Lack of statistics notwithstanding, it is fairly obvious to any student of international relations that claims of illegal intervention, aggression and the political expressions of these legal terms like western imperialism, have reached in the last decade almost epidemic proportions. An observer during general debate on the forum of the United Nations General Assembly must perpetually wonder what the world would be like if the accusations by governmental representatives reflected the true behavior of nations and, also, to what extent the venomous rhetoric contributes to the emergence of situations which may be a potential cause of a serious breakdown in international order, such as it is. There are many reasons for the indiscriminate accusations of actions by states, which, when true, represent one of the serious violations of contemporary international law. Increasing internationalization of economic and political life, improving communications which facilitate access to ideas as well as ideology, etc., have at least a dual effect. On one hand the growing awareness of people of the impact of international actions on domestic affairs makes it tempting for national leaders to blame external "forces" for any domestic problems, especially if the political rhetoric is likely to arouse nationalist feelings and divert attention of the population from the actual domestic problems the government in question may face. On the other hand, it is undeniable that more and more international events or actions of other nations at least indirectly affect most nations; therefore, those nations capable of influencing the course of events elsewhere find it very hard not to do so in one way or another, often with the genuine belief that inaction would seriously prejudice their national interest. To

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1 Cf. Pimont, La subversion dans les relations internationales contemporaines, 76 Revue Général de Droit International Public 769 (1972) [hereinafter cited as Pimont].
use a current example, it is probably true that the Soviet domination of Angola could pose a threat to the free flow of Angolan oil to the United States and, coupled with already existing Soviet military bases in Somalia, could pose a threat to the tanker traffic around Africa. United States efforts to counter Soviet and Cuban action through financial assistance to anti-Soviet factions may seem to have been natural enough and, in view of past practice, even very temperate. Alternative approaches to the situation might have seemed to be too impractical. At the beginning of the crisis, when the decision whether to act and what action to take was made, the diplomatic solution might have seemed to be unrealistic. In any event, diplomatic solution takes time during which the Soviet Union could have accomplished its goal. Development of adequate protection of tanker traffic, Soviet military bases notwithstanding, and development of alternative sources of energy might have been considered too costly or beyond the current technological capability of the United States. The crucial question of whether the extension of Soviet influence to Angola would pose a real threat to the security of the United States might have been considered too risky to be answered in the negative. The view that without firm American response the Soviet Union would stop in Angola and not seek further territorial expansion was probably, one would think, considered utopian.

The behavior of actors as well as the response of the international community, be it individual states or groupings of states, to armed conflicts, acts of aggression, intervention, etc., have been marked, in my view, by three factors. First, the ideals of the United Nations,

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\[3\] This manuscript was submitted in February 1976.

\[4\] Almost any author in this area of international law cites factors which influence behavior of nations. These factors, quite understandably, overlap. It may be noted that this author omitted "public opinion." It is his belief that (1) there is no "opinion" of the "world" public in the real sense of that word; (2) in the overwhelming majority of states there is no informed public opinion, and at any rate "public opinion" is so manipulated that any restraining effect cannot be discerned; and (3), to be sure, in Western democracies there is public opinion which influences actions of the governments in question. But even in those latter countries the public is largely oblivious to armed interventions which do not directly affect the state in question. Who, for instance, in the United States heard of Iranian intervention in Oman? See N.Y. Times, Jan. 11, 1976, at 15, col. 1. Of course, interest of the public can be aroused by television pictures of hungry children with oversized bellies. But the public is never told that such pictures could have been taken months before or after the intervention and that such pictures seldom express the state of affairs caused primarily by the action involved. In that sense, even in the West, public opinion is manipulated by the incomplete information which the majority of people receive, quite apart from frequent manipulation of public opinion by the government, individual members of the legislature, etc. This conclusion has an important bearing on rejection of subjective criteria in connection with the discussion on intervention, infra.
especially the prohibition of the use of force under article 2, paragraph 4 of the U.N. Charter are certainly viable in the sense that they reflect the desire of mankind and the goal of the international community. As such they represent a restricting element (for the actor as well as for the state or states which consider it necessary to respond) at least to the extent that no contemporary state has openly rejected the prohibition of the use of force in violation of the Charter and that the action undertaken in violation of the Charter is designed to fit a more or less plausible justification under the Charter itself, most often that of self-defense or promotion of the right of self-determination. The second factor is the reality of contemporary international society. It includes the need for changes in the international order which, it seems, cannot always be accomplished peacefully. It includes different priorities of new, poor nations as opposed to nations of the industrial West, and different ideologies of the superpowers. It includes Soviet belief in and practice of territorial expansion matched only by Disraeli's conception of the British empire. The second factor also includes the recognition of what "the scourge of war" would be like today; i.e., the fear of consequences of nuclear war and the attendant assumption that world peace depends on the balance of power. The third factor is represented by the unwillingness of principal actors to compromise, i.e., to agree on a standard or rules which they at least would intend to observe without reservation, and by the unwillingness or inability of other states to insist on a sufficiently specific agreement on interpretation of the "Law of the United Nations." The standard for intervention and an action in self-defense are the principal topics of this article.

The United Nations' responses have varied in form and effectiveness. It is possible to recall various actions of the United Nations which contributed to solutions (sometimes temporary solutions) of particular international crises. The Korean war, the India-Pakistan war of 1965, and situations in which U.N. emergency forces or ob-

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1 U.N. Charter preamble.
2 The term "principal actors" as used here is not synonymous with the term principal powers. For example, Cuban participation in Angola coupled with the Cuban attitude towards "export of revolution" in the 1960's would justify characterization of Cuba as one of the states whose assent to any new, comprehensive regulation of, say, subversive activities would have to be sought.
servers were used are among cases which come to mind. One also may recall recommendations of the U.N. General Assembly frustrated by the inaction of the Security Council, as in the case of the India-Pakistan war of 1971. The diplomatic mission of Ambassador Jarring, although not successful, should certainly be considered a form of response of the United Nations to the Middle Eastern crisis. Another form of response is represented by the so-called declaratory resolutions of the United Nations General Assembly, the purposes of which are to interpret the Charter and the rules of contemporary international law, and some of which are to a certain extent subject to the discussion which follows.

I. Article 2(4) of the Charter of the United Nations and the Concept of Self-Determination of Peoples

The prohibition of "the threat or use of force against territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations" under article 2(4) of the Charter certainly is not free from ambiguity. This author's premise is that the term "force" should be interpreted as armed force, or at least as a physical force sufficiently similar to armed force, as, e.g., in the case of the organized


* D. Bowett, Self-Defense in International Law 146 (1958) [hereinafter cited as Bowett].

* Id. at 148.

On the other hand there have been scholarly attempts to read article 2(4) of the Charter as prohibiting the use of any force, including "economic force," "against territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations." See, e.g., Paust & Blaustein, The Arab Oil Weapon—A Threat to International Peace, 68 AM. J. INT'L L. 410, 415-20 (1974) [hereinafter cited as Paust & Blaustein]. It is significant, in my view, that, for example, Messrs. Paust and Blaustein support their view by the absence of the qualifying term "armed" in article 2(4), with a host of documents which either do not have force of law or are in the area of "declaratory resolutions" of the U.N. General Assembly or by documents the relevancy of which, as to the issue, is minimal, and do not pay attention to e.g., travaux préparatoires of the Charter. For me this approach represents not only an unwarranted but also an undesirable erosion of article 2(4). First, it inevitably leads to the "conversion" of article 2(4) into an "umbrella" embracing prohibition of any intervention (e.g., against "political independence of any State," which can be, of course, interpreted rather broadly) along the lines of General Assembly Resolution 2625 (XXV) (see note 12 infra; my views on this subject appear below). Second, such a view represents to me an advocacy of the use of armed force in self-defense under article 51 of the Charter against the use of "economic force" despite the fact that, e.g., Professors Paust and Blaustein explicitly reject the view that articles 2(4) and 51 of the Charter are coextensive. Paust & Blaustein, supra, at 417. As such, this interpretation of article 2(4) provides addi-
"march" of unarmed Moroccan civilians into the territory of the Spanish Sahara in November 1975. Even if the premise is accepted, some marginal problems can arise. Nevertheless, under the premise, questions of the threat or use of force are substantially questions of fact, while interpretation of a term such as "territorial integrity" in the context of article 2(4) in some borderline situations may depend upon what might be called an ultimate conclusion of law and fact. For instance, one might think of the unilateral extension of the breadth of the territorial sea, which is not clearly illegal (e.g., from a three to a twelve mile limit) by State A and a claim of an existing right within the new limit by State B, "supported" by warships of State B sent to the particular area.

A more difficult and possibly unresolved question is who, apart from "any state," is the object of the protection of article 2(4), in view of the phrase "or in any other manner inconsistent with the purposes of the United Nations." Leaving the intention of the signatories of the Charter in 1945 aside, current development indicates that protection is accorded to peoples of the colonies which are subject to the right of self-determination. With the rapid disapp...
pearance of colonies *stricto sensu*, this is becoming a moot question. The difficulty arises with the efforts to extend the protection to other peoples (other than peoples of the colonies) subjected "to alien subjugation, domination and exploitation" and with the corresponding claim of the right to render assistance to these peoples, including armed assistance (in the sense of the use of armed force in support of these peoples). This claim, as far as armed assistance is concerned, can be logically formulated only as an exception to article 2(4). Although some of the problems involved will be discussed below, it may be said that the claim is without merit as far as the Charter and general international law is concerned. The primary object of the protection of article 2(4) is a state. As opposed to peoples within the territory whose status is "separate and distinct," the people within a territory of a state form one of the constituent elements of that state and their right of self-determination can find its expression only in "their right to be left alone" and to determine for themselves the form of government, the political, social and economic system, or to dismember the state in question and establish two or more states, etc. According to the plain meaning of the language of article 2(4), the intent of the actor is irrelevant, except insofar as it may be important with respect to an exception to article 2(4). That does not mean that the intent of the actor need not be important as one of the criteria which could be used to differentiate between two different actions in violation of article 2(4) of the Charter, if such a differentiation is at all useful. For example, at the closing meeting of the Seventh Session of the Special Committee on the Question of Defining Aggression, the phrase "other relevant circumstances" in article 2 of the U.N. General Assembly Resolution on the Definition of Aggression was un-
derstood to cover *animus aggressionis* by the representatives of the United States, the United Kingdom, and the USSR. This view was opposed by the representatives of Yugoslavia and Mexico, who evidently did not think that the intent of the actor should under any circumstances be one of the elements of aggression. Be it as it may with respect to the notion of aggression, there cannot be any doubt that the intent could help to differentiate, for example, between an act of aggression and, if viewed as a separate category, an act of disproportionate anticipatory self-defense.

The Charter of the United Nations expressly authorizes two exceptions to the prohibition of article 2(4). One, which will be discussed below, is the right of self-defense under article 51 of the Charter. The other is an action of the Security Council (or under the auspices of the Security Council which includes action of a Regional Organization under chapter VIII of the Charter and in conformity with article 53, paragraph 1 of the Charter) under articles 24 and 39 of the Charter. If humanitarian intervention is not viewed within the scope of the right of self-defense, but is considered to be a separate institution within the limits of general international law, it may represent another exception to article 2(4). With respect to a precedent which would create a *new* exception to article 2(4) of the Charter, an interesting view has been expressed by Professor

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The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Special Committee on the Question of Defining Aggression, Provisional Summary Record of the One Hundred and Thirteenth Meeting, April 17, 1974, at 7, 10, 17, 23, 26, U.N. Doc. A/AC.134/SR.113 [hereinafter cited as Provisional Record].

The example of "disproportionate anticipatory self-defense" (because of the issue of "the first use of armed force" in article 2 of the Definition of Aggression, supra note 16) is used to avoid controversy. The author's view on the legality of anticipatory self-defense appears below.

The determination of the Security Council under article 39 may be made in any case involving existence of a threat to the peace, breach of the peace, or act of aggression ("existence of any threat" (emphasis added)); i.e., not only in reaction to the violation of article 2(4). Bowett, supra note 9, at 176. Conversely, not all violations of article 2(4) need represent threat to the peace, breach of the peace, or act of aggression. Another exception originally authorized by the Charter was that under articles 106 and 107 of the Charter, which deal with transitional security elements.

For discussions of humanitarian intervention see, for example, Brownlie, *Humanitarian Intervention*, in Moore, supra note 7, at 217, and Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, in Moore, supra note 7, at 229.
Henkin in his treatment of the “Cuban Quarantine” of 1962. After strenuous argument against anticipatory self-defense, Professor Henkin wrote: “the Cuban quarantine will probably not be seen as a violation leaving the law as it was; probably it will make new law, but what that law is cannot yet be told.” However, Professor Henkin adds, “the quarantine lends itself to very cautious ‘use’ indeed.” His conclusion that the quarantine “[a]t its narrowest, . . . is an assertion that when world peace hangs on a delicate balance of terror, measures [introduction of Soviet missiles into Cuba] that threaten substantial destabilization are intolerable” is, of course, the gist of the problem. Such a rationale lends itself to most serious misuse in the name of “balance of power,” “spheres of interest,” etc. While Professor Henkin’s principal concern seems to be with the possible misuse of the Cuban quarantine within the anticipatory self-defense concept, it is submitted that an exception to article 2(4) based on the balance of power rationale would enlarge the scope of use of force substantially beyond the limits of anticipatory self-defense. It would be too much of a good thing to expect the acceptance of such a rationale for facts identical to the Cuban quarantine only. Of purely academic interest may be a question of the use of force within a territory which is neither a colony or a dependent territory nor a state. A conflict between two armies (of States A and B) competing for acquisition of terra nullius probably would be in violation of one of the purposes of the United Nations; namely, the principle of peaceful settlement of disputes. Not that there is any terra nullius left. The example is mentioned to illustrate the fact that, if the phrase “or in any other manner inconsistent with the purposes of the United Nations” is to be taken literally, there is not much room left for legal use of force.

The preceding brief exposition of the scope of the prohibition of article 2(4) of the Charter of the United Nations indicates our view that the prohibition is categorical save for exceptions which are either specifically authorized by the Charter or embodied in the existing norm of general international law which is consistent with

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21 Henkin, supra note 11, ch. XVI & 227 et seq. (particularly).
22 Id. at 232-36.
23 Id. at 236.
24 Id. at 237.
25 Id.
26 Id.
27 Whether the norm existed at the time the Charter was signed or developed— as a norm of general international law— since 1945 is in this author’s view irrelevant.
or, indeed, promotes the principles (or purposes) of the United Nations, as may be, for instance, the case of humanitarian intervention where the principle specifically promoted loosely may be called that of respect for human rights. The question ultimately to be asked is whether a rule promoting one principle can coexist with the other principles of the Charter to the extent of their character as jus cogens. Within this latter category the development of the normative contents of the right of self-determination deserves separate treatment since that development expanded the scope of the article 2(4) prohibition and provided some respectability for the claim of concurrent expansion of the right of states to threaten or to use force to promote the right of self-determination of other peoples.

"[T]he principle of self-determination of peoples," to use Dr. Bowett's words, "[is] regarded by many states as one of the most fundamental and 'peremptory' norms of contemporary international law." Indeed the principle as such, i.e., apart from particular situations, seems to be recognized by almost all states, with the inferred exceptions of South Africa, Rhodesia, and Portugal prior to General Spinola's coup d'etat. With respect to colonies stricto sensu the principle should be interpreted on the one hand as prohibiting the colonial power from using any means of suppression to curb the desire of colonial peoples to attain "a full measure of self-government," and on the other hand as sanctioning assistance to such peoples by the third states for the purpose stated. As has been already mentioned, this is becoming a moot question. The qualifying term stricto sensu is used here because this author believes that the regime of peoples living in annexed territories which prior to annexation had been independent states, especially in the case of Soviet annexations of, e.g., Latvia, Lithuania, and Estonia, is a colonial regime. This question is not a moot question, but any discussion of the subject would be a waste of time.

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21 U.N. Charter art. 1, para. 3.
22 Bowett, The Interrelation of Theories of Intervention and Self-Defense, in Moore, supra note 7, at 42 [hereinafter cited as Bowett, Interrelation].
23 U.N. Charter art. 73.
24 Article 73 of the U.N. Charter qualifies the duty of members of the United Nations "to promote . . . the well-being of the inhabitants [of non-self-governing territories] and, to this end . . . to develop self-government" by limitation "within the system of international peace and security."
25 Many years ago I read memoirs of pre-World War II Italian diplomat Daniele Varé, which in English would probably be entitled "The Laughing Diplomat." Mr. Varé was the Secretary of the Italian delegation to the League of Nations in the 1920's and described the debate on the so called "Armenian question." The "question" was Soviet annexation of
The principle of self-determination extends, in any sensible interpretation, beyond the peoples under the colonial regime. As a universal principle of the Charter it must apply to peoples of any nation and to any significant (in terms of numbers, geography, etc.) minority of homogeneous origin, culture, etc. within a state. Does State A have a right to assist any group in State B, or "majority" of the population under the government of State B, in order to promote realization of the right of self-determination? The question, of course, relates to rebellions and revolutions, civil wars, and to the efforts to foment civil strife in order to weaken a politically or ideologically hostile state or to secure succession to power by a friendly group.

The question of legality of intervention by one state on behalf of either the government of or the challenger within another state and the question of rights and duties of third states has become one of the most controversial issues of current international law. The legal analysis, it is submitted, must be based on recognition of three different situations which may not be different for the purposes of a social scientist's analysis, but which are entirely different under international law. In the first situation the delictual conduct of State A against State B creates in State B the right of self-defense under article 51 of the Charter. State C "intervenes" on behalf of State B in exercise of the right of collective self-defense according to a treaty between States B and C. This problem will be explored in part II of this article. In the second situation State A intervenes in violation of article 2(4) of the Charter either on behalf of the legitimate government of State B or on behalf of the challenger within State B and justifies its conduct either (a) by its right to promote self-determination of "people" or (b) by invitation by the legitimate government. This problem will be explored in this part of the article. In the third situation State A renders assistance either

Armenia with attendant mass murders. During the debate Mr. Varé circulated among his friends his private "resolution" which, if my memory serves me well, read along these lines: Article one: The League of Nations shall be notified of any killing of Armenians four weeks in advance. Article two: The League of Nations shall be notified of any killings involving more than 10,000 Armenians six weeks in advance. Article three: Any killing of Armenians in violation of articles one and two of this resolution shall be null and void; i.e., regarded as if it did not happen.

1 See Bowett, Interrelation, supra note 29, at 38 et seq. Dr. Bowett differentiates between international conflicts and internal conflicts. Within internal conflicts he differentiates between intervention by consent of the established government, intervention to assist a struggle for self-determination, and humanitarian intervention. Dr. Bowett's and my categories overlap but not entirely. The same is true about the conclusions.
to the legitimate government of State B or its challenger, but the action of State A does not violate article 2(4) of the Charter. This problem will be mentioned in part III below.

A. *Intervention to Promote Self-determination of “People”*

The notion of the independent, sovereign state is a legal fiction. The fiction attaches (1) to a state—as opposed to a colony or a state of a federation, be it Bavaria or, e.g., the Belorussian and Ukrainian Soviet Republics, the “nonsense” of their membership in the United Nations notwithstanding—and (2) to a *sovereign* state. Sovereignty in the legal sense simply denotes formal independence, or more precisely—if I may use a strained colloquialism—lack of formal dependence.\(^{34}\) For example, the state under the regime of a protectorate or a state-member of a confederation, which transferred the exercise of its external sovereignty to organs of the confederation are not sovereign states or at least not fully sovereign states, as the case may be. In that sense the fiction incorporates a conclusive presumption that the *state* is a *sovereign* state unless it is *formally* dependent (pursuant to a treaty, pursuant to a de jure occupation regime unilaterally imposed as in the case of postwar Germany prior to the emergence of the two German states, etc.). As it is true with any legal fiction, there are few cases in which the fiction is totally divorced from reality (and as long as there are only a few exceptional cases the fiction is viable as reflecting usual situations). Hungary and Czechoslovakia are *par excellence* examples of states whose dependence has been demonstrated and which are clearly and unequivocally under the regime of de facto suzerainty. Their problem, so to speak, does not fit the problem discussed in this article for two reasons. One is that each act of armed intervention of the suzerain is part of a continuous and illegal status which poses a different problem than acts of intervention in the proper sense of that word; the other is that any discussion of this issue would be a waste of time as mentioned earlier with respect to annexed territories. However, with respect to most states the fiction works well indeed, even if it sometimes appears that a particular state is a “dependent” state because it is within the “sphere of interest” of a “super-power” etc. For example, in the early 1950’s the People’s Republic of China had

\(^{31}\) The view that a state’s de jure sovereignty depends on its ability to exercise it (cf. article 4, paragraph 1 of the U.N. Charter) is indefensible. Even United Nations practice under article 4 of the Charter has always been (from the two Soviet republics mentioned earlier to the last admitted ministate) contrary to the rule itself.
been considered to be a Soviet satellite; prior to Castro's victory, Cuba was within the sphere of influence of the United States both in fact and under the Monroe, Truman, and Eisenhower doctrines. One may make a cautious reference to Rumania, although it is yet to be seen how far Rumanian "courage" or Soviet "tolerance" is going to go. All three states demonstrated their independence (in the case of Rumania, a measure of independence). In this connection it must be remembered that the notion of state in this context is not synonymous with the notion of government. Although "government" is one of the constituent elements of a state, it is not, as such, the independent subject of protection of article 2(4) of the Charter. As long as a state's personality according to international law continues without a change, i.e., for purposes of continuity under international law the state does not lose its identity, occasional periods of uncertainty as to the legitimate government are irrelevant.

This author believes that there are two approaches to the normative solution of the problem of the unilateral threat or use of force to promote the right of self-determination of peoples within the territory of a sovereign state. The first one lies in the determination of whether, as between two or more groups, one has under international law a superior right to self-determination than the other(s). The question does not deserve an answer. The only possible solution to the conflicting claims within a state is to allow the sum total of the legal and extralegal processes to take their course. It has to be remembered that the purpose of civil strife is not only to determine the "victor" but also to change the power structure, which is often achieved in a manner that reflects a compromise between competing factions, although rarely immediately after the victory of one faction. An armed intervention of another state on behalf of one group is, in this conception, tantamount to a suppression of the right of self-determination of any other group or the entire population. This conclusion, of course, can be made only under the assumption that there are at least two groups with competing views on self-determination of each of them or self-determination of "all people" within the state's territory. In other words the conclusion should fall, it might be argued, if the government of the state in question "rules" against the will of almost the entire population, which would be possible only if it "ruled" de facto on behalf of another state. Such a conclusion, i.e., that of dependency, cannot be left to any other state. In that sense the fiction of a sovereign state operates as a denial of a "right" to rebut the presumption of
sovereignty. If the situation is such that an outside action is imperative, there is an organ which can authorize such action on behalf of the United Nations, which in fact, nowadays, means on behalf of the international community: the Security Council under article 39 of the Charter.\textsuperscript{35}

The second approach lies in the relationship of article 2(4) of the Charter, the principle of sovereignty, and the principle of self-determination of peoples. As has been mentioned already, the primary object of the protection of article 2(4) is a state. That protection is not qualified, for example, by the requirement that the state act consistently with the principles and purposes of the United Nations unless, of course, the delictual conduct is such that it permits armed response under article 51 of the Charter. With respect to the relationship of the principles of sovereignty and self-determination of peoples, neither in the Charter nor in the travaux préparatoires is there any suggestion that the principle of self-determination should take precedence over the principle of sovereignty; quite to the contrary, sovereignty has been regarded as the cornerstone of modern international law.\textsuperscript{36} In fact, prior to the U.N. Charter, the colonies had been regarded as part of the territory of the colonial power; the travaux préparatoires of the Charter do not reflect any support for the “rights” of third states to threaten or use force on behalf of the peoples even of the colonies; consequently, the Charter itself is far from being clear on the subject of colonies, while it is quite clear on the question of respect for sovereignty. The normative contents of the right of self-determination of peoples have developed only in the last 20 or 25 years. And there is not the slightest doubt that the international community did not develop a consensus, either by way of amendments to the Charter or by way of consistent behavior—if one ignores the concept of jus cogens and the procedure for amending the Charter, as to the limitation of sovereignty in favor of the “right” of third states to promote self-determination of peoples, other than those in the colonies, contrary to the prohibition of article 2(4) of the Charter. As of the time of this writing, the Organization of African Unity was evenly split on the question of foreign intervention in Angola.\textsuperscript{37} There is not a single example since World

\textsuperscript{35} Cf. Bowett, \textit{Interrelation}, supra note 29, at 44.

\textsuperscript{36} Friedmann, \textit{Comment 4}, in Moore, \textit{supra} note 7, at 574 [hereinafter cited as Friedmann].

\textsuperscript{37} \textit{Parley on Angola Ends Without Decision}, N.Y. Times, Jan. 13, 1976, at 1, col. 5. OAU recognition of the Popular Movement for the Liberation of Angola was extended after the victory of that faction on February 11, 1976. See N.Y. Times, Feb. 12, 1976, at 1, col. 8.
War II where the overwhelming majority of states approved of foreign armed intervention within the context here discussed. Perhaps the most persuasive example is that of the India-Pakistan war in 1971. There was a long history of denial of proportionate representation to the population of East Pakistan by the central government; the parliamentary elections before the war were frustrated by the central government; the elections clearly demonstrated the overwhelming popular support in East Pakistan for those who finally emerged as leaders of Bangladesh; there was a documented history of economic neglect of East Pakistan by the government; the majority of people in East Pakistan were of different national origin than those in West Pakistan; and the popular uprising was being brutally suppressed. As Professor Friedmann pointed out, there was "the universally felt revulsion against the behavior of the Pakistani forces toward its own citizens." Yet the General Assembly of the United Nations in its Resolution 2793 (XXVI) of December 7, 1971 called "upon the Governments of India and Pakistan to take forthwith all measures for an immediate cease-fire and withdrawal of their armed forces on the territory of the other to their own side of the India-Pakistan borders." In the preambular part of the Resolution, among other things, the General Assembly referred to article 2(4) of the Charter and recognized "the need to deal appropriately at a subsequent stage, within the framework of the Charter of the United Nations, with the issues which have given rise to the hostilities." The vote in the General Assembly was 104 in favor of the Resolution, 11 against, with 10 abstentions. Thus, the General Assembly believed that status quo ante should be restored, at least in part because of the prohibition of article 2(4) of the Charter (apart from the desire to maintain peace), and despite the brutal suppression of the Bengalis in East Pakistan. At the same time, the General Assembly believed, one might infer, that the issue of self-determination of the Bengalis in East Pakistan should be resolved, but resolved by peaceful means ("within the framework of the Charter"). In view of the time such solution might take, one may see the temptation to solve the problem by a quick action, with the

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3 Friedmann, supra note 36, at 574. Professor Friedmann's conclusion was that "India's action was illegal, but morally condonable." Id. at 579. However, he also wrote: "[it hardly can be denied] that this intervention also served India's long standing purpose of weakening Pakistan and creating a friendly, but necessarily beholden, country on its northeastern frontier." Id. at 577.

3 Resolution 2793, supra note 8, para. 1.

4 Id. preamble (emphasis added).
reasonable reliance on inaction of the United Nations subsequent to \textit{fait accompli}. Nevertheless, the reasonable inference (in view of the history of the relations between the two states) that India acted with ulterior motives apart from laudable concern for the Bengalis, provides a moral and sociological justification for the action of the General Assembly and shows that the rules of international law here discussed are not contradictory to or entirely divorced from the ideas of "justice."

The basic issue in the relationship of the principles of sovereignty and self-determination of peoples is not the desirability of a juxtaposition of peace and justice, but the need to protect the concept of sovereignty from being swallowed by the principle of self-determination distorted in the rhetoric of the leaders of quite a number of nations and gravely misused by the actions of some of them.

B. \textit{Intervention by Invitation by the Legitimate Government}

It may be said at the outset that this author agrees with many others that invitation by the legitimate government does not justify armed intervention to suppress the right of self-determination.\textsuperscript{11} While, as has been emphasized above, the principle of self-determination cannot swallow the principle of sovereignty, the principle of sovereignty equally cannot swallow the principle of self-determination and the prohibition of threat or use of force in any manner inconsistent with the purposes of the United Nations. Strictly speaking, sovereignty\textsuperscript{42} actually is not involved since the right of self-determination has become a matter of international concern, regulated by international law, and, therefore, not a matter within the domestic jurisdiction of states. Nevertheless, this does not mean that a state cannot, at the bona fide invitation of the legitimate government of another state, use force within the territory of that other state, in joint exercise of, say, the police power of the latter state in an affair which is exclusively internal. Apart from "nonpolitical lawlessness and banditry,"\textsuperscript{43} drug traffic, etc., in the

\begin{footnotesize}
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\item \textsuperscript{12} Sovereignty in this context is related to the right of the state to do whatever it pleases with respect to matters which are essentially within its domestic jurisdiction and, therefore, through its government to invite any state to assist it in suppression of an internal "rebellion." Because of the internationalization of the concept of self-determination, the right of the invited state to assist ceased to exist.
\item \textsuperscript{42} Bowett, \textit{Interrelation}, supra note 29, at 42.
\end{itemize}
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contemporary political climate, there may be some cases when the right of a state to intervene pursuant to a legitimate invitation will be controversial. For example, State A may assist State B in the territory of State B in suppression of an international terrorist group; State B may request State A to send a small military contingent to guard A's embassy in B or a dam in B which A is helping to build; that military contingent, it is believed, may use minimal force on a strictly defensive basis in protecting the embassy or the dam, even against an insurgent group. On the other hand, a larger military force of State A stationed in B pursuant to B's request may (or may not) represent an intangible but real threat of force aimed at a challenger (or potential challenger) of B's government, without a single instance of the firing of a gun. The criterion simply is whether or not the behavior of the invited state, in conjunction with the behavior of the assisted state, violates the principle of self-determination. Such is largely a question of fact and of evaluation of the political history of the country in question. For example, in view of the history of the political struggle in Indochina it was patently clear that Vietcong activities within South Vietnam—from the earliest stage on—represented a political challenge to the government. In doubtful cases, it is believed, the presumption should be against intervention.

Rhetoric and illegal acts of states may cloud the issues but cannot change the normative character and contents of the rules discussed. It is regrettable that the General Assembly of the United Nations succumbed to rhetoric and adopted, in a few major resolutions, "rules" designed to interpret the Charter and general international law, which in fact not only are contentless in the sense that they do not reflect any measure of agreement among states, but also, by their mere existence, provide additional fuel for rhetoricians and law breakers. For example, article 7 of the Definition of Aggression reads:

> Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Coop-

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"The action may be illegal for other reasons, such as the violation of the principle of respect for human rights in a police action which is not contrary to the principle of self-determination."

"Note 16 supra."
eration among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

"The principle of equal rights and self-determination of peoples" of the "Friendly Relations" Resolution\(^6\) does not really add anything to article 7 of the Definition of Aggression, except that it relates to a much wider concept which includes, for example, the scope of article 2(4) of the Charter. Apart from the "separate and distinct" concept of the colonies, it is a clutter of reaffirmations of sovereignty, principles of the Charter, and such sentences as "[e]very State has the duty to promote, through joint and separate action, the realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, . . ."\(^47\)

The measure of disagreement on fundamental provisions in the Definition of Aggression was exemplified by the remarks of members of the Special Committee at its closing session and must be apparent to a layman with mediocre intelligence who reads document A/AC.134/SR.113\(^48\) of April 17, 1974. With respect to article 7 of the Definition, some statements made should be specifically mentioned. The French representative believed that "[a]rticle 7 was a safeguarding clause, essentially political in nature . . . . As drafted, the safeguarding clause seemed in fact alien to the text of the Definition, since it was not concerned with aggression as defined in article 1, i.e., between sovereign states. He nevertheless appreciated the legal necessity of having such a clause."\(^49\) (Legal necessity?!) Representatives of the United States, Australia, and Canada in essence explicitly rejected the notion that article 7 does legitimize the use of force against a sovereign state.\(^50\) In fact, the Canadian representative stated that "his Government interpreted the reference to struggle in Article 7 as being struggle by peaceful means, and did not regard the formulation as condoning the use of force in situations other than in self-defense or other than in accordance

\(^{46}\) Note 12 supra.
\(^{47}\) Id. para. 2.
\(^{48}\) Provisional Record, supra note 17.
\(^{49}\) Id. at 5.
\(^{50}\) Id. at 8, 18, 20-21.
with the Charter."\[51\] Representatives of Yugoslavia, the United Kingdom, the Soviet Union, and Egypt made, in the context of the problem, rather ambiguous statements.\[52\] The Algerian representative stated:

With respect to Article 7 in particular, it should be noted that the exercise of the right of self-determination must be placed on the same footing as self-defense and included not only the right of peoples subject to any form of alien domination to resort to armed force, but also the right and the duty of all States Members of the United Nations to assist those peoples.\[53\]

To be sure, the sentences and words of article 7 of the Definition of Aggression or those in the "Friendly Relations" Resolution are not per se objectionable, especially in view of the reaffirmations in both resolutions that nothing in the resolutions should be construed as enlarging or diminishing the scope of the Charter. The resolutions may be considered to be a positive step in the development of international understanding by virtue of extensive debate during their formulation—debate which made it possible for states to express their views and forced the states to express their political views in legal categories, etc. The resolutions also reflect a few understandings which some have considered significant.\[54\] Yet the escape clauses, referring to the promotion of self-determination, reflect precisely the justifications of illegal intervenors for their actions. One can imagine those waving the resolutions and thundering on the forum of the General Assembly and elsewhere about their contributions to the oppressed "peoples" through the use of force against "imperialists," "racists," "zionists," etc. Had there not been so many people dead and suffering as the results of flagrant aggressions, occupations, and illegal interventions in the name of "self-determination" one could find an amusing element in all of this: In 1951, the Special Rapporteur of the International Law Commission, Mr. J. Spiropoulos, concluded in his second report:

\[51\] Id. at 20-21.
\[52\] Id. at 9, 11, 17, 23, 27.
\[53\] Id. at 25.
\[54\] See, e.g., the duty "to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines . . . ." in the first principle (paragraph 5) of the "Friendly Relations" Resolution, supra note 12. See Rusk, The 25th U.N. General Assembly and the Use of Force, 2 (supp. 1) Ga. J. Int'l & Comp. L. 19, 25 (1972). In the article, the former Secretary of State expressed his support for the Resolution and examined elements which influence the "declaratory" (in a sense "legal") character of the Resolution. Id. at 30 et seq.
the natural notion of aggression is a concept per se which is inherent to any human mind and which as a primary notion, is not susceptible of definition. Consequently, whether the behavior of a state is to be considered as an “aggression under international law” has to be decided... on the basis of the above notion which, to sum it up, is rooted in the “feeling” of the governments concerned.55

We have a definition now. It seems, however, that the world is in need of another one, defining who are the peoples subjected “to alien subjugation, domination and exploitation”56 who are entitled to receive armed assistance.57 Feelings of the governments concerned seem to differ on that question. Feelings of ordinary men may not.

The hypocritical attitude of states applauding58 the mentioned and similar resolutions59 is enough to call into question the character of these resolutions as “declaratory resolutions” even if one accepts, in principle, the concept of “declaratory resolutions of the General Assembly,” despite articles 10, 11(1), and 13(1) of the U.N. Charter.60 It should be emphasized, however, that there are more instances in which the votes of the Western powers for certain resolutions of the U.N. General Assembly represent what this author calls a “Soviet style political convenience vote” (or more charitably a vote for an “ultimate goal” without regard for the current contents of the resolution).61

56 “Friendly Relations” Resolution, supra note 12, at 121.
57 See note 53 supra and accompanying text.
58 The “Friendly Relations” Resolution, supra note 12, and the Definition of Aggression, supra note 16, were adopted by acclamation.
60 For a brief and concise treatment of the concept of “declaratory resolutions” see, for example, de Visscher, Cours General de Droit International Public, in 136 ACADÉMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS 1, 125-33 (1972).
61 For example, the United States, after having voted against the Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR, Supp. 31, at 50, U.N. Doc. A/9631 (1974), voted affirmatively on Resolution 3362, Development and International Economic Co-operation, adopted by the Seventh Special Session of the U.N. General Assembly on September 16, 1975 (the resolution may be found in 14 INT’L LEGAL MAT’LS 1524 (1975)).
As must have been noticed, the question of armed intervention of State A within the territory of State B to counter an armed intervention of State C has not been explicitly raised. As a matter of principle (and law) it is believed that one violation of the law does not sanction another violation of the law. However, one would have to be totally blind, deaf, and living in a cage not to recognize the problem of a small state on the one hand exposed to illegal intervention of states which make it a habit to intervene in order to expand their sphere of influence and dominate others, and on the other hand being able to hope only for the attention in the form of an obituary in the newspapers of the law-abiding states. If there were some completely moral, virtuous, and exceptionally "nice" small states and big states it would be easy to justify interventions in response. At least some legal philosophers would dispose of the international lawyer's problem by application of the maxim *cessat rationis cessat lex.* Though there are not any completely "nice" states, one's identification with certain values makes a conclusion inescapable that there are states whose value systems are so close to ours that, for example, the United States may find it unable not to assist them by any and all means (sometimes, perhaps, quite apart from the question of its security). This problem has been dealt with by some authors by suggestions of partly subjective criteria to be applied to the determination of the legality of intervention (not only armed intervention). Professor Moore's *Applied Theory for Regulation of Intervention* is one such approach. Nevertheless, no matter what one's sentiment is, one must agree with Professor Farer that once the door to subjective determinations is open, one "finds whatever it was that he wanted to find," since there has never been a government which at all times resisted the temptation of manipulation of law. Professor Sohn's proposal *de lege ferenda* not only...
SELF-DEFENSE AND INTERVENTION

retains the subjective element ("extreme emergency," "requiring
instant response") but also presumes United Nations action, which
for the near future seems unlikely, at least in controversial situa-
tions. As for the regional organizations, their "virtues" are seriously
doubted. This author proposes to deal with the problem by way of
short-term bilateral mutual self-defense treaties if a "superpower"
is a party or by way of collective self-defense treaties if a "super-
power" is not involved. The reasons for his preference appear in part
II below. With that understanding, this author supports, in the
context discussed, Professor Farer's "categorical norm," i.e., abso-
lute prohibition of the use of armed force but "legitimation of aid
short of tactical support."68

II. SELF-DEFENSE

The right of self-defense under international law is a right belong-
ing to a state. Its exercise is directed against delictual conduct of
another state and aimed at restoration or preservation of the status
quo.67 Since The Caroline affair it has been maintained that the
right of self-defense is limited to situations in which "necessity of
that self-defense is instant, overwhelming, and leaving no choice of
means and no moment for deliberation"68 and that self-defense must
not be unreasonable or excessive. The latter requirement of propor-
tionality has been recognized in traditional international law69 and
in fact has never been challenged.

The requirement that self-defense be aimed at restoration of the
status quo disturbed by delictual conduct of another state distin-
guishes self-defense from punitive actions aimed at enforcement of
legal rights, most notably sanctions.70 In that sense, quite obviously,
defensive action within the limits of self-defense can involve use of

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7. at 582. Professor Sohn's "basic principle" for "non-intervention" reads: "No military
intervention by one state in an internal armed conflict in another is permissible, except in an
emergency action on request of the United Nations or an appropriate regional
organization." Id. at 582.
64 Farer, supra note 41, at 532-36.
65 Bowett, supra note 9, at 11. Dr. Bowett's work is a major monograph on self-defense,
although some of his conclusions are highly controversial. For Dr. Bowett's "characteristics"
of self-defense see id. at 269. See also Wright, The Meaning of the Pact of Paris, 27 Am. J.
INT'L L. 39, 54 (1933).
66 Note of Secretary of State Webster to Lord Ashburton, in Destruction of the "Caroline,"
2 J. Moore, A DIGEST OF INTERNATIONAL LAW 409, 412 (1906).
68 Bowett, supra note 9, at 118.
70 See generally id. at 11 et seq. Th term "sanction" is used by this author to denote any
lawful action taken to enforce a legal right and coincides with Dr. Bowett's expression "other
forms of self-help."
means other than the threat or use of force. On the other hand, and quite apart from the United Nations Charter, it is difficult to imagine, in view of the requirement of proportionality, that a state could use force in lawful exercise of the right of self-defense against other delictual conduct than that involving the use of force (or possibly the threat of force)."21

A. Proportionality of Self-Defense

Proportionality of self-defense in relation to delictual action distinguishes lawful self-defense from an action which originated as self-defense but, because of the disproportionate coercion involved, becomes delictual itself. Proportionality does not require that the state acting in self-defense employ the minimum force necessary to restore the status quo at the expense of effectivity. All that is required is that the defensive action be reasonable in view of the circumstances, which should include recognition that in certain situations the victim’s reaction would be logically stronger than in other situations. For instance if State B is a victim of aggression and forces of State A actually invaded B’s territory, B’s desire to liberate its territory as quickly and effectively as possible and, consequently, B’s employment of all legal means at its disposal to achieve that goal can hardly be considered objectionable. However, if B succeeds in repulsing the enemy beyond its borders but hostilities continue outside of B’s territory, the standard of proportionality should be much stricter (e.g., reasonable force necessary to achieve a ceasefire, etc.). In that sense the standard of proportionality is flexible, but even the most flagrant aggression of A against B, even perhaps accompanied by A’s intention to occupy B, will hardly justify B’s occupation of A. In conclusion, as Professors McDougal and Feliciano pointed out, proportionality relates to “magnitude and intensity” and not to “similarity or dissimilarity of weapons employed.”22 However, this author believes, save in the extreme case (in response to a nuclear attack) the means employed must be legal, and the targets attacked must not be those protected by international law. The law involved in the event of the use of armed force generally will be the principle of respect for human rights as applicable to armed conflicts and in particular the rules of the law of war.23 It

21 But see id. at 24, 148-49.
22 M. MCDougAL & F. Feliciano, Law and Minimum World Public Order 241, 244 (1961) [hereinafter cited as MCDougAL & Feliciano].
23 Professor Schwarzenberger uses a classical classification of limitation with regard to the conduct of armed operations: limitations ratione loci, ratione instrumenti (which, according
should be added that on the one hand legality or illegality of military action under the rules of the law of war may determine whether the defensive action is proportionate. Deliberate and massive bombardment of the population centers of the attacker by the military forces of the victim may be an example, in usual circumstances. On the other hand the two categories are not coextensive. For example, the destruction of a field hospital by the state exercising the right of self-defense need not affect, in a particular case, the proportionality of self-defense, but in violation of a rule of the law of war and as such it may be a delictual act for which the defending state is responsible. This author does not want to guess how far apart or how close this view is to Professor Falk’s repeated emphasis on “the technological level of sophistication” in relation to proportionality. Professor Falk developed this concept in the context of his “insurgency—counter-insurgency” theory relating to civil wars, though, in the case of Vietnam, in relation to a very much internationalized conflict. That may be, although it is seriously doubted, a distinguishing factor from, at least, a case of uncontroverted self-defense against an “armed attack.” It would be difficult to accept a proposition that a state victim of a massive attack by guerillas with automatic rifles and short range missiles should ground its supersonic bombers rather than bomb the points of concentration of the invader within and outside of its territory. While everyone with any humanistic tendencies must deplore destruction caused by current means of warfare, it seems that some American authors find it altogether too difficult to believe that for some people it is well worth risking their lives, villages, etc. for preservation of certain other values, which for them may be as real as a human life, and that such people would be more than grateful for any assistance they receive.

to Professor Schwarzenberger, cover the use of nuclear weapons) and ratione personae. G. Schwarzenberger, A Manual of International Law 201-02 (5th ed. 1967) [hereinafter cited as Schwarzenberger]. No position is taken (by this author) on the issues whether or not particular conventional rules of law of war became part of customary international law and whether the reciprocity requirement (“si omnes”) is still tenable.

71 See, e.g., Falk, Comment One, in Moore, supra note 7, at 539, 539-41. See generally Falk, The Cambodian Operation and International Law, 65 AM. J. INT’L L. 1 (1971) [hereinafter cited as Falk, Cambodian Operation], where other issues pertaining to self-defense also are discussed. For an opposing view with respect to the 1970 invasion of Cambodia see Moore, Legal Dimensions of the Decision to Intercede in Cambodia, 65 AM. J. INT’L L. 38 1971 [hereinafter cited as Moore, Legal Dimensions].
B. Article 51 of the U.N. Charter and Anticipatory Self-defense

Article 51 of the United Nations Charter\textsuperscript{25} expressly takes the use of force in exercise of the right of self-defense out of the prohibition of article 2(4) of the Charter. That much is clear. Otherwise, the rule of article 51 has been subject to a number of controversies. Due to the limitations of this paper, only the problem of the use of force in "anticipatory" self-defense and collective self-defense will be mentioned infra.

Irrespective of whether article 51 of the Charter is declaratory of the right of self-defense prior to the Charter or whether it restricted the scope of the prior right,\textsuperscript{7} it is incontestable that it does not contain a definition of self-defense. It has been mentioned above that under the requirement of proportionality it would be difficult to justify the defensive use of force against delictual conduct not involving the use or threat of force. The controversial phrase of article 51 of the Charter—"if an armed attack occurs"—specifically authorizes use of armed force in self-defense against armed attack. Does it preclude the use of armed force in self-defense against the threat of force? The literal reading of the sentence excludes the response by use of force even if the threat of force (in violation of article 2(4) of the Charter) is against the territorial integrity or political independence of the victim; i.e., the exception of article 51 is interpreted in the narrowest sense possible—only in the case of armed attack.\textsuperscript{77} Professor Schwarzenberger goes so far in his interpretation of the intent of the United Nations at San Francisco as to say that "unless a threat or use of armed force is in self-defense or collective self-defense against armed attack . . . it is illegal and,

\textsuperscript{25} Article 51 reads:
Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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-defense 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.

\textsuperscript{7} See the discussion of those problems in Bowett, supra note 9, ch. IX.

under the Charter of the United Nations, constitutes an act of aggression.”

Article 2 of the Definition of Aggression does not seem to support this proposition, yet the fact that “in the light of other relevant circumstances including the fact that the acts concerned or their consequences are not of sufficient gravity,” the first use of armed force may not be determined by the Security Council to constitute an act of aggression, does not solve the problem, since such first use of armed force may still be in violation of article 2(4) of the Charter. Yet it seems to be of some significance that the General Assembly believed that there may be circumstances in which the first use of armed force would not constitute an act of aggression. One might argue that such an attitude represents at least a recognition that even under international law, the first use of armed force may be at least partly justifiable; furthermore, one might argue that if the Security Council can take into account “other relevant circumstances” in the determination of whether an act of aggression occurred, the Council or another international body equally can conclude that article 2(4) has not been violated under all the circumstances. The question is however, if the door is opened, how wide should it be opened? If anticipatory self-defense were in fact within the scope of article 51, it seems inconceivable that it would be so in any other situation than when the armed attack were so imminent and the danger so overwhelming that the threatened state would indeed have no choice of means and no moment of deliberation. In other words, in cases of anticipatory self-defense which would represent the first use of armed force (at least, were it not an action in self-defense, against the territorial integrity or political independence of the allegedly threatening state), the danger of obliteration of the threatened state must be real, the threatening state must be in a position to obliterate the threatened state, the threatening state must have the means to obliterate the threatened state, and there must be sufficient evidence to support the belief of the intended victim that the threatening state made the decision to attack.

While the foregoing has been said (perhaps not in so many words) by most authors, it is submitted that that is where the problem lies.

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78 G. Schwarzenberger, International Law and Order 164 (1971).
79 Note 16 supra.
80 Id. art. 2.
81 As opposed to the first use of force, e.g., against a warship on the high seas (although, of course, in such case the requirements of self-defense would have to be complied with also).
82 Henkin, supra note 11, at 233.
Philosophizing whether the United States can attack first if it is about to be attacked by the USSR is not only useless, but it also would be with us even if article 51 of the Charter read in part “we said armed attack and not the threat of force and we mean it.” The problem is that in the overwhelming majority of cases when anticipatory self-defense was invoked, the self-proclaimed victim not only had sufficient time for deliberations, but any threat of armed attack which could lead to its obliteration was far less than credible. To use an extreme example, it has been suggested that the USSR probably accepted the concept of anticipatory self-defense since in the case of the 1968 invasion of Czechoslovakia “there certainly existed no ‘armed attack’.”

Even if one ignored the requirements of proportionality, that there be no time for deliberation, etc., the question to be asked is: is it at all conceivable that Czechoslovakia could attack or could threaten to attack the Soviet Union? The use of that case in support of the proposition that the USSR in practice accepted the concept of anticipatory self-defense is a complete negation of the traditional concept of self-defense, even if article 51 of the Charter and, indeed, the whole controversy surrounding anticipatory self-defense is completely ignored. Such a view eliminates any difference between an armed intervention and self-defense; it stands for the proposition that the right to use armed force in self-defense extends to the protection of any interest, anywhere, and is totally unrelated to the problem of whether, under article 51, a state can use armed force in self-defense against the threat of force, or better to say, the threat of an armed attack. It should be added that the assumption that the USSR accepted the concept of anticipatory self-defense in the context of invasion of Czechoslovakia is wholly unwarranted. The concepts of the “Socialist internationalism” and the “superior order” to the order represented by contemporary jus cogens of the “law of coexistence” represent a doctrinal effort to

Cf. id.

Bowett, Reprisals Involving Recourse to Armed Force, 66 Am. J. Int’l L. 1, 4 n.8 (1972).

This reference is not meant to convey an impression that Dr. Bowett suggested that the invasion of Czechoslovakia would in fact be within his extensive concept of anticipatory self-defense.

See G. Tunkin, Teoria Mezhdunarodnovo prava chs. XIX-XX (1970) [hereinafter cited as TUNKIN]. See also Butler, Soviet Attitudes towards Intervention, in Moore, supra note 7, at 380, 393-95. Compare Professor Hazard’s review of Mezhdinarnodnoe Pravo (G. Tunkin ed. 1974) in 69 Am. J. Int’l L. 203 (1975). Otherwise, socialist authors do not pay a great deal of attention to the nuances of self-defense in general and of article 51 of the Charter in particular. However, in the recent Czechoslovak treatise on international law the author concluded that under article 51 of the Charter the use of armed force in self-defense is limited to response to an armed attack. M. Potočný, Mezinarodné Pravo Verejne 119-22 (1973).
build a new exception to article 2(4) of the Charter, by the institution of a "new, superior type" of regional international law; abstracting from Tunkin's rhetoric, one can see on the one hand the balance of power argument (one can recall Professor Henkin's treatment of the Cuban quarantine) and on the other hand an ideological concept in its form not too different from western theories of "modernization."

Under a fairly reasonable assumption that Israeli forces attacked first, the 1967 "Six Day War" in this author's view is the only instance when anticipatory self-defense could have been claimed under any reasonable interpretation of that concept in conjunction with articles 2(4) and 51 of the Charter. The war was preceded by many unfriendly and probably illegal acts such as the closing of the Suez Canal to Israeli ships and the blockade of the Gulf of Aqaba. At the request of Egypt the U.N. emergency forces stationed on the border between Egypt and Israel were recalled. Massive Egyptian forces moved towards the Israeli border. Egyptian military equipment—notably tanks and war planes—was sufficient to pose a serious threat to the very small territory of Israel, its population centers, etc. Anti-Israeli hysteria, nurtured by President Nasser prior to the war, justified the belief that Egyptian motivation was to destroy Israel. Reliance on the United Nations must have been doubted not only because of the probability of a Soviet veto in the Security Council, but also because of the active role that Secretary-General U Thant played in the withdrawal of the U.N. emergency forces. Hardly anybody believed that the war could have been averted. In other words there was a threat of imminent armed attack and a reasonably presumed intention of the threatening state to destroy the intended victim, the threatening state was assumed to have means to carry out its intention, and there were not sufficiently effective international efforts to avert the war. The Israeli action at the beginning (i.e., the first use of armed force) was proportionate although refusal to relinquish the occupied territories after the cease-fire was probably illegal.

There are also some arguments against the first use of armed force in that case. For example, some of the Egyptian armed forces, notably the air force, did not seem fully prepared to attack. In retro-

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"See Tunkin's phraseology. TUNKIN, supra note 85.

"See, e.g., Black, The Relevance of Theories of Modernization for Normative and Institutional Efforts at the Control of Intervention, in Moore, supra note 7, at 53. For questions raised by Professor Friedmann while commenting on Professor Black's study see Friedmann, supra note 36, at 580-81."
spect, the results of the 1973 "Yom Kippur War" demonstrated that more numerous, better equipped and better trained Arab forces were not a serious challenge to Israel for a prolonged period of time despite the "surprise" attack. Yet the case of the "Six Day War" at least demonstrates a situation when the first use of armed force in self-defense could withstand The Caroline test. For a variety of reasons, including the failure of international society to contribute to the solution of the Middle Eastern problem prior to 1967 and including the inability or unwillingness of the superpowers to make any serious effort to control the behavior of the principal actors prior to the outbreak of hostilities, it was also an exceptional case.

It is, then, this author's position that the cause of international law would be much better served through the concentration on substantive requirements of and limitation to the right of use of force in self-defense in case of an armed attack or threat of an armed attack against the territorial sovereignty or political independence of a state, rather than on the question of whether the first use of force against the threat of armed attack is permissible under article 51 of the Charter. The attention, as this author attempted to show above, is largely misdirected and the problem of interpretation cannot be solved by the doctrine for at least three reasons: (1) the "sense" of self-preservation, (2) the failure of the collective security system under the Charter, and (3) the inadequacy of the travaux préparatoires of the Charter. From the point of the normative analysis, article 51 of the Charter is one of those rules often found in all legal systems. Its exact interpretation is impossible before it develops through case determinations by those authorized to interpret it. That is not the fault of the rule but the natural consequence of changing conditions and human ingenuity. What is of significance is that the ultimate interpretation be not clearly contrary to the rule and be able to coexist with rules to which the interpreted rule is related.

C. Collective Self-defense

Article 51 of the Charter, apart from its spartan formulations and the silence of its principal secondary source of interpretation (travaux préparatoires), also presents a linguistic problem. Professor Hans Kelsen, in the best tradition of his "pure" (normativist) jurisprudence wrote:

Article 51 confers the right to use force not only upon the attacked state but also upon other states which unite with the attacked state in order to assist it in its defense. This is probably the meaning of the term "collective self-defense." If so the term "collective
self-defense” is not quite correct. It is certainly collective “defense” but not collective “self”-defense.\(^{88}\)

This textual inconsistency (and again, spartan formulation, if not the lack of clarity of article 51), adherence to the concept of anticipatory self-defense in the wide sense of that term, traditional law, and some pragmatic considerations have led to a variety of interpretations.

On the opposite side of the spectrum are two theories: under one, principally Dr. Bowett’s theory each participant in the collective action must have the individual right of self-defense;\(^{89}\) under the other theory an institutionalized alliance\(^{90}\) is an independent subject of the right of self-defense under article 51.\(^{91}\) This second theory, taken to its logical conclusion (and under the wide concept of anticipatory self-defense), could ultimately lead to the assertion that the institutionalized alliance has a right of self-defense under article 51 of the Charter even if none of its member states had such a right under particular circumstances. This is a plain non sequitur. Not only can one refer to the language of article 51 (“against a Member of the United Nations”) or to chapter VIII of the U.N. Charter where no such proposition can be found, but also if one can imagine the situation where the alliance would be threatened without a corresponding threat to one of its member states, it would probably be the case of a threat against its institutional existence or structure, the unity of its members, etc. Such a theory in practice was painfully demonstrated in the cases of Hungary and Czechoslovakia (Warsaw Pact), Guatemala, Cuba, the Dominican Republic (Organization of American States), etc. However, the preceding should not be taken as a suggestion that the members of the institutionalized alliance do not have the right to assist, pursuant to a treaty provision, a member which has, in its own right, the right of self-defense. They certainly do.

Dr. Bowett’s theory has been rejected and is contrary to the practice of states as expressed in a variety of collective self-defense treaties.\(^{92}\) For this author, the theory has, however, one appealing aspect.

\(^{88}\) Kelsen, supra note 77, at 792.

\(^{89}\) Bowett, supra note 9, at 206. See generally id. ch. X. See also J. Stone, Legal Controls of International Conflict 245 (1954).

\(^{90}\) The term “institutionalized alliance” is used here to describe the institutionalized grouping of states under article 51 of the Charter (e.g., NATO) or a regional organization with “article 51 organization” characteristics (e.g., the Organization of American States).

\(^{91}\) McDoigal & Feliciano, supra note 72, at 244-53.

\(^{92}\) Moore, Legal Dimensions, supra note 74, at 55 n.73 (where other authors are also referred to). For some examples of treaty formulations see note 100 infra.
It has been mentioned already that Dr. Bowett is a proponent of the wide concept of anticipatory self-defense.\textsuperscript{33} Under his theory a state can invoke its right of individual self-defense to protect "the substantive rights for which self-defense is a permissible means of protection,"\textsuperscript{34} in other words the state can act in defense of any of these rights anywhere and can use any means (including armed force) as long as the action withstands The Caroline test. That state, having in a particular case its own individual right of self-defense, can unite with the other state which has the same right in the same case; \textit{i.e.}, both states can exercise their respective rights collectively. The attack against one state is the attack against the other state if there are certain existing links between them—in fact a situation of interdependence, which can be either geographical, political, or economic, etc.\textsuperscript{35} In that sense the theory opposes the system of alliances dominated by major powers, which "assemble" a variety of states within their respective "spheres of interest" and link them to themselves through the treaty system. Nevertheless, this aspect of Dr. Bowett's theory lost its significance in the current world in which the United States post-war alliances have crumbled or are crumbling.

In a world in which the collective security system under the Charter has failed, in which there is no hope for an impartial determination of the existence of an interdependence, a threat to security, etc., and in which the governmental rhetoricians of both states, involved and not involved, are often clearly contemptuous of facts in controversial armed conflicts, Dr. Bowett's theory gives the widest latitude to more powerful nations. For example, if State B is attacked by State A it should request the Security Council to act. If the action is not forthcoming or if a decision is impossible because of a veto, State B can request help from its defense treaty partner, State C. Under Dr. Bowett's concept, State C would now have to make a decision, which under the circumstances would have to be a subjective decision, whether its security is threatened by A's attack against B.\textsuperscript{36} That decision would determine whether C should perform its treaty obligation. Assuming that B is a small state, it can be seen readily that its security would be at the mercy of the attacker and its mutual self-defense treaty partner. It seems to be

\textsuperscript{33} See note 77 \textit{supra} and accompanying text.
\textsuperscript{34} See Bowett, \textit{supra} note 9, pt. I (the quotation in text is the title of part I).
\textsuperscript{35} Bowett, \textit{Interrelation, supra} note 29, at 48-50; Bowett, \textit{supra} note 9, at 237-38.
\textsuperscript{36} Bowett, \textit{supra} note 9, at 238.
clear that the treaty between B and C would cease to be a deterrent at any time when A could make an intelligent judgment that, for instance, domestic political problems of C would induce C's government to determine that C's security is not threatened, in order to avoid its treaty obligation.

Insofar as the treaty obligations are concerned, the decision of C not to perform would have to be based, under Dr. Bowett's concept, on one of the two possible arguments. First, since there has never been a "sufficient link" between B and C, the treaty is void. This author believes that states which have nothing in common should not enter into self-defense treaties. Nevertheless, if the treaty has been in force, its invalidation by C only at the time it was invoked by B would be a classical example of action in bad faith. The second argument is that each collective self-defense treaty contains an implied condition along the lines of Dr. Bowett's argument. If one takes into account the subjectivity of C's decision, it is imperative, this author believes, that if the principle *pacta sunt servanda* has any meaning, the collective self-defense treaty in the context here discussed must be held presumptively valid and interpreted under the usual rules of interpretation until the contrary decision of a competent international organ. Taking into account that none of the claims mentioned heretofore has been advanced (in the context discussed) by any party to a collective self-defense treaty since 1945, and taking into account the doctrinal view of the majority of authors, it appears that the exercise of collective self-defense pursuant to a treaty lies within the exception of article 51 of the Charter.

This interpretation of article 51 of the Charter leads, then, to two conclusions: First, if each of several states has an individual right of self-defense in the same case (States B and C were both attacked by A) their defensive action, in the absence of a collective self-defense treaty, is an exercise of the individual right of self-defense even if, subsequent to the attack, they coordinate their actions (establish a joint command etc.). The right to act in concert in such a situation has never been doubted and would have survived the law of the Charter even if the term "collective" did not appear in article 51. A contrario, and this is the second conclusion, if the term "[or] collective" has any independent meaning at all, it should be inter-

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8 In the context discussed see article 103 of the Charter of the United Nations.
Interpreted in view of the practice of states, the doctrine, etc., as embodying both the right of the attacked state to seek help pursuant to the treaty and the right (which under a treaty is in fact an obligation) of a party to that treaty which does not have the individual right of self-defense to assist the attacked state. The view that the right to assist is created by a treaty (and recognized by article 51) is indispensable if the action of the assisting state within the collective self-defense is to be distinguished from intervention. Since such a right is an exception to the prohibition of article 2(4) of the Charter, the treaty under which it arises should be interpreted restrictively. For example, the rights and obligations of the parties to enter into mutual consultations in the event of an attack on one of the parties do not create the right to assist within the meaning of the collective self-defense. While the right to assist is created by a treaty, the exercise of that right is wholly dependent on, and in its scope identical to, the individual right of the attacked state. In that sense the right of the assisting state is derivative or secondary. That has important consequences. The right to exercise the right to assist depends also on the request of the attacked state, which can be made only by the legitimate government of the attacked state. The right is terminated if the attacked state so requests or if the attacked state ceases to exist. The assisting state, specifically, must not take over the primary initiative in the action in a political sense of that word. It should assist the ally as effectively as possible, under the requirement of proportionality, to achieve the goal of the action, which is the restoration of territorial integrity and political independence of the ally. Therefore, it must not pursue during the action, any political goals of its own or engage in any administrative action within the territory of the ally, which is not indispensable for the effective military effort. Finally, even on its own behalf the assisting state must comply with the mandatory provision of article

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102 It should be remembered that a state has a right to defend itself, not an obligation to defend itself.
51 of the Charter and notify the Security Council "immediately" and, hopefully, try to gain international recognition for the validity of the claim that the collective action is in fact collective self-defense action.\textsuperscript{103}

On the other hand a civil strife within the territory of the victim of the attack does not \textit{ipso iure} affect the right of a treaty partner to assist the attacked state.\textsuperscript{104} The issues are (1) whether there is an armed attack (or a threat of the armed attack within the limits outlined above) by a third state against the victim and (2) whether the government which requested assistance pursuant to the treaty is, under international law and in fact (within the limits of reason), the legitimate government of the attacked state, \textit{i.e.}, the treaty partner (or the legitimate successor to political treaties) of the assisting state.

There is a strong political argument in favor of collective self-defense treaties in a world in which the collective security system under the Charter has failed. The argument relates to certainty and stability, exploitation of the balance of power, security of small states, and the need to contain nuclear weapons. Basic stability in international relations (within the concept of peaceful change) was certainly one of the goals of the United Nations at San Francisco.


\textsuperscript{104} Article 3, paragraphs f and g of the Definition of Aggression, supra note 16, is quite significant in this connection. Article 3 reads:

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State, which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.
In the context of the current triangle of power—the United States, the Soviet Union, and the Peoples’ Republic of China—basic stability is indispensable not only because it is both the condition and the desired result of détente, but also because that stability underlines the balance of power, which is thought to be the primary deterrent to nuclear holocaust. It is also clear that basic political stability is a necessary condition of change in the economic order, etc. The impulse to intervene (nowadays primarily that of the USSR) or to support strongly an intervention by a de facto dependent ally may become irresistible despite the basic policy considerations in favor of the preservation of stability, if there is no realistic expectation of a strong resistance, which would make intervention too costly or the probable cause of a major escalation of the conflict. Irrespective of what has been said above about the legality of armed intervention or counterintervention, it is quite clear that the post-Vietnam and post-“Watergate” United States is unlikely to intervene elsewhere without the sense of legality based on a strong treaty commitment. A credible treaty commitment is thus not only a deterrent to the impulsive intervention but also represents an element of pressure on national decision makers and policy planners in two respects. First, if they have a reason to fear a strong response then they are likely to look for alternatives other than the use of force to influence events elsewhere. Second, if the national decision maker believes that he has the right to intervene on behalf of a friendly government without a treaty commitment, he may often be tempted to fabricate the invitation and to intervene whenever he believes that the prestige of his nation is threatened, that nonintervention would be inconsistent with the global policy of his predecessors in government, etc. As the United States debacle in Vietnam demonstrated, at the beginning there may not be a clear understanding of the problem in which the friendly government is involved, and the intervention may appear to be minimal, which may lead to a misunderstanding with respect to what it is that the intervening state wants to achieve or how it can be achieved. Such may result not only in a later intragovernmental controversy as to the nature of the initial “commitment,” but also in a decision (be it a good one or not) that the initial intervention was unwarranted, which may result in the abandonment of the assisted state with the consequent moral and ethical problems with reliance which the initial intervention induced. On the other hand, the collective self-defense treaty is usually concluded at a time when the need for actual assistance does not appear to be imminent; since it is one of the most important and formal
treaties for any nation, it is usually preceded by a lengthy intragovernmental discussion on the interests and relationships involved, which clarifies the goal and the scope of an action, if one should become necessary.

The collective self-defense treaties have represented a guarantee of security to small nations. They still do; however, a number of small nations now have an alternative of developing their own nuclear weapons. The uncertainty caused by interventions, refusals to intervene, and unilateral terminations of interventions already has found expression in the cynical attitudes of representatives of the small nations. The Prime Minister of Iran, Mr. Hoveida, recently said that "in the life of a nation, there is only one security—[military] power." That is a highly undesirable development. This author believes that if the United States sought mutual self-defense arrangements with nations whose security is linked to the security of the United States and in whose fate and development the United States seems to have a genuine interest, it would not only remove the problem and the stigma of intervention, but it would also remove the danger of an arms race within at least some small nations. Hopefully the Soviet Union and China would be persuaded by the example.

It should be emphasized that this author is opposed to alliances "glued" together primarily for the purpose of providing an institutional structure for great power domination with the purpose of policing the internal development of the smaller member state, etc. The misuse of such alliances in interventions by a dominant member in the internal affairs of other members under the pretext of the threat of an attack by an outside power is notorious. There is no need for an organizational structure of a collective self-defense arrangement if it serves just one purpose: collective self-defense in

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165 The trend has already started. One of the poorest nations, India, has nuclear technology; there is a notorious assumption that Israel either has or is close to having nuclear weapons; Libya is seeking to acquire nuclear weapons (as to Libya see N.Y. Times, Jan. 14, 1975, at 8, col. 6).

166 Des Kaisers neue Waffen, DER STERN, March 6, 1975, at 50, col. 5 (translation by the author).

167 Without passing on the merits of the claim, it is quite indicative that even such an author as the former (Mexican) judge of the International Court of Justice wrote: "[With respect to the 1954 O.A.S. meeting in Caracas] where the attitude of Washington was clearly contrary to the idea of 'Pan-Americanism' . . . we believe that . . . [during that meeting] the Secretary of State Dulles abandoned the good neighbor policy in order to pursue the imperialist policy of the [United States]." FABELA, supra note 15, at 90 (translation by the author).
case of need. However, even if the dominant power had the best intentions not to intervene within the alliance, an organization involving a stable power and a number of small nations at different stages of development, with different interests and attitudes at a particular time necessarily must be undergoing constant political tensions, which are not conducive to a strong sense of commitment to a treaty partner. In order to make its commitment credible in the international sense and the performance of the treaty possible from the point of view of domestic politics and politicking, the United States, this author believes, in the future should seek bilateral (mutual) self-defense treaties, which would be concluded for a short time (3 to 5 years). At the end of such period the treaty should be reviewable by the Congress rather than being automatically renewed in the absence of a notice or termination. Such review would assure reaffirmation of the commitment; the short duration of the treaty would make it possible to terminate the special relationship between the two states without the political ramifications of denunciation in case of substantial changes of the political philosophy of the ally. This is not a suggestion that the United States should seek such treaties with all of its friends, especially nominal friends. That would be clearly contrary to the purpose of credibility. After all, the small nations which are fearful of Soviet interventions or interventions by a Soviet proxy need the protective umbrella of the United States only in case of the threat of nuclear attack. But there has not been a single real threat of nuclear attack since World War II. If the small nations were to unite on a geographical and ideological basis in their own collective self-defense arrangements they would be able to resist those attacks which have often occurred: attacks with conventional weapons. Such a system would be far more conducive to desired stability of the international society than that provided either by the good intentions of the United States or by the American promises which, nowadays, the United States is unable to keep.

III. INTERVENTION OTHER THAN IN VIOLATION OF ARTICLE 2(4) OF THE CHARTER

This author has never read in any international document of any significance a sentence so patently idiotic as: "No state may use or

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108 NATO is obviously an exception but only because, and only insofar as, it represents a homogeneous group of states. Greece, Turkey and contemporary Portugal exemplify the problem.

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." That sentence appears, of course, in that resolution with the long title—the "Friendly Relations" Resolution. It would be interesting, with respect to intervention "in the internal or external affairs of any other State," to scrutinize the behavior of all existing states since World War II under the "Friendly Relations" Resolution, Resolution 2131(XX), and a score of other General Assembly resolutions having some bearing on the subject. The inevitable formula that the rights and obligations under the Charter are not affected, and the redundant statement in the "Friendly Relations" Resolution that the principles therein are "interrelated" allow, of course, for appropriate justifications for interventions. A detailed treatment of this subject is not possible within the confines of this article. However, due to the relationship of some aspects of this problem to that explored in part I above, a few of this author's conclusions should be mentioned by way of a summary.

It would appear that there is a sufficient justification to distinguish between (i) intervention in an existing civil strife and (ii) intervention in the internal affairs of a state if there is no civil strife involved.

(i) On the basis of the principle of self-determination, a case of sorts could be made against any assistance to the legitimate government or to the challenger, even—to pay due respect to traditional international law—if the challenger reached the status of belligerency. A very good case, on the strength of the principle of sovereignty as well as on the basis of the mentioned resolutions, could be made against any assistance to insurgents. Yet those who

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110 "Friendly Relations" Resolution, supra note 12, at 123. The citation is from the second paragraph of "The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter."

111 Resolution 2131, supra note 59, para. 1.

112 Note 59 supra.

113 See, e.g., id. para. 8; "Friendly Relations" Resolution, supra note 12, General Part, para. 2.

114 "Friendly Relations" Resolution, supra note 12, General Part, para. 2.

115 Be it supply of weapons, training of pilots, or supply of rice. It is very difficult nowadays (and especially in case of a civil war) to conclude that some supplies do not contribute to the military effort. The supply of sophisticated weapons to one side which could effectively wipe out factions which not only do not have such weapons but do not have any means of defense against them is a problem sui generis.

116 See, e.g., the second paragraph of "The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,"
intervene steadfastly oppose, by their actions and in their words,\textsuperscript{117} any limitations in the particular case in which they are involved. Therefore, a blanket prohibition of intervention not only would be totally unrealistic,\textsuperscript{118} but also would detract from the strength of the prohibition of armed intervention. The two types of intervention should be distinguished for a variety of reasons, not the least of which is the protection of the state whose government is sufficiently stable to withstand an internal challenge, even if the challenger is receiving foreign assistance (not armed assistance). In other words, it is submitted, the law on this question is in flux and it will take some time before any new rules will emerge.

It should be pointed out, however, that if the assistance to the rebels reaches the stage of the use of force,\textsuperscript{119} the victim has a right to use force in self-defense, including collective self-defense. Also, if the assistance to the rebels clearly includes the use of a proxy which acts in violation of article 2(4), then the assisting state itself acts in violation of article 2(4) of the Charter.

(ii) International cooperation in economic, humanitarian, and other matters certainly has increased significantly since the Charter was signed in San Francisco.\textsuperscript{120} General international law\textsuperscript{121} imposes certain obligations,\textsuperscript{122} violations of which of course are prohibited.

\textsuperscript{117} In the current case—Angola—the general attitude of the USSR and Cuba exemplify the problems. See, e.g., the excerpts from an article in \textit{Pravda}, published after Secretary Kissinger's visit in Moscow and presumably reacting to the Angolan issue as raised by the Secretary of State, in \textit{N.Y. Times}, Feb. 2, 1976, at 1, col. 8; \textit{id.} at 4, col. 4. It is also quite significant that Cuba expressly stated that it would disregard a decision of the Organization of African Unity if it called for termination of foreign intervention. See \textit{N.Y. Times}, Jan. 12; 1976, at 1, col. 6; \textit{id.}, Jan. 16, 1976, at 3, col. 4.

\textsuperscript{118} Cf. Farer, supra note 41, at 530. See also \textit{id.} at 532.

\textsuperscript{119} Compare Definition of Aggression, supra note 16, art. 3, para. g with "Friendly Relations" Resolution, supra note 12, \textit{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}, at 123.

\textsuperscript{120} A reader may find it interesting in this time of preoccupation of the United Nations with economic and similar matters to read Professor Kelsen's remarks on the subject, contained in his major commentary on the Charter and published in 1950. \textit{Kelsen, supra} note 77, at 22-27.

\textsuperscript{121} General international law must be carefully distinguished from \textit{de lege ferenda} views of nations, for example those contained in the General Assembly resolutions cited note 61 supra.

\textsuperscript{122} \textit{See, e.g.}, G. \textit{Schwarzenberger, International Law and Order} 89 \textit{et seq.} (1971).
The same applies to conventional law as between members, which usually provides for specific remedies in case of violations.\textsuperscript{123} Whether the violation of such legal rules is also a violation of a general duty of nonintervention is irrelevant, since the specific rules apply as \textit{lex specialis}.

The notion that contemporary states relinquished so much of their sovereignty as to deprive themselves of the right to influence events elsewhere by an action which is otherwise legal\textsuperscript{124} is baseless. At any rate, such a transfer of sovereignty cannot be presumed on the basis of the general duty not to intervene; it would have to be proven specifically in each individual case. The concept of prohibition of intervention in this context can be maintained, perhaps, as a "reincarnation" of the doctrine of abuse of rights\textsuperscript{125} with all its traditional limitations. If a state exercises its right, then, as Professor Schwarzenberger points out, "the presumptions in favor of good faith and law abidingness impose such a heavy burden of proof on any claimant that this line of argument is but rarely advisable."\textsuperscript{126}

IV. Final Remarks

Every lawyer interpreting a legal norm is aware of the fact that the content of the norm evolves with the changing society. If he is a part of the environment in which the norm operates, his interpretation reflects not only the new facts to which the norm must be applied, but also societal preferences—philosophical, ideological, and practical—as well as his own preferences as to the function of the norm. In the narrow sense of the term the function of a norm is to regulate conduct, provide remedies, and resolve disputes. In the broad philosophical sense of that term, and as seen through the eyes of one who interprets it, the function of the norm is either to slow down or to stop development if it conflicts with the values with which one who interprets the norm and the group to which he be-


\textsuperscript{124} It is important to realize that characterization of an action, say of an economic nature, as intervention does not have any "magic" consequences. Even if the action is legal, but, for example, is considered to be an unfriendly act, then the "victim" has a right to resort to retortions. Even with such an action as the Arab oil embargo it is very difficult to make a case for violation of international law. For differing views in that case see Paust & Blaustein, supra note 10. See also Letter from Stephen Smith to the Editor, 69 Am. J. Int'l. L. 136 (1975); Shihata, \textit{Destination Embargo of Arab Oil: Its Legality under International Law}, 68 Am. J. Int'l. L. 391 (1974).

\textsuperscript{125} See, e.g., G. Schwarzenberger, \textit{International Law and Order} 84 (1971).

\textsuperscript{126} Id. at 88.
longs identify, or to accelerate the development if it serves such values. Irrespective of his philosophy, however, the lawyer—unlike the philosopher—is quite limited in his endeavors to influence social development by the current views of the totalitarian elite in power or by the current compromises within the democratic society; he has to pay his dues to the current tangible facts and recognize, to some extent, that the old maxim *ex factis jus oritur* is always in the background.

Following are this author's *a priori* conclusions which have influenced his approach to the problems discussed.

The system of "universal" collective security under the Charter has failed. It failed as an elitist approach under chapter VII of the Charter and it failed as an attempt for a majority rule under the 1950 Uniting for Peace resolution, at least from the point of view of the tiny minority of democratic societies and of those peoples who do not benefit from the current conception of self-determination. The regional organization substitute has proved to be dangerous and not particularly effective. The only viable concept, with respect to international peace and security, has proved to be that of the nation state and its sovereignty.

A majority of the new states are struggling for their identity and national coherence and are going through development not too dissimilar from the development of European states prior to this century. The "natural" development of the new nations, in the political and the economic sense, is both accelerated and distorted by the new technology which they are unable to absorb, but which contributes to the penetration of foreign influences which sometimes complicate their development. The conflicts among them, as well as civil wars within many of them, are unavoidable and are incidental to their development. They should be left alone, as their domination by one or the other industrial power has proved to be short lived; even the well-intentioned intervention, if there is such a thing as well-intentioned intervention, of industrial powers has exacerbated the problems of the new nations rather than helped to solve them.

The Soviet policy-making process is like a self-propelled wheel which cannot be stopped overnight. The idea that "enlightenment"

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127 Friedmann, supra note 36, at 575.
(by a good example or otherwise) of the ruler will bring about a quick abandonment of his imperial policy towards his own people or towards other nations as is ridiculous now as it was in the time of Catherine the Great. The Soviet Union is going to continue to try to intervene—to extend its sphere of influence—by proxies or otherwise. Détente may slow the wheel down but it will not stop it, at least not now.\footnote{Cf. Pimont, supra note 1, at 778-79. Pimont refers to the Soviet practice (which he calls "la politique des 'flots' ") of "implanting socialist enclaves within the capitalist sphere of influence." Id. at 779 (translation by the author).} It is indispensable for the success of détente not to decrease the cost of intervention, not to upset the balance of power too much. The United States should try to protect some nations—those which are stable enough to withstand internal pressures but too weak to withstand foreign intervention—on moral as well as practical grounds. Both security and economic considerations demand such an approach; "fortress" America is nonsense.

The contemporary political climate in the United States makes flexible and fast decisions by the executive impossible,\footnote{A respected journalist who certainly cannot be accused of "pro administration bias" wrote in his "Foreign Affairs" column in the \textit{New York Times}: "[As the result of Vietnam and Watergate] the Presidency has been weakened to such a degree that the Chief Executive cannot operate with the full authority allotted him by the Constitution." Sulzberger, \textit{When Mud Gets in Your Eyes}, N.Y. Times, Jan. 28, 1976, at 33, col. 1.} even if they were to be made pursuant to the "best" subjective criteria to be found and even if they were sanctioned by the often proposed international lawyer within the National Security Council;\footnote{See, e.g., Ehrlich, \textit{The Legal Process in Foreign Affairs: Military Intervention-a Testing Case}, 27 STAN. L. REV. 637 (1975).} hence the preference for the self-defense treaties and hence the legalistic approach to the problem.