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**1950—How the opportunity
for transitioning to
U.N. Collective Security
was missed for the first time**

Klaus Schlichtmann

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Klaus Schlichtmann was born in Hamburg, Germany, as the son of a medical doctor, in 1944. As a teenager he developed an interest in philosophy, comparative culture, Buddhism, the arts, literature and politics. He left Germany at the age of 18, and soon after started his *Yatra* to India, travelling overland through Turkey, Syria, Iraq, Iran and Pakistan. From 1964 to 1966 he was German lecturer at the Sanskrit Viswavidyalaya in Varanasi (Benares). He spent a number of years in India, doing research and 'going native'. After returning to Germany he took up studies at Kiel University, where Asian history became his major subject, with international law and political science as his two minor subjects. In 1992 he obtained a scholarship to go to Japan to work on his doctoral thesis about the Japanese pacifist diplomat and post-World-War II Prime Minister Kijuro Shidehara (1872-1951) who is credited with having suggested the war-renouncing Article 9 of the Japanese Constitution to General Douglas MacArthur in January 1946. Klaus Schlichtmann has published in German, English and Japanese, among others on the Hague Peace Conferences, Germany and Japan in the interwar period, U.N. Reform, H.G. Wells, Gandhi and related subjects. His original dissertation (Kiel 1997) on Kijuro Shidehara was published in English translation in two volumes in 2009 by Lexington Books, USA with the title *Japan in the World. Shidehara Kijuro, Pacifism and the Abolition of War*. He is presently a professor in the language department of Nihon University, Tokyo. He has two sons and one daughter.

1950—how the opportunity for transitioning to U.N. Collective Security was missed for the first time¹

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Summary

In 1950, at the time of the Korean crisis, the UN, under the leadership of the United States was united to counter the aggression of the North. In this situation Russia made it a condition that it would join forces, if the UN started transitioning to genuine collective security, in accordance with the relevant provision in the Charter. What actually was the idea of the transition, and what did the Russians expect, e.g. of the Germans and the French, with regard to the peace clauses that French and German socialists had succeeded to write into the countries' new constitutions. What were the consequences of the decisions made at the time?

“Things cannot be forced from the top ... The international relinquishing of sovereignty would have to spring from the people—it would have to be so strong that the elected delegates would be turned out of office if they failed to do it ... We must face the truth that the people have not been horrified by war to a sufficient extent to force them to go to any extent rather than have another war ... War will exist until that distant day when the conscientious objector enjoys the same reputation and prestige that the warrior does today.” (John F. Kennedy as a young journalist attending the San Francisco UN Conference in June 1945)²

¹ This essay is based on a Paper presented at the International Peace Research Association Conference, 10-15 August 2014, Istanbul, Turkey.

² Quoted in Arthur Meier Schlesinger, *A Thousand Days: John F. Kennedy in the White House*. Boston, Houghton Mifflin Harcourt 2002 (1965), p. 88-89.

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“History is, as a rule, about the when and where of what was done by whom and even, sometimes, about the why. Overwhelmingly, focus is on the done ... what was (and is) not done tends stalwartly to be considered at best historically uninteresting and at worst not history at all.”³

The subject I am presenting is likely to have important consequences for the future of peace. As is well known among peace historians, at the Hague Peace Conferences, 1899 and 1907, when the nations represented voted on the “obligatory arbitration” powers of the international court, Germany twice cast a veto. So, the Conferences failed to achieve their most important objectives, disarmament and an international legal order to secure peace. Some forty years later in the new German constitution the mistake made at The Hague was acknowledged and an obligation entered to submit to the I.C.J.’s compulsory jurisdiction, join a system of collective security and never again take part in aggressive war.

In 1950, at the time of the Korean crisis, when the United Nations under the leadership of the United States were uniting to fend off the aggression of the North, Russia made it a condition that it would join forces only, if and when the United Nations started transitioning to genuine collective security, in accordance with the relevant provision in the U.N. Charter. Since Germany had just previously, in May 1949, adopted a new Constitution providing for delegating security sovereignty to the United Nations in favor of “a system of mutual collective security” and disarming to the minimum stipulated in Article 26 of the U.N. Charter, did the Russians speculate that the Germans would take action to initiate the process of the transition? The German Constitution’s Article 24 reads:

[Article 24, Transfer of sovereign powers – System of collective security]

(1) The Federation may by a law [passed with a single majority in parliament] transfer sovereign powers to international organizations.⁴

³ Antony Adolf, “Preconditional, Didactic and Predictive Histories. An Introduction to Nonkilling History”, in Antony Adolf (ed.), *Nonkilling History: Shaping Policy with Lessons from the Past*, Honolulu, Center for Global Nonkilling 2010, p. 13.

⁴ At the Constitutional Convention of Herrenchiemsee in August 1948, under the chairmanship of social democrat Carlo Schmid, the issue was discussed whether the German article should also state the condition of reciprocity, like the French article.

(1a) [irrelevant]

(2) With a view to maintaining peace, the Federation may enter into a system of mutual collective security; in doing so it shall consent to such limitations upon its sovereign powers as will bring about and secure a lasting peace in Europe and among the nations of the world.

(3) For the settlement of disputes between states, the Federation shall accede to agreements providing for general, comprehensive and compulsory international arbitration.

It appears that delegating security sovereignty to the U.N. was designed to initiate and facilitate the process of the transition to collective security stipulated in Article 106 of the U.N. Charter which reads (under its Chapter XVII heading: “Transitional Security Arrangements”):

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Since the “special agreements referred to in Article 43” have never been concluded, the Security Council has so far *de jure* not been empowered to function effectively; it has not even ‘begun’ the “exercise of its responsibilities.” In fact, the five Permanent Members of the Security Council (“P5”) can take action even without the ‘mantle of legitimacy’ of the U.N. Charter, and even in a ‘Coalition of the Willing’. Under these circumstances it is argued that Germany, by delegating “security sovereignty” to the U.N. Security Council, could trigger the process of the transition to genuine collective security and disarmament.

This was rejected. The Convention Committee maintained that it was “aware that (this meant that) the German people would be called to take the initiative, but it is of the opinion that after the things that have happened in the name of the German people, such an initiative (Vorleistung), which will be followed by corresponding (legislative) action of the other states, is advisable/in order.”

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It can be said that applying the 'constitutional law(s) of peace' (*Droit constitutionnel de la paix*),⁵ to put the system of collective security into effect, would be of immense benefit; it enables lawmakers of a single nation to take positive action *by law*, "which will (then) be followed by corresponding (legislative) action of the other states,"⁶ entering into a state of contract with the U.N. Security Council to empower the United Nations and give the Security Council a basic law. As far as is discernible this aspect has not received the attention it deserves.

History: The Events leading up to 1950

In 1946, after the end of World War II and the creation of the United Nations as the successor of the League of Nations and the "Hague Confederation of States"—as the great German neo-Kantian pacifist and parliamentarian in the Weimar Republic, Walther Schücking, had called the community of nations that had gathered at The Hague in 1899 and 1907—⁷ France adopted a new Constitution, agreeing "on condition of reciprocity" to limitations of its national sovereignty for the "organization and defense of peace."⁸ It became clear that the organization

⁵ See Boris Mirkine-Guetzévitch, *Le droit constitutionnel et l'organisation de la paix (droit constitutionnel de la paix)*, *Recueil des Cours*, 3/45 (1933), pp. 676-773, and Mirkine-Guetzévitch, *La Renonciation à la Guerre dans le Droit Constitutionnel moderne*, *Revue Hélienne de Droit International*, Vol. 4, 1951, pp. 1-16. See also Raphaël Porteilla and Joël Mekhantar (eds.), *La Paix et les Constitutions*, Dijon, ESKA 2015, who, however, seem not to have covered Mirkine-Guetzévitch and much of the field.

⁶ *Der Parlamentarische Rat 1948-1949, Akten und Protokolle* (The Parliamentary Council, Acts and Protocols), vol. 2, *Der Verfassungskonvent auf Herrenchiemsee* (The Constitutional Convention of Herrenchiemsee), Boppard am Rhein, Harald Boldt 1981 (August 1948), p. 207. See also Klaus Schlichtmann, *Artikel 9 im Normenkontext der Staatsverfassungen. Souveränitätsbeschränkung und Kriegsverhütung im 20. Jahrhundert* (Article 9 in Context, limitations of national sovereignty and the prevention of war in twentieth century constitutional law), *Gewollt oder geworden, Referate des 4. Japanologentages der OAG in Tokyo*, ed. by Werner Schaumann, Munich, iudicium 1996, pp. 129-150. An English rendering of the German article is available: *Article Nine in Context—Limitations of National Sovereignty and the Abolition of War in Constitutional Law*, *The Asia-Pacific Journal*, vol. 23-6-09 (8 June 2009). (Also online: JAPAN FOCUS)

⁷ Walther Schücking, *The International Union of the Hague Conferences*, Oxford, At the Clarendon Press 1918. Online at <https://archive.org/details/internationaluni013539mbp>. See also Klaus Schlichtmann, *Japan, Germany and the two Hague Peace Conferences*, *JOURNAL OF PEACE RESEARCH*, vol. 40, no. 4 (2003), pp. 377-394.

⁸ In this connection it may be useful to recall the Majority Judgment of the Military Tribunal for the Far East (IMTFE) which unequivocally stated: "Any law, international or

and defense of peace required ceding certain, previously held sovereign rights to the international organization. The condition of reciprocity stipulated in the French article, as later also in the Italian and Danish constitutions adopted in 1948 and 1953 respectively, appeared aimed at Germany. In fact the German Article 24 was based on the French precedent promoted by the socialists, and meant to abolish war as an institution.

The surge toward world organization and non-recognition of the right of belligerency shortly after the Second World War was general and worldwide. However, the Soviet Union received “bad marks” from George Kennan, then deputy head of the U.S. mission in Moscow. In his famous “Long Telegram” to the U.S. Secretary of State on 22 February 1946 he pointed out the Kremlin’s “neurotic view of world affairs,” denying Russia had any “devotion to UNO ideals.”⁹ The Soviet system, Kennan wrote, is “unalterably opposed to our traditional system ... There can be no compromise between the two.” However, at the same time Kennan also asserted that the Kremlin—itsself “traditionally ... the victim” of aggression—had “no plans to attack,” (Ibid.) a fact confirmed by the findings from the Archives of the Foreign Ministry and the Communist Party of the Soviet Union in Moscow, following the collapse of the Soviet Union which, in the words of researcher Scott D. Parish “supports the overall thrust of ... arguments that Soviet policy ... was largely defensive and reactive.”¹⁰ Indeed, one easily underes-

municipal, which prohibits recourse to force, is necessarily limited by the right of self-defence. The right of self-defence involves the right of the State threatened with impending attack to judge for itself in the first instance whether it is justified in resorting to force. *Under the most liberal interpretation of the Kellogg-Briand Pact, the right of self-defence does not confer upon the State resorting to war the authority to make a final determination upon the justification for its action.* Any other interpretation would nullify the Pact; and this Tribunal does not believe that the Powers in concluding the Pact intended to make an empty gesture.” (Emphasis added!)

⁹ Telegram, George Kennan to George Marshall [“Long Telegram”], February 22, 1946. Harry S. Truman Administration File, Eley Papers. See also Brian Bogart, History of the War Machine: Kennan, the “father of containment,” had begun studying Russian in 1928 and developed strong “anti-Soviet” sentiments. Bogart’s article is online at <http://www.informationclearinghouse.info/article10883.htm>.

¹⁰ Scott D. Parrish, The Turn Toward Confrontation: The Soviet Reaction to the Marshall Plan, 1947, Working Paper No. 9, Washington, D.C., Cold War International History Project, March 1994 (Woodrow Wilson International Center of Scholars), p. 3. However, the “orthodox” point of view had been that “Soviet aggressiveness had caused the Cold War, and the Marshall Plan was simply a logical defensive move on the part of the United

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timates the traumatic experience that twice brought Russia face to face with an impending capture of its capital Moscow, and derived from this experience its basically defensive posture.

Subsequently, in March 1946, Winston Churchill in his “Iron Curtain” speech, at Westminster College in Fulton, Missouri, drew attention to the “supreme task” of nations “to guard the homes of the common people from the horrors and miseries of another war.” Pointing to the newly created United Nations Organization, “erected for the prime purpose of preventing war,” Churchill emphasized that the “UNO, the successor of the League of Nations ... must make sure that its work is fruitful ... a true temple of peace in which the shields of many nations can some day be hung up.” The former British Prime Minister, who had been succeeded the previous year by Clement Atlee, demanded that the U.N.O. “must immediately begin to be equipped with an international armed force,” proposing that “each of the Powers and States ... be invited to dedicate a certain number of air squadrons to the service of the world organization.”¹¹ Churchill warned of the “possibility

States. The Soviet rejection of the plan, in turn, was the natural response of a frustrated aggressor state whose expansionist plans had been thwarted.” Ibid. p. 2. See also Mikhail M. Narinsky, *The Soviet Union and the Marshall Plan*, in the same paper, pp. 41-51.

¹¹ Winston Churchill, *Never Give In!: Winston Churchill's Speeches*, London, Bloomsbury 2013, S. 346. And *ibid.*: “These squadrons would be trained and prepared in their own countries, but would move around in rotation from one country to another.” The Military Staff Committee consisting of representatives of the P5 is supposed to be in charge of the police function of the United Nations and placed at the disposal of the executive council, to “advise and assist” it, and to take on responsibility “for the strategic direction of any armed forces” under the authority of the Security Council. (UN Charter, Article 47, para 1 and 3) In 1947 the Military Staff Committee “submitted ... estimates of the overall strength required by the United Nations.” In these, “the United Kingdom, the Soviet Union and China were all thinking in terms of a land army consisting of not more than 12 divisions; the highest estimate, that of the United States, was for 20 divisions. Similarly, the United Kingdom, the Soviet Union and China would have been satisfied with an international air force totaling not more than 1,200 aircraft; the corresponding figures in the French and American estimates were 1,275 and 3,800. As regards naval forces, none of the five delegations proposed more than 3 battleships, 6 aircraft carriers, 15 cruisers, 84 destroyers and 90 submarines; the majority of them proposed a much smaller force.” UN Document S/394; see also *Yearbook of the United Nations, 1947-48*, p. 495. “The United States subsequently revised its estimates downwards.” However, whether the armed forces which are “to be ‘placed at the disposal’ of the Security Council can be properly described as an ‘international police force’ depends on the meaning” we give it. Politically it would mean “a permanent army

of German aggression,” saying that we “understand the Russian need to be secure on her western frontiers” by removing all such threats. Some observers at the time thought that the majority of Germans, far from having given up their old beliefs after losing the war, merely resented having lost the war, as in 1918, when they thought that “Germany had been stabbed in the back;” on the first occasion, it was said, it would attack again.¹² Churchill “welcome[d] Russia to her rightful place among the leading nations of the world.” “We welcome her flag upon the seas. Above all, we welcome ... growing contacts between the Russian people and our own people on both sides of the Atlantic.” But he also warned:

From Stettin in the Baltic to Trieste in the Adriatic an *iron curtain* has descended across the Continent. Behind that line lie all the capitals of the ancient states of Central and Eastern Europe. Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia, all these famous cities and the populations around them lie in what I must call the Soviet sphere, and all are subject in one form or another, not only to Soviet influence but to a very high and, in some cases, increasing measure of control from Moscow.

Was this perhaps also meant to signal an advance of Russia into West-Europe was now impossible? And did the conservative Churchill, with his secret sympathies for Fabian socialism, see communism as a threat? Probably. But he was no doubt at the same time an outspoken proponent of world organization.

In his speech at Zurich University on 19 September the same year Churchill appeared less belligerent, declaring: “Our constant aim must be to build and fortify the strength of U.N.O. Under and within that world concept we must re-create the European family in a regional structure called ... the United States of Europe.”¹³

of an international nature over and above national armies or even replacing them.” Statement by the Rapporteur of Committee III/3 of the San Francisco Conference at the opening meeting; UNCIO Document 134, III/3/3.

¹² See Friedrich W. Foerster, *Die deutsche Frage von draussen und drinnen gesehen. Friedrich Wilhelm Foersters Stellungnahme und Antworten des In- und Auslandes [The German Question seen from outside and inside]*, Hannover, Verlag Das Andere Deutschland 1947.

¹³ *War and Peace Aims of THE UNITED NATIONS*, September 1, 1939–December 31, 1942, ed. Louise W. Holborn, (Boston, World Peace Foundation 1943), p. 76. For Great Britain the problem was how to merge the Commonwealth and the emerging European Union, which requires attaining to a higher, i.e. global level. This is the prob-

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British Foreign Secretary Ernest Bevin on 23 November 1945 called for the establishment of a directly elected world parliament, saying: “There should be a study of a house directly elected by the people of the world to whom the nations are accountable.”¹⁴ This was something the Germans at the instigation of Walther Schücking had asked for in 1918 at the Peace Conference in Versailles after the First World War, but forgotten less than 30 years later. In his Speech in the House of Commons on 4 June 1946 the Foreign Secretary once more stressed the necessity “to make the United Nations organization work effectively,” saying that “some day” it should “draw its power direct from the will of the people.”¹⁵

In the Far East, the post-war trend to establish an operational organization of peace found its match in the 3 May 1947 Japanese Constitution that denounced the right of belligerency and, effectively limiting national sovereignty, aimed at an “international peace based on justice and order” (Article IX). Apart from denouncing the right to go to war and to that effect limiting national sovereignty, the Article which had been suggested by the then Prime Minister Kijuro Shidehara, can be effective as a motion to abolish war as an institution. This motion which has been on the floor already some seven decades needs to be seconded if war is to be abolished. So long, under the U.N. Charter’s Principle of Sovereign Equality, having given up the sovereign right to declare and make war, Japan is not equal! The same case may be argued with regard to Costa Rica.

Meanwhile in Europe, from 5 to 7 June 1947, one year before the start of the German Constitutional Convention, the

lem still today, which, however, has not been addressed. See an article in *Time* magazine of 20 March 1950: “Here was the old British dilemma: How to strengthen the concept of ‘Western community’ without weakening the reality of the Commonwealth? [French President] Auriol in a speech to Parliament said that the answer was a close ‘association of the military, economic and diplomatic policies ... of all those nations which ... are ready to take part in the real organization of collective security’.”

¹⁴ See Foreign News: Bevin’s Vision, *TIME*, 3 December 1945.

¹⁵ See <http://hansard.millbanksystems.com/people/mr-ernest-bevin/1946> for the full text of Bevin’s speech. (Accessed on 27 March 2016.) In the speech the Foreign Secretary also said: “If we do not want to have total war, we must have total peace.” “The ... thing that will block understanding,” Bevin further said, “is if any of us develop exclusive power politics, and do not use our perfectly legitimate interests in a way that will ... ultimately merge into a world security scheme. *The security of all countries must not be sacrificed by each country concentrating only on its own security.*” (Emphasis added.)

German Minister-Presidents from the four occupied zones met in Munich for an important Conference. This was the chance that the Germans themselves would agree to create a unified state. However, the Munich Conference participants failed to reconcile their divergent views, apparently without even having touched upon the issue of the world organization and peace. "The walk-out of the Minister Presidents of the Russian zone destroyed all ... hopes" for achieving a degree of unanimity to "bridge the differences of opinion" regarding "the larger political issues."¹⁶ After the failure of the Munich Conference of Ministers, and the breaking apart of the Allied Control Council (ACC), which had met for the last time on 20 March 1948, it seemed, the division of Germany was sealed.¹⁷

From that time on, in the words of authors Marc Trachtenberg and Christopher Gehrtz, the U.S. Military "favored German rearmament." In contrast, however, it has to be noted that the State Department still "flatly rejected the idea" and instead "called for a truly international force."¹⁸ Nonetheless, as time went on, rearmament was widely discussed as a possibility. The German Government anyway, instead of taking steps to join the United Nations and the International Court, picked on Churchill's "Iron Curtain" paradigm. As Jost Delbrück, former director of the renowned Walther-Schücking Institute of International Law at Kiel's Christian-Albrechts- University, pointed out, after the end of the Second World War chances for a substantive "sustained change in the [German] attitude toward a world organization aimed at securing peace" were not encouraging; "German *realpolitik* continued "primarily" along the lines of the Hegelian concept of power politics, which

¹⁶ Carl Christoph Schweitzer, *Politics and Government in Germany, 1944-1994: Basic Documents*, Berghahn Books 1995, pp. 14-15.

¹⁷ Beate Rosenzweig, *Erziehung zur Demokratie?: amerikanische Besatzungs- und Schulreform in Deutschland und Japan* (Education for democracy? American occupation and school reforms in Germany and Japan), Franz Steiner Verlag, 1998, p. 211.

¹⁸ "Extracts of Views of the Joint Chiefs of Staff with Respect to Western Policy toward Germany," NSC 71, June 8, 1950, and "Views of the Department of State on the Rearmament of Western Germany," NSC 71/1, July 3, 1950, in FRUS 1950, 4:686-687, 691-695. Quoted in Marc Trachtenberg and Christopher Gehrtz, *America, Europe, and German Rearmament, August-September 1950: A Critique of a Myth*, online version at [http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/cv/trachtenberg-gehrz\(final\).doc](http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/cv/trachtenberg-gehrz(final).doc) (accessed 21 March 2016), pp. 16 and 18. See also Marc Trachtenberg, *Between Empire and Alliance: America and Europe During the Cold War*, Rowman & Littlefield, 2003.

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“countered the idea of an ‘internationalistic’ organization of peace with skepticism.”¹⁹

With the prospect of the Marshall Plan to help the economic recovery of the nations of Europe, outlined by George Marshall in his famous address at Harvard University on 5 June 1947, tensions between the United States and the U.S.S.R. underwent a stress test. So, while the Marshall Plan traditionally has been regarded as a “turning point” that started the Cold War, new evidence suggests otherwise.²⁰ “The vague wording of Marshall’s June 1947 speech made it difficult for the Soviet leaders to reach definite conclusions about the purpose of his offer ... they initially hoped it might prove to be a source of capital for the reconstruction of the war-damaged USSR.”²¹ Russian concerns in connection with the Marshall Plan revolved around the possibility and desire to obtain reparations, including from Germany. Germany, believed to be “the key to the European economy,” was central to the decision that the “organization set up for the realization of the Marshall Plan should operate outside the United Nations

¹⁹ Jost Delbrück, *Deutschland und die Vereinten Nationen – Rundschau und Perspektiven* (Germany and the United Nations—overview and perspectives), in Ernst Koch, *Die Blauhelme. Im Einsatz für den Frieden* [The Blue Helmets. Working for Peace], Frankfurt, M. and Bonn 1991, p. 212.

²⁰ Scott D. Parrish, *The Turn Toward Confrontation*, pp. 1-2: “George Kennan, one of the intellectual authors of the Marshall Plan, also saw the Soviet response as indicative of a Soviet desire to seize the substantial industrial and human resources of Europe. From this point of view the Marshall Plan was a necessary defensive step, taken to prevent Soviet expansion into Western Europe.” The truth, however, after the opening of the Archives in Moscow shows, *Ibid.*, p. 4: “Far from pursuing grandiose plans of expansion, Stalin and his comrades in the Soviet leadership viewed themselves as relatively vulnerable, well aware that their country was much weaker in industrial and military capability than the United States.”

²¹ Scott D. Parrish, *The Turn Toward Confrontation*, p. 4. And *ibid.*: “As the details of the American plan unfolded, however, the Soviet leadership slowly came to view it as an attempt to use economic aid not only to consolidate a Western European bloc, but also to undermine recently-won, and still somewhat tenuous, Soviet gains in Eastern Europe. They feared that the U.S. economic aid program sought to transform Stalin’s new chain of Soviet-oriented buffer states into a revamped version of the ‘cordon sanitaire’ of the interwar years. The plan appeared to aim at the reintegration of Eastern Europe into the capitalist economic system of the West, with all the political ramification that implied. Thus the Marshall Plan, conceived by U.S. policymakers primarily as a defensive measure to stave off economic collapse in Western Europe, proved indistinguishable to the Kremlin leadership from an offensive attempt to subvert Soviet security interests.”

framework,” which, according to a Russian cable was “explained by the fact that Germany is not a member of the United Nations Organization.”²² It became a member only in 1973.

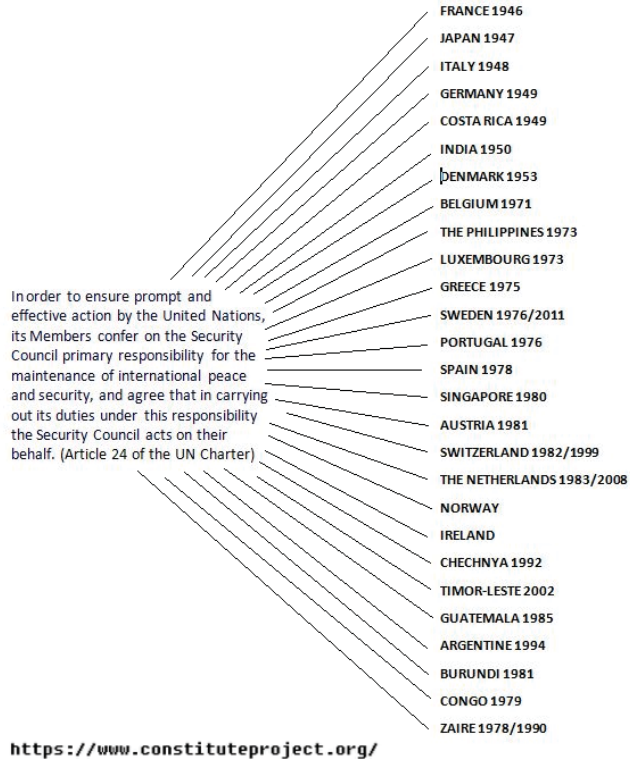


Figure 1. Constitutions facilitating the ceding of primary responsibility for the maintenance of international peace and security to the UN.

Aiming at getting the Russians to agree to a wider and general peace accord, in October 1947 Albert Einstein wrote an ‘Open Letter to the General Assembly of the United Nations’, soliciting the “co-operation of Russia and her allies” in achieving “world government.” The Russian response was not favorable.

²² Cable sent by Soviet Deputy Foreign Minister Andrei Vyshinsky to Foreign Minister Vyacheslav Molotov on 30 June 1947, quoted in Mikhail M. Narinsky *The Soviet Union and the Marshall Plan*, p. 45.

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Rejecting the idea, four members of the Soviet Academy of Sciences published their response in the Soviet *New Times* on 26 November 1948.²³ Interestingly, forty years later the *New Times* edition in April 1988 published a letter by the scientists of the Soviet Academy stating that Einstein's world-government ideas "*wonderfully correspond to the needs of the present times.*"²⁴ Did the Russians disagree earlier because they were fixated on the idea of the transition, while the Americans had forgotten all about it? There was confusion regarding the effectiveness and design of the U.N. Charter. Was this document designed to be the final constitution of the international community? In fact it is merely a blueprint pointing the way to get from "A" to "Z," from an armed, negative peace to positive, sustainable peace.

In January 1948 the Italian Constitution went into effect, renouncing war and, like France, agreeing to limitations of national sovereignty on condition of reciprocity. Similarly, a few years later, in 1953, the Danish Constitution also, as already mentioned, agreed to have "Powers ... transferred to international authorities, which are instituted *by mutual agreement with other states* to promote international legal order and cooperation,"²⁵ making it look, strategically positioned both chronologically and geographically, that these provisions, like the French article, were aimed at Germany, or rather: meant to facilitate German action taken to begin the process of empowering the United Nations. Strangely enough though, the Oxford University Press 2012 U.N. Charter Commentary, contrary to the wording and the teleological intent, claims that

²³ See Otto Nathan and Heinz Norden (eds.), *Einstein on Peace*, New York, Schocken 1972, pp. 442-443. The *Bulletin of the Atomic Scientists* in February 1948 published Einstein's reply to the Russians. See *Einstein on Peace*, *ibid.*, pp. 449-455.

²⁴ See: Decades Later, Soviet Journal Prints a Rebuttal by Einstein, *The New York Times*, 17 April 1988.

²⁵ The Article came out of the Inter-Parliamentary Union conference held in 1952 at Berne, where some Asian participant rightly pointed out *inter alia* that "two world wars have taught Europe that national sovereign states could not be the last word in the evolution of human civilization... What we require now is a world organization which will be authorized with the rights surrendered by other states ... The civilized nations have failed in the case of the League of Nations, and I may not be quite wrong if I say the Locarno Pact was the first step leading to that failure. I have my own misgivings as to whether many of these European political organizations are not in a way neutralizing the effectiveness of the United Nations. XL1st Inter-Parliamentary Conference, *Compte Rendu de la XL1e Conférence tenue a Berne du 26 août au 2 septembre 1952*, Geneva, Bureau Interparlementaire 1952, pp. 652, 654.

it is not the members who are to confer “primary responsibility” on the U.N. but the Charter²⁶—which in light of the normative current of the international law of peace constitutions (see Appendix) is absurd. Obviously, if not a deliberate attempt to obfuscate the issue and discredit the U.N., it is a clear overstatement, since the Charter has, as one commentator rightly observed, merely “*theoretically vested* [the Security Council] with ‘primary responsibility for the maintenance of international peace and security’.”²⁷

German inaction, not even verbally empowering, or acknowledging the existence, of the United Nations, led to—rather contributed to—further divisiveness and confrontation. Also, in the U.S., ideas about a limited Western Union of Democracies became a matter of concern, in turn paving the way to legitimize NATO. This “much-discussed book,”²⁸ *Union Now*, by *New York Times* correspondent Clarence Streit, first published in 1939, proposed a federal union comprising only the world’s democracies.²⁹ George Orwell criticized the book saying that “one can see at a glance that this scheme has something wrong with it;” it “smells of ... hypocrisy and self-righteousness,” its inaptness among others being that the “coloured inhabitants” in the “dependencies,” i.e. the colonies, would continue to be underprivileged and exploited, and without “the right to vote in Union affairs.”³⁰

²⁶ Anne Peters, Functions and Powers. Article 24, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus (eds.), *The Charter of the United Nations, A Commentary*, 3rd Edition, Oxford, Oxford University Press 2012, p. 765: “The Charter confers on the Council the ‘primary responsibility’ for the maintenance of international peace and security.”

²⁷ Alain Pellet, Book Review, THE CHARTER OF THE UNITED NATIONS: A COMMENTARY OF BRUNO SIMMA’S COMMENTARY, *Michigan Journal of International Law*, vol. 25, no. 1 (Fall 2003), p. 144. The commentary applies although it was on the 2002 edition of the Charter Commentary. (Emphasis added.)

²⁸ George Orwell, Not Counting Niggers, *Adelphi*, July 1939, in S. Orwell and I. Angus (eds.), *The Collected Essays, Journalism and Letters of George Orwell Volume 1: An Age Like This 1920-40*, Harmondsworth, Penguin 1970, pp. 434-438. Orwell’s revealing article is online at <http://ebooks.adelaide.edu.au/o/orwell/george/not-counting-niggers>.

²⁹ Clarence K. Streit, *Union Now*, London and New York, Harper, 1939.

³⁰ G. Orwell, Not Counting Niggers: “Mr Streit himself is not a hypocrite, but his vision is limited. Look again at his list of sheep and goats. No need to boggle at the goats (Germany, Italy and Japan), they are goats right enough, and billies at that. But look at the sheep! Perhaps the USA will pass inspection if one does not look too closely. But what about France? What about England? What about even Belgium and Holland? Like

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More importantly perhaps, China for one could obviously not be left out of a meaningful world federal union. The trend in China was complementary to Western peace aims and ambitions, as Madame Chiang on 18 February 1943 in a famous address to the American Congress in Washington, DC, explained: “The term ‘hands and feet’ is often used in China to signify the relationship between brothers. Since international inter-dependence is now universally recognized, can we not also say that all nations should become members of *one corporate body*?”³¹ In India, too, Gandhi had reiterated his stance concerning the necessary conditions for peace and security in an interdependent world after the war in an interview to the *New York Times* on 22 April 1940,³² saying he would “welcome a world federation of all the nations of the world.” However, he thought a “federation of the Western nations only” would be “an unholy combination and a menace to humanity. In my opinion a federation excluding India is now an impossibility. India has already passed the stage when she could be safely neglected.”³³ Similarly, Philippine president, Manuel L. Quezon, declared on 30 December 1943: “If we are to establish a world of peace after this war, human beings of all nations must learn to understand and respect one another. The West must try to understand and respect the East, and the East must try to do

everyone of his school of thought, Mr Streit has coolly lumped the huge British and French empires—in essence nothing but mechanisms for exploiting cheap coloured labour—under the heading of democracies! ... Here and there in the book, though not often, there are references to the ‘dependencies’ ... ‘Dependencies’ means subject races. It is explained that they are to go on being dependencies, that their resources are to be pooled among the states of the Union, and that their coloured inhabitants will lack the right to vote in Union affairs.”

³¹ *War and Peace Aims of THE UNITED NATIONS*, p. 76. On the congruent views of China and India during the war, including views on the future international order see Klaus Schlichtmann, Gandhi and the Quest for an Effective United Nations. The Stakes, 1917 to 1947, *Gandhi Marg*, Vol. 26, No. 1 (April-June 2004), pp. 55-81. Later, with the August 1942 ‘Quit-India Resolution’ Gandhi and the National Congress further elaborated on India’s ideas and support of a world federation.

³² The question by the interviewer was: “Have you any views about world federation (Streit’s scheme of 15 white democracies with India excluded at present) or about a federation of Europe with the British Commonwealth and again excluding India? Would you advise India to enter such a larger federation so as to prevent a domination of the coloured races by the white?” CWMG, vol. LXXII, p. 11.

³³ Quoted in K. Schlichtmann, *India and the Quest for an Effective United Nations, Peace Research*, vol. 35, no. 2 (2003), p. 32.

the same for the West.”³⁴ The general disposition at the time was “to start a new conception of world organization.”³⁵ And at a press conference in Chicago on 18 December 1942 the Polish Prime Minister in exile, Wladislaw Sikorski, argued: “[W]e must strive for a constructive ideal, the idea of confederation.”³⁶

Constitutional provisions limiting state sovereignty can be traced to a Resolution by the 22nd Conference of the Inter-Parliamentary Union held in Bern in 1924. The Resolution stated:

The XXIInd Inter-Parliamentary Conference endorses the stipulation ... voted at the Fourth Assembly of the League of Nations, by the terms of which war of aggression is described as *an international crime*, and recommends that proposals be submitted ... to ... parliaments for *amendments to the Constitution*, such proposals a) *to forbid resort to war ...* [and] b) *to make arbitration or other amicable or judicial means obligatory.*³⁷

The proposal engaged lawmakers around the world, when Kijuro Shidehara, Aristide Briand, Frank Kellogg and Gustav Stresemann were foreign ministers.

The Korean Crisis

When we talk about policing the world, this is meant to be a transition from armies to police, from seeing the world as a set of warring national entities to seeing it as one civic unity. (Margaret Mead, 1942)³⁸

Since aggressive war had been outlawed by the 1928 Pact of Paris (Kellogg-Briand), legally the action of the Allies against Germany and the Axis Powers was not war, but enforcing the law, with the United Nations acting “as a police force to suppress [the Axis Powers’] assaults on basic principles of internati-

³⁴ *War and Peace Aims of THE UNITED NATIONS*, p. 76.

³⁵ General Wladislaw Sikorski, 17 December 1942, in *War and Peace Aims*, Extracts from Statements of United Nations Leaders: Special Supplement No. 2 to the *United Nations Review*, 1 December 1943, New York: United Nations Information Office, p. 76.

³⁶ *Ibid.*, p. 76.

³⁷ English text in: Union Interparlementaire, *Compte rendu de la XXII^e Conférence tenue à Berne et Genève du 22 au 28 Août 1924*, Lausanne, Genève, etc., Librairie Payot 1925, p. 666.

³⁸ Margaret Mead, *And Keep Your Powder Dry. An Anthropologist Looks At America*, New York and Oxford, Berghahn Books 2000 (orig. 1942), p. 157.

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onal order,” as Chicago University professor Quincy Wright had maintained.³⁹ A similar situation developed in Korea.

The Allied forces had been dubbed the *United Nations* since the *Declaration of the United Nations* by the United States, the Union of Soviet Socialist Republics, the United Kingdom, China and twenty-two more countries in January 1942.⁴⁰ In 1943 the Allies agreed that Korea was to be “free and independent.” Ending the war, the Soviet Union occupied the North, while the United States was disarming the Japanese in the South.⁴¹ By 1948 the Russians had left North Korea.⁴² The

³⁹ Quincy Wright, Political Conditions of the Period of Transition, *International Conciliation*, Commission to Study the Organization of Peace-The Transitional Period, No. 379 (April, 1942), p. 265: “When European hostilities broke out in September, 1939, some States manifested confusion by declaring war and proclaiming neutrality but gradually many of them came to recognize that under the Pact these hostilities could not be characterized as war in the sense formally understood by international law. Rather a condition existed during which violence by certain governments in violation of international obligations was being opposed by other governments acting in defense, or acting to give assistance to those defending themselves, or acting as a police force to suppress assaults on basic principles of international order.” The French had already called the First World War the “Guerre de droit,” the “Legal War,” Emile Hinzelin, *1914: Histoire illustrée de la guerre du droit*, Paris, Quillet 1916.

⁴⁰ The term “United Nations” was probably first used in 1910, in an article by the American pacifist politician and educator Hamilton Holt, commenting on a JOINT RESOLUTION calling for the creation of an “international force for the preservation of universal peace” based on the “combined navies of the world.” (House Joint Resolution 223 of 4 June 1910.) Hamilton Holt’s article, The Federation of the World, was also published in *The Friend*, Vol. LXVIII, No. 8 (1 August 1910), Edition 01, pp. 15-17. The text can be found online, stating *inter alia*: “The history of international law presents striking analogies to the history of private law. Likewise, the history of the organization of the ‘United Nations’, which is to give sanction to international law, will correspond to the history of the organization of the thirteen American colonies into the United States, therefore, furnishes the model for the United Nations. *The Declaration of Independence foreshadows the declaration of interdependence.*”

⁴¹ Kathryn Weathersby, Soviet Aims in Korea and the Origins of the Korean War, 1945-1950: New Evidence from Russian Archives, Florida State University (Woodrow Wilson International Center for Scholars, Working Paper No. 8) Washington, D.C., November 1993, p. 12. Online at <https://www.wilsoncenter.org/sites/default/files/ACFB76.pdf> (21 March 2016 accessed): Russia’s intentions were clear, when “on August 14 Stalin approved without discussion a U.S. proposal presented that day to divide Korea into two occupation zones along the 38th parallel. He instructed Soviet ground forces to stop their rapid advance into Korea at the 38th parallel.” And p. 14: “A report entitled ‘Notes on the Question of Former Japanese Colonies and Mandated Territories’ stated: ‘1) Korea. The occupation of Korea by Soviet troops in the zone north of the 38th parallel

Russians thereafter “refused to sign a separate friendship and cooperation treaty with North Korean leader Kim Il Sung,” believing that to this point a politically unified Korea was essential, and possible.⁴³ In the talks between the United States and Russia in 1947 the U.S. called for elections to be held in the two zones, and in spite of Russian opposition the U.N. General Assembly voted by a majority in favor of general elections for Korea. However, eventually elections were held only in the South.

The Korean War began on 25 June 1950, when North Korean armed forces crossed the demarcation line entering the South. As one author states: “The invasion of South Korea by forces of the Democratic People’s Republic of Korea on 25 June 1950 was one of the defining moments” that led the United States to adopt a more assertive policy; among other things this now also included the aim to “‘prevent a Korea’ in Europe or the Middle East.”⁴⁴ Interestingly, the narrative presented until the end of the Cold War, according to author David Rees, had been that the North Korean invasion was a “Soviet war

must be kept for the same period of time as the American occupation of the remaining part of Korea.” (Emphasis added!) Furthermore, the proposal stated, *ibid.*, p. 15: “1) Upon the conclusion of the period of military occupation of the territory of Korea by the allied military forces, Korea must be taken under joint trusteeship by the four allied powers - USSR, USA, UK and the Chinese Republic. 2) The goal of trusteeship over Korea must be assistance in the political, economic and social restoration of the Korean people and the facilitation of their progressive development toward independence, in correspondence with article 76, point B of the Charter of the United Nations.”

⁴² K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 25: “Therefore, after proposing in September 1947 an immediate withdrawal of all foreign troops from Korea, Soviet troops left the peninsula by the end of 1948, seven months before the withdrawal of American forces, but the USSR retained in North Korea military advisors, technicians, and naval personnel.” See also Kathryn Weathersby, *New Russian Documents on the Korean War, International History Project Bulletin*, Issue 5 (Spring 1995), pp. 30-84.

⁴³ See for example coded message NI21973, 2 May 1947, The 8th Directorate of the General Staff, Armed Forces, pp. 4-6. Archives of the President of the Russian Federation; cable from Ambassador Shtykov to the Soviet Foreign Ministry, 19 January 1949, APRF. See also Evgueni Bajonov, *Assessing the Politics of the Korean War, 1949-1951*, Kathryn Weathersby, *New Russian Documents on the Korean War, International History Project Bulletin*, Issue 5 (Spring 1995), p. 54: The Russians complained about the increasing “number of violations of the 38th parallel by South Korean police and armed force.”

⁴⁴ K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 5.

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plan.”⁴⁵ This “was for many years the standard history of the war.”⁴⁶ According to professor of Korean studies Kathryn Weathersby, after the opening of archives in the former Soviet Union’s foreign ministry, documentary evidence shows quite a different picture. It turned out that it had been “clearly incorrect to suggest that the North Koreans attacked the South in June 1950 because Stalin ordered them to do so;”⁴⁷ in fact Stalin did not want to attack the South.⁴⁸ Although apparently the whole of Korea seemed ready “for an indigenous communist victory,” the Russians made no attempts to exploit the situation, notwithstanding “the political strength of the Korean communists” in the South, and “the extreme unpopularity of U.S. occupation policies” there.⁴⁹ In spite of that the image of “naked Soviet aggression” in Korea became “a powerful force in the making of U.S. foreign policy for many years.” Washington’s aim now was

to ‘prevent a Korea’ in Europe or the Middle East ... it seems odd that the attack on South Korea should have elicited this far-reaching

⁴⁵ David Rees, *Korea: The Limited War*, Baltimore, Penguin 1964, p. 19, quoted in K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 7. Similarly, David Dallin concluded that Stalin ‘planned, prepared and initiated’ the attack. (David Dallin, *Soviet Foreign Policy After Stalin*, Philadelphia, J.B. Lippincott 1961, p. 60) Robert Slusser, in an analysis of Stalin’s aims in Korea, argued that Stalin’s lack of initiative on the Korean question in the early postwar period was an attempt to mask his expansionist goals on the peninsula. (Robert Slusser, *Soviet Far Eastern Policy, 1945-1950: Stalin’s Goals in Korea*, in Yonosuke Nagai and Akira Iriye (eds.), *The Origins of the Cold War in Asia*, Tokyo, University of Tokyo Press 1977, pp. 123-146).” David S. McLellan, *Dean Acheson and the Korean War*, *Political Science Quarterly*, Vol. 83, No. 1 (Mar., 1968), pp. 16–39, similarly seems to have entertained this opinion.

⁴⁶ K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 7.

⁴⁷ K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 28.

⁴⁸ K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 16, where the author points out that Stalin pursued a strategy of “balancing competing interests in Korea,” and was “reluctant to support the activities of the communist party in South Korea or to engage in any direct Soviet agit-prop work in the American zone ... Instead, they instructed party members in the south to cooperate with American authorities because ‘the correct strategic line can take place only through a correct understanding of the international position of Korea ... The ideals of the United States, the leader of capitalism, and the Soviet Union, the fatherland of the proletariat, are to be expressed in Korea without contradiction’.”

⁴⁹ K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 17. The war in Korea also prompted the United States to maintain “military forces in Okinawa and South Korea” and sign a peace treaty with Japan. *Ibid.*

response from the United States. It was not, after all, the Soviet army that moved across the 38th parallel, but the army of North Korea, which ... was nevertheless attempting to reunify its own country, not engage in aggression against a neighboring state.

In addition,

it had been obvious for at least a year that war would break out in Korea; the bitterly opposing governments of the North and South were both determined to reunify the country under their own control. Indeed, the United States refused to supply South Korea with offensive weapons because it feared that Syngman Rhee would use them to march north.⁵⁰

After in August 1949 the Soviets had detonated their first nuclear device, in October the Chinese communists established their “revolutionary government.”⁵¹ Perhaps it was not a conspiracy though certainly not a coincidence when anti-Communists and a few Nazi sympathizers in the Pentagon and their German counterparts began to spread fear of communism in Europe and elsewhere and unwittingly spurred each other on, specialists in geopolitics, which in turn prompted the German government to beat the war drums once again. Yet to what extent was it the German fears mainly and more than anything else that influenced and determined American policies toward Russia?

In the spring of 1950 a policy statement was drawn up by the State and Defense Departments under the direction of Paul Nitze who had recently replaced George F. Kennan as director of State’s Policy Planning Staff. The ensuing report, NSC-68, unequivocally charged that the Kremlin sought “to impose its absolute authority over the rest of the world.”⁵² On the other hand the Department of State’s Office of Intelligence Research insisted there was “no increased threat or change in military

⁵⁰ K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 5.

⁵¹ K. Weathersby, *Soviet Aims in Korea and the Origins of the Korean War*, p. 6.

⁵² Some high-ranking U.S. government officials, like Paul Nitze, were not only anti-Soviet, but Nazi sympathizers. Brought up in a family that “embraced its German heritage,” Nitze in “frequent trips to Germany ... during, and after the Depression,” Brian Bogart writes, “had seen the transformation ... [and] is said to have defended Hitler in conversations at upper-class social functions. He admired the way facts and figures and harsh discipline had remade Germany.” B. Bogart, *History of the War Machine* (online). “Nitze’s disciple” was “Paul Wolfowitz, and his disciples, Dick Cheney, Paul Rumsfeld, and Richard Perle.” *Ibid.*

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capabilities of the USSR as a result of its atomic bomb test. US superiority was not in danger.”⁵³ As it stood, although neither President Harry S. Truman nor Secretary of State Dean Acheson were sympathetic to communism, they wanted to give the Russians the “benefit of the doubt.”⁵⁴

It has been said that the infamous National Security Council Report 68 (NSC-68) Paul Nitze as head of the planning committee had written became “the document that launched the Cold War.”⁵⁵ President Truman, however, did not approve of NSC-68 to begin with, among other things because he was not willing to spend money on the military; instead he “called for further study.”⁵⁶ However, the President finally—possibly under pressure from the State’s Policy Planning Staff—endorsed the report in the beginning of 1951, and so Nitze “got his wish: the Cold War,”⁵⁷ as one author put it. It appears that it was the Germans who had given him the space. Henceforth fear instead of rational thinking determined the course of events in the Far East as in Europe; ‘structural violence’ instead of ‘structural peace’ or—to use a term from Antony Adolf—“structural nonviolence”⁵⁸ were given the freeway.⁵⁹

The London Conference of the Foreign Ministers of France, Britain and the United States, had been convened in May 1950, largely in response to the assumption by Germany, that the Soviet Union might have plans to attack West Germany. The head of the U.S. High Commission, John McCloy, however, endeavored to calm what might also become a problematic situation, and on 4 July 1950 in an interview gave assurances that Allied troops would “remain in Germany until peace and freedom were secure.” The High Commissioner did “not believe that the Soviet Union wanted war,” and the Federal Republic therefore “currently needed no formal security guarantee [as anyway] an *attack on German territory would automatically mean*

⁵³ B. Bogart, *History of the War Machine*.

⁵⁴ John Lewis Gaddis, *We Now Know: Rethinking Cold War History*, Oxford, Clarendon Press 1997, p. 32.

⁵⁵ B. Bogart, *History of the War Machine*.

⁵⁶ S. Nelson Drew, Paul H. Nitze, *NSC-68 forging the strategy of containment*, DIANE Publishing, 1994, p. 98.

⁵⁷ B. Bogart, *History of the War Machine*.

⁵⁸ A. Adolf, *Preconditional, Didactic and Predictive Histories*, p. 21.

⁵⁹ Johan Galtung, *Violence, Peace and Peace Research*, *Journal of Peace Research*, vol. 6, no. 3 (1969), pp. 167-191.

an attack on the Western powers. In sum West Germany's security was basically the same as the security of the Western powers."⁶⁰

France also was more precautious and, as André François-Poncet, the French high commissioner to Germany from 1949 to 1953, and former French Ambassador in Berlin from 1931 to 1938, reiterated in response of Adenauer's scaremongering: "[T]he actual moment of danger was greatly exaggerated;" in fact it had been "Allied opinion that the Russians would not really attack."⁶¹ François-Poncet literally: "Mr. Adenauer wanted to force our hand."⁶² One may wonder. The various German top-secret documents contain practically no references either to the U.N. Charter or the peace provisions aiming at collective security and an effective international organization, which had only recently been passed in the French, Italian and German constitutions.⁶³

Three days before the above-mentioned interview with US High Commissioner John McCloy Adenauer in a letter to the Executive Chairman of the Allied High Commission, Kirkpatrick, had claimed that there

prevailed in the villages that lie along the main roads that lead from the Soviet zone westward, an ever more increasing excitement. Concerning the events in Korea the residents fear that all of a sudden Russian tanks will roll westward through their villages.⁶⁴

⁶⁰ Memorandum 81, p. 218, Note 5 (emphasis added).

⁶¹ Memorandum 122.

⁶² Memorandum 122: "Monsieur Adenauer a voulu nous forcer la main."

⁶³ Nevertheless, the impending outbreak of the Korean War had been a "key development;" State Department officials had "understood from the start that if Europe was to be defended, a German force of some sort would be required." But that was not the concern at the time, at least not yet. Marc Trachtenberg, *The Cold War and After: History, Theory, and the Logic of International Politics*, Princeton, Princeton University Press 2012, p. 127.

⁶⁴ Letter by Chancellor Adenauer to the Executive Chairman of the Allied High Commission, Kirkpatrick, on July 1, 1950. Memorandum 81, p. 217. See also Memorandum 113, p. 322: "The development in the Far East has triggered within the German population anxiety and uncertainty. The confidence that the Western world would be able to encounter acts of aggression against Western Europe quickly and effectively, is to a worrying extent on the wane and has led to a precarious lethargy among the German population." In: Klaus von Schubert (ed.), *Sicherheitspolitik der Bundesrepublik Deutschland, Dokumentation 1945-1977* (Security policy of the Federal Republic of Germany, documentation 1945-1977), vol. I. Bonn, Bundeszentrale für politische Bildung 1977 (Schriftenreihe der Bundeszentrale für politische Bildung, Bonn; no 116 I), pp. 79-83.

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While this may or may not have been so,⁶⁵ it is likely that the government was anyway disposed to fan fears, because Anti-Russian sentiments continued unabated. Not surprisingly: many positions in the new administration had been filled “not only with upright democrats,” but “with various representatives in key positions,” who were in fact of a “nationalistic disposition” and antagonistic toward Soviet Russia.⁶⁶ In spite of the Allies’ assurances the secret memoranda relating to the Germany question continued to refer to Korea and spread fear of Russian aggression while completely ignoring the principles and purposes of the U.N.O.

On 29 August 1950 German Chancellor Konrad Adenauer⁶⁷ sent a memorandum to the Allied High Commission that highlighted the ‘rearmament’ in the German Democratic Republic (GDR) and the assumed lack of security for West Germany. John McCloy expressed regrets that the German side had given him only relatively insignificant documents, and that he “would have preferred it” if he would also have been given “documents addressing other questions of external security;”⁶⁸ it is probable that at the back of McCloy’s mind were issues related to empowering the United Nations and its transition to genuine collective security, which were still very much debated and in the air.

Historically the modern concept of the transition originated with the German philosopher Immanuel Kant; it was expounded in his treatise on *Perpetual Peace*, which proclaimed that “without a compact between the nations ... peace cannot be established or assured. Hence, there must be an alliance of

⁶⁵ The fact that the liberating Russian forces had raped hundreds of thousands of German women may also have been at the back of popular German fears.

⁶⁶ Fritz Küster, in F. W. Foerster, *Die deutsche Frage (The German question)*, p. 47.

⁶⁷ Adenauer had no clear conception of pacifism: “Let me say a word about pacifism. If any man is a pacifist out of sincere conviction, I respect this as I respect all sincere convictions. But when Germany, in her present situation, is asked to pursue a pacifist policy, that is equivalent to advising her to commit suicide.” Konrad Adenauer, *World indivisible, with liberty and justice for all*, New York 1955, pp. 59-60. Online at <https://ia600305.us.archive.org/13/items/worldindivisible007073mbp/worldindivisible007073mbp.pdf> (accessed 21 March 2018).

⁶⁸ On 30 August 1950, the consultant on security matters, Count of Schwerin, reported that the head of the US High Commission in Germany, John McCloy, before his departure for the Foreign Ministers’ Conference in New York, had made these remarks. Memorandum 117, p. 336.

a particular kind which we may call a covenant of peace (*foedus pacificum*), which would differ from a treaty of peace (*pactum pacis*) in this respect, that the latter merely puts an end to one war, while the former would seek to put an end to war forever.”⁶⁹ Probably the first to advocate collective security was William Penn (1644-1718), writing that the powers should “unite as one strength” to “compel the submission” of anyone failing to “abide” by the “judgment” of the “European Parliament” or “seek[ing] remedy by [resort to] Arms.”⁷⁰

The Problem

While it is necessary to acknowledge “the facts of what actually did not happen,” as Antony Adolf has shown, “the fictions of what could, would or should have happened,” if things had gone right, depict a reality that allows for historical deductions, or a deductive historicization by which as a positive consequence the researcher “posits a hypothesis, collects data by observation and analyzes it, finally confirming or invalidating [his] hypothesis or theory,”⁷¹ in this case that war can be abolished. The Korean War provided the first major opportunity for launching the U.N. system of collective security. What motivated Russia to take the initiative, aiming at the transition to achieve a workable peace system, and insisting that, in order for it to participate in the United Nations collective action, the *Transitional Security Arrangements* (Article 106) must be implemented?⁷² To understand Article 106 one has to study the prelimi-

⁶⁹ Immanuel Kant, *Perpetual Peace, A Philosophical Essay*, transl. by Campbell Smith. London, George Allen & Unwin 1917, p. 134. For an argument see also Klaus Schlichtmann, Alfred Hermann Fried (1864-1921)—Transitioning to World Order (publication pending).

⁷⁰ “[I]f any of the Sovereignities that Constitute these Imperial States shall refuse to submit their Claim or Pretentions to them [the European Parliament], or to abide and perform the Judgment thereof, and seek their remedy by Arms, or delay their Compliance beyond the time prefixt in their Resolutions, all the other Sovereignities united as one strength, shall Compel the submission and Performance of the sentence, with damages to the suffering Party...” William Penn, *An Essay Towards the Present and Future Peace of Europe by the Establishment of an European Dyet, Parliament or Estates*, London 1693, pp.17-8, facsimile reprint, Hildesheim, Zürich and New York, Georg Olms 1983, with a preface by Heinz Waldner, and an introduction by Peter van den Dungen.

⁷¹ A. Adolf, *Preconditional, Didactic and Predictive Histories*, pp. 14-15.

⁷² See Quincy Wright, *Political Conditions of the Period of Transition*, pp. 265-266, where the author states: “After the fighting is over and aggression has been suppressed,

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nary works that went into the making of the Article, especially the Commission to Study the Organization of Peace that was set up, among others, by Chicago University Professor of political science and international relations Quincy Wright; Wright's paper in particular explains the matter in detail.⁷³

The transition should have been initiated by countries beginning to transfer sovereign authority to and defining the powers of the Security Council through proper legislative action, prior to the 3 November 1950 "Uniting for Peace" Resolution in the U.N. General Assembly dealing with the Korean crisis. The argument is substantial, because until then and thereafter, as the former judge at the International Court of Justice in The Hague, Mohammed Bedjaoui, has pointed out, the Security Council is basically "a law unto itself;" there is no proper law governing the body. U.S. Secretary of State John Foster Dulles corroborated: there are "no principles of law ... laid down to guide it."⁷⁴ The Council lacks democratic legitimacy—which is the main problem still today. James A. Paul, in his review of Mohammed Bedjaoui's book confirms this view, stating that the author "shows that the Security Council has interpreted its powers as being above the law—that is beyond

a period of reconstruction will be necessary to establish an order more adequate than the 'peace' which preceded and produced the hostilities. *The problem is not to restore to an earlier situation but to build a more adequate world order.*" As indicated above, this was originally a Kantian concept.

⁷³ Commission to Study the Organization of Peace. See full text of the article by Quincy Wright at www.unfor.info/transition_text.pdf ! For evidence that the Commission to Study the Organization of Peace did indeed influence the writing of the United Nations Charter see for example Robert P. Hillmann, Quincy Wright and the Commission to Study the Organization of Peace, *Global Government*, no. 4 (1998), pp. 485-499. See also Clark M. Eichelberger, *Organizing for Peace: A Personal History of the Founding of the United Nations*, New York 1977.

⁷⁴ Mohammed Bedjaoui, *The New World Order and the Security Council, Testing the Legality of Its Acts*, Dordrecht, Martinus Nijhoff 1994, p. 1. That the Security Council was not intended to be "a law unto itself" was articulated by John Foster Dulles, *War or Peace*, New York, Macmillan, 1950, p. 194. See also the verdict of the Carnegie Endowment for International Peace: "Every year that the Security Council continues with its present structure, the UN suffers because the increasingly apparent lack of representativeness of the council membership diminishes its credibility and weakens its capacity for conflict prevention." Carnegie Commission, *Preventing Deadly Conflict*, Final Report, Carnegie Corporation, New York, December 1997, p. 142.

any system of legal limits.”⁷⁵ I would refute the argument, however, that the Security Council can, as Bedjaoui—according to the reviewer—maintains, “reject ... any legal limits on its powers.” (Ibid.) I would argue that on the contrary the U.N.S.C. *invites* limitations on its powers, since the Charter provides for proper procedures that can and should be applied in this case. As far as procedures go, this, however, presupposes limitations on and the transfer of nation-state powers, in favor of the world body. Mohammed Bedjaoui himself does not give evidence that he has delved into the problem of the transition or the problem of the limitation of national sovereignty in connection with the Security Council’s functioning.⁷⁶

The transitional period envisaged in the U.N. Charter espouses an entirely new principle in international law. International law before World War II had “recognized ... no transitional period,” and war “technically ... continue[d] until the treaty of peace goes into effect.”⁷⁷ By introducing this new concept, the powers now could meet the requirements for “laying the foundations of a permanent world order,” and achieve the aims they had pursued since the end of the 19th century.⁷⁸ The new principle in international law would become an instrument to do away with the institution of war altogether. The Commission Report on the Transitional Period clearly stated: “The transition to be hoped for is not one from war to normalcy, but from war to permanent peace and order.”⁷⁹ The ‘normalcy’ until then had been understood as an ‘armed peace’ where nation-states, each by and for itself, maintain a fragile peace by arming themselves and/or joining military alliances that would guarantee an equally volatile balance of power. This form of peace based on a military balance of po-

⁷⁵ Book Review, online at <https://www.globalpolicy.org/component/content/article/163/28664.html> (accessed on 28 March 2016).

⁷⁶ M. Bedjaoui, *The New World Order and the Security Council*, p. 492 does acknowledge the problem, however, stating: “We all know that one of the greatest obstacles to organized peaceful co-operation between sovereign States lies in the absolute conception of national sovereignty.”

⁷⁷ Commission to Study the Organization of Peace, p. 152. The text continues, pp. 152-153: “After the last war, it was regarded as necessary to hold under arms millions of discontented men, to continue a harsh blockade, to leave nations in disorder while statesmen sought tensely and hastily to solve the vast and innumerable problems before them.”

⁷⁸ Ibid., p. 163.

⁷⁹ Ibid. The text continues: “The new solutions must evolve, not from the psychology of victor toward vanquished, but from the psychology of cooperation for mutual welfare.”

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wer was “latent war,” as Alfred Hermann Fried, a prominent author and peace activist, and a 1911 Nobel Peace laureate,⁸⁰ who has only recently been rediscovered, had described it already before the First World War.⁸¹

As the historic record shows, on 11 October 1950, for the last time, the representative of the USSR submitted the following draft resolution:

The General Assembly, Taking into account the particular importance of concerted action by the five permanent members of the Security Council in defending and strengthening peace and security among nations, Recommends that before armed forces are placed at the disposal of the Security Council under appropriate agreements concluded in accordance with Article 43 of the Charter, the five permanent members of the Security Council ... should take steps to ensure the necessary implementation of Article 106 of the Charter for the purpose of taking such joint action on behalf of the organization as may prove to be necessary for the maintenance of international peace and security.⁸²

Russia having traditionally, even before World War II, been in favor of collective security,⁸³ it is likely that the Russian Government was aware of the new developments in international and constitutional law, and was hoping that—France

⁸⁰ See Klaus Schlichtmann, *Der Friedensnobelpreisträger Alfred Hermann Fried (1864-1921), Pazifist, Publizist und Wegbereiter (The Nobel Peace Laureate Alfred Hermann Fried (1864-1921), Pacifist, Publicist and Trailblazer)*, *Jahrbuch des öffentlichen Rechts (Yearbook of Public Law, ed. Peter Häberle)*, vol. 60 (2012), pp. 105-129.

⁸¹ A. H. Fried, *Die Ausgestaltung der Friedensaktion in Deutschland. Eine Denkschrift zum zehnjährigen Bestande der Deutschen Friedens-Gesellschaft. November 1892-November 1902* (The organization of the peace movement in Germany. A memorandum on the ten-year existence of the German Peace Society. November 1892 to November 1902), Verlag 'Die Friedens-Warte', Berlin 1902, p. 13.

⁸² Online at <http://legal.un.org/repertory/art106.htm>. This then probably was the final attempt of the Russians to an Entente with the West, prompted perhaps by the prospects the recently adopted French, Italian and German Constitutions seemed to offer. From this perspective one would have to disagree with Scott D. Parrish, *The Turn Toward Confrontation*, p. 6, when the author states that “it was not until mid-1947 that both sides abandoned all hope of finding cooperative solutions to the problem of constructing a new political order in Europe and resorted to confrontational unilateralism,” thus starting the Cold War.

⁸³ See Jiri Hochman, *The Soviet Union and the Failure of Collective Security, 1934-1938*, New York 1984 und Jonathan Haslam, *The Soviet Union and the Struggle for collective security in Europe, 1933-39*, London und New York 1984.

having already agreed in principle to limitations of its national sovereignty—Germany might take action to initiate the process of the transition. It may well be that since the time of the Hague Peace Conferences, when the renowned Russian diplomat and international lawyer Fyodor Martens (Friedrich Martens, 1845-1909) proposed rules in international relations for czarist Russia, there has been a ‘pacifistic’ international law tradition in Russia similar perhaps to the United States doctrine of Peace through Law.⁸⁴ If not mainstream—as in the USA—one of Russia’s main pursuits has been to find its own place in the community of nations, and asking: “what is the progressive force in international law?”⁸⁵

One thing is certain: the “P5” cannot do much if anything to initiate the process of the transition. As I have argued elsewhere: “The argument that individual nations could not ‘surrender their right of self-defense to a supranational organization and submit to the superior will of the family of nations’, because ‘great powers’ would never ‘submit to the will of a central power’,⁸⁶ does not hold. It can easily be refuted, because the U.N. Charter took this fact into account by already making the great powers themselves the permanent and hard core of the central power. By transferring sovereign powers to it in a legislative act, the ‘family of nations’ may create an effective world organization. Not ‘the creation of a unified will’ is the precondition for achieving this

⁸⁴ Fyodor Martens edited 15 volumes of Russian international treaties.

⁸⁵ Lauri Mälksoo, The History of International Legal Theory in Russia: a Civilizational Dialogue with Europe, *The European Journal of International Law*, vol. 19, no. 1 (2008), p. 212. Interestingly, the author ruminates: “Since international law enshrined in the UN Charter is eroded by the process of globalization, different hegemonic aspirations, and new types of conflict, international law is currently in need of defence, or renewal, or both, whatever position one takes. The history of international law can offer further insights into the field’s current condition and future prospects, and at least enlighten us about the question ‘what of this has occurred before?’. It is not incidental that some of the most exciting recent work in the history of international law has been done on the question of how hegemonic projects and international law have collaborated rather than excluded each other in the past ... there has recently been a surge of interest in the history of international law scholarship in Russia. The revival of interest in historical sources has resulted in new editions of landmark texts by old masters such as Shafirov, Martens, Kozhevnikov ... Altogether, one gains the impression that these works are meant to represent a Russian tradition of, a Russian continuity in, international law scholarship.” (pp. 212-213)

⁸⁶ This is what the Swiss theologian Emil Brunner stated in 1943 in his *Justice and the Social Order* (1943, reprint, New York and London, Harper & Row 1945), pp. 235 ff.

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aim, but the 'intention of peace' in a single nation that would render itself defenseless and would be followed up by others, thereby giving the U.N. the power to do its job."⁸⁷

Political scientist Joseph Preston Baratta has stated, however without adequately addressing or investigating the new international law principle of the transition:

The greatest problem ... is *the political transition* ... Federalists have always resisted talk and hints of preventive war, use of force, and a national bid for empire. The preferred method is to convene a general review Conference for the reform of the United Nations ... or to convene a new world constitutional convention, like that in San Francisco in 1945.⁸⁸

Of course the Russian insistence that measures be taken to embark on the transition may have been nothing more than politicking. However, as far as Germany is concerned there is no reason for it not to have immediately submitted to the compulsory jurisdiction of the International Court of Justice (I.C.J.) and join the United Nations after its constitution, the *Grundgesetz*, went into effect in May 1949. Hans Kelsen, the great authority on international law, had stated already before the Second World War, "there is no other hope [for peace] except in the construction of a strong, really obligatory arbitration system, a jurisdiction permitting no exception."⁸⁹ Such a submission would have signaled to the Russians an acknowledgement and recognition of a pacifist, international law tradition that had been effective at the Hague Peace Conferences, to which the Russians had invited.

When the "Uniting for Peace" Resolution was adopted by the U.N. General Assembly in November 1950,⁹⁰ the Allies

⁸⁷ Klaus Schlichtmann, A Draft on Security Council Reform, *PEACE & CHANGE*, vol. 24, no. 4 (October 1999), pp. 519-520.

⁸⁸ Joseph Preston Baratta, *The Politics of World Federation. From World Federalism to Global Governance*, Westport and London, Praeger 2004, 2 vols., vol. 1, p. 15. (Emphasis added!) For those interested in studying the UN Charter let it be said that Article 106 and Article 109 are closely related.

⁸⁹ Hans Kelsen, *The Legal Process and International Order*, London, The New Commonwealth Research Bureau Publications, Series A, No. 1, 1934, p. 18.

⁹⁰ Resolution 377 A (V). The common narrative is that "adoption of this resolution came as a response to the strategy of the Union of Soviet Socialist Republics (USSR) to block any determination by the Security Council on measures to be taken in order to protect the Republic of Korea against the aggression launched against it by military forces from North Korea." Christian Tomuschat, *Uniting for Peace*, United Nations Audiovisual Library of

went into action without Article 106 or Article 43, and for that matter, Article 24 having been implemented (much like the 'Coalition of the Willing' in the 1990s, i.e. without the System of Collective Security being in effect). In June 1950, the Security Council had empowered the General Assembly and recommended the United Nations "furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."⁹¹ The conventional narrative is that the Security Council Resolution could be passed "because the USSR, at that time, boycotted the meetings."⁹² This, however, is not entirely true since the Russian Government, apparently aware of the new developments in international and constitutional law, was hoping, or at least speculating that, with potential backing of the 'P5', Germany might feel obligated to take legislative action to start the process of empowering the United Nations. It has meanwhile become common knowledge, as the declassified documents released after the end of the Cold War have revealed, that Russia's belligerence had been greatly exaggerated. The only conclusion is that indeed the Russians intended the U.N. to embark on the transition toward a genuine world order. Perhaps they thought, under conditions of perpetual peace⁹³ prevailing, this would give them a freer hand for their communist campaigns.

Opposing Currents

"But the essence of evil is that it should *repel* us. If something is evil, our actions should be guided, if they are guided at all, toward its diminution rather than toward its maintenance. That is what evil *means*. So when we aim at evil [harm-doing] we are swimming head-on against the normative current. Our action is guided by the goal at every point in the direction diametrically opposite to that which the value of that goal points. To put it another way, if we aim [to harm others] we make what we do in the first instance a positive rather than negative function of it.

International Law, p. 1, online at http://legal.un.org/avl/pdf/ha/ufp/ufp_e.pdf. According to the author, *ibid.*, p. 2, "resolution 377 A (V) was hardly reconcilable with the Charter."

⁹¹ Resolution 83 (1950) of 27 June 1950.

⁹² According to Ch. Tomuschat, *Uniting for Peace*, "with the aim of obtaining the allocation of the permanent Chinese seat to the communist Government in Beijing."

⁹³ A peace that has to be established and re-established again and again in perpetuity, with the aim of achieving permanence.

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At every point, the intentional function is simply the normative reversed, and from the point of view of the agent, this produces an acute sense of moral dislocation."⁹⁴

Konrad Adenauer, on the other hand, the German chancellor, seems to have favored a world model where not a unified world body representing unity in diversity but three military blocks would guarantee the peace. In a 1955 English-language publication he presented his Orwellian view stating that "it remains a grave danger to peace to have the world dominated by two great powers [Soviet Russia and the USA]. In the interest of world peace, it is absolutely necessary for a third power to arise. Only a federated Europe can be that third power."⁹⁵ However, oddly, it was precisely the bi-polar 'balance of power' which after the end of the Second World War for fifty years guaranteed a relative, however volatile, peace; in fact, of course, it perpetuated a capricious state of "latent war,"⁹⁶ with numerous proxy wars being fought at the same time. The English language publications and statements of Chancellor Konrad Adenauer in the early fifties show that he had not grasped the basic principles underlying the United Nations' organization of peace.⁹⁷ If the language of the U.N. Charter seemed ambivalent, this provided the country's Christian Democratic Union (CDU) the justification for a concept of "limited and controlled armaments" that allowed Germany to circumvent the peace provisions in the Basic Law regarding collective security and compulsory international jurisdiction. Apart from the fact that this concept completely ignored all of Asia, the ill conceived efforts to make Europe 'that third power', instead of taking steps to

⁹⁴ Thomas Nagel, *The View From Nowhere*, New York, Oxford University Press 1986, p. 182.

⁹⁵ K. Adenauer, *World indivisible*, p. 51.

⁹⁶ A. H. Fried, *Die Ausgestaltung der Friedensaktion in Deutschland*, p. 13.

⁹⁷ Adenauer appears to assign the responsibility for the inadequacies to others: "I am convinced that true peace can be brought about if the most powerful countries agree on, and carry out, controlled disarmament measures. It is only on the basis of limited and controlled armaments that a genuine security system can be established, which is our aim too." K. Adenauer, *World indivisible*, pp. 127-128. See also, by the same author, *Germany and the Problems of Our Time, International Affairs* (Royal Institute of International Affairs 1944-), Vol. 28, No. 2 (Apr., 1952), p. 156, where Adenauer points out Germany's vital "position in the centre of Europe, between East and West," but without offering a real, feasible peace alternative.

strengthen the organization of peace, is largely responsible for the dilemma Europe is facing today.

The CDU's misguided conception was made possible by the historical precedents that continued to loom in the German mind. The German educationist, pacifist and philosopher Friedrich Wilhelm Foerster (1869–1966), known for his opposition to Nazism (see Wikipedia), may have exaggerated when he maintained that “the real obstacle” is that the Nazi “criminals and their deluded followers in Germany have repented nothing and given up nothing, but are thinking day and night of nothing but of the opportunity to reestablish their business again by other means and with new allies.”⁹⁸ But the fact is that scores of former Nazis were rehabilitated after the war, joined political parties as well as the Foreign Service, and continued teaching at German universities and abroad.

The failed Peace Movement

On the other hand, in Europe, the Americas and even in Japan, pacifists, world citizens and world federalists constituted a powerful and vibrant movement in and after 1949; in the USA, resolutions were passed in 30 of 48 state legislatures supporting “pooling of American sovereignty with that of other countries,”⁹⁹ and a June 1949 Resolution in the American House of Representatives and the Senate aiming at a world federation, stated:

Resolved by the House of Representatives (the Senate concurring) that it is the sense of the Congress that it should be a fundamental objective of the foreign policy of the United States to support and strengthen the United Nations and to seek its development into a World Federation, open to all nations, with defined and limited powers adequate to preserve peace and prevent aggression through the enactment, interpretation and enforcement of world law.¹⁰⁰

⁹⁸ “‘Believe me, young man’, said General [Karl] Haushofer in 1941 to the American journalist Carlton Smith, ‘we think in centuries. You can be sure that in case of defeat from the first hour after the armistice day and night we will think of nothing but preparing the next war’. This is what today the majority still thinks...” F. W. Foerster, *Die deutsche Frage*, 1947, pp. 5-6.

⁹⁹ See also the “1949 World Federalist California Resolution,” online at https://en.wikisource.org/wiki/1949_World_Federalist_California_Resolution.

¹⁰⁰ Congressional Record, 7. Juni 1949, S. 7356-57. The Resolution was signed by 111 Members of Congress, among them John F. Kennedy und Gerald Ford.

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As the great Hans Kelsen pointed out, “one of the most dangerous illusions” is the “belief that the international order cannot be based on anything else except the goodwill of the states and the public opinion of the peoples.”¹⁰¹ And an international peace based on deadly weapons and a balance of power instead of justice and order is just as dangerous and illusory. The solution—unless one wants to convene a world constituent assembly right away—lies in implementing the relevant constitutional and legal provisions to embark on the transition to collective security and adopting a global treaty to disarm all nations to the legal minimum stipulated in Article 26 of the U.N. Charter that would “permit each government to maintain adequate land forces to police its territory and defend its frontiers.”¹⁰²

Professor Carlo Schmid, a social-democrat and politician, and the father of Germany’s Article 24, had to defend against die-hard nationalists who accused him of serving foreign interests for wanting to limit and cede German sovereign powers regarding the right to fight in war and empowering the U.N. instead. This, he said, was required for achieving collective security. Already in December 1948 Carlo Schmid¹⁰³ had written in the daily newspaper *Die Welt* that he thought “the only effective way to ensure security for Germany ... is by creating a collective security system.” Schmid further:

Over the past couple of weeks, a considerable number of newspapers has addressed the issue of a possible re-militarization of Germany. As much as it is understandable that especially today in Germany it is necessary to think about how this country’s security may be guaranteed—it has as much of a right to it as any other country—it is highly regrettable that apparently no one is able to imagine that a country’s security could be guaranteed, and guaran-

¹⁰¹ H. Kelsen, *The Legal Process and International Order*, p. 21. And *ibid.*: “To hope to prevent war before an international executive power has been instituted to carry out the judgments of an International Court, and one which is strong enough to ensure obedience to those judgments, is tantamount to bestowing *an* advantage upon such as are determined to enforce their own interests, if necessary, in violation of international law.”

¹⁰² Quincy Wright, *Political Conditions of the Period of Transition*, p. 278.

¹⁰³ Not to be confused with the Nazi sympathizer Carl Schmitt, who is still highly regarded among politicians, especially in Germany.

teed more effectively, by another method, i.e. an International Wehrmacht rather than national armies.¹⁰⁴

The Christian Democrats denounced such plans, while little later, probably toward the end of 1951, 250,000 registered German concerned “world citizens” in a written petition addressed to the Federal President, Theodor Heuss (1884-1963, Pres. 1949-1959), demanded

on the occasion of the General Assembly of the United Nations coming together in Paris and the second meeting of the Peoples’ World Convention held at the same time in Paris (by world citizens and world federalists),¹⁰⁵

that the Federal Government and the Bundestag (parliament) should make a “contribution ... to the maintenance of peace” by supporting the following motion:

“Article 1: Implementation of the Basic Law’s Article 24, [paragraph] 2” (collective security) and enactment of an electoral law, “which would enable the Federal Republic of Germany to elect deputies to the Peoples’ Convention,” which should then evolve to become the “World Constituent Assembly.”¹⁰⁶ Explaining further the petitioners’ intention the paper pointed out “the historical achievement” of the Constitutional Convention which deserved praise for “having espoused Germany’s desire for a federal world order by introducing Article 24 into the Basic Law.” Did it have any effect on actual politics and practice? Did policy makers, given the fact that these citizens addressed the central question of our constitutional mandate to “serve the peace of the world,” ever consider or refer to any of this in their policy statements? Unfortunately not, and so Germany neither submitted to the compulsory jurisdiction of the International Court nor ceded the right of belligerency or joined the U.N.

¹⁰⁴ Carlo Schmid, *Legionäre fremder Interessen? Kollektive Sicherheit statt Remilitarisierung* (Legionaries of foreign interests? Collective security instead of remilitarisation), *Die Welt*, 14 December 1948, and *idem.*, *Deutsche Soldaten in einer internationalen Wehrmacht – nicht als Legionäre fremder Interessen* (German soldiers in an international armed force—not as Legionaries of foreign interests), *Die Welt*, 28 April 1949.

¹⁰⁵ The first session of the Peoples’ World Convention took place from 30 December 1950 to 5 January 1951 in Geneva. Documentation online (in German), <http://www.peace.ch/images/V%C3%B6lkerkonvent.pdf>.

¹⁰⁶ Holdings Helmut Hertling, file 2 (Collection Appellus). Articles 2, 3, 4 and 5 pertained to the electoral law to be enacted.

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Meanwhile, in the United States, on 3 August 1950, in the State of Tennessee official elections of delegates for a World Parliament already were in progress.¹⁰⁷ Apparently this was coordinated and corresponded closely to the movements in Germany and other parts of Europe, and also in Japan where Physics Nobel laureate Hideki Yukawa headed the movement, supported among others by the pacifist Prime Minister Kijuro Shidehara, who on 24 January 1946 had suggested the war-abolishing provision that became Article IX of Japan's constitution. The headquarters of the European World Citizens' Registry was in Paris, the American one in San Francisco.

Perhaps also on the positive side were the *Stalin Notes* that seemed to signal Russia's goodwill toward Germany. The first Note was communicated on 10 March 1952 to the representatives of the United Kingdom, France, and the United States. The proposal called for a reunified and neutral Germany; there were practically no conditions attached. Instead, it guaranteed "the rights of man and basic freedoms, including freedom of speech, press, religious persuasion, political conviction, and assembly," democratic parties would be allowed to operate freely.¹⁰⁸ A second Note was put forward on 9 April, a third one on 24 May and a fourth one on 10 July 1952. In the end the German chancellor Dr. Konrad Adenauer, the ultimate kingpin, decided against it, apparently without even consulting his cabinet. Austria declared itself to be neutral in its Constitution in 1955.

Later, the 1955 Russell-Einstein-Manifest, the starting point for the Pugwash movement, called for the "abolition of war." Stating the obvious, the Manifesto declared that this would require "distasteful limitations of national sovereignty." However, if nation-states agree to limitations of their national sovereignty, according to the Manifest, "there lies before us, if we choose, continual progress in happiness, knowledge and wisdom. Shall we instead, choose death, because we cannot forget our quarrels?"¹⁰⁹

¹⁰⁷ Ibid., <http://www.peace.ch/images/V%C3%B6lkerkonvent.pdf>.

¹⁰⁸ United States. Department of State. Historical Office, *Documents on Germany, 1944-1961: Committee on Foreign Relations*, United States Senate, Greenwood, 1961, p. 118.

¹⁰⁹ The Russell-Einstein Manifesto. In David Krieger (ed.), *Hope in a Dark Time*, Santa Barbara CA, Capra Press 2003, p 239.

The realization is not confined to the West. The late Indian president and philosopher, Professor Sarvepalli Radhakrishnan, expressed the same idea:

We must surrender a part of our sovereignty, work together for the elimination of every kind of injustice ... The United Nations is the first step towards the creation of an authoritative world order. It has not got the power to enforce the rule of law ... Military solutions to political problems are good for nothing. Ultimately they will leave bitterness behind ... The challenge that is open to us is survival or annihilation ... but what are we doing to bring about that survival? Are we prepared to surrender a fraction of our national sovereignty for the sake of a world order? Are we prepared to submit our disputes and quarrels to arbitration, to negotiation and settlement by peaceful methods? Have we set up a machinery by which peaceful changes could be easily brought about in this world? So long as we do not have it, it is no use merely talking.¹¹⁰



John F. Kennedy meeting with Nikita Khrushchev in Vienna, 3-4 Juni 1961.

In 1961 an actual possibility for empowering the United Nations presented itself when the USA and the USSR agreed on

¹¹⁰ Sarvepalli Radhakrishnan, *Towards a New World*, New Delhi and Bombay, Orient Paperbacks 1980, pp. 14, 45, 52, 135.

far-reaching measures to abolish war as an institution.¹¹¹ At that time it seemed “individual leaders did reach out to and perhaps even rely on the [peace] movement because they saw its goals as dovetailing with what they defined as the national interests of their state, [and so] the world saw major progress toward reducing superpower tensions of the nuclear arms race (for example John F. Kennedy and Nikita S. Khrushchev in the 1960s).”¹¹² The McCloy-Zorin Accords (or Agreed Principles for General and Complete Disarmament), which aimed at abolishing war and the military as an instrument of national policy, were unanimously adopted by the U.N. General Assembly on 20 December 1961. Introducing the McCloy-Zorin Accords on 25 September US-President John F. Kennedy famously stated: “The program to be presented to this assembly—for general and complete disarmament under effective international control ... would achieve under the eyes of an international disarmament organization, a steady reduction in force, both nuclear and conventional, until it has abolished all armies and all weapons except those needed for internal order and a new United Nations Peace Force.”

In the same year both the Russians and the Americans suggested moving the U.N. or vital parts of it to Berlin to defuse the crisis that had developed.¹¹³ For this to become practical would have required that Member states start conferring primary responsibility for the maintenance of international peace and security on the Security Council. Khrushchev, in his famous ‘Troika’ speech before the General Assembly in September the previous year had suggested to move the U.N. to Europe, a center of international tension and confrontation, and take it out of the reach of American control. Austria and Switzerland, the former host country of the League of Nations, were also considered and in conversations with the Italian Prime Minister Fanfani Khrushchev apparently suggested Ber-

¹¹¹ See the comprehensive assessment of the negotiations between the Russians and the Americans and their outcome in Andrew Martin, *Legal Aspects of Disarmament*, The British Institute of International and Comparative Law, London 1963, *International and Comparative Law Quarterly*, Supplementary Publication No. 7, 1963.

¹¹² Shane J. Maddock, Review of Lawrence S. Wittner, *The Struggle against the Bomb*, 5 vols. H-Peace, H-Net Reviews 2004. Online <http://www.h-net.org/reviews/showrev.php?id=9329> (accessed 30 March 5, 2016)

¹¹³ Eberhard Menzel, Berlin als Sitz der Vereinten Nationen? (Berlin as seat of the United Nations?), *Europa-Archiv*, vol. 17, no. 1 (25 January 1962), part 2, pp. 31-40.

lin. Walter Lippmann wrote in the *New York Herald Tribune*, suggesting that some U.N. agencies could be moved to Berlin; US senators like Mike Mansfield made similar suggestions. There was an obvious interest in American government circles to defuse the Berlin crisis and to employ the U.N. for that purpose. In December the Council of foreign ministers of the Western powers meeting in Paris also suggested to move parts of the organization to Berlin. Although Germany may have had little interest in strengthening the United Nations, Eberhard Menzel, an international law expert and former director of the renowned Institute of International Law at Kiel University, was sure that “the presence of the United Nations in Berlin would not diminish the chances for reunification, but on the contrary would enhance its possibilities.”¹¹⁴

Menzel thought it would be an “honor” for the divided city and that it was “bound to fulfill its purpose” as an equalizer between East and West, if this came to pass. (Ibid.) What he does not mention is what Germany’s contribution might have been toward achieving that purpose. In spite of the fact that the East German government started building the Berlin Wall on 13 August that year, there was no basic disagreement between the USSR and the US concerning the eventual reunification of Germany. Khrushchev was keen on a peace treaty with Germany, though he threatened if this was not reciprocated by the Bonn administration, he would conclude a separate peace treaty with the German Democratic Republic, which eventually he did. Khrushchev was not too happy with the East German Government’s building of the wall. Hope M. Harrison, professor of history at George Washington University: “While East Germany viewed the Wall as a matter of survival, its leaders had to push the Soviets into approving it.”¹¹⁵ Khrushchev “was reluctant to close the border. He only did it when he was absolutely forced. He was so scared of a war with the West” (Ibid.)

All in all, the idea of Berlin as the new UNHQ met with considerable interest and even approval on both sides of the

¹¹⁴ E. Menzel, *Berlin als Sitz der Vereinten Nationen?*, p. 40.

¹¹⁵ Hope Harrison, at a conference in Berlin in mid-June 2001. See Tony Czuczka, *Berlin Wall Called Relief to Kennedy*, *Associated Press News Archive* (15 June 2001), quoting Hope Harrison. Online at <http://www.apnewsarchive.com/2001/Berlin-Wall-Called-Relief-to-Kennedy/id-d77b9b1e7a864ec4697e3e2f41b27930>. (accessed 30 March 2016)

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'Iron Curtain', and there seems to have been agreement that it would relieve tension between East and West, and contribute to world peace and security. What was lacking was some definitive action on the part of the Europeans—and of Germany first of all—to make the plan work and put it into action. It would have required the delegation of primary responsibility for the maintenance of international peace and security to the U.N.S.C. to start giving the organization a monopoly of power. The German constitution is particularly strong on this point in that it provides for passage of a bill in parliament to this effect.

Not only did Germany not, in spite of the relevant binding stipulation in its Constitution, submit to the compulsory jurisdiction of the I.C.J.—this alone could have contributed to diffusing the crisis of the year 1950—but it even, after joining the United Nations in 1973, put forward and promulgated a misguided interpretation of the U.N. Charter. The U.N. Charter Commentary, already referred to above, in its tract on Article 106 is not only misinformed (suggesting that the Article is “obsolete”), but also demonstrates the author’s ignorance of its origin and purpose.¹¹⁶ A 1977 publication by the semi-official United Nations Association (UNA/DGVN, German branch), not long after Germany joined the United Nations, stated that neither did Germany believe the U.N. could be a first step toward some kind of world federation nor was the “binding jurisdiction of the international court either feasible or desirable.”¹¹⁷ Russia on the other hand would most likely have responded favorably, if West-Germany in 1949 had submitted to the compulsory jurisdiction of the I.C.J., and—referring to the Hague Peace Conferences in 1899 and 1907—had pointed out the positive role Russia had played at the time with regard to establishing a system for the peaceful settlement of international disputes. After all, it had been Russia that had invited to the conferences, both in 1899 and in 1907, and had wholly endorsed its objectives.

It is an interesting fact that today the Permanent Members of the Security Council, the ‘P5’, are more or less the same as

¹¹⁶ Rudolf Geiger, Ch.XVII: Transitional Security Arrangements, Article 106, in Bruno Simma et al., *The Charter of the United Nations: A Commentary*, Volume II (3rd Edition), Oxford University Press 2012.

¹¹⁷ Hilmar Werner Schlüter, *Der Sicherheitsrat der Vereinten Nationen (The Security Council of the United Nations)*, Handbuch (Handbook, Schriftenreihe der Deutschen Gesellschaft für die Vereinten Nationen, DGVN), UN-Texte 22, Bonn 1977, S. 13-15.

those great nations that at The Hague in 1899 and 1907 voted in favor of an international court with binding powers; I presume this is why they have been assigned the responsibility to guarantee safe passage during the transition. It would be a mistake to doubt their high commitment in this regard.¹¹⁸ They are the *Panchayat* of our Global Village.¹¹⁹ It is not impossible that the late Indian President Sarvepalli Radhakrishnan, who from 1931 to 1938 was a member of the League of Nations' *International Committee of Intellectual Cooperation* (ICIC), the predecessor of UNESCO, introduced the idea of the *Panchayat* into the deliberations on the future world organization. Radhakrishnan was "the recognized Hindu authority on Indian ideas and a persuasive interpreter of the role of Eastern institutions in contemporary society."¹²⁰

¹¹⁸ Very promising is the project by a group of countries, initiated by Costa Rica and Switzerland, that have come together under the acronym ACT, which stands for Accountability, Coherence and Transparency,¹¹⁸ and which aims at improving the working methods and the legitimacy of the Security Council. It is possible that a small group of countries without armed forces and/or no standing army could start empowering the United Nations by agreeing to limitations of their national sovereignty in favor of the UN, with the aim to abolish war as an institution, by following up on Japan's Article IX.

¹¹⁹ The *Panchayat* is an administrative unit at the village level in South Asia, consisting of the assembly (*ayat*) of the village's five (*panch*) respected elders, selected and recognized by the community. The number "5" is ideal for a system—here: a select, executive council—that operates on the principle of unanimity. In the case of the "P5" the members consist—more or less—of the traditional world powers which already at The Hague were in favor of disarmament and an international court with binding powers. Apart from the fact that the UN Security Council opened itself to the Members, the League of Nations arrangement was quite different, where the composition of the permanent members changed several times and unanimity of both the Council and the League Assembly were required for its decisions.

¹²⁰ Donald Mackenzie Brown, *The Nationalist Movement: Indian Political Thought from Ranade to Bhave*, University of California Press 1970, p. 153. See also K. Satchidananda Murty and Ashok Vohra, *Radhakrishnan: His Life and Ideas*, SUNY Press 1990, pp. 206-207: "Radhakrishnan brought home to the West that the cultures and civilizations of the East are as great and valuable as those of the former, that they have their unique contributions to make to the advancement of a common human civilization, and that the preservation, study and mutual appreciation of all of them had to be promoted by these international bodies."

The Normative Current—A Conclusion (see Appendix)

It is maintained that applying the 'constitutional law of peace' (*Droit constitutionnel de la paix*),¹²¹ to put the system of collective security into effect, would be of immense benefit; it enables single, 'individual' nations to take positive action, and enter into a state of contract with the U.N. Security Council to start the empowerment of the United Nations "by law." As far as I can see, in the literature, this aspect has not received the attention it warrants.¹²² The true meaning of the Transitional Security Arrangements in the U.N. Charter, which is intimately related to the issue of the *Normative Current* of constitutions, has been obscured, perhaps deliberately. In 1950 within no time the window of opportunity to embark on an entirely new course of action that would have resulted in abolishing war as an institution closed and largely due to German war-mongering the chance to empower the United Nations was missed. Chances in 1961 (McCloy-Zorin Accords), 1984 and the beginning of the 1990s were equally squandered.

If this article gives the impression that Germany alone is the culprit (and may have become guilty of criminal omission),¹²³ the fact is that it is all of Europe which is historically

¹²¹ Boris Mirkin-Guetzévitch, *Le droit constitutionnel et l'organisation de la paix (droit constitutionnel de la paix)*, *Recueil des Cours*, vol. 3, no. 45 (1933), pp. 676-773, and Boris Mirkin-Guetzévitch, *La Renonciation à la Guerre dans le Droit Constitutionnel moderne*, *Revue Hélienne de Droit International* vpl. 4 (1951), pp. 1-16.

¹²² However, even a realist such as Robert Strausz-Hupe, a founding member of the U.S. Foreign Research Institute, in 1992 made the following statement before the U.S. Commission on Improvement of the Effectiveness of the United Nations: What is needed first and foremost in order to make the United Nations more effective and viable is candor. The peoples of the world need to be told that a more effective United Nations comes at a price and that this price is the delegation of national sovereignty; in the beginning, not all of it, but as the process continues, more and more of it. Quoted by John Logue, Introduction, in: Mortimer J. Adler, *How to Think About War and Peace* reprint, New York, Fordham University Press 1995 (1944), pp. xxvi-xxvii.

¹²³ I am wondering whether the German policy of not implementing its constitutional provisions for initiating the process of empowering the United Nations, collective security and compulsory jurisdiction of the international court isn't mainly aimed at the United States which twice in the last century foiled the German ambition at hegemony in Europe and the world. In the absence of an effective U.N. system the U.S. would then (as it did) unilaterally assume primary responsibility for international peace and security, and in that way, since this cannot work in the long run, get itself into a mess. This would be Germany's revenge. On

and legally responsible for many of the atrocities and wars of the past 500 years, and therefore has an obligation to take action and reverse the trend toward ever more violent conflict, environmental degradation and social dissipation. Nevertheless, in the twentieth century this European *Bringschuld* has culminated geographically in the central region of Europe which therefore has been assigned the special, legitimate task to achieve the desired result and turn things around. If Noam Chomsky exposes American imperialism, he is also talking about Caucasian Europeans who 500 years ago started to kill and take over the land of the Native Americans. To solve this problem, I believe, it is necessary to go back to the root causes, and that means that to pave the way out of the dilemma is a task only the Europeans can accomplish. In this I am inclined to agree with Robert Kagan when he complains that having entered “a post-historical paradise of peace and relative prosperity,” regarding its political role to exercise its power to “produce a ‘truly multipolar’ twenty-first century,” Europe has not fulfilled its “early promise ... during the 1990s,” else “the world would probably be a different place today.”¹²⁴ Already more than a hundred years ago Alfred Hermann Fried had stated that to “proclaim the world organization,” one must recognize “that in large parts it already exists ... and that the thinking man needs only to put the finishing touches to this huge structure ... to give the whole a uniform facade. You may call this facade whatever you like: United States, Federation, Empire, *organization* must be its essence.”¹²⁵

APPENDIX—The Normative Current

1946, FRANCE: On *condition of reciprocity*, France accepts the limitations of sovereignty necessary for the organization and defense of peace. (Preamble of the Constitution of 27 October, stands reconfirmed in the Constitution of 4 October 1958)

the other hand, an interesting question is: who are the people in the U.S. that have an interest in Germany blocking the transition to collective security and disarmament, indirectly encouraging Germany's politicians not to implement its constitutional peace provisos?

¹²⁴ Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order*, Knopf Doubleday Publishing Group 2007, pp. 3 and 20-21.

¹²⁵ Alfred Hermann Fried, *Organisiert die Welt! (Organize the world!)*, *Die Friedens-Warte* (January 1906), vol. 8, no. 1, pp. 1-3.

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1947, JAPAN: We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. ... We recognize that all peoples of the world have the right to live in peace, free from fear and want. (Preamble) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means for settling international disputes. - In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential will never be maintained. The right of belligerency of the state will not be recognized.¹²⁶ (Article IX of the Constitution of 3 May)

1948, ITALY: Italy renounces war as an instrument of offense to the liberty of other peoples or as a means of settlement in international disputes, and, *on conditions of equality with other states*, agrees to the limitations of her sovereignty necessary to an organization which will ensure peace and justice among nations, and promotes and encourages international organizations constituted for this purpose. (Article 11 of Constitution of 1 January)

1949, GERMANY: (1) The Federation may by legislation transfer sovereign powers to international organizations.¹²⁷... (2) With a view to maintaining peace the Federation may enter into a system of mutual collective security; in doing so it shall consent to such limitations upon its sovereign powers as will bring about and secure a peaceful and lasting peace in Europe and among the nations of the world. (3) For the settlement of disputes between states, the Federation shall accede to agreements providing for general, comprehensive and compulsory international arbitration. (Article 24 of the Constitution of 23 May)

1949, COSTA RICA: Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws [of the land] (Article 7) The Army as a

¹²⁶ I have argued that Article IX is a syllogism, and the last sentence of Article IX the 'conclusion', which is generalizable to apply to all peoples, generating what I have called the "non-recognition principle." Klaus Schlichtmann, *The Ethics of Peace: Shidehara Kijuro and Article 9 of the Constitution*, Japan Forum, vol. 7, no. 1 (April/spring 1995), pp. 43-67.

¹²⁷ The German article was based on the "corresponding regulation of the French Constitution." At the Constitutional Convention of Herrenchiemsee in August 1948 the issue was discussed whether the German article should also specify the condition of reciprocity. This was rejected. The Convention Committee stated that it was "aware that (this meant that) the German people would be called to take the initiative (in advance of all other states), but it is of the opinion that after the things that have happened in the name of the German people, such an initiative (Vorleistung), which will be followed by corresponding (legislative) action of the other states, is advisable/in order."

permanent institution is abolished. ... (Article 12) Public treaties and international conventions extending or transferring certain jurisdictional powers to a communitarian juridical order for the purpose of realizing common regional objectives shall require the approval of the Legislative Assembly by a vote of not less than two thirds of its entire membership. (Article 121, No.4, paragraph 2, Constitution of 7 November)

1950, INDIA: The State shall endeavor to - (a) promote international peace and security; (b) maintain just and honorable relations between nations; foster respect for international law and treaty obligations in the dealings of organizes people with one another; (d) encourage settlement of international disputes by arbitration. (Article 51) ... Parliament has exclusive power to make laws with respect to ... 13. Participation in international conferences, associations, and other bodies and implementing of decisions thereat. (Article 246, Constitution of 26 January)

1953, DENMARK: Powers which according to this constitution rest with the authorities of the kingdom, can, through a bill, to a specifically defined extent, be transferred to international authorities, which are instituted *by mutual agreement with other states* to promote international legal order and cooperation. (Article 20, of 5 June)

(Belgium, 1971, Luxembourg, 1973, Greece, 1975, Sweden, 1976, Portugal, 1976, Spain, 1978, Austria, 1981, Switzerland, 1982, The Netherlands, 1983, Albania, 1998, Norway, Ireland¹²⁸ and Chechnya¹²⁹ adopted similar provisions.)

¹²⁸ Norway and Ireland are special cases, and their constitutions date back to the inter-war period and earlier.

¹²⁹ Chechnya on 12 March 1992 adopted the following Article 6: "Chechen Republic respecting of the right and freedom of the peoples is guided by conventional principles and norms of international law in external policy. It aims at the general and fair peace based on common human values; to close, business and mutually advantageous cooperation with all countries. Having acted for expansion of international community based on domination of right Chechen Republic can enter in international organizations, systems of collective safety, interstate formations." However, I believe that since after the end of the Cold War the Europeans did not take legislative action to empower the United Nations, the newly adopted Chechnyan Constitution of 27 March 2003 no longer has this article.

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