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LEGALITY OF THE 1970 CAMBODIAN INCURSION

D. Pike

HISTORY OF THE VIETNAM WAR ON MICROFILM

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w/1001

(Sanctuary)
~~SUGGESTION~~
LEGALITY OF THE OPERATION

The heart of the legal question of the Cambodian sanctuary operation has to do with Cambodian neutrality and sovereignty. A number of international pledges exist with respect to Cambodian territorial integrity. Most important of these are the 1954 and ~~1957~~¹⁹⁶² Geneva Accords which provided for the withdrawal of foreign troops from Cambodia and Laos and the withdrawal of Communist forces to the north of the provisional demarcation line in Vietnam. In the final declaration at Geneva the participants undertook to respect the sovereignty, independence, unity, and territorial integrity of the three states. They also pledged to refrain from interfering in the internal affairs of these states. On February 14, 1970, North Vietnamese communist party chief Le Duan said that it was the policy of his government to "strengthen lasting friendship between our country and the kingdom of Cambodia... On the basis of respect for each other's independence, sovereignty, unity and territorial integrity."...

Last year before the U.S. reestablished diplomatic relations with Cambodia with a small mission of Americans, the U.S. affirmed publicly recognition and respect for the "sovereignty, independence, neutrality, and territorial integrity" of Cambodia within its present frontiers. The policy expressed toward Cambodia remains U.S. policy ~~unchanged~~ now.

The U.S. recognized the neutrality and territorial integrity of Cambodia within its present borders. Some experts ~~state~~^{say} that in international law sanctuaries are not allowed and if there is an attack on sanctuaries it is not illegal. But others say international law is ^{NOT} specific on such a point. The U.S. believes the best thing ~~to~~^{to} realistically hope for would

be a truly neutral Government in Cambodia ^{SUCH} would obviously be to ~~any~~ ^{U.S.} advantage and, in particular, would enhance progress in Vietnamization.

Under international law the U.S. had a right to strike the enemy in sanctuary, because of the inability of Cambodia over a period of years to live up to its legal obligations as a neutral state. Cambodian neutrality was not violated in any real meaning of the word. The sanctuary strike extended contention-arena by 20 miles to the west. Sovereignty already had been usurped. For five years the North Vietnamese maintained control of the sanctuary areas. In 1969 when Prince Sihanouk sought to visit to the town of Bokeo in northeastern Cambodia he was denied entrance, by North Vietnamese forces. The cumulative effect of years of such violations caused the Cambodian government increasing concern. Since 1968 Sihanouk had been protesting the violations. In April 1969 he sought international support for efforts to get the North Vietnamese armed forces to withdraw. At the time of his downfall, he was on a trip to Moscow and Peking for this purpose. After his overthrow the prestigious Japanese quarterly Pacific Community published an article by him obviously written prior to his desposition in which ironically he predicted that North Vietnam and China would partition all of Southeast Asia making it into a series of various "Asian Czechoslovakias". He complained of communist occupancy of eastern Cambodia, noted that the communists had promised to get out but added, "we know by experience :

~~SECRET~~

such promises should be greeted with the most extreme reserve." And he concluded: "Thus it is permitted to hope that, to defend its world interests (and indeed not for our sake) the U.S. will not dis-entangle itself too quickly from our area -- in any case not before having established a more coherent policy which will enable our populations to face the communist drive with some chance of success."

After the Cambodian National Assembly and Council of the Kingdom removed Sihanouk, the Government appealed to the Geneva Conference cochairmen, the U.K. and the USSR, for the reactivation ~~without delay~~ of the International Control Commission to protect Cambodian neutrality. The British were sympathetic to the request, but the USSR refused to act. The Cambodian Government also sought before and after Sihanouk's deposition, to engage in negotiations with the Vietnamese Communists for the withdrawal of their forces. The Lon Nol Government in Cambodia tried without success to negotiate a new condition of neutrality with the communists. ~~The occupation continued.~~

After the fall of France and the establishment of the Vichy Government in World War II, the United States looked across the English channel at a France which professed to be neutral. No one argued then that the U.S. should

not attack German troops, military installations, supply and communications bases in occupied France. Similarly, there is no legal basis for challenging the sanctuary strike. ² When the Cambodian change of government took place March 18, North Vietnam expelled all Cambodian government personnel from the border areas and moved militarily against the Cambodian Army hoping to link up all the sanctuaries and the port of Sihanoukville. It was impossible, for the Cambodian Government to take action itself to prevent these violations of neutral rights and its efforts to do so led to the expulsion of its forces.

Under the U.N. charter the use of armed force is prohibited except as authorized by the United Nations within the scope of its competence under Chapter Eight of the Charter, or, where the Security Council has not acted, in individual or collective self-defense against an armed attack. It is this latter basis on which U.S. relies for its actions against North Vietnamese armed forces and bases in Cambodia. ³ Since 1965, the United States and Republic of Vietnam have been engaged in collective measures of self-defense against an armed attack from North Vietnam. Increasingly, since that time the territory of Cambodia had been used by North Vietnam as a base of military operations to carry out ~~and~~ attacks, and it long ago reached a level that would have justified the U.S. in taking appropriate measures of self-defense on the territory of Cambodia. However, except for scattered instances of returning ~~Cambodia. However, except for scattered~~ ~~instances of returning~~ fire across the border, it refrained until April from taking such action in Cambodia.

Beyond the legalisms, one sometimes has the impression ~~the impression~~ of living in a never-never land where U.S. must apologize for destroying supplies

~~which~~ which for years Americans have ~~been~~ ^{AMERICANS} killed, It was a heavy handicap to have the big supply depots established all along the Cambodian frontier. Accepted because U.S. thought the neutrality of Cambodia might be a model of something that ~~was~~ could happen elsewhere. There was an effort by Sihanouk, to ~~try to~~ squeeze the sanctuaries as much as possible, and his mission in Moscow and Peking was attempt to negotiate ~~the~~ eliminat^{ing of} the sanctuaries. There is no law that says that the North Vietnamese must be able to conduct a war in South Vietnam with American toleration.

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9-18
II. Q. Did the Administration consult with Congress prior to the action in Cambodia?

A. The President has carried out his Constitutional responsibility to keep Congress informed. As Commander in Chief it is also his responsibility to protect American lives, and he made his decision with that thought uppermost and mindful of the need for tight security before launching the strikes into Cambodia.

The President considered and rejected the option of largescale U.S. arms aid, advisers, and U.S. combat forces for the defense of the Lon Nol Government. The President stated in his White House meeting with Congressional committees that had he selected this option he would have fully consulted Congress.

Q. WHY DIDN'T YOU ASK CONGRESS FOR APPROVAL FOR THE CAMBODIAN OPERATION BEFORE YOU DID IT?

A. IT WAS NOT NECESSARY BECAUSE THIS CAMBODIAN OPERATION IS A PART OF THE VIETNAM PROGRAM.

Conting

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Q. YOU CROSSED A BORDER.

A. I WANT YOU TO KNOW THAT I DO NOT CONSIDER -- I'M CONCERNED ABOUT VIETNAM AND THE VIETNAMIZATION PROGRAM. THE EFFECT OF CAMBODIA AND LAOS, THEIR EFFECT UPON VIETNAMIZATION IS WHAT CONCERNS ME AND THIS PARTICULAR OPERATION, OF SHORT DURATION, IS TIED STRICTLY WITH THE VIETNAMIZATION PROGRAM AND THE PROTECTION OF AMERICAN LIVES AND THE INSURANCE THAT WE WILL CONTINUE OUR WITHDRAWALS...

Q. YOU INVADED ANOTHER COUNTRY.

A. I DO NOT BELIEVE THAT FOR ONE MINUTE BECAUSE THE NORTH

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...PARTICULAR AREAS, AND WE CARRIED ON THESE ... -- RIGHT HERE, LISTEN, ... DIVISION STANDING HERE AND ... I THINK IF YOU GO OVER ... THESE YOUNG MEN THAT HAVE SEEN THESE PEOPLE ... SANCTUARY AREAS AND WE DID NOT HAVE THE ... BEFORE THAT WE HAVE NOW TO CARRY ON ... TRUCTIVE MISSIONS AGAINST THESE FACILITIES. ... AS MOVED WELL. YOU HAVEN'T HEARD ME TALK ABOUT ... INVOLVED HERE BECAUSE WE'RE NOT IN THERE -- OUR ... IS DIFFERENT FROM THE SEARCH AND DESTROY, ... YOU ON SATURDAY. THE PRIMARY MISSION HERE ... AND THE DESTRUCTION OF THESE FACILITIES SO

IS ... THEY CANNOT ... ED.

I'VE GOT TO GO UP AND TAKE PART IN THIS CEREMONY. (END TEXT) ITEM

EX BR(2)

SB
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Q CARL, THE -- SENATOR FULBRIGHT SAID YESTERDAY THAT CONGRESS HAD NOT BEEN NOTIFIED OF THE U.S. DELIVERY OF 7200 M-2 RIFLES TO THE SOUTH VIETNAMESE -- TO THE CAMBODIAN GOVERNMENT. DO YOU HAVE ANY INFORMATION TO EXPLAIN THAT?

MR. BARTCH: WELL OF COURSE, THAT WAS A CLOSED SESSION, MURREY, BUT I WOULD HAVE NO QUARREL WITH THE STATEMENT THAT THE SENATOR MADE.

Q I WASN'T ASKING IF YOU HAD ANY QUARREL WITH IT, I WAS ASKING, ESSENTIALLY: IS THE GOVERNMENT ACTING UNDER THE FOREIGN AID ACT WHICH REQUIRES NOTIFICATION OF CONGRESS?

A YES, MY INFORMATION INDICATES, MURREY, THAT CERTAIN DETERMINATIONS AND REPORTS TO THE CONGRESS ARE REQUIRED UNDER THE FOREIGN ASSISTANCE ACT, IN CONNECTION WITH THE FURNISHING OF MILITARY ASSISTANCE AND THAT THESE DETERMINATIONS AND REPORTS ARE CURRENTLY

PAGE TWO STATE
BEING PROCESSED, AND WILL BE SUPPLIED TO THE CONGRESS IN ACCORDANCE WITH THE REQUIREMENT.

Q DO YOU MEAN AFTER THAT FACT?

A WILL BE SUPPLIED. YES.

Congress

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Q ONE QUESTION WAS: IS THERE A REQUIREMENT TO REPORT TO THE CONGRESS ON THE TRANSFER OF ENEMY CAPTURED EQUIPMENT?

CH 20
CAPTURED ENEMY EQUIPMENT IS SUBJECT TO THE SAME LEGAL REQUIREMENTS AS UNITED STATES GOVERNMENT PROPERTY FOR PURPOSES OF FURNISHING IT UNDER THE FOREIGN ASSISTANCE ACT. THE LAW REQUIRES NOTIFICATION OF CONGRESS UNDER CERTAIN CIRCUMSTANCES IN CONNECTION WITH FURNISHING MILITARY ASSISTANCE -- SPECIFICALLY, WHEN A PRESIDENTIAL DETERMINATION IS MADE UNDER 614 (A) OF THE FOREIGN ASSISTANCE ACT. BUT THE CATEGORIZATION -- FORGIVE THE WORD -- CATEGORIZATION OF PROPERTY AS, QUOTE, "CAPTURED ENEMY PROPERTY," UNQUOTE, DOES NOT OF ITSELF REQUIRE THAT A REPORT BE MADE TO THE CONGRESS.

HOWEVER, IN THIS CASE, A REPORT IS BEING MADE ON THE TRANSFER OF THE AK-47'S, FOR EXAMPLE, WHICH WERE CAPTURED PROPERTY.

Q SO THAT YOU DO NOT FEEL THAT THE CAPTURED EQUIPMENT HAS TO BE REPORTED TO THE CONGRESS BUT IN THIS CASE YOU WOULD?

A THAT WOULD BE MY CONCLUSION, YES, BASED ON THIS LEGAL ADVICE.

Q AND WHEN IS THAT REPORT GOING TO BE MADE? IS THAT THE 25TH, OR AM I CONFUSING THAT WITH SOME OTHER DATE?

A WELL, WITH RESPECT TO THE EQUIPMENT THAT WE HAVE BEEN DISCUSSING HERE THE LAST SEVERAL DAYS, DETERMINATIONS AND REPORTS ARE CURRENTLY BEING PROCESSED AND WILL BE SUPPLIED TO THE CONGRESS. THE FOREIGN ASSISTANCE ACT, I THINK, AS WE NOTED YESTERDAY, REQUIRES THAT THESE DETERMINATIONS AND REPORTS ARE TO BE SUPPLIED TO THE CONGRESS -- AND THE WORD IS "PROMPTLY" IN THE LAW.

WE HOPE TO PROVIDE THESE DETERMINATIONS AND REPORTS WHICH WILL COVER BOTH CATEGORIES WITHIN ABOUT 30 DAYS. THIS 30-DAY PERIOD BEGAN ON APRIL 22, THE DATE THAT THE FIRST SHIPMENT OF AK-47'S WAS DELIVERED TO CAMBODIA.

NOW, I MUST ACKNOWLEDGE THAT BECAUSE OF AN ADMINISTRATIVE ERROR, THE INITIAL DATE WAS ORIGINALLY GIVEN AS APRIL 25. FOLLOWING A MORE COMPLETE DETERMINATION, THE PERTINENT DATE HAS BEEN ESTABLISHED AS APRIL 22. THEREFORE, THE TARGET DATE FOR PROVIDING THIS INFORMATION TO THE CONGRESS WILL BE MAY 22 --

-- BUT I WOULD HAVE TO ALLOW FOR THE SLIPPAGE OF A DAY OR TWO.

Q AND FOR WHAT COMMITTEE IS THIS REPORT?

A FOREIGN RELATIONS COMMITTEE IN THE SENATE; HOUSE APPROPRIATIONS COMMITTEE IN THE HOUSE; AND THE SPEAKER OF THE HOUSE.

Q BOB, TAKING A STRICT CONSTRUCTIONIST LOOK AT YOUR STATEMENT YESTERDAY YOU SAID THAT THE CONGRESS HAS DELEGATED THIS AUTHORITY TO THE PRESIDENT. BECAUSE IT HAS DELEGATED IT TO THE PRESIDENT, ARE YOU ALSO SAYING IT HAS GIVEN UP ITS OWN RIGHT TO DEAL WITH CAPTURED ARMS? IN OTHER WORDS, IT ONCLUDES THE PRESIDENT IN THAT AUTHORITY.

ARE YOU ALSO SAYING THAT IT HAS EXCLUDED ITSELF FROM THIS AUTHORITY?

A NO, I DIDN'T SAY THAT; AND I DON'T INTEND TO SAY THAT.

Q SO THEN, ACCORDING TO YOUR OPINION, CONGRESS DOES HAVE A RIGHT TO DEAL WITH CAPTURED ARMS IN SOME RESPECT?

A YES. IT IS IN THE CONSTITUTION.

Q AND DOES IT HAVE THE RIGHT TO DEAL WITH CAMBODIAN CAPTURED ARMS, OR ARMS CAPTURED IN VIET-NAM AND TURNED OVER TO THE CAMBODIANS?

A I WOULD ASSUME THAT TO BE COVERED; YES.

Q BOB, DO YOU HAVE A DEADLINE FOR REPORTING ON THE M-2'S?

A WHEN THE REPORTS AND DETERMINATIONS WE TALKED ABOUT HERE ARE SENT TO THE CONGRESS, IT WILL INCLUDE THE DELIVERIES OF AK-47'S WHICH DATE BACK TO APRIL 22, AND, ADDITIONALLY, THE DIRECT U.S. MILITARY EQUIPMENT -- M-1'S, M-2'S -- I THINK SOME MORTARS -- WHICH WERE DELIVERED SUBSEQUENTLY.

Q DO YOU HAVE FIGURES ON ALL THESE THAT ARE RELATIVELY ACCURATE, BOB? AMOUNTS, I MEAN?

A NO. SOME FIGURES WERE USED BY AMBASSADOR BUNKER ON THE HILL THE OTHER DAY WHICH WERE APPROXIMATELY USED AND STAND, BUT THERE MAY HAVE BEEN SUBSEQUENT DELIVERIES SO I DON'T HAVE AN UPDATED FIGURE. THEY RUN INTO THE THOUSANDS, BOTH IN THE SMALL ARMS SUPPLIED FROM U.S. STOCKS AND ALSO ON THE AK-47'S.

Q BOB, IN YOUR STATEMENT AT THE BEGINNING OF THIS SECTION DEALING WITH CAPTURED ENEMY EQUIPMENT, YOU SAY THE LAW REQUIRES NOTIFICATION OF CONGRESS IN SUPPLYING OR FURNISHING CERTAIN EQUIPMENT. SPECIFICALLY, WHEN A DETERMINATION IS MADE UNDER 614 (A) IN SIMPLE WORDS WHAT DOES THAT MEAN? THE DETERMINATION HAS NOTHING TO DO WITH A DETERMINATION TO PROVIDE THE ASSISTANCE IN THE FIRST PLACE?

A YES.

Q WHAT DOES THAT SECTION PROVIDE?

A WELL, I CAN'T QUOTE THE LANGUAGE OFFHAND, JOHN. I CAN GET THAT EASILY ENOUGH.

Q WELL, WHAT I'M REALLY CONCERNED ABOUT IS: IS THERE ANY REQUIREMENT THAT THE PRESIDENT, IN SPECIAL SITUATIONS, IS SUPPOSED TO NOTIFY CONGRESS AT THE TIME THAT HE HAS DECIDED TO PROVIDE IT?

A NO. THAT CAN BE DONE AFTER THE FACT OF DETERMINATION.

Q SO, IN GENERAL, UNDER THE LAW, HE HAS THE POWER TO MAKE A DECISION, TO USE CERTAIN PROPERTY IN A SITUATION OF THIS KIND, AND TELL CONGRESS AS SOON AS POSSIBLE, OR REASONABLY, OR SOMETHING LIKE THAT?

A WELL, THE WORD IS "PROMPTLY" IN THE LAW; AND THAT HAS BEEN INTERPRETED TO ALLOW FOR, AS A RULE OF THUMB, 30 DAYS.

Q BOB, DO YOU KNOW WHEN THE DECISION WAS MADE TO DELIVER THE WEAPONS WHICH ARRIVED IN CAMBODIA ON THE 22ND?

A WE DATE IT FROM THE 22ND; YES.

Q THAT WAS THE FIRST DAY THE WEAPONS ARRIVED. IS THAT CORRECT?

A WELL, IT MAY HAVE BEEN THE DAY BEFORE.

Q BUT WE'RE TALKING ABOUT A 24-HOUR PERIOD IN THIS CASE? I MEAN, ROUGHLY?

A THAT'S POSSIBLE, MARVIN; YES.

EX (copy (5))

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MR. BARTCH: WE'VE HAD QUESTIONS OVER THE LAST FEW DAYS ABOUT THE NOTIFICATION TO CONGRESS ON THE PRESIDENTIAL DETERMINATION OF SUPPLYING AID TO CAMBODIA. LAST FRIDAY, THREE DOCUMENTS WERE SENT TO THE CONGRESS. THESE WERE SENT TO THE SPEAKER OF THE HOUSE, THE CHAIRMAN OF THE SENATE FOREIGN RELATIONS COMMITTEE, AND THE CHAIRMAN OF THE SENATE APPROPRIATIONS COMMITTEE.

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THEY CONSISTED OF THE PRESIDENTIAL DETERMINATION, OF A MEMORANDUM FROM THE SECRETARY OF STATE TO THE PRESIDENT -- AND A COVERING LETTER FROM THE DEPARTMENT, SIGNED BY DAVID ABSHIRE, ASSISTANT SECRETARY OF STATE FOR CONGRESSIONAL RELATIONS. AND THIS, OF COURSE, WAS WITHIN THE 30-DAY PERIOD, WHICH DATES FROM APRIL 22ND WHEN THE FIRST DELIVERY OF AK-47'S WAS MADE TO CAMBODIA.

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LEGAL BASIS FOR ACTION (UNDER U.S. LAW)

w/ / cam

Q. What is the legal basis for the President's decision to commit American lives and materials in Cambodia?

A. The President was acting under his Constitutional authority as Commander in Chief of the Armed Forces of the United States. Also, as Chief Executive, he has the supreme responsibility for determining and directing our foreign policy. This was basically a tactical decision by the Commander in Chief to protect U.S. forces in the field.

As for the international law basis for our actions, these measures are legitimate ones of collective self-defense. Cambodian neutrality had long ago been violated by North Vietnam which turned the sanctuary areas into a war zone directed against our troops.

THE POINT OF THE QUESTION IS

WHAT IS THE PRESENTATION OF THE INTERNATIONAL LEGAL POSITION?

A THE PRESIDENT OF THE UNITED STATES SAID THAT HE TAKES THIS ACTION CONSISTENT WITH HIS AUTHORITY AS COMMANDER-IN-CHIEF UNDER THE CONSTITUTION. IT IS A DEFENSIVE ACTION AGAINST FORCES WHICH ARE THREATENING OURS IN OCCUPIED TERRITORY IN CAMBODIA, WHERE THEY HAVE ESTABLISHED BASES, SUPPLY DEPOTS, AND OTHERWISE OCCUPIED THE TERRITORY FOR MORE THAN FIVE YEARS.

IF THERE'S ANY QUESTION OF INTERNATIONAL JURISPRUDENCE HERE, IT MIGHT ALSO BE DIRECTED TO THE OTHER SIDE.