You may have seen what James Reston wrote about Eugene Rostow, our first panelist, yesterday.

"Eugene Rostow," wrote Reston, "who is no pacifist, and was recently fired"—is that true?

**Mr. Rostow: Correct.**

**The Chairman:**

... recently fired as head of the Reagan Administration’s Arms Control and Disarmament Agency, took a parting shot at this conflict between missiles and principles. "Unless we confront these facts," he told the Russians and others at the UN, "and restore general and reciprocal respect for the principles of Article 2(4) of the Charter, the slide toward anarchy will engulf us all. . . .

"Until we take effective steps to see to it that the Charter, the arms control treaties and the legally binding decisions of the Security Council are obeyed, until we can verify and assure compliance with their terms, much of what passes for arms control will be a sterile exercise at best and often, alas, no more than a charade. . . ."

**Remarks by Eugene V. Rostow**

Yes indeed, I was fired, and I came back to the office and reported this to a couple of my associates, including Paul Nitze. I said it was the first time in my life I’d ever been fired. Paul replied that he’d been fired twice.

I will do my best to answer Dick Gardner’s questions, but I will say a few words first about the evolution of the system and the nature of these claims. They rest in immensely deep forces. The notion that peace was the primary business of the foreign policy of states began to be articulated very strongly in the 18th century. There were of course prior traditions, but it is principally a legacy of the enlightenment of the 18th century, compounded and brought into focus by the experience of the Napoleonic wars.

The beginning point of the modern evolution of the ideas regarding the use of armed force in international relations is the Congress of Vienna, and the results achieved by the great men assembled there. The world community that emerged from the Congress of Vienna was changed because of the acceptance—conscious or unconscious—by the great powers of a special responsibility to keep the peace, to act in concert to prevent controversies from getting out of hand, to use force with moderation, and to assert their influence in the interest of a general system of peace in which the right of all states to exist would be respected, and in which certain forms of moderation would become habitual.

The result of this was quite extraordinary. It is an irony of history that the leaders at the Congress of Vienna—Castlereagh, Metternich, Talleyrand, Alexander—acquired a very bad reputation in the popular mind. If, however, we compare what they accomplished to what we have accomplished since 1914, I believe we must treat them with immense respect, even awe. What they achieved was to establish an environment which resulted in a century of peace, and an atmosphere in which all sorts of progress on many fronts could and did take place.

That system, of course, broke down in 1914, and the impulse of the nations was to recreate it after the war, with modifications based on an evaluation of what went...
wrong. In 1919, though, there was neither the power nor the will to vindicate that approach to the problem of peace, and without American or Soviet support, the system again failed 20 years later.

In San Francisco, in 1945, the system was reconstructed again, this time with a much stronger assertion of the primacy of peace in the system of world politics, governed by the great powers, in part through the United Nations. On paper, at least, the Security Council is given the extraordinary power, by delegation from all member states, to make binding decisions, and indeed to conduct military operations in the interest of preventing war, and even fighting it. Of course, that part of the system was never achieved. The military committee and military forces of the Security Council were never established because of the circumstances of the cold war.

That fact meant that a much greater load was imposed upon individual and collective self-defense than would otherwise have been the case. If we had had a system of collective security managed by the Security Council, the strain on article 51 would necessarily have been less. Given this reality, in the early days of the United Nations, in the late 1940s, a very strong assertion was made, led by the United States, of the importance of arrangements of collective self-defense under article 51. This started with the NATO treaty and expanded in the Eisenhower years to a network of arrangements in other parts of the world. These were consciously designed to fill the void of the failure to achieve agreement with the Soviet Union, and the manifestation of the fact that the Soviet Union did not regard article 2(4) as binding on itself. Immediately following the war, the U.S.S.R. began a policy of vigorous expansion, sustained by the international use of force in ways which, in my opinion, violated the prescriptions of article 2(4).

It is perfectly true, as Professor Gardner said, that states do not declare that they are violating article 2(4); rather, they say they are exercising their inherent and sacred right of self-defense. Sometimes that involves shooting the president of a republic and replacing him, so that the new president can ask the Soviet Union to come in, as in Afghanistan. Many other such tributes to the definition of hypocrisy have been manifested since 1945.

I would like to address Professor Gardner's third question, on whether there is any consensus today between Communist and non-Communist nations. I believe there is much more agreement about the interpretation of articles 2(4) and 51 than there appears to be in the turbulence of active politics. I suspect that students in Moscow answering exam questions on this topic would answer them in much the same way as students in this country. I say this because I think these ideas really are not as complicated as they are often made out to be. It is true that article 51 is one of the worst drafted sentences in history. That is common, however, and is natural under the circumstances of San Francisco, where a considerable and very respectable group of states felt that article 51 was altogether unnecessary in that it reflected an inherent right of sovereignty not open to challenge and better left to the mystery of things. The other view prevailed, and, I think, prevailed wisely. There are many anomalous elements in article 51, but its interpretation through the pattern of state practice has given it fairly obvious meanings, sometimes so obvious that people have preferred to ignore them. The language is not so ambiguous that one may do whatever one pleases.

In general, this consensus on certain Charter principles can be seen not in what the Communist states do or vote for in the United Nations, but in the discreet silences in their popular and scientific literature. The most amusing of those silences is the treatment they afford to the self-determination of peoples, an idea that they use politically
and militarily on a considerable scale. How, though, does that apply in the Soviet Union, which after all is an aggregation of peoples? The answer is that anyone who has enjoyed the fruits of Soviet rule or protection would be insane or a tool of the capitalist imperialists—or both—to want to leave the Soviet Union or its empire. That is how the Soviets reconcile their enthusiasm for self-determination for others and their obvious state practice.

As to the remainder of Dick Gardner's third question—on consensus within the non-Communist world, among the industrialized democracies, and in the United States—on the surface there is no consensus. There are considerable differences among people of different legal traditions, as well as between those who believe in a contextual interpretation of words and those who find it difficult to get beyond a literal reading of texts. Still, in the experience of the various U.N. legal bodies that have attempted to improve this law, there is a very striking fact. There has been for many years great enthusiasm among some for the recognition of an international legal right to use force in behalf of movements of national liberation or self-determination of peoples. There have been many attempts to reconcile support for movements of national liberation in colonial and noncolonial circumstances on the one hand, and the prohibition of article 2(4) (which, of course, is addressed to states) on the other. These attempts have totally failed. No formula has been found which the advocates of this position would be willing to have applied to themselves.

One can see the conditioned reflexes of the state system in action in behalf of the original and abiding concept of the Charter in controversies that are not within the parameters of the cold war. The Biafran case is a good example. It was taken for granted that the Soviet Union and Great Britain and Egypt could help Nigeria put down a rebellion against its authority, and that no state was allowed to help the Biafrans. The matter was not even discussed; it was instinctive. This demonstrates the true law, through the pattern of state practice. Similarly, one could cite the manifest opinion of a majority of states—notwithstanding the Soviet veto—in the Bangladesh controversy.

Professor Gardner's first question asks us to apply the principles of the Charter to concrete cases. Israel's occupation of Lebanon—it isn't an occupation; I would say Israel's campaign in Lebanon—is not really a complex case. It is the same idea that lay behind British and American movements in Lebanon and Jordan in 1958. It was classically described by President Monroe in 1818 when he explained to Congress and the world what he had done in sending General Andrew Jackson into Spanish Florida, from which the Seminole Indians, accompanied by a colorful band of freebooters and brigands, were raiding in Georgia. He said that the Spanish authorities had declined to prevent these hostile activities, and that there was only a derisory force in Florida, and that therefore he was sending the troops in to do what Spain should have done. The United States had no territorial designs on Florida, Monroe said, and would leave when the danger had been removed. This case illustrates the absolute obligation of a state to prevent its territory from being used as a source of hostile actions against another state. One could also cite the Alabama arbitration of the 19th century, or the Corfu Channel Case.

In the Middle East context, not only have there been raids over the frontier, but the conduct of worldwide military operations by the Palestine Liberation Organization against Israel. In the Israeli incursion into Lebanon, massive preparations on a very large scale for an armed attack were revealed, and mobilization has always been considered a form of attack. Lebanon could not control the situation. The Palestine Liberation Organization (PLO) fighters had been thrown out of Jordan, and Egypt
and Syria would not tolerate their presence; they were in Lebanon only because Lebanon was weak.

The most interesting case on Professor Gardner’s list is the Israeli attack on Iraq’s nuclear facility. In fact, there were two attacks: the Iranians tried as well. This case demonstrates the urgent need for effective nonproliferation controls, as well as even more drastic efforts to curb, limit, and abolish nuclear weapons. The principle of article 51 which is applicable here is that stated by Elihu Root, the great Secretary of State and Secretary of War, who said that the principle of self-defense does not require a state to wait to deal with a threat until it is too late to do so. Israel’s attack on the Iraqi nuclear facility was entirely justified under this principle. There was no question about what was going on at the facility, and this problem goes to the nature of the nuclear threat. We have been struggling desperately to try to enforce the principles of the nonproliferation treaty and to encourage the Soviet Union to cooperate in its enforcement, in order to minimize the risk of such developments as that in Iraq.

Soviet/Cuban support for guerilla forces in El Salvador is a violation of article 2(4), for the reasons I’ve mentioned—that nobody has been able, in a way which is tolerable to the world community, to distinguish guerrilla activities against the integrity of a state from those on behalf of national liberation movements or the self-determination of peoples. Or, to put it another way, to distinguish between nice insurrections that we would like to see supported, and bad ones that we’d like not to see supported. It is exactly this principle that meant that German and Italian support for General Franco in the 1930s was a violation of the Covenant of the League of Nations, and that efforts to help the Spanish Republic were not. This is why the nonintervention principle of the Allies at that time was such a lamentable affair.

U.S. support for guerrilla forces in Nicaragua is simply a form of self-defense, in the sense that if Nicaragua is playing that game it can’t expect to be immune. That is the justification, if any, for Central Intelligence Agency (CIA) activities in general.

The situation in Central America is a very miserable affair, and it demonstrates what the Secretary General said about the breakdown of the system and the slide toward anarchy. I completely agree with the Secretary General, and I think his report defines the problems we face. In a speech in October 1981, I recommended, as he did in his report, a recommitment to the enforcement of article 2(4).1

A very good place for the United Nations to begin this course would be to make a tremendous effort in the Iraq-Iran war, which I am glad to see the Secretary General is doing. The attack by Iraq on Iran had absolutely no conceivable justification. I don’t believe Iraq even pretended to invoke article 51. Iran was weak, and Iraq simply thought it was a good time to grab the oil. This is a vivid example of the spread of the practice of aggression from the area of the cold war to other areas. It is infinitely dangerous, and I think we should all welcome and applaud the leadership the Secretary General is showing.

The Chairman:

Our next panelist is Brian Urquhart,* who had a great deal to do with the writing of the U.N. Secretary General’s annual report.

That report called for a recommitment to the Charter, not only in general terms but also in very specific terms. It called on U.N. member states to study urgently the

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*Under Secretary General for Special Political Affairs, United Nations.

means by which peacekeeping missions could be strengthened, citing an increase in their military capacity or authority as one possibility. It also stressed, as another possibility, that the authority of peacekeeping operations could be underpinned by guarantees, including explicit guarantees for individual or collective supportive action. The Secretary General also announced in his report that he would play a more forthright role in bringing potentially dangerous situations to the attention of the Security Council, and that he intended to develop a wider and more systematic capacity for fact-finding in potential conflict areas. I hope that, in addition to other things he may wish to say, Brian Urquhart might give us his ideas on how the United Nation's role in peacemaking and peacekeeping and the enforcement of Charter norms on the use of force could now be strengthened.

REMARKS BY BRIAN E. URQUHART

I would like to start with a personal note, by saying that when I joined the United Nations, in 1945 in London, I had been in the British Army for six years. That experience, which was common to a great number of people in those days, certainly made one feel very strongly about article 2(4), and made it seem very real and very important, if slightly incredible. I do not think there is anything wrong in having a principle from which everyone falls away, provided they bear it in mind as a flag on a distant hill to which they are going to rally in the end. I have no doubt whatsoever that we are going to come to it. Professor Rostow in his speech in the United Nations was extremely forceful in connecting the bilateral process of arms control and disarmament, especially in the nuclear area, to the system of international security, which was set up in the United Nations after the war by the leaders of the victorious alliance as the alternative to another arms race and a steadily gathering threat of World War III.

I think it is very important to come back again and again to the origins. It was not a quixotic, enthusiastic group which wrote the Charter. It was the leaders of the alliance, who had been scared out of their wits by the process by which they had got into World War II, and were determined it should not happen again.

There were, it seems to me, two things wrong with the Charter in retrospect. One is that the Charter is an overwhelmingly Western concept, and that may be part of the trouble we have with it now. The second is that it was, of course, based on an extremely optimistic view of the future of the alliance. The effectiveness of the security system foreseen in the Charter is based on the assumption that the wartime alliance would continue into peacetime, and would be capable of dealing, at least within the United Nations, in a highly constructive and statesmanlike manner with threats to the peace. This is precisely what has not happened. The unanimity of the permanent members, which was the cornerstone of the structure of collective security in the United Nations, has been a false assumption from the very start.

That has meant that the organization has from the very beginning not only been founded on a geopolitical fault—the East-West split—but has also been deprived of what was supposed to be its most novel asset: the capacity for enforcement and coercion in the interest of peace. There has throughout even been a lack of unanimity in decisions on what a given situation was about. This has been solved to some extent by the activities of the Secretariat, but on highly controversial questions even that will not do. For all these reasons it is well to mourn article 2(4) a bit, but not to conclude that it is, in fact, dead. The trouble is that once the assumption of unanimity of the permanent members was broken, much of the effectiveness of the Security Council was lost. Having no powers of coercion or enforcement, the Council fell back on improvisation, on consensus, on conciliation, on good offices, on using the Secretary