

DISCUSSION ON IDEOLOGY AND THE USE OF FORCE

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REMARKS OF PROFESSOR WILSON

I would like to begin by briefly integrating some previous viewpoints, drawing upon them in terms of my frame of reference in evaluating the paper of Professor Oglesby. I will speak in terms of the international political system and my view of the place of international law within that system.

First, I would generally accept the views of Professor Forsythe and several of the other speakers that in the long run self-interest is a primary goal on the part of the major powers in international situations. We are well aware that both international law and international organization reflect the realities of the international political system. The international legal order does create organization, and in turn international organization, through the various organs of the United Nations, contributes to the advancement of international law. We are also aware that there is a certain amount of feedback within the international political system itself in terms of both international law and international organization.

Next, trying to be as objective as possible, I shall apply these observations to the conduct of two major world powers, namely, the United States and the Soviet Union. A problem arises in this area in that the precedents established by one bloc serve the opposing bloc as bases for competitive action. A number of the questionable precedents which have been set by the United States in international law effectively provide a basis for competitive action by our adversary, the Soviet Union. This process works both ways, however.

Also, I think we are aware of the fact that the third world nations are having an impact upon the relations between the two major blocs. It appears that we are evolving beyond a loose bi-polar system. I submit that too frequently this point is overlooked, and I dare say that it has been overlooked in many cases during this conference.

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If one attempts to take an objective view of the present world situation the double standard which prevails must be considered. I have already mentioned the matter of precedents set by one bloc or the other in terms of the evolution and development of some type of intrabloc law. Certainly these precedents are not lost on the third world nations (by third world nations I refer to the Afro-Asian bloc and to Latin America). That is to say, they operate on the basis of these precedents, viewing international law as a defense mechanism against the former colonial powers. At the same time these nations find that these same precedents do not restrain their conduct in dealing with their own neighbors. Thus, the double standard is not only applied to conduct between the two major powers or among the smaller and the larger powers but is also applied to conduct between and among the third world nations themselves.

The increasing interest in international law and civil strife suggests that international law is in transition. Problems are posed in terms of how the United States and the Soviet Union are going to relate to this transition. Are they going to assist the transition in a constructive manner, or are they going to relate to it in an activist way? In talking specifically about the two major blocs several differences must be taken into account. For example, an overview of the intervention by the United States in Latin America would indicate the existence of a situation analogous to that of Soviet intervention in Eastern Europe. The manner in which the United States considers the primacy of the Organization of American States over the United Nations in terms of cold war issues within the context of the American sphere of influence, and the manner in which the Soviet Union supports the primacy of the Warsaw Treaty Organization and the exclusion of the United Nations from issues within the Soviet sphere of influence are analogous. Nevertheless, I submit that there are some qualifications which must be made.

It must be acknowledged that the East European nations are much more subservient to the Soviet Union than are the Latin American nations to the United States. Admittedly, in terms of trade and economic relations, the East European nations are clients of the Soviet Union to a certain degree. An effective distinction can be made, however, in terms of the extent or degree of subservience as regards these two different spheres of influence. I would suggest that in terms of the history of the development of the principle of non-intervention, the cornerstone of the inter-American system enshrined in the Charter of the Organization of American States, it is a more serious matter when the United States resorts to intervention within the Western Hemisphere than is intervention by the Soviet Union in Eastern Europe. This

is true whether the intervention is under the guise of the Warsaw Pact or in terms of what the Soviets consider their prerogative within their sphere of influence.

We are confronted essentially with questions of stability and instability and how international law can relate to these questions or play a role in the process. This consideration is what leads us to the proposition of intrabloc law and the question of whether such law is developing.

McQuinny was among the first of the many writers since the early 1960's, basing his study upon the Cuban missile crisis, to argue that there is developing a concept of intrabloc law and an unwritten system of rules and regulations that would govern the relations between the two major powers. Eckstein, in his work on internal war, attempted to categorize three types of civil war. Professor Oglesby concentrated upon the intervention by the United States in the Dominican Republic and that by the Soviet Union in Czechoslovakia as two of the more contemporary examples of Eckstein's third category: war as social change.

Generally speaking, my reaction to Professor Oglesby's paper is quite favorable. I would question, nonetheless, the manner in which he arrived at some of his conclusions. Professor Oglesby raises questions as to the right of bloc intervention. Is there actually a right of bloc intervention in terms of contemporary international law, even admitting that contemporary international law is presently in a transitional period? Does bloc intervention contribute to the stability of the international system? In other words, is such intervention system-serving? Professor Oglesby submits that bloc intervention is system-serving and contributes to international stability. I am reminded, from the viewpoint of international organizations, of certain individuals who subscribe to the "building blocks" approach to international integration, in many cases arguing that regionally intergrated groups are the new substitute for the traditional nation states. Either the negative or positive side of this premise may be utilized to formulate a position, with either position having equal forcefulness as regards stability or instability. However, what is to prevent these emerging regional groups from becoming increasingly competitive and unstable in relation to the international political system? Some might even say that certain of the seven basic principles of international law and friendly relations and cooperation among states are incompatible with this evolving concept of intrabloc law. I personally believe that valid arguments could be made that a right of intrabloc intervention would have a destabilizing effect upon the relations among bloc-member nations and between the two major powers.

REMARKS OF PROFESSOR HOWELL

I will leave comments regarding ideology to my fellow panelists, but I would like to say, as a philosophical matter, that, like many other people who study this exasperating problem of the legal regulation of the use of force, I slip occasionally into the euphoric and high-minded pattern of explaining how it will all come out right in the end. That approach helps to get through some days.

I prefer to spend most of my time on the law relating to the use of force, offering as defense for this imbalance on my part the over-all theme of the meeting. Rather than criticizing any one of these excellent papers that we have heard, I will make some comments that apply to all three. Furthermore, some of my observations apply to papers presented in the earlier sessions. My goal is to suggest some general trends that relate to the use of force described in these papers.

"Intervention" has been a much-used word here. I will use it also, but with the reservation that the use of force with which we are concerned is called by a variety of names. This force is used by general international organizations in their relationship with states and by states in their relationships with other states.

In the past few decades, the United Nations Charter, General Assembly resolutions, new treaties and new interpretations of old law, among other things, have tended to broaden the justification for intervention by the United Nations into the affairs of states, by force or otherwise. In a counter-trend, we have had a narrowing legal justification for the use of force by one state in its relationships with another state.

First, let us consider the trend regarding international intervention. Article 11 of the Covenant of the League of Nations declared any war or threat of war to be a matter of concern of the whole League. The Charter of the United Nations laid the groundwork for a more effective use of force by international organs. The limitations of United Nations machinery are well-known and some aspects have been described by Professor Donald Piper and others here. I would like to refer to an aspect of international interference in state affairs that is less known. This is interference in the general area of peacekeeping where the threat to international peace is often not very imminent. Human rights cases and colonial cases are prime examples. Nevertheless, international jurisdiction has been developed in a case by case procedure in these "middle-range" threats to the peace, and the international organ would be entitled to use force, or could easily declare itself competent to use force, if the decision-making majorities dared.

International authority can, of course, be increased by new interna-

tional law. But after 1945, a broader international intervention into the affairs of states was justified by the argument that potential threats to the peace created emergency situations requiring or allowing international interference. The doctrine of international concern was developed in the Spanish case and in the early years of the South African debates. It was not the same "international concern" mentioned in Article 11 of the Covenant or implied in Chapter VII of the Charter, which strongly suggest that international concern over a threat to the peace should result in an international use of force. The later "international concern" is a concern which allows the international organ to urge peaceful solutions without having to live up to any obligation to use force.

Once this jurisdiction has been established by international concern in these less serious categories of cases, it would be possible to move to the use of force. The point is that international jurisdiction has been broadened and that the international organization could decide to use force in this broader field.

Of course the Security Council (or the General Assembly under the Uniting for Peace Resolution) can vote to use force any time the necessary votes can be found. But, as you know, they have been reluctant. There are many blocks to the decision to use force that need not be listed here. I am simply suggesting that the decision to use force may be a little easier to make if the jurisdictional question has been settled for a long time.

I believe the United Nations illustrated this point by its handling of the Rhodesian case. I believe that the United Nations agencies became involved in the Rhodesian case primarily on the basis of new international law and before there was serious claim that the situation in Rhodesia even potentially threatened international peace. It was my thesis that the situation was finally declared a threat to the peace, not to establish international jurisdiction, but to give added force to the international effort to resolve the case. Of course, in the Rhodesian situation the force was to be used by one member, not the United Nations as a group.

The question of intervention of one state into the affairs of another is quite another matter, and, as Professor Ross Oglesby has shown, intervention in bloc politics is still another. The same terms are often used, but they mean different things. I will pass over intervention in bloc situations and deal only with the trend in the law relating to intervention by one state into the affairs of another state.

Intervention once had a very specific and legalistic definition as it refers to state action. Oppenheim said: "Intervention is dictatorial interference by a state in the affairs of another state for the purpose of

maintaining or altering the actual condition of things."¹ Quincy Wright suggested that force had to be used or threatened for the term "intervention" to be applied.² United Nations intervention does not fit this definition; it is less technically defined.

Confusion over the meaning of intervention in state affairs increased after Soviet leaders urged the world community to replace old concepts of international law with principles of peaceful coexistence. The proposition was attractive to former colonies and underdeveloped states, and the stage was thus set for an extensive discussion and revision.

During the early negotiations, the label was changed from "peaceful coexistence" to "friendly relations." This change suggests an answer to a question that was asked yesterday of Professor Dean Rusk regarding why the relations had to be friendly. Perhaps the relations had to be friendly because the coexistence was to have been peaceful.

In its elaboration of the acts which constitute intervention, the General Assembly in 1965³ reflected the trend to include activities that previously had been omitted. In addition to attacking the argument that some interferences are permissible by prohibiting interventions "for any reason whatever," it specifically included assistance of any kind to "subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state," or interference "in civil strife in another state." The resolution also states that "armed intervention is synonymous with aggression." Professor Rusk has already discussed the full range of friendly relations as that topic was developed in the 25th session of the United Nations General Assembly. His mention of the modification of Charter articles by the replacement of the word "Members" by the word "State" seems to me to illustrate the extension of limitations on state use of force.

In summary, a considerable body of rules is developing to detail the many ways in which one state should not use force against another.

I am not claiming that the listing of powers of international organizations or the listing of limitations on states radically changes world events. The international organ still does not use force when its legal right can be easily established, and states still use force against each other in defiance of the rules. But, to close on a "high-minded" note, it does appear that we are at least beginning to move toward a proper regulation of the use of force if we have set a trend to establish as

¹L. OPPENHEIM, INTERNATIONAL LAW § 134 (8th ed. H. Lauterpacht 1955).

²See generally Q. WRIGHT, THE ROLE OF INTERNATIONAL LAW IN THE ELIMINATION OF WAR 73-76 (1961); Q. WRIGHT, A STUDY OF WAR 9-11 (2d ed. 1965).

³G.A. Res. 2131, 20 U.N. GAOR Supp. 14, at 11, U.N. Doc. A/6014 (1965).

law—even weak law—that the international organization has expanding rights to use force while the individual states have a diminishing right.

REMARKS OF PROFESSOR ROAD

The comments of Professor Oglesby are quite valid. He has eloquently described a pattern of bloc intervention to prevent social and political alterations of the governmental structure of a bloc member which would result in the loss of that member from the bloc. I am not certain whether this pattern constitutes a law, an observation, or an excerpt from natural law. Regardless of its categorical placement, the pattern is one which has been developing over a period of time and is not altogether new.

It appears that Professor Oglesby has framed his remarks in terms of ideological blocs. I would suggest, however, that the pattern is a reincarnation of an ancient rule of law referring to spheres of influence within geographical areas. This rule has validity and is bottomed upon the fact that the geographical location of the area of conflict frequently has significant impact upon the determination of the law or the force that is used and the outcome of such use.

The United States almost naturally expects to maintain a position of hegemony over those domains in its immediate vicinity. Perhaps, at least subconsciously, we recognize that other great powers may have superior rights of influence and control in areas proximate to them. Such recognition helps to explain the weakness of the Soviet Union in Cuba and that of the United States in Eastern Europe. It is also one of our difficulties in Vietnam. Thus, although the pattern of bloc intervention has been stated here in ideological terms, I submit that the impact of geography has had a marked effect in these affairs.

Let me turn briefly to Professor Payne's paper on Africa. I am not sure that the problem he poses is a leading world problem, or that it is in fact a real problem. Briefly stated, the supposed problem arises as to the manner of confronting humanitarian intervention by black African countries in the Republic of South Africa. Frankly, I think there has been undue concern about this African problem since I do not think the black Africans take the situation as seriously as we do. Meetings, papers and resolutions appear to evince an intention on the part of black Africans to take action; yet they continue to trade with South Africa. The position I speak from is primarily that of West Africa, which is particularly unconcerned about the problem. I would admit, however, that East Africa has evidenced some concern over the situation.

A second reason for my position is that most of these black African nations are incapable of mounting any sort of invasion. For example,

Guinea once contemplated going to the aid of Ghana, a decision which would have involved marching across the Ivory Coast; certainly they do not possess such a capability. There exists small likelihood that an army could be moved successfully from some of these black African nations down to South Africa, in some cases a distance equivalent to that between New York and San Francisco.

My position is based upon personal experience in the fourteen nations of West Africa. Prior to my visit I took the writings on the situation there quite seriously, but I soon discovered that in spite of what has been written, neither the Africans nor the Americans there are much concerned about the problem. These local attitudes merely reemphasize the implication that we may be concerned here with a problem which is not likely to arise.

DISCUSSION FROM THE FLOOR

MR. RUSK:

With respect to Mr. Oglesby's analysis of the bloc situation, it was not my impression that President Johnson felt that he was announcing a general doctrine or policy at the time of the Dominican Republic situation from the point of view of the O.A.S. During the Eisenhower administration, the O.A.S. had imposed sanctions upon Trujillo, whose dictatorship had come to be quite obnoxious to the rest of the Hemisphere. In 1962, the O.A.S. declared Castro-type communism to be incompatible with the institutions of the Western Hemisphere. Thus, in the Dominican Republic, the O.A.S. was confronted with a situation which meant, in the first instance, a blood bath and, secondly, a prospect that there would evolve from that blood bath either a Trujillo-type dictatorship or a Castro-type dictatorship. Therefore, the Hemisphere took action to give the people of the Dominican Republic another choice.

I doubt that either the United States or the O.A.S. has yet reached the point of a doctrinal statement that the principle of self-determination cannot be carried so far within a bloc as to permit a bloc nation to deviate from the bloc. I would not say that the Dominican affair could not be repeated, either in the Dominican Republic or in some other country, but I can state, quite categorically, that I cannot imagine this situation being repeated in three-fourths of the nations of the Western Hemisphere.

There is one other fundamental difference between the O.A.S. action in the Dominican Republic and the action of the Warsaw Pact in Czechoslovakia. In the one case, the O.A.S. was providing the people of the Dominican Republic with a chance to determine their own political

system, whereas, the Warsaw Pact was preventing the people of Czechoslovakia from determining their political system. The question of whether this distinction makes any difference as a matter of law, I leave to the rest of those present.

[Mr. Rusk then left the discussion due to another commitment.]

Mr. WILSON:

I feel that one can strongly disagree on factual grounds with Mr. Rusk's interpretation of the 1960 O.A.S. sanction against Trujillo. This sanction was not related to the right-to-left issue at all. That issue came much later in 1965. It is regrettable that Mr. Rusk is not present to perhaps dress out the context of his remarks and see if he was correctly understood.

The 1960 O.A.S. sanction was taken against Trujillo because Trujillo had attempted to assassinate President Betancourt of Venezuela and, thus, had violated the cornerstone of the inter-American system: the principle of nonintervention. It was on that ground alone, and not because of the rise of a dictatorship, that the O.A.S. wished to get rid of Trujillo. The Latin American countries were willing to adhere to the legal machinery that existed, namely a system of collective security through a regional arrangement undertaken on the basis of treaties, etc., and put into operation by the requisite number of votes.

In 1965, there was an entirely different situation with the United States unilateral perception of the Dominican Republic as a second Cuba. The O.A.S. member nations voted to support the United States only by a bare two-thirds majority. The Dominican Republic's vote should have been disqualified for a conflict of interest, but it was counted and carried the motion of support for the United States. On factual grounds I do not see how a person can put together the O.A.S. act against the Trujillo government of 1960 and the situation in 1965.

Mr. PAUST:

I disagree with the statement that international stability is supported by status quo laws, whether such laws are regional or are of a wider application, if in fact public frustrations or human expectations are either ignored or openly suppressed within the reference region. Status quo laws may perhaps make law itself unrealistic or of little utility regarding conflict management in the future. All that may be gained by supporting status quo laws which are unresponsive to needs is to postpone the conflict that will inevitably develop.

I also disagree with Professor Oglesby's statement that unilateral action by a single state, unless in self-defense, is incontestably illegal.

The efficacy of such a statement depends on the definition given to self-defense. As an example, the United States helicopter prisoner rescue effort in North Vietnam may have possible legal justifications other than self-defense, such as retortion, reprisal, humanitarian intervention and intervention to protect nationals. Thus, it is not necessarily incontestably clear that self-defense is the only legal ground of intervention.

Mr. OGLESBY:

My use of the term "self-defense" was perhaps categorical and an unfortunate rhetorical device which I used to give emphasis to the ambiguities surrounding bloc intervention and United Nations use of force. There is a great deal of ambiguity surrounding the use of force by a regional organization. I consider self-defense to include reprisal, although I am aware of the criticism directed toward the use of force by reprisal under the United Nations system.

Mr. KEILING:

Mr. Oglesby, would the United States be justified in intervening in Chile under the guise of that country's action being a threat to international peace, where such actions are contrary to the bloc interest of the O.A.S., and where it is realized that Chile has a democratic, elected government? If so, then does the concept of sovereignty really not apply to current international law?

Mr. OGLESBY:

I am keenly aware that perhaps the possibility of O.A.S. intervention in communist take-over situations was not as broadly based as my paper stated. If there were a peaceful revolution, as has come to take place in Chile, and if that country voted to go communist, I doubt that the O.A.S. would intervene directly with force. As my paper pointed out, if the deviation from bloc interests came about as a result of machination by another bloc, suspected or otherwise, then I think the O.A.S. would act more forcefully. In such a situation the O.A.S. has a commitment to act forcefully, and since such a commitment came about as a result of a regional treaty, it would override article 2, section 4 of the United Nations Charter.

Mr. ANDERSON:

In his consideration of the bloc situation, Mr. Oglesby seems to be setting forth a basis for a turn of international law to inter-regional law.

Mr. Oglesby, would the ultimate solution of our problems be a controlled force within regions?

Mr. OGLESBY:

I am a strong believer in the United Nations, and I was not particularly happy with the conclusions made in my paper. Although I do not see regionally controlled force as the ultimate solution, it is a realistic, intermediary way of keeping peace in certain areas of the world until such a time when the United Nations can assume a more useful role as a worldwide organization.

Mr. CLUTE:

I would agree that Africa's problems are not immediately pressing, but I think the African continent has conditions which are ripe for conflict, as evidenced by the guerrilla warfare in the Congo and with respect to the Mau Mau situation. In addition, it is important to note the effect which an increased Soviet force in the Mediterranean, North Africa and the Indian Ocean could have upon the strategic importance of black Africa.

Mr. PAYNE:

While it may be said that African nations are now small and lacking in capabilities, such an analysis ignores the very real problem of human rights and the support of guerrilla activities in the southern part of Africa. It has not been too many years since those who studied the African countries were accused of studying an unimportant part of the world. Today that is no longer true. Although the African nations may not be capable of creating a severe international problem at this time, the potential is certainly there. I am reminded of a West African proverb cited by the Foreign Minister of Liberia: When you stop dancing, you can hear the other animals in the jungle. This may well apply to Africa.

Mr. ANDERSON:

Mr. Saliba, do you feel the development of a world food bank would perhaps solve the problems of all third world countries?

Mr. SALIBA:

While I would note that I am a specialist on the Middle East, the same problems are involved here. There is always a tendency to solve problems by offering economic assistance to build a dam, to provide additional food, etc. The food issue is not the major issue at all. People

have always been able to find food to eat. The economic loss which a people can endure in taking a particular course of action is supported by a fundamental nourishment of the human psychology: honor. It is ridiculous to think that Hanoi is going to release prisoners of war merely because someone has offered them ten million dollars. A conflict cannot be forestalled by providing economic assistance where honor is involved.

Mr. SCHOU:

Mr. Oglesby, does your bloc model operationalize article 52, section 22 of the United Nations Charter?

Mr. OGLESBY:

The legal rationalization by each nation which uses my bloc model is article 52 of the United Nations Charter. The difficulty arises in deciding whether such action is peace-keeping or enforcement. At the present time there is no third party or agency which can make a disinterested decision on that distinction. In this way a legal loophole is developing whereby regional organizations can still say they have acted pursuant to the Charter all the time, while they carry on enforcement actions within the bloc.