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Beyond Vietnam to Indo-China--The Legal Implications of the United States' Incursions into Cambodia and Laos

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NOTES

Beyond Vietnam to Indo-China — The Legal Implications of the United States' Incursions into Cambodia and Laos

THE PAST YEAR has witnessed a wide extension of the Southeast Asian theater of conflict. Two additional States were added to the scenario of active hostilities as South Vietnamese troops, financed, directed, transported, supplied, and tactically supported by forces of the United States, crossed into and established bases within the sovereign territories of Laos and Cambodia. Their mission was to prevent further use of these territories as staging areas for North Vietnamese operations within South Vietnam.

On the heels of the combined forces of South Vietnam and the United States who were marching and flying over the South Vietnamese border followed an interpretation of the Charter of the United Nations that threatened to stretch provisions of the document to proportions that stood in direct opposition to its intended purposes. The existence of a threat to international peace was evident; the possibility of a solution, indefinite. Extensive and prolonged hostilities had achieved no result, yet continued. On its face, the situation which prevailed demanded international attention. Concerted efforts by the United Nations to meet the demand, however, have failed to develop.

It is the purpose of this Note to demonstrate that the violations of Cambodian and Laotian neutrality have no legal basis within the framework of the Charter of the United Nations. Should the United Nations, however, through failure to act, extend constructive recognition to these actions, a precedent would be established compromising, perhaps beyond restoration, the value of the organization as a functioning entity for peace.

I. THE ACT OF AGGRESSION

It has been the nature of international law, both that understood as general principles and that codified within the Charter of the United Nations, to be almost astoundingly vague and lacking in guidelines relative to a definition of the act of aggression.[1] The

[1] 2 L. OPPENHEIM, INTERNATIONAL LAW 190 (7th ed. 1952). The author also offers a criticism of the uncertainty in defining aggression in which he states that it is the function of enforcement tribunals and agencies to avoid injustices which might result from the particular circumstances of a given situation.

primary reason for this rather basic inadequacy has been expressed as a desire to avoid an inflexible rule which a true aggressor, by careful planning, might circumvent, or which enforcement agencies, by blind application, might use to impose sanctions upon a party whom circumstances could otherwise prove innocent.[2]

Presently, aggression is whatever the United Nations Security Council determines it to be. Article 39 of the United Nations Charter stipulates that it is the duty of the Security Council to determine whether a threat to peace or act of aggression has taken place. A positive determination would impose the further duty of making recommendations or deciding upon measures to be taken in order to restore peace.

The requirement of unanimity among the permanent members of the Security Council may cause it to fail in the exercise of its responsibilities. Motivated by this possibility, the General Assembly adopted the "Uniting for Peace" Resolution,[3] which empowers the body, when acting with a two-thirds majority, to call an emergency special session and recommend collective measures, including, in the case of a breach of the peace or act of aggression, the use of armed force. To designate the act of aggression and apply sanctions, however, the General Assembly must employ the same mysterious, definitive rationale as used by the Security Council. Although the terms of the resolution were such as to create a mandatory duty of the General Assembly to take positive action, the lack of a definition has functioned to prevent the duty from coming into operation.

It is essentially the confusion between direct and indirect forms of aggression that has delayed an official definition.[4] A common factor has existed among past and present suggestions for a definition, however. This factor is basically represented by a hostile act of one State against another without regard to the purposes of that act.[5] For present purposes, the definition of aggression as a hostile act without adequate justification will be employed.[6]

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[2] Int'l L. Comm'n, Report, 6 U.N. GAOR Supp. 9, at 8, U.N. Doc. A/1858 and at 9, U.N. Doc. A/C 1/108 (1951).

[3] G.A. Res. 377, A, B, and C, 5 U.N. GAOR Supp. 20, at 10, U.N. Doc. A/1775 (1950). For a general discussion of this resolution see Andrassy, *Uniting for Peace*, 50 AM. J. INT'L L. 563 (1956); Woolsey, *The 'Uniting for Peace' Resolution of the United Nations*, 45 AM. J. INT'L L. 129 (1951).

[4] 1 J. VERZIJL, INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 236 (1968).

[5] J. STONE, AGGRESSION AND WORLD ORDER 139-41 (1958). The notion of mens rea as a standard of judgment of State actions is examined and found deficient in that the imputation of a single state of mind to so complex a policy-making process as characterizes the modern State is virtually impossible. Even were such imputation possible, however, the mental element accompanying the warlike action would probably be that State's subjective notion of self-defense or defense of rights.

[6] 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 721 (1963).

Because the overriding purpose of the United Nations is the preservation of world peace, exceptions to the ban of armed force have been narrowed to the absolute minimum. This minimum threshold was designed to be the point at which the sovereignty of the State was endangered in an immediate sense. At this point, Article 51 of the United Nations Charter justifies the use of force as an exercise of "the inherent right of individual or collective self-defense."

The incursions into Cambodia and Laos constitute armed breaches of neutral rights and, as such, prima facie cases of aggression.[7] It became the burden of the United States to show cause before the United Nations as to why it should not be held in violation of Article 2, paragraph 4, of the Charter which prohibits the use of force against the territorial integrity of another State. As the doctrine of collective self-defense was the only theory by which the United States could justify its actions, the legality of the justification can be tested by an analysis of the doctrine.

II. THE PRINCIPLES OF SELF-DEFENSE

In the text of the President's Address to the Nation announcing the invasion of North Vietnamese sanctuaries within Cambodia,[8] the professed goals of the campaign were the acceleration of the process of Vietnamization and American withdrawal, the saving of American and South Vietnamese lives on the battlefield, the undermining of the North Vietnamese position at the Paris negotiations, and the denial to the enemy of the use of Cambodia as a staging area for attacks on South Vietnam. Complying with the requirement of Article 51 of the United Nations Charter, Ambassador Yost of the United States served notice upon the Security Council of the undertaking of armed action within Cambodian territory.[9] The letter of the Ambassador offered as justification for the American action the only legally viable explanation, that of collective self-defense.[10]

Disregarding the apparent inconsistency of the respective statements of the President and the Ambassador, the issue is narrowed to whether the United States can reconcile its obligation under the United Nations Charter to maintain international peace with the

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[7] 1 L. OPPENHEIM, *supra* note 1, at 299. *See also* 1 J. VERZIJL, *supra* note 4, at 229.

[8] 6 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 596-601 (May 4, 1970) [hereinafter cited as President's Address]. The President's Address is also found in N.Y. Times, May 1, 1970, at 2, col. 1.

[9] United States Notification to the United Nations Security Council of Self-Defense Measures Taken by the United States and the Republic of Viet-Nam Armed Forces, U.N. Doc. S/9781, at 1 (1970) [hereinafter cited as Yost Letter].

[10] *Id.*

undertaking of armed measures in neutral countries. The United Nations Charter requires three tests to be met before action can be legitimated under the label of the self-defense exception to the prohibition of armed force: (1) the nature of the threat must be in fact one which requires the undertaking of collective armed action; (2) an armed attack must have occurred against the aggrieved nation; and (3) timely and good faith efforts must be made to see that the Security Council or General Assembly investigate and take measures to control the conflict.[11] Furthermore, customary international law imposes two qualifications upon the basic interpretation of when a situation permits the exercise of force in the name of self-defense: first, a condition of necessity requiring immediate armed action must exist; and, second, the armed response must be proportionate to the extent of the existing threat.[12]

A. *Collective Self-Defense*

The authorization by Article 51 of the United Nations Charter of acts undertaken as measures of "collective self-defense" did not include a definition or express limiting guideline of the phrase. This deficiency was principally a reflection of the corresponding absence of a definition of the act of aggression. As the right of self-defense had been conceived to be a right arising only in the presence of an act of armed aggression, a precise definition would be incongruous as it would create a partial vacuum in the area between the explicit limits of its definition and the potential limits of the unwritten definition of aggression. The provisions of the United Nations Charter do provide a means of interpretation, however, in the form of Article 1, "Purposes of the Organization," and in the fact that Article 51 creates the sole exception to the Article 2(4) general prohibition of armed force beyond the boundaries of any sovereign territory. The result is a general consensus that a strict construction is appropriate in the application of the Article 51 right of collective self-defense.[13]

The foundation for collective self-defense was created by the Southeast Asia Collective Defense Treaty (SEATO),[14] which provided the link by which the United States was able to tie its interests to those of South Vietnam and to construct a legal framework for United States containment actions within Indo-China. Initially, the

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[11] U.N. CHARTER art. 51.

[12] *See* 2 J. MOORE, A DIGEST OF INTERNATIONAL LAW § 217, at 412 (1906).

[13] *See, e.g.*, 2 F. SCHICK, THE VIETNAM WAR AND INTERNATIONAL LAW 194 (R. Falk ed. 1969).

[14] Southeast Asia Collective Defense Treaty and Protocol Thereto, September 8, 1954, [1955] 6 U.S.T. 81, T.I.A.S. No. 3170, 209 U.N.T.S. 28.

agreement was to serve as an instrument binding the signatories together in a mutual self-defense organization. Aggression upon any of the parties to the agreement or upon any other State, determined by the unanimous consent of the parties as endangering their own peace and security, was to activate consultations among the signatories for the purpose of determining measures necessary for their common defense.[15] This agreement was the only relationship by which the United States could establish its right of collective self-defense in the Indo-China area, but mention of such was conspicuously absent in the letter of Ambassador Yost to the United Nations Security Council.[16]

The failure to make mention of the SEATO agreement was not merely an oversight on the part of the Ambassador. Several of the provisions of the treaty had not been complied with; thus any justification on the basis of the treaty would have amounted to no justification at all. Foremost among these violations was the failure to act with the consent of the Cambodian and Laotian governments, as required by Article IV(3) of the treaty, in crossing their borders with armed forces.[17] Even given such consent, however, the unanimous consent of the signatories would have been necessary to allow the commencement of armed incursions into the two neutral countries. There are no indications that such consent was sought, obtained, or even considered.

To invoke the doctrine of collective self-defense on the basis of an existing and valid treaty in the context of the factual setting in Indo-China would have been of controversial legality in any case. Numerous arguments have been propounded depicting the Vietnam war as an internal conflict in which, regardless of treaty arrangements, no State could legally intervene.[18] Proceeding as it did, however, the United States lost even the pretense of legal justification by abandoning the SEATO agreement and deciding, instead, to defend its actions on the basis of vague references to collective self-defense, the support for which it did not attempt to elaborate. A strict interpretation of the doctrine suggests, however, that States could join forces to meet only that which would pose a mutual threat.

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[15] *Id.* at art. IV.

[16] Yost Letter, *supra* note 9.

[17] Statement by Cambodian Premier Lon Nol regarding failure of the United States or South Vietnam to consult Cambodian government prior to the commencement of military operations on its territory, N.Y. Times, May 2, 1970 at 1, col. 5.

The informational vacuum with which the Laotian Premier Souvanna Phouma was beset in the presence of the invasion of his country is described in *The Last Big Push — Or a Wider War*, NEWSWEEK, Feb. 15, 1971, at 21.

[18] *See, e.g.*, Wright, *Legal Aspects of the Viet-Nam Situation*, 60 AM. J. INT'L L. 750, 764 (1966).

The interest of the aggreived States must be so irrevocably enmeshed that a clear and present danger to one would create an identical dilemma for the other.[19] Using this standard, the role of the United States as a State in another hemisphere carrying out armed incursions into Cambodia and Laos becomes an untenable one.

The policy for requiring a strong causal relationship between States invoking the doctrine of collective self-defense is manifest. Where any State can enlist to its aid the armed strength of any other State, the danger to the world's peace, in the form of geographic escalation, becomes overwhelming. The logical outgrowth of such potentially dire consequences is the imposition of so heavy a burden of proof upon States seeking to employ the doctrine that they will be effectively deterred from seeking its use unless absolutely required to do so.[20] Unilateral determination by an individual State that another State represents a vital interest is simply too subjective a standard to employ in a world that values peace.

B. *Armed Attack*

The active element required to bring the right of self-defense into operation is the mounting of an armed attack upon a government by external forces.[21] Here, again, the United Nations Charter fails to provide any definition other than the context of the phrase within Article 51. The lack of definition, however, would seem to impart a strict interpretation to the phrase due to the obvious conflict that would exist, with the organization's purpose of maintenance of international peace, were the meaning of the provision to be extended. In any attempted use of the provision, it must be noted that an armed attack is distinguishable from an anticipated attack or from various forms of hostile actions falling short of actual armed attack, neither of which would create a valid situation for the exercise of self-defense.[22]

The activities of the North Vietnamese troops within Cambodia, as described in the President's address regarding Cambodia, consisted of maintaining "major base camps, training sites, logistics facilities, weapons and ammunition factories, air strips, and prisoner-of-

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[19] D. GREIG, INTERNATIONAL LAW 686 (1970). The author states that there is nothing to prevent a given State from seeking outside help to assist in operations for its own protection carried out on its own territory. Absent a geographical or contractual relationship, however, operations would necessarily be limited to that territory.

[20] See discussion regarding the standard of necessity at 171 *infra*. Also, note that the total effort of the United States to meet this burden of proof consisted of the extraordinarily inadequate contents of the Yost Letter, *supra* note 9.

[21] U.N. CHARTER art 51.

[22] 2 L. OPPENHEIM, *supra* note 1, at 156.

war compounds."[23] Hit and run attacks had been made by the North Vietnamese operating from these territories upon allied forces in South Vietnam and future prospects indicated more of the same on a larger scale. A critical qualification of these facts, however, is the further fact that this basic situation had existed for over five years.[24] During this entire period, the combined forces of the United States and South Vietnam evidenced sufficient military capability to show that this threat could have been dealt with through their operations within South Vietnamese territory on the temporary basis necessary to initiate proceedings within the United Nations.

Rather than self-defense, the respective catalysts inspiring the incursions into Cambodia and Laos appeared to be the protection and preservation of the western-leaning Lon Nol government and an acceleration in the process of Vietnamization in order to facilitate further American troop withdrawals. Regardless of the precise motive, there was no actual large scale armed attack taking place within South Vietnam and originating from Cambodia or Laos at the time of the incursions into the two States. In fact, these operations were undertaken as offensive measures to enhance the military position of the allied forces, not as defensive holding actions, as the United Nations Charter foresaw, to provide time for the machinery of the United Nations to deal with the situation.[25]

Assuming a large scale armed attack were to be mounted against South Vietnam, a further problem is presented in deciding how the defensive force is to be directed. The paradox of the invasion of two neutral States to check the belligerent activities of a third (North Vietnam) becomes virtually inexplicable when the fact of that third State's present freedom from attack is considered. The political aim of expediting the Paris talks is understood, but the price of disregard for neutral rights, both in terms of injured relations with other "third world" States and cultivation of a lack of respect for international law, in order to achieve a favorable bargaining position, is far too high.[26]

C. *Submission of the Issue to the United Nations*

An affirmative duty, similar to the exhaustion of remedies principle, is placed on any member of the United Nations seeking to em-

[23] President's Address, *supra* note 8.

[24] *Id.*

[25] *See* text accompanying note 27, *infra*. *See also* U.N. CHARTER art. 33.

[26] The fact of North Vietnam's disregard for the neutral rights of Cambodia and Laos is acknowledged. This, in itself, does not justify similar actions by the United States, however. The issue becomes one of whether the United States is to seek a level of legality in the world arena only as high as the lowest on the scale.

ploy the self-defense doctrine as justification for armed action. By virtue of their accession to the terms of the Charter, the members have undertaken the obligation to deal with acts of aggression by means of the procedures and mechanisms provided for within the document. Article 33 of the United Nations Charter lists these remedies as "negotiation, enquiry, meditation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice." The Paris talks do not meet the requirements of this article as they are and have been conducted simultaneous to the conflict. With each of the parties maneuvering for position at the talks by means of victories on the battlefield, the hazards to world peace are expanded rather than alleviated. Moreover, since the positions of the parties are mutually exclusive and apparently unyielding, there seems to be little prospect of substantive results as long as participation in the talks is limited solely to the belligerents.

Article 1 of the United Nations Charter stipulates that the suppression of acts of aggression is to be accomplished through the collective efforts of the organization's membership. Unilateral determination of what is to constitute aggression and how it is to be dealt with is, on its face, contrary to the letter and spirit of the Charter's purposes and principles. The right of self-defense is an exceptional and highly restricted privilege justifiable only where immediate and vigorous action is taken to secure international assistance.[27]

The Charter's concern with procedural obligations is further reflected by Article 40, which calls upon parties to a dispute to comply with provisional measures determined by the Security Council. This duty is accompanied by a warning that account shall be taken of failure to comply with such provisional measures, imposing a clear limit on the exercise of the right of self-defense. The duty is made even more explicit by the General Assembly resolution on "The Duties of States in the Event of the Outbreak of Hostilities."[28] The resolution recommended that States involved in armed conflict openly declare their readiness, provided other parties reciprocate, to discontinue military operations and withdraw invading forces. The conduct of States in relation to this recommendation was expressed by the resolution to be instrumental in determining responsibility for breaches of the peace or acts of aggression.

Neither the President's Address to the Nation nor the letter of Ambassador Yost made direct mention of the pervasive obligations

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[27] I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 271 (1963).

[28] G.A. Res. 378, 5 U.N. GAOR Supp. 20, at 12, U.N. Doc. A/1775 (1950).

under the United Nations Charter. The act of withdrawal from Cambodia, moreover, was conditioned upon the destruction of enemy forces and supplies in the area, not upon mutual termination of hostilities and withdrawal.[29] The only efforts made to abide by these requirements of the Charter were alleged "soundings" taken in the Security Council which were said to have elicited very little interest in the problem of dealing with violations of Cambodian neutrality.[30] There were apparently no efforts made to encourage the General Assembly to consider the matter.

The questionable pragmatic consideration of the probability that no results would have obtained in the Security Council due to the Soviet Union's veto or in the General Assembly due to the lack of security forces at its disposal is not sufficient to obviate the positive duty of good faith efforts within the organization. To hold otherwise would act to deprive the United Nations of jurisdiction over all international matters, except those which the parties found convenient to submit. Support for this position is found in the *Corfu Channel Case*,[31] which stated that acts of self-help undertaken in unilateral attempts to enforce the peace constitute gross breaches of the Charter, regardless of whether the acts were intended to enforce rights of the aggrieved State which were being violated by conduct of another.[32]

International review of every use of armed force (other than in exclusively domestic circumstances) is crucial to a climate of international peace. Although reasonable measures can be taken in a situation justifying an exercise of the right of self-defense, failure to report such actions to the United Nations and to actively seek the assistance of the body precludes an effective exercise of the right. It was this failure by the United States that illustrated and confirmed its improper use of the Article 51 privilege.

D. *Necessity*

The classical definition of self-defense was expressed by United States' Secretary of State Daniel Webster in reference to the case of

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[29] President's Address, *supra* note 8.

[30] Stevenson, *U.S. Military Actions in Cambodia: Questions of International Law*, address of May 28, 1970, to the Hammarskjold Forum, New York University, 62 DEP'T STATE BULL., June 22, 1970, at 769.

[31] The Corfu Channel Case, [1949] I.C.J. 35.

[32] The Court stated that "respect for territorial sovereignty is an essential foundation of international relations." Extenuating circumstances were insufficient justification for a policy of force, which was held no longer to have a place in international law. Intervention had, in the words of the Court, "given rise to the most serious abuses . . . reserved for the most powerful States and might easily lead to perverting the administration of international justice itself." *Id.*

The Caroline.[33] He applied a standard to the self-defense concept justifying its use only where the cause for positive action has become "instant, overwhelming, and leaving no choice of means, and no moment of deliberation."[34] This standard was applied by the International Military Tribunal at Nuremberg in its judgment of September 30, 1946, in determining that the Nazi invasion of neutral Norway was not legitimized on the grounds of self-defense against an anticipated Allied invasion.[35] Lending further authority to the standard was the unanimous approval of the decision by the United Nations General Assembly.[36]

Basically, self-defense is intended to be an emergency action in which the endangered party, to survive as an independent governmental entity, has no viable alternative. The security of the State must be endangered to a point of an imminent threat to its very existence.[37] The violation of a second State by an endangered State, where the threat to the endangered State could have been dealt with by actions on its own territory, is not necessary, however, and will not be excused as a valid exercise of self-defense.[38] The principal factor in determining this prevention quotient is the qualification of urgency; that is, whether the endangered State was compelled to take immediate armed action because of a lack of time to explore alternative avenues of settlement.

As stated above, the violations of Cambodian and Laotian neutrality by the North Vietnamese Army had been taking place for years. They presented no imminent peril to the Saigon government such as to preclude efforts, prior to the incursions, to persuade the Security Council or the General Assembly to consider and act upon the problem. Absent the ingredient of necessity, the actions of the United States are effectively denied the justification of the self-defense privilege.

A further issue is fostered by the standard of necessity, that is, whether a State, the peril to which is not imminent, is to be relegated to a perpetual role of armed military defensiveness against an enemy supported by external sanctuaries. The answer to the question can only come from an expansion of the peacekeeping activities of the United Nations, an end which could be considerably hastened were the United States to devote to it the same energies that have been

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[33] 2 J. MOORE, *supra* note 12.

[34] *Id.*

[35] *See* 2 G. SCHWARZENBERGER, INTERNATIONAL LAW 28 (1968).

[36] G.A. Res. 95, U.N. Doc. A/389 (1946).

[37] F. SCHICK, *supra* note 13, at 183.

[38] 1 L. OPPENHEIM, *supra* note 1, at 298.

poured into ten years of heavy involvement in Indo-China. In this way the interest of the United States in arresting Communist subversion could conceivably coalesce with its obligations under the United Nations Charter and the purposes which these obligations were intended to promote.

E. *Proportional Response*

The final condition to the use of self-defense is the responsibility of gauging the response by the dimensions of the threat. Any armed measures undertaken as an exercise of the self-defense privilege must be strictly limited in their scope and application to dealing with the necessity that fostered them. Massive-scale measures will raise a presumption of illegality where the stimulus was an attack of a much lower degree of intensity.[39] This principle is implicit in Article 51 of the United Nations Charter in that, once armed response has exceeded the threat that motivated it, it ceases to be under the ambit of self-defense and takes on an aggressive character of its own. The basic function of the requirement of proportional response is to prevent a spiraling escalation of the scale of conflict while, at the same time, protecting the right of the defending State to take such measures as are necessitated by the emergency.

The incursions of the United States and South Vietnam into Cambodia and Laos were characterized by massive use of the combined force of aircraft, artillery, and combat troops. Their operations were not confined to the area immediately adjacent to the South Vietnamese border, such as true actions of self-defense would have been, but ranged well into the interior of each of the two neutral States. In pursuit of what the United States and South Vietnam conceived to be their own rights, large-scale disregard of neutral rights was common in the form of contact with and injury to noncombatants, as well as extensive damage to Cambodian and Laotian national property.[40] The very fact of the presence of South Vietnamese troops, supported by American air strikes, within Cambodian territory one year after the initial thrust into that State is evidence sufficiently determinative of offensive intent to destroy the credibility of any argument proclaiming self-defense. The essence of the principle of proportional response is not that an endangered State should incur heavier casulties or artificially prolong a conflict by holding back much of the armed might at its command, but rather, that em-

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[39] R. HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS 181 (1963).

[40] *Cambodia: the Wreck We Left Behind*, LIFE, July 10, 1970, at 23.

phasis on belligerent activities should be minimized while peaceful means are explored to the utmost.

III. PROJECTED INFLUENCE UPON THE U.N. CHARTER

The undefined use of numerous provisions of crucial import within the United Nations Charter has created a situation whereby their interpretation can be made, or changed, by international custom. While not in themselves custom under international law, as custom can be created only through clear and continuous habit among States, the actions of the United States are constitutive of a usage. In the processes of international law, such usages are conceived to be lines of international behavior developed without the universal conviction, among other States, of such actions as proper under international law. Continued usage, however, through the tacit consent of other States, implied by their failure to protest, may develop into custom and assume a valid place among the general principles of international law.[41]

It is this concept of usage that threatens to distort sections of the principal provisions of the Charter to proportions more adverse in their effect upon world peace than the present danger of the expanding conflict in Indo-China. To the extent that the role of the United States in Southeast Asia is not designated unlawful, it assumes an aura of quasi-legality, implied by the silence or tacit consent of the United Nations membership. To this same extent, the way is lighted for the actions of other States, seeking to protect whatever they care to conceive of as "vital national interests," to follow the example of the United States. The natural outcome of these developments would be a direct reversal of the trend toward enlightened supernationality heralded by the establishment of the United Nations and a return to the pre-World War II era where power and national interest served as the primary motivations of international conduct.

IV. CONCLUSION

The old notions of belligerency and self-help were intended to be amended by the adoption of the United Nations Charter. The threat or use of force was to be exorcised from the conduct of States except on behalf of or in conjunction with the purposes of the Charter.[42] The abuse by the United States of the sensitive concept

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[41] 1 L. OPPENHEIM, *supra* note 1, at 26, 27. It should be noted that the Soviet invasion of Czechoslovakia was another usage along lines similar to the instances of the incursions into Cambodia and Laos. Here, again, the United States is shown to have assumed a role very similar to that which it has roundly criticized in the past.

[42] 6 U.N. SCOR, 549th meeting 11-12 (1951).

of collective self-defense as justification for escalation signifies a resurrection of the Machiavellian ideal and a regression of the values of an international legal system to a point far down the list of State priorities.

Acknowledging the presumed fact that it is not the intention of the United States to subvert the purposes of the United Nations, it still must be accepted that the United States has allowed itself to be a voluntary victim of the circumstances which have developed. No coercion or regional identification binds it to the Asian continent or forces it to extend the conflict by crossing national boundaries. Regardless of the intent of the United States, the example of its actions will serve to preclude credible exercise of its Security Council role as arbiter of the actions of other States — a result portending more significant detriment to its long-run vital interests than the outcome of the present conflict in Southeast Asia.

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