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# Meeting Demands for Action as a Community of Nations

*Aaron L. Danzig*

**A**LTHOUGH investment charts are the order of the day, none are available regarding enterprises undertaken by the Community of Nations. If there were, such enterprises would not fall in the category of good investments. They could at most be called

highly speculative. The *World Street Journal*, if one were published, would show that such enterprises are divided into three major categories: (1) peace-keeping, (2) aid enterprises, and (3) human rights insurance. The first of these, peace-keeping, hit its all-time high in 1956 and has since

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been gradually declining. The second of these has had a slow upward movement with very few declines, pays a small dividend, and should eventually be a good growth investment. The third simply skirts along the bottom of the averages, and, while frequent announcements are made by the company of its high purposes and intended achievements, it has yet to show any substantial gains. Until 1920, investments in all three of the enterprises could be called "penny stocks," and it would be hard to find quotations on them in most international markets. Peace-keeping was a highly promising security in the 1920's but, like many other securities of the same period, experienced a serious decline in the 1930's. For the conservative investors between now and 1992, the aid and human rights enterprises stand a better chance of success than the more spectacular peace-keeping investment which seems to be in for troubled days. It is highly doubtful that this last enterprise will go out of business, however, since it satisfies a fundamental need of the Community of Nations — it is the principal antidote to a cancerous growth: The Bomb.

## I. HISTORICAL PERSPECTIVE (1892-1917)

In 1908, far into the first quarter-century that we are looking

at, Austria-Hungary, having been given authority to occupy and administer Bosnia and Herzegovina but not to extend her sovereignty over them,<sup>1</sup> announced that circumstances had changed and that so far as she was concerned the Treaty of Berlin was out of date. Accordingly, in October of 1908, she extended her sovereignty over the provinces and met no opposition. Germany warned Russia not to interfere.<sup>2</sup> Writing in 1916, C. Delisle Burns stated: "It is seen that States must keep their promises; but it is also admitted that no treaty holds *in all circumstances*."<sup>3</sup> The action was simply a reflection of the order of the day, and Mr. Burns' comments were a reflection of the thinking of the day.<sup>4</sup> It was a period of political giants posturing defiance at each other.<sup>5</sup> Roughly between 1880 and 1910 they had partitioned the world among themselves,<sup>6</sup> and the United States had no small share, thanks in large part to "a splendid little war"<sup>7</sup> waged by it just before the century ended.<sup>8</sup>

Plot and counterplot existed at every turn of the compass: France to recover territory lost to Prussia, Great Britain to undermine German naval power, Russia to extend her influence in the

<sup>1</sup> Pursuant to the Treaty of Berlin, July 13, 1878, 3 Martens Nouveau Recueil (ser. 2) 449.

<sup>2</sup> TUCHMAN, *THE GUNS OF AUGUST* 71 (1962).

<sup>3</sup> BURNS, *THE MORALITY OF NATIONS* 102 (1916). This was the so-called doctrine of *rebus sic stantibus*. See also LISSITZYN, *INTERNATIONAL LAW TODAY AND TOMORROW* 42 (1965). An extreme extension of this doctrine, later adopted by the U.S.S.R., was to the effect that "unequal" treaties (that is, where the parties are not on an equal negotiating basis) are void *ab inito*. *Id.* at 53.

<sup>4</sup> "Prior to World War I there were no large research programs in the field of international law undertaken by a group of scholars." *WORKING PAPER FOR FIRST WORLD CONFERENCE, WORLD PEACE THROUGH THE RULE OF LAW* 21 (1963). "Before World War I only a very few American law schools offered courses in international law." *Id.* at 18.

<sup>5</sup> Confronting each other were: (1) the Triple Alliance of Germany, Austria-Hungary, and Italy; (2) the Dual Alliance of Russia and France; and (3) the Entente Cordiale between France and England, which the Anglo-Russian agreements of 1907 converted into the Triple Entente. Japan, having ousted Russia from South Manchuria and the Liaotung Peninsula in the Russo-Japanese War of 1904-1905, emerged as another giant upon the scene. SCHUMAN, *INTERNATIONAL POLITICS* 108 (4th ed. 1948).

<sup>6</sup> *Id.* at 516-17.

<sup>7</sup> Letter from the United States Ambassador to England, John Hay, to Colonel Theodore Roosevelt: "It has been a splendid little war begun with the highest motives, carried on with magnificent intelligence and spirit, favored by that fortune which loves the brave." FRIEDEL, *THE SPLENDID LITTLE WAR* 3 (1958).

<sup>8</sup> The United States annexed the Hawaiian Islands and took Puerto Rico, Cuba, and the Philippines from Spain after the Spanish-American War. Cuba, Panama, Haiti, Santo Domingo, and Nicaragua were treated at times like American protectorates. SCHUMAN, *op. cit. supra* note 5, at 108.

Balkans, Austria-Hungary to achieve the reverse,<sup>9</sup> and Germany to invade France through neutral Belgian territory.<sup>10</sup>

Down the dark halls of history the doors had long ago been shut and sealed upon small rooms in which the dusty models of earlier Community of Nations actions lay inert. For more than a century the Delphian Amphictyony had succeeded in keeping the peace and settling differences between a dozen Greek city-states.<sup>11</sup> For two hundred years the League of the Five Nations had kept the peace among five Iroquois Indian nations.<sup>12</sup> For more than a century the Hanseatic League succeeded in keeping peace among its members.<sup>13</sup> An enterprising French scholar and lawyer, Pierre Dubois,<sup>14</sup> found keys to the door of the room holding these experiments and exposed them to public view, but strutting kings would have none of such sideshows. An exception was the King of Bohemia, George Podebrad, who asked the sovereigns of Europe to send delegates to meet as a council to appoint judges of an international court. He was later excommunicated by the Pope, largely because of this suggestion.<sup>15</sup> Small voices were raised by Desiderius Erasmus in 1517,<sup>16</sup> Emeric Crucé in 1623,<sup>17</sup> the Duc du Sully in 1662,<sup>18</sup> and William Penn in 1694,<sup>19</sup> all suggesting a Community of Action addressed to threats to international peace, but their voices were

<sup>9</sup> *Id.* at 108-09.

<sup>10</sup> TUCHMAN, *op. cit. supra* note 2, at 17-27.

<sup>11</sup> SCHUMAN, *op. cit. supra* note 5, at 41-42.

<sup>12</sup> At the dedication ceremonies a large tree was dug up and the Chief of the Oneidas proclaimed:

I, Dekanawideh, and the confederate lords now uproot the tallest pine tree and into the cavity thereby made we cast all weapons of war. Into the depths of the earth, down into the deep underearth currents of water flowing into unknown regions, we cast all weapons of strife. We bury them from sight forever and plant again the tree. Thus, shall all Great Peace be established, and hostilities shall no be known between the Five Nations, but only peace to a united people. WYNNER & LLOYD, *SEARCHLIGHT ON PEACE PLANS* 388-89 (1944).

See also GALT, *STORY OF PEACE AND WAR* 15 (1952).

<sup>13</sup> DURANT, *THE AGE OF FAITH* 618 (1950). For analyses of medieval arbitration machinery, see RALSON, *INTERNATIONAL ARBITRATION FROM ATHENS TO LOCARNO* §§ 126-38 (1929).

<sup>14</sup> DUBOIS, *DE RECUPERATIONE TERRAE SANCTAE* (1306).

<sup>15</sup> GALT, *op. cit. supra* note 12, at 23.

<sup>16</sup> ERASMUS, *QURELA PACIS* (1517).

<sup>17</sup> CRUCÉ, *LE NOUVEAU CYNÉE* (1623). The author suggested a continuous session in Venice of ambassadors from all nations of the world to hear international disputes and enforce their decisions with a world police force.

<sup>18</sup> 4 DUC DU SULLY, *MEMOIRS* (1662) (proposing a federal union of all nations).

<sup>19</sup> PENN, *AN ESSAY TOWARDS THE PRESENT AND FUTURE PEACE OF EUROPE* (1694).

drowned in the sound and fury of international cacophony. Hugo Grotius, a Dutch lawyer, whose book, *De Juri Belli ac Pacis* was published in 1625 and was read widely by kings and rulers of governments, attempted to codify international law as he saw it, but his treatise was essentially a bedside book. While it may have troubled the dreams of monarchs, it never disturbed their actions. Equally ignored were the writings of Charles de Saint-Pierre<sup>20</sup> and Jean Jacques Rousseau<sup>21</sup> who, writing respectively in 1712 and 1761, suggested a congress of delegates to sit in Switzerland in continuous session to make world laws, to appoint an international court, and to meet threats to international peace with action by the Community of Nations.

In the high winds that blew in the quarter-century preceding 1917, such conceptual plant life could not remain above ground. The stems and leaves toppled and blew away with the wind; only the roots remained. Gross, unrefined substitutes were grown but were soon overrun by weeds. Czar Nicholas II called the first Hague Peace Conference in 1899 to avoid bankruptcy rather than for any high moral purpose.<sup>22</sup> This, in turn, germinated Roosevelt's mediation of the Russo-Japanese conflict a few years later,<sup>23</sup> the acceptance by the British of a Commission of Inquiry's findings in its dispute with Russia over the cannonading of British fishing boats,<sup>24</sup> and the establishment of the so-called Permanent Court of Arbitration at The Hague, which was not a court at all but simply a panel of arbitrators.<sup>25</sup>

The period reflected the essential "non-being" of man in his international ethical behavior dating back as far as biblical days, such lack of international ethic being condoned even by the terms of the Old Testament. It is written that seven nations inhabited the land of Canaan, to which the Israelites were brought. They were thus addressed:

Thou shalt utterly destroy them; thou shalt not make any covenant

<sup>20</sup> DE SAINT-PIERRE, MEMOIRES POUR RENDRE LA PAIX PERPETUELLE EN EUROPE (1712).

<sup>21</sup> ROUSSEAU, EXTRAIT DU PROJET DE PAIX PERPETUELLE DE M. L'ABBÉ DE SAINT-PIERRE (1761).

<sup>22</sup> GALT, *op. cit. supra* note 12, at 77.

<sup>23</sup> See DENNETT, ROOSEVELT AND THE RUSSO-JAPANESE WAR (1922).

<sup>24</sup> SCHUMAN, *op. cit. supra* note 5, at 266.

<sup>25</sup> ROSENNE, THE WORLD COURT — WHAT IT IS AND HOW IT WORKS 16-19 (1962). Between 1899 and 1914 the court decided fifteen cases, but since 1931 it has only been used in four instances. WORKING PAPER FOR FIRST WORLD CONFERENCE, WORLD PEACE THROUGH THE RULE OF LAW 96, 98 (1963).

with them, nor show mercy unto them. Neither shalt thou make marriages with them; thy daughters shalt thou not give unto his son, and his daughter shalt thou not take unto thy son. But, thus shall ye do unto them: their altars shall ye pull down and their statues shall ye break, and their groves shall ye cut down, and their graven images shall ye burn with fire.<sup>26</sup>

There is not room in this article to count the wars conducted in the name of religion, economics, and chauvinism, all of which constituted part of man's ethical heritage in the quarter-century described.<sup>27</sup>

The high winds became a tornado and the tornado a holocaust. "Some damned foolish thing in the Balkans," Bismarck had predicted, would ignite the next war.<sup>28</sup> The assassination of the Austrian heir-apparent, Archduke Franz Ferdinand, by Serbian nationalists on June 28, 1914, satisfied his condition:

War pressed against every frontier. Suddenly dismayed, governments struggled and twisted to fend it off. It was no use. Agents at frontiers were reporting every cavalry patrol as a deployment to beat the mobilization gun. General staffs, goaded by their relentless timetables, were pounding the table for the signal to move lest their opponents gain an hour's headstart. Appalled upon the brink, the chiefs of state who would be ultimately responsible for their country's fate attempted to back away, but the pull of military schedules dragged them forward.<sup>29</sup>

## II. THE SOLUTION (1967)

There is a close parallel between the reactions of mankind in the quarter-centuries following both World Wars and it is the phylogenetic equivalent to the ontological experience so well described by Tillich.<sup>30</sup> Confronted by the dreadful holocaust which he has just been through, with its millions of dead, and the terrible feeling of guilt that all was for naught, "man tries to transform the anxiety of guilt into moral action regardless of its imperfection and ambiguity."<sup>31</sup> It was in this spirit of exaltation that the nations assembled in Versailles in 1919 and San Francisco in 1945. In many respects the United Nations Charter was simply a transnationalization of the birth of reason, incorporating the best of such documents

<sup>26</sup> Deuteronomy 7:2, 3, 5.

<sup>27</sup> See generally LORENZ, ON AGGRESSION 268-72 (Wilson transl. 1966). For a recent graphic description of the Crusades, see MICHENER, THE SOURCE 539-86 (1965).

<sup>28</sup> TUCHMAN, *op. cit. supra* note 2, at 71.

<sup>29</sup> *Id.* at 72.

<sup>30</sup> See TILlich, THE COURAGE TO BE (1952).

<sup>31</sup> *Id.* at 53.

as the Declaration of the Rights of Man, the Declaration of Independence, the Bill of Rights, and similar historical documents. But the Charter went much further in that it interdicted the threat or use of force by nations and concerned itself not only with man's political rights throughout the world but also with man's rights to knowledge and to basic sustenance. Plainly written, it was intended to be a law above law and it is the first document of such significance to be ultimately signed by so many nations, now 122 in number.

The Covenant of the League of Nations was a crude groping for the same objectives. The signatories pledged not to resort to war without meeting certain preconditions,<sup>32</sup> but the mechanisms were crude, and no permanent international force was contemplated.<sup>33</sup> There was a vague wish in the covenant, not too clearly expressed, to improve the lot of mankind<sup>34</sup> and to encourage, to a

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<sup>32</sup> The members agreed that if there should arise between them any dispute likely to lead to a rupture, they would submit the matter either to arbitration, judicial settlement, or inquiry by the Council, which would render a report. LEAGUE OF NATIONS COVENANT art. 12, para. 1 [hereinafter cited as COVENANT]. They limited their agreement not to resort to war to a period of three months after the award by the arbitrators, the judicial decision, or the report by the Council. *Ibid.* The options of the parties to a dispute, however, were not open-ended. If the report by the Council was *unanimous* (excluding, for this purpose, parties to the dispute), the members of the League agreed that they would not go to war with any party to the dispute which complied with the recommendations of the report. COVENANT art. 15, para. 6. There was a similar provision in the covenant pursuant to which a nation that was a party to a dispute agreed that if it were submitted to arbitration or judicial decision, it would not go to war against a nation accepting the arbitration or the judicial decision. COVENANT art. 13, para. 4.

<sup>33</sup> The essential teeth of the covenant lie in article 16 which stated that if any member of the League were to resort to war in *disregard* of its covenants described above, it would be deemed to have committed an act of war against all other members of the League. COVENANT art. 16, para. 1. Paragraph 2 of article 16 went further and stated: "It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." COVENANT art. 16, para. 2.

<sup>34</sup> There was a hopeful injunction in article 23, entitled "Social and Other Activities," that the members of the League would "endeavour to secure and maintain fair and humane conditions of labour for men, women and children," and for that purpose "will establish and maintain the necessary international organizations"; further, that they would undertake to secure just treatment of the native inhabitants of territories under their control and would "entrust the League with the general supervision over the execution of agreements with regard to traffic in women and children, and traffic in opium and other dangerous drugs"; finally, the members agreed to "endeavour to take steps in matters of international concern for the prevention and control of disease." COVENANT art. 23(a), (b), (c), (f). In implementation of the latter, article 25, entitled "Promotion of Red Cross and Health," provided: "The Members of the League agreed to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world." COVENANT art. 25.

limited extent, respect for human rights.<sup>35</sup> The Charter, on the other hand, set up a specific organ whose sole function was to improve the lot of mankind: the Economic and Social Council.<sup>36</sup> It commanded respect for the human rights of all men, references thereto being contained in at least eight places in the charter.<sup>37</sup> It also set up the framework of a military arm.<sup>38</sup>

There is a more ominous aspect to the analogue. After the initial period of exaltation, a disenchantment sets in. No sooner was Wilson back from the Versailles conference when he found himself a prophet without honor in his own country,<sup>39</sup> meeting defeat before the Senate in his proposal to join the League. Furthermore, although the members of the League of Nations attacked the task with some enthusiasm, the upward graph started its downward movement after the abandonment of the sanctions against Italy in 1936,<sup>40</sup> and what was born of exaltation died of desecration in World War II. It will be seen that the United Nations has traversed a similar pattern. The year 1966 might well be the U.N. equivalent to the year 1936 for the League, and the war in Vietnam might be equivalent to the war in Ethiopia. There is, however, an additive which may make the formula more durable: The Bomb.

It was stated in the beginning of this article<sup>41</sup> that the peace-keeping activities of the United Nations, which since 1945 have been the embodiment of action by the Community of Nations in the face of threats to the peace, reached their all-time high in 1956. The organization had achieved some resounding successes beginning as early as 1946 with Iran (withdrawal of Soviet troops

<sup>35</sup> The human rights references are contained only in the guidelines for the administration of territories, especially those of Central Africa, which required the Mandatory to govern under

conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic and the prevention of the use of natives for military purposes other than for police and self-defense of the territory. COVENANT art. 22, para. 5.

<sup>36</sup> For a detailed analysis of the differences between the Covenant and the U.N. CHARTER arts. 61-72, see BRIERLY, *THE LAW OF NATIONS* 105-21 (6th ed. 1963). For a comparison of the similarities, see Goodrich, *From League of Nations to United Nations*, in 3 *THE STRATEGY OF WORLD ORDER* 17-35 (Falk & Mendlovitz eds. 1966).

<sup>37</sup> U.N. CHARTER preamble; art. 1, para. 3; art. 13, para. 1(b); art. 55(c); art. 62, para. 2; art. 68; art. 73(a); art. 76(c).

<sup>38</sup> U.N. CHARTER arts. 43-47, Chapter VII.

<sup>39</sup> It has been contended by some, as recently as this year, that he was a psychopath. *E.g.*, FREUD & BULLITT, *THOMAS WOODROW WILSON TWENTY-EIGHTH PRESIDENT OF THE UNITED STATES* (1967).

<sup>40</sup> SCHUMAN, *op. cit. supra* note 5, at 323.

<sup>41</sup> See text preceding note 1 *supra*.



and peaceful settlement), the resolution of the guerilla warfare in Greece, which the organization had under its surveillance from 1946 to 1954, the midwifery of Indonesian independence in 1949, the achievement of the withdrawal of British and French troops from Syria and Lebanon in 1946, the sidetracking of the Corfu Channel incident to the International Court of Justice in 1947,<sup>42</sup> the smothering of the spectacular outburst in Palestine between the Arab states and Israel in 1948 and 1949, the active defense of South Korea in 1950 and 1951, the achievement of a ceasefire between India and Pakistan in 1948 over the issue of Jammu and Kashmir, the behind-the-scenes resolution of the Berlin blockade in 1948 and 1949, the gadflying of colonial powers which helped to achieve independence for Libya in 1951, for Morocco in 1955, and ultimately the independence of Tunisia in 1961, and Algeria in 1962.<sup>43</sup>

It is true that during this entire period the Security Council was beset by dozens of vetos, which were exercised by the U.S.S.R. Therefore, one of the basic pillars of the organization, the assumption that the Great Powers would always be in agreement on matters affecting world peace, had already fallen away. But like a neurotic personality which, when repressed in one area, expresses itself in another, the U.N. twisted and turned and in each instance came up with a makeshift solution to each of the problems which confronted it.

These ingenious approaches to threats to the world peace found their finest expression in the 1956 Suez Canal incident. After the nationalization of the Suez Canal by Egypt in July of that year,<sup>44</sup> Israel, upon the pretext that it was being tortured by hundreds of fedayin raids upon it, entered Egyptian territory with its army and headed for the Suez Canal.<sup>45</sup> France and the United Kingdom then demanded that they be permitted to land their troops in Egypt for the purpose of protecting the Canal against Israel.<sup>46</sup> Egypt angrily refused, whereupon France and the United Kingdom began bomb-

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<sup>42</sup> Corfu Channel Case, [1949] I.C.J. 244; see HALDERMAN, *THE UNITED NATIONS AND THE RULE OF LAW 72-75* (1966). The damages awarded to the United Kingdom were never paid, however. ROSENNE, *op. cit. supra* note 25, at 140.

<sup>43</sup> For a summary of these cases, see CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, *SYNOPSIS OF UNITED NATIONS CASES IN THE FIELD OF PEACE AND SECURITY 1946-1965* (1966).

<sup>44</sup> UNITED NATIONS OFFICE OF PUBLIC INFORMATION, *EVERYMAN'S UNITED NATIONS 80* (7th ed. 1964) [hereinafter cited as *EVERYMAN'S UNITED NATIONS*].

<sup>45</sup> Israeli Embassy Press Release, Oct. 29, 1956.

<sup>46</sup> 11 U.N. SCOR, 749th meeting 2-3 (1956).

ing Egyptian airfields and landing paratroops at Port Said.<sup>47</sup> In a fit of pique, General Nasser thereupon sank every ship that he could find in the Suez Canal for the purpose of blocking its usage by anyone.<sup>48</sup> Russia threatened to send a half-million "volunteers" to protect Egypt. There was no question that the entire Arab league would be involved in this conflagration and that it would take place in the area of the world from which were supplied two thirds of the daily oil needs of the Western European countries.<sup>49</sup>

It was in this air of crisis that the Security Council met and a resolution calling for an immediate cease-fire was vetoed by France and the United Kingdom.<sup>50</sup> The burden of the controversy was transferred to the General Assembly pursuant to a procedure which had been established by that body in 1950, known as the Uniting for Peace Resolution,<sup>51</sup> which provides that if the Security Council is tied up by veto or unable to act, any matter affecting world peace is immediately transferred to the General Assembly. It was in the Assembly, at the suggestion of Lester Pearson of Canada, that the United Nations Emergency Force (UNEF) was born and spectacular results achieved: a cease-fire established within seven days after the outbreak of hostilities, the landing of an emergency force within ten days thereafter,<sup>52</sup> and the complete clearance of the Suez Canal at approximately one fourth of its contemplated cost by April of 1957, six weeks ahead of schedule.<sup>53</sup> The Secretary General, who had been authorized to arrange the implementation of the cease-fire, acted with both brilliance and aplomb, winning the consent of Egypt to the entry of the United Nations forces as well as the respect of all the combatants. It was the U.N.'s finest day.

It is true that the U.N. subsequently achieved signal successes in the Congo in 1960 and 1961, in serving as a face-saving device in the Cuban missile crisis of 1962, and in achieving an interposed force in the armed hostilities between the Greek and Turkish communities on Cyprus in 1963, but none of these accomplishments had the unalloyed success achieved in the Suez crisis. In the Congo the Secretary General was caught in a crossfire and found himself condemned from time to time by the Congolese themselves and by

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<sup>47</sup> INT'L CONC. No. 514, at 35 (Sept. 1957).

<sup>48</sup> EVERYMAN'S UNITED NATIONS 81.

<sup>49</sup> See maps and tables in N.Y. Times, Feb. 5, 1956, § 4, p. 5.

<sup>50</sup> EVERYMAN'S UNITED NATIONS 82.

<sup>51</sup> 5 U.N. GAOR Supp. 20, at 10, U.N. Doc. A/R 377 (1950).

<sup>52</sup> EVERYMAN'S UNITED NATIONS 82, 86.

<sup>53</sup> *Id.* at 84.

the Russians.<sup>54</sup> In the Cuban situation the settlement was not as clearly attributable to the U.N.<sup>55</sup> as in the Suez situation, and by the time the Cyprus question was before the Security Council and the General Assembly, every action by the United Nations was weighted down by the overhanging dictum of Russia and France that peace-keeping operations could only be set up under Chapter VII pursuant to the original framework for military action set forth in the Charter (*i.e.*, under the aegis of the Security Council), all other peace-keeping operations being deemed illegal.<sup>56</sup>

It was this latter position that made the nineteenth session of the General Assembly practically useless since Russia, France, and others had refused to pay their share of the peace-keeping operations in Egypt and the Congo. The United States insisted that these countries be deprived of their votes pursuant to section 19 of the charter, which provides that any nation two years in arrears in its payments to the United Nations must not vote.<sup>57</sup> With the abandonment by the United States of this position in August 1965,<sup>58</sup> a whole series of assets on the United Nations' balance sheet suddenly became worthless. The Uniting for Peace Resolution, formerly accepted as part of the fabric of the organization,<sup>59</sup> now became a suspect legal doctrine. A roadblock now stood in the way of ingenious substitutes for the Chapter VII military arm of the United Nations: the position of the French and U.S.S.R. governments that such substitutes were illegal.<sup>60</sup>

Some measure of the nature of this opposition was felt in the new outbreak between Pakistan and India in 1965 when the Security Council requested the Secretary General to provide the necessary military observers to supervise a cease-fire which had been obtained

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<sup>54</sup> GARDNER, IN PURSUIT OF WORLD ORDER 49 (1964). See also FRANK & CAREY, THE LEGAL ASPECTS OF THE UNITED NATIONS ACTION IN THE CONGO 26-27 (1963); INT'L CONC., No. 534, 39-56 (Sept. 1961).

<sup>55</sup> GARDNER, *op. cit. supra* note 54, at 67-83.

<sup>56</sup> INT'L CONC. No. 559, at 16-17 (Sept. 1966).

<sup>57</sup> U.N. CHARTER art. 19:

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

<sup>58</sup> 19 U.N. GAOR, Ad Hoc Comm. on Peace Keeping Oper. (1965).

<sup>59</sup> WORKING PAPER FOR FIRST WORLD CONFERENCE, WORLD PEACE THROUGH THE RULE OF LAW 119 (1963).

<sup>60</sup> INT'L CONC. No. 559, at 17 (Sept. 1966).

by the Security Council. The Secretary General found himself subject to severe criticism by the U.S.S.R. for substantially expanding the personnel of his own volition upon the ground that he was usurping the Security Council's exclusive power to set up military or para-military forces.<sup>61</sup>

Other, more damaging elements were at work, however. The first of these occurred simultaneously with the U.N.'s most brilliant success in the Suez Canal crisis: Russia's invasion of Budapest and its refusal to withdraw in response to the request of the General Assembly.<sup>62</sup> The U.N. also failed in its duty to Tibet in 1959 when China simply annexed that country with impunity.<sup>63</sup> The most stunning blows to the U.N.'s integrity, however, came with the unilateral intervention by the United States in the Dominican Republic situation in 1965, which, though reprehensible in the eyes of many international scholars,<sup>64</sup> at least sought the cloak of U.N. propriety; and soon after this the military activities of the United States in Vietnam with daily bombings approaching the two-hundred mark. With each of these bombs the U.N. dies a little.

On the other hand, the aid programs of the U.N. have never had such spectacular successes, nor have they had such spectacular failures. Accordingly, these aid programs have grown and diversified and are continuing to grow. At first they were surrounded by the same aura of enchantment as the action devices procreated by the U.N. For the first time in the history of mankind, any man's poverty and ignorance was every man's responsibility; but, more than that, it was the joint responsibility of all nations, and this concept was embodied in articles 55 and 56 of the charter.

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<sup>61</sup> At the Nov. 5, 1965, meeting of the Security Council, Mr. Fedorenko stated that such action by the Secretary General was at variance with the provisions of the United Nations Charter. We emphasize that, pursuant to these basic provisions of the Charter, only the Security Council is competent to adopt the relevant decisions on all concrete questions involving military observers of the United Nations. It is the Council that must decide, in particular, such matters as the determination of the functions of the military observers, their numbers, their command, their terms of reference, the methods for financing their activities, and so on. 20 U.N. SCOR, 1251st meeting 42 (1965).

<sup>62</sup> See INT'L CONC. No. 514, at 4-23 (Sept. 1957). This can be compared to Japan's refusal, when requested by the League, to get out of Manchuria after its invasion in 1931. SCHUMAN, INTERNATIONAL POLITICS 315-16 (4th ed. 1948).

<sup>63</sup> GENOCIDE IN TIBET (Gilbert ed. 1959).

<sup>64</sup> FRIEDMAN, SOME FUNDAMENTAL CHANGES IN THE STRUCTURE OF TEMPORARY INTERNATIONAL LAW, WORKING PAPER FOR SECOND WORLD CONFERENCE, WORLD PEACE THROUGH THE RULE OF LAW 7-11 (1965); HALDERMAN, *op. cit. supra* note 42, at 47 n.50, 49.

In the early days of the Technical Assistance programs, idealists took tremendous pride in announcing that yaws, a disease that plagued the poverty-stricken areas of the world, could be cured by a single shot of penicillin costing only a few pennies.<sup>65</sup> Malaria would be wiped from the face of the earth by a concentrated U.N. program of DDT prophylaxis.<sup>66</sup> Tuberculosis among children was attacked, and the BCG injections were counted in the hundreds of millions.<sup>67</sup> UNESCO would teach everyone to read and write, they said, and a world scourged by illiteracy and malnutrition covering half its population,<sup>68</sup> would become literate and well fed.<sup>69</sup> Thousands of experts crisscrossed the lands<sup>70</sup> teaching people how to plow their fields, explaining new methods of fertilization, and researching new sources of food. The latest example is the discovery that hitherto unharvested fish can be converted into an odorless and tasteless meal which can be mixed with a large number of food products.<sup>71</sup>

After twenty-one years, however, almost everyone involved has come to realize that we are simply running on a treadmill: that as learning increases, the number of uneducated people increases at a similar rate;<sup>72</sup> that as mouths are fed, new-born mouths arise to take their place.<sup>73</sup> The average per capita income of fifty percent

<sup>65</sup> MORGAN, DOCTORS TO THE WORLD 3-27 (1958).

<sup>66</sup> *Id.* at 190-211.

<sup>67</sup> KEBNY, HALF THE WORLD'S CHILDREN 56-57, 74, 84, 86-87, 242 (1957).

<sup>68</sup> U.N. POOLING SKILLS FOR HUMAN PROGRESS (1953).

<sup>69</sup> U.N. OFF. OF PUBLIC INFORMATION, THE UNITED NATIONS 31, 30 SS 58.1.18; *The Battle Against Hunger*, United Nations Review Vol. 10, No. 3, 14-15 (1963); LYON, THE UNITED NATIONS IN ACTION chs. 3 & 6 (1960).

<sup>70</sup> BECKEL & LEE, WORKSHOPS FOR THE WORLD (rev. ed. 1962); GARDNER, *op. cit. supra* note 54, at 123-40; U.N. POOLING SKILLS FOR HUMAN PROGRESS 13-24, 30 (1953).

<sup>71</sup> The recent approval of fish meal as an edible product by the United States Food and Drug Administration is an important development. N.Y. Times, Feb. 1, 1967, p. 23, col. 2 (city ed.). As to the properties of the product, see N.Y. Times, Nov. 27, 1966, p. 63, col. 1, (city ed.). In the N.Y. Times, Jan. 23, 1967, p. 38, col. 1, the Interior Department's Bureau of Commercial Fisheries is quoted as follows: "Just the unharvested United States fish, translated into fish protein concentrate, would supply sufficient quantities of animal protein to supplement the deficient diets of about 1 billion people for 300 days at a cost of less than one-half a cent per person a day."

<sup>72</sup> The number of teachers in the world increased more than sixty-five percent between 1950 and 1963. Y.B. UNESCO 113, SS. 66/XIV. 10/AF (1966) (Table 8c). Adult illiteracy, however, was reduced by only five percent in the decade from 1950 to 1960. *Id.* at 32-33 (Table 3). In spite of this, there were *more* adult illiterates in 1960 than in 1950 (around 1950: 700 million; around 1960: 740 million). *Ibid.*

<sup>73</sup> Compare Goodrich, *supra* note 36, at 532-38 (Table 2-A-1, Gross National Product Projections in Underdeveloped Countries), *with id.* at 540-45 (showing projected rates of increase). In THANT, THE UNITED NATIONS' DEVELOPMENT DECADE,

of the world is less than one hundred dollars per annum.<sup>74</sup> The Development Decade undertaken by the United Nations in 1960, geared to a five-percent per annum increase in this per capita income to be achieved by 1970,<sup>75</sup> has not even achieved its intermediate objectives,<sup>76</sup> but, in any event, what gaineth a man if he earns one hundred dollars per annum in 1960 and \$150 per annum in 1970? In short, the aid programs call for spectacular happenings.

An international helping-hand program can do many things that a purely national program cannot: it is not geared to politics, it asks nothing in return, it can handle international complexes with ease (such as the projects in the Mekong delta),<sup>77</sup> it can draw on a worldwide pool of skills and, unlike national programs, it supplies no military hardware.<sup>78</sup> Yet, national programs like the United States bilateral aid program still run to four and one-half billion

PROPOSALS FOR ACTION, REPORT OF THE SECRETARY GENERAL (1962), reproduced in Goodrich, *supra* note 36, at 616, the author stated:

It should be emphasized, however, that 5 per cent annual increase in aggregate national income would not be enough to bring a very rapid rise in *per capita* income in the countries where population is growing most rapidly. Rates of population growth in a number of African, Asian, and Latin American countries have recently risen into the range of 3 to 3 ½ per cent per annum and a projection of recent mortality trends implies that population growth at such rates is likely to become more and more prevalent in these parts of the world in the next decade, unless the birth rates drop sharply. Under these conditions, a 5 per cent increase in aggregate income would correspond to an annual increase of only 1-½ to 2 percent in *per caput* income and 35 to 50 years would be required to double *per caput* income.

See also The State of Food and Agriculture 1966, U.N. FAO 1, cl 47/2 (1966) forwarded by B. R. Sen, Director-General:

Any remaining complacency about the food and agricultural situation must surely have been dispelled by the events of the past year. As a result of widespread drought, world food production, according to FAO's preliminary estimates, was no larger in 1965/66 than the year before, when there were about 70 million less people to feed. But for good harvests in North America, world production would almost certainly have declined. In fact, in each of the developing regions except the Near East, food production is estimated to have fallen by 2 per cent in total and by 4 to 5 per cent by a per capita basis. *Ibid.*

<sup>74</sup> Goodrich, *supra* note 36, at 531 (Table I-B, World Income Distribution).

<sup>75</sup> G.A. Res. 1710, 16 U.N. GAOR Supp. 17, at 17, U.N. Doc. A/5100 (1961).

<sup>76</sup> N.Y. Times, Dec. 7, 1966, p. 5, col. 5; p. 67, col. 3 (city ed.), referring to statement by Paul G. Hoffman, co-administrator for United Nations:

He deplored, however, the "distressingly slow" progress made toward goals for the United Nations Development Decade, set in 1960. The growth rate in the majority of emerging nations has been less than 4 per cent each year, Mr. Hoffman said, although some countries in all three of the developing continents have a rate of 5 per cent, and a few have reached 9 and 10 per cent a year.

<sup>77</sup> See Goodrich, *supra* note 36, at 633 (Annex II).

<sup>78</sup> The differences in approach are well analyzed in GARDNER, *op. cit. supra* note 54, at 116-19.

dollars a year<sup>79</sup> while the U.N. program is gaited to budgets under two hundred million dollars<sup>80</sup> per annum. Unless there is a moral force at work in the world — which is presently not on the horizon — these programs will continue to be wonderful as far as they go, but remain only minor contributions to the problems of mankind to be faced in the coming decades.

Finally, the human rights programs have been signaled by their spectacular announcements, but the achievements have not been terribly significant. Starting with the Universal Declaration of Human Rights in 1948 which set a standard for all mankind, the U.N. has been unable to obtain enforcement of these human rights when the chips were really down<sup>81</sup> and, as in the case of the International Court of Justice decision affecting Southwest Africa,<sup>82</sup> has sometimes shown an unwillingness to face the issues.<sup>83</sup> The latest spectacular announcements involve the deprivation of the Union of South Africa's mandate over West Africa<sup>84</sup> (although nobody knows how this cutting of the umbilical cord can be achieved) and the adoption of the International Covenants on Economic, Social, and Cultural Rights, Civil and Political Rights as well as the optional Protocol to the Covenant on Civil and Political Rights, the purpose of which is to make the International Declaration of Human Rights the law of the land of each country signatory to the covenants and to provide a means of redress after the individual has exhausted all intra-national remedies.<sup>85</sup>

In the past, offending nations simply thumbed their noses at the U.N. (particularly Portugal,<sup>86</sup> the Union of South Africa,<sup>87</sup> and, to

<sup>79</sup> *Id.* at 126. This includes 1.5 billion per year in commodities through the Food for Peace Program. "In sum, in the giving of all types of foreign aid including, most ominously, military assistance, the U.S. insists on being the first among all nations, West or East, communist or free." BYRNES, *WE GIVE TO CONQUER* 20 (1966).

<sup>80</sup> Combined expenditures of the Special Fund and the Technical Assistance Program during 1966 amounted to \$193 million. *N.Y. Times*, Dec. 7, 1966, p. 65, cols. 3-5; p. 67, col. 3 (city ed.).

<sup>81</sup> LEISS, *APARTHEID AND UNITED NATIONS COLLECTIVE MEASURES*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (1965). See also *INT'L CONC.* No. 559, at 113-19 (Sept. 1966).

<sup>82</sup> *I.C.J. South Africa Cases, Ethiopia v. South Africa, Liberia v. South Africa (Second Phase)*, [1966] *I.C.J.* 6.

<sup>83</sup> "[T]he Court failed, when offered a chance to play a creative and constructive role, in bringing about peaceful change in the social and political structure of Southern Africa." Remarks of Iranian Delegate, 21 *U.N. GAOR* 56, *U.N. Doc. A/pv.1427* (1966). See *INT'L CONC.* No. 559, at 60-67 (Sept. 1966).

<sup>84</sup> *G.A. Res. 2145*, 21 *U.N. GAOR Supp.* 16, at 2, *U.N. Doc. A/R2145* (1966).

<sup>85</sup> *G.A. Res. 2200*, 21 *U.N. GAOR Supp.* 16, at 49, *U.N. Doc. A/R2200* (1966).

<sup>86</sup> Wolgemuth, *The Portuguese Territories and the United Nations*, *INT'L CONC.*, No. 545 (Nov. 1963).

a lesser extent, France<sup>88</sup>), but the organization felt that it had received one nose thumb too many in the case of Rhodesia and took a momentous step forward. The Security Council mandated the embargo of twelve vital exports from Rhodesia, thus for the first time in its history<sup>89</sup> invoking the provisions of the charter which enable the Security Council to order such economic sanctions.<sup>90</sup> In conformity therewith President Johnson, on January 5, 1967, signed an executive order cutting off virtually all trade between the United States and Rhodesia, marking the first time that the United States had invoked section 5 of the United Nations Participation Act of 1945.<sup>91</sup> This section empowers the President to apply appropriate measures to enforce Security Council decisions made under article 41 of the United Nations Charter covering threats to peace.<sup>92</sup> Maximum penalties for violating the executive order would be ten years in prison or a ten thousand dollar fine or both.<sup>93</sup> In short, the human rights tiger is beginning to show its teeth. Time will tell whether or not it is a paper tiger.

### III. A PROGNOSIS (1968-1992)

What does the next quarter-century have to offer? No radical change.<sup>94</sup> The "Great Powers," notwithstanding the dreams of Clark and Sohn,<sup>95</sup> will hold on to the last redoubt, the veto, with a tenacity that certainly will not be overcome within the next few decades. For such forces as are required to douse the brush fires of

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<sup>87</sup> See authorities cited note 79 *supra*.

<sup>88</sup> INT'L CONC. No. 529, at 48-57 (Sept. 1960). See also INT'L CONC., No. 524, at 39-50 (Sept. 1959).

<sup>89</sup> HALDERMAN, *op. cit. supra* note 42, at 163:

It is a matter of interest that up to the time of writing (May 1966) the Security Council has never initiated measures by means of binding orders on member states — not even measures short of force as to which the supposed obstacle of the nonfulfillment of Article 43 is not applicable.

<sup>90</sup> 21 U.N. SCOR Supp. Dec. 1966, U.N. Doc. S/Res./232 (1966), invoking U.N. CHARTER arts. 39, 41.

<sup>91</sup> N.Y. Times, Jan. 6, 1967, p. 1, col. 8.

<sup>92</sup> U.N. CHARTER art. 41, para. 1.

<sup>93</sup> U.N. CHARTER art. 41, para. 2.

<sup>94</sup> "Intra-specific aggression is millions of years older than personal friendship and love." LORENZ, ON AGGRESSION 217 (Wilson transl. 1966). The author also states that man and the rat seem to be the only species that have no inhibitions against intra-specific killing. *Id.* chs. 10, 13. Accordingly, these traits of mankind are not expected to die in the next quarter century.

<sup>95</sup> CLARK & SOHN, WORLD PEACE THROUGH WORLD LAW xxiii (2d rev. ed. 1964), in which it is contemplated that the veto be abolished and that the Security Council will become an arm of the General Assembly called the Executive Council.



the world, improvisation — mostly on a voluntary basis — will be the predominant theme. An ever-increasing number of nations will join the small group which now as a matter of policy have independently offered to earmark military personnel for use by the United Nations.<sup>96</sup> By creative use of certain provisions of the U.N. Charter,<sup>97</sup> and by taking into consideration the fact that article 39 does not exclude *by its terms* other types of action, a police force supported by voluntary contributions can and probably will evolve; but in 1992 it will still be small. We will grow to love The Bomb in the next twenty-five years because it, above all, will be the greatest deterrent to the "Great Powers" striking major blows at each other. The greatest fear will be that The Bomb will come into the hands of a small, irresponsible power. Small wonder that the "Great Powers" are now devoting so much energy to the establishment of anti-proliferation measures.

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<sup>96</sup> Denmark, Norway, Sweden, Finland, Canada, Iran, and The Netherlands. GARDNER, *op. cit. supra* note 54, at 98. Britain has also offered permanent logistical support for as many as six U.N. infantry battalions. N.Y. Times, Feb. 24, 1966, p. 1, col. 7.

<sup>97</sup> U.N. CHARTER art. 7, para. 2. "Such subsidiary organs as may be found necessary may be established in accordance with the present Charter." *Id.* art. 22: "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions." *Id.* art. 11, paras. 1, 2:

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such question to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

The International Court of Justice held, in interpreting this article, that the UNEF and ONUC operations were not *enforcement* actions of the type that fall within the exception of subparagraph 2. CERTAIN EXPENSES OF THE UNITED NATIONS (Article 11, Paragraph 2 of the Charter) Pleadings, Oral Arguments, Documents 151, 165-65 (I.C.J. 1962). See also Hogg, *Peace-Keeping Costs and Charter Obligations — Implications of the International Court of Justice Decision on Certain Expenses of the United Nations*, 62 COLUM. L. REV. 1230 (1962); U.N. CHARTER, art. 35, para. 1: "Any Member of the United Nations may bring any dispute, or any situation of the nation referred to in Article 34, to the attention of the Security Council or of the General Assembly." Article 34 provides: "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security." It should be noted, however, that the General Assembly's powers under article 35 are subject to the limitations of articles 11 and 12. U.N. CHARTER art. 34, para. 3.

As to the programs which extend a helping hand to the poor nations of the world, they will continue to grow; but unless there arises an ethical drive stronger than that which now motivates them, they will grow as did charities for the poor in the last century: well-intentioned but ill-equipped. Highly dramatic and deeply stirring events must occur in the world to move man to really sacrificial measures to help his fellowman. I do not see such events occurring, because the deteriorating condition of the impoverished and ignorant portion of mankind is a creeping paralysis, not a climactic event. In many respects their condition may be compared to that of workers in the United States in the period after the Civil War, when, working in sweat shops for six and seven days a week at wages permitting them to live only in slum conditions, their future was bleak indeed. The solution to that problem lay in organization. In the long run this worked out best for everyone concerned, since the increased purchasing power generated by high wages redounded to the benefit of employers. Even aside from moral motivation, however, it is very difficult to convince man that giving to others ultimately results in his own good; accordingly, even in the United States, the organization of labor was met in its early stages by ruthless killings, beatings, goons, scabs, and every type of violence, of which the Haymarket Riot is a prime example.<sup>98</sup>

The same reluctance to meet organizational demands by the poorer nations of the world was evidenced in the United Nations Conference on Trade and Development held in 1964, which resulted in pious words but few benefits for the seventy-five nations (now seventy-eight) who need help so badly.<sup>99</sup> This mental block pervades the Communist as well as the capitalist mind, and many

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<sup>98</sup> LENS, *WORKING MEN* ch. 8 (1960); RAYBACK, *A HISTORY OF AMERICAN LABOR* ch. 11 (1954).

<sup>99</sup> Economic aid is another case in point. Two years ago, at a United Nations Conference on Trade and Development (UNCTAD) whose membership matched that of the parent body, some 75 smaller "developing" nations suddenly found what they thought was magic in the more-than-two-thirds majority they could muster when voting in a bloc. Though together they accounted, in terms of financial contribution to the UN, for no more than 5% of the total, they sought through stonewall tactics to impose their will on the far richer minority and create a whole new system of trade preferences designed to favor their exports of raw materials vital to the industrialized minority. The effort bogged down, largely out of a dawning realization among the 75 that, as one U.S. official puts it, "you can't have a dairy without milk cows and you have to keep the cows happy." In one [the?] last analysis, the minority of richer nations simply had more weight, votes aside. *Wall St. Journal* (N.Y.), Nov. 1, 1966, p. 1, col. 1.

For a detailed review of UNCTAD, see DELL, *UNACTAD: RETROSPECT AND PROSPECT, ANNUAL REVIEW OF UNITED NATIONS AFFAIRS 1964-1965*, at 52-85 (1966).

authorities attribute the present unrest in China to the resistance by Mao Tse Tung and his ruling faction to the demands by others that workers be paid higher wages and receive greater economic benefits for their work.<sup>100</sup> There is no divine reason why the export price of cocoa should be twenty-two cents per pound as distinguished from \$2.50, why the price of sugar should be four or five cents per pound instead of one dollar, or why the price of rice on the export market should not be one dollar per pound instead of a few pennies. The producing countries, now impoverished, need the organizational force to impress such increases upon the world, and I do not see such force appearing within the next quarter of a century. I see measures which will prevent disaster to mankind but which will not permit the pursuit of happiness.

Few men will die in the next quarter of a century in order to improve the human rights of mankind. A gradual erosion will continue, however, of the Portuguese,<sup>101</sup> South African, and Rhodesian extremes. The eradication of such extreme views will take as long in the southern part of the world as it has taken, and will take, in the southern United States.

The achievement of a perfect international ethic will never be seen in our lifetime. Yet unless there is dramatic progress in the areas of peace-keeping, aid, and human rights, a hypothetical visitor from outer space in 1992 would return to his own planet only to be met with wild disbelief that a substantial portion of men on earth could still be slaughtering each other or gorging themselves while their fellow men die of starvation.

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<sup>100</sup> N.Y. Times, Jan. 14, 1967, p. 3, col. 2: "Peking has denounced opposition elements for committing the ideological crimes of 'trade unionism', encouraging workers to use organized power against the state, and of 'economism', encouraging them to press for higher wages and better working conditions."

<sup>101</sup> Peter Weiss' forthcoming "The Lusitanian Bogeyman" will attack this problem in musical form.