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The Invasion of Czechoslovakia: Precendents in American Legal Diplomacy for the Socialist States' Claim of Right

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THE INVASION OF CZECHOSLOVAKIA: PRECEDENTS IN AMERICAN LEGAL DIPLOMACY FOR THE SOCIALIST STATES' CLAIM OF RIGHT

I
INTRODUCTION

A. International Law and the Use of Force

The struggle of public international law to regulate national policies which countenance the threat or use of force has met with much frustration. The proscription of the unilateral use of force to advance a state's interests has never been fully respected. In addition, the decade of the 1960's has revealed a trend of legal argument even more inimical to international order: the claim of multilateral authority to employ regional armed forces, not only to settle international disputes, but also to resolve matters within a neighbor-state's domestic affairs.[1]

The Soviet-led invasion of Czechoslovakia[2] in the summer of 1968 caused considerable consternation among proponents of the rule of law in international affairs. In justification, the Soviet Union proclaimed a class interpretation of international law, based on the interests and rights of socialism. This note will examine the elements of this recent Soviet interpretation of international law by drawing upon the record of American legal diplomacy for the "precedents" it discloses for the Soviet claim of socialist "right" to forcibly intervene in Czechoslovakia.

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[1]The concept that territorial propinquity may create special relationships between states is not new. See Wright, Territorial Propinquity, 12 A.J.I.L. 519 (1918). What is new is the trend towards making multilateral claims of international legal "right" to intervene in a neighbor-state's affairs.

[2]While frequently referred to as "the Soviet invasion," armed units from Bulgaria, East Germany, Hungary, and Poland also participated in the invasion.

B. The Principles of Reciprocity and Precedent in Legal Diplomacy

Of those concepts of equity carried into the realm of international law and relations from the national systems of law, the principle of reciprocity seems to be one of the most pervasive. It has implicitly dominated tariff negotiations for decades. Every delegate to a convention to reduce tariffs is wary lest some other state win trade advantages which would not be reciprocally available for his state.[3] The principle of reciprocity is the basis of the compulsory jurisdiction clause of the Statute of the International Court of Justice.[4]

Secretary General of the United Nations, U Thant, was referring to the principle of reciprocity in its general sense when he stated:

> If a particular regional organization considers itself competent to perform certain functions by way of enforcement in its own region, I am afraid that the same principle should be applicable to other regional organizations too.[5]

The idea implicit in the reciprocity principle in state diplomacy is that no state should claim for itself a broader range of international rights than it is willing to concede to others. Thus, one state's claim of legal right can become a precedent for the claims of other states which seek to exercise the same rights.

The United States has recognized the persuasiveness of such precedents and has employed them in its legal diplomacy.[6] One example is the response of the United States to the Soviet assertion that the exclusion of Cuba from representation in the Organization of American States in 1962 was unlawful. The

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[3] J. EVANS, UNITED STATES TRADE POLICY 29-40 (1967).

[4] I.C.J. STAT. art. 36, para. 2.

[5] N.Y. Times, May 28, 1965.

[6] The term "legal diplomacy" as used throughout this note refers to that aspect of state diplomacy which is characterized by the use of claims and assertions based on principles of international law. Simply stated, legal diplomacy is diplomacy carried on by the use of legal argument.

United States argued that the Soviet Union had earlier supported the principle of such an exclusion by its vote to exclude the Trujillo regime in the Dominican Republic. For some, that reference to the prior Soviet legal assertion carried almost the weight that the citing of a pertinent judicial precedent would carry in a common law proceeding.[7]

By the operation of the reciprocity principle the earlier action or argument adds to the justification for, or diminishes the disapproval of, the action or argument under review. It is in this sense that "precedents" for the socialist states' claim of "right" to intervene in Czechoslovakia are found both in the antecedents and in recent applications of American legal diplomacy.

II
THE SOVIET JUSTIFICATION FOR THE INVASION OF CZECHOSLOVAKIA

The first explanation offered by the Soviet Union for its invasion of Czechoslovakia in August 1968, was that its assistance was invited by unidentified Czech government and party leaders. The Czechs, despite their subjection to military occupation, saw some humor in the situation. An apt characterization of the failure of the first Soviet justification quickly spread across occupied Czechoslovakia: "What are 600,000 foreign troops doing in our country? Why, they are looking for someone who 'invited' them."

A more elaborate argument of legal justification appeared in a Pravda[8] article entitled "Socialist and International Duties

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[7]See Security Council debates on this issue in 17 U.N. SCOR, 1017th meeting 2-23 (1962); 17 U.N. SCOR, 1018th meeting 2-20 (1962); 17 U.N. SCOR, 1020th meeting 2-17 (1962).

[8]Pravda is the official Communist Party newspaper in which unsigned articles speak for the party leadership. The cited article, signed by S. Kovalev, a member of the Pravda staff, is somewhat less authoritative. It appears, nevertheless, that Kovalev expressed the views of the Soviet leadership.

of Socialist Countries," which presented the following points:[9]

1. "The socialist states respect the democratic norms of international law...."

2. But, "[f]ormal judicial reasoning must not overshadow a class approach to the matter. One who does it... begins to measure events with a yardstick of bourgeois law."

3. "... world socialism is the common gain of the working people of all lands; it is indivisible and its defense is the common cause of all Communists...."

4. The forces for "democratization"[10] in Czechoslovakia represented a movement towards that country's "detachment from the socialist community." Such "anti-socialist" forces were not properly contained by the Czech authorities.

5. The anti-socialists in Czechoslovakia were "supported" by "world imperialism."

6. "Self-determination" in Czechoslovakia would have meant the enabling of NATO forces to approach to the Soviet border, encroaching upon socialist vital interests.

7. After peaceful measures to control the Czech "anti-socialists" failed, armed forces were sent in to help protect the country's socialist sovereignty from the threat of anti-socialism.

Thus, the Soviet justification asserted only nominal respect for international law by declaring that a class approach must prevail over a judicial approach. World socialism was presented as the "world good" which is to be defended against all competitors by all socialists. Formal legal principles, the Pravda article asserted, do not restrict socialist action against anti-socialists.

Although such arguments might strike the casual observer of legal diplomacy as unprecedented and totally incredible,

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[9]Pravda, Sept. 25, 1968. For an English translation by the Soviet press agency, Novosti, see N.Y. Times, Sept. 27, 1968, at 3.

[10]See Czechs Look West, BUS. WEEK, May 18, 1968 at 38-39; see also View from Bratislava, REPORTER, June 13, 1968 at 14-17.

there are striking precedents for just such arguments both in early and in recent United States legal diplomacy. There is perhaps no better starting place than with that early and enigmatically enduring dogma of American diplomacy--the Monroe Doctrine.

III
PRECEDENTS IN THE MONROE DOCTRINE

Dexter Perkins, an authority on the Monroe Doctrine, begins his history of the Doctrine by stating: "The Monroe Doctrine, in its broad lines, is a prohibition on the part of the United States against the extension of European influence and power to the New World."[11] Early in its history the United States sought to make the New World an area of its own undisturbed dominance. Any extended European activity in the hemisphere, unless approved by the United States, was regarded as improper foreign intervention in American affairs. Thus, from its beginnings, the United States proclaimed that no state had a right to threaten its interests.[12]

In 1870, President Grant formulated the "no-transfer" principle as an addition to the Monroe Doctrine. He declared, "I now deem it proper to assert the equally important principle that hereafter no territory on this continent shall be regarded as subject to transfer to an European power."[13]

Weighing the validity of Grant's doctrine today--a century after its issuance--Perkins concludes:

> Such a corollary receives today, it is fair to say, the adhesion of the large proportion of the people of the United States. Its reason and logic appeal to most of us. The author of this volume is prepared to endorse it. But we must not blind ourselves to unpleasant facts with regard to it. Obviously, the Grant doctrine, if we are to call it that, is a pro-

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[11] D. PERKINS, A HISTORY OF THE MONROE DOCTRINE 4 (1963).

[12] See T. BAILEY, A DIPLOMATIC HISTORY OF THE AMERICAN PEOPLE 189 (1958).

[13] MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1897, 4016 (J. Richardson, 1899).

> hibition upon acts of peaceable transfer which may be perfectly legal in themselves. It is in derogation of the sovereignty of European nations; it can rest only upon an inherent right of self-defense, upon the existence of a vital national interest. On this ground we must sustain it, and on this ground alone.[14] (Emphasis added)

Insofar as this doctrine expresses present American policy, the Soviet Union is given a more modern precedent as well as an historical one (extra-legal, to be sure) for the derogation of international duties and legal principles in favor of the principle of "vital national interest." This precedent had an echo, if not a progeny, in the Pravda article's reference to the threat of NATO forces being able to approach Soviet borders, thus encroaching upon socialist vital interests.

Dexter Perkins quite appropriately and without undue subtlety illustrates the extra-legal bases of the concept of Secretary of State Richard Olney and others that the United States has a unique right in the Americas. Perkins states:

> The declaration that the republics of Latin America were "by geographic proximity (sic!), by natural sympathy (sic!), by similarity of governmental constitutions" (sic!) the "friends and allies" of the United States carried with it some exaggeration. Nor would these republics, jealous of their own independence as they were, accept without some demur the assertion that "the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition."[15] [The "sic's" are Perkins'.]

President Cleveland reasserted the myth of "right" or legality of United States' intervention in her neighbor-states' affairs in a message to Congress on December 17, 1895. He defended the Monroe Doctrine as finding "its recognition in those principles of international law which are based upon the theory that every nation shall have its rights protected, and its just claims enforced."[16]

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[14] D. PERKINS, supra note 11, at 159.

[15] Id. at 175.

[16] Id. at 179.

The "right" of the United States to intervene in a neighbor-state's affairs was the first legislative enactment sanctioning the Platt Amendment[17] to the Army Appropriation Bill of 1901.[18] The amendment asserted the right of the United States to intervene in Cuba "for the preservation of Cuban independence, ..., and for discharging its [the United States'] obligations with respect to Cuba." By changing "United States" to "socialist states" and "Cuba" to "Czechoslovakia," it can be argued that the Congressional action of 1901 places the 1968 logic of the Soviet justification into American law.

Three years later, in 1904, President Theodore Roosevelt announced the conditions for American non-intervention in Latin America. The President declared that if a nation "knows how to act with decency in industrial and political matters, if it keeps order and pays its obligations, then it need fear no interference from the United States.... The United States cannot ignore this duty."[19] Shortly thereafter the United States took over the administration of customs in the Dominican Republic in an application of the Roosevelt Corollary to that deviant neighbor-state. The President ordered the United States Navy to stop any revolt in the Dominican Republic.[20] Teddy Roosevelt both thought and acted under the premise that the United States had the right to exercise the expedient of an international police power.

Indeed, United States foreign policy throughout the period from 1823 to 1904 supplies some significant precedents for the socialist right argument advanced by the Soviets in justification for the Czech invasion. To be sure, these early precedents aremore properly regarded as examples of traditional state diplomacy rather than strictly legal diplomacy; it is also noted that they have been to some extent reversed by more recent Pan-American developments. But it is interesting to observe how these developments, which reversed the more traditional precedents of

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[17] CONG. REC. 3145 (1901).

[18] Act of March 2, 1901, ch. 803, 31 Stat. 895.

[19] PRINGLE, THEODORE ROOSEVELT 294 (1931).

[20] BISHOP, THEODORE ROOSEVELT AND HIS TIME 434 (1902); See PERKINS supra note 11, at 241.

state diplomacy, laid the foundations for more recent precedents in American legal diplomacy.

The United States ratified the principle of non intervention which was put into the convention issuing from the Seventh Pan-American Conference held in Montevideo in 1933.[21] At Buenos Aires in 1936, that convention was reinforced by a protocol declaring "inadmissible" the intervention of any American state in the affairs of another "for whatever reason" and further providing that every question of interpretation not settled through diplomatic channels should be submitted to conciliation arbitration, or to adjudication. It, too, was ratified by the United States.[22] By this action the United States seemed to be unequivocally denying its claim of right to intervene which the Monroe Doctrine had come to embody; it appeared that a new epoch in American diplomacy was born.

In the 1938 Declaration of Lima, the American states reaffirmed the concept of hemispheric solidarity and declared:

> [The] peoples of America have achieved spiritual unity through the similarity of their republican institutions, unshakeable will for peace... and through their absolute adherence to the principles of international law, of the equal sovereignty of states and of individual liberty without religious or racial prejudices.[23]

The 1939 Pan-American Conference of Havana reaffirmed the no-transfer principle and went further in binding the American states to a common commitment to the principle of collective security. In 1947, the American states again assembled for a hemispheric conference, this time at Rio de Janiero.[24] The collective security principle was reaffirmed with the formation

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[21] CONG. REC. 6496 (1937).

[22] Id. at 6494.

[23] N.Y. Times, June 6, 1940; see PERKINS supra note 11, at 952.

[24] For an account of the Conference see N.Y. Times, August 31, 1947.

of the Pan American Union and the treaty[25] further provided that a two-thirds vote could bind all the states to common action against a law breaking member-state. No state, however, could be required to employ armed force.

Despite the Pan American developments, Professor Perkins warns against the conclusion that the Monroe Doctrine itself has died in the face of the growing emphasis on regional and more strictly legal diplomacy. He states:

> The result, of course, is the same. The United States today, as in earlier times, will brook no European invasion of this continent, no indirect control of any Latin American state by another and alien power. In the deepest sense, the Monroe Doctrine remains today....[26]

Referring specifically to American diplomacy in the 1950's and early 1960's, i.e., before the 1965 intervention in the Dominican Republic, Perkins suggested the strong priority of considerations of ideology and security over legal principles. He candidly concludes:

> as recent events have clearly demonstrated, the United States will not permit the establishment of a Communist-satellite state in the New World, or, to put the matter more cautiously, will not permit any state to associate itself so closely with Russia as to jeopardize the security of the Americas. The fact has become crystal-clear in this year [of the Cuban Missile Crisis] 1962.[27]

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[25] 1 APPLICATIONS INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE 1948-1956 at 417-424 (1947). It was under the Pan American Union treaty that the United States sought to justify its use of force against Cuba in the missile crisis of 1962, and in the Dominican Republic in 1965. These matters are the subject of part IV sections B and C infra at 154, 160.

[26] D. PERKINS, supra note 11 at 370; see also DOZER, THE MONROE DOCTRINE 204 (1965); see also WILBUR, THE MONROE DOCTRINE, 126 (1965).

[27] PERKINS, supra note 11, at 389.

Briefly summarzing, the main thrust of the Monroe Doctrine seems to have been a warning to other nations that the United States regarded its national interests of first importance in the New World. Any significant extension of foreign influence in the Western hemisphere was to be regarded as an unjustified and intolerable threat to the United States. Pan-American developments of the 1930's brought the United States to reject unilateral intervention and it brought the Latin American states to accept the no-transfer principle. Nevertheless, it soon became evident that the same Pan-American developments which began with the renunciation of intervention had come to endorse the new concept of regional right to intervene against both the physical threat and ideological deviance. In the fifteen years between 1954 and 1969 the non-intervention and no-transfer doctrines seem to have been expanded so that their warning is to apply not only to "foreigners" but also to Latin American nationals and parties which may be deemed sympathetic to disfavored "international" doctrines, such as Communism. Of course, if these summarizations are valid, then the Pravda justification is well "precedented" in American diplomacy. The case studies which follow indicate that the United States' precedents for the Soviet justification are not only part of the traditions of the American republic, but also part of current American practice. Furthermore the more modern precedents are not simply political state diplomacy but have as their very basis contemporary American legal diplomacy.

IV

RECENT PRECEDENTS IN UNITED STATES LEGAL DIPLOMACY

A. Communism in Guatemala: the Caracas Resolution (1954)

In early 1954, Washington became increasingly anxious over Communist participation in the non-Communist Guatemalan government. The United States went to the Caracas Conference of the of the Organization of American States [hereinafter cited OAS] with a response to the Guatemalan government's policy of in-

creased permissiveness regarding Communist participation in Guatemalan affairs. The United States proposed a resolution characterizing, "Communist control" of an American state a threat to peace.[28]

In line with the pattern of United States hemispheric policy which emerged in the 1930's and blossomed into regional defense treaties and institutions in the 1940's, the United States sought to multilateralize its concern about the foreign influence of Communism in the hemisphere. This policy was considerably extended by the Caracas Resolution which declared that the domination or control of the political institutions of any American state by the "international communist movement" would constitute a threat to the "sovereignty and independence" of the American states, endangering the peace, and calling for appropriate OAS action under the Rio Treaty.[29]

The resolution was passed despite a Mexican warning that it would open the way for intervention in the domestic affairs of Latin American states on the vague test that there was foreign domination or control when a state was "only reorganizing its economic system."[30] In addition, to the extent that the resolution envisaged the use of force against a neighbor state, it seems to have violated the spirit of the United Nations Charter which outlaws the use of force to settle disputes.[31] But, the resolution was passed although apparently contrary to international obligations and it eventually carried almost the authority of regional law -- regional law which had defined international communism, as anti-democratic and as a threat to the peace of the American states.

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[28] 48 AM.J.INT'L. L. Supp. at 123.

[29] Inter-American Treaty of Reciprocal Assistance supra, note 25. Article 8 of the Treaty includes the "use of armed force" as a possible measure.

[30] Fenwick, Intervention at the Caracas Conference, 48 AM.J.INT'L. L. 451-53.

[31] U.N. CHARTER art. 2, para. 4.

When revolution broke out in Guatemala in June 1954, a Security Council resolution which would have had the effect of giving United Nations authorization to the OAS to handle the situation regionally was defeated by the Soviet veto. The Soviet representative argued that the issue of revolution in Guatemala was not a matter of only regional concern. Nevertheless, the OAS had already taken up the matter on its own initiative. In that forum, Guatemala urged that measures be taken against her Latin American neighbors, Honduras and Nicaragua, whom she accused of supporting the rebels in Guatemala. A Meeting of Consultation under Article Six of the Rio Treaty was scheduled to consider the danger to the peace posed by the intervention of "international communism" in Guatemala. The success of the rebels in ousting the incumbent government,which had permitted the participation of Communists,made the meeting unnecessary. American officials were understandably pleased; the threat of international communism in Guatemala had been controlled by forces within the country, so regional intervention was unnecessary.

The principal point to be noted is that fourteen years prior to the Soviet claim of right to invade Czechoslovakia the United States had initiated an ideological definition of "threat." In persuading the OAS to formally define domination by "international communism" as a threat to the peace, the United States gave the Soviet Union a precedent for its argument that the ideology of "anti-socialism" in a socialist state is properly considered a threat to its peace justifying a forceful intervention by the other socialist states. Thus, the Caracas Resolution shows that the Soviets' ideological definition of "threat" was not unprecedented.

B. The Cuban Missile Crisis (1962)[32]

In October 1962, when the presence of Soviet missile sites

[32]The United States-sponsored invasion of Cuba at the Bay of Pigs in 1961 is not treated here because it presented no assertion of right for the intervention. The United States at first denied its complicity in the invasion. Later the President assumed full responsibility, but offered no legal justification.

in Cuba was first established with certainty, the United States government felt constrained to act. The official debate was not over whether or not to act, but over precisely when and how to act. Apparently the legal considerations and the legal justification to be offered for the decision were considered subordinate. The Office of the Legal Adviser of the Department of State was not represented at the meetings of the Executive Committee ofthe National Security Council where the decisions on Cuba were made.[33] Formal legal arguments were prepared as an additional overall justification only after the Executive Committee had narrowed the range of possible United States responses to either an air strike or a blockade.

On October 22, President Kennedy addressed the nation to describe the missile build-up in Cuba. He declared that the new missile bases violated:

1) The Rio Treaty of collective self-defense,[34]

2) The traditions of the United States and the hemisphere,[35]

3) A Joint Resolution of the eighty-seventh Congress,[36]

4) The Charter of the United Nations, and[37]

So, while both the Bay of Pigs and the Czech invasions represent a great state's attempt to effect a change by force in the government of an ideologically deviant neighbor-state, in terms of legal diplomacy, the one offers no "precedent" for the other.

[33]See E. ABEL, THE CUBAN MISSILE CRISIS 46 (1966) for a list of the original members and subsequent changes.

[34]Supra note 25.

[35]Apparently this is a reference to the Monroe Doctrine and to the various inter-American developments from the 1930's, discussed supra Part III at 147.

[36]A Congressional Resolution, of course, has no effect on the issue of international legality. Presumably it was included primarily to indicate that the Chief Executive's policy was previously declared and supported by the Congress.

[37]The reference is apparently to U.N. CHARTER art. 2 para. 4 which states: All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence on any state, or in any other manner inconsistent with the Purposes of the United Nations.

5) Principles of international stability.[38]

President Kennedy declared the Soviet-Cuban missile build-up to be a "deliberately provocative and unjustified change in the status quo" which the United States could not accept if American commitments would ever be trusted again.[39] The President pledged the United States to obtaining the withdrawal of the missiles from Cuba. The President announced that he had already directed the following steps:

1) The imposition of a strict "quarantine" on all offensive military equipment bound for Cuba,

2) The continuance of close surveillance of Cuba,

3) The immediate calling of a meeting of the Organization of American States "to consider this threat" and to invoke the Rio Treaty in support of all necessary action,

4) The request for an emergency meeting of the Security Council "to take action against this latest Soviet threat to world peace."

The President directed the forceful quarantine and close surveillance of Cuba before any consultation with the OAS and without any discussion or authorization from United Nations. The United States unilaterally announced and executed its plans to deploy its armed forces around Cuba before attempting any peaceful settlement of the dispute. An OAS meeting was called for the following day.

Although it is at least arguable that the missile build-up violated the Rio Treaty, hemispheric traditions, a Congressional Resolution, and principles of stability, it is difficult to fashion a persuasive argument to the effect that the build-

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[38]Most students of the crisis seem to believe the missiles were bound to elicit a United States response, and in that sense, did upset international stability. See,e.g., the comments of Myres McDougal, AM.J.INT'L. L. Proceedings, 1963.

[39]1962 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES 806-809.

up violated the United Nations Charter.[40] Even if the threat the build-up posed was a "threat" under article 2, paragraph 4 of the Charter, the United States still was bound by its obligations under article 2 paragraphs 3 and 4:

> 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.

No clause in the United Nations Charter relieves a state from these prohibitions, even if another state has threatened to use force, except in the case of an armed attack.[41]

Because of the weakness of the argument that there was a threat under the Charter, the United States also premised its legal justification on the Regional Arrangements Chapter[42] of the Charter. Since the OAS met the following day, endorsed the "quarantine," and joined the United States in the call for the missiles' withdrawal, the United States was largely relieved of the task of defending its original threat of force as a unilateral move. The United States was then able to proceed in the exercise of its legal diplomacy to defend its actions under Chapter VIII provisions for the settlement of disputes through

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[40] While U.N. CHARTER art. 2, para. 4, makes a threat of force unlawful, it is questionable how Soviet missiles in Cuba were a "threat" in the Charter sense any more than are Soviet missiles in Russia or than American missiles in Turkey. See Wright, The Cuban Quarantine, 57 AM.J.INT'L L. 548-553 (1963).

[41] Art. 51 of the Charter recognizes the right to use force in self-defense "if an armed attack occurs." McDougal and Feliciano in LAW AND MINIMUM WORLD PUBLIC ORDER, 233-40 (1961), suggest that the right of "anticipatory self-defense" existing under customary international law may still exist under the U.N. Charter, but even if that is so, no such right could be claimed for either the Cuban blockade or the Czech invasion for there was no imminence of attack by either Cuba or Czechoslovakia. Neither was imminence of attack alleged in either case although in both cases there seemed to be fear of increased susceptibility to attack.

[42] U.N. CHARTER, Chapter VIII, arts. 52-54.

regional arrangements.[43] While Chapter VIII was originally put into the United Nations Charter with the American states predominantly in mind, it was never before employed by the OAS as an explanation of "right" justifying the actual employment of regional armed forces against a member state. Indeed, the clear language of articles 52 through 54 seems to counter any such claim. Article 52, paragraph 1, authorizes the existence of "regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action...."

What is "appropriate for regional action" is clarified by article 52, paragraph 2:

> The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve Pacific Settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.[44]

Article 52, paragraph 3 reinforces the point that what is appropriate for regional action is the peaceful settlement of regional disputes. Any further doubt is put to rest by the express language of article 53, paragraph 1, which provides that no "enforcement action" may be taken by a regional agency without United Nations authorization.[45] Article 54 adds the requirement that the Security Council "be kept fully informed of activities undertaken or in contemplation...."[46]

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[43] See Cheyes, The Legal Case for U.S. Action in Cuba, 47 DEP'T STATE BULL. 763 (1962).

[44] U.N. CHARTER art. 52, para. 2.

[45] U.N. CHARTER art. 53 para 1 states:

> The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

[46] U.N. CHARTER art. 54.

Nevertheless, the United States maintained that the OAS action was justified in terms of Chapter VIII as a proper regional response to a member states threat to the region. To get around the provisions which limit regional authority to the use of peaceful measures and expressly make unlawful any enforcement action without United Nations authorization, the United States Department of State presented three arguments:

1) The "quarantine" was not "enforcement action" because it was not regional action which was obligatory on OAS members, but only recommendatory. Therefore, no authorization was required.[47]

2) "Authorization" did not mean PRIOR authorization.

3) Authorization was given by the Security Council "constructively" by virtue of the fact that the Council did not condemn the United States--OAS action.[48]

In resting its case on these rather doubtful arguments the United States chose a novel legal justification for its action.[49] Documenting the events of the missile crisis, one writer noted the United States did not employ the more traditional argument of "self-defense against attack" preserved in article 51 of the United Nations Charter lest it provide the Soviet Union an open-ended precedent upon which to base its use of force against its socialist neighbor-states by loose interpretation of "attack" and "self-defense."[50]

Nevertheless, the United States appears to have accomplished what it had tried to avoid. It provided precedents in its legal diplomacy which could be used to defend Czech-type suppressions

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[47]This argument was based on Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151; the opinion is digested in 56 AM. J. INT'L. L. 1053 (1962).

[48]Meeker, Defensive Quarantine and the Law 57 AM.J.INT'L. L. 515-524 (1963).

[49]The arguments on both sides of the debate on the legality of such assertions are discussed in Wright, The Cuban Quarantine, 57 AM. J. INT'L. L. 558-559 (1963).

[50]E. ABEL, supra note 33, at 115.

as long as the action taken could be multilateralized so as to be made in regional concert.

Following these American precedents, the Soviets could argue that the invasion of Czechoslovakia 1) was not "enforcement action" under the United Nations Charter because it was not obligatory, but only recommendatory, on the fraternal socialist states, and therefore no authorization was required; 2) that, in any event, the required authorization need not be prior authorization; and 3) that, in fact, authorization was given constructively since the Security Council never formally condemned the invasion. Indeed, these "precedents" were boldly presented by the United States as sound principles of international law. These same points of legal argument were not specifically used in the Pravda justification. But the Soviet justification may have been inspired by the general precedents of a regional claim of right to employ force against a neighbor-state which is allegedly threatening the security of the region.

C. The Dominican Intervention (1965)

In 1965, the United States showed that it did not limit the application of its claims of regional right to use force against a neighbor state to cases involving physical threats. Armed intervention on the grounds of ideological deviancy provided startling new international precedents.

The government of the Dominican Republic fell in the early hours of a revolution in the spring of 1965.[51] The rebels announced the return of Juan Bosch -- the country's first constitutionally elected leader, who had been deposed several years earlier. Air Force units opposed the return of Bosch and were resisting the take-over. President Johnson ordered a United States Navy "evacuation" task force to land on the island to provide protection for American and other nationals whom the authorities in Santo Domingo declared they could not protect. After

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[51] For a factual account of events, see: CENTER FOR STRATEGIC STUDIES, DOMINICAN ACTION - 1965 (1966); THE HAMMARSKJOLD FORUMS, THE DOMINICAN REPUBLIC CRISIS 1965 (1967).

controlling the capital for three days, the pro-Bosch rebels partially withdrew leaving the country with no apparent leadership and in a situation of continued fighting. The Air Force set up a ruling junta, announced democratic intentions, and asked the United States to send Marines to put down the "Communist" directed rebellion. Later that day, the United States ambassador to the Dominican Republic sent a recommendation to Washington that Marine protection be provided for the evacuation and United States Embassy. In addition, he advised the United States government to consider "armed intervention which goes beyond the mere protection of Americans..." to prevent "another Cuba."[52]

U.S. officials in Washington had been considering just such a move. Two days after the initial American forces landed in the Dominican Republic, the United States increased the Marines and sent airborn units. New York Times correspondent Tad Szulc reported that "a high ranking United States naval officer" had declared that the function of the Marines was not only to protect the evacuation proceedings, but also "to see that no Communist government is established in the Dominican Republic."[53] Later that day, President Johnson referred to the Dominicans as "our fellow citizens of this hemisphere," and spoke of the danger to them and to foreign nationals. "Meanwhile," the President went on to say, "there are signs that people trained outside the Dominican Republic are seeking to gain control." In words recalling the Monroe Doctrine, the President gave assurances that the United States would not permit the peoples of the hemisphere to fall prey to international conspiracy from any quarter.

President Johnson addressed the nation again on May 3rd to announce that Communists had taken control of the Dominican rebellion.[54] The President referred to the OAS Punta del Este

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[52]See MARTIN, OVERTAKEN BY EVENTS (1966).

[53]N.Y. Times, April 30, 1965.

[54]1965-1 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES 461.

declaration of January 1962,[55] and affirmed that the principles of Communism are "incompatible with the principles of the Inter-American system." The goal of his government, the President declared, was "to prevent another Communist state in this hemisphere."[56]

After the events of the Dominican crisis had calmed, the State Department prepared a list of Communists involved in the "civil war."[57] Convincing documentation of their control of the rebellion was never given. For, in the meantime, the administration shifted its legal justification to the ground that the rebellion might have become Communist had the United States not intervened. The United States, it was argued in retrospect by the Office of the Legal Adviser, had acted to preserve the legal right of the OAS to act.[58] Even the former Legal Adviser, Abram Chayes, and his colleagues who collected and analyzed the legal documents following upon the Dominican crisis, observed that "this argument may have sounded somewhat cynical, especially in view of the strenuous United States efforts to secure OAS endorsement of its action."[59]

Also of interest in the "Opinion of the Legal Adviser" is the following statement which was partially echoed in the Pravda article:

> The United States refused to observe merely the form of legalistic procedures to the detriment of fundamental rights of a nation under the OAS Charter.[60]

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[55] See Final Act, Second Punta del Este Conference (Eighth Meeting of Consultation of OAS Foreign Ministers), January, 1962.

[56] Id.

[57] THE CENTER FOR STRATEGIC STUDIES, supra note 48, at 65.

[58] United States Department of State mimeographed distribution (unpublished) of May 7, 1965, entitled "Legal Basis For the United States Actions in the Dom. Rep." This document is cited in 2 CHAYES, EHRLICH, LOWENFELD, THE INTERNATIONAL LEGAL PROCESS, at 1173f (1968).

[59] 2 CHAYES, EHRLICH, LOWENFELD, THE INTERNATIONAL LEGAL PROCESS Problem XV at 1184 (1968).

[60] Opinion of the Legal Adviser, Department of State, May 7, 1965.

Apparently recognizing the feebleness of its strictly legal points the Opinion continued:

> Participation in the Inter-American system, to be meaningful, must take 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. The rights and obligations of all members of the OAS must be viewed in light of this reality.[61] (Emphasis added.)

It is reported that there was considerable debate within the United States government as to whether, or not, the Opinion of the Legal Adviser should be published at all, given the widespread criticism of the "legality" it argued.[62] Apparently, it was finally decided that the failure to offer any legal justification would hurt the United States position in the United Nations and OAS and would gravely damage the American image as a nation committed to the rule of law.

The United States won OAS support for its intervention by the bare two-thirds vote required; this required the votes of the United States and of the Dominican Republic. But even the common course agreed upon by the OAS was as much a criticism of the initially unilateral United States intervention as it was an endorsement. The resolution stated:

> WHEREAS,
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> ... The formation of an inter-American force will signify ipso facto the transformation of the forces presently in Dominican territory into another force that would not be that of one state or of a group of states but that of the Organization of American States, an interstatal organization, which organization is charged with the responsibility of interpreting the democratic will of its members...."[63]

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[61] Supra note 55.

[62] CHAYES, et al., supra note 59, at 1186.

[63] Act Establishing Inter-American Force, Tenth Meeting of Consultation. Meeting of OAS Foreign Ministers.

This resolution did not ratify the unilateral United States action, nor did it endorse the claim of right of the United States to intervene for the OAS in urgent situations. It said, in effect, that the national forces of the United States would be replaced by forces of OAS--the regional organization with the responsibility for taking regional action.[64] It is striking that the OAS resolution carried no reference to Communism--the basic allegation in the United States justification of its intervention. The initial intervention by the United States alone was not endorsed, as such, the OAS simply transformed the United States forces then in the Dominican Republic into OAS forces.

The Secretary General of the United Nations, U Thant, addressed himself to the implications of the regional action by the OAS.[65] The Secretary General expressed the view that the OAS had set an embarrassing and dangerous precedent. He expressed hisfears that similar "rights" might be claimed by other groups of states. Specifically he noted the danger that the Arab League, which is perhaps more an ethnic than a regional organization,might employ the OAS in an action against Israel.[66]

On the day after the Secretary General expressed his ominous misgivings, the President of the United States seemed to accept the "reciprocity" implications of such "regional action." The President asserted that the right of a people to decide the fate of their state rests only "partly" with the people of that country and "partly with their neighbors."[67]

In 1965 the Soviets, through their representative to the United Nations Security Council, Fedorenko, based their rejection of arguments favoring regional action on the principle

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[64]Nevertheless, it may be said that the OAS did not formally renounce the U.S. action "on its behalf." Theoretically, the United States could cite this non-condemnation and assert a legal right to act for the OAS on the grounds that it was "authorized" to do so because it was not condemned for its Dominican action.

[65]Supra note 5.

[66]Id.

[67]Address by President Johnson, Baylor University, May 28, 1965.

of the sovereign independence of states. Specifically, the Soviets advanced the following arguments:

1) Such regional employment of force violated Article 2 of the United Nations Charter,

2) As per Article 29 of the Charter, only the Security Council can determine threats to the peace, and

3) Article 53 prohibits any regional enforcement action "without the authorization of the Security Council."[68]

Yet despite this initial rebuke to the United States-OAS "precedents," the Soviet Pravda justification followed the general rationale of those U.S. "precedents" to the effect:

1) that not too much weight is to be given to formalistic judicial reasoning as applied to the United Nations Charter,

2) that regional (or "fraternal") organizations are competent to determine threats to the peace and to take forceful action against deviant neighbor-states, and

3) that such regional actions are not to be frustrated by United Nations interference.

So, while in 1965 there had been American precedent and Soviet dissent, in 1968 the Soviets appeared to concur in the principle developed and asserted by the American precedents: ideological deviancy in a neighbor-state can constitute a threat to the peace which the larger grouping of states has a "right" to suppress with armed forces if necessary.

CONCLUSION

The degree to which the Monroe Doctrine and the Caracas, Cuban, and Dominican "precedents" may have influenced the Pravda justification for the socialist states' invasion of Czechoslovakia may never be known. However, one's sense of outrage at the

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[68] Security Council Debates, 20 U.N. SCOR (1965).

Soviet action and arguments of legality must be somewhat numbed by the recognition that the socialist claim of right to intervene against the forces of anti-socialism does not go much beyond American claims of right to intervene against Communism.

We are encouraged to hope that legal diplomacy will be more than the servant of political diplomacy, by the present Legal Adviser, Leonard Meeker, who has stated:

> If we are struck today by the existence of international discord and open conflict in the world, we should reflect for a moment on the change in intellectual climate which has been occurring even in our own time. Intellectual climate is important. While it may not govern the events of today, it creates the premises and assumptions of tomorrow and forms the matrix of next year's decisions and actions.[69]

Thus, we should ponder the implications of asserting for regional organizations the authority that was assumed by the OAS in the Dominican crisis.[70]

It is submitted that the United States is too influential in the international system not to consider how the legal precedents which it propounds are going to influence international norms. The reciprocity principle has at least an implicit pervasiveness, and precedents in United States legal diplomacy will therefore inevitably diminish the criticism that can otherwise be levelled against contorted claims by other states.

If more lawful international conduct is to be demanded of states, the existence of the reciprocity principle must be recognized and American legal diplomacy must be grounded on sounder principles of law than those in the precedents reviewed here. Until this happens, the law will continue to follow events instead of governing them.

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[69] Meeker, Prospects of Law in a World of Conflict, 52 DEPT. STATE BULL. 900.

[70] See U Thant, Interview, supra note 5.

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