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**REPORT OF
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AMERICAN FOREIGN POLICY

AND

THE RULE OF LAW

I

INTRODUCTION—SCOPE AND PURPOSE OF REPORT

As World War II was coming to a close, there was a virtual universal recognition that a third world war would be a calamity of such proportion as had theretofore been inconceivable. The destructive power which nations were able to muster even before the first atom bomb was exploded had become so great that a third world war would have meant the death of tens upon tens of millions and untold suffering to many times the number killed. With the development of the atom bomb the threat became one to the very continued existence of mankind.

It was this realization which led the nations of diverse ideologies to organize the United Nations as a means for establishing a rule of law in the international arena in order to make possible the avoidance of the disaster which otherwise was almost inevitable. The United Nations Charter did not and, indeed, it could not undertake to resolve the differences between competing political and economic systems and ideologies. Nor was it intended to, nor could it, end the competition between these systems and ideologies, each of which was seeking the allegiance of the peoples of the world and its own extended hegemony. The two principal and most powerful contenders in this competition were and are the United States and the U.S.S.R.

It was inconceivable that any of the nations of the world, particularly the great powers, would agree to give up their attempts to maintain, by peaceful means, including economic support and political propaganda, the systems and ideologies to which they adhered, frequently characterized by the opposite side as "subversion" or some other condemnatory term. The charter did not attempt to accomplish this impossible task. Rather, its purpose was to prevent the resolution of the inevitable differences and conflicts by the use of armed force,

or by means likely to lead to war.¹ Its purpose was not only to establish certain rules of conduct in international relations but also, and primarily, to prevent the competition and differences among nations from leading to war. This meant necessarily that each party to the Charter did surrender the right to use armed force to prevent the spread of systems and ideologies which it opposed. All the parties were aware of the fact that such a rule of law had to be applied equally to all parties to the charter.

Certainly, neither the United States nor the U.S.S.R. would have bound itself by the Charter if it reserved to one side the right to use armed force in situations in which such use was forbidden to the other. Therefore, either all nations agreed to the outlawing of armed force as a means of advancing their aims or none did. It is clear that by the Charter all nations made this commitment. Under this commitment, the United States Government's right to peacefully oppose the spread of communism cannot be denied. Equally beyond question is the fact that such opposition may not be effectuated by the use of armed force.

The purpose of this report is to make a factual and legal analysis of the policies of the United States in the international arena, particularly as those policies have related to this nation's attempts to stop the spread of communism. It should be clearly stated at the outset that this report will not concern itself with the wisdom or the effectiveness of this nation's policies in this area, but it does propose to explore whether these policies have been carried out consistently with the rule of law to which the United States committed itself when it became a party to the United Nations Charter.

1 True, the United Nations was designed to deal with all threats to peace, including those arising out of non-violent intervention by one nation in the internal affairs of another, because of the danger that such non-violent conduct could lead to the use of armed force. In this paper, however, we deal only with the legal obligation to refrain from the use of armed force on the theory that it is the resort to armed violence which creates the immediate danger of a world holocaust.

II

THE THESIS OF AMERICAN FOREIGN POLICY SINCE WORLD WAR II HAS BEEN THE FORCEABLE CONTAINMENT OF COMMUNISM EVEN ABSENT ANY INTERVENTION BY THE ARMED FORCES OF ANY OTHER NATION

A. The Origin of the Thesis and the General Expressions of It.

The essence of American foreign policy since the conclusion of World War II has been the "containment" of "Communism". The thesis of this policy is that the world has become divided into "free" and "Communist" countries, and that American foreign policy requires resistance—even to the point of force—to any conversion of a "free" country to a "Communist" country whether internally or externally induced and whether by violence or by peaceful means.

Many expressions of the policy, or endeavors at justifying it, lay stress upon change pursued by external violence, i.e., by armed aggression. However, such expressions in the end are always qualified by question-begging, emotional, ambiguous terms condemning not merely change by armed aggression but change induced by "indirect aggression", by "subversion", or by "coercion"—terms which can mean all things to all men, but which raise the image of intervention by chicanery and violence without actually charging the use of armed force.² Moreover, in the final reach of the policy, as evidenced, as will be seen by actions taken under it and by some undisguisedly direct statements of its content, forcible opposition is avowed to change by "whatever means".

The landmark first expression of the policy was by President Truman in 1947 in proposing economic and military aid to the governments of Greece and Turkey in their defense against guerrilla civil wars contesting the forms and content of postwar governments and social programs in those lands. Formulating what then

² That conduct of this kind can constitute a violation of international law and particularly of the Charter is clear—but what the Charter prohibits is the use of armed force except by the United Nations itself, to deal with such violation.

became known as "The Truman Doctrine", President Truman declared, in an address to Congress:

"... At the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one.

"One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression.

"The second way of life is based upon the will of a minority forceably imposed upon the majority . . .

"I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures.

"The world is not static and the status quo is not sacred. But we cannot allow changes in the status quo . . . by such methods as coercion, or by such subterfuges as political infiltration."

(1947 U.S. Code Cong. Serv.,
pp. 1811,1813) (Emphasis added.)

The Truman Doctrine represented a turning point in American foreign policy. It terminated the war-time cooperation between the United States and the Soviet Union. Expressed as it was in the premises of the Greek Civil War, in which no participation of the armed forces of any other nation was even claimed, the doctrine advised the world that the United States had embarked upon a policy of intervening in the internal affairs of other nations whenever it chose to conclude that one side in a civil conflict represented "Freedom" and the other represented "subjugation", even though the internal conflict was not the result of or accompanied by an armed attack by another nation.

This report is not concerned with the implementation of the policy expressed in the Truman Doctrine, except to the extent that it has been accomplished by the use of the United States armed force. It is concerned with the use of force under the doctrine, for, as a matter of avowed policy, the doctrine calls for

intervention in civil wars and in instances where concededly no other foreign power has engaged in an armed attack.

D.F. Fleming points out in The Cold War and Its Origins, Vol. 1, p. 446, that under the Truman Doctrine, "whenever a communist rebellion developed the United States could suppress it". Moreover, this is not all. Comments Fleming further:

"This, too, was not the full extent of the Doctrine, for its all inclusive language also forbade every kind of revolution, democratic or otherwise. It would be difficult to find a revolution anywhere which had not been the work of an armed minority. The people might later come to the support of the fighting rebels, but revolutions were notoriously made by comparatively small groups of determined armed men. According to the new doctrine this could not happen, if for no other reason, because some communist would almost inevitably be mixed up in the revolution, or an alarmed government would allege they were. The President went on to say that the status quo was not sacred, but he had made it so. So far as the United States was concerned, the method by which this nation was born was outlawed. There would be no more revolutions thereafter, in spite of the fact that many hundreds of millions of people lived a miserable existence under the misrule of a few. Revolution was finished. All of these people would have to stay put. If their rulers should decide to alleviate their condition somewhat, well and good, but they could not be coerced or subjected to 'such subterfuges as political infiltration.' "

(Ibid., p. 446-447.)

Of equal importance is the fact that the United Nations was by-passed wholly by the Doctrine on the ground that it could not do the job. Thus, although the United States had agreed to a rule of law for peace-keeping through the United Nations, the United States, under the Doctrine, declared that it would be its own judge of how international legal obligations should be implemented and that it would by-pass the United Nations whenever it deemed that the latter could not adequately do a given job the United States believed should be done.

The danger of this action was recognized by Walter Lippman when he stated that the assumption under the Doctrine of the right to act unilaterally "cut a hole in the Charter" which would not readily be repaired. (New York Herald Tribune, March 22, 1947).

The containment thesis expressed in the Truman Doctrine was not an isolated or aberrant statement of policy. It has been expressed and pursued since by every President and every Secretary of State. The statements of it are legion. Moreover, they are replete with references not merely to resistance to overt, real aggression, but as well to "indirect aggression", "subversion", "communist imperialism" and change induced by "coercion", all as a justification for the use of armed force. See, for example, the statement of Secretary of State Dean Acheson in March 1950 (Dept. of State Bulletin, p. 473-478); the statements of President Truman to Congress in 1951 and 1953 (U.S. Code Cong. Serv., 781,782, 802,803); the addresses of President Eisenhower to Congress in 1955 and 1960 (101 Cong. Rec. 4084; 106 Cong. Rec. 2388); and the address of President Kennedy to Congress in 1963 (U.S. Code Cong. Serv. 1319, 1396).

President Johnson, in an address to Congress on May 4, 1965, expressed a policy of American forcible resistance to "subversion" designed to "create the appearance of an internal revolt and to mask aggression" (52 Dept. of State Bulletin, 822, 823), and Secretary of State Dean Rusk expressed the thesis in an address on February 25, 1964, voicing United States opposition to "the expansion of the Communist domain . . . by force or the threat of force, whether directly or indirectly applied", and referring to "indirect aggression" (110 Cong. Rec. 3925). Arthur Goldberg, United States Representative to the United Nations, in an address to a United Nations Committee on December 21, 1965, echoed again the containment thesis in terms of "indirect intervention," "indirect aggression" and "subversion" (54 Dept. of State Bulletin, 124, 126-127).

Whatever else was meant by the terms used, they referred to something other than intervention by the armed forces of the intervening nation. Accordingly, these statements restated the policy of the United States to intervene with its armed forces in situations where no other nation had done so—thus utilizing "the hole cut in the Charter" by the Truman Doctrine.

B. Incidents Illuminating the Thesis.

Actions as well as words have given content to the United States containment thesis. Indeed, incidents of force undertaken under the doctrine, and statements made in the direct context thereof, testify more eloquently and plainly to the true content of the thesis than do the more formal, general statements thereof expressed in less critical moments. And, although some of the incidents which have occurred under the doctrine involve claims or allegations of "outside" force or "aggression", what emerges from examination of the salient incidents is the stark fundamental that the true reach of the thesis is to disapproved choice, not to means. The real thrust is against the choice of "communist" orientation, not against the means inducing or accomplishing such choice. Condemned is not only "indirect aggression" in its broadest compass, but change induced by wholly internal national processes, and even change achieved or proposed by electoral vote.

(1) The Lebanon Incident

Demonstration that the American containment-of-Communism thesis reaches to "indirect aggression", and illumination as to what "indirect aggression" can mean is found in the United States armed intervention in the civil war in Lebanon in July, 1958.

On January 5, 1957, President Eisenhower, in an address to Congress, explicitly extended the containment thesis of the Truman Doctrine to the Middle East, stating that "instability" there was being "manipulated by international communism" for the "announced purpose of communizing . . . (and) dominating the Middle East" (1957 U.S. Code Cong. Serv., 719-720). He announced the intent to use United States armed force "to protect the territorial integrity and political independence of (Middle East) nations . . . against overt armed aggression from . . . international communism", and he promised aid as well in the event of "indirect aggression" (Ibid., 722-723, emphasis added).

What was meant by this pronouncement was illustrated soon by the Lebanon incident. In May, 1958, civil war broke out in Lebanon over opposition to the pro-United States policies of Lebanon President Camille Chamoun. The rebels were applauded and supported by Arab-

unity forces in Syria, Iraq, Jordan and the United Arab Republic, it being charged by Chamoun that arms and some civil war participants were infiltrated across the Syrian border. Lebanon referred the issue to the United Nations and the Security Council dispatched observers on June 11, 1958 (39 Dept. of State Bulletin, 90, 105), who reported periodically, finding no substantial border violations.

Thereafter, when Chamoun remained unable to put the rebels down and when success crowned a parallel rebellion in Iraq, overthrowing there the pro-United States Government of Nuri es-Said (without even claim of outside intervention), the United States, on July 14, 1958, abruptly landed 2,500 marines in Beirut to assist Chamoun. The United Nations was by-passed without ceremony.

President Eisenhower justified the intervention in public addresses on the day of the landings as "resistance" to "indirect aggression" (39 Dept. of State Bulletin, 182-183). He said the revolt was not a civil war because it was "strongly backed by the official Cairo . . . and Soviet radios" and because of the aid "infiltrated from Syria", and because the "avowed purpose" of the rebellion was "to overthrow the legally constituted Government of Lebanon and to install by violence a government which would subordinate the independence of Lebanon to the policies of the United Arab Republic" (Ibid, 182-183). He said:

"(The rebellion) has been actively fomented by Soviet and Cairo broadcasts and aided and abetted by substantial amounts of arms, money and personnel infiltrated into Lebanon across the Syrian border. . . . This involves taking over a nation by indirect aggression; that is under the cover of a fomented civil strife the purpose is to put into domestic controls those whose real loyalty is to the aggressor."

(39 Dept. of State Bulletin, 184-185.)

It was to prevent the "taking over of a nation by indirect aggression" (i.e., without the intervention of the armed forces of a foreign nation) that President Eisenhower dispatched American troops to Lebanon. Thus, the United States recognized that there was a revolt and there was danger of it succeeding unless the armed forces of the United States prevented it.

Professor Quincy Wright ("United States Intervention in Lebanon," American Journal of International Law, January, 1959, pp. 112-125) examined the intervention and found it without justification under the United Nations Charter. American intervention as "collective self-defense", he observed, could be justified "only if Lebanon was the victim of 'armed attack' from outside and if the de jure government, which requested such aid, was so pressed by internal revolt that it was incapable of representing the state." He found that the Chamoun Government was so gravely beset by internal revolt it could not invoke outside armed aid. The test of a government's capacity to invoke armed aid, he observed, is "uncertainty of the outcome" of the internal revolution, and Chamoun at the time of the intervention was so beset that uncertainty of the outcome of the civil rebellion, discounting all outside factors and aid, was the very reason for the request for intervention. Yet, it was upon the basis of this very "uncertainty of the outcome" which prohibited intervention, that the United States utilized its armed might in a foreign land.

Additionally, dealing with the right to resort to armed intervention against indirect aggression, Quincy Wright aptly states:

"... But such actions (i.e., actions claimed to amount to "indirect aggression") though illegal, do not in themselves justify military intervention by another state to remedy them. Intervention in the form of military reprisals to rectify wrongs when peaceful methods fail, while permissible by customary international law before World War I, have been forbidden by conventional obligations in the League Covenant and Kellogg-Briand Pact, and particularly by the obligations of members of the United Nations 'to settle their international disputes by peaceful means.'"

(Ibid., 115).

In light of the Lebanon incident, as analyzed above, it is significant and revealing to compare the United States' justification there of the use of force to suppress claimed "indirect aggression" with its rejection of unilateral forceable action to suppress overt, direct, armed aggression (let alone indirect aggression) in the instances of the 1956 invasion of Egypt by Israel, England and France where "communism" was not involved. At the time of that

invasion, and while its existence was world-evident and disputed by no one, the Soviet Union proposed that the United States join it to forcibly suppress the invasion by unilateral action outside of the United Nations. Secretary Dulles promptly rejected the suggestion of unilateral force, stating pointedly: "Any intervention by the United States and/or Russia, or any other action, except by a duly constituted United Nations peace force would be counter to everything the General Assembly and the Secretary General of the United Nations were charged by the Charter to do in order to secure a United Nations policed cease fire." (New York Times, November 6, 1956.) President Eisenhower firmly supported Secretary Dulles, stating: "The United Nations is alone charged with the responsibility of securing the peace in the Middle East and throughout the world." (New York Times, November 9, 1956.)

The undoubtedly correct legal position of the United States in the Egypt incident not only reveals the illegality of its conduct in Lebanon, but casts light upon the fact that United States policy is to disregard international law, where deemed necessary, to the policy of containing communism.

(2) The Dominican Republic Incident.

If the Lebanon incident documents and demonstrates that the American "containment" thesis extends to "indirect aggression", the incident of the landing of United States marines in the Dominican Republic in the Spring of 1965, in a wholly internal civil dispute, demonstrates that the thesis interdicts disapproved governmental change, even if brought about wholly internally and unaccompanied by any external participation, even of a propaganda character.

Between April 28 and May 4, 1965, the United States landed 30,000 marines in the Dominican Republic (Los Angeles Times, April 29 to May 4, 1965) in the midst of a wholly internal civil rebellion. The United States has never sought to justify its presence in the Dominican Republic upon the basis of any claim of aggression, direct or indirect, by any foreign power. Although the President first stated that the sole purpose of sending troops to the tiny island nation was for the protection of the lives and property of Americans, the true ultimate purpose of the intervention was stated without disguise by President Johnson in a public address on May 2, 1965. In that statement,

the President asserted that "Communist conspirators"³ had become dominant in the rebellion and that "(t)he American Nations can not, must not and will not permit the establishment of another Communist government in the Western Hemisphere" (52 Dept. of State Bulletin, 744, 746). The next day, the President amplified his stated position by declaring bluntly: "We don't intend to sit here in our rocking chair with our hands folded and let the communists set up any government in the Western Hemisphere."⁴

Expressing the thesis of forceable "containment" without veneer or apology, the President further declared:

"We believe that change comes, and we are glad it does, and it should come through peaceful process. But revolution in any country . . . becomes a matter calling for hemispheric action . . . when the object is the establishment of a Communist dictatorship. Let me also make clear tonight that we support no single man or any single group of men in the Dominican Republic. Our goal is a simple one . . . Our goal . . . is to help prevent another Communist state in this hemisphere."

(52 Dept. of State Bulletin, 744, 747.)

The Department of State expressed the same principle, observing:

"The United States (intervened) in the Dominican Republic . . . to achieve . . . a cease fire and . . . orderly processes within which Dominicans can choose their own government free from outside interference . . . The United States refused to observe merely the form of legalistic procedures . . . (but took) into account the modern day reality that an attempt by a conspiratorial group inspired from the outside to seize control by force can be an assault upon the independence and integrity of a state."⁵

3 There was never any claim that any of the "Communist Conspirators" represented any nation other than the Dominican Republic.

4 Fleming, "Can 'Pax American' Succeed?", 360 Annals of the American Academy of Political and Social Science, July, 1965, p. 135.

5 Memoranda by the Department of State entitled, "The Legal Basis for United States Actions in the Dominican Republic," appearing

Thus, the Dominican intervention makes explicit the thesis of containment even against wholly internal "communist" governmental change. The intervention was factually justified solely by furnishing the names of 58 alleged "communists" involved in the rebellion—all of them nationals of the Dominican Republic (Fleming, "Can 'Pax America' Succeed?", supra).

Obviously, every communist revolution is inspired at least in part by the very existence of other communist governments. It is thus made clear that the United States reserves to itself the right to intervene with its armed forces whenever a revolution is alleged to be communist in its nature. In admittedly disregarding what the State Department refers to as "the form of legalistic procedures" the United States actually struck a blow at the very heart of the charter and its prohibition against intervention by armed force in the internal affairs of another nation.

(3) The Guatemalan Incident.

The 1954 Guatemalan incident, involving the overthrow of the Government of Colonel Jacobo Arbenz by American-favored rebel forces operating from staging areas in Honduras, illustrates importantly the degree to which the United States is willing in the name of the containment thesis to intervene in the internal affairs of another nation.

The Guatemalan incident presents peculiar dual and contradictory aspects. There are few instances where so many of the facts with respect to the role of the United States are obscure; yet, there is no single event where the

in 111 Cong. Rec. 10734. The same concept was expressed by Adlai Stevenson to the United Nations Security Council on May 5, 1965, where Mr. Stevenson said: "The fact of the matter is that it appeared that what began as a democratic revolution was quickly penetrated by a group of trained Communists. If that movement had succeeded in establishing itself as the government of the Dominican Republic, the event would have been irreversible. The OAS would have been deprived of any realistic possibility of assisting the Dominican people to determine their political future by the free exercise of self-determination." (52 Dept. of State Bulletin, 876, 880.)

matters of record better illustrate the policy of the United States to prevent the spread of communism by whatever means it deems necessary, even though the possibility or actuality of the establishment of a communist government threatened is not the product of armed aggression.

From 1951 to 1954, the recognized^c and established government of Guatemala was headed by President Arbenz. It appears that the government was not anti-communist and that some of its members may actually have been Communists; in fact, the late John E. Peurifoy, the United States Ambassador to Guatemala, during the critical period we are about to discuss, testified that he was convinced that Arbenz himself was a Communist (Ninth Interim Report of Hearings before the Subcommittee on Latin America of the Select Committee on Communist Aggression, House of Representatives, 83rd Cong., Sec. Sess. (Washington, 1954), 124-126). However accurate or inaccurate this assessment may be, the inescapable fact is that the policies of the government were the product of its own indigenous leadership and certainly did not result from any armed aggression. The attitude of the United States was partially revealed by the appointment in October, 1953, by Mr. Peurifoy as its Ambassador to Guatemala. He had established himself as one of this country's leading anti-communist diplomats by his activities in Greece in implementing the Truman Doctrine there.

At this time, neighboring Honduras was being used as a military base for the operations under the leadership of Col. Castillo Armas of the anti-government opponents of the Arbenz regime. That this conduct of Honduras violated established principles of international law is clear (Green H. Hackworth, Digest of International Law (Washington, 1941), Vol. 2, pp. 291-298; Charles G. Fenwick, International Law, 3rd Ed. (New York, 1948), 301-302; Charter of the Organization of American States, Articles 5, 7, 11 and 15; United States Department of State, Ninth International Conference of American States (Washington, 1948), pp. 168, et seq.). At the same time, the United States made clear its opposition to Guatemalan political developments in the course of proposing and securing at the Tenth Inter-American Conference, which met at Caracas, Venezuela in March of 1954, the reiteration of a 1948 policy opposing the spread of Communism. Significantly, the reso-

lution which the United States succeeded in having adopted called only for consultation to consider appropriate action in the event that any American state established a communist government.

This is evidence that the Latin American states did not consider the Arbenz regime to be Communist. It would have been difficult for them to come to this conclusion, since it had been freely elected by a large majority. It was indisputably a reformist government, with a land reform program which impinged upon the lands of the large landowners, including especially a great American corporation. However, its unforgivable offense was its acceptance of the support of Guatemalan Communists instead of outlawing them. Understandably, the Government of Guatemala felt itself in danger and it tried to get a shipment of arms from Czechoslovakia. This attempt, about which the facts are both obscure and in conflict (see, The Guatemalan Affair: A Critique of United States Foreign Policy by Philip B. Taylor, Jr., 787, 793-797), set off a series of events leading to the overthrow of the Arbenz government. Whatever may be the truth about the shipment, the right of a nation to purchase arms where it chooses is one aspect of its sovereignty. In any event, following the receipt of this shipment in Guatemala on May 17, 1954, the United States, on May 20, 1954, concluded a Mutual Security Treaty with Honduras and, shortly thereafter, began airlifting war material to the nation where the Guatemalan foes of Arbenz maintained their illegal military base (U.S. Dept. of State Publication 5530, May 20, 1954). On June 19, the troops of Col. Castillo Armas moved from their Honduras base into Guatemala. This led, on June 27, to the resignation of Arbenz, who was replaced by the Chief of Staff of the Guatemalan army. Two days later, at a conference in which Ambassador Peurifoy participated, power was transferred to a Col. Monzon, who reached an agreement with Armas on June 30.

As the New York Times of July 3 put it:

“The signing (of the Monzon-Castillo-Armas agreement) represented an unmistakable victory for United States policy, and particularly for . . . Peurifoy, . . . who had taken an essential, difficult role in bringing it about.”

Again, on July 19, an article in the same newspaper stated: "It was perfectly clear that (Peurifoy's) instructions and his purpose had one simple theme, 'Get rid of the Reds.'" (Flora Lewis, New York Times Magazine, July 18, 1954, p. 9).

An authoritative international law journal has quoted Donald Grant of the St. Louis Post Dispatch:

"... this writer is not in a position to assign precise roles for the events which culminated in the fall of the Arbenz government, although he was, in fact, an eyewitness to many of the decisive events. Exiled Guatemalans, the Governments of Honduras and Nicaragua, the United States Departments of State and Defense, the Central Intelligence Agency, the United States National Security Council and other agencies and individuals were involved."

("Guatemala and United States Foreign Policy", Journal of International Affairs, Vol. 9, No. 1, p. 69, 1955).

On June 19, the Guatemalan representative asked a United Nations investigation of the entire affair. The United States sought, over the opposition of the Soviet Union, to have this investigation made by the Organization of American States. The end result was no investigation at all by any international body (The Guatemalan Affair: A Critique of United States Foreign Policy, supra, 787, 798-801.)

The U.S.S.R. was not the only source from which the position of the United States was questioned. Even Argentina, after first asserting its unquestioned anti-communist posture, expressed serious concern about the armed intervention of several nations (impliedly including the United States) in the internal affairs of Guatemala (O.A.S. Document C-a-155, Acta de la Sesión Extraordinaria celebrada el 2 de Julio de 1954 (Washington, 1954), pp. 920-922).

More outspoken was Clement Atlee, head of the British Labor Party, when he said on July 14, 1954, in the British House of Commons:

"... The fact is that this was a plain act of aggression, and one cannot take one line on aggression in Asia and another line in Central America. I confess that I was

rather shocked at the joy and approval of the American Secretary of State on the success of this putsch.

“... (W)e cannot pass this off as just a Central American squabble, of which there are so many. There was a principle involved and that principle was the responsibility of the United Nations. I think it was a mistake in these circumstances to try to hand it over to a regional body. We might also have talk of handing over to a regional body in other parts of the world (China) and I do not think we would like the results very much. Therefore, I am afraid that Guatemala has left a rather unpleasant taste in one's mouth because, to illustrate the theme I was putting, it seems in some instances that the acceptance of the principles of the United Nations is subordinated to a hatred of Communism.”

(H.M. Stationery Office, Parliamentary Debates, Commons, Official Report, 5th Series, Vol. 530 (London, 1954), cols. 489-490.)

This subordination of law to anti-communism can again be highlighted by the following contrasts. This country correctly refused to deal with the open armed aggression in Egypt in a manner which would result in the bypassing of the United Nations and in the direct utilization of its armed forces; on the other hand, in Guatemala it did bypass the United Nations and illegally intervened to support an attack launched from the territory of one country against another. The contrast is equally apparent between the United States intervention in Lebanon to prevent what it considered a communist revolution with its intervention in Guatemala to support a revolution by armed forces based in a foreign country directed against a government considered as communist oriented in the Guatemala incident.

What is important about the Guatemalan incident is its illustration of the readiness with which the United States has violated fundamental principles of international law and has intervened in the internal affairs of other countries in pursuing its anti-communist policy.

It is almost embarrassingly revealing, in light of the records of the Guatemalan incident,

to hear Secretary Dulles say on June 30, 1954 that Col. Arbenz and "Communist agents have persistently attempted to obscure the real issue" involved in the incident, which was "Communist imperialism" (31 Dept. of State Bulletin, 43, 45). Arbenz and his followers, said Dulles, had "treasonably become the agents of an alien despotism" (Ibid.). The Caracas Resolution and the Guatemalan incident made it clear, said Secretary Dulles on November 29, 1954, "that collective action to eradicate international communism is not an act of intervention but an act to uproot intervention" (31 Dept. of State Bulletin, 890, 984). Thus, in effect, the Secretary, contrary to all evidence, denied that the Arbenz reforms could have been indigenous. After the overthrow of the Arbenz regime, substantially all of its reforms were reversed.

(4) Vietnam.

The most serious incident of United States use of armed force under the containment thesis—still continuing and threatening even World War III—is the intervention in Vietnam. That incident is too complex and has been too recently reviewed elsewhere to be analyzed here in detail. Two prime characteristics of that intervention, however, bear witness so importantly to the true content of the United States' containment doctrine to be noted here. The first is the circumstance that the Vietnam intervention was and is bottomed on a United States resistance to a free choice of Vietnam's government by an election to be participated in by all of the Vietnamese people, and thus represents the reach of containment even to change by the electoral process. The second prime feature is the character of the South Vietnamese struggle as a civil, not an international, war.

On the first score, it is a vital circumstance to note in the heat of present conflict that the Vietnamese intervention by the United States, now so commonly "justified" by claims of "armed aggression" by the North Vietnamese, arose originally out of United States resistance to an all-Vietnam election and the direct avowal by the United States of armed resistance to any change favoring "communism" there "by whatever means." On March 29, 1954, immediately prior to and in opposition to the then proposed Geneva Conference, Secretary Dulles explicitly declared American opposition to any change

favoring "international communism" in Vietnam, or South East Asia, however peaceful, and even through the mode of elections. The proposed Geneva Conference, favored by France, posed the possible principle (later adopted by the Conference) of a free election Vietnam to settle its form of government. Secretary Dulles strongly opposed the proposed peace, and particularly and specifically the proposed election, urging undisguisedly that "the imposition on South East Asia of the political system of Communist Russia . . . by whatever means would be a grave threat to the whole free community" which "should not be passively accepted" (30 Dept. of State Bulletin, 539, 540; Fleming, supra, pp. 689-690).

In a whole series of speeches in the early Spring of 1954, Mr. Dulles, supported by President Eisenhower, opposed the ending of the war between France and Vietnam and argued the "domino theory" that if Vietnam fell (even through free elections), country after country in South East Asia would also become communist, losing for the United States all access to the tremendous riches of the Far East, an outcome considered intolerable. (Fleming, supra, pp. 689-692).

Referring to American policy in Vietnam during the post-war period prior to the Geneva Conference, Secretary of State Rusk declared while testifying before the Foreign Relations Committee of the Senate on June 28, 1966:

"After the Communists took over authority in Peiping, we and the British and the French were consulted on this situation and pretty well agreed that the security of Southeast Asia was of vital interest to the free world. The joint effort therefore to find an agreement with the nationalists on the one side and to prevent a Communist takeover on the other was a common thread of policy throughout that period."

No one doubted that, if the elections scheduled by the Geneva Conference were held, the Vietnamese people would have voted overwhelmingly for the government of Ho Chi Minh.

The foregoing position led logically to the United States walking out from the Geneva Conference, which nevertheless concluded an agreement providing for elections supervised by a committee created at the Conference, with

which agreement the United States announced it would interfere. This was followed by an agreement between French and Vietnamese officials in Saigon under which the United States assumed full responsibility for the training of the Armed Forces of South Vietnam (Fleming, supra, pp. 696-697). This in turn was followed by the refusal of South Vietnam officials, with United States support, to plan for or participate in the elections required by the Geneva agreements. As President Eisenhower later conceded, Ho Chi Minh would have won such elections because he had the support of the overwhelming majority of the Vietnamese people.

The United States has laid down as a principle, based upon policy not on reason or law, that if an election can be won by a Communist, it ipso facto is not free—even if that Communist admittedly has the support of the great majority of his constituents. It was the refusal to proceed with the elections required by the Geneva agreements which has led step by step to the present war in Vietnam—a war which is leading the world to the brink of that disaster which only a return to the rule of law can long avoid.

On the second score, the involvement of the United States in Vietnam in a civil, not an international, war is not only charged forecably by its critics but upon occasion admitted by the United States itself, despite its general adherence to the theory that North Vietnam is committing aggression against South Vietnam. Yet, intervention in a civil war is itself an open expression of the containment thesis carried to its inherent extreme.

Thus, in a White House statement issued October 2, 1963, with the approval of President Kennedy and the assembled National Security Council, it was stated:

“... The security of South Vietnam is a major interest of the United States as other free nations. We will adhere to our policy of working with the people and government of South Vietnam to deny this country to communism and to suppress the externally stimulated and supported insurgency of the Viet Cong as promptly as possible. Effective performance in this undertaking is the central objective of our policy in South Vietnam.” (Emphasis added.)

Secretary of Defense Robert S. McNamara, in an address on March 26, 1964, termed the South Vietnamese conflict "covert aggression or insurgency", termed the United States' intervention therein "counter-insurgency", said that until increase of American aid in the beginning of 1962 "the South Vietnamese were quite plainly losing their fight against the Communists," and concluded that, discounting all North Vietnamese aid or participation "the large indigenous support that the Viet Cong received means that solutions must be as political and economic as military" (The Vietnam Reader, supra, 198-201).⁶

In the hearings before the Senate Foreign Relations Committee on February 17, 1966, General Taylor, while discussing the difficulty of avoiding civilian casualties, recognized that the war in Vietnam is indeed a civil war:

"Taylor: Certainly as a matter of policy, Senator, we do everything possible to spare the civilian populations. General Westmoreland is an able and humane man, and has issued the clearest of instructions that in utilizing military force insofar as consideration of the population can be taken into account without the loss of our people in action, that he will make every effort to spare them from the horrors of war. Unhappily, they do suffer, and it is impossible to have a civil war of this type, a war in which the enemy deliberately mingle themselves with the civilian population, without civilian casualties in large numbers . . ."

This concept of the war as a civil war is consistent with the following answer given in writing at these hearings by General Taylor:

"21. Question: When will the U.S. be able to withdraw from Vietnam?

"Answer: When the threat of a Communist takeover is removed, most of our

6. In actuality, it was the tyrannies of Ngo Dinh Diem, the ruler whom we set over the South Vietnamese, which over several years gradually drove the peasantry and many others into revolt by guerrilla war, a conflict which the North Vietnamese supported belatedly and reluctantly. In recent years it is their "aggression" in the Southern part of Vietnam, which is used to justify our immense military campaign in that country.

military forces could be withdrawn. (NOTE: Not a takeover by some nation—but a takeover by a political philosophy.) South Vietnam will, of course, need continued economic support.’

Thus, the United States is pursuing its policy in Vietnam of intervening in a civil war in order to prevent the establishment therein of a Communist government.

Civil war or no, the indisputable fact is that the Vietnamese are historically a single people and that only United States military intervention has turned the war into a major international conflict. It is this international war, conducted in furtherance of the United States’ policy of containment which violates the Charter and threatens the peace of the world.

As seen then from its many formulations and the many incidents of armed force undertaken in its name as analyzed above, the American thesis of “containment” in end effect opposes “communist” governmental change, however purposed or pursued. Although much of the rationale speaks of change by aggression, the thesis under shelter of that rationale embraces forcible opposition as well to all “communist” governmental change by “indirect aggression,” “subversion”, “communist imperialism” and, ultimately, even wholly internal civil change, including even electoral change. The thesis in this full sweep has been expressed and pursued by every President and every Secretary of State since its first formulation by President Truman in 1947. Yet the thesis is at war with the fundamentals of the United Nations Charter and with the rule of law in international affairs.

III

THE USE OF ARMED FORCE IN SUPPORT OF THE UNITED STATES’ POLICY OF CONTAINMENT CONTRAVENES THE UNITED NATIONS CHARTER AND INTERNATIONAL LAW

If we turn from the aforesaid examination of American foreign policy with respect to the containment of “Communism” to an examination of the principles of international law, especially as these principles have been embodied in the provisions of the United Nations Charter, we find a fundamental contradiction

between such policy, and the rule of law adopted for the achievement of peace in the world. American foreign policy, as it is presently constituted, relegates principles of international law "back to the days preceding any attempt at collective organization of security, when the right to make war was the unlimited prerogative of national States, and international law a set of rules regulating diplomatic intercourse." Friedman, Wolfgang, The Changing Structure of International Law (1964) 260, fm. 12a.

It is plain that a concept of unilateral right by a State to interfere in the internal affairs of another State is a form of anarchy, subversive of the rule of law in international relations, which had already come to be accepted by most nations of the world before the organization of the United Nations in 1945, gravely reducing the possibility of world order and peace. It has long been an established principle of traditional international law that it is "based upon a society of sovereign states, regardless of the structure and ideology of their regime" (*Ibid.*, 264). Pre-existing the Charter and incorporated in it is the concept that any attempt by a foreign power to interfere with internal change, either by assisting rebels to overthrow a legitimate government, or by helping an incumbent government to suppress a revolution, is contrary to international law (*Ibid.*, 265).

Traditional international law "did not bar or even address itself to revolution within, whether by constitutional means or by force. But traditional international law was concerned with external intervention in the affairs of nations, including intervention to achieve internal political change. . ." Henkin, Louis, "Force, Intervention and Neutrality in Contemporary International Law", American Society of International Law Proceedings (Washington, D.C., April 25-27, 1963) 154.

When the delegates of fifty governments met in San Francisco to form a world organization, their decision to hold such a meeting "was a decision to create a world organization that would include all the hostile camps that might be destined to take form. However, much division might come into the world—over communism, or colonialism, or race and religious conflicts, or the difference between rich and poor countries—so long as the UN goes on there would be a place where the contending

parties could argue in the presence of others who are more concerned for peace than they are for the victory of either side." Coyle, David Cushman, The United Nations and How It Works (1961) 162-173.

The object of the organization was not to return to the law of the jungle in international relations, but to establish in fact "a law-creating and law-enforcing body". Dillard, Hardy C., "Conflict and Change: The Role of Law", American Society of International Proceedings (Washington, D.C. April 25-27, 1963) 22. The object of the organization was not to reject the rule of law or the traditional principles of international law, as above stated, but to expand the rule of law in the contemporary world to the end that the unilateral use of force would be abandoned for peaceful methods of settlement of disputes between States based on the respect for the independence of Nations and the unfettered right of peoples to choose their own forms of Government.

In one sense, the original United Nations was a continuation of the military alliance which had resulted in victory in World War II. And, indeed, one of the basic understandings upon which the Charter of the United Nations was premised was a belief in the post-war unity of the United States, Great Britain, France, China and the Soviet Union. However, there were other assumptions which underlay this basic premise; these have been summarized as follows: "(1) that peaceful coexistence, as between the Communist and Western ideologies, was possible; (2) that, consequently, the harmonization of their divergent national interests was achievable; (3) that the process of balancing their power capabilities was manageable". Hotz, Alfred J., "The United Nations Since 1945: An Appraisal" in 336 Annals of the American Academy of Political and Social Science (July 1961) 127-128.

There does not appear to be much dispute as to the philosophy of the United Nations at the time of its formation. The Nations were setting up a world-wide organization whose charter would have to be "loose enough to tolerate nations with deeply antagonistic views". Coyle, op. cit., 162.

It should be noted that even while the war was being pursued, the leaders of the great powers had come to realize that if peace based

upon world cooperation were to be achieved after victory, then the right of peoples to choose the form of government under which they would live, the right to self-determination and effective collaboration between such different governments with different internal political, economic and social institutions, would have to be assured.

Thus, if one pursues the Atlantic Charter, agreed to by President Franklin Delano Roosevelt and Prime Minister Winston S. Churchill in August 1941 (Dept. of State Bulletin, August 16, 1941, pp. 125-26); the Moscow Declaration of October, 1943, which pledged the Governments of China, the United Kingdom, the United States and the Union of Socialist Soviet Republics to found a world organization for peace (Dept. of State Bulletin, November 6, 1943, pp. 308-309); the Connally Resolution, adopted by the Senate of the United States in November, 1943 (Dept. of State Publication 2298, 1945, p. 8; Congressional Record, November 5, 1943, p. 9222, Senate; Harley, J. Eugene, Documentary Textbook on the United Nations, 2d Ed. 1950, 173); the Teheran Declaration of November, 1943, which as the result of a conference held in Teheran by President Roosevelt, Prime Minister Churchill and Premier Stalin (Text from Dept. of State Publication 2298, 1945, p. 15); the text of the Dumbarton Oaks proposals of October, 1944 (The Dept. of State Bulletin, Vol. XI, No. 276, October 8, 1944); and the Yalta Declaration of February, 1945 by Churchill, Roosevelt and Stalin (Harley, op. cit., 374-376), there will be found a constant reiteration that world peace can only be obtained by respecting the rights of all peoples to choose the form of government under which they will live, and that the United Nations must be based on the principle of the sovereign equalities of all peace-loving States, and open to membership by all such States, large and small. The constant refrain was a determination to build in cooperation with other peace-loving nations world order, under law, dedicated to peace, security, freedom and general well-being of all mankind.

It is also important to note that just prior to the San Francisco Conference in April, 1945, there was a meeting in Mexico City from February 21, 1945 to March 8, 1945, of twenty nations from North and South America, which dealt with questions of reconciliation of the Pan-American System with that of the United

Nations. The Act of Chapultepec affirmed the juridical equity of the American states, prohibited interference in internal affairs, emphasized the inviolability of territories, and condemned aggression (Harley, Ibid., 379). The text of the Act of Chapultepec stated, among other things, that the peoples of the Americas "remain sincerely devoted to the principles of international law", which include "the condemnation of intervention by a State in the internal or external affairs of another"; and "the recognition that respect for the personality, sovereignty and independence of each American State constitutes the essence of international order sustained by continental solidarity, which historically has been expressed and sustained by declarations and treaties in force" (Harley, Ibid., 380-384).

On April 25, 1945, the United Nations Conference on International Organization was convened. Delegates from forty-six Nations, later increased to fifty Nations, were seated at the beginning of the Conference. One delegates after another, including such persons as President Truman and Secretary of State Stettinius for the United States, Anthony Eden for the United Kingdom, Mr. Carraciolo Parra-Perez for Venezuela, Mr. Ezequiel Padilla for Mexico, and other leading representatives of the various Nations, rose to affirm the fundamental principles of law upon which the United Nations was to be based: firstly, the absolute equality of all member states of the new Organization; secondly, respect for the territorial integrity of these states and the duty to abstain from any attempt at intervention in their internal organization, whether political or social; thirdly, the obligation to have recourse to peaceful means in order to solve international controversies, and the condemnation of the use of force as a means of solving them; fourthly, the non-recognition of annexation of territory achieved without the previous freely expressed consent of the peoples interested (Harley, Ibid., 534-537; 547-548; 552-553; 611; 614; 646-647).

It is therefore plain that even before the adoption of the United Nations Charter, the Nations of the world and their leaders had declared that the new world organization, in order to keep the peace, must be prepared to meet and deal together despite differences in political, economic and social institutions, history and attitudes. The rights of every nation, large or small, were to be respected and guarded. The rights of every nation, President Roosevelt stated, were to be guarded "as jealously as are the rights of every

individual within our own Republic'. Tugwell, Rexford G., The Democratic Roosevelt (1957), 642.

The Charter of the United Nations which was adopted at San Francisco reflects the aforesaid principles.

“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

“to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

* * *

“to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,

* * *

“AND FOR THESE ENDS

“To practice tolerance and live together in peace and with one another as good neighbors, and

“To unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest.

* * *

“HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

* * *

“Chapter I

PURPOSES AND PRINCIPLES

Article I

“The Purposes of the United Nations are:

“1. To maintain international peace and security, and to that end: to take effective

collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

“2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

“Article 2

“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following principles:

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

* * *

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

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

* * *”

(Emphasis added.)

It should also be observed that the United Nations Charter (Chapter VII, Article 39) provides:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations or shall decide what measures shall be taken . . . to maintain or restore international peace and security.”
(Emphasis added.)

It is thus plain that signatory members of the United Nations Charter are barred from resorting to force unilaterally and that only the Security Council is authorized to determine the measures to be taken to maintain or restore international peace. The only exception, aside from a provision dealing solely with enemy states in World War II (Chapter VIII, Article 53), is found in Article 51 of Chapter VII of the Charter:

“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 to maintain international peace and security.”

(Emphasis added.)

Thus, only in the case of an armed attack by a foreign power, and pending action by the Security Council, may armed force be resorted to without Security Council approval. It follows that there is clearly excluded the right to use armed force in case of “indirect aggression”, “subversion”, “coercion”, “communist imperialism”, “threats”, “external aggression”, etc.⁷

These principles, as embodied in the United Nations Charter were understood and accepted by the Nation when the Senate of the United States, after extensive hearings and debates, ratified the Charter by a vote of 89-2, with five abstentions, on July 28, 1945 (Harley, Ibid., 690-691; 702; 839-840). See, Sen. Rep., Review of the United Nations Charter (A Collection of Documents), 83 Cong. 2d. Sess. Doc. No. 87 (January 7, 1954).

That there have been deviations from these governing principles in the years which followed the adoption of the Charter cannot be disputed. See, Kennan, George F., On Dealing with the Communist World (paperback) (1964), especially Chapter 3 entitled “Polycentrism and Western Policy”, 37-51. However, these principles have never been modified, and they continue in full force and effect up to the present date.

7. If armed force is to be used with respect to such matters, then such armed force must first be sanctioned by the Security Council. Member Nations, acting independently to the extent that they have a right to act at all, must use measures short of armed force in such instances.

It is not too much to say that in the light of traditional principles of international law, and especially in the light of the history of the organization of the United Nations and the principles of the United Nations Charter, that American foreign policy, insofar as it purports to deal with the containment of "Communist" governments throughout the world, is wholly at war with those principles. If justification for present-day American foreign policy is to be made by officials of Government, it would be more honest, it is submitted, to openly admit that such policy is based solely on unilateral determination of self-interest rather than upon any rule of law. Fisher, Roger, "Intervention: Three Problems of Policy and Law", Essays on Intervention (1964), 19-20.

IV CONCLUSION

From the foregoing analysis, the conclusion is unavoidable, no matter how reluctantly it may be reached, that before the ink on the United Nations Charter was dry, the United States embarked upon a policy which undermined the power and purpose of the United Nations and which substituted on numerous occasions the rule of force and naked power for the rule of law which the Charter sought to establish. There can be no question about the right under international law of the United States to adopt and implement a policy calculated to maintain and spread what it conceives to be the economic system, political arrangement and ideological adherence designed to promote its purpose and policies. There can equally be no question that the United States, no more than the U.S.S.R. or any other nation, had the right to use armed force in order to achieve these objectives. Unfortunately, the record is all too clear that the policy-makers of our country have not hesitated to abandon the rule of law in order to effectuate the anti-communist policies which they have adopted.

While any violation of the Charter and of international law by any nation is to be regretted, if not condemned, one could not realistically anticipate that the nations of the world would always consistently adhere to the rule of law to which they pledged themselves. What the examination of American policy made here reveals, however, is far more than an occasional isolated act which might be claimed to constitute a breach of the Charter. Rather, there has to have been adopted

and pursued a consistent policy justifying the use of any means, legal or illegal under the Charter, to prevent the spread of Communism. It is this policy which, if continued, assures violations of law in the future and which constitutes the great danger not only to the citizenry of the United States but to all the peoples of the world.

For no nation can have it both ways. A nation, no matter how powerful, cannot follow a practice of violating its international obligations whenever its policy requirements seem to call for such violation and expect that other nations powerful enough to do so will not soon similarly disregard the principles of international law which they agreed to follow. In short, the policy revealed here leads to a breakdown in the attempt to establish a world rule of law with respect to the use of armed force. By following this course, the United States is acting not only contrary to its solemn commitment, but to its own interests.

Competition between the great powers of the world cannot be eliminated in the foreseeable future. But the use of armed force by one side in this competition can only lead to the use of armed force by the other. The abandonment of the rule of law leads inevitably down the road to World War III—a war certain to be fought with atomic and hydrogen bombs. As has been said by many eminent statesmen and scientists throughout the world, no nation can win such a war. If it happens, all mankind will suffer, if not total destruction, the greatest loss and agony in its history.

