INT'L L. 713, 715 (1971).

⁸² Abi-Saab, *supra* note 67, at 66.

⁸³The International Socialist Organization, which groups the major Social Democratic parties of Europe and the Mediterranean, has aided the liberation movements of Africa. LE MONDE, Sept. 13, 1977.

⁸⁴ This concept is frequently found in resolutions dealing with wars of national liberation, and was first enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples. It has been accepted by the Western

At the moment an unlimited right to revolt does not exist. All Member States of the United Nations, in both the Declaration on Friendly Relations and the Declaration on the Definition of Aggression, have recognized a right to revolt by colonial peoples when armed force⁸⁵ is first used against them to prevent them from exercising their right of self-determination. These declarations provide an accurate resume of the state of international law on this subject.

The 1977 Additional Protocols to the 1949 Geneva Conventions have prejudiced the establishment of a *jus ad bellum*, by affirming that wars of national liberation are international conflicts. While it is true that such a classification will assure a greater protection for combatants falling within this category, it might be questioned whether a single comprehensive protocol would not have been more effective for two reasons. First, such a protocol would not have classified conflicts as being either international or internal. If wars of liberation were considered as internal there would be no international prohibition to a use of force. Second, such a protocol would have assured a more effective protection for the vast majority of contemporary combatants who are victims of non-international conflicts. It is obvious that the elevation of wars of national liberation from the status of internal to international wars has left little motivation for certain Third World and Socialist States to ratify Protocol II and apply the law of war to internal conflicts.⁸⁶

States. See the remarks of the British representative. 25 U.N. GAOR, Supp. (No.18) 122, U.N. Doc. A/8018 (1970). On this point both Western and Socialist States contend that this obligation does not prejudice the right to employ police powers in order to ensure the law and order of the territory.

⁸⁵ Excluding police action to maintain the law and order. Protocol Additional to the Geneva Convention of 12 August 1949 and Relating to the Protecting Victims of Non-International Armed Conflicts (Protocol II, June 1977, Articles 4, 5, 7, 8, 15, 16, 17). For a thorough discussion of the body of international law applicable in time of war, see Abi-Saab, *supra* note 67, at 93-117; Baxter, note 67 *supra*.

⁸⁶ See Forsythe, *Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflicts* 72 AM. J. INT'L L. 272-95 (1978). The greatest opponents against the ratification of Protocol II argued that it had become irrelevant just as wars of national liberation had been when elevated to the status of international conflicts. These States were in particular those which either faced an actual or potential secessionist movement, such as India, Iraq and the Philippines. For a discussion of the legal status of internal combatants, see Elder, *The Historical Background of Common Article 3 of the Geneva Convention of 1949*, 11 CASE W. RES. J. INT'L L. 37 (1979).

