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Chequers Seminars on  
Foreign Policy, October 1984

FOREIGN POLICY

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June  
July 1984

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10 DOWNING STREET

THE PRIME MINISTER

19 October 1984

IN CONFIDENCE

Dear Sir Arthur,

Thank you for your letter of 2 October. I am glad that you were able to participate in our seminar which my colleagues and I found most stimulating.

Thank you also for your further thoughts on defence priorities. I fully accept your point about the importance of sustainability. Clearly all of us in NATO can and should do more in this area. Indeed, we have already taken steps ourselves to increase stocks and Michael Heseltine has been instrumental in encouraging our European allies to make improvements.

As you say, however, our overriding aim must be to avoid the risk of war breaking out at all. I readily acknowledge that in seeking to achieve this there may be different approaches to the question of what might influence an enemy's perceptions, and so his calculations, most significantly. But, as you know, our judgement - and it is a judgement which has been shared by successive British Governments - is that an independently controlled British strategic nuclear force is an essential element not only of our national deterrent posture but also of the deterrent posture of the NATO Alliance as a whole. I do not,

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moreover, share your implied judgement that financial considerations will force us to choose between Trident and improved sustainability in the conventional field. There is room in the defence programme for both.

May I finally correct one point of fact? The decision to have four Trident boats rather than five was not determined principally by financial considerations. Rather, it was judged that four boats, especially with their improved reactors, would suffice to sustain a minimum deterrent force with the necessary degree of insurance.

Yours sincerely

Raymond Stobart

---

Sir Arthur Hockaday, KCB, CMG.



RF



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MAIN BUILDING WHITEHALL LONDON SW1A 2HB

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01-218 9000 (Switchboard)

MO 9/13

17th October 1984

*Dear Mr. Esq.*

Your letter of 3rd October asked for a draft reply to Sir Arthur Hockaday's letter of 2nd October, following the Chequers Seminar. A draft is now attached for the Prime Minister's consideration; it has been approved by the Defence Secretary.

*Yours etc,*

*Richard Mottram*

(R C MOTTRAM)

C Powell Esq



DRAFT

Please type for  
PM's signature  
OH

NATO STRATEGY

Thank you for your letter of 2nd October. I am glad that you were able to participate in our seminar which my colleagues and I found most stimulating.

Thank you also for your further thoughts on defence priorities. I fully accept your point about the importance of sustainability. Clearly all of us in NATO can and should do more in this area. Indeed, we have already taken steps ourselves to increase stocks and Michael Heseltine has been instrumental in encouraging our European allies to make improvements.

As you say, however, our overriding aim must be to avoid ~~the~~ risk of war breaking out at all. I readily acknowledge that in seeking to achieve this there may be different approaches to the question of what might influence an enemy's perceptions, and so his calculations, most significantly. But, as you know, our judgement - and it is a judgement which has been shared by successive British Government - is that an independently controlled British strategic nuclear force is an essential element not only of our national deterrent posture but also of the deterrent posture of the NATO Alliance as a whole. I do not, moreover, share your implied judgement that financial considerations will force us to choose between Trident and improved sustainability in the conventional field. There is room in the defence programme for both.

Sir Arthur Hockaday KCB CMG



May I finally correct one point of fact? The decision to have four Trident boats rather than five was not determined principally by financial considerations. Rather, it was judged that four boats, especially with their improved reactors, would suffice to sustain a minimum deterrent force with the necessary degree of insurance.

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FILE

(CAMAFFA)

10 DOWNING STREET

9 October, 1984

*From the Private Secretary*

The Prime Minister has asked me to thank you for your letter of 8 October. We did in fact take a chance and circulate your paper at the seminar. Thank you for the retrospective authority!

The Prime Minister was very sorry that you missed the discussion which she found stimulating even though - and this will hardly surprise you - no real conclusion was reached.

(C.D. Powell)

Professor Rosalyn Higgins



# The London School of Economics and Political Science

(University of London)



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8th October, 1984.

Rt. Hon. Margaret Thatcher, M.P.,  
10 Downing Street,  
London, S.W.1.

*R9*  
*seminar*  
*MS*

*Dear Prime Minister,*

Thank you very much for your letter of 26th September. I am extremely sorry not to have replied sooner, but I have only just returned from an extended period working in France.

I very much hope that my inability to reply to your letter in time did not prevent your circulating my note to the other participants in the seminar, which is of course what I would have wished. If this is not the case, and if you would still think it useful, I would of course be happy for it to be circulated now.

I am so sorry I was not able to be at what I imagine must have been a very interesting discussion.

With best wishes,

*Yours sincerely,*

*Rosalyn Higgins.*

Rosalyn Higgins



Foreign Policy: Chequer Seminar 6/86



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RAMAET

## 10 DOWNING STREET

*From the Private Secretary*

8 October, 1984

### SEMINAR ON NATO STRATEGY

You asked me to set down, rather more fully than was possible in my summary record, Sir Geoffrey Howe's remarks at this seminar.

Distilling a number of illustrious interventions into a single statement, I come up with the following account.

Nice distinctions between various levels of nuclear response were too arcane to influence the public debate on nuclear weapons. The crucial fact was whether there should be a nuclear element to NATO's strategy or not.

In a conflict, the existence of battlefield nuclear weapons could have a key influence. A decision to use them would be a big step, perhaps a crucial one. A high price was being paid in public relations terms for the existence of these weapons. If the experts believed that their military value was in doubt, then perhaps we should be better off without them.

The political cohesion of the Alliance was of first-rate importance. NATO's strength derived in large part from the Soviet Union's perception of its unity and commitment to self-defence. Political divisions in the Alliance could put at risk the US commitment to Europe's defence. It was important, too, to maintain the intellectual coherence of the Alliance vis-à-vis the Soviet Union and to be able to deal in a firm and united way with Soviet proposals that, if allowed to gain ground, would undermine the credibility of NATO's strategy (e.g. a nuclear freeze). A strong commitment to arms control was an essential element in maintaining the support of western public opinion for NATO.

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New technology was unlikely to affect the essentials of NATO's current strategy. Any advance by one side would be matched by the other.

As regards an out-of-area role for NATO, the main weakness lay in the unco-ordinated nature of the activities of countries with an out-of-area capability. There were interesting possibilities for improvement here.

This does not do full justice to his interventions. The seminar was conducted as a debate with opinions expressed in short bursts rather than lengthy statements. But I think it gives the essence.

(C.D. POWELL)

C. Budd, Esq.,  
Foreign and Commonwealth Office.

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For  
Policy  
Services



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*From the Private Secretary*

ECC  
a Sir R Armstrong  
Sir A Adair  
Sir C Whitmore  
Sir P Cadock  
Chief Defence Staff  
Mr Cartledge  
Mr Goodall

3 October 1984

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SEMINAR ON CONFLICT OF PRINCIPLES IN FOREIGN POLICY

I enclose a note summarising the discussions held at Chequers on this subject on 1 October.

I am sending copies of this letter and its enclosure to Richard Mottram and Philip Francis (Ministry of Defence), to Stewart Eldon, and to the official participants in the Seminar.

CHARLES POWELL

Len Appleyard, Esq.,  
Foreign and Commonwealth Office.

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SEMINAR ON CONFLICT OF PRINCIPLES, CHEQUERS, 1 OCTOBER 1984

This seminar - a list of the participants in which is attached - addressed the question: Is Intervention Ever Justified?

The most notable feature was the failure of participants to fulfil their stereotypes. Academics raged red in tooth and claw through the jungle of law and morality proclaiming the primacy of national interest. Politicians and civil servants pleaded for moral guidance and internationally accepted rules.

Discussion turned first to the legal aspects. It was noted that international law recognised a number of grounds for intervention (generally those listed in the paper circulated to the seminar). But there was disagreement as to how far these could or should act as a constraint on national actions. Some argued that the situations in which intervention in another state had to be considered were usually on the margins of international law. A great deal turned upon the precise construction put on the facts of a particular situation. Experience showed that these could easily be twisted to suit a convenient interpretation, for example, manufactured invitations to intervene. The only realistic course therefore was to determine where one's best policy interests lay. The law could not rule, though legal arguments could generally be developed to support decisions taken on policy grounds. If international law supported a decision taken on grounds of national interest, that was an uncovenanted bonus.

Others were more rule-oriented, while believing that existing international rules in fact permitted intervention in quite a wide range of situations, for instance intervention on request or with consent. It was important



not to flout these rules, indeed they should be strengthened. Otherwise carte blanche was given to the Soviet Union to intervene when and where it wanted. It was in our broader national interest that there should be a framework of international law, which was observed in practice.

A brave attempt was made to steer a middle course between these two views. This noted the ectoplasmic quality of international law in this area and the consequent ability of both the Soviet Union and the West to appeal to the law to justify what they chose to do for reasons of state. One had therefore to take account of the results of an intervention. Interventions should be carried out rapidly, successfully and leave a demonstrably better situation than existed before. Applying this to the American invasion of Grenada, one might say that in law the US action was wrong but that it would be hard in the light of the facts to get a jury to convict.

The only conclusion which could be reached was that we needed a respectable framework of international law which by and large we should observe unless there was very good reason not to do so.

The law not having provided much of a guide, discussion of moral aspects proceeded rather gingerly. Indeed the frontier between law, morals and realpolitik seemed at times invisible. One view seemed to be that there were virtually no relevant moral considerations, a situation which might be summed up as Thucydides rules OK: the strong do what they will, the weak suffer what they must. Various rights could be adduced, for instance a right of vicinage entitling a strong country to intervene in the affairs of a smaller neighbour if these were conducted in a way to pose a threat to its interests. Lord Salisbury's justification of the partition of Poland on the grounds that it was a ceremonious



anarchy and thus a danger to its neighbours was recalled. Both considerations were in practice no more than recognition of spheres of influence and large countries right to act as they will within them.

Against this it was represented that countries often believed themselves to be guided by moral considerations when intervening. Theodore Roosevelt's citation of "chronic wrongdoing" as grounds for intervention was quoted. More widely it was argued that the notion that a particular action was regarded internationally as "wrong" still carried force, even though situations which were plainly "wrong" - Amin's Uganda, Pol Pot, Bokassa's tyranny - had been tolerated and not led to intervention. It was also argued that there was a clear moral basis for international law in this field in the sovereign independence of each state and its right to self-determination. (This latter claim led to the usual fruitless argument about who is and is not entitled to self-determination).

A suggestion was made that a distinction could be drawn between interventions which occur as part of the global East/West conflict and others. There was a moral distinction between the US and Soviet systems. The US (or like-minded countries) was justified in intervening to sustain justice and democracy, while Soviet intervention could never be justified since its goal was to establish tyranny. It was recognised that these criteria were highly subjective. They also raised once again the mirror image problem: the Soviet Union could rely on the same body of international law and the same terms justice and democracy (though with different meaning) to justify its own interventions. Gromyko's proposal at the UN for a resolution demanding renunciation of "actions aimed at forcible change or undermining of the social systems of sovereign states" was a vivid illustration of this.



It was suggested that the UN Charter offered the best guide to what was and was not permissible. It was the only rule-book on which an international consensus existed. Condemnation by the UN remained a useful sanction, even against the Soviet Union (a view disputed by others).

Discussion moved on to practical measures to limit interventions. It was suggested that we confronted a new situation, with the existence of tiny sovereign states peculiarly vulnerable to subversion. The words of Lynden Pindling at the last CHOGM were recalled: if we don't have the capacity to defend ourselves, we don't deserve to be independent. The problem might be contained through encouragement of regional pacts. An alternative would be to follow the path of the Austrian State Treaty which set limits both on foreign policy and the level of armaments. Groups of small states might get together, accept such limitations and then seek specific guarantees from the super-powers. In considering remedies, it had to be borne in mind that smaller states, in particular, might be threatened with types of intervention other than straightforward armed intervention - for example, arms embargoes, selective trading embargoes, economic blockade, or 'political' intervention, i.e. internal subversion.

To meet the yearning for clarity an attempt was made - by the academic participants - to establish some guidelines thus:

(i) it is the policy of the UK to adhere to the rules of international law;

(ii) in applying these rules, the governing consideration will be the UK's commitment to democratic principles, the maintenance of democratic regimes and preservation of human rights;



(iii) at the same time, the UK recognises that there are limits beyond which these principles can be applied only at an unacceptable political price.

Held up to the light by the official participants, it was pointed out that 'Soviet Union' could be substituted for 'United Kingdom' throughout. Alpha for effort but only gamma for utility.

The main points noted in conclusion were:

- there was a framework of international law and most wanted to see it built on and reinforced;
- moral factors were subjective: in the end the only guidance was what you believed to be right;
- the burden of proof to justify an intervention lay with the protagonist. It needed to be justifiable when you did it not just post facto.

While it would be nice to have a clear set of rules, this was in practice all that was available.

At the subsequent restricted session there was some discussion of what UK policy should be, in the light of the previous discussion, in each of three possible scenarios affecting Nicaragua:

- an American airstrike to knock out MIG aircraft supplied to Nicaragua;
- a quarantine imposed on Nicaragua;
- a full-scale invasion



On the first, it was noted that MIG 23s would be too sophisticated for Nicaragua's real needs and could, with justification, be regarded as posing a threat to the security of the area. The Americans had already warned that supply of MIG 23s would be unacceptable. The Russians would probably be cautious about supplying them. If they did so, it would be an act of provocation and an American attack to eliminate the aircraft would be relatively easy to justify. But it was also argued that the Americans would suffer considerable damage internationally if they attacked the aircraft before the Nicaraguans had given evidence of intention to use them against other countries. It would also create an unhappy precedent, which might be used by the Soviet Union to attack American-supplied aircraft in Pakistan. Nonetheless, we should not condemn American action. We should say as little as possible, but point out that advance warning had been given.

Discussion of the implications of a quarantine was hampered by lack of precision as to what it would involve. Neither sanctions nor a blockade were thought at all likely to work. A blockade could cause us serious difficulties if, for instance, British ships were stopped and searched. The conclusion was that we should not want to take part in a quarantine but should not condemn it.

Full-scale military intervention was regarded as very unlikely. The risk of US forces being mired in a Vietnam-type situation would be high. The Pentagon were said to be against it. Our main problem was likely to be obtaining due warning of US intentions and obtaining due warning. It was suggested that we ought to speak to the American Administration after the Presidential elections with the aim of deterring them from any rash action. Against this, it was recognised that Central America was of crucial importance to them and we had little standing to



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contest their judgements. All that we could do was note that it was a situation of possible danger and keep as close as possible to American thinking. If the worst did happen we should try to avoid public condemnation of the Americans, while recognising that this would certainly mean distancing ourselves from most, if not all, other members of the European Community.

CDP

3 October 1984



SEMINAR: IS INTERVENTION EVER JUSTIFIED?

MONDAY, 1 OCTOBER 1984

LIST OF PARTICIPANTS

Prime Minister

Rt. Hon. Sir Geoffrey Howe, MP  
Foreign and Commonwealth Office

Rt. Hon. Michael Heseltine, MP  
Secretary of State for Defence

Rt. Hon. Baroness Young  
Minister of State, Foreign  
and Commonwealth Office

Rt. Hon. John Stanley, MP  
Minister of State for the Armed  
Forces

Sir Robert Armstrong  
Secretary of the Cabinet

Sir Antony Acland  
Permanent Under Secretary  
Foreign and Commonwealth Office

Sir Clive Whitmore  
Permanent Under Secretary  
Ministry of Defence

Field Marshal Sir Edwin Bramall  
Chief of Defence Staff

Sir Percy Cradock  
Foreign Affairs Adviser to the  
Prime Minister

Mr. Bryan Cartledge  
Deputy Secretary, Cabinet Office

Mr. Charles Powell  
Private Secretary to the  
Prime Minister

Mr. A.D.S. Goodall,  
Deputy Under Secretary  
Foreign and Commonwealth Office

Professor Derek Bowett  
Professor of International Law, Cambridge

Dr. Elihu Lauterpacht  
Reader in International Law, Cambridge

Sir Ian Sinclair  
Former Foreign and Commonwealth Office  
Legal Adviser

Colonel Jonathan Alford  
Deputy Director, International Institute  
for Strategic Studies

Professor Hedley Bull  
Professor of International Relations, Oxford

Professor Elie Kedourie  
Professor of Politics, London

Sir Anthony Parsons  
Research Fellow, Centre for Gulf Studies,  
Exeter

The Lord Thomas of Swynnerton  
Centre for Policy Studies

Mr. Peter Calvocoressi  
Author and former Reader in International  
Relations, Sussex

Attending Dinner only

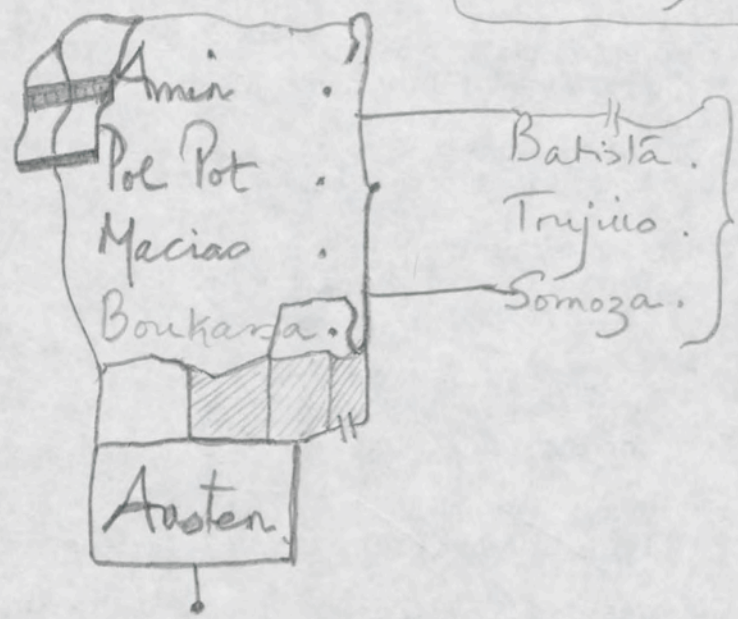
Professor Michael Howard  
Regius Professor of Modern History, Oxford



1) Counter-intervention - Angola.

2) intervention by consent.

= in case of civil strife =





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10 DOWNING STREET

*From the Private Secretary*

3 October 1984

SEMINAR ON NATO STRATEGY

I enclose a note summarising the discussions on NATO Strategy held at Chequers on 1 October. It covers both the full Seminar and the subsequent session restricted to Ministers and Officials.

I am sending copies of this letter and its enclosure to Len Appleyard (Foreign and Commonwealth Office), Philip Francis (Ministry of Defence) and to the official participants in the Seminar.

CHARLES POWELL

Richard Mottram Esq.,  
Ministry of Defence.

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SEMINAR ON NATO STRATEGY: CHEQUERS, 1 OCTOBER 1984

The Seminar - a list of the participants in which is attached - discussed the viability of NATO's strategy of flexible response and ways in which it could be implemented more effectively.

Several factors were suggested which made it timely to take a fresh look at the flexible response doctrine. These included the progressive enhancement of the Soviet capacity to attack on short warning, reducing the warning time which NATO could expect from 5/6 weeks to 2/3 days; the increased vulnerability of the process of reinforcing Europe from the United States by sea, given the Soviet capacity to attack convoys from an 800 mile stand-off; Soviet superiority in chemical weapons; NATO's possible loss of escalation dominance in the theatre nuclear weapon band of deterrence; and, more generally, the fact that the flexible response strategy, as enshrined in the NATO document MC 14/3, was now 17 years old and arguably in need of review.

There was, however, general agreement that flexible response was not so much a strategy as a description of whatever force posture the Alliance chose to adopt. Much of the discussion concentrated on the balance between the nuclear and conventional elements in NATO's strategy and in particular the proposition that growing doubts about the credibility of a general nuclear response meant that more attention had to be given to the Alliance's conventional capability.

There was no dispute that the nuclear element was an essential part of the Alliance's strategy. A conventional response alone was not an option: there would not be the money to pay for an adequate capability and it would not make the other side dispense with their nuclear weapons.

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The Alliance's nuclear capability deterred not only nuclear war but conventional war. In this equation, the Russians were less impressed by Alliance doctrine than by Alliance capabilities. In the absence of a nuclear element in NATO's deterrent posture, the Soviet Union could contemplate waging a "limited liability" conventional war. In terms of military "prizes", 30 per cent of the Alliance steel producing capacity lay within two hundred miles of the East/West divide as compared with only 9 per cent of the steel producing capacity of the Warsaw Pact: considered on this basis, the Soviet Union might be prepared to take the risk of losing a conventional conflict in Central Europe if the deterrent element of intermediate range nuclear weapons did not exist. A strategy was needed which provided maximum uncertainty about Alliance intentions together with the flexibility not to use nuclear weapons if such use could be avoided. Flexible response provided this.

There was some discussion of the "nuclear winter" phenomenon. This was agreed to be plausible as a hypothesis but unproven: scepticism was expressed about the statistics on which the theory was based, with regard both to the megatonnage needed to produce the nuclear winter phenomenon and to the duration of the phenomenon itself. Although the possibility of self-destruction, through a shared nuclear winter, might constitute some inhibition against a nuclear first strike it was pointed out that the sheer number of nuclear explosions needed to produce a nuclear winter should in themselves act as a sufficient deterrent without the added threat of the phenomenon itself.

The credibility of controlled nuclear escalation was examined. The point was made that a Soviet attack against NATO was likely to be motivated either by the belief that NATO weakness or disunity made unprovoked aggression a low risk option; or by sheer irrational desperation which could result, for example, from a Soviet belief that the

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United States was about to achieve a total military dominance in outer space which the Soviet Union could not challenge.

A danger was also seen in assuming too much rationality in nuclear exchanges: the decisions would be taken in conditions of extreme confusion and tension. Nice distinctions between the various rungs of the nuclear ladder might not be so relevant in actual practice. What mattered was that there should be a nuclear ingredient and a US readiness to risk all in the collective defence.

There was some divergence of view over the importance of readiness to envisage first use of nuclear weapons. Some saw this as a crucial element in deterrence. Others thought that too great a dependence on first use weakened flexibility. The political constraints on a decision to make first use affected its credibility. It was also divisive and caused alarm in public opinion. This was not an argument in favour of the Russian ploy of a no first use declaration. A no first use "agreement" would in any case increase the attraction to the Russians of a conventional surprise attack. It meant putting the emphasis in public discussion on deterrence rather than on threat of first use.

There was considerable debate on the utility of battlefield nuclear weapons. On the one hand it was argued that they would be useless in the likely circumstances of conflict in Europe in which Soviet and Alliance forces would be intermingled. It was doubtful that the Germans would ever be persuaded to agree to their use. Nor was there much likelihood of agreement in the Alliance on cross-border use. The dual capability of the weapons systems involved was a de-stabilising factor because it would be impossible to tell whether an enemy attack was directed at the nuclear or the conventional capability and thus what should be the appropriate response. If the military experts doubted the



utility of battlefield nuclear weapons, why pay the high political price of maintaining them? Savings from removing them could be used to strengthen conventional forces. Before long the prime military objective of nuclear artillery, namely to inhibit Soviet troop concentrations forward, would in any case be attainable by the latest conventional artillery.

Against this it was argued that it would be a mistake to remove them altogether, though they might be further reduced. They were an essential link in the chain of flexible response. Removing them altogether would give the Soviet Union a licence to concentrate its forces in forward areas, a risk it could not otherwise take. Public opinion did not seem particularly concerned about these weapons and the considerable efforts already made to reduce them had earned little credit. Nor were the Germans pressing for their removal. This was a strong argument for maintaining the status quo. The weapons had been there a long time and caused no real problems, so why offer the Soviet Union a military bonus by withdrawing them? To do so might be regarded as evidence of the Alliance's vulnerability to pressures from the peace movement and would increase efforts to get rid of intermediate nuclear weapons. Any savings would be minimal since the warheads were American. An alternative would be to base the weapons further back, while still preserving the capability to use them on the battlefield.

All agreed that the effectiveness of the conventional arm of flexible response needed to be strengthened. Congress would insist on this and Lord Carrington was proposing to take an initiative. But views differed as to where the priority for improvements lay.

Some argued the need to put it all "up front". It was crucial for the Alliance to be able to do well in the first



two weeks of a conflict and this offered the best chance of deterring the Russians from starting one. Resources should go to strengthening forces already in Europe rather than to preparing reinforcements. The psychology of Soviet Commanders was relevant. They were cautious about getting involved, but when they did so it was on a big scale. This strengthened the need for the Alliance response to be rapid, particularly to a Soviet probe out-of-area.

Others pointed out that the way in which resources were allocated was consistent with the shop window philosophy i.e. priority for hardware rather than sustainability. But as the use of nuclear weapons became more difficult to envisage extra days of sustainability became more important. A conflict was more likely to start on the flanks than on the central front, which again strengthened the argument for sustainability.

There were few specific suggestions for improving conventional defence. Full account needed to be taken of changes in Soviet military doctrine. The possibility of redeploying American Forces out of South Germany to a more central role was raised, as was that of encouraging the Germans to make a greater investment in fortifications. The Alliance must continue to press ahead with new technology. But it should not be obsessed with the most advanced kit at the expense of the rest. More than just technical improvements were needed, for instance improved training and tactics. There was likely to be a particular problem over manpower: in Germany the number of men of military age would decline by 30 per cent in the next 15 years. There were glaring weaknesses in the air defence of the UK. It was made clear, however, that there could be no question of driving up UK expenditure on defence further. It was up to the other allies to do more.



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Great importance was attached to strengthening the political cohesion of the Alliance. Avoidance of war required not just a credible strategy for war itself but a demonstration of resolve and unity by all the members of the Alliance. The political battle, which was the decisive one, was being fought at the present time. This demonstration of will was also vital in order to preserve the US commitment to Europe's defence. A lengthening shadow over Western Europe of Soviet military superiority could lead to the establishment of a Soviet droit de regard over Western European policies and to a Soviet victory over the Alliance without a battle being fought. But if the political cohesion and confidence of the Alliance were to be maintained its military strategy, too, had to be credible and on two levels - those of its efficacy for the conduct of war and of its political cogency in time of peace. Particular attention was needed to the weaker brethren on the flanks.

It was as important to carry public opinion in the Alliance. Some thought that support for NATO in public opinion was as strong today as at any time in the Alliance's history. Others saw a risk of 'generational slip', because many of the issues and circumstances which originally shaped the Alliance seemed less relevant now. The problem was most acute in relation to the nuclear arm of deterrence. More needed to be done to bring home how dreadful conventional war would be and the role of the nuclear deterrent in preventing it. This could be done by portraying CND as 'conventional warmongers'. One should highlight the dangers of failure to deter rather than the risks of the deterrent. But a commitment to arms control was a necessary part of this.

Discussion of the role of chemical weapons was inconclusive. It was argued on the one hand that there was a tendency to over-estimate the military utility of such

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weapons. They were indiscriminating and therefore difficult to use. There was evidence that the Russians were interested in negotiating a ban. The Americans should be pressed to modify the verification measures they were demanding.

Others thought that, if a ban could not be negotiated quickly, the Alliance had no alternative but to acquire a chemical weapons capability of its own as a deterrent to Soviet use of such weapons. It was more credible to have a chemical deterrent to chemical weapons than to rely upon a nuclear one. This was an unfinished discussion.

It was pointed out that the main risk of conflict lay in Soviet probing of Western interests outside the main NATO area. This argued for a conventional capability able to undertake out of area operations. At the moment too much was left to the Americans. It was pointed out, however, that this would not be a NATO capability as such but one possessed by certain NATO members. The main scope for improvement lay in improved coordination of their activities.

There was some discussion of France's role, with the feeling that while France would not become reintegrated in the military structure of the Alliance, she was moving towards closer military cooperation, particularly with Germany. It was suggested that France's nuclear strategy was not credible even to the French military themselves.

No formal conclusions were drawn. But the Prime Minister noted a number of points which were not disputed. The concept of flexible response would remain viable and credible so long as the Alliance retained the full range of capabilities, including a nuclear capability, needed to defend itself and the will to use them. But the cohesion of the Alliance remained a worry. There was a risk of



complacency about the situation on the flanks, about the Alliance's ability to reinforce the central front and sustain a long campaign, as well as about the absence of an Alliance capability for chemical warfare. There was no doubt that there would be pressure from the Americans to strengthen its conventional capability. But there were financial constraints for the UK in any further increases in spending on defence. There had been no consensus as to where this strengthening was most urgently needed or whether changes in the nature of the UK contribution were desirable.

At the subsequent restricted session attended by Ministers and officials only, discussion focussed on the Foreign Secretary's minute of 28 September, and in particular the implications for Britain of greater Franco-German cooperation.

The feeling was expressed that the UK was not getting credit for its contribution to Europe's defence; that the Germans had to be made to realise how much we did for them and that our contribution was vulnerable unless it produced more consideration for our political and financial interests; that Franco-German collaboration was giving France an undesirable hold over the FRG in a wide area of European affairs; that there was a growing instinct on the part of the US to look to France and Germany for discussion of Alliance matters; and that France derived unjustifiably large benefits from its fractional involvement in the NATO infrastructure programme. It was noted that France liked to keep Germany in a posture of penance and that the Germans for their part did not seem averse to this.

Against this it was argued that there was a strong element of rhetoric in the Franco-German relationship; that the French hinterland was of such great strategic importance to Germany that the latter needed constant reassurance about the role which France would play in a conflict; that the UK



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was obtaining a healthy share of European defence procurement and not being squeezed out; and that, rather than try to divide and rule, we should seek areas of constructive collaboration with both France and Germany.

It was agreed that the proposals in paragraphs 11 and 12 of the Foreign Secretary's minute needed further work by officials before consideration by Ministers. Doubts were expressed about a number of the proposals: in particular we should not give the impression of running after the French. The aim should be to ensure that the UK was not frozen out of Franco-German collaboration; to encourage the French back towards a more integrated relationship with the Alliance; and to ensure that the UK received not just credit for but business from collaborative projects. It would be essential to avoid anything, for instance in WEU, which undermined NATO; and to seek collaboration only in areas where we have identifiable interests in common.

CDP

3 October 1984



SEMINAR ON NATO STRATEGY AT CHEQUERS  
ON MONDAY, 1 OCTOBER 1984'

---

LIST OF PARTICIPANTS

Prime Minister

Rt. Hon. Sir Geoffrey Howe, MP  
Foreign and Commonwealth Secretary

Rt. Hon. Michael Heseltine, MP  
Secretary of State for Defence

Rt. Hon. John Stanley, MP  
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Mr. Bryan Cartledge  
Deputy Secretary, Cabinet Office

Mr. Charles Powell  
Private Secretary to the Prime Minister

Professor Lawrence Freedman  
Professor War Studies, Kings College  
London

Professor Sir Hermann Bondi  
Chairman, Natural Environment Research  
Council

Sir Arthur Hockaday  
Secretary and Director General,  
Commonwealth War Graves Commission

Dr. Robert O'Neill  
Director, International Institute for  
Strategic Studies

Admiral Sir James Eberle  
Director, Royal Institute of International  
Affairs

Professor Peter Nailor  
Professor of History, Chatham House,  
Royal Naval College, Greenwich

Sir Clive Rose  
Former UK Permanent Representative to  
NATO

Professor Laurence Martin  
Vice Chancellor, University of Newcastle  
upon Tyne

The Lord Cameron of Balhousie  
Principal, Kings College, London



Iron Pol Scania



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P. ON

10 DOWNING STREET

Prime Minister

You may like  
to glance at the  
records I made of  
the two Foreign Policy  
Seminars.

I have sent them  
to Ministers and official  
participants only.

Thanks on  
my behalf C. D. P.  
3/18

M. S.



SEMINAR ON CONFLICT OF PRINCIPLES, CHEQUERS, 1 OCTOBER 1984

This seminar - a list of the participants in which is attached - addressed the question: Is Intervention Ever Justified?

The most notable feature was the failure of participants to fulfil their stereotypes. Academics raged red in tooth and claw through the jungle of law and morality proclaiming the primacy of national interest. Politicians and civil servants pleaded for moral guidance and internationally accepted rules.

Discussion turned first to the legal aspects. It was noted that international law recognised a number of grounds for intervention (generally those listed in the paper circulated to the seminar). But there was disagreement as to how far these could or should act as a constraint on national actions. Some argued that the situations in which intervention in another state had to be considered were usually on the margins of international law. A great deal turned upon the precise construction put on the facts of a particular situation. Experience showed that these could easily be twisted to suit a convenient interpretation, for example, manufactured invitations to intervene. The only realistic course therefore was to determine where one's best policy interests lay. The law could not rule, though legal arguments could generally be developed to support decisions taken on policy grounds. If international law supported a decision taken on grounds of national interest, that was an uncovenanted bonus.

Others were more rule-oriented, while believing that existing international rules in fact permitted intervention in quite a wide range of situations, for instance intervention on request or with consent. It was important



not to flout these rules, indeed they should be strengthened. Otherwise carte blanche was given to the Soviet Union to intervene when and where it wanted. It was in our broader national interest that there should be a framework of international law, which was observed in practice.

A brave attempt was made to steer a middle course between these two views. This noted the ectoplasmic quality of international law in this area and the consequent ability of both the Soviet Union and the West to appeal to the law to justify what they chose to do for reasons of state. One had therefore to take account of the results of an intervention. Interventions should be carried out rapidly, successfully and leave a demonstrably better situation than existed before. Applying this to the American invasion of Grenada, one might say that in law the US action was wrong but that it would be hard in the light of the facts to get a jury to convict.

The only conclusion which could be reached was that we needed a respectable framework of international law which by and large we should observe unless there was very good reason not to do so.

The law not having provided much of a guide, discussion of moral aspects proceeded rather gingerly. Indeed the frontier between law, morals and realpolitik seemed at times invisible. One view seemed to be that there were virtually no relevant moral considerations, a situation which might be summed up as Thucydides rules OK: the strong do what they will, the weak suffer what they must. Various rights could be adduced, for instance a right of vicinage entitling a strong country to intervene in the affairs of a smaller neighbour if these were conducted in a way to pose a threat to its interests. Lord Salisbury's justification of the partition of Poland on the grounds that it was a ceremonious



anarchy and thus a danger to its neighbours was recalled. Both considerations were in practice no more than recognition of spheres of influence and large countries right to act as they will within them.

Against this it was represented that countries often believed themselves to be guided by moral considerations when intervening. Theodore Roosevelt's citation of "chronic wrongdoing" as grounds for intervention was quoted. More widely it was argued that the notion that a particular action was regarded internationally as "wrong" still carried force, even though situations which were plainly "wrong" - Amin's Uganda, Pol Pot, Bokassa's tyranny - had been tolerated and not led to intervention. It was also argued that there was a clear moral basis for international law in this field in the sovereign independence of each state and its right to self-determination. (This latter claim led to the usual fruitless argument about who is and is not entitled to self-determination).

A suggestion was made that a distinction could be drawn between interventions which occur as part of the global East/West conflict and others. There was a moral distinction between the US and Soviet systems. The US (or like-minded countries) was justified in intervening to sustain justice and democracy, while Soviet intervention could never be justified since its goal was to establish tyranny. It was recognised that these criteria were highly subjective. They also raised once again the mirror image problem: the Soviet Union could rely on the same body of international law and the same terms justice and democracy (though with different meaning) to justify its own interventions. Gromyko's proposal at the UN for a resolution demanding renunciation of "actions aimed at forcible change or undermining of the social systems of sovereign states" was a vivid illustration of this.



It was suggested that the UN Charter offered the best guide to what was and was not permissible. It was the only rule-book on which an international consensus existed. Condemnation by the UN remained a useful sanction, even against the Soviet Union (a view disputed by others).

Discussion moved on to practical measures to limit interventions. It was suggested that we confronted a new situation, with the existence of tiny sovereign states peculiarly vulnerable to subversion. The words of Lynden Pindling at the last CHOGM were recalled: if we don't have the capacity to defend ourselves, we don't deserve to be independent. The problem might be contained through encouragement of regional pacts. An alternative would be to follow the path of the Austrian State Treaty which set limits both on foreign policy and the level of armaments. Groups of small states might get together, accept such limitations and then seek specific guarantees from the super-powers. In considering remedies, it had to be borne in mind that smaller states, in particular, might be threatened with types of intervention other than straightforward armed intervention - for example, arms embargoes, selective trading embargoes, economic blockade, or 'political' intervention, i.e. internal subversion.

To meet the yearning for clarity an attempt was made - by the academic participants - to establish some guidelines thus:

(i) it is the policy of the UK to adhere to the rules of international law;

(ii) in applying these rules, the governing consideration will be the UK's commitment to democratic principles, the maintenance of democratic regimes and preservation of human rights;



(iii) at the same time, the UK recognises that there are limits beyond which these principles can be applied only at an unacceptable political price.

Held up to the light by the official participants, it was pointed out that 'Soviet Union' could be substituted for 'United Kingdom' throughout. Alpha for effort but only gamma for utility.

The main points noted in conclusion were:

- there was a framework of international law and most wanted to see it built on and reinforced;
- moral factors were subjective: in the end the only guidance was what you believed to be right;
- the burden of proof to justify an intervention lay with the protagonist. It needed to be justifiable when you did it not just post facto.

While it would be nice to have a clear set of rules, this was in practice all that was available.

At the subsequent restricted session there was some discussion of what UK policy should be, in the light of the previous discussion, in each of three possible scenarios affecting Nicaragua:

- an American airstrike to knock out MIG aircraft supplied to Nicaragua;
- a quarantine imposed on Nicaragua;
- a full-scale invasion



On the first, it was noted that MIG 23s would be too sophisticated for Nicaragua's real needs and could, with justification, be regarded as posing a threat to the security of the area. The Americans had already warned that supply of MIG 23s would be unacceptable. The Russians would probably be cautious about supplying them. If they did so, it would be an act of provocation and an American attack to eliminate the aircraft would be relatively easy to justify. But it was also argued that the Americans would suffer considerable damage internationally if they attacked the aircraft before the Nicaraguans had given evidence of intention to use them against other countries. It would also create an unhappy precedent, which might be used by the Soviet Union to attack American-supplied aircraft in Pakistan. Nonetheless, we should not condemn American action. We should say as little as possible, but point out that advance warning had been given.

Discussion of the implications of a quarantine was hampered by lack of precision as to what it would involve. Neither sanctions nor a blockade were thought at all likely to work. A blockade could cause us serious difficulties if, for instance, British ships were stopped and searched. The conclusion was that we should not want to take part in a quarantine but should not condemn it.

Full-scale military intervention was regarded as very unlikely. The risk of US forces being mired in a Vietnam-type situation would be high. The Pentagon were said to be against it. Our main problem was likely to be obtaining due warning of US intentions and obtaining due warning. It was suggested that we ought to speak to the American Administration after the Presidential elections with the aim of deterring them from any rash action. Against this, it was recognised that Central America was of crucial importance to them and we had little standing to



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contest their judgements. All that we could do was note that it was a situation of possible danger and keep as close as possible to American thinking. If the worst did happen we should try to avoid public condemnation of the Americans, while recognising that this would certainly mean distancing ourselves from most, if not all, other members of the European Community.

C.D.P.

3 October 1984



SEMINAR: IS INTERVENTION EVER JUSTIFIED?

MONDAY, 1 OCTOBER 1984

LIST OF PARTICIPANTS

Prime Minister

Rt. Hon. Sir Geoffrey Howe, MP  
Foreign and Commonwealth Office

Rt. Hon. Michael Heseltine, MP  
Secretary of State for Defence

Rt. Hon. Baroness Young  
Minister of State, Foreign  
and Commonwealth Office

Rt. Hon. John Stanley, MP  
Minister of State for the Armed  
Forces

Sir Robert Armstrong  
Secretary of the Cabinet

Sir Antony Acland  
Permanent Under Secretary  
Foreign and Commonwealth Office

Sir Clive Whitmore  
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Ministry of Defence

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Mr. Bryan Cartledge  
Deputy Secretary, Cabinet Office

Mr. Charles Powell  
Private Secretary to the  
Prime Minister

Mr. A.D.S. Goodall,  
Deputy Under Secretary  
Foreign and Commonwealth Office

Professor Derek Bowett  
Professor of International Law, Cambridge

Dr. Elihu Lauterpacht  
Reader in International Law, Cambridge

Sir Ian Sinclair  
Former Foreign and Commonwealth Office  
Legal Adviser

Colonel Jonathan Alford  
Deputy Director, International Institute  
for Strategic Studies

Professor Hedley Bull  
Professor of International Relations, Oxford

Professor Elie Kedourie  
Professor of Politics, London

Sir Anthony Parsons  
Research Fellow, Centre for Gulf Studies,  
Exeter

The Lord Thomas of Swynnerton  
Centre for Policy Studies

Mr. Peter Calvocoressi  
Author and former Reader in International  
Relations, Sussex

Attending Dinner only

Professor Michael Howard  
Regius Professor of Modern History, Oxford



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SEMINAR ON NATO STRATEGY: CHEQUERS, 1 OCTOBER 1984

The Seminar - a list of the participants in which is attached - discussed the viability of NATO's strategy of flexible response and ways in which it could be implemented more effectively.

Several factors were suggested which made it timely to take a fresh look at the flexible response doctrine. These included the progressive enhancement of the Soviet capacity to attack on short warning, reducing the warning time which NATO could expect from 5/6 weeks to 2/3 days; the increased vulnerability of the process of reinforcing Europe from the United States by sea, given the Soviet capacity to attack convoys from an 800 mile stand-off; Soviet superiority in chemical weapons; NATO's possible loss of escalation dominance in the theatre nuclear weapon band of deterrence; and, more generally, the fact that the flexible response strategy, as enshrined in the NATO document MC 14/3, was now 17 years old and arguably in need of review.

There was, however, general agreement that flexible response was not so much a strategy as a description of whatever force posture the Alliance chose to adopt. Much of the discussion concentrated on the balance between the nuclear and conventional elements in NATO's strategy and in particular the proposition that growing doubts about the credibility of a general nuclear response meant that more attention had to be given to the Alliance's conventional capability.

There was no dispute that the nuclear element was an essential part of the Alliance's strategy. A conventional response alone was not an option: there would not be the money to pay for an adequate capability and it would not make the other side dispense with their nuclear weapons.

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The Alliance's nuclear capability deterred not only nuclear war but conventional war. In this equation, the Russians were less impressed by Alliance doctrine than by Alliance capabilities. In the absence of a nuclear element in NATO's deterrent posture, the Soviet Union could contemplate waging a "limited liability" conventional war. In terms of military "prizes", 30 per cent of the Alliance steel producing capacity lay within two hundred miles of the East/West divide as compared with only 9 per cent of the steel producing capacity of the Warsaw Pact: considered on this basis, the Soviet Union might be prepared to take the risk of losing a conventional conflict in Central Europe if the deterrent element of intermediate range nuclear weapons did not exist. A strategy was needed which provided maximum uncertainty about Alliance intentions together with the flexibility not to use nuclear weapons if such use could be avoided. Flexible response provided this.

There was some discussion of the "nuclear winter" phenomenon. This was agreed to be plausible as a hypothesis but unproven: scepticism was expressed about the statistics on which the theory was based, with regard both to the megatonnage needed to produce the nuclear winter phenomenon and to the duration of the phenomenon itself. Although the possibility of self-destruction, through a shared nuclear winter, might constitute some inhibition against a nuclear first strike it was pointed out that the sheer number of nuclear explosions needed to produce a nuclear winter should in themselves act as a sufficient deterrent without the added threat of the phenomenon itself.

The credibility of controlled nuclear escalation was examined. The point was made that a Soviet attack against NATO was likely to be motivated either by the belief that NATO weakness or disunity made unprovoked aggression a low risk option; or by sheer irrational desperation which could result, for example, from a Soviet belief that the

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United States was about to achieve a total military dominance in outer space which the Soviet Union could not challenge.

A danger was also seen in assuming too much rationality in nuclear exchanges: the decisions would be taken in conditions of extreme confusion and tension. Nice distinctions between the various rungs of the nuclear ladder might not be so relevant in actual practice. What mattered was that there should be a nuclear ingredient and a US readiness to risk all in the collective defence.

There was some divergence of view over the importance of readiness to envisage first use of nuclear weapons. Some saw this as a crucial element in deterrence. Others thought that too great a dependence on first use weakened flexibility. The political constraints on a decision to make first use affected its credibility. It was also divisive and caused alarm in public opinion. This was not an argument in favour of the Russian ploy of a no first use declaration. A no first use "agreement" would in any case increase the attraction to the Russians of a conventional surprise attack. It meant putting the emphasis in public discussion on deterrence rather than on threat of first use.

There was considerable debate on the utility of battlefield nuclear weapons. On the one hand it was argued that they would be useless in the likely circumstances of conflict in Europe in which Soviet and Alliance forces would be intermingled. It was doubtful that the Germans would ever be persuaded to agree to their use. Nor was there much likelihood of agreement in the Alliance on cross-border use. The dual capability of the weapons systems involved was a de-stabilising factor because it would be impossible to tell whether an enemy attack was directed at the nuclear or the conventional capability and thus what should be the appropriate response. If the military experts doubted the



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utility of battlefield nuclear weapons, why pay the high political price of maintaining them? Savings from removing them could be used to strengthen conventional forces. Before long the prime military objective of nuclear artillery, namely to inhibit Soviet troop concentrations forward, would in any case be attainable by the latest conventional artillery.

Against this it was argued that it would be a mistake to remove them altogether, though they might be further reduced. They were an essential link in the chain of flexible response. Removing them altogether would give the Soviet Union a licence to concentrate its forces in forward areas, a risk it could not otherwise take. Public opinion did not seem particularly concerned about these weapons and the considerable efforts already made to reduce them had earned little credit. Nor were the Germans pressing for their removal. This was a strong argument for maintaining the status quo. The weapons had been there a long time and caused no real problems, so why offer the Soviet Union a military bonus by withdrawing them? To do so might be regarded as evidence of the Alliance's vulnerability to pressures from the peace movement and would increase efforts to get rid of intermediate nuclear weapons. Any savings would be minimal since the warheads were American. An alternative would be to base the weapons further back, while still preserving the capability to use them on the battlefield.

All agreed that the effectiveness of the conventional arm of flexible response needed to be strengthened. Congress would insist on this and Lord Carrington was proposing to take an initiative. But views differed as to where the priority for improvements lay.

Some argued the need to put it all "up front". It was crucial for the Alliance to be able to do well in the first

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two weeks of a conflict and this offered the best chance of deterring the Russians from starting one. Resources should go to strengthening forces already in Europe rather than to preparing reinforcements. The psychology of Soviet Commanders was relevant. They were cautious about getting involved, but when they did so it was on a big scale. This strengthened the need for the Alliance response to be rapid, particularly to a Soviet probe out-of-area.

Others pointed out that the way in which resources were allocated was consistent with the shop window philosophy i.e. priority for hardware rather than sustainability. But as the use of nuclear weapons became more difficult to envisage extra days of sustainability became more important. A conflict was more likely to start on the flanks than on the central front, which again strengthened the argument for sustainability.

There were few specific suggestions for improving conventional defence. Full account needed to be taken of changes in Soviet military doctrine. The possibility of redeploying American Forces out of South Germany to a more central role was raised, as was that of encouraging the Germans to make a greater investment in fortifications. The Alliance must continue to press ahead with new technology. But it should not be obsessed with the most advanced kit at the expense of the rest. More than just technical improvements were needed, for instance improved training and tactics. There was likely to be a particular problem over manpower: in Germany the number of men of military age would decline by 30 per cent in the next 15 years. There were glaring weaknesses in the air defence of the UK. It was made clear, however, that there could be no question of driving up UK expenditure on defence further. It was up to the other allies to do more.



Great importance was attached to strengthening the political cohesion of the Alliance. Avoidance of war required not just a credible strategy for war itself but a demonstration of resolve and unity by all the members of the Alliance. The political battle, which was the decisive one, was being fought at the present time. This demonstration of will was also vital in order to preserve the US commitment to Europe's defence. A lengthening shadow over Western Europe of Soviet military superiority could lead to the establishment of a Soviet droit de regard over Western European policies and to a Soviet victory over the Alliance without a battle being fought. But if the political cohesion and confidence of the Alliance were to be maintained its military strategy, too, had to be credible and on two levels - those of its efficacy for the conduct of war and of its political cogency in time of peace. Particular attention was needed to the weaker brethren on the flanks.

It was as important to carry public opinion in the Alliance. Some thought that support for NATO in public opinion was as strong today as at any time in the Alliance's history. Others saw a risk of 'generational slip', because many of the issues and circumstances which originally shaped the Alliance seemed less relevant now. The problem was most acute in relation to the nuclear arm of deterrence. More needed to be done to bring home how dreadful conventional war would be and the role of the nuclear deterrent in preventing it. This could be done by portraying CND as 'conventional warmongers'. One should highlight the dangers of failure to deter rather than the risks of the deterrent. But a commitment to arms control was a necessary part of this.

Discussion of the role of chemical weapons was inconclusive. It was argued on the one hand that there was a tendency to over-estimate the military utility of such



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weapons. They were indiscriminating and therefore difficult to use. There was evidence that the Russians were interested in negotiating a ban. The Americans should be pressed to modify the verification measures they were demanding.

Others thought that, if a ban could not be negotiated quickly, the Alliance had no alternative but to acquire a chemical weapons capability of its own as a deterrent to Soviet use of such weapons. It was more credible to have a chemical deterrent to chemical weapons than to rely upon a nuclear one. This was an unfinished discussion.

It was pointed out that the main risk of conflict lay in Soviet probing of Western interests outside the main NATO area. This argued for a conventional capability able to undertake out of area operations. At the moment too much was left to the Americans. It was pointed out, however, that this would not be a NATO capability as such but one possessed by certain NATO members. The main scope for improvement lay in improved coordination of their activities.

There was some discussion of France's role, with the feeling that while France would not become reintegrated in the military structure of the Alliance, she was moving towards closer military cooperation, particularly with Germany. It was suggested that France's nuclear strategy was not credible even to the French military themselves.

No formal conclusions were drawn. But the Prime Minister noted a number of points which were not disputed. The concept of flexible response would remain viable and credible so long as the Alliance retained the full range of capabilities, including a nuclear capability, needed to defend itself and the will to use them. But the cohesion of the Alliance remained a worry. There was a risk of

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complacency about the situation on the flanks, about the Alliance's ability to reinforce the central front and sustain a long campaign, as well as about the absence of an Alliance capability for chemical warfare. There was no doubt that there would be pressure from the Americans to strengthen its conventional capability. But there were financial constraints for the UK in any further increases in spending on defence. There had been no consensus as to where this strengthening was most urgently needed or whether changes in the nature of the UK contribution were desirable.

At the subsequent restricted session attended by Ministers and officials only, discussion focussed on the Foreign Secretary's minute of 28 September, and in particular the implications for Britain of greater Franco-German cooperation.

The feeling was expressed that the UK was not getting credit for its contribution to Europe's defence; that the Germans had to be made to realise how much we did for them and that our contribution was vulnerable unless it produced more consideration for our political and financial interests; that Franco-German collaboration was giving France an undesirable hold over the FRG in a wide area of European affairs; that there was a growing instinct on the part of the US to look to France and Germany for discussion of Alliance matters; and that France derived unjustifiably large benefits from its fractional involvement in the NATO infrastructure programme. It was noted that France liked to keep Germany in a posture of penance and that the Germans for their part did not seem averse to this.

Against this it was argued that there was a strong element of rhetoric in the Franco-German relationship; that the French hinterland was of such great strategic importance to Germany that the latter needed constant reassurance about the role which France would play in a conflict; that the UK

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was obtaining a healthy share of European defence procurement and not being squeezed out; and that, rather than try to divide and rule, we should seek areas of constructive collaboration with both France and Germany.

It was agreed that the proposals in paragraphs 11 and 12 of the Foreign Secretary's minute needed further work by officials before consideration by Ministers. Doubts were expressed about a number of the proposals: in particular we should not give the impression of running after the French. The aim should be to ensure that the UK was not frozen out of Franco-German collaboration; to encourage the French back towards a more integrated relationship with the Alliance; and to ensure that the UK received not just credit for but business from collaborative projects. It would be essential to avoid anything, for instance in WEU, which undermined NATO; and to seek collaboration only in areas where we have identifiable interests in common.

C.D.P.

3 October 1984



SEMINAR ON NATO STRATEGY AT CHEQUERS  
ON MONDAY, 1 OCTOBER 1984'

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Professor Laurence Martin  
Vice Chancellor, University of Newcastle  
upon Tyne

The Lord Cameron of Balhousie  
Principal, Kings College, London





File 88

10 DOWNING STREET

*From the Private Secretary*

3 October 1984

NATO Strategy

BT

I enclose a copy of a letter to the Prime Minister from Arthur Hockaday, following up certain points made at the Chequers seminar last Monday. I should be grateful for a draft reply.

Charles Powell

Richard Mottram Esq  
Ministry of Defence

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10 DOWNING STREET

*From the Private Secretary*

SIR PERCY CRADOCK

MR. CARTLEDGE ✓

(separate copies)

SEMINAR ON CONFLICT OF PRINCIPLES

I attach a draft summary record, to which I should welcome amendments and improvements.

CDP

✓ *Mr Powell* 900.

*Fine. But what about the rescheduled conversation after dinner on Thursday?*

3 October 1984

*le 3/10*



SEMINAR ON CONFLICT OF PRINCIPLES, CHEQUERS, 1 OCTOBER 1984

This seminar - a list of the participants in which is attached - addressed the question: Is Intervention Ever Justified?

The most notable feature was the failure of participants to fulfil their stereotypes. Academics raged red in tooth and claw through the jungle of law and morality, proclaiming the primacy of national interest. Politicians and civil servants pleaded for clear and internationally accepted rules.

Discussion turned first to the legal aspects. It was noted that international law recognised a number of grounds for intervention (generally those listed in the paper circulated to the seminar). But there was disagreement as to how far these could or should act as a constraint on national actions. Some argued that the situations in which intervention in another state had to be considered were usually on the margins of international law. A great deal turned upon the precise construction but the facts of a particular situation and historical experience showed that these could easily be twisted to suit a convenient interpretation, for example, manufactured invitations to intervene. The only realistic course therefore was to determine where one's best policy interests lay. The law could not rule, though legal arguments could generally be developed to support decisions taken on policy grounds. If international law supported a decision taken on grounds of national interest, that was an uncovenanted bonus.

Others were more rule-oriented, believing that existing international rules in fact permitted intervention in quite a wide range of situations, for instance intervention on request or with consent. It was important not to flout



these rules, indeed they should be strengthened. Otherwise carte blanche was given to the Soviet Union to intervene when and where it wanted. It was in our broader national interest that there should be a framework of international law, which was observed in practice.

An attempt, not entirely successful, was made to steer a middle course between these two views. This noted the ectoplasmic quality of international law in this area and the consequent ability of both the Soviet Union and the West to appeal to the law to justify what they chose to do for reasons of state. One had therefore to take account of the results of an intervention. Interventions should be carried out rapidly, successfully and leave a demonstrably better situation than existed before. Applying this to the ~~Soviet~~ <sup>American</sup> invasion of Grenada, one might say that in law the US action was wrong but that it would be hard in the light of the facts to get a jury to convict.

The only conclusion which could be reached was that we needed a respectable framework of international law which by and large we <sup>should</sup> ~~observed~~ unless there was very good reason not to do so.

The law not having provided much of a guide, discussion of moral aspects proceeded rather gingerly. Indeed the frontier between law, morals and real politics <sup>real politics</sup> seemed at times invisible. One view seemed to be that there were virtually no relevant moral considerations, a situation which might be summed up as Thucydides rules OK: the strong do what they will, the weak <sup>suffer</sup> ~~do~~ what they must. Various rights could be adduced, for instance a right of vicinage entitling a strong country to intervene in the affairs of a smaller neighbour if these were conducted in a way to pose a threat to its interests. Lord Salisbury's justification of the partition of Poland on the grounds that it was a ceremonious anarchy and thus a danger to its



neighbours was recalled. Both considerations were in practice no more than recognition of spheres of influence and large countries right to act as they will within them.

Against this it was represented that countries often believed themselves to be guided by moral considerations when intervening. Theodore Roosevelt's citation of "chronic wrongdoing" as grounds for intervention was quoted. More widely it was argued that the notion that a particular action was regarded internationally as "wrong" still carried force, even though situations which were plainly "wrong" - Amin's Uganda, Pol Pot, Bokassa's tyranny - had been tolerated and not led to intervention. It was also argued that there was a clear moral basis for international law in this field in the sovereign independence of each state and its right to self-determination. (This latter claim led to the usual fruitless argument about who is and is not entitled to self-determination).

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3 October 1984



File

Prime Minister

CDP  
2/x.

CHIEF OF THE DEFENCE STAFF

MINISTRY OF DEFENCE  
MAIN BUILDING WHITEHALL LONDON SW1A 2HB

Telephone 01-218 ..... (Direct Dialling)

01-218 9000 (Switchboard)

2 Oct 84

Dear Prime Minister

Thank you so very much  
for including me in your 'Seminar'  
day at Chequers and for, as usual,  
entertaining all of us so  
hospitably.

I thought the morning  
was extremely interesting and useful  
as a very good mind clearing  
exercising. The afternoon was slightly  
disappointing, with all the lawyers  
apparently remarkably unconcerned about  
the law; but even here some  
useful points emerged and the



Smaller meeting of officials ~~at~~  
 at the end can I think helpful.  
 We are indebted to you for  
 finding the time to go into these  
 things so thoroughly.

I know you will not  
 forget about the Chemical problem

Thank you again very  
 much.

Your ever

Lin

DL 8 6 11 12 1

22 OCT 1984



IN CONFIDENCE

From SIR ARTHUR HOCKADAY KCB CMG Director-General  
(Secretary to the Commission)

4



COMMONWEALTH WAR GRAVES COMMISSION  
2 MARLOW ROAD  
MAIDENHEAD BERKSHIRE  
Telephone: 0628 34221

2 October 1984

The Rt Hon Margaret Thatcher MP  
10 Downing Street  
LONDON SW1

*Dear Prime Minister*

*12/10*

NATO Strategy

First may I thank you again for inviting me to take part in a very interesting seminar yesterday morning, for your generous hospitality at luncheon, and for the arrangements that were made for some of us to spend the previous night at Thame.

2. Secondly let me repeat that I am quite clear, and you have dispelled any doubts I might have had, that my disagreement with a number of the basic tenets of Just Defence must be reflected in a dissenting note, failing which I cannot associate my name with the project.

3. Thirdly I have been reflecting further upon one point in the discussion, when you took as an assumption the absolute priority of Trident in Britain's defence programme, following which the debate moved on to other things. I should have no hesitation in agreeing with you if expense were no object. But you had made only too clear that expense is an object in the way of the improvements in our conventional posture which all of us agreed to be desirable; and so I wonder whether the absolute primacy of Trident may not warrant reconsideration. Financial considerations have already dictated a decision to have four boats rather than five, thereby markedly exacerbating the problems that would be posed by the loss, for any reason, of one boat during the 20-25 years of the effective life of the force.

4. It would be ingenuous to assume that the Trident force will act as a deterrent to anything other than a nuclear threat against the British Isles. It is very desirable to be able to deter such a threat. Nevertheless, given the financial pressures to which you alluded, may not the first priority be to seek to ensure that matters never reach a pass at which a nuclear threat against the British Isles is on the agenda? This is in a sense the balance of risk against seriousness, of which Sir Hermann Bondi spoke in a different context. The first priority must surely be to deter the first risk, that of war breaking out at all; and most of us felt that while the conventional posture of the Alliance was not hopeless its conventional forces, to which Britain makes a significant contribution (very significant indeed in quality), needed some strengthening.

/5.

IN CONFIDENCE





5. The Defence Secretary suggested that Trident would consume a relatively small proportion of defence resources, though you uttered a timely warning about exchange rates. I know, too, that the question has sometimes been asked whether deterrence would be more greatly enhanced by Trident or by additional armoured formations. But I do not believe that the first priority for conventional improvement is more men or greater numbers of major weapon systems. I believe that the first priority is sustainability, upon which yesterday's discussion touched from time to time. You said quite rightly that the Falklands War had reminded us that wars usually last longer than people expect. It also rubbed in the lesson of the recent Middle East wars, that ammunition and other consumable stores are expended in greater quantities and much more rapidly than people expect; I believe there were one or two quite close calls on the logistic side, in part of course reflecting the fact that the relatively limited scale of the conflict was offset by the problems posed by distance. Ten billion pounds (or more) may seem relatively little in relation to the costs of manpower or major weapon systems, but it is very substantial in the scale of logistic expenditure and could, I believe, make a very significant difference to the sustainability, hence to the confidence, and hence to the credibility of our conventional forces.

6. This is why I wonder whether there might be a case for a further study of the absolute priority of Trident before too much money is irretrievably committed.

Yours sincerely

Arthur Rockdale





10 DOWNING STREET

*From the Private Secretary*

SIR PERCY CRADOCK

MR. CARTLEDGE

(separate copies)

SEMINAR ON CONFLICT OF PRINCIPLES

I attach a draft summary record, to which I should welcome amendments and improvements.

3 October 1984



DSGACH

SEMINAR ON CONFLICT OF PRINCIPLES, CHEQUERS, 1 OCTOBER 1984

This seminar - a list of the participants in which is attached - addressed the question: Is Intervention Ever Justified?

The most notable feature was the failure of participants to fulfil their stereotypes. Academics raged red in tooth and claw through the jungle of law and morality proclaiming the primacy of national interest. Politicians and civil servants pleaded for clear and internationally accepted rules.

Discussion turned first to the legal aspects. It was noted that international law recognised a number of grounds for intervention (generally those listed in the paper circulated to the seminar). But there was disagreement as to how far these could or should act as a constraint on national actions. Some argued that the situations in which intervention in another state had to be considered were usually on the margins of international law. A great deal turned upon the precise construction but the facts of a particular situation and historical experience showed that these could easily be twisted to suit a convenient interpretation, for example, manufactured invitations to intervene. The only realistic course therefore was to determine where one's best policy interests lay. The law could not rule, though legal arguments could generally be developed to support decisions taken on policy grounds. If international law supported a decision taken on grounds of national interest, that was an uncovenanted bonus.

Others were more rule-oriented, believing that existing international rules in fact permitted intervention in quite a wide range of situations, for instance intervention on request or with consent. It was important not to flout



these rules, indeed they should be strengthened. Otherwise carte blanche was given to the Soviet Union to intervene when and where it wanted. It was in our broader national interest that there should be a framework of international law, which was observed in practice.

An attempt, not entirely successful, was made to steer a middle course between these two views. This noted the ectoplasmic quality of international law in this area and the consequent ability of both the Soviet Union and the West to appeal to the law to justify what they chose to do for reasons of state. One had therefore to take account of the results of an intervention. Interventions should be carried out rapidly, successfully and leave a demonstrably better situation than existed before. Applying this to the <sup>American</sup> Soviet invasion of Grenada, one might say that in law the US action was wrong but that it would be hard in the light of the facts to get a jury to convict.

The only conclusion which could be reached was that we needed a respectable framework of international law which by and large we <sup>should</sup> observed unless there was very good reason not to do so.

The law not having provided much of a guide, discussion of moral aspects proceeded rather gingerly. Indeed the frontier between law, morals and <sup>real politik</sup> real politics seemed at times invisible. One view seemed to be that there were virtually no relevant moral considerations, a situation which might be summed up as Thucydides rules OK: the strong do what they will, the weak do what they must. Various rights could be adduced, for instance a right of vicinage entitling a strong country to intervene in the affairs of a smaller neighbour if these were conducted in a way to pose a threat to its interests. Lord Salisbury's justification of the partition of Poland on the grounds that it was a ceremonious anarchy and thus a danger to its



neighbours was recalled. Both considerations were in practice no more than recognition of spheres of influence and large countries right to act as they will within them.

Against this it was represented that countries often believed themselves to be guided by moral considerations when intervening. Theodore Roosevelt's citation of "chronic wrongdoing" as grounds for intervention was quoted. More widely it was argued that the notion that a particular action was regarded internationally as "wrong" still carried force, even though situations which were plainly "wrong" - Amin's Uganda, Pol Pot, Bokassa's tyranny - had been tolerated and not led to intervention. It was also argued that there was a clear moral basis for international law in this field in the sovereign independence of each state and its right to self-determination. (This latter claim led to the usual fruitless argument about who is and is not entitled to self-determination).

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3 October 1984



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10 DOWNING STREET

*From the Private Secretary*

SIR PERCY CRADOCK )

MR CARTLEDGE )

) separate copies

NATO Strategy Seminar

I should be very grateful for any comments on and amendments to this in the course of tomorrow - both style and substance as it has been done in rather a hurry. In particular I am not happy with the early paragraphs on the nuclear aspects. Something needs to be added, for instance, on the rationality of procedures.

C.P.

Charles Powell

2 October 1984

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SEMINAR ON NATO STRATEGY: CHEQUERS, 1 OCTOBER 1984

1. The Seminar - list of participants attached - discussed the viability of NATO's strategy of flexible response and ways in which it could be implemented more effectively.

2. The point was quickly established that flexible response was not a strategy but a description of whatever force posture the Alliance chose to adopt.

3. Much of the discussion concentrated on the balance between the nuclear and conventional elements in NATO's strategy and in particular the proposition that growing doubts about the credibility of a general nuclear response meant that more attention had to be given to the Alliance's conventional capability.

4. There was no dispute that the nuclear element was an essential part of the Alliance's strategy. A conventional response alone was not an option: there would not be the money to pay for an adequate capability and it would not make the other side dispense with their nuclear weapons. The Alliance's nuclear capability deterred not only nuclear war but conventional war. In this equation, the Russians were less impressed by Alliance doctrine than by Alliance capabilities. A strategy was needed which provided maximum uncertainty about Alliance intentions together with the flexibility not to use nuclear weapons if such use could be avoided. Flexible response provided this.

*It's not enough, but the figures related to it were uncertain, eg. how many weapons needed to be deployed to provoke nuclear winter; how long would it last.*

5. Some attention was given to the "nuclear winter" phenomenon. This was regarded as ~~feasible but unproven and the accuracy of the statistics attached to it were treated~~ sceptically. But the general feeling was that its relevance to the debate was not very great: it did not need the possibility of nuclear winter to make you scared of a

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6 A danger was also seen in assuming too much rationality in nuclear exchanges: The decisions would be taken in conditions of extreme confusion and tensions. Nice distinctions between the various wings of the nuclear ladder might not be so relevant in actual practice. What mattered was that there should be a nuclear ingredient and a U.S. readiness to risk all ~~on behalf of Europe~~ in the collective defence.



general nuclear response.

- insert new para 6 opposite and renumber*
6. There was some divergence of view over the importance of readiness to envisage first use of nuclear weapons. Some saw this as a crucial element in deterrence. Others thought that too great a dependence on first use weakened flexibility. It was also divisive and caused alarm in public opinion. This was not an argument in favour of the Russian ploy of a no first use declaration. It meant putting the emphasis in public discussion on deterrence rather than on threat of first use. The political constraints on a decision to make first use anyway affected its credibility. *It was unlikely that the political decisions necessary for their use could be obtained in the short time before they can be used.*
- meaning*
7. There was considerable debate on the utility of battlefield nuclear weapons. On the one hand it was argued that they would be useless in the likely circumstances of conflict in Europe in which Soviet and Alliance forces would be intermingled. It was doubtful that the Germans would ever be persuaded to agree to their use. *Nor was there much likelihood of agreement in the Alliance on cross-border use.* The dual capability of the weapons systems involved was a de-stabilising factor because it would be impossible to tell whether an enemy attack was directed at the nuclear or the conventional capability and thus what should be the appropriate response. If the military experts doubted the utility of battlefield nuclear weapons, why pay the high political price of maintaining them? Savings from removing them could be used to strengthen conventional forces.
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8. Against this it was argued that it would be a mistake to remove them altogether, though they might be further reduced. They were an essential link in the chain of flexible response. Removing them altogether would give the Soviet Union a licence to concentrate its forces in forward areas, a risk it could not otherwise take. Public opinion did not seem particularly concerned about these weapons and



the considerable efforts already made to reduce them had earned little credit. Nor were the Germans pressing for their removal. This was a strong argument for maintaining the status quo. The weapons had been there a long time and caused no real problems, so why offer the Soviet Union a military bonus by withdrawing them? To do so might be regarded as evidence of the Alliance's vulnerability to pressures from the peace movement and would increase efforts to get rid of intermediate nuclear weapons. Any savings would be minimal since the warheads were American. An alternative would be to base the weapons further back, while still preserving the capability to use them on the battlefield.

9. All agreed that the effectiveness of the conventional arm of flexible response needed to be strengthened. Congress would insist on this and Lord Carrington was proposing to take an initiative. But views differed as to where the priority for improvements lay.

10. Some argued the need to put it all "up front". It was crucial for the Alliance to be able to do well in the first few weeks of a conflict and this offered the best chance of deterring the Russians from starting one. Resources should go to strengthening forces already in Europe rather than to preparing reinforcements. The psychology of Russian Commanders was relevant. They were cautious about getting involved, but when they did so it was on a big scale. This strengthened the need for the Alliance response to be rapid.

11. Others pointed out that the way in which resources were allocated was consistent with the shop window philosophy i.e. priority for hardware rather than sustainability. But as the use of nuclear weapons became more difficult to envisage extra days of sustainability became more important. A conflict was more likely to start on the flanks than on the central front, which again strengthened the argument for



sustainability.

12. There were few specific suggestions for improving ~~the~~ conventional defence. Full account needed to be taken of changes in Soviet military doctrine. The possibility of redeploying American Forces out of South Germany to a more central role was raised, as was that of encouraging the Germans to make a greater investment in fortifications. The Alliance must continue to press ahead with new technology. But it should not be obsessed with the most advanced kit at the expense of the rest. More than just technical improvements were needed, for instance improved training and tactics. There was likely to be a particular problem over manpower: in Germany the number of men of military age would decline by 30 per cent in the next 15 years. There were glaring weaknesses in the air defence of the UK. It was made clear, however, that there could be no question of driving up UK expenditure on defence further. It was up to the other allies to do more.

13. Great importance was attached to strengthening the political cohesion of the Alliance. Avoidance of war required not just a credible strategy for war itself but a demonstration of resolve and unity by all the members of the Alliance. ~~This~~ was also vital in order to preserve the US commitment to Europe's defence. Particular attention was needed to the weaker brethren on the flanks.

14. It was as important to carry public opinion in the Alliance. Some thought that support for NATO in public opinion was as strong today as at any time in the Alliance's history. Others saw a risk of 'generational slip', because many of the issues and circumstances which originally shaped the Alliance seemed less relevant now. The problem was most acute in relation to the nuclear arm of deterrence. More needed to be done to bring home how dreadful conventional war would be and the role of the nuclear deterrent in

*The political battle, which could well be the decisive one, was being fought at the present time. This demonstration of will*



preventing it. This could be done by portraying CND as 'conventional warmongers'. One should highlight the dangers of failure to deter rather than the risks of the deterrent. But a commitment to arms control was a necessary part of this.

15. Discussion of the role of chemical weapons was inconclusive. It was argued on the one hand that there was a tendency to over-estimate the military utility of such weapons. They were indiscriminating and therefore difficult to use. There was evidence that the Russians were interested in negotiating a ban. The Americans should be pressed to modify the verification measures they were demanding.

16. Others thought that, if a ban could not be negotiated quickly, the Alliance had no alternative but to acquire a chemical weapons capability of its own as a deterrent to Soviet use of such weapons. It was more credible to have a chemical deterrent to chemical weapons than to rely upon a nuclear one. This was an unfinished discussion.

17. It was pointed out that the main risk of conflict lay in Soviet probing of Western interests outside the main NATO area. This argued for a conventional capability able to undertake out of area operations. At the moment too much was left to the Americans. It was pointed out, however, that this would not be a NATO capability as such but one possessed by certain NATO members. The main scope for improvement lay in improved coordination of their activities.

18. There was some discussion of France's role, with the feeling that while France would not become reintegrated in the military structure of the Alliance, she was moving towards closer military cooperation, particularly with Germany. It was suggested that France's nuclear strategy



was not credible even to the French military themselves.

19. No formal conclusions were drawn. But the Prime Minister noted a number of points which were not disputed. The concept of flexible response would remain viable and credible so long as the Alliance retained the full range of capabilities, including a nuclear capability, needed to defend itself and the will to use them. But the cohesion of the Alliance remained a worry. There was a risk of complacency about the situation on the flanks, about the Alliance's ability to reinforce the central front and sustain a long campaign, as well as about the absence of an Alliance capability for chemical warfare. There was no doubt that there would be pressure from the Americans to strengthen its conventional capability. But there were financial constraints for the UK in any further increases in spending on defence. There had been no consensus as to where this strengthening was most urgently needed or whether changes in the nature of the UK contribution were desirable.

20. At the subsequent restricted session attended by Ministers and officials only, discussion focussed on the Foreign Secretary's minute of 28 September, and in particular the implications for Britain of greater Franco-German cooperation.

21. The feeling was expressed that the UK was not getting credit for its contribution to Europe's defence; that the Germans had to be made to realise how much we did for them and that our contribution was vulnerable unless it produced more consideration for our political and financial interests; that Franco-German collaboration was giving France an undesirable hold over the FRG in a wide area of European affairs; that there was a growing instinct on the part of the US to look to France and Germany for discussion of Alliance matters; and that France derived unjustifiably large benefits from its fractional involvement in the NATO



infrastructure programme.

22. Against this it was argued that there was a strong element of rhetoric in the Franco-German relationship; that the French hinterland was of such great strategic importance to Germany that the latter needed constant reassurance about the role which France would play in a conflict; that the UK was obtaining a healthy share of European defence procurement and not being squeezed out; and that, rather than try to divide and rule, we should seek areas of constructive collaboration with both France and Germany.

23. It was agreed that the proposals in paragraphs 11 and 12 of the Foreign Secretary's minute needed further work by officials before consideration by Ministers. Doubts were expressed about a number of them: <sup>proposals</sup> in particular we should not give the impression of running after the French. The aim should be to ensure that the UK was not frozen out of Franco-German collaboration; to encourage the French back towards a more integrated relationship with the Alliance; and to ensure that the UK received not just credit for but business from collaborative projects. It would be essential to avoid anything, for instance in WEU, which undermined NATO; and to seek collaboration only in areas where we have identifiable interests in common.





10 DOWNING STREET

From the Private Secretary

SIR PERCY CRADOCK )  
 ) separate copies  
MR CARTLEDGE )

*replied*

NATO Strategy Seminar

*8/2*

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15. Discussion of the role of chemical weapons was inconclusive. It was argued on the one hand that there was a tendency to over-estimate the military utility of such weapons. They were indiscriminating and therefore difficult to use. There was evidence that the Russians were interested in negotiating a ban. The Americans should be pressed to modify the verification measures they were demanding.

16. Others thought that, if a ban could not be negotiated quickly, the Alliance had no alternative but to acquire a chemical weapons capability of its own as a deterrent to Soviet use of such weapons. It was more credible to have a chemical deterrent to chemical weapons than to rely upon a nuclear one. This was an unfinished discussion.

17. It was pointed out that the main risk of conflict lay in Soviet probing of Western interests outside the main NATO area. This argued for a conventional capability able to undertake out of area operations. At the moment too much was left to the Americans. It was pointed out, however, that this would not be a NATO capability as such but one possessed by certain NATO members. The main scope for improvement lay in improved coordination of their activities.

18. There was some discussion of France's role, with the feeling that while France would not become reintegrated in the military structure of the Alliance, she was moving towards closer military cooperation, particularly with Germany. It was suggested that France's nuclear strategy

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was not credible even to the French military themselves.

19. No formal conclusions were drawn. But the Prime Minister noted a number of points which were not disputed. The concept of flexible response would remain viable and credible so long as the Alliance retained the full range of capabilities, including a nuclear capability, needed to defend itself and the will to use them. But the cohesion of the Alliance remained a worry. There was a risk of complacency about the situation on the flanks, about the Alliance's ability to reinforce the central front and sustain a long campaign, as well as about the absence of an Alliance capability for chemical warfare. There was no doubt that there would be pressure from the Americans to strengthen its conventional capability. But there were financial constraints for the UK in any further increases in spending on defence. There had been no consensus as to where this strengthening was most urgently needed or whether changes in the nature of the UK contribution were desirable.

20. At the subsequent restricted session attended by Ministers and officials only, discussion focussed on the Foreign Secretary's minute of 28 September, and in particular the implications for Britain of greater Franco-German cooperation.

21. The feeling was expressed that the UK was not getting credit for its contribution to Europe's defence; that the Germans had to be made to realise how much we did for them and that our contribution was vulnerable unless it produced more consideration for our political and financial interests; that Franco-German collaboration was giving France an undesirable hold over the FRG in a wide area of European affairs; that there was a growing instinct on the part of the US to look to France and Germany for discussion of Alliance matters; and that France derived unjustifiably large benefits from its fractional involvement in the NATO



infrastructure programme.

22. Against this it was argued that there was a strong element of rhetoric in the Franco-German relationship; that the French hinterland was of such great strategic importance to Germany that the latter needed constant reassurance about the role which France would play in a conflict; that the UK was obtaining a healthy share of European defence procurement and not being squeezed out; and that, rather than try to divide and rule, we should seek areas of constructive collaboration with both France and Germany.

23. It was agreed that the proposals in paragraphs 11 and 12 of the Foreign Secretary's minute needed further work by officials before consideration by Ministers. Doubts were expressed about a number of them: in particular we should not give the impression of running after the French. The aim should be to ensure that the UK was not frozen out of Franco-German collaboration; to encourage the French back towards a more integrated relationship with the Alliance; and to ensure that the UK received not just credit for but business from collaborative projects. It would be essential to avoid anything, for instance in WEU, which undermined NATO; and to seek collaboration only in areas where we have identifiable interests in common.



Lord Cameron

- U.S.S.R. - Superiority.

- Warning line drawn.

- Reinforcement for D + 30.  
U.S. ? Possible?

Convoy vulnerable.  
"Something" should be done

- Chemical Warfare.

- Out of area.

- Soviet - Diversionary Brigades  
Ships in ports

Air flot.

- Iron heart - "penetrating this  
country"

Sir Arthur

- Trust Defense

Escalation

Nuclear Response.

"still seems valid".

Nuclear Winter,  
Weapons - solid deterrent.

67 - deliberate escalation?  
limited use - back off.

Sustainability



Sir David Ross

First decision to use  
nuclear. Timing of.

U.S. nuclear first?

asked escalation not  
automatic?

Russians deterred for  
reliability.

Sir Herbert Bondi

Numbers - spurious?

Direction - spurious.

Much less well known than is claimed.

Why the Russians attacking.

"Opportunity to gain"

Answer - show of resolution.

Totally depends - no hope of displacing  
American lead technology.

Too much rationality.

Professor Freedman

Don't need nuclear winter to make me  
fear nuclear response  
Horror of conventional war.

If deterrence fails



Would be in crisis of  
stupendous propos.

In crisis - show enough capability.

- something terrible could happen

What would you do if hoops start to  
move.

Cohesion. - Why war had  
started.

What holds alliance together  
Plus Plus. - reliability or justice.

wouldn't want to dwell on possibility.

"Nuclear crisis" in Congress.

Conventional side

Professor Partin.

"Integrity". "Integrity" of Physics.

Full conventional response - neither  
attainable nor desirable.  
Wouldn't prevent attacks

If promise you will not go nuclear

Supreme would work on.



Un-used.

Mr O'Neill, - Nuclear Winter - phenomenon  
with multiplier

F.R. - Concepts.

Mid 1980's. <sup>plausible</sup> - less than in 1970's.

Command & Control facilities.

Soviet doctrines.

- period of change.

FCS

Battlefield nuclear weapons?

∴ stop conventional resources.

Avoid necessity of cohesion  
because of U.S. determination

Sir James - Nuclear winter - what it might  
do to the attacker.

Pressure off

Cohesion vis-à-vis Western public  
opinion.



H-K - Wearing own position

Reassurance of own public opinion.

Credible

Fighting a battle

Too much rationality  
in foreign int'l.

Too sophisticated in working out  
the precise mechanism.

If balloon works.

Ceteris

Military shadows will lengthen.

USIA Battle won by third?

U.S. reduces to middle

Political battle. - Military strategy credible

Hostilities - Political battle.



Problems NATO

Military Situation

Existence of Cohesion in former Soviet  
are concerned

Alliance — N.A.T.O. — workable

How long can deterrence go on?

Russian Unilateral

Branch

line between Conventional & Nuclear

Strategy — main = deterrence.

- not to use nuclear weapons.

- balancing.

- slight shift from nuclear to  
conventional.



Fr. - not credible.

- infinite.

- of France budget.  
Ueché.

- strategic weapon

- co-ordinated within Alliance

Sir John Gordon

Gen Rogers - doing better than  
what we've got.

Conversion capability - independent.

Southern flank

Common - New Technology now.

Security risk

← Technology → A



John

Flexible Response

Response = credible

Credibility		Options
Reliability		

Political Context

Conventional -

Advanced side

Not all money into advanced technology.

Complex -

Rules of war never change.

Research Side - Political management

Development 40 years ago.

Political shadow over them

Economic shadow.



limited UK

①

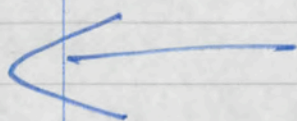
U.K. nuclear force.

②

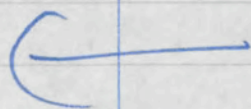
Evolution of  
Nuclear.

FIM Small

if not intention to go all  
the way.



As much as possible up front.



Greater involvement in

formulation

M-11

Reference - No cheap option.

Handover - Duration - 4 or 5 weeks

CNI) - are Government War-morces

High Value Target

30% Standard Spec



Can't give much ground  
— —

Technology - their technology.

|| Cornucopia War - Agriculture already ||  
|| dependent on inputs ||

|| Levels of Trade  
|| & Protection ||

→ Fed Rsv - 30% down

5.9 to 4.7

Reduce spending on tariffs.

Price disincentives

Out of Southern America.

Philadelphia Wacker Deposits - Wacker - 10 - 4  
Wacker Public Bank  
Print in  
— —



Lord Curzon

Prof Friedman #

John Stanley ✓  
Swiss bank  
Unlikely - doubted

but don't know

Prof. Martin

St. Anne Board

Battlefield Nuclear

Reduce dependence - battlefield



Sir James Blake

Sir John Gater

Sec of State

F III

Committee  
Overhead

less dependence

Prod capability

Provisional

reserves

Chem - Offensive  
Capability

Civilian

Chemical  
why?  
Verification  
↓

R.O.E

①

Conventions War - 1 3/4 m miles

1922 - Row of bunkers

Bayern 4 1/2 hours

Refer to - Powers of Reference

Failure to Refer

②

Chemical Weapons Banned



Capability

③

First Refer - First Conclude

- Content of Res state elements

1)

PRG - requests? - No. - Military wants  
U.S.S.R.

2)

20-30 years. Can't make it run.

Response to  
political pressure.

3)



Mr. O'Neill

Very interested



# "To Protect States Own Interests".

1) Integrity of territories

- attitude on others

is attitude on self.

Treaties.

"Collective self-defence"  
= Vietnam.

2) Counter-intervention

Force - unlawful. ∴ counter-intervention.

3) Intervention with consent }  
Request }

Hong Kong  
Myanmar

Difficult

4) To protect own interests

5) Amendment Article



Own authority.

Own judgment.

U.N. Resolutions.

Landmark.

Own best policy interest.



Quick

Successful

Plan to Rank-

Let.

Let Low.

Front line pilot - —

Plan for self-protection.

Views not immediately concerned



Kedourie.

Sphere of Influence.

Fundamentals.

→ ~~the~~ 1914  
~~the~~

Ordered World

Int. Relations Los Angeles

70's

Anni  
Polyst-  
W. Lane  
Polkanna.

Oct. 27



Political - Int. Indpendence  
Self-determination

Promote that concept.

Prattling <

P de Cuellar

Tung

Sovereignty - Admission Nation

Lithuanians

1914

2 Great Powers



56.

- Sphere of Influence

Order

R.P. → lev. of agreement.

---

Landesrecht.

a) Int. Law.

b) U.K. committed to democratic prin-  
ciple  
human rights

c) limits - unacceptible political price

↓

120.

160.



SEMINAR: IS INTERVENTION EVER JUSTIFIED?

MONDAY, 1 OCTOBER 1984

LIST OF PARTICIPANTS

Prime Minister

Rt. Hon. Sir Geoffrey Howe, MP  
Foreign and Commonwealth Office

Rt. Hon. Michael Heseltine, MP  
Secretary of State for Defence

Rt. Hon. Baroness Young  
Minister of State, Foreign  
and Commonwealth Office

Rt. Hon. John Stanley, MP  
Minister of State for the Armed  
Forces

Sir Robert Armstrong  
Secretary of the Cabinet

Sir Antony Acland  
Permanent Under Secretary  
Foreign and Commonwealth Office

Sir Clive Whitmore  
Permanent Under Secretary  
Ministry of Defence

Field Marshal Sir Edwin Bramall  
Chief of Defence Staff

Sir Percy Cradock  
Foreign Affairs Adviser to the  
Prime Minister

Mr. Bryan Cartledge  
Deputy Secretary, Cabinet Office

Mr. Charles Powell  
Private Secretary to the  
Prime Minister

Professor Derek Bowett  
Professor of International Law, Cambridge

Dr. Elihu Lauterpacht  
Reader in International Law, Cambridge

Sir Ian Sinclair  
Former Foreign and Commonwealth Office  
Legal Adviser

Colonel Jonathan Alford  
Deputy Director, International Institute  
for Strategic Studies

Professor Hedley Bull  
Professor of International Relations, Oxford

Professor Elie Kedourie  
Professor of Politics, London

Sir Anthony Parsons  
Research Fellow, Centre for Gulf Studies,  
Exeter

The Lord Thomas of Swynnerton  
Centre for Policy Studies

Mr. Peter Calvocoressi  
Author and former Reader in International  
Relations, Sussex

Attending Dinner only

Professor Michael Howard  
Regius Professor of Modern History, Oxford



SEMINAR ON NATO STRATEGY AT CHEQUERS  
ON MONDAY, 1 OCTOBER 1984

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LIST OF PARTICIPANTS

Prime Minister

Rt. Hon. Sir Geoffrey Howe, MP  
Foreign and Commonwealth Secretary

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North Atlantic Council

Mr. Bryan Cartledge  
Deputy Secretary, Cabinet Office

Mr. Charles Powell  
Private Secretary to the Prime Minister

Professor Lawrence Freedman  
Professor of War Studies, Kings College  
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Professor Sir Hermann Bondi  
Chairman, Natural Environment Research  
Council

Sir Arthur Hockaday  
Secretary and Director General,  
Commonwealth War Graves Commission

Dr. Robert O'Neill  
Director, International Institute for  
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Admiral Sir James Eberle  
Director, Royal Institute of International  
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Professor Peter Nailor  
Professor of History, Chatham House,  
Royal Naval College

Sir Clive Rose  
Former UK Permanent Representative to NATO

Professor Laurence Martin  
Vice Chancellor, University of  
Newcastle upon Tyne

The Lord Cameron of Balhousie  
Principal, Kings College, London





PM/84/153

PRIME MINISTERNato Strategy

1. I have been reflecting on the papers prepared for your Seminar at Chequers. You may find it helpful to have my thoughts about some of the questions we could usefully focus on, among those identified at the end of the MOD paper.

2. The paper demonstrates convincingly that NATO strategy is still valid. No credible alternative has yet been advanced. At the same time the continuing political cohesion of the Alliance is imperative if the Russians are to remain convinced of Western determination and will to resist any aggression. Recently there has been an increasing tendency for some allies to opt out of key aspects of NATO strategy, particularly over nuclear weapons. We therefore need - together with the other "sound" partners - to work hard to keep the backsliders on the rails.

3. I also agree strongly that the credibility of all three major components of NATO strategy will continue to depend crucially on the health of transatlantic relations and the American dimension. It will remain a key Soviet objective to alienate Western Europe from the United States. The lack of touch in Washington over public statements on Alliance affairs has sometimes made their task easier. From this side of the Atlantic we have not done enough to convince the American Congress and public opinion that Europe shares American objectives for the Alliance as well as its burdens. We need to reaffirm the importance we attach to transatlantic ties. We must show that Senator Nunn's concerns are taken seriously. We ought to think further about how to achieve all that more effectively.

/ 4. The need





4. The need for us to hold firm is reinforced by the recent Labour document on defence: if such thinking were to gain ground, particularly within a major ally like the UK, it could destroy the political consensus in the Alliance. This makes it important to us to stick to our guns and go on presenting the basic arguments.
5. If there are short term weaknesses in NATO capabilities, it should obviously be an immediate priority to put these right. Some of the critical shortcomings that most concern NATO military commanders seem often to lie in relatively prosaic areas such as reserves, munition stocks and aircraft shelters. Not all of these problems are prohibitively expensive to resolve. So much the better. We should put them right. As for longer term improvements, particularly in conventional forces, we cannot be complacent when SACEUR and SACLANT warn of their reduced ability to fulfil conventional missions, in the light of Soviet force improvements and doctrinal changes. The problem is to reconcile this advice from our military men with the obvious resource constraints.
6. Over the horizon, emerging technology and new tactical concepts may help to reduce pressure, should deterrence fail, to take early or hasty decisions on escalation. All the signs are that some of these new technologies will be very expensive and will probably be matched by equivalent efforts from the other side. My guess is that they will not revolutionise NATO's fortunes or offer a way out of the political dilemma over nuclear weapons. The proposal for a NATO review directed by Peter Carrington to assess the need and scope for conventional force enhancements is very relevant to this issue. Michael Heseltine and I will be thinking about how to take this forward.





7. As to nuclear weapons themselves, we have won the initial debate over cruise deployment in the UK and perhaps more widely, but the real antidote to current popular anxieties would be visible progress on the arms control front, preferably set within the wider context of improved East/West relations.

8. A break through on arms control will sooner or later prove essential - to both sides - if defence spending is not to break our economic backs. Sustained public emphasis on the seriousness of our commitment to arms control is, in any case, a key part of the political case we have to get across.

9. It is worth making two points about the case we have to present. First, I was struck on re-reading NATO's basic text on flexible response (MC 14/3) by how well it has stood the test of time as a prescription for our defence. I think we should consider proposing that it should be declassified and published by the Alliance. This would help to dispel much of the current misunderstanding about NATO strategy and to underline its unambiguously defensive character. Second, and at a more practical level, I suspect that NATO is vulnerable to criticism on so called battle field nuclear weapons. NATO Ministers took an important first step with the reductions announced last year at Montebello. But there is a case for going further, as Michael Heseltine's paper admits. I should like to see a critical examination of the need to retain these, particularly nuclear artillery.

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/ 10. Turning





10. Turning to Britain's role within the Alliance, we need to follow up your paper to Heads of State and Government about the future of Europe and strengthening the European Pillar of the Alliance. Since France and Germany are so central in their different ways to the effectiveness of NATO strategy, the heart of the matter remains how far Britain and those two can move forward together (though I recognise that Italy is important). You know of my concern that Britain should not be pushed to the sidelines by the burgeoning Franco/German security dialogue. Peter Carrington has told me of his similar concern that in NATO, as he finds it on his return, Britain seems to count for less than she should. If we are to re-establish a central role - as we must - that will mean more than just working for good personal relations with our French and German counterparts (important though that is). Somehow we need to try to identify how Britain could provide a new political impulse in the defence/security field, that Paris and Bonn - as well as Washington - would plainly recognise as such.

11. Ideas of this kind are more in Michael Heseltine's province than in mine: and I have had no chance to discuss the subject with him. But here are a few examples of the kind of specific ideas we might want to have looked at.

- should we consider whether current understandings with France on harmonising operational patterns of attack submarines could be extended to SSBNS?
- should we look at how far we might formalise with France reciprocal use of our respective out of area defence facilities. without reducing national freedom of action?
- should we tempt the French into closer discussions of joint military command arrangements for a crisis in Berlin?

/ - could we





- could we propose to the Germans that we conduct a joint examination at military staff level of practical measures to bring French conventional forces more closely into cooperation with other major allies on the central front?
- could we persuade the Germans to contribute to out of area peace keeping operations within the framework of a future European peace keeping force?
- should we make more to the Germans of the role that RAF strike aircraft, based in Germany with British nuclear weapons, play in reinforcing extended nuclear deterrence for Europe?

I emphasise that these are only examples. They may not be ideal. They may not even be right. But I hope they indicate the kind of thing I have in mind.

12. I apologise for burdening you with another - rather discursive - piece of paper, which I have had to finalise in the midst of all the goings on here in New York. But I hope my main points are reasonably clear. I think we have the following requirements:

- (i) to keep Alliance backsliders on the rails;
- (ii) to convince American opinion that the European allies are keeping up to the mark;
- (iii) to meet equipment shortcomings within existing constraints;
- (iv) to get the best out of the Carrington Review of Conventional Forces;
- (v) to keep public opinion on board and, not just for that reason

/ (vi) to stay



SECRET



- (vi) to stay in the public lead in the search for a breakthrough on arms control:
- (vii) to reassert Britain's central role with that of Germany and France.

*CL Budd (Private Secretary)*

*for*

GEOFFREY HOWE

(Approved by the Secretary  
of State and signed in  
his absence)

Foreign and Commonwealth Office

28 September 1984

SECRET



*de rke*

PRIME MINISTER

Foreign Policy Seminar at Chequers  
on 1 October

You have already read through the papers for the main seminars. You will want, however, to glance at the separate folders for the two Restricted Sessions with Ministers and officials only on NATO strategy and Conflict of Principles. In particular there is a new paper from the Foreign Secretary on some of the NATO issues.

*CP*

28 September 1984



PRIME MINISTER

SEMINAR ON NATO STRATEGY

CHEQUERS, 1 OCTOBER

Restricted Session

There is no separate paper for this discussion though the Foreign Secretary's minute at Reference A raises some new points in paragraph 11 which might be discussed.

You will want to use the session with Ministers and officials to identify the implications of the morning's discussion for United Kingdom policy. You might invite the Defence Secretary to assess the implications for the United Kingdom armed services over the next decade: does the need to enhance the credibility of the flexible response strategy call for any adjustment in the balance of the United Kingdom defence expenditure, for example, in favour of the Royal Navy or Royal Air Force? What will be the likely impact on the United Kingdom of Lord Carrington's forthcoming review of scope for conventional force enhancement? What are the potential expenditure implications? What more should we do to assert our central role in the Alliance alongside France and Germany?

You could then ask the Foreign and Commonwealth Secretary to speak about the aspects of intra-Alliance relationships addressed in his minute to you. The single most cost-effective improvement to NATO's overall strategic posture would be the closer integration of France into the operational planning of the Alliance: what could the United Kingdom and the Federal Republic of Germany do to encourage this? What might be done to reduce unjustified American scepticism about the contribution of the European Allies, in order to minimise the possibility of United States troop



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withdrawals? The policies and public attitudes of maverick Alliance members such as Greece and Denmark tarnish the European image in Washington and may pose temptations to the Russians: are we too lenient with them? Would the Alliance be healthier without them? What more needs to be done to keep the support of public opinion for NATO's current strategy?

You will wish to conclude the discussion with Ministers and officials by drawing up a check list for follow-up action by the Departments concerned: the discussion may throw up a requirement for one or more papers for consideration by OD.

C.D.P.

28 September 1984

VSCABC

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SEMINAR ON NATO STRATEGY AT CHEQUERS  
ON MONDAY, 1 OCTOBER 1984'

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LIST OF PARTICIPANTS

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Rt. Hon. Sir Geoffrey Howe, MP  
Foreign and Commonwealth Secretary

Rt. Hon. Michael Heseltine, MP  
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Professor War Studies, Kings College  
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Royal Naval College, Greenwich

Sir Clive Rose  
Former UK Permanent Representative to  
NATO

Professor Laurence Martin  
Vice Chancellor, University of Newcastle  
upon Tyne

The Lord Cameron of Balhousie  
Principal, Kings College, London



PRIME MINISTER

SEMINAR ON NATO STRATEGY : 1 OCTOBER

The programme for this is as follows:

- 0930-1215      general discussion between all participants
- 1230-1400      continue discussion over lunch
- 1415-1530      consider policy implications with official participants

The list of participants is at reference A and the basic discussion document circulated to all participants at reference B. The latter sets out a number of issues for discussion in an annex at reference C. Finally you might like to have to hand Henry Kissinger's article at reference D.

The FCO are preparing a note on a number of current political issues in the Alliance, for discussion during the restricted part of the seminar. But it might be useful to raise some of them - US/European relations, burden-sharing, the implications of Franco-German co-operation - with the wider group over lunch.

I rather doubt that at the end of the day you are going to come out of this seminar with any major new ideas. NATO strategy is well-trodden ground, and those taking part have mostly been doing the treading for a fair time. You may want to prod them a bit for heretical ideas - e.g. on



the real value of theatre nuclear weapons, on greater specialisation of roles in the Alliance - if you are to get the discussion to spark.

I attach some Chairman's notes.

C.D.P.

CHARLES POWELL

26 September 1984



E.R.

SEMINAR ON NATO STRATEGY, 1 OCTOBER

CHAIRMAN'S NOTES

1. Welcome you all to Chequers. Most distinguished and experienced group. Grateful to you for coming here to share your wisdom with us.

2. Purpose of the seminar is to allow more reflective discussion than we normally have time for when confronted with the need for urgent decisions. In particular a chance to look closely at the intellectual basis for accepted doctrines which we treat as though they were tablets of stone. No constraints on what we say - indeed I hope that no-one will shrink from being provocative - but there are limits on the amount of time we have to say it in. Hope everyone will make an effort to be brief. Also ask you to abide by Chatham House rules, that is that nothing be attributed either to the occasion or to participants by name.

3. The main subject for our discussion is the doctrine of flexible response, on which you have all received a paper, and I propose that we devote most of our time to this. Goodness knows it is a big enough subject! But if there is time over lunch we might also touch on some of the current political issues in the Alliance - the problem of burden-sharing for example and the implications for the UK of growing Franco-German co-operation.

Flexible Response

4. Since time is so short, I shall not use up more with a lengthy introductory statement, but plunge straight into the main issue. There are two main aspects to be looked at:



- the viability or otherwise of NATO's current strategy;
- the means by which its effectiveness can be enhanced.

5. The discussion paper states in paragraph 28 that no credible alternative to the strategy of 'flexible response' has been advanced. The only clear alternative is, in fact, the 'trip wire' strategy which preceded it and which ceased to be credible with the Soviet attainment of strategic nuclear parity with the United States. Root and branch critiques of 'flexible response' usually turn out, on closer examination, merely to be suggestions as to ways in which the strategy could be made more effective rather than attacks on the strategy itself. It would nevertheless be useful to open the discussion by establishing whether or not there is a consensus round the table in favour of 'flexible response' in principle. One of the invitees, Lord Cameron, chaired earlier this year a study group of the British Atlantic Committee which, in its report "Diminishing the Nuclear Threat" concluded that NATO's strategy of 'flexible response' is "no longer credible" and "needs to be replaced". You might invite Lord Cameron to defend this view, for which Sir James Eberle may express some support. The first thirty minutes of the plenary could be devoted to a discussion of the basic concept of 'flexible response'. The conclusion of the majority is likely to be that, in terms of effective deterrence, there is no substitute for the triad of conventional, theatre nuclear and strategic nuclear forces on which the flexible response strategy is based.



The next hour of discussion in plenary might be devoted to ways in which the flexible response strategy, and the components of the strategic triad, could be enhanced. You will wish to emphasise at the outset that NATO's objective must be to create the strongest possible deterrent to Soviet attack: once hostilities have begun, there will be no certain scenarios and no guaranteed assurance of carefully controlled or graduated escalation. You might ask each of the invited unofficials to speak for five minutes each, summarising briefly their own prescriptions for an improved NATO deterrence posture. You might encourage them in the process to air the particular question of the UK contribution, picking up Peter Carrington's theory that the UK should make its main contribution through air and naval rather than ground forces. You might also canvas views on whether a new initiative is required to strengthen the Alliance's conventional defences (another theme which Peter Carrington is likely to pursue and on which HMG will have to react); and if so whether it can be achieved without great expenditure of additional funds, e.g. through more efficient use of resources.

In the remaining half hour of plenary, there are some questions which it would be useful to raise if they have not already emerged in discussion, namely -

- (i) The Russians have recently done a great deal to improve their capacity to attack on short warning: the concept of the Operational Manoeuvre Group (OMG) represents an important evolution of Soviet military thinking. Does not this weaken even further the viability of the NATO concept (cf. paragraph 10 of the discussion paper) of forward defence? Could the threat posed by Soviet OMGs be used to encourage the Germans to







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FLEXIBLE RESPONSETHE ORIGINS AND NATURE OF FLEXIBLE RESPONSE

1. NATO's security is based on the twin approaches of deterrence and defence. Deterrence seeks to influence decisively and positively the calculation of the leaders of the Soviet Union that they would run an unacceptable degree of risk regardless of the nature of an attack: if deterrence fails, NATO's declared aim is, by carrying out a robust forward defence, to restore the status quo ante using a level of force as far short as possible of an all out strategic nuclear exchange. NATO's present strategy is one of flexibility in response to aggression, and seeks to blend into an overall strategic consensus the disparate elements which form NATO's military and political posture.

2. 'Flexible Response' was adopted in December 1967 after some 'ten years' of debate about the Alliance's strategic posture. The previous strategy - massive nuclear retaliation - which dated from 1956, assigned to NATO's (weak) conventional forces the tasks of:

- a. forcing the aggressor to mobilize for an attack (thereby increasing the warning time to NATO).
- and
- b. holding him as far forward as possible just long enough for the certain and overwhelming nuclear response to be made.

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3. This 'tripwire' was accepted by the Europeans in particular who were able to see that it:

- a. linked the defence of the US inextricably with Europe.
- b. provided a less expensive alternative to maintaining the size of conventional forces that would otherwise have been needed to ensure defeat of a Soviet conventional attack.

But even during the late 50s, developments in Soviet nuclear capabilities were undermining the credibility of tripwire. These encompassed the introduction of Soviet long/medium range bombers, and the development of ICBMs. The attainment in the 1960s by the Soviets of the ability to strike US territory with nuclear weapons (along with their overwhelming conventional forces) destroyed the credibility of 'tripwire' because the deterrent threat that the US would automatically launch a strategic nuclear attack on Russia to defeat conventional aggression had irretrievably lost its force. As de Gaulle was reported to have said "No US President will exchange Chicago for Lyon".

4. Some 10 years lapsed between the first suggestion that NATO should revise its strategy and the adoption of the strategy of flexible response. In the course of that process, described in a recent US Report as "the longest and

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most divisive debate in the history of the Alliance", virtually every issue that has emerged in the current questioning of NATO's strategy was addressed in depth in the Alliance: the reliability of the US nuclear guarantee; the feasibility of achieving a satisfactory conventional balance in Europe; the benefits and risks of first use of nuclear weapons; and the implication for deterrence of stronger conventional defence and a 'higher' nuclear threshold.

5. France has pursued an independent nuclear policy which is akin to 'tripwire'. Although there is potential for more flexible employment options inherent in her modernisation plans and an enhanced role for conventional forces, she remains sceptical about NATO's strategy of flexible response, and the declared role of her theatre weapons remains that of a "final warning" of a strategic nuclear response. Such a policy would not suit NATO's sophisticated theatre nuclear doctrine and is made possible only by the unique position of France who, though outside NATO's military structure, nonetheless enjoys the shelter of the US strategic umbrella and the "glacis" provided by the FRG. Many analysts doubt the credibility of France's nuclear stance, notwithstanding these advantages.

6. There are three key principles underlying NATO's deterrent strategy:

- a. a manifest determination to act jointly and defend NATO's Treaty Area against all forms of aggression.

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- b. a recognisable Alliance capability to respond effectively at all levels of aggression, and to escalate if necessary.
- c. a flexibility in response which would prevent the Soviet Union from predicting with confidence NATO's specific response to aggression, and which will lead the Soviet Union to conclude that an unacceptable degree of risk would be involved regardless of the nature, place and time of an attack.

These three principles are built on a coalescence of political will and military posture. Both aspects must be demonstrable and credible to the potential aggressor (and also to electorates) if NATO's deterrent strategy is to succeed.

7. It is implicit in the Alliance, whose treaty states that "an armed attack against one ... shall be considered an attack against them all", that all members participate on an equal basis in the process of decision-making. And it is also central that the Alliance should send to the Soviet Union clear signals of continuing political cohesion and of its political will to mount direct defence and to escalate where necessary to whatever level is needed to persuade the aggressor to pull back. This demonstration of cohesion - which should not be confused with absolute harmony at all times - must be maintained in peacetime and, critically, in a period of rising tension. Failure to maintain a clear signal, especially during tension, could allow the Soviets to (mis-) calculate that NATO's political determination, and thus its military capacities, would crumble in the face of actual aggression.

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8. There are three basic components of NATO's military posture:

- a. conventional forces - to deter and counter as far as possible any Soviet non-nuclear attack by direct defence, with an implicit threat of escalation to the use of nuclear forces.
- b. theatre nuclear forces - to provide an additional deterrent to conventional attack, and also to Soviet use of TNF; and to provide NATO with a range of nuclear options short of a strategic exchange, but which demonstrates our willingness to escalate the conflict to the strategic nuclear level if necessary.
- c. strategic nuclear forces - to be able to inflict unacceptable damage on the Soviet Union even after a Soviet pre-emptive first strike, and to provide the ultimate threat to deter Soviet aggression.

#### COMPROMISES IMPLICIT IN FLEXIBLE RESPONSE

9. The conclusions which were reached in 1967 are based on a series of compromises that reflected the (differing) views of the US and its Allies. In some instances the compromises stem from geography: others derive from markedly different political viewpoints. In every case, however, the compromise was built on the desire not to expose cracks between the US and Europe: these same potential differences remain, albeit below the surface, within the Alliance today.

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10. There are some military penalties to be paid in a slavish interpretation of forward defence - a cardinal military precept once hostilities have started is to use depth in defence to give our forces greater protection and more freedom of action - and the resultant deployments in the FRG do not necessarily make best use either of terrain and/or the conventional capacities of the Alliance. But the Europeans, and especially the FRG, with vivid memories of the devastation of two world wars, were (and are) not prepared to accept the principle of a forward 'glacis' of territory: there could be no 'disposable' Western states to act as a buffer between super-powers.

11. Ever since their first efforts at the February 1952 Lisbon North Atlantic Council meeting, Alliance members have never been prepared to provide the resources needed to mount a full conventional defence to a major Soviet attack. The concept of threatened escalation by NATO to the first use of nuclear weapons reflects this fact.

12. There is no defined length to any phase of NATO's response. There is an underlying tension between the US who would wish to delay nuclear exchanges as long as possible (hence their emphasis on building up warstocks in Europe, and the need to reinforce) and the Europeans, especially the FRG, who view with alarm the consequences of a major conventional war fought on their soil. (Henry Kissinger tartly observed that the Europeans would prefer to have a nuclear war fought between the US and the USSR over their heads). These wishes represent the extremes of polarity: there are other elements which although implicit were never addressed in detail; they include:

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- a. the natural preference to defeat the enemy quickly by conventional means as close to NATO's borders as possible.
- b. the need to be able to fight the conventional battle long enough to allow NATO political authorities to make calculated decisions about the employment of nuclear weapons if necessary, and for further reinforcements to arrive.

13. Nor was the impact of 'flexible response' on NATO's maritime posture addressed in detail. Different considerations apply to the conduct of operations on land and at sea; for example, mobility of maritime forces and their relative freedom from geographical constraints provide a wide range of options in tension, transition to war and war - yet the same principles underlying flexible response must apply in both areas.

14. Striking the right balance between ready and in-place forces and rapid reinforcement is no easy matter. Reinforcement is a vital element of deterrence: however, its implementation raises difficult and conflicting issues for decision makers. Its success will depend in no small measure on timely political decisions early in a period of tension which may not prove easy, not least because they may be seen as escalatory. Equally, the costs (political and resource) of in-station forces make it inevitable that heavy reliance will be placed on reinforcement.

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CRITICISMS OF FLEXIBLE RESPONSE

15. Whilst there is clear and unequivocal public support for NATO there are many critics of the West's reliance on nuclear weapons. Critics range from the responsible to the absurd fringes of the peace movements who have no interest whatsoever in the concept of deterrence. It is important, however, even when considering the important contributions to the debate made by the 'responsible' critics, to make a clear distinction between those who doubt the intellectual, political and military validity of the overall strategic concept, and those who merely regard its implementation as deficient. A number of so-called 'alternative strategies' have been propounded by various commentators responsible and mischievous alike. These cover concepts such as: no first use of nuclear weapons; nuclear free zones; rapid moves to new advanced weapons technology (to obviate the need for nuclear, especially battlefield, weapons); unilateral nuclear disarmament.

16. As paragraph 4 indicates, none of these issues is new. However, there are various reasons why public concern has revived in recent years. They include worries about the growth of Soviet military power across the spectrum and about the role of nuclear weapons in NATO strategy following the 1979 decision to modernise NATO INF, as well as US and UK strategic modernisation programmes. There is also a growing aversion to nuclear matters, both civil and military, and an inchoate feeling in some quarters that Arms Control is not being pursued adequately by the Alliance.

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17. When analysing alternative defence strategies, however, it is vital not to address them solely from a western perspective: although the strategy must be credible in Western eyes it is important to state clearly that the most critical analysis, in terms of the efficacy of a strategic concept, is that of the potential aggressor. NATO's objective is to seek to influence Soviet calculations to ensure that Soviet leaders decide that whatever the incentive (which at the moment is not great) the gamble of using the military option would not be worth taking. The litmus test, therefore, of any alternative defence concept is whether it would be more convincing to the Soviet Union. There is no evidence that, since 1967, the Soviet leadership has ever doubted the political will and military capacity of the Alliance to respond robustly to aggression. There is no immediately obvious reason, despite Soviet preponderance in conventional and longer range theatre nuclear forces, and broad strategic nuclear parity, why the Soviets should alter their assessment. And there is nothing in any of the alternative defence concepts that would be any more credible than flexible response in Soviet eyes. Indeed, inasmuch as such concepts could simplify Warsaw Pact operational planning or leave NATO forces at risk, they would work to the Soviets' advantage. This is not to say that there are not areas of weakness which if allowed to go uncorrected might lead to a change in the Soviet perception. Flexible response is only as flexible as the forces provided to put it into effect allow.

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18. That said, powerful and responsible criticisms have been made of NATO's military posture which could have implications for future Alliance policy, and which call into question the ability of the Alliance to meet its current military objectives. It is therefore worth analysing the circumstances under which flexible response may be invalidated:

a. a complete collapse of the strategic balance in favour of the Soviet Union would destroy the threat of ultimate retaliation and would leave the Alliance open to nuclear blackmail.

b. if NATO's theatre nuclear capabilities ceased to provide an appropriate range of options linking conventional and strategic forces the ability of the Alliance to threaten a controlled escalation would be damaged. This could put NATO in the impossible dilemma of suing for peace or launching a strategic nuclear attack because it was left with no adequate intermediate options.

c. a major conventional reduction in Europe could deny the Alliance the ability to undertake a robust direct defence and would in effect be a return to 'tripwire'. It could thereby tempt the Soviet Union to make a quick 'surgical' attack with limited aims confident that the US would not

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risk a strategic nuclear exchange in such circumstances, though such a scenario would need to assume that the UK's and French strategic forces would also be similarly inhibited.

d. A perception by the Soviets - rightly or wrongly - that NATO's political will would collapse in the face of a major conventional attack would obviously be a disastrous development: and it follows therefore that the Alliance should seek to foster and demonstrate its political cohesion as one of its highest priorities.

e. a force posture in any Region, for example on the Flanks, so weak as to inhibit an Alliance response to a limited Soviet incursion.

19. We believe that the overall strategic concept is sound - indeed there is neither evidence to support an early obituary, nor any available alternative strategy that would score in the same way as flexible response in Soviet calculations. But we should analyse against current criticisms whether any changes need to be made to NATO's military posture to enhance the strategy. This paper does not address the highly complex issues of strategic nuclear forces, and the US Strategic Defence Initiative: suffice it to say that the retention of broad strategic nuclear stability with a secure second-strike capability between the

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super-powers is a necessary pre-condition of the NATO's deterrent strategy. The three key areas which need to be addressed are conventional forces and theatre nuclear capabilities; and regional imbalances within the Alliance.

20. Criticisms of the conventional leg of the triad of forces is based on evidence of: sheer numerical inferiority; limited sustainability; low level of equipment standardisation and interoperability; inadequate reserves; blunting of the qualitative edge. An understandable (and sometimes automatic) reaction is to seek to extend our conventional capacity simply by spending more on defence. For a wide variety of reasons, this is impossible to achieve evenly across the Alliance, and our approach has been to question whether the UK and NATO are getting the maximum value for the already substantial resources deployed. Could the Alliance undertake its conventional roles more rationally - eg by role specialisation among nations, and by increasing the volume of efficient equipment collaboration? And how should the Alliance balance its various needs for powerful land forces against the equally strong claims for air defence and a strong maritime capability?

21. A separate but related issue is whether it is in NATO's interest, given the geopolitical compromises and subliminal tensions inherent in flexible response, to seek to enhance conventional capabilities to make it possible to fight an extended conventional war. Would it actually be preferable to relying on early use of nuclear weapons? Would this be likely to increase the risk of

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war - either by appearing to threaten the Soviet Union or by making the nuclear element less credible? It is at least arguable that excessive reliance on conventional capabilities could appear to demonstrate that the West had lost its resolve to escalate to nuclear weapons, and therefore that the Soviet Union could expect to be able to wage a conventional war in Europe without the threat of nuclear attacks against its homeland. It is also possible to argue that such a strengthening of NATO's conventional forces, especially if matched by the Soviet Union, would not necessarily extend the period of conventional hostilities, but merely increase its intensity. War fighting capabilities would be enhanced, but should deterrence fail, early recourse to nuclear weapons might still be needed.

22. Evidently there is a balance to be struck here - but, equally, it is a matter of judgement whether overall, despite all the criticisms, NATO's conventional forces are excessively weak (though see 23 below). There are plainly many areas, such as sustainability and interoperability, where NATO can and must do much better. But we must not assume that NATO's conventional defences would be a push-over for the Soviets. If the present levels of expenditure on nuclear systems were used to bolster conventional forces, the switch would produce only relatively modest enhancements in our conventional capabilities. At the same time the UK would be denuded of her ultimate national retaliatory capability.

23. The principal criticisms of theatre nuclear weapons are based on doubts, as expressed for example by McNamara, on the utility of very short range or

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battlefield systems. Although many studies have been undertaken, and the issues aired thoroughly, no adequate alternative in terms of deterrence to NATO's possession of some battlefield nuclear weapons has been advanced. There has been a gradual reduction in such weapons in Europe in recent years, and this will increase in pace over the next few years. But in considering the role of battlefield weapons it is important to identify likely Soviet perceptions. The removal of the short range nuclear threat would allow the WP to mass conventional forces for attack with relative impunity, while NATO forces would still be at risk from comparable Soviet systems. Whilst there is a case for further reductions in such systems it has not been demonstrated that it would be to NATO's advantage to renounce such a capability in its entirety.

24. There are wide disparities between the different NATO regions in terms of force levels, equipment standards, and overall defensive posture. It must follow from this that those areas which are weakest - notably North Norway and Eastern Turkey - could present comparatively easy targets should the Soviet Union wish to test NATO cohesion and the level of response. This is an acute difficulty for NATO, and it could present serious difficulties for the Alliance should the Soviets seek to probe Alliance resolve. Would it be credible for NATO to make a major military response in another theatre to, say, a Soviet incursion into Finnmark? Should NATO plan to seize a 'countervailing' area of strategic interest to the Soviet Union, or take appropriate measures at sea? Could NATO take any credible military measures in such circumstances? Is it possible to

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rectify the regional imbalances? How should Norway's defences be strengthened? Should the Alliance provide additional military aid to Turkey? The questions can be easily posed, although there are no straightforward answers. However, it is important that NATO should maintain its ability to deploy specialist reinforcement forces as a tangible demonstration of politico-military cohesion and its will to give effect to Article 5.

25. Two further areas need to be addressed: NATO's stance on out of area matters and burden-sharing.

26. The threat to Alliance interests outside the NATO area is acknowledged by NATO. However, it has no adequate collective mechanism for handling such crises as Afghanistan. This places the Alliance at a disadvantage in that it presents options for the Soviet Union to test Western resolve without running the risk of a united NATO response. Thus the responsibility for any military action will remain with those Allies who are able to respond to a crisis out of area in consultation with other friendly powers, leaving NATO, EEC and other fora to consider what collective political support can be given. Nevertheless, the potential drawdown of reinforcement forces (particularly the US RDF) faces the Alliance with an acute dilemma in crises out of area.

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27. There is growing evidence that the Alliance collectively needs to devote greater efforts to ensuring that the risks and burdens (as well as the benefits) of membership are shared equally between members. There are obvious transatlantic ramifications to this as manifested by the Nunn/Cohen resolutions; it is also an intra European problem. The political, military and resource implications are considerable.

#### CONCLUSION

28. Analysts, both serious and mischievous, enjoy writing obituaries about NATO's strategy. None has yet, however, advanced any credible alternative to the strategy of flexible response. This is no surprise: flexible response is designed to provide as many options as possible to the defender, and every alternative that has yet been propounded would reduce flexibility in varying measures. Most efforts to debunk flexible response misunderstand the fundamentals of the strategy: it does not commit NATO to a preordained sequence of responses, conventional to nuclear, and it does not require NATO to match the WP system for system at every level. Above all, there is no absolute nuclear threshold. Flexible Response provides NATO commanders and political authorities with a wide range of options for response to aggression. Clearly, the stronger and more enduring the conventional leg, the longer the time available to NATO to consider other (especially nuclear) options: but paradoxically there is a danger that over reliance on increased conventional forces could also weaken deterrence because the Soviets might assume NATO was losing the will to resort to nuclear weapons if necessary.

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29. Given that NATO's objectives are to deter aggression, there is no empirically verifiable formula which will guarantee that the Alliance's success over the last 35 years will be replicated in the next 35 years. But, two key points stand out from our analysis which point the way ahead. In order to preserve its political and military credibility NATO must preserve and nourish the two primary links on which the Alliance is founded: the political links between Europe and the USA (and within Europe) and the military links between conventional and nuclear capabilities. The efforts made by the Soviet Union to de-couple Europe from the USA by attempting to block INF modernisation vividly demonstrates that their own analysis has identified the same key elements in NATO's future posture.

Finale. "Take but degree away, untune that string and hark what discord follows."

30. The credibility of the strategy of flexible response depends crucially on convincing the Soviet Union.

- that NATO has sufficient material resources to respond to attack, to go on responding, and to raise the stakes if necessary.
- that NATO has the political will to use the formidable military assets at its disposal.

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In these circumstances, NATO can therefore ensure that, as the IISS judges "military aggression (would be) a highly risky undertaking ..... the consequences for an attacker would be unpredictable, and the risks, particularly of nuclear escalation, incalculable".(1)

31. The Chiefs of Staff recently reaffirmed that in their judgement no credible alternative to flexible response exists, but acknowledged that there were a number of weaknesses in its implementation which detract from the inherent flexibility required which needed to be addressed and overcome; these included sustainability, and mobilisation and reinforcement measures.

32. In sum, there is no reason to judge that, in Soviet eyes, flexible response has ceased to be credible: but, equally, we must not be complacent about the present state of NATO's defences and we must continue to give priority to areas such as sustainability, interoperability, efficient use of NATO's resources and effective equipment collaboration to ensure that NATO's posture remains as credible to the Soviet Union in the next decades as it evidently has been until now.

(1) Military Balance 83/84.

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ISSUES FOR DISCUSSION

1. In what way (if any) are the circumstances surrounding conventional, theatre nuclear and strategic forces in 1984 different from 1967?
2. Is Flexible Response the right strategy; are there any credible alternatives given the geo-political realities? Are there any lessons to be learnt from French strategic and nuclear thinking?
3. Is there any evidence that Soviet perceptions of NATO's credibility have changed? What is their likely risk analysis?
4. Is it necessary to undertake further conventional improvements in Europe to maintain credibility of Flexible Response?
5. Is NATO's political solidarity under threat from the weaker members? If so how can this division be countered both politically and militarily?
6. Are NATO governments doing enough to reassure publics of the viability of NATO strategy?
7. Is NATO doing enough to maintain the primary linkages both between Europe and USA and between conventional and nuclear response?



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Cheques Summer.



# A Plan to Reshape NATO

By HENRY KISSINGER

*After 35 years of preserving peace in Western Europe, the Atlantic Alliance confronts new military, political and social realities. In this article, a former Secretary of State proposes dramatic—and in his view, vital—steps to help the alliance meet the challenges ahead. Among them: NATO's Supreme Allied Commander should be a European, not an American, as is now the case; Europe should have a decisive voice in certain nuclear arms-control talks and greater responsibility for its ground defense. If Europe refuses to accept that responsibility, the U.S. should withdraw up to half of its ground forces from Europe.*

Lebanon and the Soviet succession have preoccupied us in recent weeks, but the Atlantic Alliance must remain the pivot of American policy. On its unity depends the security of free peoples. From its cohesion will flow whatever hopes the Soviet succession offers for a new dialogue. Unfortunately, just as storms recur in nature, crises recur in the Atlantic Alliance. Nearly every Administration for a generation has been involved in them. However, the present controversies in NATO are both unprecedented and unsettling.

In West Germany, Scandinavia, the Low Countries and even in Britain (though to a lesser extent), "peace" movements have been pulling governments in the general direction of their policies, even though those governments disagree with their premises. In addition, the main opposition parties in West Germany and Great Britain—which, in the nature of democratic politics, can be expected to get into office eventually—are advocating policies that amount to unilateral nuclear disarmament for their countries. Because these groups hold sway over key segments of public opinion, too many European leaders—even conservative ones—have yielded to the temptation to demonstrate their peaceful intentions the easy way, by pretending to be reining in a bellicose and insensitive U.S. through their ministrations. As a result, among those who shape public attitudes—and thereby set what become the limits of the politically possible—there is less intellectual or philosophical agreement than in any previous period.

This creates an exceedingly dangerous situation. An alliance cannot live by arms alone. To endure it requires some basic agreement on political aims that justify and give direction to the common defense. If military arrangements provide its only bond, it will sooner or later stagnate. It will surely prove unable to take advantage of diplomatic opportunities for an easing of tensions. That is the central issue before the Atlantic Alliance today. It requires a remedy that is fundamental, even radical—in the literal sense of going to the root.

Four problems in particular are gnawing at the alliance:

1) *Lack of an agreed, credible strategy.* The gap between NATO's formal strategy and what the public will support has widened dangerously. The so-called flexible response devised in the 1960s remains NATO's official doctrine. It contemplates a defense of Europe that begins with conventional weapons and then goes up the ladder of nuclear escalation—until it reaches whatever level is necessary to halt Soviet aggression. In today's circumstances this doctrine has a fatal weakness: neither existing nor projected NATO conventional ground forces are adequate to

repel a major Soviet conventional attack. Therefore, the doctrine would require a nuclear response at an early stage. Yet strategic nuclear parity deprives the threat of strategic nuclear war of much of its credibility; mutual suicide cannot be made to appear as a rational option. And no alternative nuclear strategy has been developed. Partly for this reason, public opinion, essentially unopposed by most NATO governments, is moving powerfully against any reliance on nuclear weapons—even tactical ones.

The alliance is thereby trapped in a precarious combination of (a) inadequate conventional forces, leading to (b) reliance on nuclear weapons in (c) a strategic environment that makes the threat of their use, and therefore their deterrent value, less and less credible, and (d) a public climate of growing nuclear pacifism that undermines what credibility remains. Lack of a coherent defense policy leaves the alliance, possessing a huge stockpile of enormously destructive weapons, disarming itself psychologically.

2) *Intermediate-range weapons and arms control.* The arrival of the new U.S. intermediate-range weapons in Europe late last year was properly hailed as a major success. For if public demonstrations and Soviet pressure had succeeded in blocking that deployment, the Soviet Union would in effect have achieved a veto over NATO's military dispositions. But unless the alliance clarifies the purpose of these missiles, the accomplishment is likely to be transitory, since the basic European attitude toward the missiles is that of a host toward a now unwanted guest whose invitation to dinner it would be too awkward to withdraw. Some prominent Europeans purport to see in the missiles' presence a hidden American design to confine a nuclear war to Europe. Others treat them as one of those peculiar American aberrations that periodically upset the alliance's equilibrium. Too few recognize, and even fewer are willing to admit, that in fact the missiles link the strategic nuclear defense of Europe and the U.S. Weapons capable of reaching Soviet territory stake the American homeland to the defense of Europe; they do not enable America to remain immune.

European ambivalence makes it excruciatingly difficult to define "progress" toward arms control, while the nearly desperate eagerness with which progress is pursued makes its attainment less likely. The Soviets have refused even to discuss any proposal balancing U.S. intermediate-range missiles in Europe against the Soviet arsenal at a lower level. They insist on total withdrawal of American missiles while retaining a large number of their own. The goal of leaving Europe vulnerable to Soviet nuclear blackmail is obvious. Yet significant segments of European opinion persist in blaming the U.S. for the deadlock. In Europe





ISSUES FOR DISCUSSION

1. In what way (if any) are the circumstances surrounding conventional, theatre nuclear and strategic forces in 1984 different from 1967?
2. Is Flexible Response the right strategy; are there any credible alternatives given the geo-political realities? Are there any lessons to be learnt from French strategic and nuclear thinking?
3. Is there any evidence that Soviet perceptions of NATO's credibility have changed? What is their likely risk analysis?
4. Is it necessary to undertake further conventional improvements in Europe to maintain credibility of Flexible Response?
5. Is NATO's political solidarity under threat from the weaker members? If so how can this division be countered both politically and militarily?
6. Are NATO governments doing enough to reassure publics of the viability of NATO strategy?
7. Is NATO doing enough to maintain the primary linkages both between Europe and USA and between conventional and nuclear response?



Professor Friedman ✓

Professor Naiter ✓

Dr. O'Neill

Sir Isaac Kuhn

Professor Naiter

Sir Isaac

No nuclear  
Money

Lord Cameron

John Sturdy ✓

Professor Friedman

Professor Naiter

Professor Borden

Dr. O'Neill

Sir Clive Bk

Sir Mikhail Gorbachev

If Europe later

French strategy

Fr.

Nuclear Potential

Nuclear weapons



in the U.S., this attitude must in-  
crease the public support needed  
not only for missile deployment but  
for coherent arms control.

3) *East-West relations.* Behind the  
sharp differences over defense strategy  
and arms control lies a parallel dispute  
over the alliance's posture toward the  
Soviet Union. Too many Europeans ac-  
cept the caricature of a U.S. run by trig-  
ger-happy cowboys whose belligerence  
has provoked Soviet intransigence.  
Many Americans, on the other hand,  
consider such European notions naive and believe that together  
with the pacifist and neutralist demonstrations, they reflect a  
trend toward appeasement that encourages Soviet intransigence.

4) *Relations with the Third World.* Most European leaders  
believe that they have a special opportunity to establish prefer-  
ential relationships with Third World countries. In the flash  
points of the Middle East, Africa and Central America, they see  
U.S. approaches as hopelessly tainted by an obsession with Soviet  
ambitions; some hope to win favor in the Third World by an  
ostentatious dissociation from the U.S. More than a few Ameri-  
cans view such behavior as a free ride paid for by U.S. sacrifices  
or as a positive incitement to Third World radicalism.

These differences could be healthy if they led to compatible  
and constructive policies for the 1980s and '90s. So far this has not  
happened. Mutual recriminations have created opportunities for  
Soviet political warfare even during this period of stagnation in  
the Kremlin leadership. The Politburo is obviously convinced  
that the West has become so paralyzed concerning nuclear weap-  
ons that there is no urgency about nuclear arms control; the Soviets  
can simply wait for a while to harvest the fruits of Western  
anxieties. By contrast, there may be concern in Moscow that  
NATO will move to close the gap in conventional forces; hence the  
willingness to resume the talks, moribund for ten years, about  
limiting conventional arms. Does this reflect a genuine interest in  
arms control, or is it a means to thwart the desperately needed  
Western conventional buildup by creating the same conditions by  
which public opinion was mobilized on the missile question? And  
what is one to make of the almost deferential pleas by all major  
NATO countries for the resumption of a dialogue that the Soviets  
have interrupted? Or of the upgrading of all major European dele-  
gations except the French to the Andropov funeral, compared  
with the Brezhnev rites 15 months ago—especially as Andropov's  
rule was marked by the flagrant attempt to influence the German  
election, the walkout from arms-control talks and the shooting  
down of the Korean airliner, not to speak of Andropov's 15-year  
stewardship of the KGB?

Will the Soviets see Western pleas for dialogue as a demon-  
stration of good will, or will they learn from the compulsion to  
demonstrate good intentions after months of harassment that in-  
transigence pays because the West has weak nerves? Will we fail  
to relax tensions because the Soviets conclude that atmospherics  
can substitute for dealing with the real causes dividing the world?  
Europe is not moderating the U.S., and the U.S. is not stiffening  
Europe's spine, as the folklore on each side would have it. More  
likely, each is in danger of paralyzing and demoralizing the other.  
Western disunity is perhaps the principal obstacle to progress in  
East-West negotiations.

This state of affairs has deeper causes than particular poli-  
cies on either side. The present NATO  
structure is simply not working, either  
in defining the threat or in finding  
methods to meet it.

Existing arrangements are unbal-  
anced. When one country dominates  
the alliance on all major issues—when  
that one country chooses weapons and  
decides deployments, conducts the  
arms-control negotiations, sets the tone  
for East-West diplomacy and creates  
the framework for relations with the  
Third World—little incentive remains

**A European officer  
should take the tradi-  
tionally American place as Su-  
preme Allied Commander  
Europe, probably with  
a U.S. deputy.**

for a serious joint effort to redefine the  
requirements of security or to coordi-  
nate foreign policies. Such joint efforts  
entail sacrifices and carry political  
costs. Leaders are not likely to make the  
sacrifice or pay the cost unless they feel  
responsible for the results.

An imbalance such as the one now  
existing cannot be corrected by "con-  
sultation," however meticulous. In the  
long run, consultation works only when  
those being consulted have a capacity  
for independent action. Then each side

takes the other seriously; then each side knows that the other's  
consent has to be won. Otherwise consultation becomes "brief-  
ing." Agreement reflects not conviction but acquiescence for  
want of an alternative.

The present imbalance is not new. It has existed ever since  
World War II. But military dependence on another nation has a  
cumulative impact. When dependence no longer results from  
wartime destruction but from a policy choice, made under condi-  
tions of relative prosperity, it can breed guilt, self-hatred and a  
compulsion to display *independence* of the U.S. wherever doing so  
is safe, especially with regard to some Third World issues and cer-  
tain aspects of East-West relations.

The problem has become even more acute because the gen-  
eration of leaders that built NATO has virtually disappeared.  
Those who governed Europe during the early postwar years were  
still psychologically of the era when Europe bestrode the world.  
Global thinking came naturally. European leaders assumed re-  
sponsibility for their own security policies and gave it up only re-  
luctantly because of special circumstances. But nearly 40 years  
have passed since the end of World War II. The new leaders  
were reared in an era when the U.S. was pre-eminent; they find  
it politically convenient to delegate Europe's military defense to  
us. Too many seek to position themselves somewhere between  
the superpowers—the first step toward psychological neutral-  
ism. Thus Europe's schizophrenia: a fear that the U.S. might not  
be prepared to risk its own population on a nuclear defense of  
Europe, coupled with the anxiety that America might drag Eu-  
rope into an unwanted conflict by clumsy handling of Third  
World issues or East-West relations.

The rush to condemn our actions in Grenada by so many of  
our European allies is a case in point. What could have been in  
the minds of their leaders? Even making allowance—especially  
in the case of Britain—for totally inadequate consultation, they  
could hardly have wanted us to fail. That would surely have af-  
fected our willingness to run risks in defense of other areas, ulti-  
mately including even Europe. Rather, they must have assumed  
that their actions were irrelevant and costless: that we would not  
be deterred, that we would exact no penalty and that therefore it  
was safe to use the incident to score points with "progressives" at  
home and with Third World radicals abroad.

**T**he change in the nature of European leadership has been  
paralleled in the U.S. Our new elites do not reject NATO  
any more than do their European counterparts. But for  
them, too, the alliance is more a practical than an emo-  
tional necessity, more a military arrangement than a set of com-  
mon political purposes.

On both sides of the Atlantic, we find ourselves threatened  
by the dominance of domestic politics over global political strategy.  
In Europe this leads in too many  
countries to a faintly disguised neutral-  
ism. In the U.S. it accelerates our al-  
ready strong tendency toward unilat-  
eralism and isolationism.

U.S. leaders have too often adjust-  
ed foreign policies to political pres-  
sures, bureaucratic infighting or  
changing intellectual fashions. The  
history of the American attitude to-  
ward intermediate-range missiles in  
Europe is an example. These were pro-  
posed to the Europeans in 1957-58, in-

**Europe should take over  
those arms-control ne-  
gotiations that deal with  
weapons stationed on  
European soil.**



led in Britain, Italy and Turkey by 1960 and withdrawn in 1963. They reappeared later in 1963 as part of a NATO multilateral force, and were abandoned once again by 1965. They were put before NATO for the third time in 1978 and accepted once again in 1979. Not surprisingly, Europeans organizing to stop the current deployment are encouraged by the knowledge that previous American decisions have not proved immutable.

Similarly, our allies have had to adjust from passionate U.S. advocacy of SALT II to its rejection, and then to the fact that we have chosen to observe a treaty we refuse to ratify; from a strategic doctrine of massive retaliation to one of flexible response; from a policy of détente to one of confrontation and back to conciliation, not to speak of the gyrations in our Middle East policy—all in addition to the reassessments that occur whenever a new Administration comes into office. Each change of course leaves victims among European leaders who have staked their domestic positions on policies that the U.S. later abandons. Each lurch encourages a kind of neutralism, as Europeans seek to avoid being made hostage to sudden swings in American policy.

A continuation of existing trends is bound to lead to the demoralization of the Western alliance. An explicit act of statesmanship is needed to give new meaning to Western unity and a new vitality to NATO. In my view such an effort must have three components: (a) a more significant role for Europe within NATO, (b) a reform of the NATO organization and (c) a reassessment of current NATO deployment.

### A NEW ROLE FOR EUROPE

During the entire post-World War II period it has been an axiom of American policy that for all the temporary irritation it might cause us, a strong, united Europe was an essential component of the Atlantic partnership. We have applied that principle with dedication and imagination, insofar as it depended on American actions, in all areas except security. With respect to defense, the U.S. has been indifferent at best—at least since the failure of the European Defense Community—to any sort of Europeanization. Many in this country seemed to fear that a militarily unified Europe might give less emphasis to transatlantic relations or might botch its defense effort and thus weaken the common security. The opposite is almost certainly the case.

In the economic field, integration was bound to lead to transatlantic competition, even to some discrimination. What defines a Common Market, after all, is that its external barriers are higher than its internal ones. In the field of defense, by contrast, increased European responsibility and unity would promote closer cooperation with the U.S. A Europe analyzing its security needs in a responsible manner would be bound to find association with the U.S. essential. Greater unity in defense would also help to overcome the logistical nightmare caused by the attempt of every European nation to stretch already inadequate defense efforts across the whole panoply of weapons. For example, there are at least five kinds of battle tanks within NATO, different types of artillery and different standards for calculating the rate of consuming ammunition. In a major conflict it would be nearly impossible to keep this hodgepodge of forces supplied.

Thus the paradox: the vitality of the Atlantic Alliance requires Europe to develop greater identity and coherence in the field of defense. I am not talking about traditional "burden sharing," paying more for the existing effort. I have in mind something more structural—a more rational balance of responsibilities. The present allocation of responsibilities fails to bring the allies to reflect naturally about either security or political objectives. Everyone has been afraid to take the initiative in changing the present arrangement, lest doing so unravel the whole enterprise. But since drift will surely lead to unraveling—if more imperceptibly—statesmanship impels a new approach.

### STRUCTURAL REFORM

Structural reform cannot substitute for a sense of purpose and clear doctrine. But if pursued with care and sensitivity, it can help catalyze the development of shared political purposes. These common objectives require that European judgments on security, East-West diplomacy and other matters emerge from Europe's own analysis. Mere acquiescence in American decisions, briefings and pressures provides a façade of unity; shared purposes require a deeper sense of participation. Specifically:

1) By 1990 Europe should assume the major responsibility for conventional ground defense. This is well within the capability of a group of countries with nearly one and one-half times the population and twice the G.N.P. of the Soviet Union. The Soviets, moreover, have to divide their forces on at least two fronts.

2) This requires that planning for Europe's defense become a more explicitly European task. Heretofore, the Supreme Allied Commander Europe (SACEUR) has been American. In the new arrangement a European officer should take that traditionally American place, probably with a U.S. deputy. Such a change is also likely to give a new perspective to allied strategic planning. The U.S. has generally achieved its military successes by the weight of the equipment that our vast industrial potential has made available. This has tended to tempt our military leaders to equate strategy with logistics. European nations have rarely

enjoyed such a material margin; rather, they have had to rely on superior leadership, training, initiative and tactics—precisely what NATO needs in an age of nuclear parity and renewed emphasis on conventional defense.

3) Since the beginning of NATO, the Secretary-General, who is responsible for running the alliance's political machinery, has been European. In the new structure, with its greater emphasis on political coordination, it would make more sense for this official to be American—whenever the new Secretary-General, Lord Carrington, decides to retire. Meantime, no Western leader is better qualified for guiding NATO's transition than the wise and thoughtful Carrington.

4) Europe should take over those arms-control negotiations that deal with weapons stationed on European soil. The INF negotiations with the Soviets (for intermediate-range missiles) and the MBFR negotiations

(on conventional forces) have heretofore been conducted by American delegations. Both of these negotiations should be "Europeanized" as quickly as possible, with a European chairman, an American deputy and a mixed, though predominantly European, delegation.

**T**he structure that I am proposing would enable Europeans to confront—on their own initiative and in their own context—issues that have been evaded for at least two decades: the precise definition of an adequate conventional defense; the nature of the so-called nuclear threshold—the point where there is no choice except conventional defeat or nuclear escalation; the relationship between strategy and arms control. Since nuclear weapons would presumably be used only if conventional defense failed, Europe would be responsible for setting the nuclear threshold by its own efforts; it could relieve its nuclear anxieties by the simple expedient of augmenting its conventional defenses.

By the same token, European leadership in the MBFR and INF negotiations would place final responsibility for both conventional force levels and intermediate-range missile deployment in Europe with the leaders whose countries will have to bear the brunt—for good or ill—of the outcome of these negotiations. This is especially important with respect to the American intermediate-range missiles in Europe. That deployment makes sense only if the allies genuinely believe that the prospect of a nuclear blow from Europe





on Soviet territory will help deter a Soviet conventional attack or nuclear blackmail. If our principal allies do not share this conviction, the psychological basis for the deployment will evaporate.

European chairmanship of the INF talks would oblige Europe's leaders to face the issue head-on; their domestic critics would no longer be able to argue (as they do now) that U.S. intransigence is the principal obstacle to arms control.

As for the U.S., it would of course participate in these deliberations—in a less dominant position—through its continued membership in the integrated command, its responsibility for nuclear defense, and its ground, naval and air forces in Europe.

## REDEPLOYMENT

The issue of redeploying American forces touches raw European nerves like no other. The slightest hint of altering present arrangements jangles sensibilities; it evokes fears of American withdrawal and prospects of European neutralism. But if present trends continue, it is certain to become a central issue in the alliance relationship. Before dealing with it in the context of a program of NATO reform, a few facts must be noted:

1) The present NATO deployment of five American divisions and supporting air and naval forces evolved in the 1950s, when NATO's doctrine was massive retaliation—to react to aggression with an immediate and overwhelming nuclear blow against Soviet territory. Massive retaliation paradoxically required that the total forces on the Continent be kept below the level required for conventional defense. NATO did not wish to tempt Soviet conventional aggression by doing anything to suggest that a Western response would be limited to nonnuclear means. Hence the American conventional deployment in Europe reflected political, not military, criteria: it was intended to give us no choice about nuclear retaliation and to leave the Soviets no doubt that this would be the consequence of even a conventional war. European conventional forces represented a similar political decision: they too were conceived as a trip wire for our nuclear riposte. From the birth of NATO a full conventional defense has been part neither of its strategy nor of its efforts.

2) This situation became anomalous when the growth of Soviet strategic forces deprived general nuclear war of much of its credibility. Yet NATO deployment has been essentially unaffected by the change. NATO has improved its conventional defenses but has not closed the gap in such forces. As the current NATO commander made clear recently, even counting the five American divisions that have remained in Europe, the alliance is still unprepared to withstand a major Soviet ground attack for more than a few days. European ambivalence continues 35 years after NATO's creation. Our allies remain unwilling to develop forces strong enough to provide an alternative to nuclear weapons—and yet much of their public opinion shies away from even thinking about nuclear deterrence.

3) Were we to start all over again, we would therefore hardly repeat the decision of the '50s in today's circumstances. Let us assume a group of wise men and women from both sides of the Atlantic came together to plan a global strategy unconstrained by the past. Assume further that it started from the premise that ultimately the defense of the West is indivisible and that European security should be viewed under the aspect of the defense of the West in Europe—as a thoughtful French observer, François de Rose, put it. Such a group would almost surely conclude that the sensible division of responsibilities would be for Europe, with economic resources and manpower exceeding those of the Soviet Union, to concentrate on the conventional defense of the Continent. To maintain the global balance of power—by definition as essential for Europe as for

**If nuclear weapons remain the ultimate deterrent to even conventional attack, a gradual withdrawal of up to half of our ground forces would be logical.**

America—the U.S. would emphasize highly mobile conventional forces capable of backing up Europe and contributing to the defense of, for example, the Middle East, Asia or the Western Hemisphere.

Such a division of responsibilities would also enable our military establishment to shift some of its intellectual energies and scientific research from a hypothetical esoteric war in an area where we have major allies to the defense of regions where conflict is much

more likely. In such regions our allies are less prone to see their interests immediately engaged, and the countries being threatened are in a worse position to assist in the defense effort.

Even if we were to start all over again, an irrefutable case would exist for maintaining considerable American ground forces in Europe. This would be essential to keep our allies from feeling abandoned and to eliminate any Soviet misunderstanding that the defense of Europe no longer reflects a vital American interest. In a new division of responsibilities we should also preserve and preferably strengthen existing U.S. land-based airpower on the Continent. And we should continue our responsibility for both strategic and tactical nuclear defense, assuming that we and the Europeans could agree on a strategy for the latter. American intermediate-range missiles should remain in Europe to "couple" the nuclear defenses of both sides of the Atlantic so long as European leaders desired them. No change in naval deployments would be involved.

Why then is such a division of responsibilities not realized? The principal obstacle is psychological. For all their criticisms of American policy, Europeans dread a return to isolationism in the U.S. Americans fear that any tinkering with deployment would drive Europe into explicit neutralism. And some in the Pentagon would rather maintain our troops in Europe in a less than rational deployment than return a portion to the U.S., where they are more exposed to congressional budget cutters.

In my view, persisting in a deployment that is losing its rationale accelerates these attitudes. Pacifism and neutralism are on the march in Europe even under the present setup; isolationism in America is not yet so vocal but is being powerfully encouraged by endless allied disputes. An alliance that cannot agree on its political premises cannot sustain itself by clinging to military arrangements decided a generation ago in totally different circumstances. With current trends the issue of the rationale for the NATO deployment will become unavoidable. If it arises not as an integral component in a comprehensive design but as a single question of whether to continue stationing American troops in Europe, unilateral changes will be arbitrarily imposed by the potentially most destructive means—the American budgetary process. Then indeed we might see in America a psychological wrench away from Europe and in Europe a panicky resentment against the U.S. A change in deployment without a positive political and strategic purpose, withdrawal for its own sake, might shock our allies into neutralism; it could mislead our adversary and tempt aggression.

There is an urgent need for a serious and rapid re-examination of NATO doctrine, deployment and policies, conducted by men and women known for their dedication to Western unity. The group—to be formed immediately after our elections—must begin with one of the most divisive issues before the alliance: an agreement on the nature and scope of the threat.

The group must avoid the tendency of previous such efforts, which set unrealistic goals and thereby magnified the problem. A deadline for completion should be set—certainly no longer than two years.

Theoretically, such a study could lead to one of three outcomes: 1) The group could come to the same conclusions about the optimum division of responsibilities in an agreed global strategy outlined above. Given the dis-

**We must not let our future pass by default to the neutralists, pacifists and neoisolationists who systematically seek to undermine all joint efforts.**



reements about the nature of the interests involved in regions outside of Europe and the domestic priorities of most European countries, such a conclusion, however rational, is extremely improbable. 2) The group could agree that the strategic interests of the West require a full conventional defense, but that for practical and psychological reasons, Europe can undertake the required effort only if the present American ground deployment in Europe is maintained intact. 3) The group could decide that the realities of European domestic politics preclude more than the current gradualistic, marginal improvement of defense efforts.

I hope very much that Europe would choose the second option. If Europe should agree to build a full conventional defense and were prepared to express that commitment in unambiguous yearly obligations to increase its forces, the U.S. should accept the judgment that its present ground forces in Europe are an indispensable component. Such a decision might in fact invigorate the conventional arms-reduction talks and in time lead to stability at a lower level. But if Europe should opt for a perpetuation of the present ambivalence or for only a token improvement, then the U.S. will owe it to the overall requirements of global defense to draw certain conclusions. If Europe by its own decision condemns itself to permanent conventional inferiority, we will have no choice but to opt for a deployment of U.S. forces in Europe that makes strategic and political sense. If nuclear weapons remain the ultimate deterrent to even conventional attack, a gradual withdrawal of a substantial portion, perhaps up to half, of our present ground forces would be a logical result. To provide time for necessary adjustments, that withdrawal could be extended over five years. To ease the transition further, we could, if Europe agreed, keep the excess ground forces in Europe for a time afterward in a new status analogous to that of the French forces, prepared for use in Europe but also available for use in emergencies outside it. Any withdrawal would make sense only if the redeployed forces were added to our strategic reserve; if they were disbanded, the effect would be to weaken the overall defense.

The proposed redeployment would leave intact air and naval forces, as well as intermediate-range missiles, so long as Europe wants them. A useful byproduct of the process would be a systematic re-evaluation of the existing inventory of very short-range tactical nuclear weapons, a legacy of three decades of *ad hoc* decisions; these weapons now represent at one and the same time an increment to deterrence and the greatest danger of unintended nuclear war because, being deployed so far forward, they are unusually subject to the exigencies of battle.

In this scheme, withdrawal would be not an end in itself—as it will if frustrations on both sides of the Atlantic go much further—but one component of an adaptation to new circumstances extending over some eight years that rededicates the U.S. to the alliance for the indefinite future.

Psychology is immensely important in international relations, especially when policies turn not only on cold, professional assessments of the national interest by trained political leaders, but on public opinion. I would like to believe that restructuring the alliance to give Europeans greater responsibility for their own defense, while important American forces remain in Europe, will be seen not as an abandonment but as an embrace of Europe. It is a means of enlisting Europeans as full partners in the process of decision on which their safety as well as ours depends. For a son of Europe reared on the existing NATO orthodoxy, the very idea of even a partial redeployment is painful—all the more so after Lebanon. But we will not be fulfilling our obligations to the West if we fail to put forward an initiative to forestall the crisis that will otherwise confront us in much worse circumstances.

### POLITICAL OBJECTIVES

By themselves, neither organizational nor doctrinal adaptations can remedy the political incoherence rending NATO. This article has emphasized security issues. However, a few general observations on the alliance's political problems are necessary.

1) Those leaders on either side of the Atlantic who value the alliance, with all its failings, as the ultimate guardian of Western freedom must seek urgently to end political disputes over East-West relations and North-South policy, especially Western conduct in the flash points of conflict in the Third World. The tendency to grandstand before domestic audiences, the growing self-righteousness, will in time make a mockery of the key assumption of the Atlantic Alliance: that we share a common approach to security. Defense requires after all *some* agreed political purpose in the name of which it is conducted. The Atlantic Alliance must urgently develop a grand strategy for East-West problems and Third World relations applicable for the rest of this century. Otherwise, it will tempt constant pressures and crises.

2) The U.S. cannot lead the alliance or even contribute to its cohesion if we do not restore bipartisanship to our foreign policy. Ever since the Viet Nam War, we have disquieted our friends and confused, where we have not emboldened, our adversaries by periodic wide swings on essential elements of our policies. But the national interest does not change every four or eight years. At

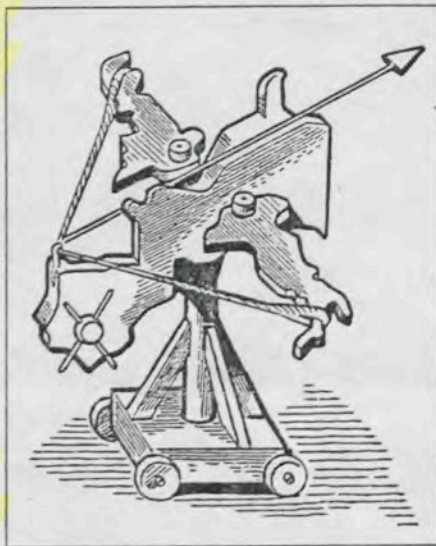
some point the national interest must be accepted by our public as clearly recognizable and constant. Otherwise, we shall become a source of dangerous instability, still relevant for our power but irrelevant for our ideas. A presidential election year is probably not an ideal time to forge a bipartisan consensus. But whoever wins the presidential election faces no more important and urgent challenge than to restore the element of bipartisanship to our foreign policy.

3) European governments must meet head-on the disturbing trends toward pacifism and neutralism in their countries. These movements are led by people of conviction; they cannot be defused by accommodation. They can only be resisted with a compelling vision of a new future. If European governments continue to humor those who profess to see the danger to the peace in a bellicose America, not an intransigent Soviet Union, they will find themselves making concession after concession and will become hostages of their critics.

The current condition of the alliance cries out for a rethinking of its structure, its doctrine and its unifying purposes. The creativity and courage with which we approach this challenge will determine whether the alliance enters a new and dynamic period or gradually withers.

I have outlined proposals to reinvigorate allied cohesion by defining clear responsibilities for each side of the Atlantic, to be implemented over a period of years. On that basis European leaders could defend cooperation with the U.S. as something they sought as a matter of their own conviction and in their own national interest. American leaders would have a rational, understandable policy to defend and would benefit from dealing with a more equal partner. A new era of allied creativity and American dedication could give inspiration to the generation that has come to maturity since World War II and since the postwar crises that infused NATO's founders with their sense of common purpose.

We must not let our future pass by default to the neutralists, pacifists and neoisolationists who systematically seek to undermine all joint efforts. The nations bordering the North Atlantic need above all faith in themselves and the will to resist the siren calls of those who use fear and panic as instruments of policy or domestic debate. In the end we must fulfill our trust: to preserve and strengthen a North Atlantic alliance that represents the hope of human dignity and decency in our world. ■





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PRIME MINISTER

SEMINAR ON POSSIBLE CONFLICT OF PRINCIPLES  
IN FOREIGN POLICY: CHEQUERS, 1 OCTOBER

Restricted Session

A separate paper has been circulated to Ministers and officials taking part. It is at reference A. Its guidelines for defensible intervention are that it should be:

- successful
- undertaken as a last resort
- involve minimum force
- last as short a time as possible
- demonstrably solve the problem it is intended to deal with
- benefit the local population
- be plausibly justifiable under the various exceptions acknowledged by international law
- be explicable to public opinion in this country

These are fair enough. The problem is that one is required to react to an intervention very quickly and before it is at all clear whether these criteria are or will be met. Some immediate conclusions which can be drawn are:

- the importance of encouraging the United States in the habit of consultation so that we can have an opportunity to influence their decisions or at least an inkling of them in advance. The converse is that the United States will be the readier to consult the more confident it feels that our support will be forthcoming;



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- the almost equal importance of good intelligence about situations where intervention might be considered, and shrewd assessment of the nature and objectives of such intervention.
- recognition that in the last resort it may well not be possible to reach measured decisions balancing all the various factors. It will be a question of weighing the steadfastness of our friendship with the United States against damage to our principles, unpopularity with international opinion and so on.

For the purposes of this discussion, you may like to take the specific case of Nicaragua and apply the conclusions of the earlier seminar and the points above to it. In particular you could ask what our policy should be in each of three possible scenarios:

- an American airstrike to knock out Nicaragua's armoury;
- a quarantine imposed on Nicaragua;
- a full-scale invasion intended to instal a new regime.

CDP

27 September 1984

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BRITISH POLICY TOWARDS INTERVENTION

- ISSUES FOR DISCUSSION -

- Introduction
  
- The Case of Nicaragua
  
- Possible Guidelines for British Policy

Annex A Intervention: British Experience Since 1945

Table 1 Examples of British Military  
Interventions Since 1945

Table 2 British Army Operations Out of Area  
Since 1945

Annex B British Attitudes to Intervention by Others  
Since 1945



INTRODUCTION

1. Recent events have shown once again that, without effective international arrangements for the peaceful settlement of disputes, the near absolute prohibition in international law of intervention is an inadequate means of regulating relations between states.
  
2. This paper identifies some of the issues involved in developing a coherent British policy towards intervention. It is intended as a basis for discussion, and does not constitute agreed recommendations for policy. In view of the overriding importance of circumstances in determining reaction towards an intervention, the paper looks first at the factors which might govern Britain's reaction to a hypothetical US intervention in Nicaragua. Drawing on this examination of a particular case the paper then suggests some possible guidelines for British policy. Two annexes describe Britain's limited experience since 1945 as an intervening power and British attitudes towards major interventions by others since 1945.
  
3. For the purposes of this paper, "intervention" is generally used in the narrow, but most common, sense of "dictatorial interference in affairs normally within the domestic jurisdiction of a state involving the use of overt military force"\*. Many of the legal and moral issues discussed are therefore those associated with the use of armed force. The paper does not deal with the question of covert intervention, which by definition should not need public justification. If it does, then the same considerations apply as to overt intervention.

THE CASE OF NICARAGUA

4. The factors which HMG would need to consider in formulating its response towards a US intervention in Nicaragua fall into two broad categories: the circumstances of the intervention itself and,

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\* See Annex A of "Is Intervention Ever Justified?".



secondly, other factors extraneous to the intervention itself.

(i) The Circumstances of the Intervention.

5. The first consideration would be the real necessity for military intervention. HMG would want to assess the appropriateness of the US action in relation to American objectives and whether the Administration had exhausted all peaceful means of achieving those objectives.

6. The precise occasion for the intervention would clearly be of great importance. For example, if the United States were able to show unequivocally that Nicaragua had committed an act of aggression against a neighbour, then the justification of collective self-defence might be used, citing both Article 51 of the UN Charter and the provisions in the Rio Treaty and the OAS Charter for collective action to contain aggression. Self-defence (under Article 51) might also conceivably be used to justify action to protect US or other foreign nationals (or, less plausibly, their property) under threat in Nicaragua. But since the majority of American and other foreign nationals in Nicaragua support the Sandinistas, this argument would hardly be convincing. If Cuban or Soviet troops were found to be operating in a combat role, then the United States might claim a right of counter-intervention. Much more controversially, the United States might claim to be providing assistance at the request of the 'Contras', if they were to become well enough established to be awarded belligerent status. But recognition of belligerent status has traditionally been linked with a position of neutrality in a civil war. A further possible argument might be that the intervention was "humanitarian" in nature, intended to prevent the violation of the Nicaraguan people's basic human rights, which might be stretched to include the "right" to a truly pluralist democracy or even to a mixed economy. Other, more general, justifications might be that the growing size and sophistication of the Nicaraguan armed forces posed a threat to regional peace and stability, which, in the absence of collective action by the UN or a regional organisation, the US (preferably with one or two partners) felt bound to safeguard.

7. Closely related to the occasion for the intervention would be



its objectives. To aim to remove one item from the Nicaraguan armoury would clearly be more defensible than a full-scale intervention to change the nature of the regime. Intervention with the genuine objective of providing for free and fair elections, while it might be seen merely as a device to install a Government sympathetic to the US, might be more easily justified than, say, action designed to destroy the Nicaraguan economy. The validity of an American claim to be intervening to protect the legitimate security interests of the United States or its Central American neighbours would also be a matter for political judgement.

8. Next, the participants in an intervention: the support or participation of as many other states as possible would obviously be highly desirable for the United States.

9. Linked to this would be the exact form of the intervention. Full scale amphibious assault by ground forces would be more difficult to justify than, for example, lightning air-strikes intended to take out any MIGs acquired by the Nicaraguan Air Force or a landing by airborne forces to evacuate foreign nationals from Managua. A full scale assault would meet strong resistance in terrain ideal for protracted guerrilla war. Eden Pastora, one of the 'Contra' leaders, has said that he would change sides and join the Sandinistas in defending Nicaragua in the event of an American invasion.

10. Equally important would be the duration of an intervention. A quick in-and-out operation would be easier to defend than an operation lasting weeks or months.

11. Finally, and perhaps most important, would be the results of an intervention. Harcourt's remark that "of all things, at once the most unjustifiable and the most impolitic is an unsuccessful intervention" was borne out by the American experience in Vietnam. In Nicaragua, the United States would need not only to ensure that any intervention was successful, but also to be able plausibly to assert that the world, or at least Nicaragua, was a better place after the intervention than before it. Some states would naturally never accept such claims, but the United States would hope to



satisfy a significant section of world opinion.

(ii) Other factors affecting the British attitude towards an intervention

12. In deciding the British attitude towards a possible American intervention in Nicaragua, HMG would need to weigh all the considerations set out above. But it would also have to take account of factors more directly influencing the British position.

13. One issue, of major interest to Parliament, would be the degree of consultation by the United States prior to and during the intervention. Ministers might find it easier to say that Britain supported, or sympathised with the aims of, American intervention if HMG had been consulted adequately in advance by the United States. Equally, British opposition to an intervention which went ahead might be more easily explained to Parliament if we were able to say that we had not been consulted early enough to prevent the action.

14. A second, even more important, consideration would be the attitude of other governments and international opinion to the intervention. British policy would need to take account not only of the likely effect on Anglo-American relations, but also of the attitude taken by partners in the Ten and NATO. Most, if not all, could be expected to criticise such an intervention. The Government would also need to weigh, albeit less heavily, the views of Latin American and Caribbean nations and of Commonwealth partners. Posts in Canada and the major Latin American countries have reported, in response to a survey of likely reactions to possible American action in Nicaragua, that their host governments would react strongly against any American intervention in Nicaragua. The strength of the reaction of the Soviet Union and the arguments used would also be important in determining the British Government's public line. All these factors would in turn be likely to fuel the inevitable domestic controversy in the United States.

15. A further consideration would be public and Parliamentary opinion within the United Kingdom.



16. A presentational point affecting the development of British policy towards a putative American intervention in Nicaragua is that of the audience to which a policy statement might be addressed. What HMG said would be heavily conditioned by what the Administration themselves were saying in justification of their action. Justifications for intervention which might appeal to an American audience might not be suitable for use in Parliament. Similarly, Third World representatives at the United Nations or elsewhere might not accept arguments to justify intervention suitable for use with a 'Western liberal' audience. The Government would also need to take great care to ensure that arguments used to support American intervention in Nicaragua could not be used in turn to justify Soviet or other outside interference in, say, Northern Ireland or South Africa.

#### POSSIBLE GUIDELINES FOR BRITISH POLICY

17. The hypothetical case of Nicaragua shows the severe difficulty of devising a consistent policy towards intervention in the abstract. Circumstances are of the first importance in justifying any particular instance of intervention to domestic and international opinion, and ensuring that arguments used to justify intervention by Western powers are not exploited by the Soviet Union and her allies in other contexts.

18. In devising a coherent British policy towards intervention in general, the first principle would be that of the United Kingdom's attachment to the rule of international law. Wherever possible disputes should be settled peacefully, and within the framework of international law. Nevertheless, the United Kingdom might recognise that there could be certain, strictly limited, circumstances in which a state's obligation to intervene would be stronger than the prohibition of intervention in international law. The desirability of supporting (or undertaking) such an intervention would need to be examined under eight broad headings.



(i) Success

19. The sine qua non of defensible intervention. This would rule out attempts to intervene in cases where the resources available were inadequate to meet the obligations.

(ii) Intervention only as a last resort

20. The state(s) undertaking the intervention must be able to show (not necessarily to satisfy everybody) that all peaceful means of achieving the objectives of the intervention have been exhausted. In particular, it would be highly desirable, although often impractical, to show that all avenues for collective intervention by the UN or regional organisations have been explored. Force must always be used only as a last resort.

(iii) Minimum force and duration

21. The intervening state must be seen to be employing the minimum force necessary to achieve its objectives, and the intervention should last for the shortest possible period.

(iv) Collective action

22. Intervention should be undertaken (and sanctioned) by as many states as possible.

(v) Moral and Practical Justifications

23. These will depend largely on the audience to which they are addressed. But the guiding principle will be the utilitarian (and subjective) one of showing that the world is a better place after the intervention than it was before. It will also be important to show that the penalties of non-intervention would be greater than the disadvantages of intervention. Possible arguments might refer to the benefits to the victims of the oppression which the intervention has removed, or suggest that there are circumstances in which a government behaves so shockingly in breaking international law and custom as to oblige outsiders to intervene. Wherever possible, citizens of the "receiving" state should be seen to be the principal beneficiaries of the intervention. Arguments which point to the need (in the absence of effective international enforcement action) to maintain or restore international order, while less universally acceptable, still retain considerable force with Western



audiences. The importance of containing international communism may, in certain circumstances, provide a useful additional justification.

(vi) Legal Considerations

24. Ideally, any intervention should fall into one or more of the five broad categories of exception to the general prohibition on intervention in international law identified in the earlier paper. It should therefore be: at the invitation of the "receiving" state; or on the authority of the Security Council or of a regional organisation; or in exercise of the right of individual or collective self-defence; or intended to protect a state's citizens abroad; or on humanitarian grounds; or in more than one of these categories. In each case, to be legally defensible, intervention using force should meet tight conditions for exceptions to the principles in international law of non-intervention and non-use of force. For example, action in self defence would have to be a necessary and proportionate response to an actual or imminent armed attack; action to protect nationals abroad should be confined to achieving that aim, and should not be seen to be designed primarily to promote, say, the intervening state's security interests. Intervention on humanitarian grounds will only in exceptional circumstances be justified.

(vii) Implications for Possible Interventions in Other Countries

25. The Government would also need to consider the implications of HMG's attitude towards intervention by a friendly power for our attitude towards intervention by hostile powers. In particular, any arguments would need to be drafted so as not to give outsiders an argument for interfering in support of anti-government political movements in, for example, Northern Ireland or countries where we support the government and criticise support by others of insurgent movements, for example Thailand.



(viii) Domestic and International Opinion

26. The attitude of other countries and of public and Parliamentary opinion within the United Kingdom would be a major factor in determining British policy.

Planning staff  
Foreign and Commonwealth Office

September 1984



Annex A

## INTERVENTION: BRITISH EXPERIENCE SINCE 1945

1. If intervention is defined narrowly as involving the "dictatorial" use of overt military force, then there has only been one clear instance of intervention by the United Kingdom since 1945: the Anglo-French intervention in Egypt in 1956. All the other "interventions" listed in Tables 1 and 2 have been either at the request of a friendly sovereign government or in Associated States or dependencies where Britain has been responsible for defence and internal security. Other instances of intervention by British forces occurred towards the end of the last war (Greece, Yugoslavia, Azerbaijan), but different war-time criteria make them largely irrelevant to this exercise.

2. The arguments advanced by the British Government for the intervention in Egypt in November 1956 were largely political and moral in character. As Eden remarked in a telegram to Eisenhower on 27 July 1956: "We should not allow ourselves to become involved in legal quibbles about the rights of the Egyptian Government to nationalise what is technically an Egyptian Company". The most important political argument for the intervention was seen as the need to curb an ambitious dictator, who, if not challenged over the nationalisation of the Canal, might go on to undermine Western interests in the Middle East. HMG also claimed that the running of the Canal should not be left in the hands of any single country, and especially not those of Egypt. Moreover, the British Government did not believe that Egypt would adequately compensate the shareholders of the Canal Company.

3. Nevertheless, HMG did seek publicly to justify its action on legal grounds. It argued that Egypt had reneged on its obligations in the Concession to the Canal Company and in the Suez Canal convention of 1888. After the outbreak of hostilities between



Israel and Egypt, the British and French Governments threatened the temporary occupation of Port Said, Ismailia and Suez "in order to guarantee freedom of transit through the Canal ..." and in order to separate the belligerents". In a statement to the Commons on 31 October 1956, the Foreign Secretary, Selwyn Lloyd, cited Article 51 of the UN Charter as sanctioning the use of force to protect the lives of a state's nationals abroad, a provision which, he maintained, was also supported by "customary international law". Both the British and the French Governments also justified their joint military action as being necessary while the UN lacked the means for decisive action.

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Examples of British military interventions since 1945<sup>1</sup>

Date	Territory	Cause	Form of Intervention	Time Scale	Justification
1. 1955	Oman/Abu Dhabi	Buraimi dispute	Re-occupation of Buraimi by Trucial Oman Levies (British force, locally raised)	1 day	At Omani request
2. 1956	Egypt	Nationalisation of the Suez Canal	Joint Anglo-French task force, including air, sea and ground forces	8 weeks	To secure Canal/ separation of the belligerent States (Egypt and Israel)
3. 1957-59	Oman	Internal rebellion	Various: armour, RAF strikes; SAS	2 years	At Omani request
4. July 1958	Jordan	King's apprehensions after successful coup in Iraq.	2 paratroop battalions 1 paratroop field regiment of artillery, 1 squadron Royal Engineers, ½ squadron Hunter aircraft: approx 3000 involved	5 months	At Jordanian request
5. Aug 1960 - Oct 1961	Southern Cameroons (UN Trust Territory)	Internal security pending plebiscite in Southern Cameroons following Nigerian independence	1 battalion	13 months	Under British rule (UN Trust Territory)

<sup>1</sup> Interventions are broadly defined as "out-of-area military operations"



Date	Territory	Cause	Form of Intervention	Time Scale	Justification
6. 1961	Kuwait	Iraq claims to Kuwait shortly after independence	British troops sent in response to appeal by Amir (later replaced by Arab League force)	2-3 months	At request of Kuwait
7. 1962	Brunei	Internal revolt to pre-empt Brunei's proposed integration into the new Malaysian Federation. Around 2000 rebels launched attacks in Brunei Town, seized small coastal towns and 2 oil centres taking European hostages	Army units from Singapore with air and sea support (including battalion of Gurkha Rifles and armoured car squadron)	8 days	1959 Anglo-Brunei Agreement: UK responsible for Brunei's defence <sup>2</sup>
8. 1963-66	Indonesia/Malaysia	Indonesian attacks on Malaysia, chiefly on latter's North Borneo territories (Confrontation)	British (and Australian and New Zealand troops)	3 years	Mutual Defence Agreement invoked by Malaysia government
9. 1964-1977	Oman (Dhofar War)	Internal rebellion, latterly supported by regime in South Yemen	British loan service and contract personnel aided by interventions by RAF and SAS units (The latter for training)	13 years	

<sup>2</sup> Under the terms of an arrangement which runs until 1988 a battalion of Gurkhas is stationed in Brunei. The Sultan meets the costs, but the UK retains full operational control.



Date	Territory	Cause	Form of Intervention	Time Scale	Justification
10. 1963 - 1967	Kenya	Somali-backed guerillas claiming North-East Kenya	Indirect; Royal Engineers back-up to Kenyan security forces	4 years	At request of Kenyan Government linked to 1964 Defence Memorandum of Understanding
11. Jan 1964	Tanganyika (20 Jan)	Army mutiny at <u>Dar Es Salaam</u> , Tabora and Nachingwea against British officers followed by <u>rioting and looting</u>	Helicopter landing by Royal Marine battalion from aircraft carrier with naval barrage at <u>Dar Es Salaam</u> . <u>Air landing with air support at Tabora</u>	Action: 2 days, troops withdrawn after 73 days	By invitation of the Tanganyikan Government
12. Jan 1964	Uganda (23 Jan)	Army mutiny at Jinja	3 companies of Infantry Brigade by air from Kenya	Action: 2 days, troops withdraw after 36 days	By invitation of the Ugandan Government
13. Jan 1964	Kenya (24 Jan)	Army mutiny at Lanet	Locally stationed British units of 124 Infantry Brigade	Action: 1 day (British troops withdraw Dec 1964	By invitation of the Kenyan Government



Date	Territory	Cause	Form of Intervention	Time Scale	Justification
14. Dec 65	Zambia	To protect Zambia from possible Rhodesian attack	RAF Squadron of Javelins	9 months	By invitation of the Zambian Government
15. 1963	Swaziland	Internal security	1 battalion	4 years	Swaziland was still a Brit. Dependency (Protectorate)
16. Dec 65 Aug 67	Bechuanaland/ Botswana	To guard British radio station at Francistown installed after Rhodesian UDI	90 men	20 months	By invitation at the Botswana Govt (Independence Sept 1966)
17. Jan 68 - Nov 68	Mauritius	Internal security; communal rioting during run up to independence and afterwards	Approximately 3 companies of infantry at the height of the trouble	11 months	Mauritius was a Brit Dependency until March 1968. An Anglo-Mauritian Defence Agreement was signed on Independence Day (12 March)



Date	Territory	Cause	Form of Intervention	Time Scale	Justification
18. March 1969	Anguilla	UDI by Anguilla from St Kitts	300 paratroops, later replaced by Royal Engineers. 46 police	Withdrawn after 3 years	British Associated State
19. 1980	New Hebrides (Vanuatu)	Although the Vanuatu government had the support of the majority of New Hebrideans during the approach to independence there were certain islands with strong separatist feelings. The Vila government feared that the French would not act decisively against these separatists, who identified with <u>Francophone interests</u>	200 marines. These troops arrived on 15 June but continuing differences with the French prevented their use until July 22. Reluctant French co-operation meant that the rebellion was not effectively ended until after independence (30 July 1980) when French and British troops were replaced by a Papua New Guinea Force	2½ months	Joint UK/French dependency



Date	Territory	Cause	Form of Intervention	Time Scale	Justification
20. Dec 79 - March 80	Rhodesia	Monitoring Force for ceasefire	Participation in Commonwealth Force. Army and Airforce: approx 1000 involved	4 months	On the restoration of legality and following Constitutional Conference Agreement at Lancaster House and earlier C/W agreement at Lusaka
21. Aug 81	Gambia	To secure release of members of President's family captured during coup attempt	(At Gambian request) 3 SAS personnel took part in <u>under-</u> <u>cover operation</u>	Action: approx 1 hour (presence 1 week)	[Meant to be a covert operation at request of Gambians]
22. April- June 1982	Falkland Islands	Argentine invasion	Task force: over 100 ships; aircraft; over 25,000 men	53 days (plus an additional 18 days to reach area)	To restore British administra- tion of the Islands and Dependencies.

Source: FCO Research Department



## BRITISH ARMY OPERATIONS OUT OF AREA SINCE 1945

1945	JAVA & SUMATRA	1961	KUWAIT
1945-48	INDIA	1961	ZANZIBAR
1945-46	GREECE	1962	BRITISH HONDURAS
1945-54	TRIESTE	1962-64	GUYANA
1945-48	PALESTINE	1962-66	BRUNEI/MALAYSIA
1945-48	BURMA	1963	SWAZILAND
1946-56	EGYPT	1963	ZANZIBAR
1946-52	ERITREA	1963	CYPRUS
1947	ADEN	1963-67	KENYA
1947	BRITISH HONDURAS	1963-67	SAUDI ARABIA
1948-60	MALAYA	1964-77	DHOFAR
1948-50	SOMALIA	1964	UGANDA
1949-52	AQABA	1964	TANGANYIKA
1950	SINGAPORE	1965	MAURITIUS
1950-53	KOREA	1965-67	BOTSWANA
1951	ANTIGUA/GRENADA	1965-67	ADEN
1951	ABADAN	1966	HONG KONG
1952-56	KENYA	1966	BELIZE
1952	GUYANA	1966	DAS ISLAND
1954-59	CYPRUS	1967	HONG KONG
1955-58	ADEN	1968	MAURITIUS
1955-64	SAUDI ARABIA	1968	BERMUDA
1955	BURAIMI	1968	GIBRALTAR
1956	SINGAPORE	1969	ANGUILLA
1956	BAHRAIN	1972	BELIZE
1956	HONG KONG	1974	CYPRUS
1956	EGYPT	1975-	BELIZE
1957-59	MUSCAT & OMAN	1975	BERMUDA
1957	BRITISH HONDURAS	1979	HONG KONG
1957	TOGOLAND	1979-81	ZIMBABWE
1958	BAHAMAS	1980	NEW HEBRIDES
1958	JORDAN	1981	GAMBIA
1958-63	ADEN	1982	SINAI
1959	GAN	1982	FALKLAND ISLANDS
1960-61	CAMEROONS	1983-84	LEBANON
1960	JAMAICA		

Source: Army Department, Ministry of Defence



BRITISH ATTITUDES TO INTERVENTIONS BY OTHERS SINCE 1945

1. This Annex describes British attitudes towards interventions by the United States, the Soviet Union and France, the three states with the fullest record of interventions since 1945. Many of these interventions, especially those by France, have been at the invitation of the "receiving" state, and have not therefore been "coercive or dictatorial."\*

(i) US Intervention in Latin America

2. In general the British Government has avoided public comment on US interventions in Latin America. At the time of the covert intervention in Guatemala in 1954 the Churchill Government refused to accept publicly that the United States was involved in the invasion by Colonel Castillo Armas's forces. HMG abstained on a proposal in the Security Council to accept the Guatemalan Government's complaint, and supported action to refer the issue to the OAS. During the Bay of Pigs invasion of Cuba in 1961, the British Government at first relied on American denials of involvement and on lack of information, and later refused to be drawn on the question of US involvement. Britain supported an Argentine resolution to refer the matter to the UN and opposed one which asked UN members to refrain from encouraging civil war in member states. During the 1962 Cuba missile crisis, Britain, like America's other allies, stood by US action in support of the demand that the missiles should be taken out of Cuba: the first time Britain had given formal approval to someone else's blockade at sea. In the Commons the Prime Minister referred to the limited character of the embargo. Mr Macmillan said that it was not the moment to go into the niceties of international law. "In new situations ... we cannot rely on a pedantic view of precedents". He also sent messages to the leaders of all Commonwealth countries and to General

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\* For a fuller account of US, Soviet and French interventions, see "Is Intervention Ever Justified?"



de Gaulle emphasising the need for the United States to act firmly.

3. When the United States intervened in the Dominican Republic in 1965, avowedly to protect American lives and also to prevent the establishment of a communist regime, the British representative at the UN said that HMG understood the reason for the American action, which was in support of the role of the OAS in the crisis. After it had become clear that the main purpose of the intervention had been to prevent the establishment of a second communist regime in Latin America, the Foreign Secretary told the Commons on 11 May 1965 that the immediate task of the OAS was to create conditions in which the functioning of democratic institutions in the Dominican Republic could be resumed. He refused publicly to condemn the United States or to comment on the legality of the American action, remarking that "whatever one says about the wider aspects of this, there was at the time a very dangerous and disorderly situation in Santo Domingo and ... it was right that ... those who wanted to be evacuated should have been ...". The UK Permanent Representative told the Security Council that "my Government fully understands what prompted the emergency action taken by the United States Government". He welcomed the OAS's decision to appoint a committee to oversee the ceasefire and to mediate between the factions involved in the fighting. After the Chilean armed forces overthrew President Allende in September 1973, following a period in which the Nixon Administration had weakened Allende's position through economic pressures and through covert "destabilising operations", a debate was held in the House of Commons but HMG declined to make a public statement.

4. HMG's statements on Grenada broke new ground by criticising US intervention in Latin America. In October 1983 the Prime Minister told the House of Commons that "we communicated to the United States the very considerable doubts which our Government had about initiating action, and asking them to weigh carefully several points before taking irrevocable action". On the BBC World Service on 30 October the Prime Minister said that she was delighted whenever people had the yoke of communism removed from their shoulders "but that does not mean you are entitled to go into every country either in Central America or Eastern Europe which is under communist oppression. When things happen in other countries which we do not



like we do not just march in. We try to do it by persuasion". In respect of continuing American pressures against the Sandinista regime in Nicaragua HMG has repeatedly stated that it shares US concern about instability in Central America and supports the objectives of the US Government (peace, stability, democracy, economic development) in the area, while indicating privately its concern about some of the means employed. The Foreign Secretary said in a television interview with Mr Brian Walden on 31 October 1983: "We would not view an attempt to impose a government from outside as helpful to the problems of Nicaragua or any other country". The mining of Nicaraguan harbours by rebels aided by the CIA also led to public comment: at the United Nations the British representative deplored the mining and expressed HMG's commitment, as a maritime nation, to freedom of navigation. However, while making its opposition to the mining clear, Britain was the only country to abstain on the draft Security Council Resolution, which condemned the mining and which was vetoed by the United States.

(ii) US Interventions elsewhere

5. During the US military involvement in Vietnam (1962-73) Britain generally avoided public comment or statements of support for American policy. As Co-Chairman of the Geneva Conference, British policy was to work for a negotiated settlement which would safeguard the rights of both South and North Vietnam. American requests for British military assistance were turned down. In March 1966 the Prime Minister said in the Commons that "President Johnson understands our special role as Co-Chairman of the Geneva Conference and that we cannot put troops or military advisers into Vietnam". There was never an outright condemnation of American intervention although the British Government had reservations about certain American military activities, such as the heavy bombing of the North. In 1968 the Foreign Secretary, Mr Stewart, said in the Commons that HMG believed "that there cannot be a truly military solution to this matter". He emphasised the importance of HMG maintaining contact with the US Government and with the other parties to the dispute, including the Soviet Union (the third Geneva Co-Chairman).

6. Britain had taken a different attitude when, after reports of



North Vietnamese attacks on two US destroyers in the Gulf of Tonkin in 1964, President Johnson ordered the bombing of a North Vietnamese naval base and oil storage area. HMG believed that North Vietnamese actions constituted unprovoked aggression on the high seas and accordingly supported American counter-measures. A Downing Street statement described these as being in accordance with the inherent right of self-defence enshrined in Article 51 of the UN Charter.

7. On 1 May 1970 the Foreign Secretary told the Commons that HMG had received no advance information about the American military intervention in Cambodia announced by President Nixon on 30 April. He refused to make a judgement on the American action and stated that the "real objective of policy must be to secure the complete neutrality of Cambodia and the absence of all foreign troops from this territory". Privately HMG told the United States of its regret that it had had no advance information and explained that HMG had to be careful "not to inflame anyone unnecessarily by provocative statements of support". Mr Stewart told the Commons on 5 May that he had made clear to the American Chargé d'Affaires the anxieties felt by many people in Britain about the American action. But he refused to condemn the Americans on the grounds that HMG was not privy to all the information on which the Americans had based their decision. Summing up the debate, the Prime Minister emphasised Britain's duty, as one of the Geneva Co-Chairmen, to assist in a negotiated settlement of the dispute.

8. In April 1980 the Foreign Secretary, Lord Carrington, described the abortive American attempt to rescue the hostages at the US Embassy in Tehran as a "legitimate operation". The Prime Minister, asked if Britain had been consulted over the use of Diego Garcia, told MPs that on most matters the United States would consult the British Government but when it came to the organisation of a rescue operation any country thinking of one would be ill advised to reveal it, even in confidence, to other nations. The Prime Minister also said that the Government believed that a rescue operation should be distinguished from military intervention.

(iii) Soviet Intervention in Eastern Europe and Afghanistan

9. British statements on the Soviet interventions in Hungary,



Czechoslovakia and Afghanistan claimed that the Soviet actions were in violation of the sovereignty and territorial integrity of the country concerned; in breach of international law and the UN Charter; and had led to the denial of the rights of peoples to determine their own affairs, and particularly to choose their own government. None of the three countries had presented a genuine external threat to the Soviet Union.

10. In the cases of Hungary and Czechoslovakia, HMG argued that neither the existence of an alliance, nor the claim that the states lay within the Soviet sphere of influence, justified the use of force to further Soviet interests. In 1956, the Foreign Secretary, Mr Selwyn Lloyd, said that, while the Hungarian Government might have agreed to the presence of Soviet troops in their country under the Warsaw Treaty, there was no justification under the treaty for these troops to repress the Hungarian people or for the Soviet Union to call in additional forces. Hungary had been in breach of no agreements and desired only neutrality. After the invasion of Czechoslovakia in 1968, Mr Stewart said that a nation was not entitled to send troops into the territory of another against that country's will simply because it served its own security; the Soviet Union had betrayed an ally.

11. In the cases of Afghanistan, a British spokesman said that the Soviet Union had allowed its concept of national interest to override its obligations under the UN Charter, acting in disregard of the consequences for the rights and wishes of the Afghan people, for international peace and security, and détente.

(iv) French Interventions in Africa

12. Broadly speaking Britain's attitude towards French interventions in Africa has been to leave the French to pursue their own policies in their former colonies and to avoid public comment. In most cases, interventions by France in Africa have been at the request of the "receiving" state. The purpose of French action has, in general, been to maintain stability and therefore, in the British view, to serve Western interests as a whole. After the French and Moroccan intervention in Zaire in 1977, the Minister of State at the Foreign Office said that the request by the Zaire Government to the



Foreign Office said that the request by the Zaire Government to the Moroccan Government and the French support was "perfectly proper". In April 1977 the Foreign Ministers of the Nine approved a General Declaration on Africa which stated, inter alia, that the Nine were willing "to cooperate insofar as any African state wishes them to do so" and expressed their support for the principles of territorial integrity and non-intervention in internal affairs.



SEMINAR ON POSSIBLE CONFLICT OF PRINCIPLES  
IN FOREIGN POLICY: 1 OCTOBER AT CHEQUERS

The list of participants and the timetable are in the inside cover.

The folder contains:

- A. Chairman's Notes.
- B. The paper: Is Intervention Ever Justified? circulated to all participants.
- C. Professor Rosalyn Higgins' note.
- D. Douglas Hurd's letter. *See file.*
- E. Percy Cradock's note.



SEMINAR ON POSSIBLE CONFLICT OF PRINCIPLES IN FOREIGN POLICY

1 OCTOBER: CHAIRMAN'S NOTES

1. Welcome you all to Chequers. Most distinguished group: a formidable accumulation of wisdom, legal expertise and practical experience in world affairs.

2. Purpose of the seminar is to allow more reflective discussion than we normally have time for when confronted with the need for urgent decisions. Opportunity to analyse the intellectual basis for statements, principles, positions or policies which we are inclined to take as read - yet when tested against events often turn out to be inadequate. No constraints on what we say. But hope we can all abide by what are called Chatham House Rules, that is nothing should be attributed either to the occasion or to any of the participants by name.

3. You have all received a background paper which has been prepared for this discussion. Its title - Is Intervention Ever Justified? - sums up crisply the dilemma which will be at the heart of our debate. But let me tell you in a little more detail why I want a really good discussion on this. We in Britain and most other Western countries stand for the upholding of international law and respect for national sovereignty. We therefore believe it to be wrong, except in the most extreme circumstances, to violate the borders of another state or to intervene in its internal affairs. But others are not so scrupulous. They interfere blatantly in the internal affairs of sovereign states, they work from within to impose regimes against the will of the peoples concerned, they openly violate national borders. How should we respond to this? Should we stand firm on the principles in which we believe while others ravage them? What if the consequence of doing so is to allow the massive violation of another people's human



∩ other overriding principles

rights? Are there circumstances in which these practices entitle us - and by us I don't just mean the United Kingdom but other Western democratic nations - to intervene? If so, in what circumstances and what justifications can we use?

4. I don't want it to become a discussion of particular cases, though of course it is perfectly legitimate to quote them in support of an argument. It will not surprise anyone, I am sure, that it was the experience of Grenada which moved me to want to discuss this problem, and the dilemma is one which arises particularly in the case of small states. They are the ones most vulnerable both to external intervention and to internal subversion.

5. I think it will be helpful if we divide our discussion into some broad areas, following the general outline of the paper circulated. That means that we should start with the legal considerations, go on to look at the moral arguments, then examine the lessons of historical experience. We have about 45 minutes for each, which means plenty of self-discipline, leaving us to draw general conclusions over dinner.

#### International Law

6. Here I will ask Professor Bowett, Dr. Lauterpacht and Sir Ian Sinclair to speak early on. Before they do, I will just remind you that the paper which you have identifies five broad categories of exception to the general prohibition on intervention in international law. It can be justified:

- at the invitation of the "receiving" state;
- on the authority of the Security Council or of a regional organisation;
- in exercise of the right of individual or collective self defence;



- with the intention of protecting a state's citizens abroad;
- on humanitarian grounds.

6. Questions we might look at are: are these the only exceptions? Or are there other, legally acceptable grounds for breaching the principle of non-intervention? Are there ways in which we can strengthen the structure of international law against intervention? Should we consider introducing the notion of reciprocity and outlaw pirate states who do not themselves act in accordance with international law from the protection of it? Or, a final and more provocative question, is it more realistic to regard intervention as a matter of policy with the legal aspects secondary and often just a fig leaf?

#### Moral arguments

7. The second aspect we need to look at is the moral one. I am not quite sure who I should pick on here but Professor Kadoorie, Professor Bull and Mr. Calvo-corelli might like particularly to comment. Once again the paper which has been circulated is a veritable mine of quotes and precedents leading to a very simple conclusion: everyone agrees that non-intervention is a Good Thing but there is no consensus about the circumstances which justify a breach of that principle. Should we conclude that the only guiding principle is the utilitarian one of demonstrating that the world is a better place as a result of an intervention than it was before? Or, put another way, that the penalties of non-intervention would be greater than the disadvantages of intervention? How far is it possible to rely on justifications based on the need to maintain or restore international order? Or contain international communism? Is success in the end the only justification of intervention that really matters?

*Kadoorie  
Bull  
Dr. Calvo-corelli*



Historical experience

8. The third area we should look at is that of historical experience. And here I look to historians and practitioners, in particular Tony Parsons, Hugh Thomas and Colonel Alford. There is no shortage of historical examples drawn from our own experience - Oman, Kuwait, Indonesia, Malaya, Tanganyika, Kenya, Anguilla, Suez - or drawn from American / Soviet / and French intervention. Are there any general lessons to be learned from these examples, in terms of credible justifications? Can one construct a profile, from historical experience, of situations which are most widely regarded as justifying intervention? What are the elements most commonly present?

Conclusions

9. I hope that none of you will go away thinking that I have invited you here to help me find a justification for some action which I am planning, or construct an alibi for supporting some-one else. That is not at all the purpose. But we have seen that situations can arise, as in Grenada, which pose very difficult choices. It is inevitable that there will be more. I will not attempt to sum up our discussion: I am more interested in hearing your conclusions. But some points which seem to me to emerge are:

{ to be devised in the light of the discussion }



IS INTERVENTION EVER JUSTIFIED?

- I Introduction
- II Intervention in International Law
- III Intervention: Moral Approaches
- IV Soviet Doctrine and Practice
- V US Doctrine and Practice
- VI Conclusion: When Is Intervention Justified?
  - Annex I: Definitions
  - Annex II: UN Texts
  - Annex III: Regional Texts
  - Annex IV: Recent French Practice
  - Annex V: Letter and Leading Article in The Times
  - Annex VI: Select Bibliography

*Prof. Bowett*  
*Handwritten*  
*Su. Ian Switani*  
*Prof. Kadzame*  
*Bull*  
*M. Calvo-Corressi*

*Historical*  
*Lyons*  
*Parsons*  
*Tony*  
*High Names*  
*Global Affairs*



## I Introduction

I.1 "Non-intervention in the internal affairs of states" has become one of the catch phrases of international diplomatic language in the postwar world. Recent events have reminded us that an absolute prohibition on intervention is an inadequate tool for dealing with the range of assaults on sovereignty faced by states today, and that there may be circumstances in which it is necessary to intervene to defend that sovereignty. In a letter to The Times last autumn, Lord Home suggested that "international law is immature and defective in this important area of relations between nations"<sup>1</sup>. A leading article in The Times the same day called for a "strategic initiative" to "develop a coherent and multilateral approach to further rescues" of the type carried out by the United States in Grenada.<sup>1</sup>

I.2 This paper explores the legal and moral issues associated with intervention. It describes some of the ways and circumstances in which intervention has been justified, with special reference to Soviet and American doctrine and practice in, respectively, Eastern Europe and Latin America. Annex IV briefly describes French practice since 1961. The paper does not, however, address the United Kingdom's recent experience of intervention. This is partly because it has been so limited, but mainly because the paper's principal aim is to analyse the wider problem as a basis for discussion. A proper review of British policy on intervention would require a separate, and more highly classified, paper.

I.3 For the purposes of this paper, intervention will usually be taken to mean dictatorial interference in affairs normally within the domestic jurisdiction of a state. Although this broad definition allows for intervention by means other than armed force (such as economic coercion or propaganda), armed force or the threat thereof is involved in most of the cases considered in the paper. Annex I examines the problem of defining intervention in more detail.

I.4 The paper begins (Section II) by looking at the legal position. Section III gives a short account of how a selection of political philosophers have set out to justify intervention. The two following Sections (IV and V) explore Soviet and American experiences of intervention. A final Section (VI) draws certain conclusions about the circumstances in which intervention may be justifiable.



Intervention in International Law

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

## Article 2(4) of the UN Charter

"Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII".

## Article 2(7) of the UN Charter

II.1 All contemporary international lawyers agree that intervention is, as a general rule, forbidden by international law. Since 1758, when Vattel set out the duty of non-intervention as a restatement of the right to independence from the negative side, this principle has been seen as the corollary of every state's right to sovereignty, territorial integrity and political independence. Articles 2(4) and (7) of the UN Charter, quoted above, make this clear. The Charters of the OAS, the OAU and the Arab League all embody the principle of non-intervention.

II.2 The prohibition on intervention implicit in the UN Charter has been made explicit in numerous drafts put before, and several Resolutions approved by, the General Assembly, which, although not binding, may be considered to reflect customary international law. Of these, the most important are the 1965 Declaration on The Inadmissibility of Intervention in the Domestic Affairs of States<sup>1</sup> (adopted with 109 in favour, none against, and only the UK abstaining<sup>2</sup>); the 1970 Declaration on Principles of International Law concerning Friendly Relations ... among States (adopted without vote); and the 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (adopted with 120 in favour, 22 (including the UK, EC and US) against<sup>3</sup>, and 6 abstentions). All three Declarations affirm that no state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other

<sup>1</sup> See Annex II for excerpts from all 3 Declarations.

<sup>2</sup> Several countries, including the UK, expressed reservations on the grounds that the Declaration was "vague and imprecise in language, and more political and legal in content, based more on concepts of international politics than on rigorous juridical analysis" (UN Year Book 1965).

<sup>3</sup> Britain and other countries voted against the 1981 Declaration not because they objected to the principles underlying the Resolution, but because they found objectionable certain subsidiary and semi-legal provisions on, for example, the exchange of information and permanent sovereignty over natural resources.



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te. Consequently, armed intervention and all other forms of interference are condemned; no state may use economic, political or any other measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or advantages of any kind.

II.3 The Helsinki Final Act<sup>4</sup> is one of a number of regional arrangements specifically to forbid intervention in the internal affairs of participating states. Principle VI of that Act (on Non-Intervention in Internal Affairs) includes an undertaking by states to refrain from "political, economic or other coercion ... to subordinate to their own interest the exercise by another participating State of the rights [of] sovereignty". An early precedent for such an undertaking was the inclusion of "non-interference in internal affairs" as one of the pancha sila, or five principles, set out in the preamble to China-India Treaty of 1954. These principles came to form the basic creed of the Non-Aligned Movement.

II.4 In all these international arrangements, intervention is regarded as including political and economic measures. However, in international law intervention is usually defined as forcible or dictatorial interference by a state in the affairs of another state, calculated to deprive that state of control of the matter in question<sup>5</sup>. States perform many acts which affect other states but which are solely within their own sovereign rights or are not dictatorial, and therefore do not violate the sovereign rights of other states.

II.5 The exceptions to the general prohibition on intervention are strictly limited in international law, and may be said to fall into five broad categories.

(a) Intervention under a treaty with, or at the invitation of, another state

II.6 If one state requests assistance from another, then clearly that intervention cannot be dictatorial and therefore unlawful. In 1976 the Security Council recalled, in a preamble to a Resolution, that it is "the inherent and lawful right of every State, in the exercise of its sovereignty, to request assistance from any other State or group of States"<sup>6</sup>. Examples of such lawful intervention at the request of states might be British aid to Muscat and Oman in 1957 at the request of the Sultan; the US/Belgian action to rescue the hostages in Stanleyville in 1964; or the military action taken by the German Government with the consent of the Somali authorities to free a hi-jacked aircraft at Mogadishu Airport in 1977.

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<sup>4</sup> See Annex III

<sup>5</sup> See Annex I for further discussion of the definition of intervention.

<sup>6</sup> SCR 387, condemning South African aggression against Angola.



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II.7 International law does, however, place two major restrictions on the lawfulness of states providing outside assistance to other states. One is that any form of interference or assistance is prohibited (except possibly of a humanitarian kind<sup>7</sup>) when a civil war is taking place and control of the state's territory is divided between warring parties. But it is widely accepted that outside interference in favour of one party to the struggle permits counter-intervention on behalf of the other, as happened in the Spanish Civil War and, more recently, in Angola.

II.8 Some commentators also believe that a second limitation is on other states' acceding to requests from a "colonial power" for assistance in suppressing an armed struggle by peoples of a colony seeking to exercise their right of self-determination. This view is not, however, shared by many international lawyers, and might be problematic for countries such as France or the United Kingdom.

II.9 Intervention under a treaty by which one state consents to intervention in certain circumstances by another is of course only apparent intervention - provided that the intervening state remains within the terms of the treaty.<sup>8</sup>

(b) Intervention with the authority of the Security Council (or, less certainly, the General Assembly); or other collective intervention on behalf of international bodies

II.10 Chapter VII of the UN Charter (Articles 39-51) was drawn up to ensure that the Security Council could "maintain or restore international peace and security" through the use of armed forces, but many of its provisions (for example, Article 42<sup>9</sup>) have never been used. And the failure to conclude military agreements in accordance with Article 43<sup>9</sup> has rendered that Article unusable. Recommendations have, however, been made under Article 39 suggesting that members make armed forces available, but only in the case of South Korea. Articles 52 and 53<sup>9</sup> are clear that regional organisations' main role is in the peaceful settlement of disputes, and that any enforcement action must be under the authority of the Security Council.

II.11 The only other, and much more uncertain, form of intervention provided for in the UN system is that under the "Uniting for Peace" Resolution of 1950.<sup>9</sup> The Charter gives the Security Council responsibility for maintaining or restoring "international peace security", if necessary by despatching military forces (Chapter VII). If, however, the Security Council could not agree, the General Assembly "Uniting for Peace" Resolution was designed by its

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<sup>7</sup> See para II.18 ff below.

<sup>8</sup> For example, under the 1960 Treaty of Guarantee for Cyprus, each of the guarantor states "reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty" if the Treaty has been breached and common action proves impossible.

<sup>9</sup> See Annex I



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American sponsors to give the Assembly powers to deal with these issues by, for example, holding an emergency special session of the Assembly to discuss the matter. It is generally accepted today that the Assembly can meet to discuss threats to "international peace and security" if the Council cannot agree (for example, on Afghanistan in 1980). But it is not considered to have the power to despatch military forces to deal with such disputes, except with the consent of the "receiving" state (as, for example, happened with the Congo).

II.12 Some international lawyers also allow other collective action undertaken in the general interest of states or for the collective enforcement of international law. However, this would be difficult to justify in the absence of any of the other grounds for intervention cited in this Section. It should, moreover, be distinguished from limited exceptions such as that in the Inter-American Treaty of Reciprocal Assistance signed at Rio in 1947<sup>10</sup>. This provides for collective measures to be taken, after consultation, in the event of aggression against any American State (Article 6). The OAS Charter<sup>10</sup>, signed at Bogota the following year, states that measures for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the articles in the Charter prohibiting intervention.

(c) Intervention in exercise of the right of individual or collective self-defence

II.13 Article 51<sup>11</sup> of the UN Charter states in part that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations". Clearly, however, this does not extend to intervention (or counter-intervention) in circumstances which do not involve an actual or threatened armed attack, still less to what some politicians and writers have described as "preventive" or "pre-emptive" intervention.

II.14 In one of few judicial comments on intervention, the alleged right of intervention in self-defence was undermined by the judgement against the United Kingdom by the International Court of Justice in the celebrated Corfu Channel case of 1949. After two Royal Navy destroyers had been damaged by Albanian mines in the international strait, Britain sought to collect evidence by undertaking a minesweeping operation in Albanian territorial waters. Although the Court found Albania guilty of causing the explosions, it rejected British claims that the intervention was justified on grounds of "safe-guarding evidence necessary for the purposes of justice", action to prevent an international "nuisance" and "self-protection or self-help". The Court regarded "the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to the most serious abuses and such as cannot, whatever be the present defects in international organisations, find a place in international law".

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<sup>10</sup> See Annex III

<sup>11</sup> See Annex II



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He states that they are entitled to use force to prevent violations of human rights may make other states reluctant to accept legal obligations concerning human rights".<sup>15</sup> In essence, therefore, the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law.

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II.23 In conclusion, it should be noted that various other exceptions to the rule of non-intervention have from time to time been advanced; but that none of them are now accepted by a significant number of international lawyers. Among these are armed intervention to enforce the provisions of a treaty, to restore the balance of power, to deal with chronic disorder in a neighbouring state, to undertake international police action, or to assist a national liberation movement seeking to assert the right of self-determination. Of these, only the last deserves a fuller mention here. Most Western writers reject such a right on the grounds that such assistance (unless, possibly, it is humanitarian or economic) infringes the sovereignty of the state, at least until the rebels establish belligerent rights by controlling part of the territory. Brownlie<sup>16</sup> gives a good account of the reasons for dismissing the other grounds for intervention.

II.24 This brief account of the extensive legal debate on intervention has concentrated on the treatment of the subject in conventional and contemporary international law. An alternative approach, favoured in earlier times, might be that of writers of the natural law school who would judge any particular case of intervention in the context of the natural rights of man. But such an approach would today be unlikely to command widespread international support, and would in any case raise as many questions as it would answer. This Section has shown how often the "legal" debate about intervention strays into politics and morality, the subject of the next Section.

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<sup>15</sup> in Intervention and World Order, ed Bull. See also Donnelly, Humanitarian Intervention etc and Lillich, Humanitarian Intervention and the United Nations

<sup>16</sup> International Law and the Use of Force by States



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public opinion and the attitude of the Powers are in favour of such interventions, and it may perhaps be said that in time the Law of Nations will recognise the rule that interventions in the interests of humanity are admissible provided they are exercised in the form of a collective intervention of the Powers". Lauterpacht's rationale for humanitarian intervention is that "ultimately, peace is more endangered by tyrannical contempt for human rights than by attempts to assert, through intervention, the sanctity of human personality"<sup>13</sup>. A substantial body of opinion and of practice has thus supported the view that when a state commits cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible.

II.21 The state practice to which advocates of the right of humanitarian intervention have appealed provides an uncertain basis on which to rest such a right. Not least this is because history has shown that humanitarian ends are almost always mixed with other less laudable motives for intervening, and because often the "humanitarian" benefits of an intervention are either not claimed by the intervening state or are only put forward as an ex post facto justification of the intervention. In the nineteenth century, interventions by the Western Powers to protect the Christian and other minorities in the Ottoman Empire, such as the Maronites on Mount Lebanon, are those most often said to have been for humanitarian ends. The two most discussed instances of alleged humanitarian intervention since 1945 are the Indian invasion of Bangladesh in 1971 and Tanzania's "humanitarian" invasion of Uganda in 1979. But, although both did result in unquestionable benefits for, respectively, the peoples of East Bengal and Uganda, India and Tanzania were reluctant to use humanitarian ends to justify their invasion of a neighbour's territory. Both preferred to quote the right to self-defence under Article 51. And in each case the self-interest of the invading state was clearly involved.

II.22 In fact, the best case that can be made in support of humanitarian intervention is that it cannot be said to be unambiguously illegal. To make that case, it is necessary to demonstrate, in particular by reference to Article 1(3)<sup>14</sup> of the UN Charter, which includes the promotion and encouragement of respect for human rights as one of the Purposes of the United Nations, that paragraphs 7 and 4 of Article 2 do not apply in cases of flagrant violations of human rights. But the overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention, for three main reasons: first, the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right; secondly, state practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all; and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation. As Akehurst argues, "claims by

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<sup>13</sup> International Law and Human Rights, p 32

<sup>14</sup> See Annex II



Protective intervention

II.15 Related to the right of self-defence is a state's alleged right to intervene to protect its citizens or, more controversially, their property abroad. Most writers derive this right from that enshrined in Article 51 of the Charter, and see action to protect nationals abroad as a form of self-defence. Thus the United States claimed that its use of force to rescue United States nationals from Cambodia in 1975, Iran in 1980 and Grenada in 1983 was justified by Article 51. The landing of Israeli commandos at Entebbe Airport in 1977 and of French and Belgian paratroops in Zaire in 1978 were justified on similar grounds.

II.16 An alternative, and less satisfactory, approach is to seek to derive from customary international law a right of intervention to protect nationals. In either case, it is clear that such intervention must be confined to securing the safety of the nationals, and is open to all sorts of abuse. For this and other reasons, many authors doubt whether a right to intervene on behalf of nationals abroad does exist, believing that force may be used in defence of nationals only when they are present on the territory of the state to which they belong. Judges Morozov and Tarazi supported this view in the 1980 ICJ Case concerning United States Diplomatic and Consular Staff in Tehran.

II.17 The alleged right to intervene to protect the property of a state's citizens abroad is no longer considered lawful, although it was used as a justification for the British landings in Egypt in 1956 and for South African intervention in Angola in 1976.

(e) Humanitarian intervention

II.18 The final, and by far the most controversial, category of exceptions to the general prohibition on intervention is that on humanitarian grounds. This should be distinguished from action to protect a state's own nationals abroad discussed in (d) above. The vast literature on this subject in the past and present century has wrestled with the difficulty of reconciling a state's supposedly absolute sovereignty with even more fundamental human rights which may be held to justify intervention on behalf of oppressed nationals of another state. Lauterpacht put his finger on the fundamental contradiction in international law, in the UN Charter and in other documents, between state sovereignty and other states' right to comment on, let alone to intervene to protect, human rights: "in so far as the availability of a remedy is the hallmark of a legal right, they [fundamental human rights] are imperfect legal rights"<sup>12</sup>.

II.19 Those who have argued for a right of humanitarian intervention have done so by appealing to the common interest of humanity and to state practice over the past two centuries.

II.20 Oppenheim, in the first edition of his International Law published in 1905, put it thus: "... it cannot be denied that

<sup>12</sup> International Law and Human Rights, p 34



Intervention: Moral Approaches

"No state shall interfere by force in the constitution or government of another state"

Immanuel Kant's fifth preliminary article for eternal peace (1788)

"The recognition of sovereignty is the only way we have of establishing an arena within which freedom can be fought for and (sometimes) won. It is this arena and the activities that go on within it that we want to protect, and we protect them, much as we protect individual integrity, by marking out boundaries that cannot be crossed, rights that cannot be violated. As with individuals, so with sovereign states: there are things that we cannot do to them, even for their own ostensible good."

Michael Walzer, Just and Unjust Wars (1977) p89<sup>1</sup>

"Our opinion of the gods and our knowledge of men lead us to conclude that it is a general and necessary law of nature to rule wherever one can".

The Athenian generals to the rulers of Melos, Thucydides V. 104 (415 BC)

"The average voter is not interested in the technicalities of treaty obligations. He thinks quite properly that Castro is a menace, and he favours the candidate who wants to do something about it - something positive and dramatic and forceful - and not the one who takes the 'statesmanlike' or 'legalistic' view".

Richard M Nixon, Six Crises (1968), p384

III.1 On only one thing are the moralists, philosophers and politicians who have written about intervention agreed: in an ideal world there would be no need for intervention, and thus no call for the awkward accommodations between state sovereignty, individual liberty and the rule of law about which men have argued since classical times. The issue of whether, and, if so, in what circumstances, the principle of non-interference in the affairs of a sovereign state can be breached raises profound questions about the place of ethics in international politics. In large part, the moral debate about intervention has mirrored discussion of the subject by international lawyers, for in both cases the conclusions one reaches depend heavily on the premises from which one starts.

III.2 One of the first - and more original - of modern political philosophers to deal with intervention was Richard Cobden, the Manchester businessman and MP. Perhaps the most cogent statement of

Walzer's position, discussed later in this section, is not as absolutely non-interventionist as this suggests.



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views is a speech he made to the Commons in 1850<sup>2</sup> attacking the Government's foreign policy. He questioned the wisdom of Britain acting as a guarantor of constitutional government, pointing out that this would involve the Foreign Office in the reform of "every country on the face of the earth". After asserting that Britain had no right to interfere with any other form of government whether it were a republic, despotism or monarchy, he emphasised that a Britain which contravened the principle would have to tolerate breaches by others. Nor did he believe that interference to impose liberalism would work: "[a] people which wants a saviour, which does not possess an earnest and pledge of freedom in its own heart, is not yet ready to be free".<sup>3</sup>

III.3 The doctrine giving Britain a right to interfere in Continental affairs was never clearly formulated by Cobden's opponents. Indeed Palmerston, criticised for intervening in Turkey in 1839, had replied: "true political wisdom consists not in enunciating a policy in sonorous terms, but in applying to each question as it occurs the rules of common sense and prudence"<sup>4</sup>

III.4 Earlier, however, in a Circular to British Ambassadors in 1821, Castlereagh, while emphasising the rarity of the occasion for exercising the right to intervene, had stated: "It should be clearly understood, that no Government can be more prepared than the British Government is, to uphold the right of any State or States to interfere, where their own immediate security, or essential interest, are seriously endangered by the internal transactions of another State".<sup>5</sup>

III.5 Cobden's belief that states are self-determining political communities, whether or not their citizens are free to choose the state's government, was picked up by John Stuart Mill in a short article<sup>6</sup> published in the same year (1859) as his treatise On Liberty. In discussing intervention, Mill draws an analogy between the state and the individual, and sees them both as enjoying an absolute right to self-determination and therefore to non-intervention. For Mill, self-determination is a people's right "to become free by their own efforts". Those who have the

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<sup>2</sup> Hansard, 28 June 1850

<sup>3</sup> Cobden's letter to a friend in 1858 is also worth noting:

"You rightly interpret my views when you say I am opposed to any armed intervention in the affairs of other countries. I am against any interference by the government of any one country in the affairs of another nation, even if it be confined to moral suasion. Nay, I go further, and disapprove of the formation of a society or organisation of any kind in England for the purpose of interfering in the internal affairs of other countries. I have always declined to sanction anti-slavery organisations formed for the purpose of agitating the slavery question in the United States".

<sup>4</sup> Quoted in Stapleton, Intervention and Non-Intervention, pp72-74

<sup>5</sup> Quoted in Webster, The Foreign Policy of Castlereagh, pp322-3

<sup>6</sup> A Few Words on Non-Intervention



"fortune" to be ruled by a tyrannical government have never had a chance to develop "the virtues needful for maintaining freedom". And "it is only during an arduous struggle to become free by their own efforts that these virtues have the best chance of springing up".<sup>7</sup>

III.6 Despite this stern doctrine of self-help, intended mainly to prohibit intervention in a civil war, Mill makes two interesting exceptions to the rule of non-intervention. First, he argues that the principle does not apply to relations with or between barbarians, in whose interest it is to be conquered and held in subjection by (civilised) foreigners. Secondly, Mill believes in the right of counter-intervention, arguing as follows:

"The doctrine of non-intervention, to be a legitimate principle of morality, must be accepted by all governments. The despots must consent to be bound by it as well as free States. Unless they do, the profession of it by free countries comes but to this miserable issue, that the wrong side may help the wrong, but the right must not help the right. Intervention to enforce non-intervention is always rightful, always moral, if not always prudent".

Whether Mill would allow a right of counter-intervention in cases where a state had been subverted, but not invaded, from outside is unclear.

III.7 Kant's<sup>8</sup> fifth preliminary article for eternal peace, quoted at the beginning of this Section, is by no means as absolute as it seems to be. Kant appears to allow intervention when internal dissension splits a state into two parts each constituting a separate state. He also apparently implies that intervention is permissible if it enables a republic to be established or a despotic regime to be crushed. Furthermore, Kant's requirement of a ius cosmopoliticum applying directly to individual citizens of all states seems to permit men to intervene in each other's affairs across state boundaries by having recourse to law beyond the state. Friedrich goes so far as to argue that Kant "would have restricted the idea of non-intervention in such fashion as to enable the world federalism [Kant's second definitive article on international law] to take positive steps to protect people against imperialism and minorities against abuse".<sup>8</sup>

III.8 In the present century most writing on intervention has been legalistic, but Professor Martin Wight, one of Britain's leading postwar writers on international relations, formulated a doctrine of intervention based on the moral interdependence of peoples as follows:

<sup>7</sup> A curious echo of the Marxist maxim "The liberation of the working class can come only through the workers themselves".

<sup>8</sup> Quoted in Friedrich, Inevitable Peace, p248



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1. That intervention, in the sense of unwelcome interference by one member of the community of states in the internal affairs of another, is an occasional necessity in international relations, because of the permanent instability of the balance of power and the permanent inequality in the moral development of its members.
2. That it is an unfortunate necessity, because it conflicts with the right of independence; and it should be the exception rather than the rule.
3. That in a moral scale, to maintain the balance of power is a better reason for intervening than to uphold civilised standards, but to uphold civilised standards is a better reason than to maintain existing governments." <sup>9</sup>

III.9 Two American political philosophers have also recently attempted to construct working theories of non-intervention which permit practical exceptions to the rule. Michael Walzer, Professor of Government at Harvard, does not disguise his contempt for the formulations of international lawyers:

"Legal positivism, which generated major scholarly works in the late nineteenth and early twentieth centuries, has become in the age of the United Nations increasingly uninteresting. The UN Charter was supposed to be the constitution of a new world, but, for reasons that have often been discussed, things have turned out differently. To dwell at length upon the precise meaning of the Charter is today a kind of utopian quibbling. And because the UN sometimes pretends that it already is what it has barely begun to be, its decrees do not command intellectual or moral respect - except among the positivist lawyers whose business it is to interpret them. The lawyers have constructed a paper world, which fails at crucial points to correspond to the world the rest of us still live in". <sup>10</sup>

III.10 Walzer goes on to describe 3 sets of circumstances in which in the "ban on boundary crossings" (as he calls the principle of non-intervention) may be suspended unilaterally by a state. His main justification is that in each of these cases the prohibition on intervention fails to serve the purpose for which it was established, and therefore does not apply. His three categories are:

"- when a particular set of boundaries clearly contains two or more political communities, one of

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<sup>9</sup> Diplomatic Investigations, (1966) ed Butterfield and Wight  
<sup>10</sup> Just and Unjust Wars (1977), pp xii-xiii



which is already engaged in a large-scale military struggle for independence; that is, when what is at issue is secession or 'national liberation';

- when the boundaries have already been crossed by the armies of a foreign power, even if the crossing has been called for by one of the parties in a civil war, that is, when what is at issue is counter-intervention; and

- when the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination or 'arduous struggle' seem cynical and irrelevant, that is, in cases of enslavement or massacre.

Walzer's approach is, however, descriptive and not normative. He accepts that international lawyers may not be able to find a place for these exceptions in law, but adds that that is not to deny the need for intervention in such circumstances. He also goes somewhat towards arguing that a state capable of intervening effectively in any of the circumstances set out above may have the right to do so. And he attaches overriding importance to prudential considerations.

III.11 Charles Beitz, Professor of Political Science at Swarthmore College,<sup>11</sup> rejects both the realist and the state-person analogy views of the world as empirically inaccurate and theoretically misleading. Instead, he tries to devise a normative theory of international politics derived from a revised principle of state autonomy, based on the justice of a state's institutions. Beitz prohibits interference in the affairs of a just state (which he seems to define only partially), or of one which is likely to become just if left free from external interference. Any form of interference in, or attempts to influence, a state whose political and economic institutions conform to "appropriate principles of justice" is banned.

III.12 If, however, a state is neither just nor likely to become just if left to its own devices, Beitz regards interference as permissible on three conditions:

"First, it must meet certain standards (ie promote justice and be carried out with adequate information and assurances against self-serving actions by the intervening agent). Second, it must not run afoul of other relevant moral restraints on political action. Third, it must not be too costly in terms of the other goals of international politics. Since these conditions might be met or not met in a great variety of ways, it does not seem possible simply to enumerate the kinds of actions forbidden by the non-intervention principle with respect to unjust states."

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<sup>11</sup> Political Theory and International Relations



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.13 It is interesting to note that both these recent justifications of intervention in certain, limited, circumstances concentrate on the state of affairs within the "receiving" country. They say nothing of the interests of the intervening state or of international society as a justificatory factor - in contrast to the Soviet and US arguments described in Sections IV and V.

III.14 This rapid survey of a small selection from the vast literature on intervention of the last two centuries suggests almost total unanimity on the desirability of the principle of non-intervention, but wide disagreement on the circumstances in which it is permissible to breach that principle.

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IV Soviet Doctrine and Practice

"Intervention: the armed invasion or interference of one or several capitalist states in the internal affairs of another state aimed at the suppression of a revolution, acquisition of special privileges, establishing domination etc".

Soviet Political Dictionary, 1958<sup>1</sup>

"The policy of intervention is alien to the USSR and the countries of people's democracy; it contradicts the policy which they carry out of peace, of non-interference in internal affairs of other states and of respect of their sovereignty. In upholding these principles the USSR has more than once come out against intervention carried out by imperialist states. Thus in 1936 the USSR protested against fascist intervention in Spain, in 1950-53 against American intervention in Korea, and in 1956 against Anglo-French-Israeli intervention in Egypt."

Soviet Diplomatic Dictionary, 1960

"It is perfectly clear that defence of the socialist system, and efforts to counteract attempts of bourgeois counter-revolutionary forces, does not require any special, supplementary legal justification; it stems from the very nature of the class struggle and, far from contradicting, fully conforms to a genuinely democratic interpretation of the concept of sovereignty".

Sanakoyev, Proletarian Internationalism<sup>1</sup>

IV.1 Non-intervention is a shibboleth of Soviet foreign policy, which Soviet theorists, like their bourgeois counterparts, derive from the principle of state sovereignty. Unlike those counterparts, however, Soviet thinkers seem to hold that the prohibition of intervention is absolute, and admits of no exception. Only if intervention is the exclusive sin of capitalists does it make sense for socialist theory to assert an absolute rule of non-intervention.

IV.2 Ever since the Russian Revolution, Soviet writers and politicians have had to meet the fundamental contradiction in Soviet foreign policy between the principles of international Communism (which demand the spreading of the revolution) and the principles of state sovereignty and self-determination (which demand non-interference, most particularly in the internal affairs of the Soviet Union). The notions of peace and self-determination inherited by the Russian revolutionaries from their French predecessors were at first overridden by the doctrine of worldwide proletarian revolution, in which class had been substituted for nation and there was no place for states. However, the Bolsheviks were soon forced to come to terms with the fact that revolution was

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<sup>1</sup> Quoted in Marxism-Leninism and Theory of International Relations, Kubálková and Cruickshank, pp 225-6



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not going to be instantaneous in all countries (and that where it did strike a spark, it was soon extinguished), and so began to moderate their expectations. Lenin's arguments against Trotsky for first consolidating the revolution in Russia, and thus for signing a separate peace with Germany, prevailed, and culminated in the Treaty of Brest-Litovsk in March 1918.

IV.3 After the Second World War, the establishment of Communist regimes in Eastern Europe and the Communist victory in China transformed the problem of relations between parties, with which the Comintern had dealt in the thirties, into one of relations between parties and states with all which the latter implied in terms of sovereignty. Soviet theorists nevertheless maintained that in relations between the Soviet Union and the people's democracies Lenin's principle of national self-determination did not apply because it belonged to the province of the bourgeois revolution. Formally relations between the USSR and her satellites were based on mutual recognition of the principles of sovereignty, equality and non-interference in domestic affairs. But the East Europeans' designation as people's democracies placed them at a stage in the building of Communism inferior to that of the Soviet Union. As the centre of world Communism and the first socialist state, the Soviet Union awarded itself the right to determine the basic form of political and economic structures within Eastern Europe.

IV.4 In disputes with East European régimes, the Russians have always used political propaganda and economic pressure to achieve their wishes before resorting to force. Overt force is only used when the existence of a Communist régime is deemed to be in peril. This was the case in Hungary in 1956. The Soviet justification for military intervention there was that it was at the request of the Hungarian government, and intended to restore order against the forces of reaction supported by the imperialist powers.<sup>2</sup> Khrushchev stated in October 1957 that the Soviet Union had come to the aid of the "working class and toiling peasantry in Hungary in defeating the counter-revolution and defending the socialist gains of the Hungarian people from encroachments by imperialist reaction when the enemies of socialism attempted to take all these gains away from the working people of Hungary".

IV.5 The events in Czechoslovakia nearly twelve years later showed that, although the Soviet Union had moved a little further towards loosening its control over Eastern Europe, there remained clear limits to diversity. With Hungary, the worry had been that of possible defection from the bloc. With Czechoslovakia the fear was that, despite Czech protestations to the contrary, internal liberalisation would lead to counter-revolution and thus to defection.

IV.6 At first the Soviet Government sought to justify the intervention as a response to a request for assistance from Czechoslovak government and party leaders. But, after that was

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<sup>2</sup> Pravda, 4 November 1956



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discredited by a statement from those leaders that the intervention had occurred without their knowledge, another invitation was manufactured. In fact the justification of the intervention preceded it. In a letter to the Czechoslovak Party Central Committee issued after the meeting in Warsaw of five Warsaw Pact states in July 1968, the Russians claimed that, since "enemy" forces were allegedly diverting Czechoslovakia from the path of socialism and threatening to tear her from the socialist community, developments in Czechoslovakia were the "concern of all Communist and Workers' parties and all states united by their alliance, cooperation and friendship". This was at the heart of what was to become known as the Brezhnev Doctrine.

IV.7 This theme was elaborated in an article which appeared in Pravda on 26 September 1968. The writer set out to rebut allegations that the action to "defend the socialist gains" of the Czech people contradicted the "Marxist-Leninist principle of sovereignty and the right of nations to self-determination". The most outspoken passage in the article argued that:

"There is no doubt that the peoples of the socialist countries and the Communist parties have and must have freedom to determine their country's path of development. However, any decision of theirs must damage neither socialism in their country, nor the fundamental interests of the other socialist countries, nor the worldwide workers' movement, which is waging a struggle for socialism. This means that every Communist party is responsible not only to its own people but also to all the socialist countries and to the entire Communist movement..."

IV.8 Brezhnev himself at the Fifth Polish Party Congress in Warsaw in November of that year warned that there were "common laws governing socialist construction, deviation from which might lead to deviation from socialism as such". A threat to the cause of socialism and the security of the Socialist Commonwealth as a whole became the common concern of all socialist countries. Brezhnev said that military "aid" to Czechoslovakia was an extraordinary step caused by actions by the enemies of socialism, which created a threat to the common interests of the camp of socialism.

IV.9 In reality, the Brezhnev Doctrine contained little that was new. It stemmed from the relationship between the Soviet Union and the East European countries, as well as from Soviet determination not to permit its political dominance to be shaken by the removal of vital limits to the Socialist states' freedom of manoeuvre.

IV.10 Soviet intervention in Afghanistan was at first justified on quite different grounds. Pravda claimed that "the Afghan Government turned to the USSR with a request for immediate help against external aggression"<sup>3</sup>, and spoke of the sending of a limited

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<sup>3</sup> 31 December 1979



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military contingent to help repel external armed interference.' The 1978 Soviet-Afghan Treaty of Friendship and Article 51 of the UN Charter were both cited as a legal basis for the intervention. Later in the same article, however, the writer claimed that the Soviet Union could not tolerate the use of Afghanistan as "a bridgehead of imperialist aggression against the Soviet Union". Brezhnev, interviewed in Pravda <sup>4</sup> injected an important ideological justification, maintaining that failure to respond to the request for help from the Afghan Government "would have meant leaving Afghanistan to be torn to pieces by imperialism, allowing the aggressive forces to repeat in that country what they had succeeded in doing in ... Chile, where the people's freedom was drowned in blood." He added that "to have acted otherwise would have meant to look on passively as a serious threat to the security of the Soviet State arose on our southern frontier".

IV.11 In the wake of Afghanistan, Soviet spokesmen and writers were disposed to apply more widely the political and ideological justifications for the intervention in Afghanistan. The Head of the Soviet Army and Navy's Chief Political Administration wrote in Pravda, with reference to Angola, Ethiopia and Afghanistan, that "the Leninist understanding of the defence of revolutionary gains reflects the profoundly international character of ensuring the transition of people to socialism and Communism in conditions where international and internal reaction is trying to prevent this historic process by force. The combined might of the countries of the Socialist Commonwealth, embodied in the Warsaw Treaty Organisation, serves as a reliable guarantee of the security of peoples building a new life".<sup>5</sup> Another article argued, with reference to Cuba, Vietnam, Angola and Afghanistan, that attempts to stop the revolutionary process were regarded by the Soviet people as a direct threat to their own country, and potentially to the revolutionary gains in the USSR. In defending others the Russians were defending themselves. "Such is the logic of the class struggle, such is the dialectic of internationalism".<sup>6</sup>

IV.12 Such ideological rhetoric has yet to be tested in terms of practical commitment. Soviet military assistance to such countries as Angola, Ethiopia and Mozambique remains limited to the supply of military advisers and weaponry (for cash). The extent of future Soviet involvement seems likely to be determined by considerations of self-interest: for example, propinquity; economic costs; world reaction; the risk of confrontation with Western, especially US, forces; and the ability of the Soviet Armed Forces logistically and militarily to sustain an operation in distant parts. While the prospect of such intervention is presented exclusively in terms of practical assistance to preserve "revolutionary" or "socialist" gains, this is not to say that, should opportunities present themselves, the Soviet Union would not act (subject always to the above constraints and judgements). No difficulty would be found in producing an "ideological" justification for any such eventuality.

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<sup>4</sup> 13 January 1980

<sup>5</sup> 11 April 1980

<sup>6</sup> Mezhdunarodnaya Zhizn, October 1980



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The standing definition of internationalism lays down:

"The international solidarity of the proletariat strengthens the position of the revolution in each individual country. The international proletariat renders political, moral and material aid to all forms of the liberation struggle of the peoples masses and hinders or renders impossible the intervention of foreign imperialists. This support is not "export of revolution", for it represents not the imposition of revolution from outside but fraternal aid to a people which itself has risen in revolution." 7

IV.13 The Soviet "doctrine of non-intervention", which has been a central plank of Soviet propaganda in the UN and other international fora, is thus seen to be highly adaptable. Although claimed to be absolute, it is in certain circumstances in practice inferior to the competing doctrine of Socialist Internationalism, which implies the unity of socialist states in the class struggle between socialism and capitalism, and obligations of "mutual assistance" including military aid<sup>8</sup>. A clear distinction must be drawn between the Soviet Union's relations with adjacent states inside the Soviet orbit and with those more distant from Soviet borders. In her relations with the latter, the Soviet Union has been more circumspect, but there have been instances of intervention (Angola, Ethiopia) as well as of non-intervention (Grenada, Somalia). National liberation movements benefit from civil or military aid, but this hardly falls into the category of intervention. Thus the extension in Soviet writings of the Brezhnev Doctrine to Third World countries should not be taken at face value.

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<sup>7</sup> Philosophical Encyclopaedia 1962

<sup>8</sup> See Tunkin, Theory of International Law, pp434-5



V US Doctrine and Practice

"... with the governments [in Latin America] who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States".

President Monroe, Message to Congress,  
2 December 1823

"Chronic wrong doing, or an impotence which results in a general loosening of the ties of civilised society, may in America, as elsewhere, ultimately require intervention by some civilised nation".

President Theodore Roosevelt, Message to Congress,  
6 December 1904

"[the High Contracting Parties declare] inadmissible the intervention of any one of them, directly or indirectly, for whatever reason, in the internal or external affairs of any other of the Parties"

Declaration of the Inter-American Conference for the  
Maintenance of Peace, Buenos Aires, 1936

"no member of the United Nations can claim that mistreatment of its citizens is solely its own business"

President Carter, Address to UNGA,  
17 March 1977

"A final lesson of the events in Grenada is that neighbours have a clear, ongoing responsibility to act in ways consistent with each other's legitimate security concerns"

Deputy Secretary of State Dam, Louisville,  
Kentucky, 4 November 1983

*cf  
Soviet  
Union*

V.1 Non-intervention has been one of the fundamental declared principles of US foreign policy at least since Washington's second term as President. The interpretation and application of this principle have, however, varied widely according to circumstance, particularly in the Western hemisphere. Its roots lie deep in the idea of the independence of the United States from the corrupt Old World, expressed in the belief of Thomas Paine and others that "it was the true interest of America to steer clear of European contentions".<sup>1</sup> The doctrine of non-interference in the affairs of other, European, nations reflected not only a desire to protect the independence of a weak United States but also a deeply-held

<sup>1</sup> Quoted in Vincent, op cit, pl04



commitment to the right of nations to choose their own form of government.

V.2 This Section reviews American doctrine and practice on intervention as it has evolved since the early nineteenth century, and pays particular attention to US actions in Latin America since 1945.

V.3 One immediate consequence of the strict application of the principle of non-intervention was the American Government's refusal to take sides in the struggle for independence by the Spanish Colonies in Central and South America during the early years of the nineteenth century. By 1822, however, the United States felt strong enough to recognise - in the face of Spanish protests - five of the new states. The following year President Monroe, in his Annual Message to Congress, warned the European powers not to intervene in the American hemisphere, while pledging that the United States would abstain from similar interference in European affairs. But he was silent on the future course of relations between the United States and the newly independent Latin American states.

V.4 However, as American power grew in the course of the nineteenth century, so did American willingness to intervene to protect US interests in the hemisphere. In 1895 Secretary of State Olney declared that the United States was "practically sovereign" on the American continents. President Roosevelt's Corollary to the Monroe Doctrine made explicit the United States' right to intervene in the affairs of Latin America which had been implicit in US intervention on Cuba's behalf in 1898 in her struggle for independence against Spain. US victory in the Spanish-American War which followed led not only to the acquisition of territory in the Caribbean and the Pacific, but also to renewed interest in an isthmian canal. In achieving this the United States encouraged and financed Panama's successful revolt against Colombia, and justified the intervention as in the "interests of collective civilisation". By 1912, Secretary of State Knox was able to proclaim that:

"the logic of political geography and of strategy, and now our tremendous national interest created by the Panama Canal, make the safety, the peace, and the prosperity of Central America and the zone of the Caribbean of paramount interest to the Government of the United States. Thus the malady of revolutions and financial collapse is most acute precisely in the region where it is most dangerous to us. It is here that we seek to apply a remedy."<sup>2</sup>

V.5 In the twentieth century, the latter part of the inter-war period saw a tilt in declared American policy back towards greater acceptance of the principle of non-intervention. At the sixth International Conference of American States held at Havana in 1928 the American delegation had refused to accept the unqualified doctrine that "no state has the right to interfere in the

<sup>2</sup> Quoted in Vincent, op cit p121



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Internal affairs of another". Between 1918 and 1932 US troops landed in Haiti, the Dominican Republic, Cuba, Panama, Honduras (twice) and Nicaragua. But, by the time of the Montevideo Conference of American States in 1933, the United States was willing to sign the Convention on the Rights and Duties of States, Article 8 of which read: "No state has the right to intervene in the internal or external affairs of another". Similarly, Under-Secretary of State Clark, in a memorandum to Secretary of State Kellogg five years earlier, had been at pains to emphasise that the Monroe Doctrine "is now, and always has been, not an instrument of violence and oppression, but an unbought, freely bestowed and wholly effective guarantee of [the] freedom, independence and integrity [of Latin America] against the imperialistic designs of Europe".

V.6 The culmination of this resurgence of non-interventionism - the obverse of isolationism - was President Roosevelt's "Good Neighbour" Policy, enunciated in an address to the Pan-American Union in April 1933. In this, the President picked up the pledge in his Inaugural Address that he would "dedicate this Nation to the policy of the good neighbour - the neighbour who ... respects the rights of others ... who respects his obligations .. and the sanctity of his agreements in and with a world of neighbours".

V.7 The end of the Second World War was followed by a period in which America's isolationist instincts were challenged by the need to deal with Soviet expansionism in Europe and elsewhere. By the time of Truman's Message to Congress of 23 March 1947 announcing US aid to Greece and Turkey it was clear which principle had won: "I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures".

V.8 In Latin America this determination to contain the spread of international communism found its first formal expression in the Inter-American Treaty of Reciprocal Assistance signed at Rio in 1947, and in the 1948 OAS Charter<sup>3</sup>. Both provide for collective action to be taken after consultation in the event of an actual armed attack or of aggression which is not an armed attack (Article 6 of the Rio Treaty and Article 28 of the OAS Charter.) At the Caracas Conference of American States in 1954, Dulles orchestrated the passing of a resolution which read in part: "that the domination or control of the political institutions of any American State by the international communist movement, extending to this hemisphere the political system of an extra-continental power, would constitute a threat to the sovereignty and political independence of the American States, endangering the peace of America".

V.9 This resolution represented the American view that communist subversion in Latin America amounted to an intrusion by a rival power in an area to which it did not belong. Its passage was followed almost immediately by the overthrow of the Arbenz regime in Guatemala.

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<sup>3</sup> See Annex III

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10 In 1952, a reformist government in Guatemala, headed by the democratically-elected President Jacobo Arbenz, introduced an agrarian reform law. The dominant US company in Guatemala, United Fruit, strongly objected to the terms of compensation offered by the Guatemalans for expropriated lands. The impact of this law, combined with the presence of a number of communists in the Guatemalan Congress, trade union leadership and key positions in the government bureaucracy, led the Eisenhower Administration to denounce Guatemala as a communist beachhead in the Western hemisphere. The US Government subsequently resorted to covert intervention. With the collaboration of Honduras and Nicaragua, the Central Intelligence Agency engineered in June/July 1954 an invasion by Guatemalan exiles. Arbenz was forced to resign and was replaced by a right-wing dictator (Colonel Carlos Castillo Armas), chosen by the CIA.

V.11 At the time of the invasion the Eisenhower Administration asserted that the overthrow of Arbenz had been the work of Guatemalan "patriots", who had risen to topple a government riddled with "communist agitators". The "real issue", which "the Guatemalan Government and communist agents throughout the world (had) persistently attempted to obscure", was "that of communist imperialism". The Arbenz Government was charged with implicitly accepting communists as "an authentic domestic political party and not as part of the worldwide Soviet communist conspiracy"<sup>4</sup>. Nine years later, in a speech to the American Booksellers' Association, Eisenhower explained his government's decision to intervene thus: "There was a time when we had a very desperate situation, or we thought it at least, in Central America, and we had to get rid of a communist government that had taken over".<sup>5</sup>

V.12 In Cuba in 1961 the United States followed the precedent established in Guatemala of unilateral intervention against the communist menace in the American hemisphere. After Castro had come to power in January 1959, relations with the US had steadily deteriorated. The CIA started to provide aid to anti-Castro exiles, and in December 1959 Dulles agreed that thorough consideration be given to Castro's elimination. In January 1960 a Special Group was set up to consider Castro's overthrow. During the next three years several assassination plots against Castro's life were devised.

V.13 The CIA thus came to be closely involved in the abortive Bay of Pigs invasion. Anti-Castroites trained in camps in Florida and in Guatemala and Nicaragua and embarked from the latter two. Kennedy inherited the plan from the previous Administration and allowed it to proceed, but said that no US forces should be involved in the attack. Schlesinger and Fulbright advised against the action. Nixon's advice was to "find a proper legal cover and ... go on".

<sup>4</sup> US State Department, Intervention of International Communism in the Americas.

<sup>5</sup> Quoted in Wise and Ross, The Invisible Government p166

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4 Speaking on "The Lessons of Cuba" after the operation, Kennedy made it clear that there were circumstances in which the United States believed that the Inter-American doctrine of collective intervention was not enough:

"Any unilateral American intervention, in the absence of an external attack upon ourselves or an ally, would have been contrary to our traditions and to our international obligations. But let the record show that our restraint is not inexhaustible. Should it ever appear that the Inter-American doctrine of non-interference merely conceals or excuses a policy of non-action - if the nations of this hemisphere should fail to meet their commitments against outside Communist penetration - then I want it clearly understood that this Government will not hesitate in meeting its primary obligations, which are the security of our Nation."<sup>6</sup>

V.15 In the Dominican Republic four years later President Johnson ordered a direct intervention by US forces. The April revolution in 1965 had begun as a routine military revolt aimed at restoring to office the elected President ousted by a coup in 1962. After four days of confusion the leading General, Wessin y Wessin, formed a military junta to suppress the revolt. He failed, and appealed to the US for help. Internal law and order collapsed. On 28 April US forces entered with the avowed objective of protecting American lives. President Johnson gave a second reason on 2 May when he described the insurrection as an initially democratic movement which had fallen under communist control. Outside observers did not share this view.

V.16 The United States consulted the OAS only after the invasion. By one vote the OAS agreed to a peacemaking role, with Brazil and smaller Central American countries sending troops and contributing to mediation. At the United Nations, Lord Caradon reported the views of delegations as follows:

- the landing of US troops was a breach of Article 2 of the UN Charter;
- The OAS, not having been consulted beforehand, was later consulted by the US and used to give a veneer of respectability;
- The OAS itself was in breach of the Charter by agreeing to be used by the US for enforcement action without the prior approval of the Security Council, as required by Article 53 (1) of the Charter;
- The effect of the US and OAS action was to frustrate the Dominican people in their legitimate desire to establish constitutional government.

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<sup>6</sup> Address, 20 April 1961



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7 In the weeks which followed, President Johnson and his advisers put forward justifications for the intervention ranging from protection of the lives of nationals, to the maintenance of order, anti-communism and the safeguarding of democracy. The State Department Legal Adviser was probably closest to the truth, when, in searching for a justification, he admitted: "In the tradition of the common law, we did not pursue some particular legal analysis or code, but instead sought a practical and satisfactory solution to a pressing problem".<sup>7</sup> He also mentioned the role of "experiment and innovation" in the creation of international law.

V.18 American intervention in support of democracy and to contain communism was during this period not confined to the American hemisphere.

V.19 The Eisenhower Doctrine of 1957 had made clear that the United States was committed to defending the free peoples of the Middle East. The intervention in Lebanon the following year was seen as evidence of that commitment. In 1980, President Carter formulated a Doctrine which extended the commitment even further:

"An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States. It will be repelled by any means necessary, including military force"<sup>8</sup>

V.20 In Indo-China, the United States had in 1950 started to supply aid to the French forces, thus beginning an involvement in the affairs of the region which was to last 25 years and cost many lives and much American pride. The strategic, moral and legal justifications for the American military intervention in Vietnam have been much debated elsewhere, and are beyond the scope of this paper. Nevertheless it is worth remarking that, as McNamara put it, the problem of how to "cope with communist 'wars of liberation' as we have coped successfully with Communist aggression at other levels" was never finally solved. The United States was never able to satisfy a large part of world and domestic opinion that the scale and methods of US intervention in the Vietnam war could be properly reconciled with the principles of non-intervention and self-determination.

V.21 However, it has been in Latin America that the United States has faced the most persistent challenges to the doctrine of non-intervention over the past three decades. In Chile, the United States' intervention was indirect. In September 1970, Salvador Allende, an avowed Marxist, was elected President at the head of a left-wing coalition government. After failing to prevent Allende's election, the Nixon Administration weakened his position through international economic and financial pressures, as well as through covert "destablising" operations within Chile.<sup>9</sup> Following

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<sup>7</sup> Address, 9 June 1965

<sup>8</sup> State of the Union Address, 23 January 1980

<sup>9</sup> Senate Hearings on Intelligence Activities, 1975



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Legations by the Chilean Congress and Supreme Court that Allende was not respecting the constitution, laws passed by Congress or the "Statute of Guarantees", the Chilean armed forces finally overthrew him in September 1983.

V.22 Kissinger is clear about the justification for US intervention: "President Nixon and his principal advisers were convinced that Allende represented a challenge to the United States and to the stability of the Western Hemisphere. Allende ... was a geo-political challenge. Chile bordered Peru, Argentina and Bolivia, all plagued by radical movements. As a continental country, a militant Chile had a capacity to undermine other nations and support radical insurgency that was far greater than Cuba's ... If Chile had followed the Cuban pattern, communist ideology would in time have been supported by Soviet forces and Soviet arms in the Southern Cone of the South American continent." <sup>10</sup>

V.23 The US intervened in Grenada in October 1983 following the murder of Maurice Bishop and the installation of a Revolutionary Military Government. The reasons given in the first instance were to protect the lives of the 1,000 US citizens on the island, to forestall further chaos and to assist in the restoration of conditions of law and order and of governmental institutions. Subsequently President Reagan said, in a televised speech on 27 October, that US action was justified by Cuba's intention to occupy Grenada as a military base. The US based its action on a request for assistance from the members of the Organisation of East Caribbean States (OECS) in accordance with their Charter, and a purported written request for help to the OECS from Grenada's Governor-General. The OECS Charter requires unanimous agreement, a condition which, in Grenada's absence, was not met.

V.24 In Nicaragua, the situation is again different. US support for counter-revolutionary groups ('Contras') began after the new Sandinista regime rejected President Carter's offers in 1979 of co-operative relations. Some 5,000 former members of the National Guard had fled to Honduras after the revolution and had begun to prepare to invade. Incursions were stepped up in 1981. The same year an estimated 7,000 Cuban and Nicaraguan exiles were reported training in camps in Florida. Secretary of State Haig said that the camps were legal because they were on private property. Extensive CIA funding of 'Contra' activities soon became public knowledge.

V.25 In 1981 the US Administration justified its support for the 'Contras' as a means of putting pressure on the Sandinistas to desist from supplying arms to the insurgents in El Salvador. Responding to Sandinista and Cuban covert support from 1979 of the powerful FMLN leftist insurgent movement in El Salvador, the US intention was to repay in kind and to gain a bargaining counter for use in negotiations. Proponents of this policy justify it by its results, pointing to the concessions made by the Sandinistas (notably in agreeing to hold elections) as a direct result of the

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<sup>10</sup> Kissinger, Years of Upheaval



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Assassination scare created by the Administration in November 1983. The 'Contras' are seen both as a spearhead of a direct US intervention, and as a potential pretext for one.

V.26 Congressional approval for funding these 'covert' activities was forthcoming until publicity in April 1984 for one of them, the mining of Nicaraguan ports, obliged Congress to mark its disapproval by blocking further funds. Many observers believed that the Administration implicitly acknowledged that their action contravened international law by suspending their voluntary acceptance of the jurisdiction of the International Court of Justice. The Court passed judgement on 10 May 1984 against the US. The Administration is unlikely to press hard for a restoration of funding in the election period. In the context of the Contradora negotiations, the US has made clear its readiness to end support for the 'Contras' and to halt other forms of indirect military pressure if the Sandinistas give reliable guarantees likewise to end attempts to export revolution.

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V.27 In all these instances of American practice since the Second World War, it is clear that the United States' firm commitment to the principle of non-intervention has almost always been subsidiary to the higher imperative of the need to control the spread of communism. In Latin America that imperative is reinforced by the Monroe Doctrine's exclusion of other powers from the hemisphere and by the belief that, in the words of the Kissinger Commission, "the security interests of the United States are importantly engaged ... Preserving US interests in Central America and the Caribbean against the Soviet challenge will be a significant concern for years to come".

V.28 Behind the determination to defend freedom may lie a certain impatience with the constraints imposed by international law on the use of force. This has lead American policy-makers either to use dubious legal justifications for their actions or to appeal to the higher ends of American policy as justifying the use of force. The uncertain foundations for Deputy Secretary of State Dam's speech<sup>11</sup> on the legal bases for the US action in Grenada are matched by claims from certain US officials who claim that all US activities in Central America, including the mining of Nicaraguan waters, are within international law and derive from the right of individual and collective self-defence enshrined in the UN and OAS Charters.

V.29 On the other hand, there are those, such as Secretary of State Shultz or Ambassador Kirkpatrick, who point to the nobler and wider aims of US policy as justifying the means employed. In a speech<sup>11</sup> to the Trilateral Commission on 3 April 1984, Shultz warned:

"Of course, any use of force involves moral issues. American military power should be resorted to only if the stakes justify it, if other means are not

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<sup>11</sup> Louisville, Kentucky, 4 November 1983



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available, and then only in a manner appropriate to the objective. But we cannot opt out of every contest. If we do, the world's future will be determined by others - most likely by those who are the most brutal, the most unscrupulous, and the most hostile to our deeply-held principles. The New Republic stated it well a few weeks ago: 'The American people know that force and the threat of force are central to the foreign policy of our adversaries. And they expect their President to be able to deter and defeat such tactics'.

As we hear now in the debate over military aid to Central America, those who shrink from engagement can always find an alibi for inaction. Often it takes the form of close scrutiny of any moral defects in the friend or ally whom we are proposing to assist. Or it is argued that the conflict has deep social and economic origins which we really have to address first before we have a right to do anything else. But rather than remain engaged in order to tackle these problems - as we are trying to do - some people turn these concerns into formulas for abdication. Formulas that would allow the enemies of freedom to decide the outcome. To me, it is highly immoral to let friends who depend on us be subjugated by brute force if we have the capacity to prevent it".

V.30 Speaking 6 days later at Chatham House, Mrs Kirkpatrick put the same point another way:

"We also have serious political and moral grounds for our position:

1) We do not think it is moral to leave small countries and helpless people defenceless against conquest by violent minorities which are armed and trained by remote dictatorships. The amount of Soviet Bloc arms funnelled into El Salvador is staggering. So is the sophistication of the guerilla command and control system, including especially communication systems, that guides the insurgency from outside Managua.

2) We believe our political goal, a more democratic and stable hemisphere, requires building democracies, not the multiplication of dictatorships". 12

<sup>12</sup> Asked in an interview in The Guardian on 20 July about relations between the South African Government and the ANC, Dr Chester Crocker, Assistant Secretary of State for Africa, said: "... The basic point about the ANC and the role of the various voices for change in South Africa is that what has been accomplished in recent months after years of investment is a clear signal that sovereignty is a two-way street - boundaries are two-way things and that if there's to be violence in one direction there is going to be violence in the other direction."

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31 Other recent American pronouncements are regarded by many as showing a similar impatience with legal and moral constraints on intervention in "grey-area situations" short of war, and notably in dealing with the problem of international terrorism:

"Can we as a country - can the community of free nations - stand in a solely defensive posture and absorb the blows dealt by terrorists? I think not. From a practical standpoint a purely passive defence does not provide enough of a deterrent to terrorism and the states that sponsor it. It is time to think long, hard and seriously about more active means of defence - about defence through appropriate preventive and pre-emptive actions against terrorist groups before they strike"<sup>13</sup>

V.32 The frustrations of being a great power obliged to play fair with an unfair opponent were colourfully put by Assistant Secretary Cleveland in 1961.<sup>14</sup> Let his views conclude this Section:

"So long as we think of relations between nations, we are schooling ourselves to deal with the War of Jenkins's Ear ... In the 18th and even the 19th century we could describe a country as either friendly or an enemy ... We had trouble with governments from time to time but the definitions held. How do we describe Cuba, Laos and the Congo today? By our relations with the embodiment of the nation's sovereignty? Of course not. These countries are the marchlands of mutual intervention. We have friends and we have enemies in each. Yet when we seek to aid the one or oppose the other, we too often find ourselves caught in a conceptual traffic jam created by our inherited concepts of international law, while Communist guerrillas rush past us in the fast outside lane ... Perhaps they [international organisations] alone offer breakthrough possibilities in rethinking the old doctrine of non-intervention in the domestic affairs of other nations. This doctrine has been the self-denying ordinance under which the democracies have laboured throughout the 20th century, an unenforced international ... law that disarms the householder but never bothers the burglar".

*disarms the householder but never bothers the burglar*

<sup>13</sup> Mr Shultz at the Jonathan Institute Conference on 24 June 1984. In another passage in the same speech he said that the response to terrorism must be within the rule of law.

<sup>14</sup> Address, 7 May 1961



Conclusion: When is Intervention Justified?

"Of all things, at once the most unjustifiable and the most impolitic is an unsuccessful intervention"

Sir William Harcourt<sup>1</sup>

VI.1 The search for a morally, legally and politically watertight doctrine reconciling the principle of state sovereignty with intervention in certain circumstances is, especially in the post-war world, a search for the philosopher's stone. It is as difficult as efforts to devise a positive policy on human rights which is both morally consistent and politically realistic. Such considerations have not, however, prevented generations of writers, diplomats and statesmen from making the attempt.

VI.2 As Sir William Harcourt wrote in the 1860s, and many examples both before and after have shown, intervention is a "question rather of policy than of law. It is above and beyond the domain of law, and when wisely and equitably handled by those who have the power to give effect to it, may be the highest policy of justice and humanity". St Thomas Aquinas was making a similar point in setting his criteria for a just war: a just cause, a just intention, a reasonable chance of success; if successful, a better situation than the one which would have prevailed without the use of force; and that the force should be proportionate to the objective.

VI.3 Yet, until the international system for dealing with threats to international peace and security envisaged by the authors of the UN Charter becomes a reality, and collective intervention to enforce international law a serious possibility, intervention will be regarded as what it has always been: the prerogative by which greater powers impose their wishes - whether virtuous or not - on lesser powers.

VI.4 This brief account of certain legal and moral approaches to intervention shows that in the contemporary world the burden of proof lies firmly on those who seek, in law, morality or practice, to make exceptions to the "impeccable" principle of non-intervention in the affairs of sovereign states. In making such exceptions, they will need, if they attach importance to the rule of international law, to establish grounds for breaking the principle of non-intervention which are at once consistent and practical. For the United Kingdom, it will be important that guidelines which permit Western intervention in, say, Nicaragua or Afghanistan cannot be exploited by others in the cases of, for example, Northern Ireland or South Africa.

VI.5 Legally, as American and Soviet justifications have shown, the case for intervention is bound to be at best ambiguous and at worst non-existent. And the dubious benefits of making certain recognised general exceptions to the rule are likely to carry heavy costs in

<sup>1</sup> Letters by 'Historicus' on Some Questions of International Law, 1863



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terms of respect for international law. (This is, of course, of greater importance for those democratic countries whose domestic as well as international policies are predicated on respect for the rule of law).

VI.6 Morally and politically, the argument is more difficult and more subjective, and the ground infinitely more treacherous. Those wishing to prove that a particular intervention is justified will need to do so essentially on utilitarian or practical grounds. They will need to convince their audience, whose own criteria will be of the first importance in establishing any case, that the world is a better place after the intervention than it would have been before it. But, since that is not possible until after an intervention is complete, they will need also to point to the motives of the agent of the intervention, and perhaps to an obligation to intervene on behalf of those seeking liberation from foreign government or particularly shocking oppression. They will need to show that forcible intervention offers the best or only practical means of achieving desirable ends. And it is there, in the realm of subjective moral and political judgement, that the case for and against intervention must rest.

Planning Staff,  
Foreign & Commonwealth Office

July 1984

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## ANNEX I: DEFINITIONS

"Non-intervention ... c'est un mot métaphysique et politique, qui signifie à peu près la même chose qu' intervention"

Talleyrand, 1832

1. There are two reasons why it is important to define what exactly is meant by intervention.
2. The first is the fluid way in which a wide variety of events in international affairs are loosely described as intervention. We say that the United States intervened in the First (but not the Second) World War; in the dispute between Britain and Argentina over the Falklands; in Iran to try to rescue the hostages in 1980; in Chile to undermine Allende's regime in 1973; and in Vietnam and Grenada. The Soviet Union denounced the offer of Marshall Aid to the countries of Europe in 1947 as intervention, as it condemns as intervention the support given by outside powers to the Mujahideen in Afghanistan.
3. This imprecision points to the second reason why an agreed definition of intervention is important: the word itself implies a value-judgement. As with so many other terms in the legal and moral vocabulary of international relations, "intervention" has acquired strong pejorative overtones. To describe an event in international affairs as intervention is more often than not to condemn it. One man's intervention is another's act of self-defence or friendly assistance.
4. Winfield<sup>1</sup> distinguishes between (i) internal intervention: interference in the domestic affairs of another state; (ii) external intervention: intervention in the relations, usually hostile, of two or more other states; and (iii) punitive intervention: measures such as a peaceful blockade by one state against another to force observance of a treaty or redress a breach of law. But the distinction between internal and external intervention constantly breaks down. For example, Western intervention in the Lebanon in 1958 and in 1982-3 may have been intended both to protect that country from external dangers as well as to give the Lebanese Government a chance to set its domestic affairs in order.
5. Fawcett<sup>2</sup>, on the other hand, uses the agent, not the target, of the intervention as his criterion for distinguishing between (i) intervention by the UN; (ii) collective intervention under a multilateral convention; and (iii) intervention by one or more states acting individually, though sometimes together.

<sup>1</sup> in Lawrence, Principles of International Law, pp119-20

<sup>2</sup> Law and Power in International Relations, p11



6. Lauterpacht<sup>3</sup> defines intervention as "dictatorial interference in the sense of action amounting to a denial of the independence of the state". The two fundamental notions involved here are those of coercion and of intrusion in a state's domestic affairs. This restrictive definition does not take account of the means, agent, purpose, or results of an intervention. But many other definitions do, and the most common further criterion is that of whether force or the threat of armed force is used.

7. Many commentators describe intervention in which force, or the threat thereof, is not used as no more than interference. But, apart from force, there are other means, of which economic coercion and propaganda are two examples, of violating a state's absolute sovereignty over its domestic affairs. To define as intervention only those instances of interference in which armed force is used or threatened thus seems artificially restrictive. Nevertheless, armed force is by far the most common means of intervention, and occurs in most of the cases considered in this paper.

8. As far as defining intervention is concerned, it is also relatively unimportant who undertakes the intervention - a group of states, another state, or any other body -, and what the ultimate purpose and result of that intervention are. Again, however, it should be noted that some definitions of intervention invoke these criteria.

9. For most observers, however, the essence of intervention is the involvement of one state in the internal affairs of another. The main focus of this paper is thus on the first of Winfield's and the third of Fawcett's categories. Paraphrasing Lauterpacht, intervention may therefore be broadly defined for the purposes of this paper as dictatorial interference in affairs normally within the domestic jurisdiction of a state. The phrase "affairs normally within the domestic jurisdiction of a state" echoes Article 2(7) of the UN Charter, and is wider than the more usual "internal" or "domestic affairs".

10. In passing, it is also worth noting that non-intervention may in certain circumstances be held to constitute intervention - the meaning of Talleyrand's remark. Similar thoughts were expressed by Joseph Mazzini ("non-intervention ... means ... intervention on the wrong side; intervention by all who choose, and are strong enough, to put down free movements of peoples against corrupt governments")<sup>4</sup>. At the Caracas Conference of the Organisation of American States in March 1954, John Foster Dulles was asked, during a discussion of the inalienable right of each American state to set up its own form of government, whether non-intervention applied if an American state chose Communism. "The slogan of non-intervention", Dulles answered, "can plausibly be invoked and twisted to give immunity to what is in reality flagrant intervention."

<sup>3</sup> International Law and Human Rights, pl67

<sup>4</sup> Life and Writings of Joseph Mazzini, pp 305-6



## UN CHAPTER

CHAPTER I  
PURPOSES AND PRINCIPLES

## Article 1

The Purposes of the United Nations are:

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and

## Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER VII  
ACTION WITH RESPECT TO THREATS  
TO THE PEACE, BREACHES OF THE  
PEACE, AND ACTS OF AGGRESSION

## Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

## Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

## Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

## Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII  
REGIONAL ARRANGEMENTS

## Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

## Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.



31 (XX). Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty

*The General Assembly,*

*Deeply concerned* at the gravity of the international situation and the increasing threat to universal peace due to armed intervention and other direct or indirect forms of interference threatening the sovereign personality and the political independence of States,

*Considering* that the United Nations, in accordance with their aim to eliminate war, threats to the peace and acts of aggression, created an Organization, based on the sovereign equality of States, whose friendly relations would be based on respect for the principle of equal rights and self-determination of peoples and on the obligation of its Members to refrain from the threat or use of force against the territorial integrity or political independence of any State,

*Recognizing* that, in fulfilment of the principle of self-determination, the General Assembly, in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) of 14 December 1960, stated its conviction that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

*Recalling* that in the Universal Declaration of Human Rights the General Assembly proclaimed that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, without distinction of any kind,

*Reaffirming* the principle of non-intervention, proclaimed in the charters of the Organization of American States, the League of Arab States and the Organization of African Unity and affirmed at the conferences held at Montevideo, Buenos Aires, Chapultepec and Bogotá, as well as in the decisions of the Asian-African Conference at Bandung, the First Conference of Heads of State or Government of Non-Aligned Countries at Belgrade, in the Programme for Peace and International Co-operation adopted at the end of the Second Conference of Heads of State or Government of Non-Aligned Countries at Cairo, and in the declaration on subversion adopted at Accra by the Heads of State and Government of the African States,

*Recognizing* that full observance of the principle of the non-intervention of States in the internal and external affairs of other States is essential to the fulfilment of the purposes and principles of the United Nations,

*Considering* that armed intervention is synonymous with aggression and, as such, is contrary to the basic principles on which peaceful international co-operation between States should be built,

*Considering further* that direct intervention, subversion and all forms of indirect intervention are contrary to these principles and, consequently, constitute a violation of the Charter of the United Nations,

*Mindful* that violation of the principle of non-intervention poses a threat to the independence, freedom and normal political, economic, social and cultural development of countries, particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace,

*Fully aware* of the imperative need to create appropriate conditions which would enable all States, and in particular the developing countries, to choose without duress or coercion their own political, economic and social institutions,

*In the light of the foregoing considerations, solemnly declares:*

1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

4. The strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security.

5. Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

6. All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

7. For the purpose of the present Declaration, the term "State" covers both individual States and groups of States.

8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII.

*1408th plenary meeting,  
21 December 1965.*



G.A. Res. 2625(XXV)(1970). Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

The first principle is as follows:

*The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations*

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

(a) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

(b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and

strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligation under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

The third principle is as follows:

*The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable right and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.



Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States

Date: 9 December 1981  
Vote: 120-22-6 (recorded)

Solemnly declares that:

1. No State or group of States has the right to intervene or interfere in any form or for any reason whatsoever in the internal and external affairs of other States.
2. The principle of non-intervention and non-interference in the internal and external affairs of States comprehends the following rights and duties:

I

- (a) Sovereignty, political independence, territorial integrity, national unity and security of all States, as well as national identity and cultural heritage of their peoples;
- (b) The sovereign and inalienable right of a State freely to determine its own political, economic, cultural and social system, to develop its international relations and to exercise permanent sovereignty over its natural resources, in accordance with the will of its people, without outside intervention, interference, subversion, coercion or threat in any form whatsoever;
- (c) The right of States and peoples to have free access to information and to develop fully, without interference, their system of information and mass media and to use their information media in order to promote their political, social, economic and cultural interests and aspirations, based, inter alia, on the relevant articles of the Universal Declaration of Human Rights and the principles of the new international information order;

II

- (a) The duty of States to refrain in their international relations from the threat or use of force in any form whatsoever to violate the existing internationally recognized boundaries of another State, to disrupt the political, social or economic order of other States, to overthrow or change the political system of another State or its Government, to cause tension between or among States or to deprive peoples of their national identity and cultural heritage;
- (b) The duty of a State to ensure that its territory is not used in any manner which would violate the sovereignty, political independence, territorial integrity and national unity or disrupt the political, economic and social stability of another State; this obligation applies also to States entrusted with responsibility for territories yet to attain self-determination and national independence;
- (c) The duty of a State to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed at another State or group of States, or any act of military, political or economic interference in the internal affairs of another State, including acts of reprisal involving the use of force;
- (d) The duty of a State to refrain from any forcible action which deprives peoples under colonial domination or foreign occupation of their right to self-determination, freedom and independence;
- (e) The duty of a State to refrain from any action or attempt in whatever form or under whatever pretext to destabilize or to undermine the stability of another State or of any of its institutions;
- (f) The duty of a State to refrain from the promotion, encouragement or support, direct or indirect, of rebellious or secessionist activities within other States, under any pretext whatsoever, or any action which seeks to disrupt the unity or to undermine or subvert the political order of other States;
- (g) The duty of a State to prevent on its territory the training, financing and recruitment of mercenaries, or the sending of such mercenaries into the territory of another State and to deny facilities, including financing, for the equipping and transit of mercenaries;
- (h) The duty of a State to refrain from concluding agreements with other States designed to intervene or interfere in the internal and external affairs of third States;
- (i) The duty of States to refrain from any measure which would lead to the strengthening of existing military blocs or the creation or strengthening of new military alliances, interlocking arrangements, the deployment of interventionist forces or military bases and other related military installations conceived in the context of great-Power confrontation;
- (j) The duty of a State to abstain from any defamatory campaign, vilification or hostile propaganda for the purpose of intervening or interfering in the internal affairs of other States;



(k) The duty of a State, in the conduct of its international relations in the economic, social, technical and trade fields, to refrain from measures which would constitute interference or intervention in the internal or external affairs of another State, thus preventing it from determining freely its political, economic and social development; this includes, *inter alia*, the duty of a State not to use its external economic assistance programme or adopt any multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational and multinational corporations under its jurisdiction and control as instruments of political pressure or coercion against another State, in violation of the Charter of the United Nations;

(l) The duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States, of exerting pressure on other States or creating distrust and disorder within and among States or groups of States;

(m) The duty of a State to refrain from using terrorist practices as state policy against another State or against peoples under colonial domination, foreign occupation or racist régimes and to prevent any assistance to or use of or tolerance of terrorist groups, saboteurs or subversive agents against third States;

(n) The duty of a State to refrain from organizing, training, financing and arming political and ethnic groups on their territories or the territories of other States for the purpose of creating subversion, disorder or unrest in other countries;

(o) The duty of a State to refrain from any economic, political or military activity in the territory of another State without its consent;

### III

(a) The right of States to participate actively on the basis of equality in solving outstanding international issues, thus contributing to the removal of causes of conflicts and interference;

(b) The right and duty of States fully to support the right to self-determination, freedom and independence of peoples under colonial domination, foreign occupation or racist régimes, as well as the right of these peoples to wage both political and armed struggle to that end, in accordance with the purposes and principles of the Charter of the United Nations;

(c) The right and duty of States to observe, promote and defend all human rights and fundamental freedoms within their own national territories and to work for the elimination of massive and flagrant violations of the rights of nations and peoples, and in particular, for the elimination of apartheid and all forms of racism and racial discrimination;

(d) The right and duty of States to combat, within their constitutional prerogatives, the dissemination of false or distorted news which can be interpreted as interference in the internal affairs of other States or as being harmful to the promotion of peace, co-operation and friendly relations among States and nations;

(e) The right and duty of States not to recognize situations brought about by the threat or use of force or acts undertaken in contravention of the principle of non-intervention and non-interference.

3. The right and duties set out in this Declaration are interrelated and are in accordance with the Charter of the United Nations.

4. Nothing in this Declaration shall prejudice in any manner the right to self-determination, freedom and independence of peoples under colonial domination, foreign occupation or racist régimes, and the right to seek and receive support in accordance with the purposes and principles of the Charter of the United Nations.

5. Nothing in this Declaration shall prejudice in any manner the provisions of the Charter of the United Nations.

6. Nothing in this Declaration shall prejudice action taken by the United Nations under Chapters VI and VII of the Charter of the United Nations.

RECORDED VOTE ON RESOLUTION 36/103:

In favour: [120 countries]

Against: Australia, Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, United Kingdom, United States, Venezuela.

Abstaining: El Salvador, Finland, Greece, Guatemala, Swaziland, Turkey.

Absent: Antigua and Barbuda, Botswana, Dominica, Equatorial Guinea, Gambia, Malawi\*, Saint Vincent, Zimbabwe.



A

## General Assembly,

Recognizing that the first two stated Purposes of the United Nations are:

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace", and

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace",

Reaffirming that it remains the primary duty of all Members of the United Nations, when involved in an international dispute, to seek settlement of such a dispute by peaceful means through the procedures laid down in Chapter VI of the Charter, and recalling the successful achievements of the United Nations in this regard on a number of previous occasions,

Finding that international tension exists on a dangerous scale,

Recalling its resolution 290 (IV) entitled "Essentials of peace", which states that disregard of the Principles of the Charter of the United Nations is primarily responsible for the continuance of international tension, and desiring to contribute further to the objectives of that resolution,

Reaffirming the importance of the exercise by the Security Council of its primary responsibility for the maintenance of international peace and security, and the duty of the permanent members to seek unanimity and to exercise restraint in the use of the veto,

Reaffirming that the initiative in negotiating the agreements for armed forces provided for in Article 43 of the Charter belongs to the Security Council, and desiring to ensure that, pending the conclusion of such agreements, the United Nations has at its disposal means for maintaining international peace and security,

Conscious that failure of the Security Council to discharge its responsibilities on behalf of all the Member States, particularly those responsibilities referred to in the two preceding paragraphs, does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security,

Recognizing in particular that such failure does not deprive the General Assembly of its rights or relieve it of its responsibilities under the Charter in regard to the maintenance of international peace and security,

Recognizing that discharge by the General Assembly of its responsibilities in these respects calls for possibilities of observation which would ascertain the facts and expose aggressors; for the existence of armed forces which could be used collectively; and for the possibility of timely recommendation by the General Assembly to Members of the United Nations for collective action which, to be effective, should be prompt,

A

1. Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations;

2. Adopts for this purpose the amendments to its rules of procedure set forth in the annex to the present resolution;

E

14. Is fully conscious that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly

15. Urges Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas.

302nd plenary meeting

3 November 1950



*II. Refraining from the threat or use of force*

The participating States will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration. No consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle.

Accordingly, the participating States will refrain from any acts constituting a threat of force or direct or indirect use of force against another participating State. Likewise they will refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. Likewise they will also refrain in their mutual relations from any act of reprisal by force.

No such threat or use of force will be employed as a means of settling disputes, or questions likely to give rise to disputes, between them.

*IV. Territorial integrity of States*

The participating States will respect the territorial integrity of each of the participating States.

Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force.

The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognised as legal.



## VI. *Non-intervention in internal affairs*

The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations.

They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State.

They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

Accordingly, they will, *inter alia*, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the régime of another participating State.

## VII. *Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief*

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognise and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

The participating States recognise the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.

They confirm the right of the individual to know and act upon his rights and duties in this field.

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including *inter alia* the International Covenants on Human Rights, by which they may be bound.



# INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE

Signed at the Inter-American  
Conference for the Maintenance of  
Continental Peace and Security,  
Rio de Janeiro, August 15-September 2, 1917

## ARTICLE 1

The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty.

## ARTICLE 3

1. The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations.

2. On the request of the State or States directly attacked and until the decision of the Organ of Consultation of the Inter-American System, each one of the Contracting Parties may determine the immediate measures which it may individually take in fulfillment of the obligation contained in the preceding paragraph and in accordance with the principle of continental solidarity. The Organ of Consultation shall meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be taken.

3. The provisions of this Article shall be applied in case of any armed attack which takes place within the region described in Article 4 or within the territory of an American State. When the attack takes place outside of the said areas, the provisions of Article 6 shall be applied.

4. Measures of self-defense provided for under this Article may be taken until the Security Council of the United Nations has taken the measures necessary to maintain international peace and security.

## ARTICLE 6

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent.

## ARTICLE 7

In the case of a conflict between two or more American States, without prejudice to the right of self-defense in conformity with Article 51 of the Charter of the United Nations, the High Contracting Parties, meeting in consultation shall call upon the contending States to suspend hostilities and restore matters to the *statu quo ante bellum*, and shall take in addition all other necessary measures to reestablish or maintain inter-American peace and security and for the solution of the conflict by peaceful means. The rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon.

## ARTICLE 8

For the purposes of this Treaty, the measures on which the Organ of Consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force.

## ARTICLE 9

In addition to other acts which the Organ of Consultation may characterize as aggression, the following shall be considered as such:

- a. Unprovoked armed attack by a State against the territory, the people, or the land, sea or air forces of another State;
- b. Invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State.



# CHARTER OF THE ORGANIZATION OF AMERICAN STATES

AS AMENDED BY THE PROTOCOL OF BUENOS AIRES IN 1967

## Chapter II

### PRINCIPLES

#### Article 3

The American States reaffirm the following principles:

- a) International law is the standard of conduct of States in their reciprocal relations;
- b) International order consists essentially of respect for the personality, sovereignty, and independence of States, and the faithful fulfillment of obligations derived from treaties and other sources of international law;
- c) Good faith shall govern the relations between States;
- d) The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy;
- e) The American States condemn war of aggression: victory does not give rights;
- f) An act of aggression against one American State is an act of aggression against all the other American States;
- g) Controversies of an international character arising between two or more American States shall be settled by peaceful procedures;
- h) Social justice and social security are bases of lasting peace;
- i) Economic cooperation is essential to the common welfare and prosperity of the peoples of the continent;
- j) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex;
- k) The spiritual unity of the continent is based on respect for the cultural values of the American countries and requires their close cooperation for the high purposes of civilization;
- l) The education of peoples should be directed toward justice, freedom, and peace.

#### Article 12

The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts. The exercise of these rights is limited only by the exercise of the rights of other States in accordance with international law.

#### Article 14

The right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State.

#### Article 15

The jurisdiction of States within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens.

#### Article 16

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.



Article 19

No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

Article 20

The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

Article 21

The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.

Article 22

Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 18 and 20.

Chapter VI

COLLECTIVE SECURITY

Article 27

Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.

Article 28

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extracontinental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.



RESTRICTED

ANNEX IV: RECENT FRENCH PRACTICE

Since 1961 France has intervened militarily 18 times in 9 independent African States. Recently, actual military intervention has become less frequent. Nonetheless, in 1977, French aircraft were used to bring Moroccan troops into the Shaba Province (formerly Katanga) of Zaire to control Katangan rebels infiltrating from Angola. President Giscard d'Estaing explained that friends of France, when acting within their rights when their security was threatened, would not be abandoned. A similar action, using French troops and American logistic help, took place in 1978 'to protect French citizens'. In 1979 the French air force flew M. Dacko to Bangui and installed him as President to replace Bokassa. French troops remaining in the Central African Republic took no action 2 years later when Dacko was overthrown. The (Socialist) French Defence Minister said troops would only take action to protect the lives of French citizens. French troops have been intermittently embroiled in the civil war in Chad since 1968. The French Government has variously explained its policy as being to support the sovereign independence of Chad, to prevent the dispute from spreading into an East-West confrontation and as the defence of the territorial integrity and independence of a friendly state.

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## RESCUE

There are 158 members of the United Nations and barely 40, certainly under 50 of them, have governments which subscribe to the principles of parliamentary democracy and human rights which underlie the original *raison d'être* of that international body. The vast majority of members of the United Nations are dictatorships of one kind or another, but all of the kind which is ultimately legitimized only by the barrel of the gun and certainly not by the symbolism of the mace. Indeed if they saw a mace, most members of the UN would assume that it was not a symbol of the sovereignty of the parliamentary tradition so much as one more blunt instrument with which to beat their peoples into submission and to pound words into a pabulum of falsehood.

The perversion of truth and the manipulation of a purely local majority of dictatorships at the UN were both evident when the Grenada episode was debated early yesterday at the General Assembly. The vote condemned the action, which has saved Grenada from a dictatorship and is clearly welcomed by Grenadians themselves. How ironic, then, that the majority of unelected dictatorial governments which voted to condemn the East Caribbean States and the United States called for early elections in Grenada - a privilege they deny absolutely or in all but name to their own citizens. Not the Soviet Union and its allies, though; even they could not quite stomach that recommendation.

Most members deplored the use of force and persisted in describing the action as illegal - the one an exercise in cynicism, the other in the familiar manipulation of language which is such an effective instrument in the hands of enemies of liberal democracies. Language is to democracy what a sound currency is to the working of an economy: abuse one and the other becomes fatally subverted. It is not surprising therefore that those who are hostile to free speech in their own countries use it so effectively as a weapon of suppression within and subversion elsewhere.

The intervention in Grenada was requested from Grenada's neighbours and the only avail-

able nation with the requisite power at hand. It was requested by the only remaining constitutional authority within Grenada. The Governor-General subsequently confirmed his invitation in writing when his safety was assured. That is not the way that the dictatorial majority in the United Nations would like to see the episode. It is none the less surprising that Mr Denis Healey in the House of Commons yesterday was so contemptuous of Sir Paul Scoon's legitimacy. Even Sir Geoffrey Howe was less than generous in his endorsement of an operation which has brought more security to Grenada than its citizens have known for many years.

So who is to look after those members of the United Nations who, like Grenada, are to all intents unable to defend themselves from any group of thugs? That is the question posed on this page today by Lord Home. It was raised rather less effectively yesterday in the Commons by the Foreign Secretary. It needs an answer. It received an answer last week, quite succinctly, when Grenada's neighbours and the United States went to that country's rescue. The facts of that episode have now run foul of the cynicism at the United Nations, and the general manipulation of language which occurs whenever the interests of the Soviet system appear to be challenged.

The United Nations was founded on a principle of non-interference in the affairs of sovereign states. At that time its membership comprised nations who could lay some claim to a capacity to look after themselves in defence of their sovereignty, so that any intervention was bound to be overt and identifiable to the world community. That situation is wholly different now for two reasons.

The first is the growth of a new generation of so-called sovereign states which have little or no capacity to protect that sovereignty from the slightest threat. The second is because the spread of totalitarianism outwards from the Soviet Union uses covert methods more frequently and more successfully than overt ones. They present the West with a challenge which it has hitherto had neither the clarity of mind nor the will to tackle.

In 1964 Tanzania invited British troops in to quell a mutiny. In the mid 1970s Tanzanian troops invaded Uganda to help topple President Amin. Did either of those precedents influence Tanzania's vote in the United Nations yesterday? Of course not. Yet had there been any honesty left in Tanzania we might have seen some recognition of the fact that what Grenada has suffered is what Zanzibar suffered in the 1960s and what any Third World country, which is not yet a military dictatorship will suffer from unless some measures are taken by the West to protect them from the relentless progress of Communist or near-Communist attempts to undermine the slender political structures on which developing countries are based.

Those countries have no articulate communities to argue about freedom. They are not so concerned with politics as with the basic requirements of development and subsistence. They can literally be hijacked by armed men aided and supplied by outsiders. Many have been so already, and few have been rescued from such an experience.

The Brezhnev doctrine enunciated a principle which the Western world recognized to be intolerable. Yet nobody has taken action to see that it would in practice not be tolerated. That doctrine was that no country, once it has been embraced by so called "Socialism" could be allowed to revert to a non-Socialist state.

Since then the Western world has watched impotently while nation after nation has become the prisoner of this rhetoric, ruled by military dictatorships which often call themselves People's Democratic Republics, with neither popular consent, nor democracy, nor the republican ideal anywhere in evidence. Grenada is almost the first small defenceless country to be rescued from that prison. Its rescue should be welcomed, and fully consolidated.

A more important task for the West now is not to feel hang-dog about this rescue, but to develop a coherent and multilateral approach to further rescues. If it could not have been done for Grenada, could anybody have had hope? From this small beginning, a strategic initiative should be seized.

## Getting round law on intervention

From Lord Home of The Hirsel

Sir, In the welter of words which have been written and spoken on the subject of the breach by the United States of the clause of the Charter which forbids intervention by one country in the affairs of another there is one question which the critics have never answered. When a small and sovereign country finds itself subverted by communists, and about to be overborne by force, where can it go to preserve its independence?

The only practical answer available may be to a powerful, friendly nation which is willing and has the power to respond.

Grenada found such neighbours in Jamaica, Barbados and the United States who answered the call. The result was that they were denounced by liberal opinion for breaching the UN rules.

I am suggesting that international law is immature and defective in this important area of relations between nations. Perhaps that is inevitable so long as Russia and a few countries which follow her instructions are ready to deal in subversion and takeover.

Is it not a little hard to blame the potential victim and the rescuer until the law is reformed?

The reaction of your learned readers would be interesting.

Yours sincerely,  
HOME,  
House of Lords,  
November 2.



ANNEX VI SELECT BIBLIOGRAPHY

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(1) I found the section on international law very helpful. While there are a few specific points that I could make on it I feel that I would prefer to step back from the technicalities and make some comments on the policy issues that run through all the legal arguments.

(2) Much of the discussion is focused upon whether present international law does or does not "forbid" (or conversely "permit") intervention as defined in the paper. I feel that the statement at II.1.: "All contemporary international lawyers agree that intervention is, as a general rule, forbidden by international law" greatly over-simplifies the problem. The heart of the argument is about what is "the rule" and what are "the exceptions". And may it be the case that "the exceptions" are actually so numerous and significant as to require us to look again at what constitutes "the rule"? This observation necessarily leads us into questions of legal theory. I would for present purposes only say that there are those who will go on asserting that a rule exists even though it is honoured in the breach; while other international lawyers (including myself) would regard that state of affairs as evidence of emergent new rules.

(3) In answering the question of whether present international law "forbids" intervention, there are a variety of sources to be looked at, including writers, who are of course cited in the paper. Most important of these sources is (a) State practice, and (b) Judicial decisions.

(a) As to State Practice, there seems to me to be overwhelming evidence that East and West alike engage in intervention in one form



or another. (I analysed the factors militating towards this some time ago in a paper that I now attach). At certain levels not involving the overt use of major force, it is also arguable that the Superpowers tolerate - through the doctrine of spheres of interest - each other's intervention. There are certain perceived thresholds above which such intervention is not, however, acceptable.

The invocation of international law in support of such commonly practised and, to some extent, mutually tolerated intervention, is often Article 51 of the Charter. But the fact that Article 51 is invoked, often in manifestly inappropriate circumstances, should not blind us to the fact that it is a quite different type of intervention that states are engaging in. It is partly for this reason that the expression "intervention in self-defence" seems to me inappropriate. While self-defence may indeed entail military action, such military action would then definitionally not be intervention.

(b) Judicial decision. What the tribunals say stands in substantial contrast with what is actually going on all around us. The recent decisions of tribunals in this area accords very much more than does state practice with traditional international law. The unlawfulness of intervention is still heavily emphasised. This comes through in the Corfu Channel Case and more recently in the Nicaragua/U.S. case. Naturally what a court will have to say will depend upon the available facts of the case. For example, the International Court's discomfort with the United States rescue attempt in Iran is probably to be read as embarrassment about the timing of that action, given that the issue was before the Court. And courts are undoubtedly likely to deal more sympathetically with, for example, an "in and out" rescue attempt of direly threatened nationals, as in an Entebbe type situation, than with, e.g. mine laying in the port of Nicaragua. The immediacy of the need to



intervene will be critical.

(4) We are in that uncomfortable period of time where judicial pronouncement differs significantly from substantial areas of state practice. The problem is not that one or more renegade nations no longer accept the rules, but rather that the leading powers of East and West have in large part moved away from the rules, even though in their rhetoric they will often endeavour to justify their conduct in terms of the traditional rules. It may therefore be that the law itself is in an evolutionary process of change, but that there is still a great reluctance to look at it in these terms.

(5) The Grenada and Nicaragua cases have obviously greatly exercised international lawyers in the West, because in the former case there has been much satisfaction with the outcome of intervention and in the latter case there is a widespread understanding of the anxiety that the United States feels over the Sandinistas' involvement in the spreading of communism. But at the same time many Western international lawyers have found it very hard to agree with the legal justifications put forward for these actions. In Grenada there was no evidence of substantial danger to U.S. nationals; considerable evidence of pre-preparation by the U.S. authorities; doubts as to whether indeed the Governor-General asked for help at the relevant time and if so what his status was in doing so; anxiety that the issue of whether the revolutionary government was nonetheless "government" has been ignored; and discomfort at the attempt to fit the intervention into the regional treaty framework. The fact that a very desirable outcome is achieved cannot push these anxieties on one side. As for Nicaragua, we have been faced with the discomfort of the United States overtly supporting rebel forces and using the same type of arguments that the Soviet Union uses elsewhere, and which we







cases where undesirable governments have taken over by force.

(8) It is in my view impossible to articulate an international law rule that permits intervention in the one case but not in the other. That is not to say that international law is simply about the mechanistic application of the rules regardless of context. I do not believe that to be the case at all - but at the same time it does not follow that because one believes in a contextual application of international law that one can simply apply it uncritically in the service of desired ends. In this context I enclose a paper given by Professor Gordon of the United States at the 1984 meeting of the American Society of International Law, against the background of animated discussion on the issues of Grenada and Nicaragua.

(9) The most useful thing perhaps is to identify three main areas where the intellectual problems of intervention are very pressing.

(i) Humanitarian intervention (and here I make no special distinction between the rescue of nationals and non-nationals because I personally do not believe the arguments that Article 51 covers the position of nationals are very convincing). I am among those who believe that it can sometimes be lawful for such interventions to take place, but that they would have to fulfil the test in Article 2, paragraph 4 that they be not against the territorial integrity of a state, nor undermine its political independence; and it would also have to be shown that no other reasonable alternative was available. However, I share the view that the general presumption should be as to the unlawfulness of intervention under this head, leaving the onus on an intervening state to defend its case in the above terms. I am of course very aware that in any decentralised system it is all too easy for states to abuse this, and that is why the presumption should always be against intervention.



(ii) The "Small States Problem". Here I refer to the Grenada-type problem - namely the ease with which small states can be subverted and freedom lost for their peoples. If the subversion is external, it ought to be possible to provide some protection against that by defence treaties. Such treaties would in my view have to be regional and local, because all the evidence shows that external guarantees by larger powers are probably not worth the paper they are written on. The tripartite guarantee in the Middle East and the Cyprus treaties of guarantee are among the many examples one could cite.

If the subversion is internal, then we have to ask ourselves whether there are special problems in this case that make the normal rules of non-intervention inapplicable, i.e. is there something so very special about the dilemma small states face that should legitimise friendly intervention? For reasons I have indicated above, I feel the answer has to be in the negative. Assistance against internal subversion is surely best done not through bending international law (under the rhetoric of harnessing it to the cause of freedom) but through providing the political infra-structure to resist subversion. I doubt whether this simply means the provision of military support, but aid and political cooperation.

(iii) The Containment of Communism. Here we face the question of intervention in response to prior intervention directed at the revolutionary exportation of communism. Once again the precipitating factors and the subjectivities involved make it highly undesirable (along with other reasons I have already referred to) that intervention should be "exceptionally" permitted here. The problem cannot be resolved, or indeed even contained at the international legal level, but must surely lie in the long-term in making communism unattractive to the indigenous population. While this is beyond my



own field, it would seem that much lies to be done in terms of assisting in achieving the economic aspirations of the very poor, and in curbing the excesses of undemocratic governments which so often allow communism to take root. Aid which is not harnessed to these ends, and in which military assistance is predominant, seems to me doomed to failure - a failure in which the manipulation of rules of international law cannot and should not assist.

Rosalyn Higgins.

21 Sep. 84.



Pl. put with  
Seminar papers.  
Dr.

INTERNAL WAR AND INTERNATIONAL LAW

in  
The Future of the International Legal  
Order, ed. Falk and Black (1971) Rosalyn Higgins

INTRODUCTION

This paper seeks to examine the role of international law in internal wars and to make suggestions as to the future of the international legal order in this regard. The theme is one which, until fairly recently, was regarded as of limited interest to the international lawyer. International law is largely concerned with international transactions and, to a lesser degree, with the promotion within nations of international standards on certain questions. Events occurring within a state have been regarded as prima facie a matter solely for the country concerned; but it has long been recognized that the dimensions and duration of a civil conflict may affect the position of outside parties.\* To the extent that this is so, traditional international law has purported to provide certain rules of conduct to be observed by the community of nations in respect of a civil war. And since 1949 international law has also sought to promote a certain minimum standard of conduct by the parties to the hostilities.

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\* Lauterpacht, Recognition in International Law, Pt. 3; Berlia, "La guerre civil et la responsabilité internationale de l'Etat" Revue general de Droit International (1937) 51; Fenwick, "Can civil wars be brought under the control of international law?" 32 AJIL (1938) 538; Garner, "Recognition of belligerency" 32 AJIL (1933) 106; Green, "Le statut des forces rebelles en droit international" Revue General de droit international (1962) 5; Kotzsch, The Concept of War in Contemporary History and International Law (1937) 121; Silvanie, Responsibility of States for Acts of Unsuccessful Insurgent Governments; Siotis, Le Droit de la Guerre et les conflits annés d'un caractère non international; Walker, "Recognition of belligerency and grant of belligerent rights" 23 T.G.S. (1937) 177; Weber, Problèmes de droit international public posés par les guerres civiles; Wehberg, "La guerre civile et le droit international" Hague Recevil 1 (1938); Wilson, "Insurgency and International Maritime Law" 1 AJIL (1907) 46; Castrén, Civil War; Pinto, "Les Regles de Droit International concernant la Guerre Civile" 114 Hague Recevil (1965) 451.



Only comparatively recently, however, has there been much critical analysis of the degree to which the stated 'rules' in fact conform to experience.\* Those who believe that law must accurately reflect community expectations, rather than consist of a mere statement often unheeded 'rules' \*\* have contended that the traditional rules no longer represent an accurate statement of the law. \*\*\* Further, there has been recently some work of considerable importance on the causes and international implications of civil strife, \*\*\*\* which has caused the contention to be made that the traditional rules are inimical to the policy interests of the world community. \*\*\*\*\*

Major research in this field is now under way, \*\*\*\*\* commanding infinitely greater resources than the present writer has at her disposal. The target of this paper is therefore modest: it seeks to look at current practice to analyse contentions made by the foremost scholars in the field, and to examine alternative proposals for the future. This is done in tentative form pending discussion, suggestion and criticism by conference members.

I have sought to handle the multitude of relevant factors and variables by presenting groupings of claims made by the protagonists. This method has the advantage of highlighting the real issues at stake, and enables one to relate the traditional law to the assertions of legality actually made by

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\* See, for example, the comments of Siotis on the practical irrelevance of the notion of recognition of belligerency by the legal government itself: Siotis, op.cit., 223; Cf. Castrén, op.cit., 138.

\*\* The present writer would number herself among them. See McDougal "Some basic theoretical concepts about international law: a policy-oriented framework of enquiry" IV Journal of Conflict Resolution (1960) 337.

\*\*\* Falk, "Janus tormented: The International Law of Internal War" in International Aspects of Civil Strife (ed. Rosenau) 185-92.

\*\*\*\* See the admirable volume International Aspects of Civil Strife (ed. Rosenau) which provides an interdisciplinary analysis of the problems involved.

\*\*\*\*\* Falk, op.cit. supra, 210-48.

\*\*\*\*\* By the American Soc. of Int. Law, under the direction of Prof. Falk.



the actors.\* In essence, the claims which are made concern three international aspects of civil strife: the existence of a civil war, as opposed to international conflict or mere domestic revolt; claims concerning the right of third parties to participate in the outcome of the war; claims concerning the conduct of the war; and claims concerning relations between the contending factions and third parties.

No policy recommendations can be made without distinguishing between various types of civil conflict. To do otherwise would be to paint with too broad a brush, for the interests of the international community are by no means identical in each case. Before proceeding to an analysis of the claims made, therefore, we will briefly refer to the varying motives and situations which lead to internal war:

#### SITUATIONS

Internal wars may be of a variety of types, occurring for a variety of different reasons. They may be civil conflict simpliciter, in which two parties are contending for the status of government of all the territory: this was the case in the Spanish civil war. The incumbent government may be democratically elected, and the insurgents communists, military junta, fascists or other non-democrats. Alternatively, the incumbent government may be unrepresentative, and the insurgents may be seeking to introduce democracy. Or neither party may command popular or democratic support. The motives of such insurgents vary. They may be seeking to establish certain minimum human rights; they may be acting from ideological motives; they may be seeking to secure a government more acceptable to the majority of the people; or to the neighbours of the territory concerned; or they may be engaged in a simple power struggle.

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\* This is a technique which the present writer has found helpful in other comparatively uncharted areas of international law: see Higgins, The Development of International Law through the Political Organs of the United Nations.



The civil conflict may also occur not as a dispute over central power, but because one party wishes to secede from the political unit as it is established. The Nigerian civil war is clearly a dispute over secession rather than an attempt by Biafra to seize power in Lagos. The civil war in the Congo was in part - though not solely - caused by the attempted secession of Katanga. The reasons for attempts at secession also vary. Secession may be attempted by a wealthy part of a larger federal unit which does not wish to share its resources with, or pay tax on them to, the central government. It may be encouraged in this attitude by foreign economic interests. Both of these factors are relevant to the Katanga and Biafra secessions. The secession may be felt necessary because tribal groups residing in one area believe that they are not treated as equals and fear for their security: this is clearly the prime motive of Colonel Ojukwu's attempt to establish a separate state of Biafra. And the secession may represent the attempt of a locally charismatic leader to secure a greater measure of power than he has been able to achieve in the federal structure. One can also imagine attempts at secession in order to join with ethnically similar neighbours: although the fighting between Kenya Somalis and the Kenya government has never reached the status of civil war, one may note that the rebel's objective has been to unify with the neighbouring state of Somalia.

Government persecution, or claimed persecution of minorities, and resistance by those minorities, could lead to civil war. Were the Kurds and the Nagas militarily better organized the internal hostilities could acquire the status of internal warfare. Equally, disputes between ethnic or religious groups as to the constitutional disposition of power between them can cause domestic strife on a major scale, as the tragedy of the Cyprus experience shows.

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A further group of internal wars arise from the process of decolonization. The peoples of colonial territory may take up arms because they have no prospect of obtaining independence from the metropolitan power - such is the case in Angola and Mozambique. In yet other territories, even if independence is promised, the local leaders may insist that the timetable is too slow, or that the people to whom power is to be handed are not representative. These factors were of great significance in the fighting in Aden between British forces and the nationalist groups. Insofar as the administering authority declares that the territory in question is an integral part of the metropolitan territory - as was the claim in respect of Algeria - then, at least from the point of view of the metropolitan power, any conflict is an internal rather than international war. The international community has regarded such claims with some scepticism, and from the point of view of, for example, the United Nations, such a war is not necessarily internal.\* The evidence points to this imbalance of legal perspective, though certain authors prefer to rest on the formalistic argument that such wars cannot be international "since such areas do not have the status of a subject of international law".\*\* A similar problem arises in the case of anti-colonial wars in those dependent territories which have a special legal status, such as protectorates or trusteeship areas. In both cases there is some controversy as to the division of sovereignty between the dependent and governing authorities. Some authors view colonial wars in protectorates as internal,\*\*\* and those in trust territories as international.\*\*\*\* In any event, the

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\* For a full discussion of the United Nations perspective, see below p.

\*\* Castrén, op.cit., p.37. Cf. Siotis, op.cit., p. 47.

\*\*\* Castrén, p. 37. Cf. Castberg, op.cit., p.86.

\*\*\*\* Castberg, p. 86; Castrén p.38.



international community is taking an increased interest in their outcome, and whatever their precise status, they cause important international repercussions.

Rebellions in colonial territories are usually between the colonial authority and those representing the majority of the indigenous population. It can occur, however, that the rebellion against the administering authority is by a minority element in the territory, seeking to secure power against the indigenous majority. This has been the case in the seizure of power by Ian Smith's government in Rhodesia.

In all of these cases the policy considerations, from the point of view of the world community, are different. For the moment we merely note the different and the differing motives for which they are fought. In our concluding section on recommendations for the Future International Legal Order, we shall seek to relate these variables to certain proposals.



CLAIMS CONCERNING THE EXISTENCE OF A CIVIL WAR

1. Claim that the war is internal rather than international

The identification of a major conflict as either civil or international war is essential to the correct application of the relevant legal norms. Two main factors operate to make difficult the appraisal of a conflict as simply 'internal'. In the first place, the international community (and the parties themselves) may be divided as to whether the territory concerned is one political unit or state, or two. In the second place, it may be claimed that what appears ostensibly as a civil war is in fact violence fomented from outside. Should this be so, different considerations of both law and policy will ensue.

The appraisal of a conflict as internal war, rather than international conflict, entails legal consequences so far as the status of the warring parties is concerned; so far as the rights of third parties to participate or remain neutral is concerned; and so far as the modalities of the conflict is concerned. All of these aspects are discussed below. For the moment we may note that the war in Vietnam provides a clear example of this problem. Certain observers have regarded Vietnam as legally one state<sup>\*</sup>; entailing the consequence that the fighting was initially a civil war, which gave no entitlement to the United States to intervene on one side.<sup>\*\*</sup> Others have

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\* It is argued that the Geneva Accords of 1954 established the unity of Vietnam. See, eg. Lawyers Committee on American Policy toward Vietnam, American Policy vis à vis Vietnam, Memorandum of Law, in 112 Cong. Rec. 2552; Senator Morse, 112 Cong. Rec. 1975; Commanger "Our Vietnamese Commitment" Diplomat (June 1961) in 112 Cong. Rec. 11174; Standard, "United States Intervention in Vietnam is not legal" 52 A.B.A.J. 627(1966); Partan, "Legal Aspects of the Vietnam Conflict", in The Vietnam War and International Law, ed. Falk, pp. 216-7; Wright, "Legal Aspects of the Vietnam Situation", ibid., p.285. Falk, "International Law and the United States Role in the Vietnam War", ibid. pp.363-69.

\*\* The scope of the right to intervene in a civil war is discussed below, pp. 19-44.



contended that, the intentions of the Geneva Accords notwithstanding, North and South Vietnam are now effectively two de facto states; and that, if aggression by one can be shown, there is a right by the other to invite the assistance of another nation in collective self defence.\*

Similar arguments, though in more muted terms, were heard in respect of the Korean war. In this case South Korea had been recognized in a resolution of the United Nations General Assembly,\*\* and thus the majority of the international community were on record as acknowledging the de facto statehood of the South. The crossing of the parallel by North Korean troops was thus readily deemed an international breach of peace,\*\*\* and not a mere civil conflict.

The sequence of events, as well as the status of the territorial units involved, is also relevant to the determination of a conflict as internal or international. Thus in the case of Vietnam it is argued by some that the conflict was originally between the Diem Government and the NLF, but that it was internationalized by the United States intervention, leading in turn to a response by regular troops of Hanoi.\*\*\*\* Others read the evidence differently, asserting that the United States responded only after intervention by the North.\*\*\*\*\*

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\* Eg. Hawkins, "Issues raised by the U.S. actions in Vietnam" in The Vietnam War and International War, op.cit. supra.

\*\* GA Resolution 195 (III)

\*\*\* SC Resolution S/1501

\*\*\*\* Falk, "International Law and the U.S. role in Vietnam" in Legal Order in a Violent World at pp. 376-7, 398.

\*\*\*\*\* Eg. Memorandum of the Legal Adviser, Dept. of State "The Legality of U.S. Participation in Defense of Vietnam", reprinted in Legal Order in a Violent World, pp. 594-5.



2. Claim that international law is relevant to the situation

Clearly, international law is not directly relevant to all domestic conflicts. Traditionally, major domestic violence has been classified as falling within one of three categories: rebellion, insurgency or belligerency. Rebellion is understood to entail sporadic violence which is capable of containment by the national police or militia. By definition, a government has no need to call for outside help in controlling the situation.\* International law gives no protection to the rebels, and is relevant only insofar as it entitles the government to promulgate measures which may incidentally inconvenience other nations, and makes help to the rebels an offence.

By contrast, certain traditional norms of international law are - or are said to be - relevant to internal hostilities which are deemed either insurgency or belligerency. Some guidance is given by the records of the Geneva Diplomatic Conference of 1949\*\* which lists "convenient criteria"\*\*\* which are useful for "distinguishing a genuine [internal] armed conflict from a mere act of banditry or an unorganized and shortlived insurrection". These criteria are as follows:

- "(1) That the Party in revolt against the de jure government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the Convention.
- (2) That the legal Government is obliged to have recourse to the regular military forces against insurgents - organized as military and in possession of a part of national territory.

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\* Though cf. Falk, Legal Order in a Violent World, who states that foreign states are however free to help the government against the rebels, p.118.

\*\* The Conference at which the texts of the 1949 Geneva Conventions were adopted.

\*\*\* Cited in Whiteman, Digest of International Law, vol.10, p. 41.



(3) (a) That the de jure Government has recognized the insurgents as belligerents, or

(b) that it has claimed for itself the rights of a belligerent; or

(c) that it has accorded the insurgents recognition as belligerents for the purposes only of the present Convention; or

(d) that the dispute has been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to the peace, a breach of the peace, or an act of aggression.

(4) (a) That the insurgents have an organization purporting to have the characteristics of a state;

(b) that the insurgent civil authority exercises de facto authority over persons within a determinate territory;

(c) that the armed forces act under the direction of the organized civil authority and are prepared to observe the ordinary laws of war;

(d) that the insurgent civil authority agrees to be bound by the terms of the Convention". \*

All violent acts against the Government, whether rebellion, insurgency, or belligerency, are likely to be punishable under domestic law. \*\* However, neither treaty nor customary international law condemns civil war; \*\*\* indeed, many have explicitly asserted that the law of nations permits civil war. \*\*\*\*

There is also a considerable sympathy for the notion that civil war may be the only way by which the peoples of a country can express their will in an authoritarian environment, and that it should thus not be condemned by international law.

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\* Final Record of the Diplomatic Conference of Geneva, 1949, vol.II-B p.121. We shall return below, pp.12-19 to the application of the Geneva Conventions in civil war.

\*\* See Geamanu, La Résistance à l'oppression et le Droit à l'insurrection (Paris 1933).

\*\*\* Nothing in the United Nations Charter forbids civil war; nor does the Inter-America Habana Convention of 1928.

\*\*\*\* See Wehberg, Guerre Civile, pp. 9 and 40; Scelle, Revue General (1938) 266; Lauterpacht, Recognition in International Law, p.175; Castrén, Civil War p.19.



While international law neither prohibits nor condemns civil war, it has a relevant role to play in where the domestic violence is more than mere rioting or rebellion. This is even though, as we shall see below, it has become in recent years virtually unheard of to grant a formal status of either insurgency or belligerency. Though the traditional distinctions and the methods for enacting them - have become largely irrelevant, it remains correct to observe that minor domestic violence entails few international - and thus international legal - repercussions.

3. Claim that the status of the protagonists renders a conflict a civil war.

Traditional international law recognizes two categories of domestic violence which establish a civil war; and different legal consequences flow from each of these categories.

The lesser, and less well defined status, is that of insurgency. It is, as Professor Falk has correctly commented, an international acknowledgment of the existence of an internal war, which leaves each state substantially free to control the consequences of this acknowledgment.\* De Visscher has described the recognition of insurgency as "more elusive in its criteria than recognition of belligerency,\*\* while Lauterpacht has observed that

"any attempt to lay down the conditions of recognition of insurgency lends itself to misunderstanding. Recognition of insurgency creates a factual relation in the meaning that legal rights and duties as between insurgents and outside states exist only insofar as they are expressly conceded and agreed upon for reasons of convenience, of humanity, or of economic interest". \*\*\*

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\* Falk, Legal Order in a Violent World, p. 119-22.

\*\* De Visscher, Theory and Reality in Public International Law (1957), 238.

\*\*\* Recognition in International Law, pp. 276-7.



The recognition of insurgency - whether implied or express, is an indication that the recognizing state regards the insurgents as legal contestants, and not as mere lawbreakers.\* Such an acknowledgment does not entail the legal burdens of a neutral - the recognizing state is possibly still free to assist the legal government\*\*, and would be illegally intervening if it materially assisted the insurgents.\*\*\*

The recognition of belligerency, on the other hand, involves more than the mere acknowledgment of the fact that hostilities are being conducted. Traditionally, four criteria are cited: first, there must exist within the State an armed conflict of a general character; second, the insurgents must occupy and administer a substantial portion of national territory; third, they must conduct the hostilities in accordance with the rules of war and through organized armed forces responsible to an identifiable authority; and fourth, there must exist circumstances which make it necessary for third parties to define their attitude by recognition of belligerency.\*\*\*\*

#### CLAIMS CONCERNING THE CONDUCT OF INTERNAL WAR

1. Claim that international law regulating the methods of warfare is applicable in internal war.

Any examination of the purpose of the laws of war - the minimizing of suffering and destruction - reveals that they must in principle be regarded as relevant to internal war. The fact that one party is not, in traditional terminology, a full subject of international law, is not relevant to this

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\* Memorandum of Legal Adviser Yingling, cited in 2. Whiteman, Digest 487.

\*\* though see the discussion on self determination below, p. 34-5.

\*\*\* Hyde, International Law Chiefly as Interpreted and Applied by the United States, Vol. 1, 2nd ed., p.204.

\*\*\*\* Lauterpacht, op.cit., p. 176.



proposition. Nor is the characterization of the rebels as criminals under the constitutional law of the country concerned. Lauterpacht's views in 1946 remain appropriate:

" A clearly ascertained state of hostilities on a sufficiently large scale, willed as war at least by one of the parties, creates suo vigore a condition in which the rules of warfare become operative...Once a situation has been created which, but for the constitutional law of the state concerned, is indistinguishable from war, practice suggest that international law ought to step in in order to fulfill the same function which it performs in wars between sovereign states, namely, to humanize \* and regularize the conduct of hostilities as between the parties."

To the traditionalist, recognition of belligerency was required before the rights and duties of the laws of war and neutrality were conferred upon the recognized party. Broadly speaking - and certainly in respect of belligerent rights as against neutrals - this proposition remains true. However, attempts have been made to make operative certain minimum humanitarian standards. These attempts are found in Article 3 of all four \*\* Geneva Conventions of 1949, which provide:

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\* Recognition in International Law, p. 246. This is one reason why Lauterpacht contends that the government is under a duty to recognize the insurgents as belligerents. See also McDougal and Feliciano: "The physical characteristics of exercises of violence and their effects upon people and resources are of course the same, assuming violence of comparable proportions in an internal as in an international conflict. It would thus seem fairly obvious that what has been generalized above as a fundamental policy of minimum unnecessary destruction is equally vital and applicable in one as in the other type of conflict". Law and Minimum World Public Order, p. 535.

\*\* On the Wounded and Sick in the Field, On the Wounded, Sick and Shipwrecked at Sea, On prisoners of War, and on Civilians during War.



" In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

- (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.\*

What this provision does is to call for certain humanitarian rules to be applied irrespective of whether the insurgents have been recognized, by the

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\* This Article was a compromise, the Conference being unable to decide whether the Conventions should be automatically applicable to civil wars; or whether they should not; or whether they should be applicable only in certain major types of civil war. See Castrén, op.cit., p.85. Siotis, op.cit., pp. 185-205; McDougal and Feliciano, op.cit., pp.536-7; and Yingling and Ginnane, "The Geneva Conventions of 1949", 46 AJIL (1952), p .395-6.



legitimate government or by third parties. It also makes clear that interventions by the Red Cross are not to be regarded as unfriendly acts. The provisions of Article 3 have not, unfortunately, been regarded as an integral whole. There have been cases where Red Cross intervention has occurred, but none of the other paragraphs of Article 3 have been employed - and still less have the parties made special agreements to bring the rest of the Convention into effect. Nonetheless, this basis for Red Cross action has still proved useful. The Red Cross has been able to act in Guatemala in 1954, and in Costa Rica in 1955, though there was no recognition of belligerency.\* It remains true, however, that the attitude of the constitutional government may still remain hostile to the Red Cross, even while allowing it certain limited rights of action, as has been the case in Nigeria.

The Article is binding on both parties, and is not subject to reciprocity. It does not itself define an "armed conflict not of an international character", but - given its humanitarian purposes - it would seem to be applicable to major insurgency and probably also rebellion as well as to civil war.\*\*

While this provision in the Geneva Convention has performed the valuable function of making clear that humanitarian behaviour depends neither on recognition, nor on the formal status of the parties, actual practice\*\*\* all too often falls lamentably below the standards required by the Geneva Convention of 1949. This is so whether or not the constitutional government is a party to the Conventions, and whether or not the parties have agreed to heed the humanitarian requirements of the laws of war.

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\* See Castrén, op.cit., p.78; Siotis, op.cit., p. 209ff.

\*\* To this effect, Siotis, p. 209, Castrén, p.87.

\*\*\* And note also that Portugal has a reservation in respect of Article 3 to the effect that she reserves the right not to apply the Article if it is considered contradictory to her domestic legislation. Such a reservation would seem to be quite incompatible with the overall intentions of the Convention.



The war in Vietnam has been marked by indiscriminate murder, torture, the use of weapons of doubtful legality, and lack of discrimination between civil and military targets. While, so far as one knows, the Nigerian civil war has not occasioned terrorism and torture on any scale, the deliberate bombing of civilian centres has been all too evident.\*

Behaviour is frequently anomalous, and occasionally the humanitarian provisions of Article 3 of the Geneva Conventions are applied in spite of the refusal of the constitutional government to recognize the insurgents as belligerents. France refused to recognize the Algerians as belligerents, but did permit relief activity of the Red Cross. The French government acknowledged that the conflict was not a purely criminal matter but was an armed conflict of the type mentioned in Article 3 of the Geneva Conventions. Nonetheless, she denied the international character of the conflict.\*\* Neither side fully adhered to the legal standards of Article 3. Not infrequently, a government permits activity by the Red Cross asserting that it does so as an act of sovereignty, and not because Article 3 is applicable. The United Kingdom never admitted that Article 3 applied in respect of the conflicts in Kenya and Cyprus, though it did allow the Red Cross to visit detainees in Cyprus in 1955 and in Kenya in 1957.\*\*\*

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\* See, for example, the eyewitness accounts of Mr. Winston S. Churchill in The Times (London) during March 1969.

\*\* Castrén, p.74. See also Siotis, p.211. Bedjaoui, Law and the Algerian Revolution, p.159 observes that France engaged in actions that were tantamount to a recognition of belligerency - such as stopping, searching and re-routing foreign ships sending supplies to the Algerian rebels.

\*\*\* Col. Draper observed in 1958 "...several thousand troops were employed to quell the Mau Mau in Kenya, the terrorists in Malaya, EOKA in Cyprus, and no less than 400,000 are employed in Algeria where the rebels are still active. The refusal of France and the United Kingdom to recognize that these conflicts fall within Article 3 has, it is thought, been determined by political consideration and not by any objective assessment of the facts". The Red Cross Conventions, p. 15, n.47.



In Nigeria the situation seems confused. The Federal authorities agreed to enter into arrangements with the International Red Cross concerning proposals for airlifting supplies to airports under federal control but rejected an appeal (on 23 May 1968) for extensive lifting of the blockade on Biafra, the sparing of civilians from bombing attacks, and the exchange of some prisoners of war. The Federal Government stated that the I.C.R.C. was "allowing itself, perhaps unwittingly through political naivety, to be used as a tool of rebel propaganda."\* The Biafrans agreed to cooperate with the Red Cross, but clearly wanted an airlift operation rather than a land corridor, for political rather than humanitarian reasons. Although the Federal authorities have not formally deemed Article 3 of the Geneva Conventions to be applicable, they have invited in international observers to inspect Federal military operations in the field. By and large, their reports have been favourable. The Federal Government has stated that it will, voluntarily, apply the standards of the Geneva Conventions. At the same time, there have been widespread reports about indiscriminate bombing and the holding up of relief supplies..

In Vietnam the United States, viewing the situation as an international rather than a civil war, deems the entirety of the Geneva Conventions applicable, rather than only Article 3. All parties to the conflict - North Vietnam\*\*, South Vietnam and the USA - are bound by the four Geneva Conventions.

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\* Keesings Contemporary Archives, 24 August 1968, 22877.

\*\* The International Committee of the Red Cross classifies the situation as armed conflict between two or more of the Contracting Parties. It also has stated - and has not been contradicted by any of the parties - "The National Liberation Front too is bound by the undertakings signed by Vietnam". See letter from Jacques Freymond to Dean Rusk, 11 June 1965, reproduced in International Legal Materials, Nov. 1965, p.1171. But cf. contrary reports, eg. N.Y. Herald Tribune, 7 May 1966 which stated that the I.C.R.C. had been informed that the Viet Cong were 'freedom fighters', not subject to the responsibility of Hanoi. They were entitled, it was argued, to regard themselves as not bound by the Geneva Conventions.



In reply to a letter from the I.C.R.C., the United States indicated its intention to abide by the provisions of the Geneva Conventions, adding the caveat, that given the reliance by the North on disguise and illegal methods of warfare, it is

"difficult to develop programs and procedures to resolve fully all the problems arising in the application of the provisions of the Conventions. Continued refinement of these programs and procedures in the light of experience will thus undoubtedly be necessary". \*

The Republic of Vietnam reported that the Geneva Conventions were being applied in respect of Viet Cong prisoners. Visits by the I.C.R.C. would be permitted. The Democratic Republic of Vietnam replied that the aerial attacks on the North by the United States, indiscriminate bombing, and the use of napalm, were all in breach of the Geneva Agreements of 1949. Consequently, it regarded captured air pilots as "criminals" and liable for judgment under North Vietnamese law. \*\*\* North Vietnam's reply made no mention of the applicability of the Conventions to the situation. \*\*\* \* North Vietnam has not allowed inspection of camps by the I.C.R.C., nor has it given lists of prisoners. Certain attempts have been made by third parties - such as the UAR - to act as protecting power for U.S. forces held by Communist forces, but these have been unsuccessful. On occasion, captured military personnel have been paraded in a manner contrary to the Conventions.

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\* International Legal Materials, November 1965, p. 1173.

\*\* Ibid., p. 1174.

\*\*\* At the time of capture of the pilots it was threatened that they would be brought to trial as 'war criminals'. In fact this has not occurred.

\*\*\*\* Reprinted in International Legal Materials, Jan. 1966, p. 124.



Undoubtedly, there have also been breaches of the Conventions in the South, though there is evidence that the United States has sought to control these.\* Given the difficulty of making the Viet Cong fall within the definition of Prisoners of War in Article 4 of the Convention, it could have been argued that they were unprotected by this Convention; yet, because the war was international, the minimum humanitarian provisions of Article 3 did not apply either. Fortunately, this narrow argument has not been advanced, and P.O.W. status has been granted to North Vietnam regulars and to Viet Cong alike. The United States has no doubt been mindful of its own traditions, public opinions, and the hope that it would be able to call for reciprocity.

#### CLAIMS CONCERNING PARTICIPATION IN INTERNAL WARS

##### 1. Claims in favour of outside participation

##### A. Claim by the constitutional government

##### (i) that it is entitled to ask for help

Traditional international law is fairly clear in indicating that, in relations with third states, a lawful government is in a privileged position compared with the insurgents,\*\* at least until there has been recognition of belligerency. What is less clear - and it has become still more doubtful in recent years - is the legal authority of the government to ask for military assistance during civil hostilities, in the sense of either arms or active participation. While the majority of writers support aid in general terms for the government, they are divided where aid in arms or

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\* Thus in July 1966 the United States decided not to hand over all prisoners directly to the South Vietnamese Army, but to keep them in U.S. hands until transferred to P.O.W. camps. Under Article 12 of the Convention of Prisoners of War, a capturing power is required to turn prisoners over to another country to guarantee their well-being.

\*\* This aspect is dealt with below, under Claims concerning relations with third parties.



forces is concerned. Those supporting\* the right of the government to call for assistance point to the fact that it is still the recognized government, and that the insurgents have no status under international law. Others suggest that once a government requests foreign military aid it no longer, by definition, represents all the state.\*\* What is clear beyond doubt is that governments faced with rebellion do frequently ask for assistance, and other governments see fit to grant it. Given the increasing infrequency of recognition of belligerent status - a legal concept fast becoming irrelevant in the context of internal wars - governments feel more and more free to answer a plea for help from another government, irrespective of whether the rebels are mounting an organized opposition, and have control of a substantial portion of the territory.

Calls for assistance in the form of troops usually occur when the government classifies the war as international rather than internal. In Vietnam, the South Vietnamese emphasize that the fight is against North Vietnamese regulars, and that even the Vietcong are assisted by and directed from Hanoi. Sometimes there is comparatively little evidence that the conflict is anything but internal; thus Chamoun's Government in the Lebanon sought aid from the U.S.A. in 1958, claiming that the domestic rebellion was being fomented by the U.A.R. A UN observer group found no proof of this.\*\*\*

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\* Among those supporting the legality of military aid, see Castberg, Borgekrig, p. 104; Brownlie, International Law and the Use of Force by States, pp. 325-7; Castrén, pp. 110-11.

\*\* See Raestad, Ned. Tid. Int. Ret. 1938, p.5.

\*\*\* For an overall survey of the UN role in civil wars, see below, pp.37-43.



It is comparatively rare for a government faced by a rebellion to call for assistance by foreign troops. East African governments asked with great reluctance for British help in 1964 in putting down mutinies; but this damaged their prestige in the region and would be unlikely to be repeated. Clearly, most governments that have recently secured their independence from their colonial masters are unwilling to invite them to assist in terminating civil conflict. However, requests are made - and met - for arms supplies to the government.\*

In short, there is a clear community expectation that a government may seek arms supplies from abroad when a civil conflict occurs, and is not prevented from doing so even if the rebels have acquired a position which, under traditional international law, would have been granted the status of belligerency. Most governments are reluctant to ask for foreign help when the conflict is purely civil, but they and the world community believe that they have the right to do so when the civil war is fomented or supported from outside.

(ii) that it is entitled to belligerent rights

Although the formal recognition of belligerency is becoming increasingly rare, we may note that under traditional international law the constitutional government is not entitled to claim belligerent rights unless the insurgents have been recognized as belligerent. As we shall observe below, this nominal restriction has little practical effect on the course of the war.

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\* For a discussion of the right of outside parties to provide arms, see below, p. 26-30.



B. Claims by insurgents

(i) that they are entitled to belligerent status

This claim may be advanced by the insurgents in respect of the constitutional government. There has been academic debate as to whether such recognition  
\* is constitutive - bringing into existence certain rights and duties - or whether it is declamatory. \*\* Suffice it to say that, since the Spanish war, belligerent recognition of the insurgents by government and by third parties has lost all practical significance, \*\*\* though it can be argued that tacit recognition of this status \*\*\* still brings certain legal consequences into effect. Whereas it is arguable that, as a matter of policy, insurgents should be entitled to recognition by the government, there is less case for making such a suggestion in respect of third parties because the recognition of belligerency cannot be gratuitous, but depends upon the necessity of the relations between the insurgents and the third party concerned. \*\*\*\*\*

There are arguments for and against the proposition that states are obliged to recognize the belligerent status of insurgents when the appropriate conditions exist. An obligation to recognize belligerency entails subsequent neutrality by the recognizing party (which it may or may not deem to its

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\* Castrén, op.cit. -.138; Castberg, p. 109.

\*\* Lauterpacht, p.253, who notes that recognition acknowledges that the civil war has fulfilled certain pre-requisites for recognition and that the recognition is mandatory. It is recognition of belligerency which brings the laws of war into operation - though Article 3 of the Geneva Conventions applies irrespective of recognition by either the government or third parties.

\*\*\* Thus Siotis, op.cit., p.223.

\*\*\*\* Castrén, pp. 136, 147.

\*\*\*\*\* On which question, see below, p. 45-48.



advantage, depending on the circumstances) and its non-participation in the internal conflict.\* On the other hand, recognition entails highly significant consequences for the recognizing state, and it will be reluctant to acknowledge that insurgents, lacking formal status under traditional international law, can oblige it to embark upon these. We shall suggest later\*\* that this is an area in which community procedures could be profitably employed.

- (ii) that they are entitled to recognition as either the government of all the territory or of a seceded portion of the territory

So far as traditional international law is concerned, insurgents may on occasion pursue the claim that they are entitled not merely to recognition as belligerents, but to recognition as a de facto government. Sometimes an insurgent government may be recognized as the de facto government in the area which it controls (though some have said that this is merely tantamount to a recognition of belligerency\*\*\*). However, insurgents may also be recognized as the general de facto government. Recognition must traditionally be based on factual prerequisites, although the granting of it is discretionary. When the goal of civil war is separation of a portion of the territory, and if the insurgents have already succeeded in establishing their rule, and have been recognized by many states, it is arguable that the internal war has now become an international one.\*\*\*\*

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\* This reason - the tendency to limit the scope of civil wars - is emphasized by Lauterpacht when he urges the legal obligation to recognize belligerency. Recognition in International Law, p. 229ff.

\*\* p.49.

\*\*\* Spiropoulos, Die de facto Regierung im Völkerrecht, p. 57.

\*\*\*\* A point made by Fiore, Il Diritto internazionale codificato, p. 556.



All this being said, one may note that practice has varied considerably. In the Spanish civil war, Germany and Italy early recognized Franco as the only lawful government in Spain. Academic arguments as to the propriety of this notwithstanding\*, these countries opened diplomatic relations and provided Franco with arms and troops. De jure recognition was also accorded by Portugal, Albania, El Salvador, Guatemala and Nicaragua. Yet other states granted de facto recognition.\*\* The Soviet Union and Mexico, on the contrary, recognized the National Government as the only lawful government, and Franco as a mere insurgent.

In other cases recognition has taken place in circumstances which the majority of nations regard as premature, because the outcome was uncertain: the recognition by certain nations of the Algerian government was a case in point. Here the traditional criteria were fulfilled and the controversy was about timing. In some recent cases, however, it has become clear that some governments assert a right to recognize even when the traditional criteria are manifestly not fulfilled. The eloquent statement by President Nyerere of Tanzania on his decision to recognize Biafra reveals a preoccupation with questions of morality, and a total ignoring of the customary legal factors.

C. Claims by outside states

1. Claims in favour of supporting the Government

(i) that armed assistance, mere rebellion or insurgency is taking place.

It used to be generally accepted that a state may aid a government threatened with riots and insurgency, until such time as it has recognized - whether by

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\* The German and Italian actions widely regarded as premature and illegal: Castrén, p.58, Castberg, NTIR (1937), p.164.

\*\* Britain sought a middle path by recognizing, in due course, Franco as the local de facto government.



implication or expressly - the belligerent status of the insurgents. This statement of the traditional rule is now to be qualified by concern for the principle of self determination: to what extent is such help an intervention preventing the self determination of the population of the territory concerned, notwithstanding the limited status of the rebels? This aspect is discussed below.\*

Intervention by invitation is a doctrine to be regarded with suspicion so long as there are no centralized procedures for establishing the support commanded by the rebels, and so long as the openings for abuse are so many.\*\* One point was well put as early as 1924:

"[if intervention is] directed against rebels, the fact that it has been necessary to call in foreign help is enough to show that the issue of the conflict would without it be uncertain, and consequently that there is a doubt as to which side would ultimately establish itself as the legal representative of the state. If again, intervention is based upon an opinion as to the merits of the question at issue, the intervening state takes upon itself to pass judgment on a matter which, having nothing to do with the relations of states, must be regarded as being for legal purposes beyond the range of its vision".\*\*\*

A more detailed discussion of the policy considerations at stake in this question will follow in the final section of this paper. For the moment, we may note that the traditionalist view - allowing a right of intervention where there has been no recognition of belligerency - is losing favour.\*\*\*\*

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P. 34-5.

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On this point generally, see Higgins, The Development of International Law through the Political Organs of the UN, pp.210-13.

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Hall, A Treatise on International Law, p. 347 (8th ed.)

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See eg. Wright, 53 AJIL (1959) p.21-2.



(ii) that arms may be sold to the lawful government if the belligerency of the rebels has not been recognized.

We have already observed that, given the general desire for international stability, the lawful government starts with a built-in advantage against the rebels. The duty of non-intervention requires states not to furnish arms, munitions, military goods or financial aid to the rebels, and not to allow their territory to be used as a base for rebel activities against the lawful government.\* However, it appears in these circumstances to be lawful to continue to provide arms to the lawful government. The U.S. Department of State, in justifying its decision in respect of the 1930 resolution in Brazil to prohibit all arms to that country save to the Government, explained:

"Until belligerency is recognized, and the duty of neutrality arises, all the humane predispositions towards stability of government, the preservations of international amity, and the protection of established intercourse between nations are in favour of the Existing Government". \*\*

Such a view does not appear to be inconsistent with the view that there is a legal right of revolution, and certainly it is consistent with state practice.

(iii) that arms may be sold to the recognized government, irrespective of the status of the rebels.

Given the contemporary infrequency of formal recognition of belligerency, it has become more and more possible for states to deal with the lawful government as if the rebels had not the status of belligerents, even though

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\* Relations between third states and the parties to an internal war are dealt with more fully below, pp. 45-7.

\*\* Dept. of State, Latin American Series No.4., 1931. Cited in Lauterpacht, p.231.



the facts clearly indicate otherwise. In other words, the legal relevance of the particular rights and duties flowing from the existence of a major civil war is denied. A clear example of this tendency is available in the handling of the British Government of the Nigeria-Biafra war. The British Government appear to acknowledge - indeed, it would seem impossible on the facts to do otherwise, - that a civil war exists in Nigeria. At the same time, the government regards itself as free to provide the Federal Government with arms, merely on the legal ground that it is the recognized Government. Speaking in the House of Commons, the Secretary of State for Commonwealth Affairs commented:

"Neutrality was not a possible option for Her Majesty's Government at that time. We might have been able to declare ourselves neutral if one independent country was fighting another, but this was not a possible attitude when a Commonwealth country, with which we had long and close ties, was faced with an internal revolt. What would other Commonwealth countries have thought?" \*

Lest it be thought that the Commonwealth Secretary was implying that this was a mere rebellion, it may be noted that he had earlier classified the situation as "a civil war".\*\* The entire speech largely ignores the legal issues, and in so far as they are touched on at all, it is in confusion. Nor was the Secretary of State endeavouring to draw a distinction so far as aid to the government is concerned, between civil war and secession. The Deputy Leader of the Opposition had supported the supply of arms, but added:

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Hansard, 27 August 1968, col. 1146.

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Ibid., col. 1443.



"However, the position could change of the struggle took on the character of a genuine civil war...Despite the recognition of Biafra by a number of other territories on the African continent, is it not still a fact that this is a matter of secession rather than a civil war?" \*

The suggestion, apparently, was twofold: first, secession was something different from civil war; and that in the case of the former - but not the latter - arms supplies could continue. But the Secretary of State did not wish to grasp at even this legal straw, for he replied (no doubt correctly) \*\*:

"I do not follow the distinction that the right hon. gentleman was seeking to make between the issue of secession and the fact of a civil war. I would describe this as a civil war over the issue of secession". \*\*\*

The historical antecedents of this claim to aid the recognized government, irrespective of the circumstances, lie in the Spanish civil war. Quincy Wright has pointed out that if an outside state could respond to help from the de jure government, then where different states recognize different factions, there is a prescription for the internationalizing of a local dispute. He goes even further, denying the right to help the recognized government even where the insurgents have not attained the status of belligerency. He contends that what is relevant is not recognition of belligerency, but the uncertainty of the outcome. \*\*\* \*

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\* Ibid., col. 1437.

\*\* We approve the definition by McDougal of a civil war " A genuinely internal conflict within a nation state in which a counter-elite group seeks forcibly to organize a new political unit separate from the old body politic, or to capture effective control of existing governmental structures". McDougal and Feliciano, Law and Minimum World Public Order, p. 535.

\*\*\* Hansard, cols. 1443-1444.

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Wright, "United States Intervention in the Lebanon", 53 AJIL(1959) 121-2.



- (iv) that they are under a treaty obligation to sell arms to the lawful government.

Nations which have treaty arrangements for the supply of arms to a particular government are placed in an embarrassing position - and especially if they are the traditional supplier of arms - if a civil war breaks out in the territory. Here the term 'non-intervention' is something of a misnomer because the foreign state is already involved; and if it ceases to supply the lawful government, that may be regarded, effectively, as assistance for the rebels. There is considerable evidence that the export of arms de novo during a civil war is impermissible. By a Joint Resolution of Congress of 8 January 1937 the United States prohibited the export of arms and munitions to Spain. Again, during the American Civil War a British proclamation of 4 December 1861 prohibited the export of arms and military stores. The claim of a government engaged in civil war to be able to buy arms in countries to which it has had access hitherto would not seem to be upheld by either principle or practice. But the position where there is a treaty covering the matter is very much more complicated. Policy considerations would seem to indicate the paramountcy of the desirability of non-intervention in a civil war, even over and above treaty commitments. Lauterpacht devised a method of squaring this particular circle by suggesting that

"even the provisions of the treaty may have to be read subject to the implied condition of its fulfilment not involving the danger of international complications following upon interference, implied in a unilateral grant of advantages, in a civil war of considerable dimensions..." \*

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Recognition in International Law, pp. 232-3.



Clausula rebus sic stantibus might be thought relevant here. But the essential difficulty - that in the case of a long standing arms supplier, the cessation of supplies is effectively intervention on the side of the rebels - remains. Closely related is the argument that the withdrawal of arms by a traditional supplier, far from limiting an internal war, in fact lengthens it because the rebels are also securing arms. This argument has also been advanced in the Nigerian war - Britain has claimed that, from a humanitarian point of view, it is better that a war which will inevitably be won by the Federals in the long term should be won by them sooner rather than later.

(v) that the insurgents are being assisted by one or more other states  
State practice reveals that, even if a civil war is manifestly in progress, governments feel free - regardless of the 'rule' of non-intervention - to intervene on the side of the government if the rebels are receiving external assistance. This argument is used with particular vigour where it is believed that the rebellion is not essentially indigenous, but is fomented from outside. Thus the United States in 1958 went to the assistance of President Chamoun of the Lebanon, supporting his assertion that rebellion in the Lebanon was being fomented by the United Arab Republic.\* But even where the war is initially a bona fide civil war, the claim of counter-intervention is now frequently heard. The UAR asserted that it was supporting the Yemen republicans because Saudi Arabia was interfering in the civil war by supporting the Royalists. The mirror claim was made by Saudi Arabia. The

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But see UNOGIL's reports denying major intervention by the UAR: S/4040 3 July 1958, S/4043 8 July 1958. For a detailed analysis of the UN role in the Lebanon civil strife, see Higgins, United Peacekeeping 1946-67, Documents and Commentary, Vol.I pp. 535-603.



United States regards itself as authorized to intervene in the war between the Viet Cong and South Vietnam, because North Vietnam has been aiding the Viet Cong. The list could be greatly enlarged. Professor Falk has brilliantly analyzed why this claim is more commonly heard than the traditional emphasis on non-intervention.\* He notes that in a decentralized system, it is hard to establish authoritatively the sequence of events, and each side is able to claim initial intervention by the other. After describing other reasons for the breakdown of the concept of non-intervention in civil wars, Professor Falk goes on to suggest that "offsetting participation by nations in internal wars may often be more compatible with the notions of non-intervention than is an asymmetrical refusal to participate".\*\* These are points of policy to which we shall return below.\*\*\*

(vi) that another state is assisting the lawful government

This claim is not normally dealt with in the growing literature on internal war, but is very much a reality. If there is a civil war in State A, State B may be inclined to support the government if it sees that State C, its enemy, is supporting the insurgents. However, if it desires the outcome of the civil war to be victory for the government of State A, State B may be disconcerted to see its rival State C helping the lawful government; and may itself intervene on the side of the lawful government in order to effect the influence of State C in State A. Obviously different policy considerations.

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\* "Janus Tormented: The International Law of Internal War" in International Aspects of Civil Strife, ed. Rosenau, p. 206ff, 222-27.

\*\* Ibid., at p.207. This view is elaborated by Manfred Halpern, "The Morality and Politics of Intervention", Ibid. 249-88.

\*\*\* pp. 50-55.



obtain here. What is disconcerting is the built-in predisposition, in a divided world, to intervention. There is a case for intervention if one's rival enters the field on one's chosen side, or against it. This claim has been very much at the forefront of the British Case for continuing to supply arms to the Nigerian Federal Government:

"The Russians have already secured a political foothold in Nigeria by supplying military aircraft and bombs, which we refused to supply. If we cut off our arms supplies, Russia would be only too willing to fill the gap and gain the influence which we would lose. Is it seriously argued that this is the best way to help a new Commonwealth to stand up to the pressures of Soviet imperialism?" \*

The depressing logic of this position is that, in an area of any major importance to them, if one super-power intervenes a competing superpower will also intervene, either on the same side or on the opposing one, according to its preferred outcome to the internal war.

(vii) that the internal war is occurring within a super-powers' sphere of interest

No state, of course, baldly asserts that it is intervening because it has a vital interest in the outcome of an internal conflict within its sphere of influence. Events, however, indicate that this is a common course of practice, and one which given the nuclear confrontation, is increasingly tolerated as between the superpowers. The Monroe Doctrine formalizes the interest of the United States in the prevention of successful communist governments in the Americas. The Bay of Pigs was clearly in breach of traditional norms of non-intervention (though this, of course, occurred some considerable time after the conclusion of the internal hostilities in Cuba). And the United States intervention in the Dominican Republic in 1965 was based on a concern felt by that country that certain persons coming to power

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\* Hansard, 27 August 1968, col. 1448.



were known communists. The charges, in fact, proved lamentably untenable: but the point at issue was that the United States believed it to be a sufficient legal basis for intervention. In Guatemala, in 1954, the United States again intervened for identical reasons in an internal dispute. In eastern Europe the grip of the Soviet Union has been sufficiently strong to prevent situations developing into civil war. But in a situation that comes very close to it - Hungary in 1956 - the Soviet Union showed that it too had a major interest in the outcome of internal conflicts in the communist world. And it was prepared (and Czechoslovakia confirms that it is still prepared) to use the most repressive and harsh methods. Though the nations concerned may complain (though they usually do only in muted terms - the Guatemala Case of 1954 being an exception) the interventions by one super power in its own sphere of influence are in fact tolerated by the other super powers.

(viii) that humanitarian reasons dictate the necessity of intervention

Intervention for humanitarian reasons more usually arises in the context of the treatment of minorities. Occasionally, however, this particular problem of intervention occurs in the context of a civil war. The doctrine is obviously open to abuse, and this writer has suggested elsewhere that it is not to be regarded as compatible with contemporary international law.\* In 1964 the British, American and Belgian governments, in cooperation with the government of the Congo, intervened in the rebel-held areas of Stanleyville to rescue certain missionaries whose safety was at risk. The operation was a strictly limited one avoiding participation in the outcome of the internal

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\* Higgins, The Development of International Law through the Political Organs of the United Nations, p. 220.



strife. The Department of State emphasized that it was acting with the authorization of the Congo Government and "in exercise of our clear responsibility to protect U.S. citizens under the circumstances existing in the Stanleyville area".\* The State Department communiqué also pointed to the fact that the treatment of the civilian prisoners by the rebels fell lamentably short of the Geneva Conventions. The task force was speedily withdrawn. However, complaints were made both at the United Nations and at the Organization of African Unity, and it is clear that, if even the particular intervention on a specific occasion is reasonable and limited, the international community is reluctant to approve such interventions.

2. Claims in favour of assisting the insurgents

- (i) that a state is at war with the government which is engaged in civil war

In these circumstances an outside state will feel legally free to help the insurgents rather than to remain neutral.

- (ii) that support must be given to the right of self-determination\*\*

The extent to which the self-determination of peoples has become an accepted right under international law is perhaps debatable.\*\* This writer has suggested that the right is now established in principle, even if its contents are still somewhat imprecise.\*\*\* The term is now spoken of as a legal right by virtually all the nations of the world, and no state has publicly denied its validity. Outside states are under a duty not to hinder

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\* Dept. of State statement, Nov. 24, 1964, Cited in 5 Whiteman's Digest, p. 476.

\*\* See the debates on this point in the Pleadings of the South West Africa Cases, 1966.

\*\*\* Higgins, The Development of International Law, etc. pp. 90-106. See also Fawcett, "Human Rights and Domestic Jurisdiction" in Luard, Protection of Human Rights, Cf. earlier views by L.C. Green, IIA Report 1956, pp. 56-7; Potter, 52 AJIL (1958) 727-8. For another, dissenting opinion, see Linda Miller, World Order and Local Disorder, pp. 53-4.



the expression of self-determination in a nation torn by civil strife. The promotion of the right of self-determination is counterbalanced by considerations of stability. Thus until the rebels have established themselves with a status tantamount to that traditionally regarded as meriting a recognition of belligerency, normal relations may continue with the recognized government. However, third states should not, once a civil war occurs, engage in activities preventing the self determination of peoples. Normally speaking, this is an authorization for non-participation.. However, where the government is repressive and undemocratic, and where the rebels represent the forces of self-determination, outside countries may seek to support them. It is doubtful, however, whether the right to self-determination can entail more than neutral posture on the part of a third state.

Where the civil war takes the form of secession, the question arises whether self-determination of the region is a determining factor. Those recognizing Biafra (such as Tanzania and Zambia) and those assisting her with arms (such as France) has emphasized the right of self-determination of the Biafran peoples. The United Kingdom, on the other hand, has spoken darkly of the undesirability of balkanisation on the African continent, as it clearly thinks of self-determination as a concept operating within larger units.

(iii) that the insurgents are waging a war of liberation

The traditional doctrine of non-interference has little appeal either for the revolutionary Marxist, or for the newer nations who see no pacific method for altering the status quo in certain areas. The Communist nations have made it clear, both in word and practice, that they regard themselves as free to assist in what they term wars of liberation. To a considerable extent, these are wars in which the indigenous population is fighting against



the colonial authority- although the claim could also apply to a revolutionary group engaged in seizing power from a conservative, non-representative government. The justification is advanced that the principle of non-intervention in civil wars can not be relied on by 'reactionary' regimes, and that the principle of self-determination is paramount. Accordingly

"It was essential that the principle of non-intervention should be applied in international law in such a way ...[as not to weaken] ...the provisions of international law designed to help those countries still under colonial rule".\*

Again, the Soviet Union has made it clear that if African nationalists found themselves in a position to wage a war of liberation against the white minority governments of Southern Africa, assistance would be forthcoming.

The newer nations find themselves in a similar position, though their motives are not ideological. Given the everyday assistance afforded to the white minority governments of Southern Africa, and given the United Nations apparent inability to bring about peaceful change in the areas concerned, they believe that they are under no moral obligation to abstain from any civil conflict that may occur. The departure from the traditional rules of law is in the broad area of intervention: members of the OAU are overtly committed to providing military assistance for guerrillas operating in Portuguese, Rhodesian and South African territory. In Rhodesia and South Africa there is no internal war; in Mozambique there is. Non-intervention is regarded as an irrelevant norm in respect of both of these situations. In recent United Nations resolutions there has been a tendency to introduce clauses which whittle away the traditional rule of non-intervention, and instead reflect practice so far as liberation movements

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\* Czechoslovakian delegate, GAOR 18th sess. 6th Committee, 802nd mtg.



are concerned. Thus, in the latest resolution on Rhodesia, the resolution calls upon UN members to give moral and material assistance to those in Rhodesia opposing the Smith régime.\*

(iv) that the insurgents are to be supported for humanitarian or ethnic reasons.

If the internal conflict is due to ethnic or religious controversy, it may be that third states having ties with the rebels will feel constrained to intervene on their behalf. Turkey has on several occasions threatened to intervene in Cyprus on the side of the Turkish Cypriots, who have been - until the UN Force established itself\*\* - engaged in major hostilities with the Greek Cypriot authorities.

(v) that major interests of state require the support of the rebels

While this claim is not overtly advanced, it is clearly of relevance so far as policy is concerned. There is ample evidence that the Belgian government, heavily committed to the Union Minière, in fact tacitly supported the attempts at secession by Katanga.\*\*\*

### 3. Claims in favour of participation by international organizations

#### (i) The United Nations

Article 2(7) of the United Nations Charter provides that

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state... but this principle shall not prejudice the application of enforcement measures under Chapter VII".

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\* Security Council resolution S/253, 29 May 1968.

\*\* See Stengaga, The UN Force in Cyprus; and Higgins: "The UN Force in Cyprus: Basic Facts", World Today, August 1964.

\*\*\* Catherine Hoskyns, The Congo since Independence.



At the same time, Article 1 of the Charter stipulates that the purposes of the United Nations include the maintenance of international peace and security, and the development of friendly relations based on self-determination of peoples.

To relate these broad propositions to the problem of internal war, we may note that the United Nations has been faced with three main categories of civil war: colonial wars, a major breakdown in internal law and order, and internal conflicts allegedly fomented from outside.\*

There has been widespread discussion elsewhere as to the meaning of 'intervention' by the United Nations.\*\* In the context of internal wars caused by colonial conflicts, the United Nations has shown itself willing to intervene in the sense of passing resolutions to bring pressure to bear on the colonial authority. Far from remaining 'neutral' in such conflicts, the United Nations has indicated that its sympathies lie with the indigenous population; and, in the case of the war in Angola and Mozambique, the Security Council has even called for an arms embargo against Portugal.\*\*\* The clearly emerging tendency in UN practice points to the acceptance of community pressures against the government when its 'internal' conflict occurs in an overseas territory seeking independence. Even Portugal's NATO allies have indicated - by their abstention in the voting - that they don't regard the matter as an essentially internal one, falling within the scope of Article 2(7). In this category of cases the UN has also been willing to suggest quite specific measures: thus in Angola it has called for an

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\* These three classifications are used by Linda Miller in her interesting study World Order and Local Disorder.

\*\* Higgins, The Development of International Law, etc. pp. 64-130; Rajan, The United Nations and Domestic Jurisdiction, 2nd ed.

\*\*\* S/5380 31 July 1963.



amnesty,-\* and in the Indonesia-Dutch dispute, ultimately alienated by the second Dutch 'police-action', the Security Council spelled out a detailed programme for a political settlement. African members of the United Nations have overtly supported the Angolan and Mozambique rebel groups (indeed, some have recognized them de jure); and the United Nations itself has shown no inclination to condemn such practice as contrary to the international law requirements of non participation in a civil war. The United Nations has legitimized its intervention in colonial civil wars by reference to human rights and self determination.\*\*

Rhodesia has presented a particularly complex problem in this category. It is not internal war in the full sense, due to the British decision not to use arms; yet it is undoubtedly a rebellion against the lawful government, in which all the normal pressures ancillary to the use of force are being used. In this case a British internally self governing \*\*\* territory unilaterally declared its independence under a minority government headed by Mr. Ian Smith. The issues were extraordinarily complex. If international law recognizes the right to revolution, does it recognize a right to revolution by an élite representing minority interests? The international community is being asked, through the United Nations, not to stay impartial in a conflict

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\* S/5480, 11 December 1963.

\*\* In the context of the Portuguese territories, as Linda Miller correctly points out, there was disagreement on the meaning of the term 'self determination', because Portugal promised new laws designed to ensure local participation in administrative and political life, whereas the Angolans wanted to be free to opt out of Portuguese control altogether, p.59.

\*\*\* Although the General Assembly insisted that Rhodesia was non-self governing within the meaning of Article 73. See Higgins, "The Rhodesian rebellion: Britain at the United Nations", Round Table, March 1966.



between a metropolitan and dependent territory, but on this occasion to help the metropolitan power in suppressing the rebellion. The grounds are similar to those in the case of Angola - discrimination on grounds of colour, amounting to a denial of human rights, and the right of all the Rhodesian peoples to self-determination. Throughout, the United Kingdom, recognizing that the question is one of international concern, has used the UN to assist it in its attempt to end a rebellion. The United Nations has been offended not so much by UDI as by a long standing denial of human rights in Rhodesia, and its objectives are not so much the ending of UDI as the achieving of majority rule in that country. In other words, whereas Britain might be satisfied with a return to the situation of 1963, the United Nations would not.\* The United Nations has in this case considerably gone beyond the traditional norms concerning civil conflict. Not only has the UK case been formally supported by the international community, but the United Nations Security Council has formally prohibited states from trading with Southern Rhodesia - not only in war materials, but in all commodities which could assist the survival of Rhodesia as an independent state. Intervention on the side of the lawful government has been for the purpose of sanctioning the rebels. It is because nations are in any event under a general international law obligation not to support the rebels that the Security Council has legally been able to address its remarks to non-members such as West Germany, as well as to UN members. The United Nations has also required governments to act more strictly than usual in controlling the activities of individuals in non-military aid and trade.

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\* See Higgins, "International Law, Rhodesia and the United Nations", World Today, March 1967. See also McDougal and Riesman, "Rhodesia and the UN: the lawfulness of international concern", 62 AJIL (1968) 1-19.



The Security Council found itself in a predicament in that minority rule and racial discrimination - the questions with which the UN has been really concerned - are not themselves grounds for recommendations under Chapter VII. Accordingly, it was necessary to ; this desire to act on the existence of "a threat to international peace"\* - a course of action strongly resisted by the United Kingdom in the early stages, when it feared escalation to Article 42, but agreed to later when it became prepared to use the veto, if necessary, to avoid international military sanctions. The Security Council has thus established the principle that an internal rebellion, in which racial questions play a strong part, may be a threat to international peace, warranting community sanctions, if neighbouring states feel compelled to support the majority peoples of the territory. The situation is anomalous enough for the precedents - including authorization to Britain to blockade the port of a third power\*\* assisting the rebels - to be far from clear. Nonetheless, the UN role in respect of Rhodesia does mark a move away from traditional rules of law.

The second major category of internal conflicts which the UN has faced are those entailing a breakdown of law and order, which in turn entails international repercussions. The UN has shown a preparedness to intervene physically - when invited - in this type of case. In the Congo the United Nations was asked to help at the stage of a mutiny by the Force Publique

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\* For a full discussion, see Higgins, "International Law, Rhodesia and the UN", World Today, March 1967, pp.100-03.

\*\* The authorization to the Royal Navy to stop the Joanna V and any other ships from discharging oil for Rhodesia at Beira, Mozambique. For a full discussion, see Higgins, World Today, March 1967, pp. 95-7.



but before major civil war had developed. Indeed, at this juncture the situation was fairly readily recognizable as a threat to peace, and rather less as a potential civil war, although separatist tendencies had long been evident. After the mutiny of the Force Publique against its Belgian officers, Belgian paratroops re-entered the Congo, purportedly to protect the life of their nationals. The situation rapidly degenerated. On 11 July Tshombe announced the secession of Katanga. Having received a cable from Lumumba and Kasavuba,\* Secretary-General Hammarskjöld used his powers under Article 99 of the Charter to convene a meeting of the Security Council. Hammarskjöld stated that the breakdown in law and order had posed a threat to peace and security. The ensuing resolutions of the Security Council spelled out the UN task as securing the withdrawal of Belgian troops, restoring law and order, and ensuring respect for the territorial integrity and political independence of the Congo. As time went by, and various interests began to assert themselves, the UN became more and more involved with ending the Katangese secession until, after Hammarskjöld's death, the ONUC was authorized to "use force if necessary in ending the civil war". The UN had thus become involved on the side of the central government in ending a secession: though this strictly relied on the fact that foreign elements - Belgian mercenaries - were instigating the secession.

A force with a not dissimilar mandate\*\* (though of a very different composition) was established to help restore law and order in Cyprus after civil war between the two communities. Again, international factors were

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\* For full background, see Legum, Congo Disaster; Catherine Hoskyns, The Congo since Independence; Merriam, Congo: Background of Conflict; Van Langenhove, The Congo and Problems of Decolonization; Linda Miller, World Order and Local Disorder; and Burns and Heathcote, Peacekeeping by UN Forces; Lefevre, Crisis in the Congo: A United Nations Force in Action.

\*\* See Miller, pp.116-48; Stengaga, op.cit.



involved - the ethnic ties of Greece and Turkey with the two communities, and the treaty rights of those two countries and Britain. Again, the consent of the host government was required.

In the third main category of civil wars - internal wars allegedly fomented from without - the United Nations seems to have evolved a particular technique. This is the technique of observation/fact finding. In the cases of Greece (1947), the Lebanon\* (1958) and the Yemen,\* the claim was made that the civil war was externally organized. In each of these cases UN observers, with powers limited to observing and reporting facts, went to investigate the charges. A variety of circumstances made it impossible for UNYOM to function efficiently, and it was withdrawn from the Yemen. But the experience of UNSCOB and UNOGIL was altogether more favourable. In this area the United Nations has seen fit to participate when invited, but the principle of consent has remained pivotal.\*\*

It seems to be the case, therefore, as a rough rule of thumb, that the UN is an active participant in several types of civil war. So far as colonial wars are concerned, the UN will pass resolutions and engage in certain preserves, but will not itself intervene physically. So far as wars involving the need to restore law and order is concerned, the UN has been willing to participate with para-military forces, nominally on the basis of neutrality, although inevitably with advantage to the incumbent government. And in the third case of 'proxy wars' the UN has found it helpful to offer its services in the field of observation and fact finding.

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\* For a detailed study of these, see Higgins, United Nations Peace-keeping: Documents and Commentary, Vol.I- The Middle East.

\*\* Though one may note that in the case of the Yemen, the consent of the UAR and Saudi Arabia was regarded as more important than that of the Yemen.



(ii) Regional Organizations

Regional organizations are usually predicated on a certain degree of political homogeneity, though the degree required will vary from organization to organization. They have a natural interest in the control of civil wars in their region. The OAU has tried to end the Nigerian war, though its members have been divided on the side they support; the OAS played an active role in finding a way out of the impasse caused by the Dominican Republic strife of 1964. But there are certain disadvantages in their intervention, and these are mentioned below:\*

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\* pp. 53-4.



CLAIMS CONCERNING RELATIONS WITH THIRD STATES

Insofar as recognition still remains a relevant factor, the following points may be made: outside states may not lawfully grant recognition to insurgents unless the traditional criteria are present. Recognition so granted is premature, and a hostile act against the constitutional government. However, it is far less certain that there is a duty to recognize if the conditions are fulfilled\* - or at least, it is not a verifiable duty, because it is for each state to ascertain whether the criteria for recognition are fulfilled. There are nonetheless strong reasons of policy which support the thesis that there is a duty to recognize,\*\* and to this we will return below.\*\*\* If the lawful government itself recognizes the belligerency of the rebels, then third states are bound to grant the insurgents belligerent recognition.\*\*\*\* But recognition by certain third states places the lawful government under no obligation to accord recognition also.

A government faced with a rebellion can shut off its own ports to all foreign shipping,\*\*\*\*\* and outside states must accept this. Some have contended that the government may not blockade the insurgents'-held ports unless belligerency is recognized;\*\*\*\*\* while others have said that a

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\* Though such claims have been made. See, for example, the U.S. claim against Denmark in respect of the failure of the latter to recognize the U.S. as a belligerent in the War of Independence: Moore, vol. 1, Sec.60.

\*\* See especially Lauterpacht, pp. 228-30.

\*\*\* P. 49.

\*\*\*\* For early U.S. and British practice on this point, see Lauterpacht, pp. 188-90.

\*\*\*\*\* and can probably also lay mines within its own territorial waters - though not in the high seas - provided that clear warning is given. Wehberg, p.51.

\*\*\*\*\*  
eg. Castrén, p. 102.



blockade of the insurgents' ports is permissible so long as no rights on the high seas are infringed.\* But a blockade, to be legal, must be effective, and this usually involves patrolling on the high seas. Yet others have asserted that, so long as sovereignty over the territory remains with the government, it may at any time blockade insurgent-held ports; and that full effectiveness - a requirement of interstate warfare - is not even essential. A government engaged in civil war would probably be entitled to take action against a foreign merchant vessel seeking to break its blockade on an insurgent port.\*\*

The lawful government may also, in time of civil war, adopt such internal measures as may be necessary, even if they affect aliens. These measures may include limitation on freedom of movement, and the requisitioning of property. At the same time, the lawful government is under a duty to protect aliens from dangers arising out of the civil war. But in the absence of fault for negligence there is no liability for injuries to aliens due to civil war, whether caused by the government side or insurgents.\*\*\*

Although an outside state may (subject to a UN prohibition, as in the case of Rhodesia) continue normal intercourse with the rebels, it may not engage in any assistance which supports the war effort. The sending of war materials, troops and financial support is traditionally regarded as prohibited - though claims of counter-intervention provide a means for states to ignore this injunction. The action of France and Portugal in

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\* McNair, "The Law Relating to the Civil War in Spain" (1937) L.Q.R., p.483.

\*\* This situation has some similarities to the question of the Rhodesian rebellion and the *Joanna V.* The case is discussed above, p.41.

\*\*\* Borchard, Diplomatic Protection of Citizens Abroad, p. 229; Lauterpacht, p. 248-9; The Home Missionary Case, Annual Digest, 1921-2, Case no. 117.



aiding Biafra is more easily affirmed as 'lawful' by the fact of British and Russian aid to Lagos.

Outside parties - either governments, or private companies, may be placed in an embarrassing position if the rebels demand from them actions which seem prima facie to involve active support of the rebellion. This is a predicament which has faced British oil companies in Biafra. The Biafrans decreed that they would deprive the Federal Government of all customs revenue and export duties collected at Port Harcourt, as well as of the erstwhile federal revenue of companies taxes and oil rents and revenues. Shell-BP has a £200 million stake in Nigeria, mainly in the East. It normally pays rental and royalties to the Federal Government every six months. Suggestions of placing the money into a suspended acting for the duration of hostilities was unacceptable to the Federal Government and to Biafra. Biafra then suggested a compromise whereby 57.5% of the royalties and rents would be paid to the authorities in Enugu. The position was inevitably difficult for the oil companies, and particularly so when the British government was actively pro-Federal. Shell-BP, after prolonged discussions, decided to offer an initial payment of royalties to Biafra. The Federal Government now announced a blockade of Port Harcourt, and a prohibition on oil exports. The Federal Government indicated that if royalty payments were not made, the oil concessions would be lost; and when Shell hesitated to make further payments, their installations were taken over by Biafran forces and personnel imprisoned. Since that time no further payments have apparently been made to the Biafran authorities.



RECOMMENDATIONS FOR THE FUTURE INTERNATIONAL LEGAL ORDER

To draw firm conclusions in such an unsatisfactorily charted area of international law is a difficult task. I have sought to show that, in a variety of 'civil war' situations, international law purports to provide guidance on the identification of a conflict as an internal one; on the methods used to wage internal wars; on the intervention by other states and bodies; and on the relations between the protagonists and third parties.

It is clear beyond doubt that international law operates inadequately in at least the first three of these roles.

So far as the identification of a situation as a civil war is concerned, the horizontal authority whereby it is for each state to appraise the facts leads inevitably to the pursuit of different practices consequential upon such appraisals. The legal debate on Vietnam has to a large extent been a 'dialogue de sourds', because certain lawyers have seen the situation as essentially a domestic revolt, in which the United States has intervened; while others, with the same information at their disposal, and from within the same cultural background, believe the war to be a truly international one in which the United Nations is entitled to intervene. The divergence of appraisal is undoubtedly bona fide<sup>\*</sup>, and inevitably in a

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\* Though this writer has been disturbed by the way in which protagonists on each side seem to have overstated their case: one would have wished to see-and would have felt more intellectual confidence in- a debate in which some contended that the U.S. had indeed behaved badly in supporting Diem and refusing elections, had indeed increased the stakes in the war, had indeed been somewhat indiscriminate in their bombing targets, had indeed used some illegal weapons, but were nonetheless entitled to assist the South Vietnamese; while others contended that the Viet Cong had conducted warfare in a terroristic manner; had at an early stage received support from the North; were seeking to impose their views by force; but were nonetheless entitled to oppose the United States intervention. These two positions seem to this writer far closer to reality than the more extreme cases, unremitting in support for every action of the favoured side, that have been advanced. The highly informative and interesting volume, International Law and the Vietnam War (ASIL, Ed. Falk) reveals this deep cleavage, with little give and take on the middle ground.



decentralized system. There would therefore seem to be a case for suggesting that efforts be directed towards the process of appraising the domestic or international causes of the conflict. The United Nations has shown a certain ability to fulfil this role successfully, and in a variety of ways. In Laos 1959, a special Representative of the Secretary-General was used, and in the Lebanon in 1958 an Observer Group fulfilled this function. Undoubtedly, in the case of the latter, the clear assertion by UNOGIL of the domestic quality of the fighting made the tenability of the American argument in favour of the intervention very difficult, and contributed to containment and a speedy solution. National decision makers should thus support - and informed groups should press for support - of a UN fact finding role in civil wars on a regular basis. Where appropriate, regional organizations should also be encouraged to assert this competence though it is preferable for this task to be carried out by the United Nations, because bodies like the OAS and the OAU obviously have a strong predisposition in favour of the established government. Community procedures for recognition of status could also usefully be employed. The experience of Korea, and the satisfactory way in which the UN has handled recognition problems concerning Iraq, the Yemen and the Congo, indicates that it could play a helpful role in providing normative judgments on the status of the parties to a civil war. This is so notwithstanding the UN recognition and China question, which, while unhappy, is an isolated example.

On the question of conduct, it must be conceded that the provisions of the Geneva Conventions are at once too weak and too open to ambiguity. In some cases prisoners are given the status of prisoners of war, in others they are not, in some cases basic humanitarian standards are applied, in others they are not. Clearly, a new international convention to deal specifically with standards of conduct in civil war would be desirable. At the same time, it is clear that there is no practical hope of getting



consensus at an international conference on even these topics, let alone such thorny questions as the status to be accorded to guerrillas, who do not wear uniforms or insignia or bear arms openly, and yet represent a major element in the realities of civil war. There is an encouraging trend for the International Red Cross or other international observers to be invited in to witness the fighting, and the international community has a considerable stake in promoting the idea that to refuse international scrutiny is prima facie evidence of guilt. The Red Cross has visited South Vietnam camps, and UN observers (who have reported in very favourable terms) have attended Nigerian prisoner camps. When the states supporting a party in a civil war have public information media, there is a considerable, and desirable, pressure on them to use their influence to achieve desirable behaviour by their 'clients'. Thus the United States has undoubtedly improved the treatment of Viet Cong by South Vietnamese (though undoubtedly much is left to be desired) while Britain has perhaps made the Nigerian bombing of civilian centres in Biafra less than it might otherwise have been. A norm whereby the selling of arms to parties to a civil war would be strictly related to their obeying international norms of conduct, would obviously be highly desirable; but very unlikely of achievement.

The aspect of civil war which has perhaps attracted most recent attention<sup>\*</sup> has been that of intervention, or participation by outside parties. Professor Falk, in a pioneering essay,<sup>\*\*</sup> has analyzed the shortcomings of traditional international law in this regard. This writer agrees with each and every one of them. Professor Falk notes that the tendency to

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\* See Falk, op.cit., "Janus Tormented, etc"; Friedmann and Farer, "Intervention in Civil Wars: A modest proposal", 67 Columbia Law Review (1967) 266.

\*\* "Janus Tormented, etc" in International Aspects of Civil Strife.



avoid an express bestowal of status on the parties to a civil war makes it hard to establish the precise nature of claims by third states. Further, the decentralized and increasingly arbitrary assertion of claims make it impossible to standardize what is permitted and what is forbidden. He also correctly observes that the traditional rule of non-interference is incompatible with the revolutionary ideology of communist nations and the anti-colonial commitments of the Afro Asians. With the major powers - and particularly the nuclear powers - wishing to avoid direct confrontation at all costs, ideological wars are being increasingly fought in the guise of civil wars. And this high degree of substantial participation by outside groups makes inadequate the traditional 'recognition criteria' of effective government, a willingness to be bound by the laws of war, and the impingement upon the maritime and other interests of third powers. As Falk puts it

"The facts of external participation are more important than the extent or character of insurgent aspirations as the basis for invoking transformation rules designed to swing from domestic jurisdiction to international concern".

Moreover, the whole problems of civil war has changed, because they are tending to become increasingly prolonged in duration with the result that neutrality becomes increasingly difficult.

There are, of course. innumerable competing claims being made - claims employing the normative rhetoric that refers to self defence, domestic jurisdiction, non-intervention, the maintenance of international peace. This is to be expected - law is essentially a vast web of alternative claims, between which the relevant decision-maker has to choose at any given moment of time.\* Quincy Wright has suggested that, given that revolution is not

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\* This theme is elaborated by McDougal, "The Ethics of Applying Systems of Authority: The Balanced Opposites of a Legal System" in Lasswell & Cleveland, The Ethic of Power.



prohibited, no state should be allowed to intervene to stop it; though the United Nations could act if the civil war was threatening international peace.\* Falk goes further, and boldly asserts:

"It should be stressed, perhaps, that there is a need to promote certain social changes by organizing and encouraging external participation in anti-governmental insurgencies; but that this participation must itself be legitimized by a centralized process of decision and implementation". \*\*

While this writer finds Professor Falk's analysis perceptive and persuasive, she is not convinced as to the practicability of his suggestions. He proposes that a prima facie presumption of legitimate status might be given to the incumbent government; but that it would be overcome if the incumbent regime is based on colonial subordination or racial superiority; and that the regime would be classified as such by the United Nations. But this proposition avoids the realities:

First, so far as the Security Council is concerned, governments will only be condemned insofar as no physical intervention is anticipated, and no close parallel is seen to a situation in which one of the veto powers finds itself. Professor Falk's recommendation would, to be sure, avoid the formalistic pretence that sanctions are being mounted against Ian Smith because his regime is a threat to international peace. But this case is a truly unique one. Whereas Britain and America will vote for arms embargoes against South Africa, they would not vote for a resolution classifying it as an 'illegitimate' regime if they thought that the consequence was to be international participation on the side of freedom fighters in that unhappy land. (Nor, one imagines, would the United

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\* Wright, "Subversive Intervention" 54 AJIL(1960) 529.

\*\* Op. cit., p. 235.



Kingdom have allowed Ian Smith's government so to be designated, if this was the anticipated outcome). In short, resolutions are passed not simply for what is in them, but for what consequences it is thought they will entail.

So far as the General Assembly is concerned, the same point holds good to a lesser degree. Western and Scandinavian nations would be less prone to add their voice to those condemning particular governments. Further, it is very doubtful if the numerical majority at any particular time is an adequate register of normative legitimacy. Deplorable though recalcitrant colonialism and racial supremacy may be, why should these entail a classification of "illegitimacy", whereas other forms of suppression do not? Are rebels against Duvalier's regime in Haiti really to receive less support from the international community than guerrillas in Rhodesia? Is western colonialism really more repressive than communist colonialism? The answer should be in the negative; yet, if the 'illegitimizing' process is left to the Assembly, one knows that it would be otherwise.

If, then, one rejects Falk's attempt to provide centralized procedures on the problem of intervention, where is one left? This writer would reject the notion of regional hegemony. International law should not be moulded so that the United States is entitled to dictate the political system of the Dominican Republic; or the Arabs that of Israel; or the Russians that of Czechoslovakia. The importance of self determination here seems to outweigh in importance the desire for peace at any price. We have already suggested that there is effectively a norm which permits intervention by the super powers in their sphere of influence: but it permits it only in the sense that physical opposition is not usually countenanced. Opposition at every other level - diplomatic and economic - should be encouraged. And the reciprocal norm should not be extended beyond Big Power relations to areas where smaller



powers are in dispute. The risk is here more worth running.\*

Falk would seem to be correct in suggesting that if centralized procedures break down (or if, as here contended, they are inappropriate), the practice of counter-intervention must now be publicly acknowledged as an operational norm.

Professor Farer has suggested that the time is ripe for defining a norm prohibiting overt assistance by armed personnel in a civil war.\*\*

Certain all the recent practice indicates that states have paid, in either political or military terms, very heavily for direct participation; and that their decisions to send forces would not be lightly repeated. One thinks of the American experience in Vietnam, the British in East Africa, and the Egyptians in the Yemen. And direct involvement rarely occurs among non-revolutionary nations unless a foreign element is perceived participating on the other side. Thus there has been no question of Britain participating on the side of Lagos, even though its political preference has been clearly stated.

One can urge other points as relevant to decision-making. Does the traditional concept of collective defence apply in its full vigour where

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\* Cf. Falk's curious statement - as one who is in principle prepared to have the UN physically intervene in specified circumstances - that regional homogeneity "is unfortunate in many respects to compel dissenting national communities to conform to regional political preferences, but it may be indispensable for the maintenance of minimum conditions of international stability". "The Legitimacy of Legislative Intervention by the United Nations", in Essays in Intervention, p.55. Is the concern of the international community with apartheid in South Africa really based on preference of other states on the continent? Or is not the inherent lack of human dignity the real point on which apartheid is to be judged?

\*\* In his interesting article "Intervention in Civil Wars: a modest proposal" 67 Columbia Law Review (1967) 261.



the war is primarily internal, and where the domestic government is manifestly undemocratic, corrupt and authoritarian? This has, until comparatively recently, been a major query- though an inadequately debated one - on Vietnam. If the war is a colonial one, and a definite date for independence has been given (as was the case in Aden) should violence to achieve earlier independence be condoned? And by what right does a European power pronounce that Balkanisation would be disastrous for another country and that (as in the case of Biafra) this disaster of secession should be prevented by force of arms? And if a civil war is for the control of power throughout the country, does not the international community have a greater stake (though still a limited one) in the outcome than if the war is one of secession?

What I have urged here is not that centralized procedures are wholly irrelevant, but that they should be focussed on the question of fact finding and determining the status of the war, rather than on the question of intervention. If the status of the war were internationally determined, this would inevitably have consequences for the participation of other states. And this may be thought a more useful and realistic way of approaching the problem. Meanwhile, centralized pressures for social change, short of direct intervention, should certainly continue. For ultimately the internal war problem will only be resolved by removing both the causes for rebellion.\*

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\* Rosenau has helpfully pointed out that the civil wars have a twofold characteristic: they are convention-breaking and authority-oriented. Journal of International Affairs (Summer 1968) 167-70; for other useful contributions to the military, political and psychological factors operating in the civil war problem, see the essays in the same journal, particularly those by Oran Young, Adan Yarmilinsky, and Andrew Scott.



Article 2(4) and Permissive Pragmatism

Remarks of Professor Edward Gordon before the  
American Society of International Law,  
Washington, D.C., April 12, 1984

It is unfortunate that in her remarks earlier today Ambassador Kirkpatrick chose to invoke the names of two former presidents of this Society, Myres S. McDougal and the late Harold D. Lasswell, and to emphasize their influence upon her own thinking and the foreign policy of the present Administration. It surprises me to hear that either McDougal and Lasswell or the approach to legal jurisprudence associated with them has been particularly influential in the formulation of the Administration's foreign policy. That policy, I am afraid, will have to be judged on its own merit -- or lack of it. Borrowing the prestige of McDougal and Lasswell would be unnecessary if the policy had merit -- and will not help appreciably since it has none.

But the substance of her remarks does serve the useful purpose of reminding us why the study of international law is so important. We should recall, in this respect, T. D. Woolsey's advice, contained in his treatise on international law, published in 1874:

Every educated person ought to become acquainted with international law because he is a responsible member of the body politic and . . . because the executive if not controlled will be tempted to assume the province of international law for us.<sup>1</sup>

Somehow we have allowed the Executive to assume the province of international law for us. In my comments today, I would like to address a few aspects of this phenomenon.



I think it appropriate to begin with an observation made recently by Professor Georg Schwarzenberger in an essay which, coincidentally, appears in a book that deals with the teaching of international law.<sup>2</sup> Dr. Schwarzenberger refers to what he sees as a destructive trend among western international lawyers, a trend he characterizes as permissive pragmatism. He does not single out American lawyers and legal scholars. But his point seems particularly well directed at what is sometimes said to be the Achilles heel of American legal realism, especially as manifest in the international law field in the jurisprudential approach favored by McDougal and Lasswell and those of us who have been influenced by their scholarship: namely, its unusually severe susceptibility to manipulation in the cause of whatever outcome one wishes to justify. What is lawful seems to be a function of the result one favors, rather than being a matter of compatibility with prevailing rules of law. The emphasis is upon primary values, at some cost, arguably too high a cost, to the stability and compelling authority of those mediating rules that most people have in mind when they speak of "the law." In effect, the complaint is that this kind of realism merges advocacy with objective analysis, with the latter usually falling victim to the influence of the former.

I have spent too many years denying this charge to yield completely to it just yet. I continue to think that, as is generally true of the legal realism from whose roots it springs, McDougal and Lasswell's jurisprudence simply forces us to be aware of both the potency of hidden assumptions and the consequences of applying rules of law in disregard of the social outcomes to which their application may lead. But in light of the tendency among some of its adherents to apply their jurisprudential approach to international law in a way that seems invariably to justify



even the most militantly aggressive instances of American foreign policy, it becomes increasingly difficult to deny the charge that it really is too easily manipulable, too permissive, too suitable to the ends of zealots, and too likely to operate to the long-term detriment of the rule of law in international relations.

I do not suggest, of course, that the phenomenon Dr. Schwarzenberger describes is attributable solely or mostly to one school of jurisprudence. Permissive pragmatism aptly characterizes a good deal of the discussion of the legal aspects of foreign relations among those of us in this country whom Oscar Schachter has dubbed the "invisible college" of international lawyers and legal scholars. Indeed, one reason the Administration's misguided attitudes about international relations have been able to sustain the illusion of legitimacy among some opinion leaders in the United States is that we who bear a special responsibility for appraising the compatibility of international conduct with rules of international law have thus far failed to subject the Administration's conduct of foreign relations to sufficiently rigorous scrutiny.

Let me offer a case in point. A few months ago, the blue ribbon panel appointed by the President to help articulate and forge a national policy towards Central America produced their long awaited report -- the so-called Kissinger Commission Report or, more formally, the Report of the National Commission on Central America. It is a substantial document, running over a hundred and thirty pages of lean prose, with an annex of over eight hundred pages. It bears the imprimatur of a panel of experts whose ranks include, among others, a former associate justice of the Supreme Court. According to The New York Times, its two principal draftsmen were, respectively, the President of the prestigious Council on Foreign



Relations, who happens to be a graduate of The Fletcher School of Law and Diplomacy, and a former president of this Society, who is a graduate of Yale Law School. Their professional credentials and those of the members of the Commission cannot seriously be challenged, nor can it be said that the Commission lacked counsel on relevant norms of international law or United States treaty commitments. Whatever the report says, or does not say, about this law and these commitments represents deliberate choice, not ignorance or inadvertence.

There is therefore reason to be alarmed that the report utters scarcely a word about existing legal rules and treaty commitments bearing upon the use or threat of force as an aspect of our relations with the countries of Central America. No mention is made of the UN Charter, Article 2(4), Article 2(3), Article 33 or any other provision. Or of Articles 18, 20 or 21 of the OAS Charter, either. And the only references to the Rio Treaty take the form of laments that it has failed to stop the spread of communism in Latin America.

Where the report refers to treaties at all it is chiefly to say that any future agreement concerning Central America should be verifiable, should avoid any loophole that would permit the Soviet Union and Cuba to argue that whatever is not specifically prohibited is allowed, should not be ambiguous, and so on. But nothing is said that would identify as already binding on the U.S. existing treaties and non-treaty norms governing the conduct of foreign relations. Even the Constitution itself does not appear in the report to be of relevance. Nor do treaties to which the U.S. is a party, even though these too constitute the law of the land that the President and his subordinates are sworn to uphold.



You and I know that Article 2(4), for example, renders the use or threat of the use of force in international relations unlawful, other than in exceptional circumstances. But the Kissinger Commission was and its members apparently still are prepared to give the impression that inter-American relations can be carried out in something of a legal vacuum, that because our motives are just and the desired outcome desirable, any existing legal constraints are of no moment.

Why has this aspect of the report elicited so little criticism so far? One reason may be that the attitude towards law that it reflects corresponds to the impression left by a series of Supreme Court decisions, beginning with Curtiss-Wright<sup>3</sup> and extended by Baker v. Carr,<sup>4</sup> Goldwater v. Carter<sup>5</sup> and most recently Dames & Moore v. Regan:<sup>6</sup> that is, that in its foreign relations the Executive Branch operates above or at least beyond the constraints of law.

The circumstances and laws at issue in these cases have varied, and the precise holdings in them can be distinguished from one another to some extent. Moreover, strictly speaking, the Court has never said that law is irrelevant to the conduct of foreign relations. But the cumulative effect of these decisions and the opinions in which they are explained has been to leave the impression that, so far as the judiciary is concerned, the applicability of legal rules and treaty commitments to the conduct of foreign relations is something for the Executive Branch to determine for itself. The implicit message has not been lost on the members of the Executive Branch, on the Kissinger Commission or on opinion leaders in this country.

In the 1960s and 1970s, when the general outline of these decisions was coming into focus, government lawyers were saying in private as they were in pleadings that their effect was not to write international law



out of the conduct of foreign relations, but merely to leave with the Executive Branch the prerogative of deciding free from independent judicial review whether and when legal norms and treaty commitments apply to its conduct of foreign relations. They were not then persuaded that the history of law in society compels the conclusion that self-constraint is not an adequate substitute for third-party review, especially when self-constraint is subject to unusual political stresses and perceived exigencies. The frequency and importance of apparently exigent circumstances tend to be enhanced by the prospect that their sufficiency will never be amenable to independent appraisal. Some of the government lawyers who lauded the Supreme Court's decisions in the past now decry the Administration's apparent indifference to law as an element in the making and execution of foreign policy. But it is appropriate now to remind them that this attitude of indifference did not come about overnight.

Each of the leading cases in which the Supreme Court found the conduct of foreign policy to lie beyond judicial scrutiny seems to have been motivated to some extent by a feeling among the justices that what they were deciding was pragmatic, if not strictly correct. As it turns out, in this respect their contribution to the rule of law in this country is neither pragmatic nor correct, as the Kissinger Commission's attitude of indifference to international law so well demonstrates.

My concern, though, is more with our own contribution to the emergence of this attitude. We represent virtually the only continuing, informed constituency international law has in this country. Others are influenced by international law, or at least by concern that this nation and its officials conduct foreign relations with the same due regard for law as applies domestically.



And of course a fair number of political leaders and writers of opinion pieces for the editorial pages of our newspapers find it at least convenient from time to time to lace their views with allusions to international law. But it is to you and me that the integrity of the regime of international law matters most -- professionally, intellectually and, if we are honest with ourselves, even emotionally, since more than any other group in this country we have tied our sense of personal and professional identity to the idea of a world legal order and its influence.

Therefore, we are the ones at whom the charge of excessively permissive pragmatism is most pointedly and accurately levelled. What it implies, if it is correct -- and I think it is -- is that we have not kept the faith. Which brings me -- at long last? -- to Article 2(4) of the UN Charter. Simply put, even though Article 2(4) is ambiguous in important respects, even though it has been violated with disconcerting frequency and impunity, even though events subsequent to its adoption... have shown it to be less than perfectly suited to contemporary affairs, nevertheless it contains a solid, inalienable core of objective meaning independent of the judgment of national government officials and eminently worth protecting and preserving. If, therefore, we are true to our commitment to the principled conduct of foreign relations, then we should be among the forefront of those who champion the cause of Article 2(4), rather than dwelling upon its plasticity and the apparent overreach of its idealism.

Moreover, we ought best to know and to remind others of the historical context in which Article 2(4) came to be adopted and of its interrelationship to other legal norms and treaty commitments. Earlier today, we heard several necessarily abbreviated renditions of this historical background. Reference was made, as it should be, to the Covenant of the League of



Nations and to the Kellogg-Briand Pact. Undoubtedly, Article 2(4) owes some of its spirit to the principle of the "hue and cry" first articulated in Articles 10 and 11 of the Covenant. But Article 2(4) also owes some of its inspiration to the parallel development, in our hemisphere, of the principle of nonintervention as a basic organizing concept of hemispheric solidarity. Especially in light of current concern with events in Central America, that principle and its importance in twentieth century hemispheric relations cannot be emphasized too often or too much. In my judgment, its omission from Ambassador Kirkpatrick's remarks earlier today is glaring and inexcusable.

The circumstances that preceded adoption of the principle are worth noting here. The tendency of U.S. foreign policy early in this century to resolve all issues involving Latin America through force or the threat of the imposition of force is well known. Not so well remembered, perhaps, is that virtually every time the United States sent military forces into the Caribbean or Latin America, American international lawyers were quick to deny that it infringed on the sovereignty or political independence of the Latin states whose territory we were invading. Our military force, it seemed, was always employed in furtherance of principles of international law.

In 1898 John Bassett Moore said of the U.S. invasion of Cuba that it "was analogous to what in private law is called the abatement of a nuisance."<sup>7</sup>

In 1913, even while U.S. troops occupied Haiti and Santo Domingo, Charles Evans Hughes assured a meeting of the American Bar Association that the application of the Monroe Doctrine did not threaten the sovereignty or political independence of any country in South America. Our invasions



in the Caribbean, he said, were humanitarian and had been carried out in the interest of the protection of human rights.<sup>8</sup>

These instances are merely illustrative. Additional time would permit me to offer many more examples, even if I were to limit myself to the pages of the American Journal of International Law. For whatever reasons, our professional history is replete with enthusiastic endorsement of the compatibility of our hemispheric aggressiveness with prevailing norms of international law, and with explanations of the practicality of policies whose lawfulness cannot otherwise be defended.<sup>9</sup>

We should learn. Our forebears' rationalization of the use of force by the United States against the smaller republics of this hemisphere became so humiliating to Latin Americans that the delegitimation of force in the Americas became a major objective of Latin American diplomacy.<sup>10</sup> In 1927 the Inter-American Commission of Jurists recommended the adoption of a principle of noninterference that was simple, direct and uncompromising: "No nation," it said, "has a right to interfere in the internal or foreign affairs of an American Republic against the will of the Republic."

Initially, the United States opposed adoption of the principle. Then, following Franklin D. Roosevelt's election to the presidency, the United States accepted the Commission's proposal, tentatively at first (in 1933 at the Conference of American States in Montevideo), but by 1936 completely, without reservation (at the Inter-American Conference for the Maintenance of Peace, at Buenos Aires). At Buenos Aires the American states declared as "inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any of the Parties" to the declaration. Towards the



end of World War II, this principle was reiterated in the so-called Act of Chapultepec, adopted by the Inter-American Conference on Problems of War and Peace.

Thus, by the time Article 2(4) of the UN Charter came to be drafted and adopted at the San Francisco conference, the unilateral resort to armed force in foreign relations had already been deprived of legitimacy in this hemisphere, through the untiring efforts of Latin American diplomats and their insistence that hemispheric relations be based upon this bed-rock principle. Following the adoption of the Charter, the principle was embodied in the OAS Charter and the Rio Treaty, the two major instruments defining the legal regime governing international relations in the Americas. This history, it should be remembered, is not some footnote in the archives of international law. The adoption of the principle of nonintervention, its acceptance by the United States and its emergence as a preeminent element in the law governing hemispheric relations for half a century represent one of the finest achievements of Latin American diplomacy.

Surely, then, its omission from Ambassador Kirkpatrick's remarks earlier today and, I regret to add, from the heart of the Kissinger Commission's report should not go unchallenged. At best, it represents indifference; at worst, outright contempt. The effect in either case is to pretend that, like Article 2(4) of the Charter, inter-American treaty commitments are minor impediments to any inclination to interpose American military force to bring about a change of policy or governments in the Americas.



I have so little time remaining that I can only allude briefly to what was to have been the subject of the concluding portion of my remarks; that is, the techniques (other than blatant omission) international lawyers have used to justify otherwise intolerable violations of Article 2(4). I will try to be brief, mentioning only one or two and leaving to another occasion a fuller development of this topic.

One technique is to assume that the constraints of Article 2(4) have simply lapsed. In effect, that is what Ambassador Kirkpatrick was telling us today. That if not the entire UN Charter, then at least Article 2(4) is no longer legally binding. Of course, this audience should not accept any such contention. It is not justified by the terms of the Vienna Convention on Treaties. Under the Convention, the grounds she mentioned or left implicit -- e.g., obsolescence, fundamental change of circumstances, and so on -- may justify abandoning a treaty or provisions of it under certain circumstances. But they do not justify simply ignoring the treaty or the provisions so long as they remain in force.

• Other than in exceptional circumstances a state cannot violate a treaty commitment with impunity merely by saying that the commitment has simply lapsed, at least without having previously indicated its intention to renounce the treaty or to treat its provisions as having lapsed. Remember that in the International Law Commission's discussion of proposed provisions of the Convention dealing with termination, withdrawal from and the lapsing of treaty commitments the Rapporteur, Professor Waldock, pointed out that if one were to allow mere violations of a treaty to constitute grounds for treating its legal constraints as having lapsed, the effect in the case of human rights treaties would be to deprive the victims of human rights violations of the legal protection provided by treaties on the basis of those very violations!<sup>11</sup>



A second technique one sees being used is that of saying that Article 2(4) is simply one provision among many in the Charter and that in appraising the lawfulness of a state's resort to force it is necessary to refer to the purposes for which the force is employed. When Ambassador Kirkpatrick spoke to the UN Security Council last October in a vain attempt to persuade the other members of the Council that the use of force in Grenada was legally justified, she said:

The prohibitions against the use of force in the United Nations Charter are contextual, not absolute. They provide ample justification for the use of force in pursuit of the other values also inscribed in the Charter -- freedom, democracy, peace. . . . 12

Thus explained, Article 2(4) is reduced to an incidental means to the attainment of a primary goal, rather than -- as its negotiating history would suggest -- an objective rule of treaty law and, by now, general international law.

What is unfortunate is not so much that a United States governmental official should seriously advance this proposition as that we who are committed to the influence of international law should let it go unanswered. Here, too, I think the explanation lies in a kind of permissive pragmatism. But clearly I have now used the time available to me and I must hope that these brief thoughts stimulate you to wonder how pragmatic we have been, and are being, in allowing the Executive to assume the province of international law for us.



Footnotes

1. T.D. Woolsey, Introduction to International Law (1874)(Rothman reprint, 1981, at p. 355).
2. Schwarzenberger, International Law and the Problems of Political World Order: Inter-Disciplinary Working Hypotheses and Perspectives, in INTERNATIONAL LAW: TEACHING AND PRACTICE 62 (B. Cheng, ed., 1982).
3. United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).
4. 369 U.S. 186 (1962).
5. 444 U.S. 996 (1979).
6. 453 U.S. 654 (1981).
7. Quoted in Hughes, Observations on the Monroe Doctrine, 17 AJIL 611, 620 (1923).
8. Id. at 615-621.
9. Particularly good illustrations may be found in Brown, International Responsibility in Haiti and Santo Domingo, 16 AJIL 433 (1922), and Moore, Grenada and the International Double Standard, 78 AJIL 145 (1984).
10. See generally Fenwick, The Monroe Doctrine and the Declaration of Lima, 33 AJIL 257 (1939).
11. UN Doc. A/CN.4/SR.832, at para. 23.
12. Reprinted at 83 Dep't St. Bull. 74 (1983).



Intervention is one of the essential and perennial issues in international relations. This book, based on a series of lectures given at Oxford University, provides a re-examination of this issue of coercive interference by outside parties in the internal affairs of foreign states. Such a re-examination is topical because of the progress of Soviet intervention in the Third World; the recovery of belief in military intervention in the USA so soon after a period of deep disillusion about it; the scepticism evident in Western Europe about this belief; the discovery of a new rationale for intervention – or, more strictly, the rediscovery of an old one – in access to resources, especially oil; the connection that is made between intervention and human rights, and the resurgence of an old belief in humanitarian intervention; and the spate of interventionary activity occasioned by movements for national liberation – whether to suppress these movements or to assist them.

The authors of the different papers all speak with authority although none is narrowly academic. This makes the book of value to all students taking courses in international relations, strategic studies, and politics, as well as to the general reader who is interested in these subjects.

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### *World Politics*

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# Intervention and International law

ROSALYN HIGGINS

To those who are not international lawyers, it may seem very unlikely that international law has any real relevance to the question of intervention.

It is apparent that intervention can mean many different things to many people. It is perhaps less obvious that there are also very many different views about what international law is. If one views international law simply as a static set of rules formulated in a bygone age then it is apparent that it can have nothing to say on the contemporary problem of intervention. But if one perceives it, as I do, as a dynamic process of authoritative decision-making,<sup>1</sup> then it will be seen that it is very relevant to the current attempt to identify and promote acceptable limits to the impinging of one state's activities and interests upon another state's. Rules are really only the accumulated body of past decisions,<sup>2</sup> which, while an essential starting-point, tell us little about variables and still less about changing circumstances. The preferable emphasis is on international law as continuing process, a flow of legal decision-making. It is necessary also to say something about the sources of international law, so that we understand why it is appropriate to draw on particular materials in this context. International lawyers perceive the source of international law, (that is to say where we look for international law), as comprising treaties—multilateral and bilateral, but importantly multilateral treaties; custom, which is the habit evidenced in state practice of doing something through a period of time with the belief that one is obliged to act in that way; and judicial decisions.<sup>3</sup> Each of these is relevant in the context of intervention. It is also arguable that decisions of international organizations are a source of international law whether as state practice or as a special distinct category.<sup>4</sup> But



that is more controversial because quite often these decisions emanate from bodies which do not have the authority to bind their members, and consequently one looks to them not as 'rules' or 'judicial decisions' or even 'quasi-judicial decisions' but rather as part of this flow of state practice which can generate custom. They form an important part in the story we have to tell about international law and intervention.

Is there an acceptable definition of intervention in the context of international law? One perceives very rapidly that not only is it not profitable to seek such a definition, but that really one is dealing with a spectrum. This spectrum ranges from the notion of any interference at all in the state's affairs at the one end; to the concept of military intervention at the other. And if one is choosing to deal with all of these as intervention, that choice is immediately complicated by the fact that not every maximalist intervention is unlawful and not every minimalist intrusion is lawful. One cannot simply indicate a particular point along the spectrum and assert that everything from there onwards is an unlawful intervention and everything prior to that point is a tolerable interference, and one of the things we put up with in an interdependent world. It is not that simple. The purpose of the international law doctrine of intervention is, it seems to me, to provide an acceptable balance between the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other.

Let us return to this idea of the spectrum, and look first of all at minor non-violent intrusions upon the interest and assertions of sovereignty of the other state. The whole question of intervention of a non-military character is closely tied up with international law notions of jurisdiction. An unacceptable minor, non-military intrusion is a violation of a state's jurisdiction. It is universally accepted that a state has jurisdiction over events and persons within its territory.<sup>5</sup> That is known to international law as the territorial basis of jurisdiction. It is not regarded as an infringement of sovereignty or as an interference in a foreign state's affairs to assert jurisdiction over that foreign state's nationals when they are on one's own territory. Territoriality is not the only

basis of jurisdiction, however. Other alternative bases of jurisdiction do give rise to questions of unacceptable interventions. For example the United States relies much more heavily than we do on the notion of 'impact jurisdiction'. It is prepared to assert jurisdiction over foreign persons outside of its own territory if the acts they are engaged in have an adverse impact within the United States; their extraterritorial antitrust law is a classical example of this.<sup>6</sup> And this is much resented in the United Kingdom and our recent Trading Interests Act<sup>7</sup>—which many lawyers think a singular piece of legislation<sup>8</sup>—is in my view an altogether excessive and inappropriate response to that difference of perception about what is and is not tolerable in this context.

We have spoken of minor intervention really being a problem of jurisdiction. The other side of the coin is that there exist exceptions from territorial jurisdiction which would be regarded as an unwarranted intervention in the public functions of the state—even though normally one can exert jurisdiction over the nationals or events concerning a foreign state within one's own territory. International law requires restraint if that assertion of jurisdiction would intrude upon the public functions of the other state; and it is for that reason that we have the law of diplomatic privileges and immunities<sup>9</sup> and immunity for foreign states in our courts when they are acting *qua* government.<sup>10</sup>

The term 'intervention' only has a meaning measured against the question 'intervention against what?' and the answer has to be 'intervention against a state's domestic jurisdiction'—that is, intrusion upon that which is for a state alone. But what is a state's domestic jurisdiction is a relative matter, and changes through time. A celebrated international law case that came up before the Permanent Court of International Justice, the *Tunis-Morocco Nationality Decrees Case*, contained some very interesting statements about the relativity of domestic jurisdiction and international law and the ability of the line dividing the two to shift through time.<sup>11</sup> We see no better example of this than the area of human rights where we feel free to speak about all sorts of events occurring within the territories of other states, to bring pressure, indeed to exercise certain sanctions and coercion, when in bygone

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years those would have been regarded as matters essentially for the jurisdiction of the state concerned.

There is a wide range of minor intrusions upon a state's sovereignty carried on through a variety of methods. The diplomatic weapon is obviously extremely important in this context. A state normally has total freedom to establish diplomatic relations with another country or not; but when that weapon is used in a collective form such as the United Nations, one then gets not so much a collective recognition policy but rather a collective non-recognition policy where the diplomatic weapon is used as a form of sanction (a non-military sanction) against a state as a mark of disapproval of its particular policies. The case of Rhodesia was a very clear example,<sup>12</sup> as has been the call of the United Nations for the non-recognition of the South African bantustans of Transkei, Bophuthatswana, and Venda.

Trade presents many problems in the context of minor intervention. Again, one starts from the proposition that any state is free to trade with whomsoever it wants, and indeed free to terminate any trade arrangements that it has; but the reality is that expectations are built up over trade patterns—when trade patterns continue for a period of years expectations about the future are built up, and it is thus an over-simplification to say that one could therefore cut such relationships off at will. This dilemma too is reflected in contemporary events. For example, when the United States introduced its own arms and then subsequently the other forms of export bans to Iran after the taking of the hostages, it is not commonly realized that current contracts were in fact fulfilled. It was only future contracts that were prohibited, but it was regarded—at least on a unilateral basis without a Security Council directive—as inappropriate to terminate existing arrangements even in the extreme circumstances of that time. There has to be a very substantial military background (for example, the Middle East war forming the background to the 1973 Arab oil embargo) before these expected patterns are cut off without any notion of unwarranted intervention. But when one state can legally terminate trade with a prior partner, then definitionally others can join it in doing so. Parallel unilateral action then takes on the

appearance of joint action and, again, most countries in responding to the hostages episode in Iran and to the USSR intervention in Afghanistan drew the line after existing contracts had been fulfilled.<sup>13</sup> Trade sanctions, of course, arise as collective diplomatic sanctions in exactly the same way as do the other forms of diplomatic sanctions, such as non-recognition. They are mentioned in Article 41 of the Charter under which trade sanctions are permissible when ordered by the Security Council, when there has been a finding of a threat to the peace, breach of the peace, or act of aggression. The difficulty arises when there has been, for example, a failed resolution at the UN—one that has not been passed because of the veto of a permanent member of the Security Council; and then an attempt to take that same form of sanction that the veto of the resolution would have authorized. The United States, for example, called upon its allies to take with it exactly those measures that were vetoed in the Security Council by the Soviet Union in connection with Iran. And that clearly gives rise to some difficult legal problems.<sup>14</sup> On the one hand there is a resolution that has not gone through; on the other hand there is the proposition that if one country can decide not to trade then several countries can decide jointly not to trade. I think it is right to say there are no clear-cut answers here but rather a delicate balancing act.

Another area of non-military intervention that has become of major importance in the last couple of decades is the question of capital investment and economic influence as an intervention in the internal affairs of a country. This phenomenon, which in a different context is spoken of as neo-colonialism, is closely tied in with contemporary ideas of intervention in the non-military sense. The argument runs that economic influence to that degree can distort the economy; it can lead to the support of one local political party over another; it can have unwarranted influence on the government. This range of problems is not really dealt with by the law of intervention as such at all, but is rather dealt with by a body of law that international law compendiously terms the law of permanent sovereignty over natural resources. That body of law<sup>15</sup> clearly connects the freedom of countries to develop and exploit their own natural resources with the



doctrine of non-intervention on the part of other states. A brief survey of some of the leading contemporary instruments illustrates the way in which that relationship has developed. The useful starting-point is the resolution 1803 (1962) on permanent sovereignty over natural resources, which provided *inter alia* that peoples and nations had the right to permanent sovereignty over their natural wealth and resources, and that this right must be exercised in accordance with the well-being of the state concerned. That was followed within a decade by a further series of resolutions which spoke in terms of the efforts of the developing countries and of the peoples of the territories under colonial and racial domination and foreign occupation in their struggle to regain effective control over their natural resources.<sup>16</sup> And more recently there has been the so-called Charter of Economic Rights and Duties which seeks to lay out in some detail the acceptable balance in this area and the detailed articles of that Charter which is a General Assembly resolution. Article 1 states that every state does indeed have the sovereign inalienable right to choose its economic system 'without outside interference coercion or threat in any form whatsoever';<sup>17</sup> so the interrelationship is clearly there.

A further area of interest is that of intervention and human rights. Human rights have shifted from being a matter traditionally of solely domestic concern into a matter of legitimate international concern. We thus now have a situation where other parties are entitled to raise complaints in all appropriate forums without any charge of intervention being reasonably raised against them. There are of course problems about what human rights are, whether some are more 'basic' than others, whether the list is not ever expanding, and so forth.<sup>18</sup> This is not the subject-matter of this essay. But what we can say in the context of our discussion on intervention is that certainly once a human right appears in treaties it then acquires international status, and it is no intervention in the state's domestic affairs to criticize its performance in relation to that obligation. There are many such instruments today, ranging from the UN Declaration on Human Rights to the UN Covenants, which are binding instruments for the parties to them, to the UN Convention on

the Elimination of All Forms of Racial Discrimination.<sup>19</sup> But the idea that human rights are essentially still a domestic matter seems to die extraordinarily hard, and a surprising number of western politicians seem to share the Soviet view that mere verbal concern is tantamount to intervention. For example, Enoch Powell, writing about Soviet failures to implement the human rights provisions of the Helsinki Final Act said, in an article in *The Times*: 'The whole policy of Helsinki, Belgrade and the rest is a hair-raising absurdity. The relationship of the Russian state to its subjects has remained unchanged ever since the Russian state emerged . . . to try to shame or cajole or negotiate the Russian state into abandoning these convictions is like standing by the Volga inviting it to be so obliging to flow north instead of south.'<sup>20</sup> Now, of course, Mr Powell makes a fair point in inferring that the Soviet Union could not implement human rights and survive in its present form. But at the margin there is always room for improvement, and there are obviously considerable differences between various Communist countries in the implementation of different human rights, as there are in the western democracies. Freedom of movement, for example, is substantially greater even now for the citizens of Hungary than for the citizens of the Soviet Union. Where I think Enoch Powell is simply wrong is in believing that the treatment of its citizens is a matter only for 'the country concerned. Human rights have long since passed, by all the conventional criteria that I have identified, into that realm which is of legitimate international interest. We now have a variety of international instruments which actually institutionalize the possibility of states intervening in these areas. The Helsinki Final Act itself, while not technically a treaty, provides for review of progress by continual meetings between heads of state. The eastern European countries continue to contend that the aspect which is written into the Final Act itself is an unwarranted intervention in their domestic affairs, notwithstanding that it is something to which they have given their signatures, along with the substantive rights there.<sup>21</sup> And under the European Convention on Human Rights we have most unusually, a system whereby one state can now bring an action relating to a human rights violation in another



state that does not even concern its own national.<sup>22</sup> That is a considerable step forward in the diminution of old ideas about what was and was not unacceptable intervention. The doctrine of sovereignty has here been restricted to accommodate growing notions of human rights.

While examining this end of the spectrum on intervention a brief word is appropriate about non-military intervention and the United Nations itself. The key problem here is that of the celebrated domestic jurisdiction clause in the Charter—Article 2, paragraph 7. Article 2(7) provides that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of a state. It goes on to say that this provision shall not prejudice enforcement measures. Thus once there has been a threat to the peace, breach of the peace, or act of aggression, a finding of that by the Security Council, and a call for enforcement measures, then the state can no longer protect itself by claiming domestic jurisdiction. Intervention by the United Nations at that juncture becomes entirely lawful. But short of that situation, what acts are unlawful intervention? What is the status of general (i.e. not specifically directed) resolutions about affairs that do concern internal matters of states? Are they unlawful interventions? Certainly the practice of the United Nations over the years has indicated that they are not. And indeed, specific resolutions directed at individual states have been widely tolerated as a legitimate method of bringing pressure upon a state and yet not falling foul of the prohibition against intervention in Article 2, paragraph 7. One is led very near to saying that most things short of actual action by the United Nations are in fact now permissible interventions.

I now turn to the other end of the spectrum, the military aspects of intervention. The starting-point for any international lawyer must here of necessity be the two articles of the Charter—Article 2, paragraph 4, and Article 51. Article 2(4) is the basic prohibition against the use of force. That clause provides that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations.

That must be read together with the limited permission that the United Nations gives for the use of force by individual states. Article 51, which identifies self-defence, provides that 'nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations'. Then it goes on to provide that the Security Council shall act to take measures to maintain international peace and security. The prohibition against the use of force is balanced by the permission to engage in individual or collective self-defence. But individual and collective self-defence appears to be limited to armed attacks, whereas the prohibition clause is drafted more widely. Article 2(4) prohibits the threat or use of force against the territorial integrity or political independence of a state. The two sides of the coin do not entirely match. There has been a tendency among most international lawyers to interpret the phrase 'if an armed attack occurs' quite widely, so as to allow a certain measure of self-defence by way of anticipatory self-defence where the need appears to be 'instant and overwhelming and leaving no choice as to alternative means'.<sup>23</sup>

Now in this area of military intervention, as well, there has been a series of UN resolutions, which again are General Assembly resolutions and not technically binding. For example, there has been the Declaration on Friendly Relations between Nations<sup>24</sup>—a Declaration which was the outcome of several years of legal negotiations, and not a hasty political compromise. The Declaration attempts to elaborate the Charter articles on the use of force. It proclaims the principle that the use of force constitutes a violation of international law, and proceeds to the principle concerning the duty not to intervene. No state or group of states has the right to intervene directly or indirectly for any reason whatever, in the internal or external affairs of any other state. Consequently armed intervention and all other forms of interference or attempted threats against the personality of the state, or against its political, economic, and cultural elements are in violation of international law. The Declaration proceeds to provide that no state may use or encourage the use of economic, political, or other types of measures to coerce another state, in order to

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obtain from it the subordination of the exercise of its sovereign rights. No state shall organize, assist, foment, finance, incite, or tolerate subversive, terrorist, or armed activities directed towards the violent overthrow of the regime of another state. Though this resolution was arrived at after many years of negotiating, there are very few states which take seriously what is in it. Those from one political corner read in an implicit exception as regards finance and support of armed activities directed towards another state, when these armed activities are those of 'national liberation movements' overthrowing colonial or alien government. And certainly many states regard it in practice as entirely acceptable to bring various pressures to bear, to influence the internal or external events of other states. One thus has constantly the problem of identifying the reality, and measuring it against the rhetoric.

One of the most interesting and difficult areas has been the question of humanitarian intervention and international law. Again our starting-point has to be Article 2(4) of the Charter. Is a state entitled to intervene in another state, by the use of force for humanitarian purposes?—for example, rescue its own citizens or indeed, more unusually, to rescue other citizens, or to rescue 'kith and kin' in difficulty? Article 2(4) of the Charter clearly prohibits the use of force against the territorial integrity or political independence of a state, and it also contains the 'catch-all' prohibition 'or in any other manner contrary to the Charter'.

Article 51 only allows the use of force in self-defence. Is rescuing one's nationals abroad really what is meant by self-defence? The case law indicates that to be rather doubtful. The leading cases on this bring me to the view that the only thing one can do is to try and make a contextual case-by-case appraisal of all the circumstances.<sup>25</sup> The so-called intervention at Mogadishu seems not really an intervention at all. The rescuing of the persons on the hijacked aeroplane there, while implemented by external elements, was none the less carried out with the consent and indeed at the request of the host state; we call it 'intervention' at our peril.

The case of the rescue of persons on a hijacked plane in Cyprus is a more difficult case. On the one hand, the Cyprus government certainly was not acting as 'host' to the terrorists

in any sense—and indeed was endeavouring to negotiate for the safe release of the hijacked persons—but on the other hand it had set its face against military action. And when military intervention by the Egyptians occurred, there was in fact a loss of life and a great deal of resentment by Cyprus. The facts make this incident fall in a different category.

The case of Entebbe is on its own facts very much clearer. Here the government was undoubtedly supporting the hijackers, and not engaged in any attempts to secure the release of the hijacked persons. In those circumstances it seems to me there is at least a case to be made that an 'in-and-out action' by a foreign state is lawful, and does not in any real sense infringe the territorial sovereignty or political independence of the state. (I appreciate that any brief intrusion is, at the formal level, really an infringement of the territorial sovereignty.) But the point is that one cannot read legal texts as if they tell one all the answers, regardless of the factual context in which they are to be applied. The text has to be applied contextually in any given circumstances, looking at all the variables. None the less, the Entebbe action by the Israelis was categorized by the Secretary General of the United Nations as 'a flagrant aggression'.<sup>26</sup> I have some difficulty in understanding how he could reach that conclusion so decisively.

Yet another problematic case arose from the holding of the United States hostages in Iran. There the state itself was, as it were, the hijacker, and all alternative means of redress had been tried over a very significant period of time. The United States had been at pains to go to the Security Council, and then the General Assembly, and then the International Court of Justice, and to try economic sanctions, before it was finally moved to attempt military intervention. The great difficulty, even if one is prepared to look at this problem relatively and contextually, is that it is extraordinarily hard to see how it ever could have been successful on an 'in-and-out' basis. It is difficult to see that the hostages, held in the Embassy compound, could have been rescued simply by a lightning swoop that would not have been in any extended sense an intrusion upon the internal affairs of Iran. One imagines that the action would have involved some form of overthrowing or



restricting of the government concerned. And the other great difficulty was that the intervention occurred in fact while the matter was before the International Court of Justice, of which an Advisory Opinion had been requested.<sup>27</sup> One can only surmise that this happened because of military advice as to the most appropriate moment for the intervention, since until then the Americans had been so painstaking about using, very systematically, the non-military route. The International Court of Justice was clearly very disquieted about it. The International Court was not asked about the intervention—it had simply been asked about the lawfulness of the taking of the hostages. But in giving its reply to that legal issue it did take the opportunity to say that it felt it inappropriate to have to be answering that question against that particular military backdrop.<sup>28</sup>

Finally, we come to the question of intervention and civil war. When one is dealing with military intervention in the context of Article 2(4) of the UN Charter, one is really simply dealing with the lawful and unlawful use of force. To call it 'intervention' is simply a value-laden way of saying it is an impermissible use of force. Care should be taken about doing this in any lawyerish context, however. For example, the Declaration on the Definition of Aggression<sup>29</sup> makes it clear that 'aggression' is not 'intervention'. 'Aggression' involves the military use of force and the unlawful military use of force. 'Intervention', as we have seen, is a term used to describe a spectrum of intrusions—some major, some minor, some lawful, some unlawful. One has to guard against using these phrases loosely and in an identical sense. 'Intervention' in the military context has some reality to the international lawyer in the context of humanitarian intervention, and in the further context of participating at some level in civil wars, in internal wars. The traditional classical international law has it that once the insurgent party in a civil war has reached a certain standing, the status which affords it the right to be regarded by the international community as a belligerent (that is to say it has effective control over substantial parts of the territory and an organized fighting unit) requires third parties to be neutral in their relationships with each of the warring factions.<sup>30</sup> The reality is vastly different. Indeed, there is

evidence that the law is perceived differently today. The constitutional government will often itself ask for outside help. It will say that as the constitutional government it is indeed entitled to ask for help. The insurgents will themselves ask for help on the grounds that they are engaged in a battle for self-determination, or to overthrow an undemocratic government or a government that has been engaged in repression of human rights, or they will say they are entitled to recognition as the government perhaps of a ceded part of the territory.<sup>31</sup> Looked at from the perspective of the outside states which have to respond to these requests to intervene, there are many arguments that can reasonably be adduced in favour of supporting the existing government. First of all, they will be able to argue that what is going on in the country concerned is at the moment mere insurgency, mere rebellion; it has not reached that level where neutrality is required. (But conversely, the responding state must bear in mind the growth of the contemporary doctrine of the right of self-determination. If a government is always entitled to ask for the assistance of an outside power it is hard to see the right of self-determination as a reality in the hands of a fighting secessionist or other rebellion movement.) Secondly, it is said that arms may continue to be sold to the lawful government provided that the belligerency has not been recognized. And sometimes it seems to be thought that it is perfectly appropriate for arms to be sold to recognized governments virtually regardless of the status of the rebels. For example, the then Secretary of State for Commonwealth Affairs, speaking in the House of Commons on the Biafra episode, which objectively appeared to fulfil the criteria of a fully fledged civil war, said neutrality was not a possible option for HM Government at that time. Britain might have been able to declare itself neutral if one independent country was fighting another, but this was not a possible attitude when a Commonwealth country with which we had long and close ties was faced with an internal revolt. Such neutrality, he said, would not have been understood or appreciated by other Commonwealth countries.<sup>32</sup> This is strikingly different from the traditional understanding of international lawyers, and one cannot help but notice that really all the arguments



militate towards intervention. One hears that one is under a treaty obligation to sell arms to the lawful government, and that it will be a hostile act to cease supply once war begins—including an internal war. One hears that it is necessary to intervene because in fact the insurgents themselves are being assisted by other states so that some form of balancing act is needed. And indeed, as regards the Nigeria question one heard it argued that it was necessary for us to intervene on behalf of the government because the government itself was being assisted by those we did not regard as our allies. And at the political level it is frequently contended that it is necessary for a superpower to intervene because an internal war is occurring within that power's sphere of interest. The realities all militate in favour of intervention. And the task of the international lawyer over the next few years is surely not to go on repeating the rhetoric of dead events which no longer accord with reality, but to try to assist the political leaders to identify what is the new consensus about acceptable and unacceptable levels of intrusion. We have seen from the things I have said about the non-violent part of the spectrum of intervention that international law can accommodate itself to changes here. It should not be impossible for us to be prepared to adapt ourselves to these new tasks. Having said that, there are clearly no easy answers, and indeed in so many of these areas international law cannot itself provide the answers; it can only assist in formulating answers when there is a sufficient political consensus to move towards that. But international law is part of and not extraneous to the current debate on the limits and control of intervention.

## NOTES

- 1 See Higgins, 'Policy Considerations and the International Judicial Process', 17 *International and Comparative Law Quarterly* (1968), 58.
- 2 See McDougal, 'Law as a Process of Decision: A Policy-Oriented Approach to Legal Study', 1 *Natural Law Forum* (1956), 53; McDougal, Lasswell, and Reisman, 'The World Constitutive Process of Authoritative Decision', 19 *Journal of Legal Education* (1967), 253.
- 3 Along with general principles of international law and (as a subsidiary

- source) the writings of leading jurists, see Article 38 of the Statute of the International Court of Justice.
- 4 See Higgins, *The Development of International Law through the Political Organs of the United Nations*, ch. 1; Castaneda, *Legal Effects of United Nations Resolutions* (1969); Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations* (1960); di Qual, *Les Effets des Résolutions des Nations Unies* (1967).
  - 5 For example, Brownlie, *Principles of Public International Law*, 2nd edn. 290–8; Mann, 111 *Recueil des Cours* (1964), vol. 1, pp. 9–162; Akehurst, 'Jurisdiction in International Law', *British Yearbook of International Law* (1972–3), 145.
  - 6 As exemplified in the Sherman Act of 1890, 15 USC, ss. 1–7 (1976); and the court applications thereof, e.g. *American Banana v. United Fruit Co.*, 213 US (1909), 347; *United States v. Aluminium Co. of America Case*, 148 F. 2d 416 (2d Cir. 1945); *Timberlane Lumber Co. v. Bank of America*, 549 F. 2d 597 (9th Cir. 1976).
  - 7 *Protection of Trading Interests Act*, 1980.
  - 8 See e.g. Tsois, 'Section 6 of Great Britain's Protection of Trading Interests Act: the Claw and the Lever', 14 *Cornell International Law Journal* (1981), 457; and Huntley, 'The Protection of Trading Interests Act 1980—Some Jurisdictional Aspects of Enforcement of Antitrust Law', 30 *International and Comparative Law Quarterly* (1981), 213.
  - 9 See for example, Vienna Convention on Diplomatic Relations, 500 UNTS 95; Denza, *Diplomatic Law* (1976); and Hardy, *Modern Diplomatic Law* (1978).
  - 10 The common law has recently moved from absolute immunity to qualified immunity, i.e. immunity only in respect of *acta jure imperii*. See Higgins, 'Recent Developments in the Law of Sovereign Immunity in the United Kingdom', 71 *American Journal of International Law* (1977), 423. This immunity is affirmed in the 1978 State Immunity Act.
  - 11 *Tunis-Morocco Nationality Decrees Case*, PCIJ Series B, No. 4.
  - 12 Security Council Resolution 216 (1965), 12 Nov. 1965; Security Council Resolution 277 (1970), 18 Mar. 1970 (Rhodesia); General Assembly Resolution 2775E (XXVI) 29 Nov. 1971; General Assembly Resolution 3411D (XXX) 28 Nov. 1975; General Assembly Resolution 31/6A, 27 Oct. 1976 (Bantustans).
  - 13 See e.g. 5th Report Foreign Affairs Committee, House of Commons, para. 36; Higgins, 'Legal Responses to the Iran Crisis', *Proc. Am. Soc. Int. Law* (1980), 250.
  - 14 Higgins, *op. cit.*, *supra* n. 13 at 251.
  - 15 On which there is now a vast literature. For an introduction, see Schachter, *Sharing the World's Resources*; Brownlie, 'Legal Status of Natural Resources in International Law', *Recueil des Cours* (1978), vol. IV, 249.
  - 16 General Assembly Resolution 1803 (XVII), Dec. 14 1962; General Assembly Resolution 3201 (S-VI), May 1 1974.



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- 44 *Intervention in World Politics*
- 17 General Assembly Resolution 3281 (XXIX), Dec. 12 1974. See especially Article 2 thereof for a detailed statement on the treatment of foreign investment.
- 18 For a thoughtful analysis of some of these questions see Bilder, 'Rethinking International Human Rights: Some Basic Questions', *Human Rights Journal* (1969), 557. See also McDougal, 'Human Rights and World Public Order: Principles of Content and Procedure for Clarifying General Community Policies', 14 *Virginia Journal of International Law* (1974), 387; and Milne, 'The Idea of Human Rights: A Critical Enquiry' in *Human Rights, Problems, Perspectives and Texts*, ed. Dowrick (1979).
- 19 660 UNTS 195 (Racial Discrimination Convention); UN Doc. A/810 (Universal Declaration); European Treaties Series No. 5 (European Convention on Human Rights); 6 *International Legal Materials* (1967), 360, 368 (Covenants on Human Rights).
- 20 *The Times*, 24 June 1977.
- 21 See Henkin, 'Human Rights and Domestic Jurisdiction' in *Human Rights, International Law and the Helsinki Accord*, ed. Buergenthal (1977).
- 22 Article 24 European Convention on Human Rights provides for interstate complaints.
- 23 The test enunciated in *The Caroline*, Moore, *Digest*, vii, 919.
- 24 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, 9 *International Legal Materials* (1970), 1292. See further Ronzitti, 'Resort to Force in Wars of National Liberation' in A. Cassese (ed.), *Current Problems of International Law* (1975).
- 25 For different views on the problem of humanitarian intervention, see Lillich (ed.), *Humanitarian Intervention and the United Nations*; Brownlie, 'Humanitarian Intervention' in *Law and Civil War in the Modern World* (ed. J. Moore, 1974), p. 217; Frank and Rodley, 'The Law of Humanitarian Intervention by Military Force', 67 *American Journal of International Law*.
- 26 See, *inter alia*, Paust, 'Entebbe and Self-help', 2 *The Fletcher Forum* (1978), 86; Salter, 'Commando Coup at Entebbe: Humanitarian Intervention or Barbaric Aggression', 11 *Int. Lawyer* (1977), 331.
- 27 *Case Concerning U.S. Diplomatic and Consular Staff in Tehran (USA v. Iran)*, ICJ Reports (1980).
- 28 *Ibid.*, paras. 93-4.
- 29 Resolution on the Definition of Aggression, 13 *International Legal Materials* (1974), 710.
- 30 Lauterpacht, *Recognition in International Law*, and Castren, *Civil War*.
- 31 Higgins, 'Internal War and International Law' in *The Future of the International Legal Order*, eds. Falk and Black.
- 32 Hansard, 27 Aug. 1968, cols. 1146, 1443-4.

## 4 Superpower Intervention

PHILIP WINDSOR

It is fashionable, at present, to suggest that the old Westphalian system of a world of non-interventionist states is on the decline, and that the dangers of growing intervention by different powers in the affairs of other states have been on the increase. The Westphalian system represented some remarkable achievements: the absolute sovereignty of a state rested on a dual basis whereby internal authority was matched by freedom from external interference; and in this way the principle of *cuius regio eius religio*, codified in the Religious Peace of Augsburg, laid the foundation of the modern state system. Today, these achievements are regarded with a degree of nostalgia, and there is a widespread assumption that the current threats to the system represent something new. Yet if one looks at the recent history of the world, it seems that this non-interventionist system of sovereign states, providing states with the domestic freedom to conduct their own affairs as badly as they like, is in many respects rather stronger than it used to be. At the height of the imperial era, or even in the 1920s, states which failed to pay their debts were liable to be bombarded by their creditors. Today a state in default merely asks for a reschedule. Its creditors meet, grant it more money to pay even more interest on further debts, and the nearest anyone comes to interference is that the International Monetary Fund might lay down conditions for a substantial advance. This applies not merely to a case like that of Poland, but also to countries in Latin America, the Middle East, or the developing world. The non-interventionist system is still strong in many respects and its strength has indeed increased. But at the same time a general assumption persists of a world so dominated, indeed permeated, by sheer power that it becomes almost futile to discuss the question of intervention by the superpowers because it is like asking what contribution oxygen makes to our ability to breathe in the atmosphere.

Foreign Ministry: Summary of 6/8/84





FILE

67

10 DOWNING STREET

THE PRIME MINISTER

26 September, 1984

Dear Professor Higgins,

I was sorry to hear that you will not be able to come to the Seminar on 1 October but most grateful for the thought-provoking note that you have sent. I am sure that many of the points you raise will come up in the discussion and it is a shame that you will not be there to help us. Would you agree to my circulating your note to the other participants in the Seminar?

With best wishes.

Yours sincerely  
Raymond Dalitz

Professor Rosalyn Higgins.

67



E.R.  
PRIME MINISTER

P.  
M.

FOREIGN POLICY SEMINARS

Antony Acland has suggested that, for the NATO Strategy seminar, you might like to have a two-man secretariat at a separate small table, to make a record of the proceedings. One would be from the MOD, the other from the FCO. They would not participate in the discussion or attend the lunch - which would anyway be difficult since we are already 23.

The alternative is to proceed as planned i.e. for Bryan Cartledge and me to do the record, which helps keep total numbers in the room down.

I am bound to say that I think this proposal is a way to smuggle more officials into the seminar.

Agree to stick to original plan?

CDD

Yes ✓

26 September 1984





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MR POWELL

Chequers Seminar

As we agreed, I attach a draft Steering Brief (which you will wish to tailor to match the format of other briefs) for the NATO half of the seminar on 1 October. No Great Thoughts, I fear: it is very well-trodden ground!

B G Cartledge

26 September 1984





10 DOWNING STREET

Prime Minister

Is Intervention Ever Justified?

You may like to  
glance at this contribution  
from Rosalyn Higgins, who  
unfortunately can't attend  
the seminar.

Some fair points, but  
a very weak piece  
at the end on the  
Containment of Communism.

CDP  
24/9.  
Liz Kendall -  
I must write her  
thanks and







If this is on the lines which you find useful, I will do a similar note for the NATO Strategy seminar.

EDP

21 September 1984

RAMADT



The London School of Economics and Political Science  
(University of London)

Telephone: 01-405 7686  
Telegrams: Poleconics, London  
Telex: 24655 BLPES G  
LAW DEPARTMENT

Houghton Street,  
London WC2A 2AE

21st September, 1984.

Mr. Charles Powell,  
Private Secretary,  
10 Downing St.,  
London, S.W.1.

Dear Mr Powell,

Thank you very much for your letter  
of 5th September and enclosed background  
paper.

I enjoyed reading the paper and feel  
that it should stimulate a fruitful  
discussion. I enclose some comments  
arising from it. *(see files at back of file)*

Yours sincerely,

Rosalyn Higgins

Rosalyn Higgins





10 DOWNING STREET

*From the Private Secretary*

17 September 1984

Foreign Policy: Possible Conflict of Principles

Thank you for your letter of 13 September enclosing a further paper on this subject, suggesting some guidelines for policy.

The Prime Minister has read this with interest and agrees that it should be discussed by the official participants in the Seminar only, after dinner on 1 October.

I am sending copies of this letter to Richard Mottram (MOD), Colin Farthing (Mr. Stanley's Office, MOD), Sir Antony Acland (FCO), Sir Clive Whitmore (MOD), Chief of Defence Staff, Sir Percy Cradock and Bryan Cartledge.

Charles Powell

L.V. Appleyard, Esq.,  
Foreign and Commonwealth Office.

CONFIDENTIAL UK EYES A



From: THE PRIVATE SECRETARY

*cell*



NORTHERN IRELAND OFFICE  
WHITEHALL  
LONDON SW1A 2AZ

Charles Powell Esq  
10 Downing Street  
LONDON  
SW1

17<sup>th</sup> September 1984

*CDP*  
*17/9.*

*Dear Charles*

POSSIBLE CONFLICT OF PRINCIPLES IN FOREIGN POLICY SEMINAR :  
CHEQUERS, 1 OCTOBER

*- WMLP*

Thank you for your letter and enclosure of 10 September.

As you surmised in your postscript, the Secretary of State does not think that he could now very easily attend the Chequers Seminar. He is grateful to the Prime Minister for understanding the position. The Secretary of State will, however, be studying with interest the papers you sent, since he certainly still retains a keen interest in foreign policy!

*Yours Sincerely*

*Neil Wand*

*for* G K SANDIFORD  
*(in Belfast).*



Foreign Bureau June '84

Sumner



11 7 SEP 1984





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Prime Minister

Foreign and Commonwealth Office

London SW1A 2AH

13 September 1984

This is being circulated  
to official participants in  
the seminar only. It is  
a good, clear piece  
of work and should make  
for a stimulating discussion.

Dear Charles,

CDP

Foreign Policy: Possible Conflict of Principles

13/9.

Thank you for your letter of 10 September. In your earlier letter of 2 August to Colin Budd you asked for a paper covering the points set out in his letter to you of 30 July and suggesting some guidelines for policy.

I now enclose such a paper. As you asked, it does not attempt to draw any hard and fast conclusions. The Foreign Secretary emphasises that it is intended only as a basis for the discussion at Chequers of the implications for British policy. It should in no sense be taken as constituting agreed policy recommendations, which could only follow after further consideration.

The Foreign Secretary suggests that the Prime Minister may wish to consider, as an outline agenda for the discussion by Ministers and officials on 1 October, inviting participants to test the guidelines for policy in the second half of the paper against three possible scenarios for American intervention in Nicaragua:

- (a) a limited operation, such as a rapid air strike, to neutralise elements in the Nicaraguan Armed Forces' armoury;
- (b) a general quarantine on Nicaragua designed to undermine the Sandinista regime and create disorder, thus providing a pretext for intervention: and
- (c) a full-scale invasion by ground forces intended to install a new regime in Managua.

I am copying this letter and enclosure to Richard Mottram (MOD), Colin Farthing (Mr Stanley's office, MOD), Sir Antony Acland (FCO), Sir Clive Whitmore (MOD), Chief of Defence Staff, Sir Percy Cradock and Bryan Cartledge.

Yours ever,

Len Appleyard

(L V Appleyard)  
Private Secretary





done  
NR 1319

Duty Clerk

10 DOWNING STREET

Pl. sent to ~~Mr.~~

Mr. Cartledge under

my comps:

(a) paper on

NATO strategy

(b) paper on Is

intervention justified?

(c) Timetable for

foreign policy

review.

[But not list of  
participants.] con.



PRIME MINISTER

Foreign Policy Seminar at Chequers:  
1 October

Acceptances for the two foreign policy seminars are now complete and total 21 for each (including you). I have not so far invited Sir Robert Armstrong. There have been a number of bids to be included, but I have thought it important to keep the numbers in bounds, and to limit official participation so far as possible to those dealing directly with the issues under discussion,

However, it is clear that Sir Robert Armstrong would like to attend. Agree that he should be invited?

C.D.P.

Yes mk

12 September, 1984.



RESTRICTED



10 DOWNING STREET

*From the Private Secretary*

11 September, 1984.

Foreign Policy Seminar: NATO Strategy

Thank you for your letter of 5 September enclosing a revised paper on the strategy of flexible response for the Seminar on NATO Strategy on 1 October. The Prime Minister is content for the paper to issue, and I am circulating it to the non-official participants in the Seminar.

I am sending a copy of this letter to Colin Budd (Foreign and Commonwealth Office).

Charles Powell

R.C. Mottram, Esq.,  
Ministry of Defence.

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RESTRICTED

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MFJADS



10 DOWNING STREET

? Return to No 10.

Handwritten initials.

From the Private Secretary

10 September 1984

NATO STRATEGY SEMINAR: CHEQUERS, 1 OCTOBER

I enclose:

- i. a programme for the seminar;
- ii. a list of the non-official participants; and
- iii. the paper which has been circulated to non-official participants, as background to the discussion.

Charles Powell

Hayden Warren-Gash, Esq.,  
Foreign and Commonwealth Office

RESTRICTED



RESTRICTED



MKTADS

file

10 DOWNING STREET

*From the Private Secretary*

10 September 1984

Foreign Policy Seminars: Chequers, Monday 1 October

I enclose:

- i. a programme for the two Foreign Policy Seminars on 1 October.
- ii. lists of the non-official participants in them; and
- iii. the two papers which have been circulated to the non-official participants, to serve as background for the discussion.

A further paper suggesting conclusions which might be drawn for government policy on the Possible Conflict of Principles will be circulated, to official participants only, before the seminar.

I am copying this letter and enclosures to Richard Mottram (Ministry of Defence), Colin Farthing (Mr. Stanley's office, MOD), Sir Antony Acland (Foreign and Commonwealth Office), Sir Clive Whitmore (Ministry of Defence), Chief of Defence Staff, Sir Percy Cradock and Bryan Cartledge.

Charles Powell

Len Appleyard Esq  
Foreign and Commonwealth Office

RESTRICTED



POSSIBLE CONFLICT OF PRINCIPLES IN FOREIGN POLICY

SEMINAR, CHEQUERS, 1 OCTOBER

Programme

1630 - 1845 Full Seminar on Conflict of Principles

1900 - 2030 Continue discussion over dinner

2045 Unofficial participants depart

2100 - 2200 Consider policy implications with officials



NATO STRATEGY SEMINAR: CHEQUERS, 1 OCTOBER

Programme

- 0930 - 1215 Full Seminar on NATO Strategy
  
- 1230 - 1400 Continue discussion over lunch
  
- 1400 Unofficial participants depart
  
- 1400 - 1530 Consider policy implications with official participants



NATO STRATEGY

Professor Lawrence Freedman

Professor Sir Hermann Bondi, KCB, FRS

Sir Arthur Hockaday, KCB, CMG

Professor Laurence Martin

Dr. Robert O'Neill

Admiral Sir James Eberle, GCB

Lord Cameron of Balhousie,  
GCB, CBE, DSO, DFC

Professor Peter Nailor

Sir Clive Rose

CONFLICT OF PRINCIPLES

Professor Derek Bowett, CBE

Dr. Elihu Lauterpacht, QC

Sir Ian Sinclair

Colonel Jonathan Alford

Professor Headley Bull

Professor Elie Kedourie

Sir Anthony Parsons, GCMG, MVO, MC

Lord Thomas

Mr. Peter Calvocoressi





FUE

(RAMACV)

10 DOWNING STREET

*From the Private Secretary*

10 September, 1984

The Prime Minister was very pleased to hear that you are able to take part in the Seminar on NATO strategy and its rationale in the mid-1980s to be held at Chequers on 1 October.

I enclose a copy of a paper which is intended to serve as background for the discussion. I should be grateful if you would treat it as solely for your personal information and use. I also enclose a list of those expected to take part.

Mrs. Goodchild will shortly be writing to you with details of how to get to Chequers and of accommodation where this has been requested.

I look forward to seeing you at the Seminar. Please do not hesitate to contact me if you have any questions.

(C.D. Powell)

sent to non-official participants



ccpe



MINISTRY OF DEFENCE  
MAIN BUILDING WHITEHALL LONDON SW1  
Telephone 01-~~8337002~~ 218 2111/3

MO 9/13

Prime Minister

5th September 1984

This is a revision of the paper which you justly criticized in July. It is a considerable improvement.

Yes not

Agree that I should circulate it to non-official participants in CP's seminar? Yes

Dear Madam.

FOREIGN POLICY SEMINAR: NATO STRATEGY

CJP 6/9.

Thank you for your letter of 6th August about the Prime Minister's forthcoming Seminar on NATO Strategy.

/ As requested, I attach a revised paper. This concentrates, as the Prime Minister wished, on the question of the continuing validity of the strategy of Flexible Response. I also attach a list of key points which it seems to us might sensibly form the basis for discussion. You may feel it would be worth forwarding these to the outside participants together with the paper itself.

I am copying this letter and the attachments to Colin Budd, (FCO).

Yours ever,

Richard Mottram

(R C MOTTRAM)

C Powell Esq



IN CONFIDENCE

FLEXIBLE RESPONSETHE ORIGINS AND NATURE OF FLEXIBLE RESPONSE

1. NATO's security is based on the twin approaches of deterrence and defence. Deterrence seeks to influence decisively and positively the calculation of the leaders of the Soviet Union that they would run an unacceptable degree of risk regardless of the nature of an attack: if deterrence fails, NATO's declared aim is, by carrying out a robust forward defence, to restore the status quo ante using a level of force as far short as possible of an all out strategic nuclear exchange. NATO's present strategy is one of flexibility in response to aggression, and seeks to blend into an overall strategic consensus the disparate elements which form NATO's military and political posture.

2. 'Flexible Response' was adopted in December 1967 after some ten years' of debate about the Alliance's strategic posture. The previous strategy - massive nuclear retaliation - which dated from 1956, assigned to NATO's (weak) conventional forces the tasks of:

- a. forcing the aggressor to mobilize for an attack (thereby increasing the warning time to NATO).
- and
- b. holding him as far forward as possible just long enough for the certain and overwhelming nuclear response to be made.

IN CONFIDENCE



IN CONFIDENCE

3. This 'tripwire' was accepted by the Europeans in particular who were able to see that it:

- a. linked the defence of the US inextricably with Europe.
- b. provided a less expensive alternative to maintaining the size of conventional forces that would otherwise have been needed to ensure defeat of a Soviet conventional attack.

But even during the late 50s, developments in Soviet nuclear capabilities were undermining the credibility of tripwire. These encompassed the introduction of Soviet long/medium range bombers, and the development of ICBMs. The attainment in the 1960s by the Soviets of the ability to strike US territory with nuclear weapons (along with their overwhelming conventional forces) destroyed the credibility of 'tripwire' because the deterrent threat that the US would automatically launch a strategic nuclear attack on Russia to defeat conventional aggression had irretrievably lost its force. As de Gaulle was reported to have said "No US President will exchange Chicago for Lyon".

4. Some 10 years lapsed between the first suggestion that NATO should revise its strategy and the adoption of the strategy of flexible response. In the course of that process, described in a recent US Report as "the longest and

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most divisive debate in the history of the Alliance", virtually every issue that has emerged in the current questioning of NATO's strategy was addressed in depth in the Alliance: the reliability of the US nuclear guarantee; the feasibility of achieving a satisfactory conventional balance in Europe; the benefits and risks of first use of nuclear weapons; and the implication for deterrence of stronger conventional defence and a 'higher' nuclear threshold.

5. France has pursued an independent nuclear policy which is akin to 'tripwire'. Although there is potential for more flexible employment options inherent in her modernisation plans and an enhanced role for conventional forces, she remains sceptical about NATO's strategy of flexible response, and the declared role of her theatre weapons remains that of a "final warning" of a strategic nuclear response. Such a policy would not suit NATO's sophisticated theatre nuclear doctrine and is made possible only by the unique position of France who, though outside NATO's military structure, nonetheless enjoys the shelter of the US strategic umbrella and the "glacis" provided by the FRG. Many analysts doubt the credibility of France's nuclear stance, notwithstanding these advantages.

6. There are three key principles underlying NATO's deterrent strategy:

- a. a manifest determination to act jointly and defend NATO's Treaty Area against all forms of aggression.

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- b. a recognisable Alliance capability to respond effectively at all levels of aggression, and to escalate if necessary.
- c. a flexibility in response which would prevent the Soviet Union from predicting with confidence NATO's specific response to aggression, and which will lead the Soviet Union to conclude that an unacceptable degree of risk would be involved regardless of the nature, place and time of an attack.

These three principles are built on a coalescence of political will and military posture. Both aspects must be demonstrable and credible to the potential aggressor (and also to electorates) if NATO's deterrent strategy is to succeed.

7. It is implicit in the Alliance, whose treaty states that "an armed attack against one ... shall be considered an attack against them all", that all members participate on an equal basis in the process of decision-making. And it is also central that the Alliance should send to the Soviet Union clear signals of continuing political cohesion and of its political will to mount direct defence and to escalate where necessary to whatever level is needed to persuade the aggressor to pull back. This demonstration of cohesion - which should not be confused with absolute harmony at all times - must be maintained in peacetime and, critically, in a period of rising tension. Failure to maintain a clear signal, especially during tension, could allow the Soviets to (mis-) calculate that NATO's political determination, and thus its military capacities, would crumble in the face of actual aggression.

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8. There are three basic components of NATO's military posture:

a. conventional forces - to deter and counter as far as possible any Soviet non-nuclear attack by direct defence, with an implicit threat of escalation to the use of nuclear forces.

b. theatre nuclear forces - to provide an additional deterrent to conventional attack, and also to Soviet use of TNF; and to provide NATO with a range of nuclear options short of a strategic exchange, but which demonstrates our willingness to escalate the conflict to the strategic nuclear level if necessary.

c. strategic nuclear forces - to be able to inflict unacceptable damage on the Soviet Union even after a Soviet pre-emptive first strike, and to provide the ultimate threat to deter Soviet aggression.

COMPROMISES IMPLICIT IN FLEXIBLE RESPONSE

9. The conclusions which were reached in 1967 are based on a series of compromises that reflected the (differing) views of the US and its Allies. In some instances the compromises stem from geography: others derive from markedly different political viewpoints. In every case, however, the compromise was built on the desire not to expose cracks between the US and Europe: these same potential differences remain, albeit below the surface, within the Alliance today.

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10. There are some military penalties to be paid in a slavish interpretation of forward defence - a cardinal military precept once hostilities have started is to use depth in defence to give our forces greater protection and more freedom of action - and the resultant deployments in the FRG do not necessarily make best use either of terrain and/or the conventional capacities of the Alliance. But the Europeans, and especially the FRG, with vivid memories of the devastation of two world wars, were (and are) not prepared to accept the principle of a forward 'glacis' of territory: there could be no 'disposable' Western states to act as a buffer between super-powers.

11. Ever since their first efforts at the February 1952 Lisbon North Atlantic Council meeting, Alliance members have never been prepared to provide the resources needed to mount a full conventional defence to a major Soviet attack. The concept of threatened escalation by NATO to the first use of nuclear weapons reflects this fact.

12. There is no defined length to any phase of NATO's response. There is an underlying tension between the US who would wish to delay nuclear exchanges as long as possible (hence their emphasis on building up warstocks in Europe, and the need to reinforce) and the Europeans, especially the FRG, who view with alarm the consequences of a major conventional war fought on their soil. (Henry Kissinger tartly observed that the Europeans would prefer to have a nuclear war fought between the US and the USSR over their heads). These wishes represent the extremes of polarity: there are other elements which although implicit were never addressed in detail; they include:

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- a. the natural preference to defeat the enemy quickly by conventional means as close to NATO's borders as possible.
- b. the need to be able to fight the conventional battle long enough to allow NATO political authorities to make calculated decisions about the employment of nuclear weapons if necessary, and for further reinforcements to arrive.

13. Nor was the impact of 'flexible response' on NATO's maritime posture addressed in detail. Different considerations apply to the conduct of operations on land and at sea; for example, mobility of maritime forces and their relative freedom from geographical constraints provide a wide range of options in tension, transition to war and war - yet the same principles underlying flexible response must apply in both areas.

14. Striking the right balance between ready and in-place forces and rapid reinforcement is no easy matter. Reinforcement is a vital element of deterrence: however, its implementation raises difficult and conflicting issues for decision makers. Its success will depend in no small measure on timely political decisions early in a period of tension which may not prove easy, not least because they may be seen as escalatory. Equally, the costs (political and resource) of in-station forces make it inevitable that heavy reliance will be placed on reinforcement.

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CRITICISMS OF FLEXIBLE RESPONSE

15. Whilst there is clear and unequivocal public support for NATO there are many critics of the West's reliance on nuclear weapons. Critics range from the responsible to the absurd fringes of the peace movements who have no interest whatsoever in the concept of deterrence. It is important, however, even when considering the important contributions to the debate made by the 'responsible' critics, to make a clear distinction between those who doubt the intellectual, political and military validity of the overall strategic concept, and those who merely regard its implementation as deficient. A number of so-called 'alternative strategies' have been propounded by various commentators responsible and mischievous alike. These cover concepts such as: no first use of nuclear weapons; nuclear free zones; rapid moves to new advanced weapons technology (to obviate the need for nuclear, especially battlefield, weapons); unilateral nuclear disarmament.

16. As paragraph 4 indicates, none of these issues is new. However, there are various reasons why public concern has revived in recent years. They include worries about the growth of Soviet military power across the spectrum and about the role of nuclear weapons in NATO strategy following the 1979 decision to modernise NATO INF, as well as US and UK strategic modernisation programmes. There is also a growing aversion to nuclear matters, both civil and military, and an inchoate feeling in some quarters that Arms Control is not being pursued adequately by the Alliance.

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17. When analysing alternative defence strategies, however, it is vital not to address them solely from a western perspective: although the strategy must be credible in Western eyes it is important to state clearly that the most critical analysis, in terms of the efficacy of a strategic concept, is that of the potential aggressor. NATO's objective is to seek to influence Soviet calculations to ensure that Soviet leaders decide that whatever the incentive (which at the moment is not great) the gamble of using the military option would not be worth taking. The litmus test, therefore, of any alternative defence concept is whether it would be more convincing to the Soviet Union. There is no evidence that, since 1967, the Soviet leadership has ever doubted the political will and military capacity of the Alliance to respond robustly to aggression. There is no immediately obvious reason, despite Soviet preponderance in conventional and longer range theatre nuclear forces, and broad strategic nuclear parity, why the Soviets should alter their assessment. And there is nothing in any of the alternative defence concepts that would be any more credible than flexible response in Soviet eyes. Indeed, inasmuch as such concepts could simplify Warsaw Pact operational planning or leave NATO forces at risk, they would work to the Soviets' advantage. This is not to say that there are not areas of weakness which if allowed to go uncorrected might lead to a change in the Soviet perception. Flexible response is only as flexible as the forces provided to put it into effect allow.

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18. That said, powerful and responsible criticisms have been made of NATO's military posture which could have implications for future Alliance policy, and which call into question the ability of the Alliance to meet its current military objectives. It is therefore worth analysing the circumstances under which flexible response may be invalidated:

a. a complete collapse of the strategic balance in favour of the Soviet Union would destroy the threat of ultimate retaliation and would leave the Alliance open to nuclear blackmail.

b. if NATO's theatre nuclear capabilities ceased to provide an appropriate range of options linking conventional and strategic forces the ability of the Alliance to threaten a controlled escalation would be damaged. This could put NATO in the impossible dilemma of suing for peace or launching a strategic nuclear attack because it was left with no adequate intermediate options.

c. a major conventional reduction in Europe could deny the Alliance the ability to undertake a robust direct defence and would in effect be a return to 'tripwire'. It could thereby tempt the Soviet Union to make a quick 'surgical' attack with limited aims confident that the US would not

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risk a strategic nuclear exchange in such circumstances, though such a scenario would need to assume that the UK's and French strategic forces would also be similarly inhibited.

d. A perception by the Soviets - rightly or wrongly - that NATO's political will would collapse in the face of a major conventional attack would obviously be a disastrous development: and it follows therefore that the Alliance should seek to foster and demonstrate its political cohesion as one of its highest priorities.

e. a force posture in any Region, for example on the Flanks, so weak as to inhibit an Alliance response to a limited Soviet incursion.

19. We believe that the overall strategic concept is sound - indeed there is neither evidence to support an early obituary, nor any available alternative strategy that would score in the same way as flexible response in Soviet calculations. But we should analyse against current criticisms whether any changes need to be made to NATO's military posture to enhance the strategy. This paper does not address the highly complex issues of strategic nuclear forces, and the US Strategic Defence Initiative: suffice it to say that the retention of broad strategic nuclear stability with a secure second-strike capability between the

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super-powers is a necessary pre-condition of the NATO's deterrent strategy. The three key areas which need to be addressed are conventional forces and theatre nuclear capabilities; and regional imbalances within the Alliance.

20. Criticisms of the conventional leg of the triad of forces is based on evidence of: sheer numerical inferiority; limited sustainability; low level of equipment standardisation and interoperability; inadequate reserves; blunting of the qualitative edge. An understandable (and sometimes automatic) reaction is to seek to extend our conventional capacity simply by spending more on defence. For a wide variety of reasons, this is impossible to achieve evenly across the Alliance, and our approach has been to question whether the UK and NATO are getting the maximum value for the already substantial resources deployed. Could the Alliance undertake its conventional roles more rationally - eg by role specialisation among nations, and by increasing the volume of efficient equipment collaboration? And how should the Alliance balance its various needs for powerful land forces against the equally strong claims for air defence and a strong maritime capability?

21. A separate but related issue is whether it is in NATO's interest, given the geopolitical compromises and subliminal tensions inherent in flexible response, to seek to enhance conventional capabilities to make it possible to fight an extended conventional war. Would it actually be preferable to relying on early use of nuclear weapons? Would this be likely to increase the risk of

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war - either by appearing to threaten the Soviet Union or by making the nuclear element less credible? It is at least arguable that excessive reliance on conventional capabilities could appear to demonstrate that the West had lost its resolve to escalate to nuclear weapons, and therefore that the Soviet Union could expect to be able to wage a conventional war in Europe without the threat of nuclear attacks against its homeland. It is also possible to argue that such a strengthening of NATO's conventional forces, especially if matched by the Soviet Union, would not necessarily extend the period of conventional hostilities, but merely increase its intensity. War fighting capabilities would be enhanced, but should deterrence fail, early recourse to nuclear weapons might still be needed.

22. Evidently there is a balance to be struck here - but, equally, it is a matter of judgement whether overall, despite all the criticisms, NATO's conventional forces are excessively weak (though see 23 below). There are plainly many areas, such as sustainability and interoperability, where NATO can and must do much better. But we must not assume that NATO's conventional defences would be a push-over for the Soviets. If the present levels of expenditure on nuclear systems were used to bolster conventional forces, the switch would produce only relatively modest enhancements in our conventional capabilities. At the same time the UK would be denuded of her ultimate national retaliatory capability.

23. The principal criticisms of theatre nuclear weapons are based on doubts, as expressed for example by McNamara, on the utility of very short range or

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battlefield systems. Although many studies have been undertaken, and the issues aired thoroughly, no adequate alternative in terms of deterrence to NATO's possession of some battlefield nuclear weapons has been advanced. There has been a gradual reduction in such weapons in Europe in recent years, and this will increase in pace over the next few years. But in considering the role of battlefield weapons it is important to identify likely Soviet perceptions. The removal of the short range nuclear threat would allow the WP to mass conventional forces for attack with relative impunity, while NATO forces would still be at risk from comparable Soviet systems. Whilst there is a case for further reductions in such systems it has not been demonstrated that it would be to NATO's advantage to renounce such a capability in its entirety.

24. There are wide disparities between the different NATO regions in terms of force levels, equipment standards, and overall defensive posture. It must follow from this that those areas which are weakest - notably North Norway and Eastern Turkey - could present comparatively easy targets should the Soviet Union wish to test NATO cohesion and the level of response. This is an acute difficulty for NATO, and it could present serious difficulties for the Alliance should the Soviets seek to probe Alliance resolve. Would it be credible for NATO to make a major military response in another theatre to, say, a Soviet incursion into Finnmark? Should NATO plan to seize a 'countervailing' area of strategic interest to the Soviet Union, or take appropriate measures at sea? Could NATO take any credible military measures in such circumstances? Is it possible to

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rectify the regional imbalances? How should Norway's defences be strengthened? Should the Alliance provide additional military aid to Turkey? The questions can be easily posed, although there are no straightforward answers. However, it is important that NATO should maintain its ability to deploy specialist reinforcement forces as a tangible demonstration of politico-military cohesion and its will to give effect to Article 5.

25. Two further areas need to be addressed: NATO's stance on out of area matters and burden-sharing.

26. The threat to Alliance interests outside the NATO area is acknowledged by NATO. However, it has no adequate collective mechanism for handling such crises as Afghanistan. This places the Alliance at a disadvantage in that it presents options for the Soviet Union to test Western resolve without running the risk of a united NATO response. Thus the responsibility for any military action will remain with those Allies who are able to respond to a crisis out of area in consultation with other friendly powers, leaving NATO, EEC and other fora to consider what collective political support can be given. Nevertheless, the potential drawdown of reinforcement forces (particularly the US RDF) faces the Alliance with an acute dilemma in crises out of area.

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27. There is growing evidence that the Alliance collectively needs to devote greater efforts to ensuring that the risks and burdens (as well as the benefits) of membership are shared equally between members. There are obvious transatlantic ramifications to this as manifested by the Nunn/Cohen resolutions; it is also an intra European problem. The political, military and resource implications are considerable.

#### CONCLUSION

28. Analysts, both serious and mischievous, enjoy writing obituaries about NATO's strategy. None has yet, however, advanced any credible alternative to the strategy of flexible response. This is no surprise: flexible response is designed to provide as many options as possible to the defender, and every alternative that has yet been propounded would reduce flexibility in varying measures. Most efforts to debunk flexible response misunderstand the fundamentals of the strategy: it does not commit NATO to a preordained sequence of responses, conventional to nuclear, and it does not require NATO to match the WP system for system at every level. Above all, there is no absolute nuclear threshold. Flexible Response provides NATO commanders and political authorities with a wide range of options for response to aggression. Clearly, the stronger and more enduring the conventional leg, the longer the time available to NATO to consider other (especially nuclear) options: but paradoxically there is a danger that over reliance on increased conventional forces could also weaken deterrence because the Soviets might assume NATO was losing the will to resort to nuclear weapons if necessary.

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29. Given that NATO's objectives are to deter aggression, there is no empirically verifiable formula which will guarantee that the Alliance's success over the last 35 years will be replicated in the next 35 years. But, two key points stand out from our analysis which point the way ahead. In order to preserve its political and military credibility NATO must preserve and nourish the two primary links on which the Alliance is founded: the political links between Europe and the USA (and within Europe) and the military links between conventional and nuclear capabilities. The efforts made by the Soviet Union to de-couple Europe from the USA by attempting to block INF modernisation vividly demonstrates that their own analysis has identified the same key elements in NATO's future posture.

Finale. "Take but degree away, untune that string and hark what discord follows."

30. The credibility of the strategy of flexible response depends crucially on convincing the Soviet Union.

- that NATO has sufficient material resources to respond to attack, to go on responding, and to raise the stakes if necessary.
  
- that NATO has the political will to use the formidable military assets at its disposal.

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In these circumstances, NATO can therefore ensure that, as the IISS judges "military aggression (would be) a highly risky undertaking ..... the consequences for an attacker would be unpredictable, and the risks, particularly of nuclear escalation, incalculable".(1)

31. The Chiefs of Staff recently reaffirmed that in their judgement no credible alternative to flexible response exists, but acknowledged that there were a number of weaknesses in its implementation which detract from the inherent flexibility required which needed to be addressed and overcome; these included sustainability, and mobilisation and reinforcement measures.

32. In sum, there is no reason to judge that, in Soviet eyes, flexible response has ceased to be credible: but, equally, we must not be complacent about the present state of NATO's defences and we must continue to give priority to areas such as sustainability, interoperability, efficient use of NATO's resources and effective equipment collaboration to ensure that NATO's posture remains as credible to the Soviet Union in the next decades as it evidently has been until now.

(1) Military Balance 83/84.

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ISSUES FOR DISCUSSION

1. In what way (if any) are the circumstances surrounding conventional, theatre nuclear and strategic forces in 1984 different from 1967?
2. Is Flexible Response the right strategy; are there any credible alternatives given the geo-political realities? Are there any lessons to be learnt from French strategic and nuclear thinking?
3. Is there any evidence that Soviet perceptions of NATO's credibility have changed? What is their likely risk analysis?
4. Is it necessary to undertake further conventional improvements in Europe to maintain credibility of Flexible Response?
5. Is NATO's political solidarity under threat from the weaker members? If so how can this division be countered both politically and militarily?
6. Are NATO governments doing enough to reassure publics of the viability of NATO strategy?
7. Is NATO doing enough to maintain the primary linkages both between Europe and USA and between conventional and nuclear response?



SEMINAR ON NATO STRATEGY

Official participants

The Prime Minister  
Foreign and Commonwealth Secretary  
Secretary of State for Defence  
Mr. Richard Luce, Minister of State, FCO  
The Rt. Hon. John Stanley, Minister of  
State for the Armed Forces  
Mr. Geoffrey Pattie, Minister of State  
for Defence Procurement  
Sir Antony Acland  
Sir Clive Whitmore  
Chief of the Defence Staff  
Sir Percy Cradock  
Sir John Graham  
Mr. Bryan Cartledge  
Mr. Charles Powell

Non-official participants

Professor Lawrence Freedman  
Professor Sir Hermann Bondi  
Sir Arthur Hockaday  
Dr. Robert O'Neill  
Admiral Sir James Eberle  
Professor Peter Nailor  
Professor Laurence Martin  
Lord Cameron of Balhousie  
Sir Clive Rose





FILE

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10 DOWNING STREET

5 September, 1984

*From the Private Secretary*

Thank you for your letter of 21 August. I am sorry to have taken some time in replying but I was on holiday and subsequently very much occupied with other matters.

The Prime Minister was very pleased to hear that you are able to take part in the Seminar on 1 October. I now enclose a copy of a paper which is intended to serve as background for the discussion. I shall be grateful if you would treat it as solely for your personal information and use.

I hope the paper will in fact provide answers to, or at least shed light on some of the questions in your letter.

1. The rather circumlocutory title of the Seminar in my original letter stems from my discretion. The purpose of the seminar is better expressed in the title of the paper "Is Intervention Ever Justified?".

2. I do not want to attempt too precise a definition of small states. But what we have in mind are independent Third World countries particularly vulnerable to outside intervention. I agree that being small is not a necessary qualification for being at risk. But on the whole the risks are particularly acute in smaller, poorer countries.

84



3. The threat to sovereignty could be any of the varieties you mention and the objective to bring about changes in the political system and alignment of the state in question. And it is not just the threat itself which is of interest but how others should respond to it.

4. It is certainly not the purpose of the discussion to draw up categories of small states but rather to see how far one can arrive at general principles and rules which apply irrespective of the nature of political systems, strategic importance etc.

5. On your question 5, the answer is yes, it is the threat to sovereignty which is at issue and what can be done to counter or pre-empt it. This will emerge more clearly from the paper than from my original letter.

6. The object of the discussion is to examine the issues raised in the paper, to consider how far they give rise to a conflict of principles and if so, how that conflict should be resolved. The idea of an "initiative" is too ambitious, but the construction of the soundest possible intellectual basis for future policy would be a fair aim.

I hope that my replies - which are mine and nobody else's - are not too delphic! Please let me know if I can shed any further light: or speak to Percy Cradock, whom I am sure you know.

Mrs. Goodchild will shortly be writing to you with details of how to get to Chequers and of accommodation where this has been requested.

(C.D. Powell)

Dr. Elihu Lauterpacht, Q.C.





(ECLACY)

10 DOWNING STREET

*From the Private Secretary*

5 September 1984

Thank you for your letter of 14 August. The Prime Minister was disappointed to learn that you will be unable to attend the Seminar but of course fully understands the reasons.

I enclose a copy of a background paper which has been prepared for the Seminar and would welcome any comments you have time to make. I shall be grateful if you would treat the paper for your personal information and use only.

Charles Powell

Professor Rosalyn Higgins





ECL ALX

10 DOWNING STREET

*From the Private Secretary*

5 September 1984

The Prime Minister was very pleased to hear that you are able to take part in the Seminar on the legal, moral and intellectual issues which arise when the sovereignty of small states is threatened, to be held at Chequers on 1 October.

I enclose a copy of a paper which is intended to serve as background for the discussion. I should be grateful if you would treat it as solely for your personal information and use.

Mrs Goodchild will shortly be writing to you with details of how to get to Chequers and of accommodation where this has been requested.

I look forward to seeing you at the Seminar. Please do not hesitate to contact me if you have any questions.

Charles Powell

Professor Derek Bowett

CBE, QC.







File

Seminar 1 October

10 DOWNING STREET

*From the Private Secretary*

5 September 1984

I am sorry to have been so long in replying to your letter of 10 August which came in while I was on holiday.

The Prime Minister is naturally disappointed that you will not be able to attend the whole of the discussion. She would be very pleased if you could nonetheless come for dinner - but would not want to cause you inconvenience if it is difficult to get away from Oxford in time. Perhaps you could let me know in due course what you decide.

In the meantime I enclose a copy of the paper intended to serve as background for the seminar. I should be grateful if you would treat it as solely for your personal information and use.

Charles Powell

Professor Richard Howard

Oriel College, Oxford, OX1 4EW.

RB





10 DOWNING STREET

*From the Private Secretary*

5 September 1984

*Dear Tony,*

The Prime Minister was very pleased to hear that you are able to take part in the Seminar on the legal, moral and intellectual issues which arise when the sovereignty of small states is threatened, to be held at Chequers on 1 October.

I enclose a copy of a paper which is intended to serve as background for the discussion. I should be grateful if you would treat it as solely for your personal information and use.

Mrs Goodchild will shortly be writing to you with details of how to get to Chequers and of accommodation where this has been requested.

I look forward to seeing you at the Seminar. Please do not hesitate to contact me if you have any questions.

*yours ever*  
*Charles*

Charles Powell

Sir Anthony Parsons, G.C.M.G., M.V.O., M.C.



MRS. GOODCHILD

cc. Mr. Powell

*file*

Chequers Seminars: 1 October

Following is a summary of replies received so far:

Nato Strategy Seminar

Accommodation on  
30 September/1 October

Outside participants:

Professor Lawrence Freedman	No
Professor Sir Hermann Bondi	No
Sir Arthur Hockaday	Yes
Dr. Robert O'Neill	No
Admiral Sir James Eberle	Yes
Professor Peter Nailor	Yes
Sir Clive Rose	Yes
Professor Laurence Martin	Yes
Lord Cameron of Balhousie	No

Official participants:

Foreign and Commonwealth Secretary  
Secretary of State for Defence  
Lady Young  
Mr. Stanley  
Mr. Pattie — *as his successor?*  
Sir John Graham  
Sir Clive Whitmore  
Sir Antony Acland  
Sir Percy Cradock  
Mr. Cartledge  
Chief of the Defence Staff

Seminar on Conflict of Principles

Accommodation on  
1/2 October

Outside participants:

Professor Derek Bowett	Yes
Dr. Elihu Lauterpacht	Yes
Sir Ian Sinclair	No
Colonel Jonathan Alford	No
Professor Headley Bull	Yes
Professor Elie Kadoorie	Possible
Sir Anthony Parsons	Yes
Lord Thomas	No
Mr. Peter Calvocoressi	?

Official participants: /



Official participants:

Foreign and Commonwealth Secretary  
Secretary of State for Defence  
Lady Young  
Mr. Hurd — or his successor?  
Mr. Stanley  
Sir Clive Whitmore  
Sir Antony Acland  
Sir Percy Cradock  
Mr. Cartledge  
Chief of Defence Staff

I have assumed that none of the official participants will require overnight accommodation. But we should perhaps check with their offices. Could you very kindly take this on?

DB

3 September, 1984.

Professor Howard may come for part of the time.

Regrets from Professor Higgins.



D. R.

Now obtained  
CDP.

PRIME MINISTER

Foreign Policy Seminar: Conflict of Principles

I do not want to nag about the paper. But we ought  
to circulate it soon to other participants in the seminar.  
Have you had time to glance at enough of it to judge  
whether it is a satisfactory basis for discussion?

CDP.

3 September 1984





v6  
cpc

10 DOWNING STREET

*From the Private Secretary*

3 September 1984

The Prime Minister was very grateful indeed for your letter of 28 August with some ideas on an approach to dealing with the possible conflict of principles in foreign policy. She thought this was excellent. She hopes very much that you will be able to attend the seminar at Chequers, starting at 1400 hours on 1 October.

I am sending a copy of this letter to Len Appleyard (Foreign and Commonwealth Office).

Charles Powell

The Right Honourable Douglas Hurd, CBE, MP.

AK





F.6

10 DOWNING STREET

MR. POWELL

Mr. Calvocoressi will  
be attending the Seminar  
on 1 October and will require  
accommodation.

*Sue*

---

30 August 1984





Rle

SH

10 DOWNING STREET

*From the Private Secretary*

29 August 1984

Foreign Policy Seminar

Thank you for your letter of 8 August which I have seen on return from holiday. The Prime Minister agrees that Mr Pattie and Sir John Graham should be included in the NATO Strategy Seminar and that Sir Clive Whitmore should attend the "Conflict of Principles" Seminar as well as that on NATO strategy.

I am sending copies of this letter to Peter Ricketts (Foreign and Commonwealth Office) and to Stewart Eldon (Foreign and Commonwealth Office).

C D Powell

Richard Mottram, Esq.,  
Ministry of Defence

WJ





Prime Minister

HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

28th August 1984

Liswell

An interesting contribution.  
Would you like to invite  
him to the seminar.

CIP 30/8

Yes please  
mr

Dear Prime Minister,

At your meeting on June 1st you launched us into a discussion which was recorded in John Coles' letter of the same day under the title "Foreign Policy: Possible Conflict of Principles". You encouraged contributions in advance of a possible seminar at Chequers. What follows is a personal reflexion on the theme which you proposed. It is very much a holiday effort and I apologise for any lack of polish.

The launching pad of that discussion was the problem of what limits could reasonably be set for the political activities of foreigners in Britain aimed at their home governments. Leon Brittan and Geoffrey Howe have, as you know, recently been in touch about this particular problem and departmental work is in hand on this. I will not trespass on it, except to annex a historical note on the painful experience of Lord Palmerston in 1858 when handling this very problem.

But you carried the discussion into a wider arena. The background would seem to be this. On the one hand Britain stands to gain enormously from any real progress towards a genuine international order. This is because we are a satisfied state, in the sense that we desire to acquire no-one else's territory and to subvert no-one else's government. We tend to lose from any major disturbance in the world. If the UN Charter and the institutions which it set up were actually to function as proposed in 1945 we would be one of the main beneficiaries. That is even more true now than in 1945 because we and the other former colonial powers have without coherent thought allowed the world to fragment into an amazing multitude of nation states, which the advocates of nationalism in nineteenth century Europe would have regarded as a caricature of what they fought for. This fragmentation makes even more important the rules which should govern disputes between states and in particular the principle of non-aggression.

On the other hand there must be a limit to the extent to which we can be expected to abide by the rules of international order when faced with powers, great or small, which ignore them in order to damage our interests. The same is true of a fortiori of the United States, and you cited the example of Central America. To some extent of course in recent decades this dilemma has been eased by the possibilities of covert action, to which all powers have had resort in order to protect or advance their interests. But whereas the Soviet Union has been able to move with virtual impunity to overt military action when they deemed this necessary (Hungary 1965, Czechoslovakia 1968, Afghanistan 1979 are just three examples) the Western powers have found this much more difficult (Suez 1956, Vietnam), not least because of the shock administered to their domestic political systems.

/It is certainly

The Rt. Hon. Mrs Margaret Thatcher M.P.



It is certainly not in our interests to pull down the half-built structure of international order. Indeed my own view is that we might be more active than we are in building it up.

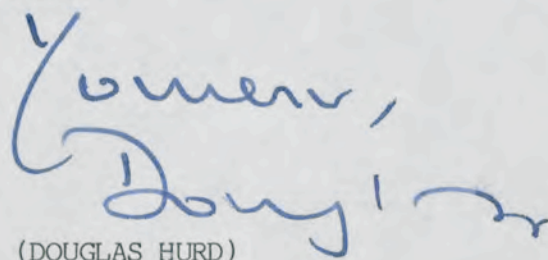
That is a separate issue. If we are to correct the imbalance just described without destroying what is now half-built, we need to be more explicit about the right of self-defence which the UN Charter recognises. I borrow here from the argument used by Lord Denning in the Lords on May 16th, in the much narrower context of the Libyans in St. James' Square. He quoted Grotius and Oppenheim in support of the argument that by their actions in violating the Vienna Convention the Libyans had in effect forfeited its protection (though I would not share his further argument that this interpretation should be put to the ICJ for an advisory opinion). It seems to me that this extension of the concept of self-defence, by adding to it the concept of reciprocity, could provide the answer to our philosophical problems. What applies to the Vienna Convention under Lord Denning's argument should apply also to the rules of the UN Charter.

There is little advantage in a philosophical stance which yields no practical advantage. But let us take Libya as an example. She is in effect a pirate state, breaking whether in St. James' Square, in the Red Sea or elsewhere, many of the basic rules of international conduct. I am not sure how international law treated piracy when it was rife. Certainly the Western states from time to time rooted out nests of pirates on the North African coast (hence the mention of Tripoli in the anthem of the US Marines) presumably without much regard for the nominal sovereign power in Constantinople. Is it conceivable to work out the concept of outlawing a pirate state by declaration? A state thus temporarily declared outlaw would not necessarily be attacked or deprived of trade; but notice would have been given that so far as the declaring powers were concerned the pirate state and its agents were no longer entitled to the normal protections of international law, because they had consistently ignored international law in their dealings with others. This could be a substantial deterrent.

I am thinking of course of declarations by a concert of Western powers rather than by the Security Council. It would hardly be practical to apply this concept to the Soviet Union because the need to maintain some sort of dialogue with a superpower is likely to remain overriding except in extreme circumstances. But it could conceivably be applied to surrogates such as Cuba once a sufficient record of defiance of international law had accumulated. Obviously encouragement of terrorism would be a major item in such a record. So conceivably could the wholesale denial of human rights, though President Carter's experience showed that this can be a will o' the wisp.

The above certainly needs refinement, but it might conceivably be of some use in wrestling with the dilemma which you outlined.

I am sending a copy of this letter to Geoffrey Howe.

  
(DOUGLAS HURD)



THE ORSINI AFFAIR

On January 14th 1858 an Italian Republican called Orsini throw a bomb at the carriage of the Emperor Napoleon III as he and the Empress Eugénie drove to the opera. Neither of them was hurt but several bystanders were killed. It was discovered that Orsini had links with Italian refugees in London and that the explosives in the bomb had been made in England. The French Government asked the British Government, its recent ally in the Crimean War, to act against these refugees in England.

Lord Palmerston was Prime Minister. Professor Ridley in his biography describes Lord Palmerston's attitude as follows:

"Palmerston had always been consistent in his attitude about political refugees. Britain was entitled to give them asylum, but must not permit them to engage, on British soil, in any activity against the government of their own, or any other, country. As he had adopted this attitude towards Italian and Hungarian refugees from Austrian rule, even at a time when his relations with Austria were unfriendly, he had all the more reason to adopt it in the case of refugees from Napoleon III with whom he was on friendly terms. He had for some time been viewing with suspicion the activities of the refugees in the Channel Islands, where French Republicans, among them Victor Hugo, had taken refuge after Napoleon III's coup d'état."

Three years before the Orsini incident Palmerston had already written to the Home Secretary about these refugees:

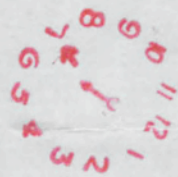
" 'The reverse of the Medal is the conduct of the French Refugees, who are meeting, and in Speeches and Newspapers openly recommending assassination not only of the Emperor of the French, but of Sovereigns in general. I have little doubt that they are pushed on by Russian Agency.' He therefore proposed that all the refugees should be deported from the Channel Islands, and brought to Britain, where they could do less harm than in the Channel Islands. 'Some of them may be apparently quiet and well conducted, so much the worse for them that their associate Fellow Countrymen render measures of severity necessary. But we are not doing Justice by our faithful and zealous Ally the Emperor of the French, by allowing a knot of his mortal Enemies to be plotting within an hour's sail or row of his Shore ... I think they ought all and everyone without any exception to be sent out, and that the misconduct of their Fellow Refugees should be assigned as the reason.' "

After the assassination attempt Palmerston introduced a Conspiracy to Murder Bill which made it a felony instead of merely a misdemeanour to plot in England to murder someone abroad. Unfortunately this Bill roused against it an alliance of the left-wing radicals who detested Napoleon III because of the way he had come to power, and Disraeli and the Conservatives who saw an opportunity of defeating the Government by accusing it of subservience to a foreign government. The Government was defeated by 19 votes on a radical amendment. Next day Lord Palmerston was hooted as he rode in the park, and two days later he resigned. He was out of office for 16 months.



FOREIGN POL. Strategy

10/10/84



10

1984





House of Lords

chiefly in  
Italy

27. viii. 84

Dub  
5/9

Dear Mr Barclay:

I have just recd. Ches  
Powell's letter of the 7<sup>th</sup> about  
the meeting on Oct 1. I did  
accept (to Ches.) verbally but I  
confirm that I shd. like to come.  
I shd. say that I shall not need  
overnight a room in a hotel.  
I much look fwd to the occasion

Yrs sincerely

Hugh Thomas



HISTORY FACULTY LIBRARY  
BROAD STREET  
OXFORD  
OX1 3BD

From MICHAEL HOWARD  
Regius Professor of Modern History

CF  
Prime Minister  
C.D.P. 29/8  
Oxford 40043  
(4)

August 27th 1984

R29  
PPS

Dear Mrs Thatcher,

I am so very sorry that an inescapable professional engagement prevents me from coming to the meeting which you have called at Chequers on the afternoon of October 1st. I hope that the circumstances have been explained to you.

[He is committed to a Faculty ceremony]

Meanwhile I enclose two lectures which I have given in the course of the summer in Australia and the United States, and hope you will find them useful.

I hope you enjoyed your well-deserved holiday and return refreshed to confront the truly appalling problems which seem to beset us.

Yours sincerely

The Right Hon. Margaret Thatcher, M.P.  
10 Downing Street,  
London S.W.1.

Michael Howard



Foreign Policy

Part 2

Strategy



E. LAUTERPACHT QC · 7 HERSCHEL ROAD · CAMBRIDGE CB39AG

0223 354707

2 pp's

CP o/r

21 August 1984

Charles Powell, Esq.,  
Private Secretary,  
10 Downing Street,  
London, SW1.

CONFIDENTIAL

Dear Mr Powell,

I telephoned to David Barclay last week, thanked him for your invitation to the Chequers meeting on "Small States" and said I would be happy to attend.

Naturally, my thoughts have since turned with curiosity and interest to the problem as stated in your letter. Though I note that a discussion paper will be circulated early in September, I hope that it will not be thought out of place if I attach to this letter a few questions of a threshold kind to which it would be helpful, for at least this participant, if some answer could be provided before the meeting. Please do not read them as reflecting anything other than a constructive attitude on my part.

Yours truly  
E. Lauterpacht

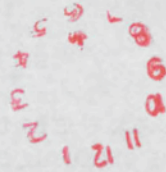


Some questions prompted by the problem of the "legal, moral and intellectual issues which arise when the sovereignty of small states is threatened".

1. What is the purpose of the question?
  - Why is it expressed in terms of "legal, moral and intellectual issues" rather than, say, the more comprehensive form of "political and legal" issues?
2. What is meant by "small states"?
  - I assume that "state" means "independent state". But what is the measure of smallness - territorial area, population or economic strength? Are we concerned with Switzerland, Israel, Malta or Kiribati?
3. What is meant by "when ... sovereignty ... is threatened"?
  - Is the threat that of internal insurrection, external armed attack or foreign economic pressure?
  - What is the objective of the threat - seizure of control (long-term or short-term), annexation or merely exposure to influence?
4. As to "moral issues", is it contemplated that we should distinguish between various categories of small states, e.g. those that there are near us, are "democratic" in the Western sense, are "stable" or are strategically important? Are all, or only some, to be "helped" or "ignored"?
5. Given that the problem is concerned with "small" States, is it correctly focussed in emphasizing the threat to sovereignty? Is not an actual problem of importance that of their position in and impact on international organizations?
6. What is the object of the discussion - simply to air the problem or to assist in identifying elements in a political initiative?



For. Policy  
Strategic  
pk. 2



23 AUG 1984



file 507  
MRS. GOODCHILD

FOREIGN POLICY SEMINARS: CHEQUERS, 1 OCTOBER

You may like a note of the response to date to our invitations to the two seminars to be held at Chequers on 1 October.

For the morning seminar, we have received seven acceptances and no refusals. Two guests have yet to reply. Of those who have responded, four have asked for overnight accommodation on 30 September/1 October.

For the evening seminar, we have received six acceptances, and two refusals. Three people have not yet replied. Of those who have, three definitely require overnight accommodation on 1/2 October, and a fourth may do so.

Unless you particularly need names now, I will let you have them all at the end.

David Barclay

15 August 1984



The London School of Economics and Political Science

(University of London)

Telephone: 01-405 7686

Telegrams: Poleconics, London

Telex: 24655 BLPES G

Houghton Street,  
London WC2A 2AE

Pl. enter e  
Submit  
CDA

14 August 1984

Dear Private Secretary,

I am writing this letter from the  
United States to confirm my telephone call  
to David Barclay.

Thank you very much for the  
invitation to join a group of academic  
experts to discuss the problems of small  
States with the Prime Minister.

It is indeed a question to which  
I am much interested and I would  
have been delighted to come to



Chequers for such a discussion.

Unfortunately, however, I am leading a London University team on a conference on that date at ~~the~~ the University of Aix-en-Provence on the topic of nationalisations and international law. This is a long standing commitment which I cannot change and I must therefore with regret say that I would be unable to be at Chequers on 1 October as I shall be abroad.

If it were nonetheless felt appropriate for me to receive the discussion paper, I would be happy to offer written comments ahead of the meeting if that would be thought useful.

Yours sincerely,

Russlyn H. Jones.





Foreign and Commonwealth Office

London SW1A 2AH

14 August 1984

C/S

Dear Tim

FOREIGN POLICY SEMINAR: NATO STRATEGY: PARTICIPATION BY OFFICIALS

1. Charles Powell's letter of 6 August to Richard Mottram gave a list of the official participants the Prime Minister has in mind to invite to her seminar on 1 October.
2. We recognise (Charles Powell's letter of 2 August to Colin Budd) that the Prime Minister is keen to keep official participation in the seminar to a minimum. We would very much hope however that Sir John Graham, the UK Permanent Representative on the North Atlantic Council, could be present in addition to those listed. Not only would he be able to make a valuable contribution to the discussion by bringing a Brussels perspective to it; but participation would give him a better feel for ministerial thinking on the issues which will be considered there for which he has, to a large extent, operational responsibility, and make him better placed to take account of Ministers' views in his dealings with the Allies and with Lord Carrington.
3. It is in any case quite likely that Mr Luce will be away in the Far East at that time. This may not therefore mean any overall increase in numbers.

Yours ever  
S G Eldon

S G Eldon  
PS/Lady Young

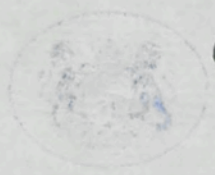
T Flesher Esq  
Private Secretary  
10 Downing Street



For: P87. Strategy Pt2

Foreign and Commonwealth Office

London SW1A 2AH







10 DOWNING STREET

Morning

② not received

⑦ accepted

④ accom.

Afternoon

③ not received

⑥ accepted

② refused

③+? accom.



MTG.  
RECORD



NOTE FOR THE FILE

MR. FLESHER/MR. BARCLAY

Seminar at Chequers on 1 October

9 rooms with bath have been booked at the Spread Eagle Hotel, Thame for the night of 30 September. They are, unfortunately fully booked for the night of 1 October so we are looking for alternative accommodation for the 11 who might need accommodation for that night. (Shoulder of Mutton might be a possibility).

So could you let me know as and when you hear whether accommodation is required by the participants in the two Seminars.

Sue G

10 August 1984



ORIEL COLLEGE  
OXFORD  
OX1 4EW

From  
PROFESSOR MICHAEL HOWARD

Oxford 241056 (Personal)  
241651 (Porter's Lodge)

10 August 1984

Dear Mr Powell,

*with TC*  
Very many thanks for the kind invitation you extended to me in your letter of 7 August on behalf of the Prime Minister to attend a meeting at Chequers on Monday 1st October.

I am afraid that this puts me in a considerable difficulty. I have agreed that afternoon to attend a Faculty ceremony here which will last from 5.30 till 7 p.m., and make a presentation. The date has been fixed with some difficulty to suit my convenience, and it would cause much disappointment and annoyance if I were now to renege. I think therefore that with very great reluctance I must give it priority.

I could escape at about 6.15, and thus be at Chequers soon after 7 in time for dinner; but having missed the serious part of the evening, my contribution would then be rather marginal. Unless I hear from you to the contrary, therefore, I shall assume that I can not come.

Yours sincerely

Charles Powell Esq,  
10 Downing Street,  
London S.W.1.

*Michael Howard*



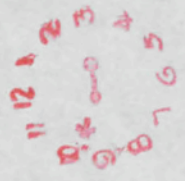
Folklore Pr. Strategy

OWEN COLLEGE  
OVI ORD  
OVI 67



OWEN COLLEGE  
OVI 67

13 AUG 1964



TO MISS ...

Very kind, please see the fine invitation and return to me in  
your factor of a number of labels of the type. I think to attend a  
session at the house on Monday, but please.

I have a slight, but this is to be a weakness in difficulty.  
I have a notion that it is to be a faculty, but I am not sure.  
I will not from 2:30 till 4:00, and have a presentation. The date has  
been fixed at the house difficulty to attend by convention, and it would  
cause much hardship if you are unable to do so. I am sorry to  
think that this is the only way to give it.

I will make a number of labels, and this is an important matter.  
It is the house; but please return the labels to me at the  
house, by convention, and then to the house. I think it  
is to be the house, but please, a small number of labels will be sent.

Yours sincerely,

Charles Towne, Jr.  
10 ...  
...



*CF in file*  
GARDEN ROOMS

Chequers Seminar on 1 October:  
Professor Elie Kedourie

Would you please note that further correspondence for Professor Kedourie, who is one of those attending the Chequers Seminar on the afternoon of 1 October, should be sent to his home address and not to the LSE.

His home address is 75 Lawn Road,  
London NW3 2XB.

*JMB*

8 August 1984



*XCPC*



MINISTRY OF DEFENCE  
MAIN BUILDING WHITEHALL LONDON SW1

Telephone 01-980 7022 ~~XXXX~~ 218 2111/3

MO 9/13

8th August 1984

*Prime Minister*

*Agree:*

*Yes* (i) Mr. Pattie and Sir J. Graham to attend NATO seminar?

*Henry David,*

FOREIGN POLICY SEMINAR

*Yes* (ii) Clive Whitmore to attend small states as well as NATO

Charles Powell wrote to me on 6th August about participants at the NATO strategy element of the Foreign Policy Seminar and he also copied to me his letter of 2nd August to Colin Budd about participation in the discussion on "Conflict of Principles". The Defence Secretary has now seen these suggested lists of invitees and has asked me to raise two points:

*CDP.  
28/8*

a. He hopes that Mr Pattie, might be included in those participating in the NATO Strategy Seminar. This topic is of course central to our work here and to the interests of both our Ministers of State: moreover, Mr Pattie has taken a particular interest in the question of emerging technologies the implications of which will be an important element in the discussion.

b. He has noted that Sir Clive Whitmore has been invited to the NATO element but he is not at present on the list for the other seminar. He believes it would be helpful if he were present throughout the discussion like Sir Edwin Bramall, Sir Antony Acland, Sir Percy Craddock and Mr Cartledge. Perhaps this was an oversight?

I am copying this letter to Peter Ricketts (FCO).

*Yours etc,  
Richard Mottram*

(R C MOTTRAM)

D Barclay Esq



For POI Strategy Pt 2

MINISTRY OF DEFENCE  
MAIN BUILDING WITTHAMPTON LONDON SW1T 2JQ  
Tel: 0181 754 3434



CONFIDENTIAL



24, VINEYARD HILL ROAD,  
WIMBLEDON, S.W. 19.  
TEL. 01-946 4269

8 August, 1984

Dear Charles,

Security of small states

with TF?

Thank you very much for your letter of 7 August conveying an invitation from the Prime Minister to join a small group of academic experts at Cheyres on 1 October to discuss the problem of the security of small states.

I would be delighted to accept and would plan to be at Cheyres at 1630 hrs. on that day. I would propose to come by car and would not require hotel accommodation, as I should be able to reach Wimbledon easily after the end of the meeting.

My wife and I are leaving for Scotland this evening for a month, but I will be back in London on or about 6 September.

Yours ever,

Jan Swire

---



RESTRICTED



FILE

(CANADY)

10 DOWNING STREET

*From the Private Secretary*

6 August, 1984

FOREIGN POLICY SEMINAR: NATO STRATEGY

Thank you for your letter of 1 August enclosing a short paper to serve as a framework for discussion at the Prime Minister's seminar on NATO strategy.

BA The Prime Minister was grateful for the paper but thinks that further work could with advantage be done on it between now and early September to make it rather more stylish and thought provoking. I shall be grateful if this can be put in hand, in time for a revised version to be circulated to non-official participants in early September.

You also suggested a number of names to receive invitations to the seminar. The Prime Minister has decided to invite the following:-

Professor Lawrence Freedman  
Professor Hermann Bondi  
Sir Arthur Hockaday  
Dr. Robert O'Neill  
Admiral Eberle  
Professor Peter Nailor  
Sir Clive Rose  
Professor Laurence Martin  
Lord Cameron

The Prime Minister has in mind to invite the following official participants the Defence Secretary, Foreign and Commonwealth Secretary, Mr. Stanley, Mr. Luce, CDS, Sir Clive Whitmore, Sir Antony Acland, Mr. Cartledge and Sir Percy Cradock.

I am sending a copy of this letter to Colin Budd (Foreign and Commonwealth Office).

(C.D. Powell)

R. Mottram, Esq.,  
Ministry of Defence.

RESTRICTED



CF: In the event Charles signed these letters.

2/8

MR BARCLAY

FOREIGN POLICY SEMINAR: 1 OCTOBER

I attach draft letters of invitation to the two seminars on 1 October.

I should be grateful if you could send the letter of invitation to the NATO Strategy Seminar to:-

	<u>Yes or No</u>	<u>Accom?</u>
Professor Lawrence Freedman	✓	X
Professor <sup>Sir</sup> Hermann Bondi	✓	X
Sir Arthur Hockaday	✓	
Dr. Robert O'Neill	✓	X
Admiral <sup>Sir James</sup> Eberle	✓	X
Professor Peter Nailor	✓	✓
Sir Clive Rose	✓	✓
Professor Laurence Martin	✓	✓
Lord Cameron of <sup>Bathurst</sup>	✓	X
<sup>Mr Patten</sup>		
<sup>Sir John Grahame</sup>		

Letters of invitation to the Seminar on Conflict of Principles should go to:

*but see letter*

Professor Michael Howard	X	X
Professor Derek Bowett	✓	✓
Professor Rosalyn Higgins	X	X
Dr. Elihu Lauterpacht	✓	✓
Sir Ian Sinclair	✓	X
Colonel Jonathan Alford	✓	X
Professor Headley Bull	✓	✓
Mr. Peter Calvo-coressi		
Professor Elie <del>Kadoorie</del> Kedourie	✓	✓
Sir Anthony Parsons	✓	✓
Lord Thomas	✓	X
<sup>+ Mr Douglas Head</sup>		

*is prepared to send in comments on working paper (clear)*

Full details of them can be obtained from the file.

6 August, 1984





1

10 DOWNING STREET

*From the Private Secretary*

August 1984

I have been asked by the Prime Minister to enquire whether you would be willing to join a small group of academic experts at Chequers on Monday, 1 October, to discuss with her questions relating to NATO's strategy and its rationale in the mid-1980s.

We propose that the group should assemble at Chequers at 0930 hours on that day. The discussion would take up the whole morning and continue over lunch, the proceedings ending at about 1400 hours. Since Chequers is not altogether easy to reach by public transport, we shall arrange overnight accommodation at a nearby hotel for the night of 30 September/1 October for those participants who so wish. All accommodation and travel expenses will, of course, be reimbursed.

The Prime Minister would much appreciate it if you were able to take part. It would be helpful to know fairly soon whether you can do so. If you prefer to reply by telephone, the number to ring is (01) 930 4433. Please ask for David Barclay.

Further details about the meeting, together with a discussion paper, will follow in early September. This letter is marked "PRIVATE AND CONFIDENTIAL" because we should prefer knowledge of the meeting to be confined to the participants themselves.

CHARLES POWELL





2

10 DOWNING STREET

*From the Private Secretary*

PRIVATE AND CONFIDENTIAL

August 1984

I have been asked by the Prime Minister to enquire whether you would be willing to join a small group of academic experts at Chequers on Monday, 1 October to discuss with her legal, moral and intellectual issues which arise when the sovereignty of small states is threatened.

We propose that the group should assemble at Chequers at 1630 hours on that day, and hold its discussions until 1900 hours. The discussions would continue over dinner and end at 2100.

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CHARLES POWELL

PRIVATE AND CONFIDENTIAL



CF: In the event Charles signed these letters.

ans  
7/8

MR BARCLAY

FOREIGN POLICY SEMINAR: 1 OCTOBER

I attach draft letters of invitation to the two seminars on 1 October.

I should be grateful if you could send the letter of invitation to the NATO Strategy Seminar to:-

Yes or No

Accom

Professor Lawrence Freedman

Professor <sup>Sir</sup> Hermann Bondi

Sir Arthur Hockaday

Dr. Robert O'Neill

Admiral <sup>Sir James</sup> Eberle

Professor Peter Nailor

Sir Clive Rose

Professor Laurence Martin

Lord Cameron of <sup>Balkhousie</sup>

Letters of invitation to the Seminar on Conflict of Principles should go to:

Professor Michael Howard

Professor Derek Bowett

Professor Rosalyn Higgins

Dr. Elihu Lauterpacht

Sir Ian Sinclair

Colonel Jonathan Alford

Professor Headley Bull

Mr. Peter Calvocoressi

Professor Elie Kadoorie

Sir Anthony Parsons

Lord Thomas

?

✓

no

✓

✓

Full details of them can be obtained from the file.

CP

6 August, 1984





1

10 DOWNING STREET

*From the Private Secretary*

August 1984

I have been asked by the Prime Minister to enquire whether you would be willing to join a small group of academic experts at Chequers on Monday, 1 October, to discuss with her questions relating to NATO's strategy and its rationale in the mid-1980s.

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CHARLES POWELL





2

10 DOWNING STREET

*From the Private Secretary*

PRIVATE AND CONFIDENTIAL

August 1984

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Further details about the meeting, together with a discussion paper, will follow in early September. This letter is marked "PRIVATE AND CONFIDENTIAL" because we would prefer knowledge of the meeting to be confined to the participants themselves.

CHARLES POWELL

PRIVATE AND CONFIDENTIAL



PRIME MINISTER

FOREIGN POLICY SEMINAR: NATO STRATEGY

The Ministry of Defence and the Foreign and Commonwealth Office have suggested the following outside experts for the Seminar on NATO Strategy:-

Professor Michael Howard	
Professor Lawrence Freedman	Professor of War Studies, Kings College, London
Professor Sir Hermann Bondi	
Sir Arthur Hockaday	Former PUS in the Ministry of Defence and one of the drafters of the original NATO Flexible Response Document
Dr. Robert O'Neill	Director of the IISS

Since this seems rather few compared with the Conflict of Principles Seminar, you may care to add:

Admiral Eberle	Chatham House
Professor Peter Nailor	Professor of History, Royal Naval College, Greenwich



Sir Clive Rose

Former UK  
Permanent Rep-  
resentative to  
NATO

Professor Laurence Martin  
Lord Cameron

(Doubtful whether  
he will be able to  
attend but I am  
sure he would  
welcome the  
invitation).

This means that Michael Howard and Admiral Eberle are on the list for both Seminars. It might be better to avoid this, inviting Admiral Eberle to the NATO Strategy Seminar and keeping Michael Howard for the Conflict of Principles Seminar. (Incidentally, it might be better to have Hugh Thomas for the Conflict of Principles Seminar only: he has not involved himself much in strategic questions).

The official participants would be Defence Secretary, Foreign and Commonwealth Secretary, Mr. Stanley, Mr. Luce, Chief of the Defence Staff, Sir Clive Whitmore, Sir Antony Acland and Mr. Cartledge.

Agree list on this basis?

Yes mt

You will also wish to see the attached discussion document for the NATO Strategy Seminar prepared by the MOD.

The paper is not very stylish or thought-provoking. You might ask for further work to be done on it before it is circulated in September to non-official participants. Agree?

Yes  
mt



Looking back at the last Foreign Policy Seminar with outside experts, I see that they were also invited to produce papers. This time there will only be the two discussion documents prepared by the FCO and MOD respectively. I think this is probably right, given the rather broad nature of the subjects. Nearer the time I will try to break each of the subjects down into five or six main themes or questions which you could use to organise discussion.

Agree not to commission further papers?

Yes not

C.D.P

3 August 1984



Have read  
- an issue 1/2 in



excellent

offers to paper  
is intervention ever  
justified

10 DOWNING STREET

Please

- FLO to CP 30.7.84

circulate  
not

Prime Minister.

You wanted to

read this during your

holiday

"Is intervention ever justified"

C.D.P.

not

2/p

but didn't get  
round to it. We  
ought to circulate  
to non-official  
participants in early  
September.

Agree?

C.D.P. 28/8





10 DOWNING STREET

file  
SSM  
slhacp  
CCMOD

*From the Private Secretary*

2 August 1984

FOREIGN POLICY: POSSIBLE CONFLICT OF PRINCIPLES

Thank you for your letter of 30 July enclosing a draft paper for the proposed seminar at Chequers on this subject, together with a list of experts who might be invited.

The Prime Minister has not yet had time to read the paper but will do so during her holiday.

The Prime Minister has considered the proposed arrangements for this seminar and that on NATO Strategy. She has confirmed her intention to hold both on the same day. I attach a proposed programme which sets out how she envisages discussion will be organised. This is intended to allow time both for discussion with outside experts and consideration of policy implications by official participants alone. It is a tight fit and quite a day for those who will take part in both seminars.

I also attach a list of outside experts whom she wishes to be invited, together with reserves, and suggested official participants. The Prime Minister is keen to keep this latter category to a minimum.

The Prime Minister agrees that it would be useful for a second and confidential paper to be prepared covering the

SSM



points set out in your letter. It should not attempt to draw any hard and fast conclusions for future policy since these will be for discussion by the official participants in the seminar, but it might suggest some guidelines. I should be grateful to receive this, if at all possible, by the time of the Prime Minister's departure for South East Asia (14 September).

I hope that Richard Mottram, to whom I am copying this letter and enclosures, will be able to let me have the further paper on NATO Strategy, together with a list of possible participants in that seminar, by the end of this week. We can then start on issuing invitations. I do not, however, propose to circulate the paper on Possible Conflict of Principles to non-official participants until rather nearer the time.

C D POWELL

Colin Budd, Esq.,  
Foreign and Commonwealth Office

CONFIDENTIAL



DRAFT PROGRAMME FOR SEMINARS AT CHEQUERS ON 1 OCTOBER

0930 - 1215 Full Seminar on NATO Strategy

1230 - 1400 Continue discussion over lunch

1400 Unofficial participants depart

1400 - 1530 Consider policy implications with  
official participants

1530 - 1630 Break

1630 - 1845 Full Seminar on Conflict of Principles

1900 - 2030 Continue discussion over dinner

2045 Unofficial participants depart

2100 - 2200 Consider policy implications with  
officials



OUTSIDE EXPERTS ON INTERVENTION

Derek Bowett	Professor of International Law, Cambridge
Rosalyn Higgins	Professor of International Law, LSE
Dr. Elihu Lauterpacht	Reader in International Law, Cambridge
Sir Ian Sinclair	Former FCO Legal Adviser
Col. Jonathan Alford	Deputy Director, IISS
Hedley Bull	Professor of International Relations, Oxford
Peter Calvocoressi	Author and former Reader in International Relations, Sussex
Admiral Sir James Eberle	Director, RIIA
Michael Howard	Regius Professor of Modern History, Oxford
Elie Kadourie	Professor of Politics, London
Sir Anthony Parsons	Research Fellow, Centre for Gulf Studies, Exeter
Hugh Thomas	Centre for Policy Studies

\* \* \* \* \*

Reserves

Dr. Anthony Kenny	Master of Balliol
Peter Nailor	Professor of History, RNC Greenwich
Dr. Roger Scruton	Reader in Philosophy, Birkbeck College, London
Dr. John Vincent	Lecturer in International Relations, Keele
Ben Whitaker	Director, Minority Rights Group
Bernard Williams	Provost, King's College, Cambridge
James Mayall	Senior Lecturer, International Relations, LSE

\* \* \* \* \*

Official Participants

Sir G. Howe  
 Mr. Heseltine  
 Lady Young  
 Mr. Stanley  
 Sir A. Acland  
 Sir P. Cradock  
 Mr. Cartledge  
 CDS

*Mr Hind - pm only*  
*Sir C Whitmore - all day*  
*Mr Pettie - am only*  
*Sir J Graham - am only*

*Sir R. Murray*



*D. P. Carole*

*1A*

PRIME MINISTER

NATO STRATEGY

You asked to see recent papers produced by the Chiefs of Staff. There are two.

UK STRATEGY WITHIN NATO

A A fairly conventional analysis. I suggest that you read paragraphs 4 to 37. These cover the basic assumptions, the threat, Soviet strengths and weaknesses, NATO weaknesses and measures to deal with them.

I should skip paragraphs 38 to 71 which deal with each of the regions - Atlantic, Northern, Central and Southern - in detail and look at paragraphs 73 to 87 which assess the relative importance of the areas and give priority to the Central Region.

I should skip paragraphs 88 to 101 and read the conclusions in paragraphs 102 to 111.

B There is also an annex on Flexible Response but it contains nothing new.

UK STRATEGY OUTSIDE THE NATO AREA

C There is then a rather racier paper on UK Strategy outside the NATO area.

Paragraphs 6 to 44 are a geographical survey:

Paragraphs 45 to 50 try to set priorities;

Paragraphs 52 to 60 deal with training, etc;

Paragraphs 61 to 62 contain the conclusions.

*CP*

1 August 1984



*alt*



MINISTRY OF DEFENCE  
MAIN BUILDING WHITEHALL LONDON SW1  
Telephone 01-~~230 7922~~ 218 2111/3

MO 9/13

1st August 1984

*New Charter,*

FOREIGN POLICY: NATO STRATEGY

In your letter of 19th June to Peter Ricketts, you asked for a short paper to serve as a framework for discussion at a seminar on NATO strategy to be held by the Prime Minister at Chequers.

I attach a short paper prepared by officials here which addresses the issues referred to in your letter and, as you requested, poses questions as much as attempting to answer them. Also enclosed is a copy of the text of the key NATO document on the meaning of flexible response (MC14/3) which the Prime Minister might find of interest but which, because of its classification, we would not propose to circulate to the outside participants at the seminar itself. The Defence Secretary has already separately forwarded to the Prime Minister a more extensive and wider ranging paper by the Chiefs of Staff which addresses these issues.

The Defence Secretary will wish himself to give further thought to these problems in the Autumn in the run-up to the publication of next year's Statement on the Defence Estimates in which he would intend to include a full discussion of the basis of our present defence policy and its continuing relevance for the future. Given the Prime Minister's wish to have papers for the Chequers seminar before the Summer break, I am, as we discussed, forwarding the attachments to you now: the Defence Secretary may wish to add to them in due course prior to the seminar itself.

You also asked for advice about outside experts who might participate in this session. We and the FCO would suggest the following:

Professor Michael Howard Regius Professor of Modern History and Fellow of Oriel College, Oxford and leading authority on military history and strategy;

Charles Powell Esq





Professor Lawrence Freedman Professor of War Studies,  
King's College, London and perhaps Britain's foremost  
authority on nuclear strategy;

Professor Sir Hermann Bondi Chairman of the Natural  
Environment Research Council, Master of Churchill College,  
Cambridge and a former Chief Scientific Adviser, MOD;

Sir Arthur Hockaday 2nd PUS, MOD 1973-76. As Assistant  
Secretary General of Defence Planning and Policy, NATO in  
the mid 60s, Sir Arthur played a central role in the  
preparation of MC 14/3, the basic flexible response document;

Dr Robert O'Neill Director, International Institute for  
Strategic Studies.

I am copying this letter and the attachments to Len Appleyard (FCO).

*Yours etc.*

*Richard Mottram*

(R C MOTTRAM)  
Private Secretary



F P Strategy Pt 2



CONFIDENTIAL



POINTS FOR DISCUSSION

1. Is Flexible Response the right strategy: are there any credible alternatives given the geo-political realities?
2. In what way (if any) are the circumstances surrounding conventional, theatre nuclear and strategic forces in 1984 different from 1967?
3. Is there any evidence that Soviet perceptions of NATO's credibility have changed? What is their likely risk analysis?
4. Is it necessary to undertake further conventional improvements in Europe to maintain credibility of Flexible Response?
5. Is NATO's political solidarity under threat from the weaker members? If so how can this division be countered both politically and militarily?
6. Are NATO governments doing enough to reassure publics of the viability of NATO strategy?
7. Is NATO doing enough to maintain the primary linkages both between Europe and USA and between conventional and nuclear response?



## 1. The Intellectual Foundation of Flexible Response.

NATO security policy is based on deterrence and defence and is essentially reactive. Unlike Soviet doctrine it has no concept of pre-emption or of seizing the military initiative in a crisis. Prime aim is to prevent war; secondary aim, should aggression occur, is to restore deterrence short of an all out nuclear war.

The North Atlantic Treaty limits the Alliance to operations within a defined geographic area. The threat to Alliance interests outside the NATO area is acknowledged by NATO, but the responsibility for any military action remains with the individual members of the Alliance who have the military capacity to intervene.

The strategy of flexible response (set out in MC14/3 attached) was adopted in 1967. It replaced the "tripwire" doctrine of massive nuclear retaliation in response to aggression which had ceased to be credible with attainment of strategic parity by the Soviets. At that time, there was also a theatre nuclear and conventional imbalance in the Soviet's favour. Parallels with 1984 are striking; in neither year could the Alliance claim that it had escalation dominance. (ie. the higher up the 'ladder' of escalation, the stronger NATO's military position becomes.) The strategy contains some important compromises (see 5 below) resulting from geo-political realities but its adoption followed searching public enquiry and intensive strategic analysis. That process of analysis has continued, most recently in a major review this year by the Chiefs of Staff of the UK's contribution to, and strategy within, NATO.

## 2. Strategic Objectives of Flexible Response.

Aim is preserve peace and provide for security of NATO area by a credible deterrence, effected by persuading the potential aggressor that the risks he would run from his aggression would be far greater than anything he could hope to gain from it. This means confronting any possible, threatened or actual aggression ranging from covert operations to all out nuclear war, with adequate NATO forces. Three key principles:

- a. manifest determination to act jointly and defend NATO area against all forms of aggression;
- b. a recognisable Alliance capability to respond effectively regardless of level of aggression;
- c. a flexibility which will prevent potential aggressors predicting with confidence NATO's specific response to aggression, and which will lead him to conclude that an unacceptable degree of risk would be involved regardless of nature of the attack.

These represent a coalescence of political will and military capability. Both elements are critical; both must be declaratory and credible to East (deterrent) and West (public reassurance).

## 3. Military Posture.

There are three components to NATO's military posture:

- a. Conventional forces: to deter and counter as far as possible any Soviet non-nuclear attack by direct defence and threat of escalation to nuclear war;



- b. theatre nuclear forces; to provide an additional deterrent to conventional attacks and a deterrent to Soviet use of theatre nuclear forces and to provide NATO with a range of options for the use of nuclear weapons short of the ultimate strategic exchange.
- c. strategic nuclear forces; to be able to inflict unacceptable damage on the Soviet Union even after a pre-emptive Soviet first strike.

All three components are crucially inter-linked; and for flexible response to remain credible, each level must be capable of fulfilling its required role. If one component (eg. theatre nuclear forces) is ineffective, the credibility of both conventional defence, with its implicit threat of escalation, and strategic nuclear forces, which are of their nature ultimate weapons, is eroded to dangerous levels. The Chiefs of Staff strategic review reaffirmed the importance to deterrence of the UK's contribution to all three components.

#### 4. Political Will.

It is implicit in the nature of the Alliance that all members participate on an equal basis in the process of decision making. Equally, it is essential for the Alliance to make a clear demonstration, as an unmistakable signal to the Soviet Union, of:

- political cohesion
- burden sharing
- risk sharing and
- the will to mount direct conventional defence and the preparedness to continue to escalate NATO's response to the strategic level. Internally the Alliance must show its member states that the same political determination can be maintained in times of crisis.

#### 5. Compromises implicit in Flexible Response.

There are a number of compromises in flexible response drawn from geo-political realities and concerns as valid for the foreseeable future as they were in 1967:

- a. Given Soviet strategic nuclear parity, the US would not accept a strategy which immediately risked the US homeland in the event of a limited conventional assault; moreover, such a strategy would be militarily and politically incredible and morally repugnant;
- b. Forward defence reflects continental European, especially FRG, concerns that there cannot be any "disposable" or "vassal" Western states acting as a buffer between super-powers;
- c. The concept of possible escalation by NATO to the first use of nuclear weapons reflects the fact that Alliance members have never been willing to provide the resources needed to mount a full conventional defence to a major Soviet attack;



RESTRICTED

d. MC14/3 never defines the length of any phase of NATO's response. There is an underlying tension between at one extreme the US, who would wish to delay nuclear exchanges for as long as possible (hence their emphasis on building up stocks of conventional weapons in Europe and on the need to be able to reinforce), and at the other, the Europeans, especially the FRG, who would not wish to see a prolonged conventional war in Europe (although they equally fear a nuclear war limited to Europe). There are options between these two extremes which reflect the need to fight a conventional battle long enough to make rational decisions about escalation.

6. Has Flexible Response ceased to be credible?

There is widespread concern that the tenets of Flexible Response - notably the conventional element of the triad of forces - no longer constitute a realistic defence posture, and that it has reverted to something akin to an extended "tripwire". Much of the debate has focussed on the 1979 decision to modernise NATO's Long Range Theatre Nuclear Forces, as well as US (and UK) Strategic modernisation programmes, and an inchoate feeling that Arms Control is not being pursued adequately by the Alliance.

Although public opinion in Western democracies cannot be dismissed (indeed, it is necessary for it to be reassured), the aim of a deterrent strategy is to influence decisively and positively the calculations of the Soviet Union. In analysing, however, how the Soviet Union might address such a calculation, three factors are relevant:

a. flexible response caters for a wide range of contingencies ranging from a minor incursion involving conventional forces only, to an overwhelming attack leading very rapidly to the need for resort to a strategic exchange. Where NATO stands in its ability to respond effectively to any of these options is a function of the relationship between NATO and Warsaw Pact forces, and not just NATO in isolation.

b. flexible response does not require a specific pre-ordained graduated (or inflexible) response; it does not of itself commit NATO to using any particular weapon system (especially nuclear) at any given stage; and it does not require NATO to match every WP system with an equivalent Western counterpart. This implies;

c. flexible response has no "nuclear threshold" as such. Instead, it presents NATO's military and political authorities with a range of options. The stronger and more enduring NATO's conventional capability, the longer the time that is then available to the Alliance for it to decide whether or not to exercise any nuclear options. Excessive concern in the West about the "nuclear threshold" could lead Soviet analysts to calculate that NATO's deterrent options had been circumscribed to the point of incredibility; on the other hand, dismissal of conventional effort is a step back to the notion of "tripwire".

7. Soviet analysis would need to question the same areas that have been scrutinised in the current Western debate. Taking each "leg" of NATO's force structure, the main questions that need to be addressed are:



a. Conventional Forces:

- Are NATO's conventional forces strong enough to make direct defence feasible? (Assessing the Military Balance is a complex task; see extract from SDE 84 at Annex. Whilst a potential aggressor could achieve local superiority there is no reason to believe that the Soviets perceive, in terms of the broader calculus, the present balance as giving them a certainty of success nor that NATO would easily succumb to a conventional attack, even on a massive scale).
- If they are, how far does that depend upon timely reinforcement and how confident can we be that these reserves are adequate and that necessary decisions will be taken to despatch reinforcements when they are needed?
- If direct defence does not look feasible and if early recourse to nuclear weapons is not an option that can be publicly sustained what can be done to strengthen the Alliance's conventional capability?
- The questions above notwithstanding, is there a danger that over-emphasis on strengthening conventional capability will actually weaken deterrence because the Soviets will assume that the Alliance is losing the will to resort to nuclear weapons if necessary?

b. Theatre Nuclear Forces.

- What role is there for battlefield nuclear systems? Are they credible?
- Whatever the answer on battlefield nuclear systems does it matter that there should be a very large numerical discrepancy between Soviet and NATO theatre nuclear forces? Does such disparity suggest that escalation is an unreal concept because at each stage the Russians could still hit NATO harder than NATO could hit the Russians?
- If the disparity doesn't matter, well and good. But if it does, and if the answer is to build up NATO theatre nuclear forces, then is there a danger of weakening deterrence through the suggestion that some kind of balance between European based nuclear forces is being sought and the importance of US strategic forces can be correspondingly reduced?

c. Strategic Forces.

- does the lack of US strategic superiority undermine flexible response (even though achievement of parity by Soviets made tripwire incredible)?
- are strategic forces adequately linked by credible conventional and theatre nuclear forces to the overall NATO military posture?
- is the USA prepared to use its strategic nuclear forces, and risk reprisals, to defend Europe?
- How do UK and French strategic forces complicate Soviet analysis?



The Chiefs of Staff concluded from their review that flexible response is still valid, will continue to be so for the foreseeable future and that no credible alternative is foreseen. They recognised weaknesses in all NATO regions and identified ways in which they might be overcome. However we have no reason to judge that, in Soviet eyes, flexible response has ceased to be credible but equally we cannot afford to be complacent.

d. There is a need for public reassurance on this score but public and official concern about credibility and role of nuclear weapons is not new. Interesting that SDE 1966 states: "Until progress is made towards disarmament, the only alternative to NATO's present dependence on nuclear weapons would be a massive build up of its conventional forces in Western Europe. Even if Britain, were prepared to face the heavy economic cost of this alternative, NATO as a whole is not willing to do so. A decision by NATO to increase its conventional forces in this way could in any case stimulate an arms race in Europe, since the Warsaw Pact powers would probably follow suit. It would provide no protection if the aggressor himself decided to use nuclear weapons first." Plus ca change, plus c'est la meme chose.



- in face of Soviet strategic/INF systems does NATO have any alternative to maintaining similar capabilities? What effect will SDI and other developments in space have on the strategic balance and the concept of flexible response in the longer term?

#### 8. Chemical Warfare

NATO relies on its conventional and nuclear (and very limited US national CW) forces to deter a CW attack. CW, however, presents special problems in terms of flexible response because of the wide span of the threats it encompasses - ranging from a small local attack (to which a nuclear response would hardly be credible) to a massive CW strike (to which a nuclear response could well be appropriate). MC 14/3 calls for passive defensive measures against CW; and for a limited retaliatory CW capability. The key question is whether NATO's current posture is credible, or whether a more potent CW capability to respond to any CW attack is needed.

#### 9. Political Analysis.

Underpinning the analysis of NATO's conventional and nuclear military capabilities, the Soviet Union must make an overall assessment of NATO's political will to reinforce, to resist, to escalate, and ultimately to threaten Armageddon. NATO must, to remain credible at all levels, demonstrate its political unity in its defence posture:

- failure to maintain political solidarity at a time of crisis would be tantamount to defeat, as NATO would be unable to mount a credible conventional or nuclear defence.

- in this context the derogation by some Allies of their nuclear responsibilities, especially LRTNF, and unwillingness to share in some nuclear tasks is disturbing.

- every effort must be made to re-emphasise political solidarity of Alliance.

#### 10. Linkage.

Such analysis leads to the inescapable conclusion that NATO must nourish and maintain as central to its survival, two primary linkages:

- political: between Europe and the USA (and within Europe)
- military: between conventional and nuclear capabilities.

The efforts made by the Soviet Union to de-couple Europe from the USA over LRTNF modernisation demonstrate vividly that their own analysis has reached identical conclusions.

11. Alternative to Flexible Response. A number of analysts have put forward some alternative defence concepts and strategies. The main ones are briefly criticised below against the key criteria for strategic viability:

##### a. Nuclear Weapon Free Zone/Unilateral Nuclear Disarmament.

- commits NATO vastly to increasing the level of its conventional forces (and to prospect of equally devastating conventional war in Europe); with unrealistic resource costs.



- no guarantee the other side would not cheat;
  - Soviet homeland is only put at risk from US strategic systems;
  - it offers no defence against nuclear blackmail or even massive conventional threat.
- b. No first use of Nuclear Weapons/"Just Defence"
- again, commits NATO to increasing the size of its conventional forces;
  - does not avoid the need to retain nuclear weapons (for use in response);
  - impossible to verify an opponent's intention.
- c. Emerging Technology/New Tactical Concepts.

Technology can help improve conventional posture and might reduce role of battlefield nuclear weapons. Essential value of new tactical concepts is to enhance conventional element in flexible response. But:

- does not subsume strategic or LRTNF balance;
- does not provide a defence alone against nuclear threat.

The key question to ask is: would the Soviet Union feel more comfortable with any of these postures than with flexible response, and if so, why?

#### 11. Current work in NATO to enhance Flexible Response.

NATO is in the process of modernising all three elements of its triad of forces. In the strategic nuclear area the US MX and the US/UK Trident II programmes will contribute to preserving Alliance/WP strategic parity. The Alliance has also successfully begun to deploy its new theatre nuclear weapons (GLCMs and Pershing IIs). Against this background, particular attention is being paid to improving NATO's conventional posture through:

- a. looking at potential for sensible and affordable exploitation of Emerging Technologies. A further report will be submitted to NATO Ministers in December;
- b. new tactical concepts are under development; and NATO's Military Authorities are preparing a 'conceptual framework' to meld new concepts and long term procurement plans into a cohesive whole against clear priorities;
- c. improvements are being made to the coordination and forward projection of defence planning as part of NATO's continuing efforts to improve output and value for money;



d. following the UK initiative on armaments cooperation, nations are seeking to enhance the harmonisation of operational requirements and to extend the scope of equipment collaboration through the IEPG and Eurogroup. The EFA is an instance of the potential for collaboration.

## 12. Conclusions.

a. Flexible response is only as flexible as its military and political contributory elements allow. It is threatened or becomes invalid in one or more of four circumstances:

a. a collapse of the strategic balance;

b. NATO's theatre nuclear capabilities cease to provide a spectrum of options for deterrence and credible linkage between the conventional and strategic nuclear forces;

c. a major conventional reduction in Europe, which would put at risk direct defence and coupling;

d. evidence that NATO's political cohesion would collapse in face of conventional attack.

b. Of these four circumstances, (b) above has come closest to threatening the credibility of flexible response in recent years; and that is being rectified by NATO's deployment of Pershing II and cruise missiles. Barring successful congressional pressure to withdraw US troops from Europe, we do not face the danger of a, b or c in the foreseeable future.

But the Alliance's conventional effort has come under increasing scrutiny in recent months; and we must guard against the danger that lack of confidence by the Alliance in the credibility of its conventional defence will lead to an erosion of political will and cohesion and allow the Russians to calculate that a conventional attack will not carry with it a major risk of escalation.

There would also be dangers in the combined effect of a little of each of the three circumstances at a, b and c above: significant Soviet strategic superiority, major Soviet superiority in TNF and some reduction in conventional forces in Europe. The combined effect could again be to undermine the political will and cohesion of the NATO Governments. The credibility of the strategy of flexible response depends on convincing the Soviet Union of two things:

- that NATO has sufficient material resources to respond to attack, to go on responding, and to raise the stakes if necessary;

- that NATO has the political will to use the men and equipment at its disposal.

If the NATO governments can demonstrate that they could and would respond, and that they have the forces to do so, NATO can ensure that:

c. The Russians must continue to conclude, as the IISS judges, that "military aggression (would be) a highly risky undertaking .... the consequences for an attacker would be unpredictable, and the risks, particularly of nuclear escalation, incalculable" (Military Balance 83/1



The Chiefs of Staff concluded from their review that flexible response is still valid, will continue to be so for the foreseeable future and that no credible alternative is foreseen. They recognised weaknesses in all NATO regions and identified ways in which they might be overcome. However we have no reason to judge that, in Soviet eyes, flexible response has ceased to be credible but equally we cannot afford to be complacent.

d. There is a need for public reassurance on this score but public and official concern about credibility and role of nuclear weapons is not new. Interesting that SDE 1966 states: "Until progress is made towards disarmament, the only alternative to NATO's present dependence on nuclear weapons would be a massive build up of its conventional forces in Western Europe. Even if Britain, were prepared to face the heavy economic cost of this alternative, NATO as a whole is not willing to do so. A decision by NATO to increase its conventional forces in this way could in any case stimulate an arms race in Europe, since the Warsaw Pact powers would probably follow suit. It would provide no protection if the aggressor himself decided to use nuclear weapons first." Plus ca change, plus c'est la meme chose.



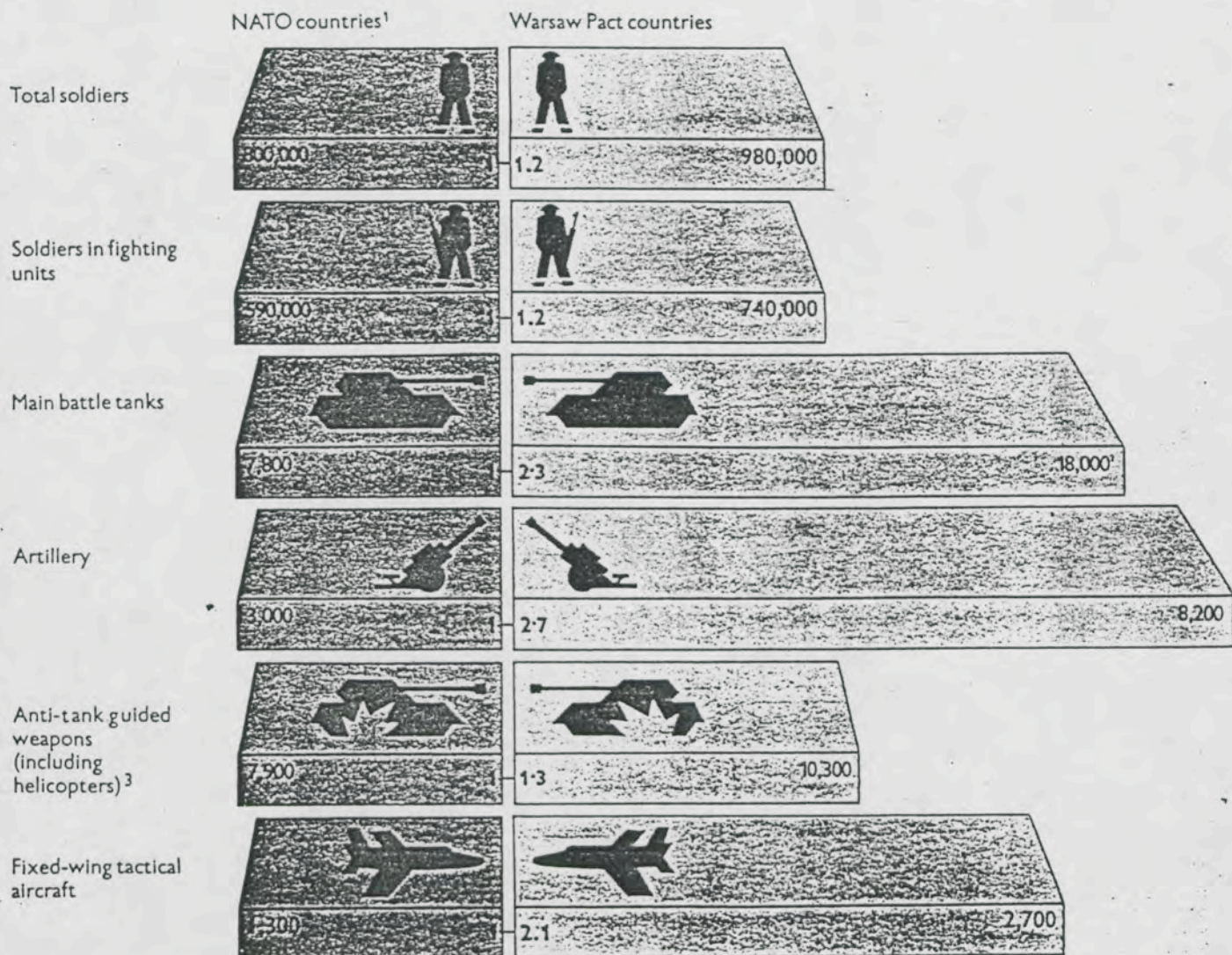
# Annex A

## The Balance of Forces Between East and West

1. Drawing up an accurate picture of the military balance between the Warsaw Pact and NATO is a complex matter. A complete assessment of the global power balance would involve taking into account forces deployed worldwide; both the United States and the Soviet Union, for example, maintain substantial forces in Asia whose existence and roles are of indirect but nonetheless considerable importance to the military situation in Europe. Even if attention is confined to the European theatre, a numerical comparison of forces can never constitute a complete assessment of the military balance. Many other factors can affect NATO's capability to deter and defend, or

conversely the Soviet leadership's assessment of the strength of NATO's forces. The quality of men — their morale and motivation, their standard of training, the way they are led — is both crucial and unquantifiable. Equally important is the quality of the equipments they use; factors such as range, reliability, technical sophistication and age can count for much more than bare numbers. In the case of Soviet dual-capable nuclear delivery systems, it is impossible to determine precisely what proportions might be used in the conventional and nuclear roles. A further consideration is the ability to sustain a conflict, which covers a spectrum of concerns from spares and stocks at the front to the underlying

Figure 9 The Balance of Forces on the Central Front



<sup>1</sup>Including French Forces in the Federal Republic of Germany but excluding the Berlin garrison, which is not declared to NATO

<sup>2</sup>Includes some Warsaw Pact tanks in training units and storage which would be available for operational use

<sup>3</sup>Only weapons which are, or have the capability of being, vehicle or helicopter mounted are included



national economic and industrial base. Geography, too, cannot be ignored. The Soviet Navy has to face the handicap of widely dispersed bases and restricted egress to the high seas. Conversely, short lines of supply and reinforcement would give the Soviet Union and her Warsaw Pact allies an enormous advantage in any conflict on the continent of Europe. Finally, in any land conflict the attacker, despite the advantage of surprise, would normally require considerable local numerical superiority over the defender, whilst at sea it is the defender who needs the advantage of numbers. These qualifications and limitations must be borne in mind when considering the following summary of the numerical balance of forces between NATO and the Warsaw Pact.

## THE CONVENTIONAL BALANCE

### Land/Air Forces

2. Figure 9 shows the balance of conventional forces at the end of 1983 on the Central Front. Among the major developments in Warsaw Pact forces, an improved tank has recently appeared with the Soviet forces in Eastern Europe with enhanced firepower and protection. Most Soviet units in Eastern Europe are now equipped with T64 or T72 tanks, and the latter are also starting to appear in the non-Soviet Warsaw Pact inventories. New self-propelled artillery pieces are being introduced to the forward area. There has been a significant increase in the number of airborne and

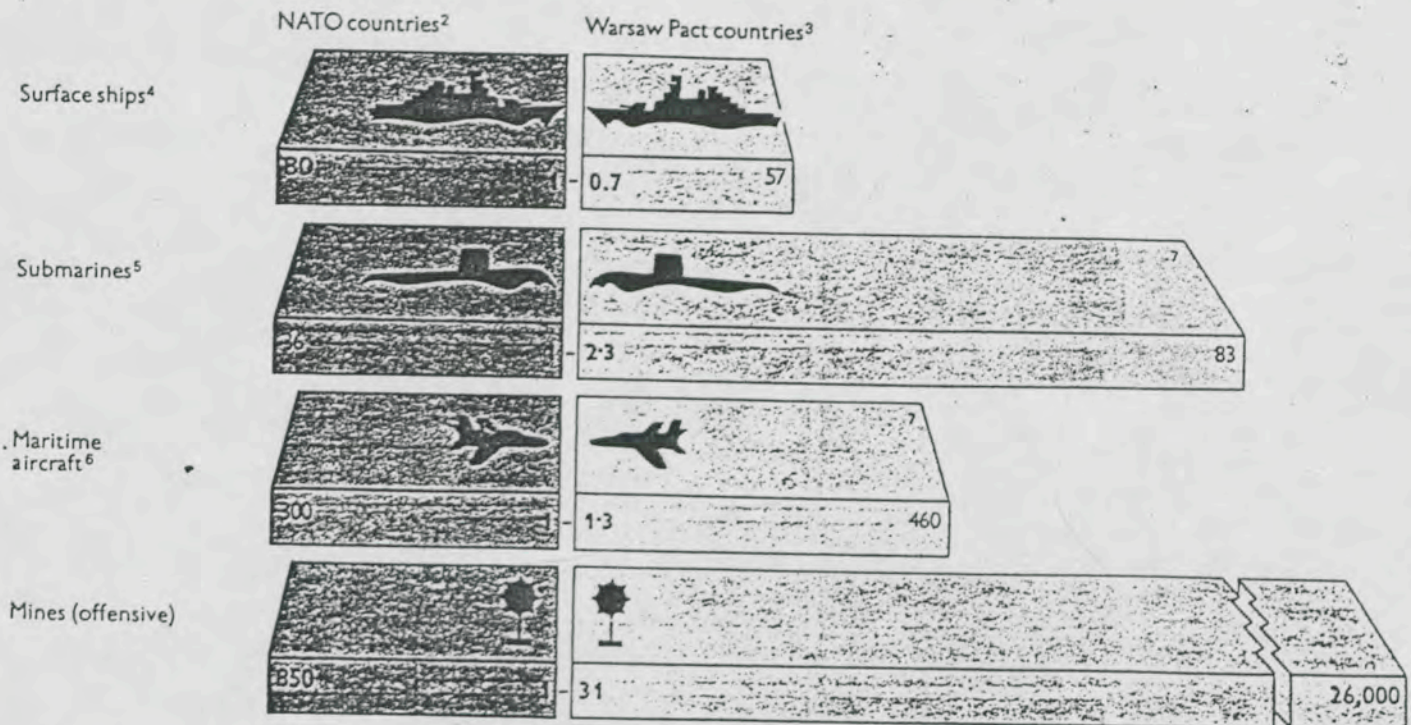
parachute troops available for operations behind NATO lines, with a doubling in the last four years to 500 of the number of attack helicopters facing NATO in the Central Region. In the area of air power, current generation tactical aircraft have increased range, improved avionics and weapons and better performance and all-weather capabilities than previous models. Two new fighter aircraft have been developed, Fulcrum and Flanker, which have added improvements in range, thrust-to-weight ratio, manoeuvrability and avionics and represent a major step in closing the technological gap with the West. The overall picture remains of a significant numerical advantage to the Warsaw Pact in all major aspects of conventional arms.

3. To the main categories of armaments should be added chemical weapons. The Soviet Union has a major capability in this field. Continuing research and development and production of chemical weapons is adding to their stock-pile, already assessed to include over 300,000 tons of nerve agent. Moreover, Soviet forces are comprehensively equipped and trained to operate in a contaminated environment. Among NATO members only the United States has chemical weapons; but its stocks are much smaller, ageing and not declared to NATO.

### Maritime Forces

4. Figure 10 illustrates the balance of ready maritime forces in the Eastern Atlantic. Warsaw Pact forces comprise

Figure 10 The Balance of Ready Maritime Forces in the Eastern Atlantic<sup>(1)</sup>



#### Notes

<sup>1</sup>For the purposes of this diagram the Eastern Atlantic comprises the NATO command areas CHANNEL, EASTLANT and IBERLANT. British Forces normally operate in CHANNEL and EASTLANT but also on occasion in the more southerly IBERLANT

<sup>2</sup>Includes French maritime Forces

<sup>3</sup>Warsaw Pact Forces comprise Northern Fleet surface ships, submarines and maritime aircraft and Baltic Fleet maritime aircraft

<sup>4</sup>Surface ships of frigate size and above

<sup>5</sup>Excludes SSBNs and certain submarines not formally committed to the Eastern Atlantic

<sup>6</sup>Includes helicopters

<sup>7</sup>The threat to NATO is increased by the Warsaw Pact's capability to deploy a total of 350 anti-ship missiles with a range of over 200 km in its ready maritime forces. NATO has no equivalent capability



Northern Fleet surface ships, submarines and maritime aircraft and Baltic Fleet maritime aircraft. The figures for NATO include French forces but exclude US Navy ships from the Strike Fleet Atlantic because their availability in the Eastern Atlantic cannot be assumed at the outbreak of hostilities. NATO retains a small numerical superiority in major surface combatants over the Soviet Union in this area. But this advantage, already off-set by Soviet superiority in submarine numbers, is being eroded by the rate of Soviet naval production.

5. Major Soviet surface warships under construction include four new classes of heavily-armed missile cruisers and destroyers, as well as the Kiev class aircraft carriers. Over the past year a second Kirov class nuclear-powered cruiser and further units of both the Udaloy and Sovremenny class destroyers have put to sea, whilst the first of the latest new cruiser type, the Slava, and the third Kiev class carrier Novorossysk both made their first deployments out of the Black Sea. Several new classes of submarines including a successor to the Victor III class attack submarine are in production and a large, nuclear-powered aircraft carrier capable of operating conventional fixed-wing aircraft is likely to appear later in the decade. Meanwhile, the centrally-controlled Soviet merchant and fishing fleets are being steadily upgraded; they are available to compensate for the Soviet Navy's relative lack of logistic support afloat, as well as for other military roles. The Soviet Navy thus continues to enhance its capability as an offensive force capable of global power projection. In response the US government have embarked upon a shipbuilding programme to increase the strength of the US Navy to over 600 ships.

## THE NUCLEAR BALANCE

6. The balance of nuclear forces is shown in Figure 11. While the overall balance is not as heavily weighted against NATO as in the case of conventional forces, there are serious disparities in some areas, and the picture is again one of a steadily adverse trend.

### Strategic Forces

7. At the strategic level, the Soviet Union has the advantage in numbers of delivery systems. Soviet systems are generally newer than US systems; and the Soviet Union has a considerable advantage in throw-weight (a measure of destructive potential) and in missile warheads, although the United States retains a small advantage in total warhead numbers. Since 1972 when SALT I was signed the Soviet Union has introduced three new types of inter-continental ballistic missiles (ICBMs) and four new types of submarine launched ballistic missiles (SLBMs). In the same period the US have deployed only one new SLBM and the air-launched cruise missile (ALCM). The MX ICBM which the US is planning to deploy from 1986 as part of the modernisation of its strategic nuclear forces will be its first entirely new ICBM since 1970. Other US modernisation plans include the development of the Trident D5 SLBM and procurement of 100 B1 strategic bombers. Meanwhile, the Soviet Union is continuing to modernise its nuclear forces. Delta class nuclear-powered ballistic missile submarines (SSBNs) equipped with missiles with multiple independently

targetable re-entry vehicles (MIRVs) are still being built and are replacing the older Yankee and Hotel SSBNs which have single-warhead missiles. The Typhoon submarine entered operational service in late 1983 equipped with the new multiple-headed SS-N-20 SLBM. Testing of two new Soviet ICBMs, the SS-X-24 and SS-X-25, is underway. Both could be deployed on mobile launchers. A new strategic bomber, the Blackjack, is also under development. It is similar in configuration to the US B1 bomber but is one-third larger in size.

### Cruise Missiles

8. The development and deployment of long-range cruise missiles is one of the more significant developments in the past year. The US are fitting air-launched cruise missiles (ALCMs) on their strategic bombers and deployment of sea-launched cruise missiles (SLCMs) on submarines and surface ships is expected from the middle of this year. The first US ground-launched cruise missiles in Europe have now become operational. Meanwhile, the USSR is actively engaged in a test programme to develop long-range cruise missiles for launch from ground, sea and air platforms. These will be primarily for nuclear strike and have ranges estimated at up to 3000 km. The air- and sea-launched versions have the potential for intercontinental strategic strike, depending on the platforms, while they could all complement Soviet assets in the theatre role. Initial deployments of at least the sea- and air-launched cruise missiles are likely within the next two years. The ALCM will probably be carried initially by a variant of the Bear heavy bomber, followed in the 1990s by Blackjack.

### Theatre Nuclear Forces

9. In intermediate-range nuclear forces (INF) there is still a marked imbalance in favour of the Warsaw Pact despite the initial deployment by NATO of ground-launched cruise missiles (GLCMs) and Pershing II. The Soviet Union has revoked its moratorium on SS20 base construction in the Western USSR and is starting to add to the 243 SS20s at present facing Europe. It has also begun forward deployment of the Scaleboard/SS22 in Eastern Europe and of Delta class strategic missile-firing submarines in the Western Atlantic. Construction of new bases has continued in the Far East and the total number of SS20 missiles now operational worldwide is 378, carrying 1134 warheads. The few remaining obsolete SS5 missiles have now been withdrawn from service but it is unclear whether the rundown of the remaining SS4 missiles will resume with new SS20 deployments or whether they will be maintained at their present level. Major improvements are taking place in Soviet shorter-range, dual-capable missile systems, with the SS21, SS22 and SS23 missiles replacing or about to replace the older Frog, Scaleboard and Scud missiles. The new or improved missiles can cover ranges of up to 950km and have greater accuracy, better survivability and shorter reaction time than their predecessors. Improvements are also underway in Soviet battlefield nuclear artillery. 152mm guns, both self-propelled and towed, are adding significantly to this capability, as is the recent formation of additional 203 and 240mm heavy artillery brigades. The recent deployment of nuclear-capable artillery into the Forward Area will considerably increase Soviet short-range nuclear options.



Figure 11. The Balance of Nuclear Forces<sup>(1)</sup>Strategic Systems<sup>2</sup>

## USSR

ICBMs: SS11, 13, 17, 18, 19  
 SLBMs: SS-N-5, 6, 8, 17, 18, 20  
 Bombers: Bear, Bison,  
 Backfire

NATO<sup>4</sup>

ICBMs: Titan II, Minuteman  
 2 & 3  
 SLBMs: Poseidon, Trident,  
 Polaris (UK)  
 Bombers: B52, FB111

Longer Range<sup>3</sup>  
INF in Europe

## USSR

Aircraft: Badger, Blinder  
 Missiles: SS4, SS20

NATO<sup>4</sup>

Aircraft: F111  
 Missiles: Pershing II,  
 GLCM

Shorter Range<sup>3</sup>  
INF in Europe

## Warsaw Pact

Aircraft: Fitter  
 Fishbed  
 Flogger  
 Fencer

Missiles:  
 Scaleboard  
 SS22  
 Scud/SS23

NATO<sup>4</sup>

Aircraft:  
 F4 F104  
 (Bel, FRG,  
 Gr, It, NL,  
 Tu)  
 F16 (Bel,  
 NL, US)  
 Buccaneer  
 (UK)  
 Jaguar (UK)  
 Tornado  
 (UK, It)

Missiles:  
 Pershing I

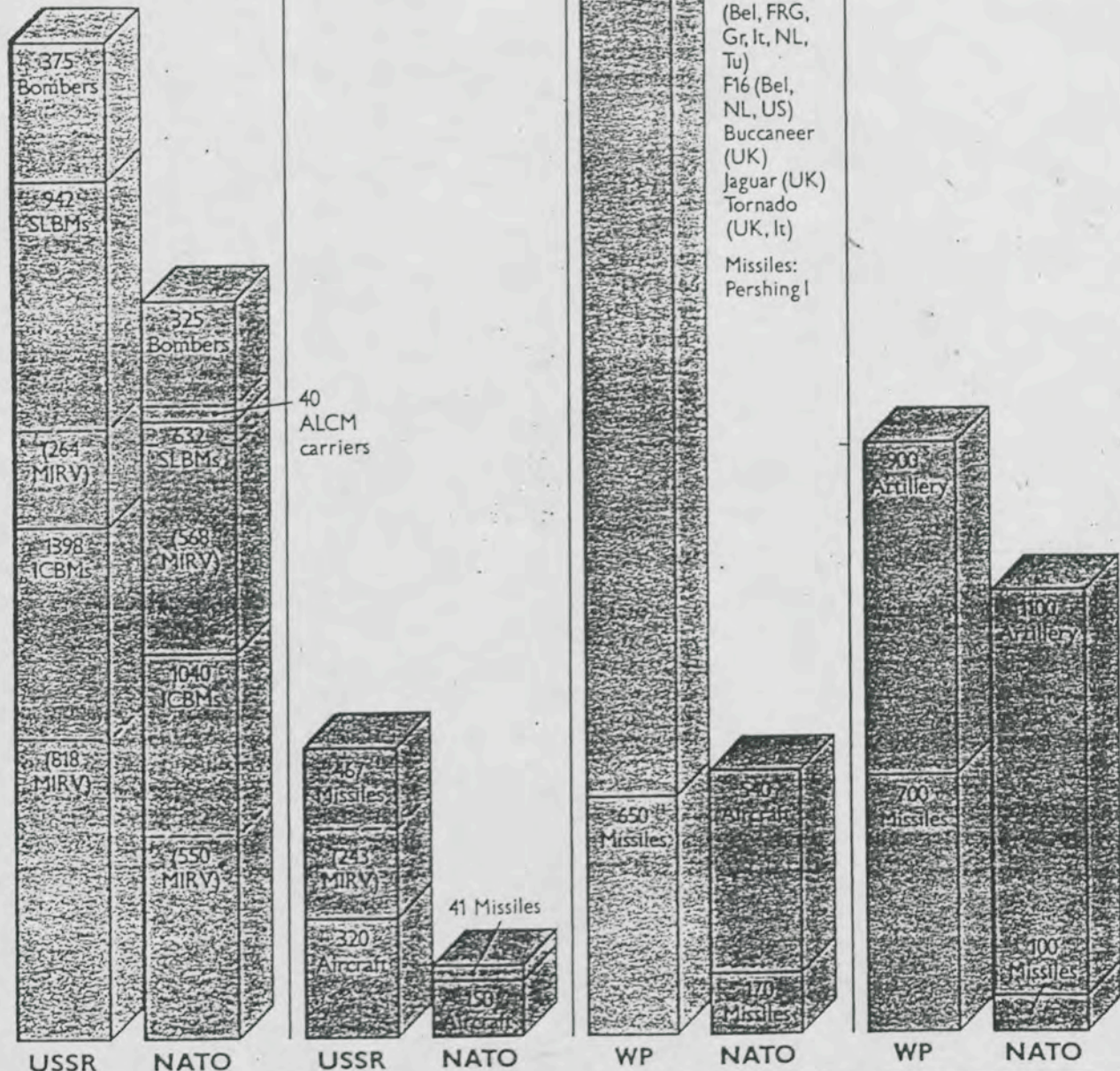
Short Range Forces<sup>3</sup>  
in Europe

## Warsaw Pact

Missiles: Frog/SS21  
 Artillery: 203/152/240 mm

NATO<sup>4</sup>

Missiles: Lance (Bel, FRG, It,  
 NL, UK, US)  
 Honest John (Gr, Tu)  
 Artillery: 155 mm (Bel, FRG,  
 Gr, UK, US)  
 8 in (Bel, FRG, Gr,  
 It, NL, Tu, UK, US)



Notes 1 French systems are not included in this diagram. They comprise 64 SLBM, 18 SS3 missiles, 36 Mirage IV bombers, shorter range Mirage IIIA and Jaguar aircraft and Pluton missiles. The diagram does not include defensive systems such as ABMs or air defence missiles or aircraft.

2 In accordance with NATO practice, strategic forces include operational systems fully within the definition used within SALT II plus the Soviet Backfire and US FB 111 aircraft which have an inherent inter-continental capability.

3 Intermediate and short-range nuclear forces are land-based systems in Europe from the Urals westward. These figures do not include some 170

aircraft of the Soviet Naval airforce based in the European theatre or some 20 aircraft of NATO airforces which have an anti-ship capability; nor do they include sea-based nuclear capable systems on both sides which are normally deployed in the European theatre and which have a land attack capability, e.g. 18 SS-N-5s on Soviet Golf Class Submarines in the Baltic and about 70 A6 and A7 aircraft on US carriers in the Mediterranean.

4 All NATO systems operated by the US except where shown.

5 Includes additional equipments now assessed to have a nuclear delivery potential.



## NATO Document

The NATO document which was enclosed on this file has been removed and destroyed.

Such documents are the responsibility of NATO and as the originators they reserve ownership of the documents they issue. NATO documents are, therefore, not public records even when they are kept in UK government records. When released they will be available in the NATO Archives in Brussels.

**Document Reference:** MC 14/3 (photocopy of the text of the document)

**Document Title:** Overall Strategic Concept for the Defence of the North Atlantic Treaty Organisation Area

**Document Date:** Unknown

**Destruction Date:** 21 June 2013

Signed

J. Gray

Date

21/6/2013

**PREM Records Team**



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PRIME MINISTER

FOREIGN POLICY: POSSIBLE CONFLICT OF PRINCIPLES

The Foreign and Commonwealth Office have provided a paper for the Seminar on this. It is - deliberately and I think rightly - a rather academic paper which examines the legal and moral arguments and quotes copiously from various sources. It will be a good document to circulate to participants and to have on the table at the Seminar. You might like to read it on holiday.

Geoffrey Howe suggests that you might commission a further paper, for official participants only, on:

- (a) examples of British intervention since 1945; ✓
- (b) HMG's attitudes towards intervention by others since 1945; ✓
- and
- (c) the implications for our policy in future hypothetical situations. ✓

/It seems



It seems to me that a paper on (a) and (b) would be useful.  
But it is better to draft a paper on (c) after the Seminar.

Agree?

I think we need to consider  
(c) at the Seminar in order  
to apply the principles effectively.  
rob

C.D.P.

31 July 1984



PRIME MINISTER

FOREIGN POLICY SEMINARS

You agreed to hold two half-day seminars on 1 October:  
one on NATO Strategy, the other on Possible Conflict of  
Principles in Foreign Policy.

That makes a lot for one day. It's not too late to reconsider and split them into separate days. But it would mean taking a Saturday or Sunday later in the Autumn.

Programme

If you go ahead with both on 1 October the following might be the programme:

0930 - 1215	Full Seminar on NATO Strategy
1230 - 1400	Continue discussion over lunch
1400	Unofficial participants depart
1400 - 1530	Consider policy implications with official participants
1530 - 1630	Break
1630 - 1845	Full Seminar on Conflict of Principles
1900 - 2030	Continue discussion over dinner
2045	Unofficial participants depart
2100 - 2200	Consider policy implications with officials



Participants

I attach a list of possible participants in the Conflict of Principles Seminar. Some of the non-official ones eg Michael Howard and Admiral Eberle might also be needed for the NATO Seminar. You may like to add Hugh Thomas.

So:

Please tick  
or cross

Stick to plan to hold both Seminars  
on 1 October?

Agree programme?

or

Hold only one Seminar?

if so

NATO Strategy?

or

Conflict of Principles?

Agree List of participants for  
Conflict of Principles Seminar?

? Dr. Kerry?

Add Hugh Thomas?

Other names?

C.D.P.

30 August 1984

July



OUTSIDE EXPERTS ON INTERVENTION

Lawyers

- ✓ Derek Bowett - Professor of International Law, Cambridge
- ✓ Rosalyn Higgins - Professor of International Law, LSE  
[Michael Akehurst - Reader in Law, Keele]
- ✓ Dr. Elihu Lauterpacht - Reader in International Law, Cambridge
- ✓ Sir Ian Sinclair OR [Sir Francis Vallat] - Both former FCO Legal Advisers

Philosophers/Historians

- ✓ Col. Jonathan Alford - Deputy Director, IISS
- ✓ Hedley Bull - Professor of International Relations Oxford
- ✓ Peter Calvocoressi - Author and former Reader in International Relations, Sussex
- ✓ Admiral Sir James Eberle - Director RIIA
- ✓ Michael Howard - Regius Professor of Modern History, Oxford
- ✓ Elie Kedourie - Professor of Politics, London
- ? [Dr. Anthony Kenny] - Master of Balliol?
- ✓ Sir Anthony Parsons - Research Fellow, Centre for Gulf Studies, Exeter

Reserves:

- Peter Nailor - Professor of History, RNC Greenwich
- Dr. Roger Scruton - Reader in Philosophy, Birkbeck College, London
- Dr. John Vincent - Lecturer in International Relations Keele
- Ben Whitaker - Director, Minority Rights Group
- Bernard Williams - Provost King's College, Cambridge
- James Mayall - Sen. Lecturer International Relations, LSE

Official Participants

- Sir G. Howe  
Mr. Heseltine  
Lady Young  
Mr. Stanley
- Sir A. Acland  
Sir P. Cradock  
Mr. Cartledge  
CDS



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Foreign and Commonwealth Office

London SW1A 2AH

30 July 1984

Dear Charles,

Foreign Policy: Possible Conflict of Principles

In his letter of 18 June, Len Appleyard undertook to let you have by the end of this month a paper and list of outside experts for a seminar at Chequers later this year on the foreign policy issues associated with intervention.

I now enclose a draft paper and list of experts (from whom a small group will need to be carefully selected). As the Prime Minister requested, the paper is intended to provide a thorough analysis of the problem and an intellectual basis for the Chequers discussions and for policy.

The paper does not deal with policy itself. The Foreign and Commonwealth Secretary suggests that the Prime Minister might consider commissioning a separate, much briefer and more highly classified paper, which would not be shown to outside experts, on the implications for British policy of the issues addressed in the present paper. The Prime Minister will want to consider whether she would like the Chequers seminar to be divided into two parts, with officials only to consider the implications for policy, or whether she would prefer discussion of a policy paper to follow the session at Chequers, possibly in OD, or in a smaller group.

The Foreign and Commonwealth Secretary thought that a second paper might cover the following policy aspects:

- (a) examples of British intervention since 1945;
- (b) the attitude of HMG to intervention by others since the war;
- (c) the application of the legal, moral and political considerations discussed in the paper to hypothetical situations e.g. intervention in Nicaragua.

This last part will not be easy to write since so much will depend upon the precise circumstances of the intervention. It may not be right at this stage to go further than outlining some general guidelines for policy.

/The

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The Foreign and Commonwealth Secretary agrees with the Prime Minister's view that this is an important subject which needs careful consideration. Sir Geoffrey hopes that the present paper will provide interesting material on which the Prime Minister may like to reflect over the holiday.

I am copying this letter (and enclosure) to Richard Mottram (MOD).

*Yours ever,*

*Colin Budd*

(C R Budd)  
Private Secretary

C D Powell Esq  
10 Downing Street

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OUTSIDE EXPERTS ON INTERVENTION

Lawyers

Derek Bowett, Professor of International Law, Cambridge  
Rosalyn Higgins, Professor of International Law, LSE, or  
Michael Akehurst, Reader in Law, Keele  
Dr Elihu Lauterpacht, Reader in International Law, Cambridge  
Sir Ian Sinclair or Sir Francis Vallat (both former FCO  
Legal Advisers)

Philosophers/Historians

Colonel Jonathan Alford, Deputy Director, IISS  
Hedley Bull, Professor of International Relations, Oxford  
Peter Calvocoressi (author and former Reader in International  
Relations, Sussex)  
Admiral Sir James Eberle, Director RIIA  
Michael Howard, Regius Professor of Modern History, Oxford  
Elie Kedourie, Professor of Politics, London  
Dr Anthony Kenny, Master of Balliol  
Peter Nailor, Professor of History, RNC Greenwich  
Sir Anthony Parsons, Research Fellow, Centre for Gulf Studies,  
Exeter  
Dr Rogert Scruton, Reader in Philosophy, Birkbeck College, London  
Dr John Vincent, Lecturer in International Relations, Keele  
Ben Whitaker, Director, Minority Rights Group  
Bernard Williams, Provost of King's College, Cambridge

James Mayall, Senior Lecturer in International Relations, LSE

OFFICIAL PARTICIPANTS

SIR G. HOWE  
Mr. Heseltine  
LADY YOUNG  
Mr. Stanley

Sir A. Acland  
Sir P. Crockett  
Mr. Cartledge.  
CDS

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file SH



10 DOWNING STREET

*From the Private Secretary*

2 July, 1984

Foreign Policy: NATO Strategy

Thank you for your letter of 25 June about the Prime Minister's intention to hold a Seminar on NATO Strategy.

BH/1  
The Prime Minister has now decided to hold the Seminar on Monday, 1 October at Chequers. Half a day will be devoted to the possible Conflict of Principles in foreign policy, the other half to NATO strategy.

I am copying this letter to Richard Mottram (Ministry of Defence).

C. D. POWELL

Len Appleyard, Esq.,  
Foreign and Commonwealth Office

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TH



PRIME MINISTER

Foreign Affairs/Defence Seminar at Chequers

Charles Powell, David Barclay and myself have been looking at the diary for a suitable date for the above.

The Autumn is very crowded and we hope that you will agree that the two subjects can take place during one day, Content? *Yes*

If you agree we all feel that the best day would be on Monday 1 October, (I will postpone the Carlton Club lunch).

You return from your overseas trip on Thursday 27 September. I am keeping Friday 28th free for you to clear boxes, and the weekend - 29/30 completely free to relax. You would then stay on overnight on Sunday 30 September. The two Seminars will take place on Monday 1st. We are looking at the possibility of a visit to Liverpool on Tuesday 2nd; Wednesday 3rd is free for the Party Conference speech; Thursday 4th a possible Cabinet and Friday 5th and that weekend all free for the Party Conference speech.

Content to have above Seminar at Chequers on Monday 1 October.

*Yes not CR*

Caroline

29 June 1984



From: THE PRIVATE SECRETARY

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celc  
CJD 28/6



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

28 June 1984

Dear Charles,

FOREIGN POLICY: POSSIBLE CONFLICT OF PRINCIPLES

wjm DB

You copied to me your letter of 1 June to Peter Ricketts.

The Home Secretary is grateful to be brought into this consideration of our policy on intervention by one country in the affairs of another, because of the clear implications for the police and the security service of our action to counter terrorism and subversion and to preserve public order in this country. Recent incidents involving the Libyans, the Kashmiris and the Sikhs have brought home forcefully the inter-relationship between domestic and foreign policies on these matters, on which various new initiatives are already being pursued.

The Home Secretary fully supports the idea of a seminar and would be grateful if officials here could be consulted on the paper which the Foreign Secretary has undertaken to prepare for it.

Yours faithfully,  
Hugh Taylor

H. H. TAYLOR

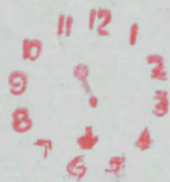
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Charles Powell, Esq



Foreign (B)  
Strategy Pt 2

28 JUN 1984





re PC  
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Foreign and Commonwealth Office

London SW1A 2AH

25 June 1984

*Dear Charles,*

Foreign Policy: NATO Strategy

Thank you for your letter of 19 June to Peter Ricketts about the Prime Minister's wish to hold a seminar on NATO strategy.

We have noted the subject matter that you think this seminar ought to try to cover. Work is in hand in the MOD and FCO to produce a discussion paper by the end of July (last September's strategy meeting on foreign affairs and defence suggests that a short discussion paper which focusses on the right questions is probably more use than the weighty collection of background papers commissioned last time). Among the subjects that you list is outer space: the Prime Minister will now have received the joint FCO/MOD paper forwarded to her on 19 June by Sir Geoffrey Howe and Mr Heseltine. A companion piece, comprising a situation report on President Reagan's strategic defence initiative, is now in preparation.

If the Prime Minister wishes to follow the pattern of two half-day seminars, there are certainly a number of worthwhile people who might participate from outside the Government. We will reflect further with MOD on this and let you have specific suggestions in due course.

On timing, it may be that late September would offer a better chance of raising a full turn-out from among non-Governmental participants than the first half of the month (because of the holiday period and the IISS annual conference to which many of them will go at Avignon 13-15 September). However, you will also wish to note that Sir Geoffrey Howe will be attending the UN General Assembly in New York from 24-28 September, and there is still a good chance that he may have to visit Peking and Hong Kong again during September.

I am copying this letter to Richard Mottram (MOD).

*Yours ever,*

*Len Appleyard*

(L V Appleyard)  
Private Secretary

C D Powell Esq  
10 Downing Street

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For PO Strategy A2

Foreign and Commonwealth Office

London SW1A 1AA



London SW1A 1AA

Foreign and Commonwealth Office  
London SW1A 1AA



PRIME MINISTER

Seminar on NATO Strategy

You said last week that you would like to organise a seminar on NATO strategy which might be held at the same time as that on the possible Conflict of Principles in foreign policy. Before setting action in hand on this I would like to be sure I have properly understood how you envisage the seminar and what it should discuss. I attach a draft letter which tries to express it. Agree?

E.S.P.

Yes.

Richard Howard  
would be one person  
to attend - I am  
not sure about other  
historians & military  
academics  
not

19 June 1984





10 DOWNING STREET

*From the Private Secretary*

19 June, 1984

FOREIGN POLICY: NATO STRATEGY

John Coles' letter to you of 1 June said that the Prime Minister intended to hold a seminar at Chequers in September on the broad question of a possible Conflict of Principles in foreign policy. You will have set preparatory work in hand.

The Prime Minister is now thinking in terms of a further seminar, at about the same time, on NATO strategy. The purpose would be to examine some of the points which were touched on in the recent Ministerial discussion (OD(84)7 meeting). The seminar would review the key issues of NATO's military strategy, and in particular flexible response, and consider whether the intellectual foundations of present policy remain valid. It would devote special attention to the significance of technological development for future military strategy, particularly as regards the use of space.

BF || It will be helpful if a short paper could be prepared jointly by the FCO and MOD on these issues by the end of July. The paper should pose questions as much as attempt to answer them. Its purpose will be to serve as a framework for discussion.

It would also be helpful if you could let me have suggestions both from within Whitehall and outside, for people who might be invited to attend the seminar.

One possibility is to hold the two seminars on the same day, devoting half a day to each.

I am copying this letter to Richard Mottram (Ministry of Defence).

(C.D. Powell)

P. Ricketts, Esq.,  
Foreign and Commonwealth Office



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MR POWELL

19 June 1984

JUSTIFIED INVASIONS

1. The Prime Minister has noted a possible conflict of principles in foreign policy between on the one hand respect for national sovereignty and unwillingness to intervene militarily in another state; and on the other the need to prevent massive violation of human rights by a failure to check intervention or subversion in that state by others.

2. I have thought a little about this, and offer some comments as a way of encouraging the discussion.

3. The broad rule against armed intervention in the affairs of another state is reflected in Article 2(4) of the UN Charter. That Article requires that all member states "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations".

4. The exceptional cases, where the use of armed force in the territory of another state may be legally justified, are where:

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- a. this is authorised under the terms of a treaty with that state, or takes place in compliance with a request made by an authority competent so to act on its behalf;
- b. it is in the execution of measures authorised by the Security Council (or, less certainly, the General Assembly acting under the Uniting for Peace Resolution of 1950);
- c. it is a proper exercise of the inherent right of individual or collective self-defence recognised by Article 51 of the UN Charter;
- d. the state resorting to it is acting to save the lives of its nationals in circumstances where both the UN and the local authorities are unable or unwilling to do so, and limits its action to securing the safe removal of the threatened nationals;
- e. possibly, but much more controversially, the state acting does so to protect the people of the other state in circumstances where a high degree of savagery is being inflicted on them, and both the UN and the local authorities are unable or unwilling to act.

5. In the case of Grenada, the legal justifications advanced by the US Government were: the need to protect US

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nationals and avoid a possible hostage situation (4(d) above); an invitation to intervene by 5 members of the Organisation of East Caribbean States (OECS); and finally a request for action by the OECS and other regional states from the Governor General of Grenada, Sir Paul Scoon. None of these defences was watertight. Action to protect nationals must be strictly limited in its application and for a limited purpose, ie a rescue mission and not an attack on the authority of another Government. As regards the invitation by the members of the OECS, the OECS Treaty makes no provision for an invitation to a non-member to intervene against a member state. Though there is provision for collective defence against "external aggression", there was probably not external aggression within the terms of the Treaty. Finally, the vote in favour of an invitation to the Americans was not, as it ought to be on defence and security issues, unanimous: 3 states did not vote. There are many obscurities about the invitation by the Governor-General, but it could be argued that this had perhaps more validity than the other defences: he had broad executive powers under the 1967 Constitution of Grenada; and although that Constitution was suspended and new laws passed under the Bishop regime in 1979, it could be argued that, after the collapse of Government in October 1983, he was the sole surviving source of authority.

6. As against these justifications, it should be noted the UN Charter, the Charter of the Organisation of American

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States, and the Inter-American Treaty of Regional Assistance (the Rio Treaty) - all contain prohibitions against forcible intervention in another state.

7. In general, the defence of US action in terms of international law was distinctly shaky, and a better case was founded in terms of threats to US political and strategic interests.

8. If we assume US military intervention in Nicaragua, it would probably be even harder to justify in terms of international law. There would be nothing equivalent to the OECS invitation. There would be no request forthcoming from the Nicaraguan Government, or parts of it. A request from the Security Council would be equally unlikely. It is doubtful whether a threat to the lives of US nationals could be invoked, and in any case, as pointed out above, this would justify only limited US rescue measures. A "high degree of savagery" (paragraph 4(e) above) is also unlikely: there would probably be a higher degree of order in Nicaragua than in Grenada after Bishop's overthrow. There would probably be conditions amounting to civil war, but in international law this is a domestic matter, and not ground for outside intervention. The prohibitions against intervention under the UN Charter, the Charter of the OAS and the Rio Treaty mentioned above, would apply equally in the case of Nicaragua.

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9. The only head under which a defence might be constructed would be 4(c) above: namely that intervention was a proper exercise of the inherent right of self-defence. This would be slightly easier in the case of Nicaragua than Grenada. The argument would presumably run that Nicaragua was an important Central American country in an area close to the US, and vital to US security. Its proximity to Panama would be important. Communist control of Nicaragua would either immediately or proximately threaten US security. (Cf. Shultz's remark to Sir Geoffrey Howe that if America withdrew from Nicaragua now, Communism would spread, perhaps to Panama, and the result would be war.) The objection to this line is that the right to self-defence is generally interpreted as one of response against a real and immediate peril. Potential dangers, or dangers at one remove, are not enough; nor is the establishment of an ideologically distasteful regime.

10. A similar argument to that in paragraph 9 above would be invocation of the second part of the Monroe Doctrine, ie the non-intervention principle, usually used to resist interference by non-American powers in the exercise of independence by American states - eg Napoleon III in Mexico in the 1860s. President Kennedy referred to it when justifying opposition to the introduction of Soviet missiles to Cuba in 1962. It is, however, a controversial doctrine and it could be argued that, even if it were accepted, there

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is no significant outside interference in Nicaragua, and that the Sandinistas are a genuine local growth.

11. The legal justification for US intervention in Nicaragua would therefore be very thin. The arguments in paragraphs 9 and 10 above could be invoked, but the best case would be one based squarely on US political and security interests, ie the inadmissibility of another Cuba. Parallels with Soviet action against Eastern Europe and Afghanistan would be tempting. The distinction based on the purpose of the invasion - ie that Soviet intervention has been undertaken to set up or maintain closed systems from which there is no possibility of appeal, while the purpose of US intervention would be to restore democratic freedoms - would no doubt be drawn but, given the close links between the "Contras" and the former Somoza dictatorship, it might not carry conviction. Nor is it one that international law, with its great emphasis on the independence of states, favours. Nor would the other distinction, namely that the Russians stay while the Americans soon withdraw, be available in Nicaragua, where even a successful invasion would probably prompt a prolonged guerrilla resistance.

12. US military intervention in Nicaragua would present Western Europe with appallingly difficult choices: on the one hand, doubts about the wisdom, justification and efficacy of the action (quite apart from the law, would it work?); concern at a further possible erosion of the Western

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legal and moral case; on the other, a realisation of the threat to US interests, West European relative impotence, and the need for Atlantic solidarity in a major crisis. I myself think that the UK would have to take a highly understanding view and reserve any doubts for private discussion. The worst situation would be one of the US intervening desperately in what they saw as a situation of great danger near their borders, and a querulous European chorus of high-minded dissent. But the argumentation on our, as on the US side, would have to be primarily in terms of expediency rather than principle, ie the defence of political and security interests; there would be no available coherent structure of justification based on international law; and the undoubted distinctions between Western and Eastern interventions (paragraph 11 above) would in practice be difficult to demonstrate.

PERCY CRADOCK

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Foreign and Commonwealth Office

London SW1A 2AH

18 June 1984

cc: [handwritten initials]  
CDP  
13/6

Dear Charles,

Foreign Policy: Possible Conflict of Principles

John Coles wrote about this on 1 June. <sup>with CDP</sup>

The Foreign and Commonwealth Secretary will be happy to provide a paper tackling the issues set out in your letter, and to suggest names of outside experts who might be consulted and invited to attend a seminar at Chequers in September.

BF // We will let you have a paper and a list of possible experts before the end of July.

I am copying this letter to Hugh Taylor (Home Office).

Yours ever,

Len Appleyard

(L V Appleyard)  
Private Secretary

C D Powell Esq  
10 Downing Street

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Foreign Policy Act

Foreign and Commonwealth Office

STRATEGY







SUBJECT  
cc McKillop

he re  
C Sir PC

## 10 DOWNING STREET

From the Private Secretary

1 June 1984

BT

### Foreign Policy : Possible Conflict of Principles

At a meeting on another subject here today the Prime Minister raised a question of a possible conflict of principles in foreign policy. The Foreign and Commonwealth Secretary, Mr. Douglas Hurd, Sir A. Acland and Sir J. Leahy were present (among others).

The Prime Minister said that Britain stood for the upholding of international law and respect for national sovereignty. We therefore believed it wrong except in the most extreme circumstances to violate the borders of another state or to intervene in its internal affairs.

But others were not so scrupulous. Some blatantly interfered in the internal affairs of sovereign states, or worked from within to impose regimes against the will of the peoples concerned or openly violated national borders. Did these practices entitle us to intervene and if so, at what point and in what circumstances? It might not be right to stand on the principles in paragraph 2 above if the consequence was the massive violation of another people's human rights.

The Prime Minister detected an intellectual vacuum in this area of international affairs. The issues could become acute if, for example, the United States at some future point intervened militarily in Nicaragua. We therefore needed to analyse the problem and develop a respectable intellectual basis for our policy towards it.

She said that she proposed to hold a seminar at Chequers in September to discuss this question. She would be grateful if the Foreign and Commonwealth Secretary could provide a paper in due course. It was also desirable to consult outside experts (Michael Howard was mentioned).

I should be grateful if you could in due course suggest some outside experts who might be consulted - and a list of people, both from Whitehall and outside, who might attend the seminar.

I am copying this letter to Hugh Taylor (Home Office).



