

COMMON SUBJECTS STUDENT'S STUDY GUIDE

**LEGAL ASPECTS OF INTERNAL DEFENSE/INTERNAL
DEVELOPMENT OPERATIONS**

**PREPARED IN ACCORDANCE WITH ANNEX AL
TO TRAINING DIRECTIVE HEADQUARTERS
UNITED STATES CONTINENTAL ARMY
COMMAND**

SUBJECT: COMMON SUBJECTS, ARMY SERVICE SCHOOLS

USAR SCHOOLS COURSE (1 HOUR)



**THE JUDGE ADVOCATE GENERAL'S SCHOOL
U. S. ARMY
CHARLOTTESVILLE, VIRGINIA**

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THE JUDGE ADVOCATE GENERAL'S SCHOOL, U. S. ARMY
Charlottesville, Virginia 22901

STUDENT'S STUDY GUIDE

SUBJECT: Legal Aspects of Internal Defense/Internal Development Operations

COURSE: USAR School Branch Officer Advanced Course

LESSON TITLE: Legal Aspects of Internal Defense/Internal Development Operations

LESSON OBJECTIVE: To develop a broad understanding of the legal aspects of the military phase of Internal Defense/Internal Development Operations, particularly the international rules pertaining to civil wars of an insurgency nature.

PRESENTATION: Lecture-Conference

HOUR: One

REFERENCES: Required reading: Student's Guide - Legal Aspects of Internal Defense/Internal Development Operations, pages 1-24 and Appendix 6, page 44.

Recommended reading: Remainder of Student's Guide - Legal Aspects of Internal Defense/Internal Development Operations; FM 27-10, The Law of Land Warfare (1956), paras. 1-14, 60-66; DA Pam 27-161-2, II International Law (1962), pages 25-28.

Student Study Guide Outline

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INTRODUCTION

The armed forces in recent times have placed much emphasis on "counterinsurgency." With the intensification of communist inspired civil wars this is understandable and necessary. But now we have substituted two new terms which we prefer because they are more descriptive of the total effort involved in these questions.

An "internal defense operation" is "any operation conducted by [the] host country or its allies--security establishment, military, paramilitary, police or security organization--directly against armed insurgents, their underground organization, support system, external sanctuary or outside supporting power."¹

An internal development operation is "any operation undertaken by [the] host government or its allies to strengthen the local government politically, economically, socially or militarily, or make more viable its national life." ^{1A}

During this hour, the instructor is going to discuss the legal aspects of these operations, particularly with regard to military action. Please understand that military action is sometimes, but not always, the most efficient course of action. Under some circumstances, recourse to economic and/or political action is a preferred alternative. Also, you should appreciate that our focus on the legal aspects of military action is not intended to imply in the least that strategic, tactical, intelligence and logistical, etc., aspects are irrelevant. Your instruction here should be blended with other specialized instruction you have or will receive to complete the picture of military operations against insurgents.

The purpose of this study guide is to give you some background in the material which will be covered by the instructor. It is not a substitute for the lecture itself. However, the material contained here will enhance the benefit of the conference hour for the student and enable him to participate in the class. The Outline at Appendix 10 will assist you in taking notes during class.

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1. Army Regs. No. 320-5, Dictionary of United States Army Terms, Change No. 2, p 215 (21 Feb 66).
 - 1A. AR 320-5, Change No. 2, 215 (21 February 1966).

Since internal defense/internal development operations, by their very definition, contemplate relationships between States, international law provides part of the legal aspects of these operations. Therefore, during his formal presentation your instructor will discuss what international law is, some of the guidelines and rules it provides for rational international relations, and particularly its guidelines and rules pertaining to internal defense/internal development operations.

I. NATURE OF INTERNATIONAL LAW

The drafters of the Constitution committed the new nation to the observance of international law. This was no startling or unexpected decision; rather it was but a perpetuation of the "law habit" inherited from Great Britain as the common law. Not only does the Constitution make our treaties part of the supreme law of the land, but it also gives to Congress the authority to define and punish offenses against international law. One way Congress has done this is in articles of the Uniform Code of Military Justice. Article 21 of the UCMJ, for example, recognizes the jurisdiction of a military commission over offenders and offenses under the law of war. The law of war is international, but it is part of our law too. These commissions, then, may try anybody charged with an offense against the law of war whether or not the offense is defined in a statute of the United States.

International law is a law for States. The world today is divided into more than 140 States. There is not a land area of the globe that is not controlled in one way or another by one of them. International law is designed to guide the conduct of States not only when they deal with one another but also in their transactions with other international organizations such as the International Committee of the Red Cross and the United Nations, and to a limited extent, their dealings with individuals.

International law exists because it is to the benefit of all the States that some sort of order govern their international dealings. There may be disagreement among them as to what law applies to a given situation. But there is no disagreement as to the central fact that some sort of rules are necessary to reduce friction.

Rules are necessary when it is understood just what entity international law is attempting to govern. Mankind has organized itself into "States." These "States" have each taken on a personality. In the first instance, it is to these "States" that international law is addressed.

States in the State system are said to be "sovereign." This means that they are (1) supreme within their own borders and (2) independent of legal control by some other State. They alone are the supreme lawmaker and regulator of activities within their borders. This "supreme within" is not only a right, but also a responsibility. The State is usually responsible for everything that occurs within its borders. No State can arrest individuals within the borders of another State, or in any other manner exercise authority within another State without that State's consent. Though a State may be "supreme within" it cannot be supreme outside its borders. Therefore, the second aspect of sovereignty, "independent without," does not mean the State is in any sense supreme outside its boundary. Its independence from other States merely means that one State cannot dictate law to another. But since rules are necessary for some sort of international order, these rules are made by the States themselves. Therefore, the States themselves are the ultimate drafters of the content of international law. The following shows the manner in which States make rules for their own international conduct.

II. DEVELOPMENT OF INTERNATIONAL LAW

In general, the rules of international law are derived from the common consent of the nations of the world. Determination of whether such consent exists in a particular case is a question of fact.

A. Custom.

Until fairly recent times, international laws have been developed primarily by the customary practice of states. At the present time there are many conventions, pacts, or treaties which cover a wide scope of international law. However, custom still retains a prominent position, both because it is through custom that conventions are interpreted and because many conventions (treaties) are not considered binding as general international law until their doctrines are accepted as customary by some nations which are not parties to the Convention. In the beginning, a treaty is binding only on the parties to it.

Some definitions of custom are:

(1) (Custom arises when) . . . a clear and continuous habit of doing certain things a certain way has grown up under the conviction that this habit is obligatory or right.

(2) State practice accepted as law between nations.

(3) Custom is a usual or habitual course of action, a long-established practice; in international relations, a long-established practice of states. But the frequency of conduct, the fact that certain actions or abstentions have repeatedly been performed during a certain period of time, is only one element of the law-creating fact called custom. The second element is the fact that the individuals whose conduct constitutes the custom must be convinced that they fulfill, by their actions or abstentions, a duty, or that they exercise a right.²

As may be seen from the definitions set out above, the essence of customary international law lies not only in the existence and universal application of the custom but in that it is accepted as obligatory by the nations of the world, or at least a large proportion of those nations. It then becomes "accepted as law."

The determination that a certain usage has blossomed into customary international law is a factual one. As in the case with most factual determinations, there are a number of criteria to be studied in order to resolve the issue.

Judge Manley O. Hudson has suggested the following criteria for determining the existence of a rule of customary international law:

- (a) Concordant practice by a number of States with reference to a type of situation falling within the domain of international relations.
- (b) Continuation or repetition of the practice over a considerable period of time.
- (c) Conception that the practice is required by, or consistent with, prevailing international law.
- (d) General acquiescence in the practice by other states.³

2. Kelsen, Principles of International Law 307 (1952).

3. Briggs, The Law of Nations 25 (3d Edition, 1952).

There are two interesting United States Supreme Court cases which show how a court examines facts in order to determine the existence of a rule of international law. In The Paquete Habana,⁴ the Court determined that a rule of customary international law exempted coastal fishing vessels from capture by enemy nations. The Court examined the practice of practically every navy in the world on this point dating back to an agreement between England and France on the subject during the Hundred Years War (1403). The Court determined that since 1794 the uniform practice of so many maritime States had developed a rule of customary international law which was binding on the United States. By the judgment of the Court the owners of two Spanish coastal fishing vessels were compensated for their capture by the United States navy during the Spanish American War. The second case, The Scotia,⁵ dealt with the question of whether international law required sailing vessels to carry colored lights instead of white ones. It also dealt with the positioning of the lights. In this case the determination that such a rule existed was made from the numerous examples of such requirements in the national laws of the great maritime nations and their acceptance by other nations as binding international law. It must be remembered that these decisions themselves did not make the rules in question international law, except in so far as they bound other United States courts. However, they would be strong additional evidence of what the customary rules of international law are.

B. International Agreements.

A convention or agreement or treaty (merely different titles given to international agreements) is normally binding only on those states that are a party to it. It may either codify, expand or modify an existing rule of customary law, or it may abrogate such a rule as between the parties, or it may make a rule where none existed before.

Many modern authorities in the field have compared treaties to "international legislation." This is helpful provided you understand that classic international law doctrine holds that treaties do not bind States which do not consent to be bound. However, many examples of international conventions which shaped customary law can be given.

Conventions tend to establish international law for non-parties by:

4. 175 U.S. 677 (1900).

5. 14 Wallace 170 (1871).

(1) Purporting to codify a preexisting rule of international law. Many treaties contain provisions that purport to expound a valid preexisting rule of international law. They are followed by the contracting parties, not only because they are part of the treaty, but also because they are considered binding customary international law. Such a fact lends substantiation to a later assertion that the rule is a custom followed as international law. Naturally the greater the number of nations that follow it, and the more often it is followed as binding, the more likely it is to be universally accepted as such.

(2) Establishing a strong precedent and incentive for nonsignatory nations to follow. There has been a substantial increase in the frequency and importance of agreements made, not by two or three states as a matter of private business, but by a considerable proportion of the civilized states at large, for the regulation of matters of general and permanent interest. Such acts are often the result of conferences held for that purpose, and they are framed to permit the subsequent adhesion of Powers not originally parties to the proceedings. When all or most of the great Powers have deliberately agreed to these rules, they will have very great influence even among those states which have never expressly adopted them. Often, in the absence of prompt and effective dissent by some Power of the first rank, the rule may well, in time, become universally accepted as binding international law by parties and non-parties alike.

For instance, not all belligerents in World War II were parties to the Hague Convention No. IV, Respecting the Laws and Customs of War on Land, drafted in 1907. However, many of the rules announced in that Convention and its attached Regulations had become binding on all civilized nations. Perpetrators were thus held accountable for violations of the rules against assassination, denial of quarter, improper use of flags of truce and mistreatment of prisoners, whether or not their government was a party to the Hague Convention.

III. EVIDENCES OF INTERNATIONAL LAW

Evidences of international law are the books used to determine the content and extent of the law created by treaties, custom and general principles. The principle evidences are books by historians and learned international lawyers, state documents relevant to international relations, instructions to the armed forces, and decisions of national and international courts.

A. Text Writers.

Courts have valued the role of text writers in international law as expert witnesses of the law.

1. West Rand Central Gold Mining Company v. The King.⁶

"The views expressed by learned writers on international law have done in the past, and will do in the future, valuable service in helping to create the opinion by which the range of the consensus of civilized nations is enlarged. But in many instances their pronouncements must be regarded rather as the embodiments of their views as to what ought to be, from an ethical standpoint, the conduct of nations inter se, [among themselves] than the enunciation of a rule or practice so universally approved or assented to be fairly termed . . . law.

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". . . the international law sought to be applied must, like anything else, be proved by satisfactory evidence, which must show, either that the particular proposition put forward has been recognized and acted upon by our own country, or that it can hardly be supposed that any civilized state would repudiate it. The mere opinions of jurists, however eminent or learned, that it ought to be so recognized, are not in themselves sufficient. They must have received the express sanction of international agreement, or gradually have grown to be part of international law by their frequent practical recognition in dealings between various nations"

2. The Paquete Habana.⁷

"Such works are resorted to by judicial tribunals, not for the speculation of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."

3. In Queen v. Keyn,⁸ it was stated that, "no unanimity on the part of theoretical writers would warrant the judicial application of the law on the sole authority of their views or statements."

It may be said that the opinions of authors are, in the final analysis, only as authoritative as the evidence upon which those opinions are based. While this may be true as to opinions concerning existing law, it cannot be denied that the works of authors have done much to influence the development of international law.

6. 2 Kings Bench 391 (1905).

7. 175 U.S. 677 (1900).

8. 2 Exch. Div. 63 (1876).

B. State Documents.

International law in action is most frequently seen not as an issue to be litigated in court, but as the basis for the action of States in the conduct of international affairs. Therefore, primary evidence of international law is to be found in State documents pertinent to these affairs. In the case of the United States many of these documents can be found in an annual publication called Papers Relating to the Foreign Relations of the United States. In addition, the United States position in various international affairs is reflected in the State Department Bulletin, a weekly publication. Other States have similar publications, as does the United Nations, and its predecessor, the League of Nations.

C. Judicial Decisions.

Normally, the decision of a national court, on a question of international law, is binding only upon the parties to the dispute; and in the United States, on the other courts subject to judicial review by the court rendering the decision. However, a fairly unanimous body of decisions by national courts on a point of international law will usually furnish compelling criteria for the ascertainment of a rule of international law. This is particularly true of courts in the major countries. Such decisions are most compelling when the decisions put international interests first and national interests second.

There is no rule which requires judicial precedent to be followed in international law. Hence, precedents are not binding authorities. However, judicial precedent is still a major guide to international law.

. . . Judges, statesmen, and lawyers dealing with questions of international law inevitably give weight to the work of their predecessors and their colleagues. The customary side of international law has, like the common law, largely developed from case to case, and an increasing number of these cases have been submitted to international tribunals or have come before the "municipal" courts of various nations. Decisions of the courts play an important part in the development of customary law. They help to form international custom and they show what the courts, national or international, have accepted as international law.⁹

Technically the decision of an international tribunal with respect to an international law question is binding only on the States appearing before it. However, the decision will help in similar cases because it is supported by a written, reasoned opinion which is likely to be considered persuasive.

9. Bishop, *International Law* 37 (2d ed. 1962).

The importance of the judicial opinions of national courts as compared to international tribunals should not be overlooked. First, the national courts actually decide far more cases involving international law than does the International Court of Justice. In addition, as Judge Lauterpacht observed, the cumulative effect of uniform decisions of municipal courts is to establish evidence of "international custom."¹⁰

IV. FUNCTIONS AND SANCTIONS OF INTERNATIONAL LAW

A. Functions.

In general, international law provides the principles, standards and rules to accommodate the concept of "sovereignty" i.e., "supreme within--independent without." More particularly, international law performs, in a more or less efficient manner, five principal functions.

1. It promotes efficiency in international transactions. States are not economically self-sufficient; they must trade. International law provides a basis for agreements on uniform systems of weights and measures, prohibition of traffic in slaves, regulation of traffic in drugs and cooperation to prevent piracy. All of this coordination is made efficient by using international law.

2. It encourages reciprocal limitations on indiscriminate application of power in international relations. Thus criminals may, by treaty, be extradited from one country to another, for it would be illegal for one state to go into another to kidnap a man sought for offenses against the law of the acting state. Similarly, no matter how hostile states may be toward one another for the time being, their visiting diplomats are accorded immunity and treated with dignity, which is the manner called for by the sovereignty of the State they represent. So after Pearl Harbor was attacked without warning, arrangements were made to protect the Japanese diplomats until they could be removed from the United States and safely returned to Japan. The Japanese did the same for the United States diplomats.

The rules of warfare and neutrality have also developed as part of this function. As a result, the existence of war does not make every enemy person and every type of enemy property a legitimate target for our firepower.

10. Lauterpacht, Development of International Law by the International Court 31-32 (1958).

3. It affords some security of expectations. When States agree on a certain course of conduct it is routinely expected that the agreed course of conduct will be followed. The rules for navigation safety, which are rules of international law, are a useful example of this function. All vessels of a certain type are required to show lights of certain colors at certain positions on the ship. When lights of another ship are made out in the distance, the position of the lights in relation to each other reveals what direction she is headed. The position of the lights in relation to the horizon reveals her distance from the viewing ship. The viewing ship can thus maneuver to avoid collision. Without such security of expectation provided by the international law, lights on ships would provide no reliable information except that there was another ship out there.

4. It rallies support for our decisions to exercise power. In the case of our decision to go to the aid of South Viet Nam, if we did not have a rational legal argument for our action we would be less able to rally the support of our free world allies in that action. The "third bloc," the nations uncommitted in the cold war struggle of ideologies, would be less likely to abstain from involvement. But our action in Viet Nam is based on a strong, rational legal argument, and we do have the active support of many free world allies.

5. It sets the outer limits on national authority. International law determines spheres wherein the State may operate as supreme. First, international law determines the legal existence of the State and the point in time when it came into existence or ceased to exist. Second, it determines the territorial limits of the State. Third, it determines the people over whom the State has jurisdiction. Fourth, it determines the functional subject matters which State law may regulate and those which may be regulated only by international law. For instance, a State is not obliged by general international law to admit aliens to its territory. However, if it does admit aliens, the state is required by international law to grant these aliens certain minimum legal protections.¹¹

B. Sanctions.

International law has its own kinds of sanctions, although at certain given times and places they may be ineffective to control, prevent, or give redress for the violation of the law. Hackworth aptly summarizes the sanctions of international law and their effectiveness in the following words:

Whether the answer to the question as to how international law is made effective is to be found in the will of the state, in the state's ultimate responsibility for its own action or failure to act, in its fear of war or

11. Kelsen, Principles of International Law 205-253 (1952).

reprisals, in the effect of world opinion, or in a combination of any two or more of these, it is certain that states, sovereigns, parliaments, and public officials usually feel either bound by the commonly accepted precepts of international law or under the necessity of explaining their departure from those precepts. Whatever be the sanction upon which the enforcement of international law rests, its effectiveness increases as the nations of the world find it not only to their benefit but also to the benefit of the community of nations to conduct their relations according to certain generally accepted standards possible of performance and at the same time fair and reasonable.¹²

Though, as Hackworth has said, States may feel bound by a rule, those critical of international law as "law" maintain that this feeling of being "bound" is more moral than legal because of the absence of a central sanction-enforcing authority. The defenders of the legal quality of international law point out that sanctions do exist in international law, though not exercised by one authority.¹³ For example, war crimes trials along with reprisals have long been sanctions for violation of the law of war.

V. THE "COLD WAR" AND INSURGENCY

Since the Second World War, foreign State involvement in rebellions against established governments has become more frequent. The people of the world have become aware of what is beyond their doorstep. The poor who have eked out a bare subsistence for centuries seek to achieve the comforts which they know are available to other people. Many governments are aware of the need to raise the standard of living of the people, but, because of lack of trained personnel and economic backwardness, progress has been slow and the people are restless and anxious to speed the achievement of their goals, by revolution if necessary.

A. Legality of Self-determination by Revolution.

"Self-determination" of peoples is a recognized right in international law. The right is given expression in Article 1, paragraph 2 of the United Nations Charter. But it was given expression long before by Thomas Jefferson, then Secretary of State, in his message to Mr. Morris, the United States Minister to France on 12 March 1793, concerning the recognition of the new Government of France achieved by bloody revolution:

12. Hackworth, Digest of International Law 12 (1940).

13. See Brierly, *The Law of Nations* 69-70 (5th ed. 1955); Kelsen, *Principles of International Law* 3-89 (1952); and Jessup, *A Modern Law of Nations* 4-10 (1952).

"It accords with our principles to acknowledge any government to be rightful which is formed by the will of the nation substantially declared . . . We surely cannot deny to any nation the right whereon our own government is founded, that every one may govern itself according to whatever form it pleases, and to change these forms at its own will . . . The will of the nation is the only thing essential to be regarded."¹⁴

B. International Communism and "Self-determination."

Revolution is, under international law, as legitimate a means of "self-determination" as any other. The United States would be the last to deny this. But foreign instigation and support of rebellion is no more "self-determination" than is outright conquest. However, international communism has found in national unrest a fertile ground to sow its seeds of discontent and has reaped a remarkable harvest with the use of artful propaganda such as this expression of Premier Khrushchev.

"Liberation wars will continue to exist as long as imperialism exists, as long as colonialism exists. These are revolutionary wars. Such wars are not only admissible but inevitable, since the colonialists do not grant independence voluntarily . . . What is the attitude of the Marxists toward such uprisings? A most positive one. These uprisings must not be identified with wars among states, with local wars, since in these uprisings the people are fighting for implementation of their right of self-determination, for independent social and national development. These are uprisings against rotten reactionary regimes, against the colonizers. The Communists fully support such just wars and march in the front rank with the peoples waging liberation struggles."¹⁵

This is a dangerous program announced by Premier Khrushchev, dangerous not only to the security of the United States in the context of the "cold war," but also to the very independence of the people deceived by such Communist propaganda. Professor Sigmund Neumann has described very accurately the present state of things, when he wrote:

"In the age of the international civil war it is not always necessary to move armies across national frontiers in order to win major battles. A central revolutionary authority, enforced by the new weapons of psychological warfare, can direct its orders by remote control through the well-

14. I Moore, Digest of International Law 120 (1906).

15. N. K. Khrushchev, address to Higher Party School, Academy of Social Sciences, Institutes of Marxian-Leninism of the Central Committees, Communist Party of the Soviet Union, 6 Jan 1961.

established revolutionary pipelines of the disciplined party within the border . . . [The hero or villain who suddenly determines the fate of a nation] is not the pattern of the twentieth century revolution. It is totalitarian and institutionalized, operating to play its role in the international civil war."¹⁶

The foreign manipulations of insurgent forces within a State will often fall short of sending in the regular army of a foreign State. However, a common technique is the employment of armed bands which infiltrate across the border and act as cadres for the local insurgent forces. Often these armed bands are inhabitants of the country in revolt who have returned after having been trained and equipped in a foreign State.¹⁷ There is no dramatic crossing of the border. The border State, if friendly to the insurgents, not only offers them a haven from pursuit by the established government, it also assures them some degree of control of their own country bordering on the friendly foreign State.

C. Legality of Foreign Support for Insurgent Rebels.

States have understood the danger of such subversive foreign intervention, both to the idealized "self-determination," and more recently, to world peace. When Greece complained to the General Assembly of the United Nations that aid was being given to rebel guerrillas by her northern neighbors (Yugoslavia and Albania) the discussion in the United Nations turned on the very difficult question of proof. During the debates, no one challenged the legal proposition that such aid, if proven, was unlawful.¹⁸ "There is no doubt that a foreign State commits an international delinquency by assisting insurgents in spite of being at peace with the legitimate Government."¹⁹

The United Nations General Assembly is aware of the threat to world peace posed by foreign intervention to promote and support insurgency. In a resolution on November 17, 1950, it stated:

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16. Neumann, *The International Civil War*, I World Politics 333, (1949).
 17. See Brownlie, International Law and the Activities of Armed Bands, 7 Int'l Comp. L. Quart. 712-735 (1958), for a comprehensive treatment of the action of armed bands since 1945.
 18. General Assembly 2d Session, 1st Committee, 60th meeting, p. 34; reported in III United Nations Bulletin 301, 355, 512 (1947). See also Yearbook of the UN, 1947-48, pp. 337, et. seq.
 19. II Oppenheim, *International Law* 660 (7th ed Lauterpacht 1952).

"Whatever the weapons used, any aggression, whether committed openly or by fomenting civil strife in the interest of a foreign power, or otherwise, is the gravest of all crimes against peace and security throughout the world."²⁰

However, the United Nations has achieved less than ideal success in dealing with aggression. This leads us to consider what steps the established (loyalist) government may take to meet the threat and what assistance it might receive from foreign governments in sympathy with it.

D. Legality of Foreign Support for the Loyalist Government Against Rebel Insurgents.

An insurgent party is not a sovereign nation maintaining or entitled to the usual relations with other nations of the world. That being the case, "recognition of a State of insurgency" does not legally justify a foreign state in giving aid to insurgents, nor does it make a foreign state neutral under international law. It has been the practice of foreign states to resist insurgent's efforts to interfere with the normal international trade and relations of the loyalist government.²¹ It has also been the practice of states to respond favorably to requests from the loyalist government for military assistance against insurgents who are aided by subversive intervention. In this regard, the Havana Convention on the Rights and Duties of States in the Event of Civil Strife provides amongst other things: "Article 1. The contracting States bind themselves to observe the following rules with regard to civil strife in another one of them. . . . Third: To forbid the traffic in arms and war material, except when intended for the Government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied."²²

It is a principle of international law that ". . . aid to the established government during insurgency or rebellion is legal, prior to recognition of belligerency, and unless limited by a treaty or agreement."²³ (The Charter of the Organization of American States

20. Wright, United States Intervention in the Lebanon, 53 Am. J. Int'l L. 112, 123 (1959).

21. Powers, Insurgency and the Law of Nations, Vol. 16, No. 4 The JAG Journal 55 (May 1962) sets forth numerous examples of United States, German, British, French and Portugese resistance to insurgent interference with trade conducted by those powers with the loyalist governments of Mexico, Spain and Brazil.

22. 46 Stat. 2749; T.S. 814; 20 Feb 1928 (effective 21 May 1930).

23. Powers, op. cit. supra note 21, at 63.

Article 15 may be such a limitation.)²⁴ But particularly when a rebellion is instigated and sustained by foreign support, the loyalist government may legally obtain aid from foreign governments in sympathy with it.

E. Questions and Answers Based Upon a Hypothetical Situation.

The following hypothetical situation and subsequent questions will highlight the problems that surround the legal and political justification for aid to an established government. The questions are designed to generate discussion. There are no cut and dried answers; answers which follow are merely guides. Doctrinaire answers do not always solve problems generated by the complex and powerful forces at work in the international relations of states:

"State X is a member of the nations of the free world, and occupies a strategic geographical position in the Cold War. Its government has tried its best to raise the standard of living of the citizens. However, because of the lack of trained personnel and the economic backwardness of the area, progress has been slow. The people are dissatisfied. Propaganda discrediting the government and linking it with the forces of reaction and colonialism is directed from a neighboring Communist State. This same State begins to supply the more militant of the citizens of State X with arms. Soon guerrilla warfare breaks out in State X led by local Communists. The revolt is a "popular" one in the sense that the majority of the people are dissatisfied with their present conditions. It is this dissatisfaction that the local Communists have seized upon in their bid to take over the government."

Question 1. Can the United States legally intervene in this conflict without the consent of the duly established government?

Answer. Generally no. The only justification for such intervention would be protection of our nationals in State X in the event that State is unable to protect them, as was the case in the Dominican Republic, April 1965. [But see Q. 8 below.]

Question 2. If the government does consent, does this alter the facts sufficiently enough to change your answer to (1) above?

Answer. Yes. A duly established government may seek help in order to resist outside intervention.

Question 3. Can any shaky government call upon other States to help it keep its control over its own citizens?

Answer. Generally no. It all depends upon the causes of its instability.

24. 2 U.S.T. and O.I.A. 2394; T.I.A.S. 2361; 30 April 1948 (effective 13 December 1951).

Question 4. If "no" to (3) above, does the fact that the revolt in the problem is incited and supported by international Communism make any difference.

Answer. Yes. If such instability were caused by outside forces this may be a justification.

Question 5. Does it make any difference at what point in the rebellion the request for aid is extended by the government to another State; that is, may a government only extend an invitation early in the struggle or can the invitation still be a valid justification for intervention when the government is hanging on by a thread?

Answer. It does make a difference. If it is late in the struggle, the insurgents may have gained the status of a belligerency. If so, then the laws of neutrality may preclude legitimate outside help to the established government. If the rebels receive aid from a foreign power before or after they have gained the status of a belligerent, other powers in sympathy with the established government may feel compelled to aid it in the absence of effective U.N. action. In such a case there exists a very grave threat to international peace.

Question 6. Suppose the neighboring Communist State had done nothing to foster the revolt and the idea is entirely that of the local Communists in State X. The neighboring Communist State, though it has done nothing to aid the revolt, would naturally like to see it succeed. In such circumstances would the U.S. be justified in intervening with armed forces on behalf of the duly established government?

Answer. This is a difficult question because it assumes something that is very difficult to accept--namely, that "good" Communists do not help other Communists. If the facts are precisely as stated, the answer is no. But if Communism is taken as a world movement, then there would be no such thing as a "local" Communist. If Communism is an international movement, the danger to the United States would be as great no matter how a particular state fell to Communism. Nevertheless, it would be difficult to say that the people of a particular state could not freely choose Communism if they truly wished to do so.

Question 7. If the United States intervenes to help the government in power upon the request of such government, does such intervention justify the intervention by another State to assist those in rebellion?

Answer. No. Unlike the case of foreign support for rebels, aid to the established (loyalist) government, being legal, does not give rise to a legal right to intervene to counteract that aid.

Question 8. Would it make any difference if the States which intervened on behalf of the government in power were all members of a regional organization such as the Organization of American States, the same organization to which State X belongs?

Answer. Such collective intervention would underscore the fact that the intervention was not the unilateral decision of one State but reflected a regional community concern about the penetration of the area by the Communist movement. Otherwise the same rules generally apply as to the intervention of only one State at the request of the government in power. But the agreement of the regional organization may include an advance invitation or implied consent for other members of the Organization to enter a member State on behalf of the government in the event of a rebellion. This would negate the need for a current invitation.

F. The Value of Knowing the Reasons for and Philosophy Back of Internal Defense/Internal Development Operations.

The average military man has plenty to do in his own job. He may wonder why he should know anything about our political philosophy or about the international rules surrounding intervention.

Admiral Burke's testimony to Congress is an appropriate answer to such a question:

"We have had a tragic example . . . of what can happen when American soldiers are trained only for combat but not for understanding what they are fighting for or against. The . . . success of the enemy in eroding the will of our men captured in Korea is not incredible really.

"It was, as has been proven, due simply to the inability of those troops to resist even rudimentary arguments and persuasions concerning the nature of constitutional government and the background of the decision to resist an assault against it on a remote battlefield."²⁵

We must know why we are involved and we must also know the rules which the President and Congress have laid down for us to follow. These rules may be termed "legalistic" by some. However, knowledge of them is essential. Commanders must be aware of them in order that they may take intelligent action. We are educating officers of the United States, officers of the most powerful army in the world which is engaged in an operation as vital to our country as that of any undertaking in our history. Officers who want simple answers will find none. Simple

25. Admiral Arleigh A. Burke, "Excerpts of Testimony before the Senate Armed Services Subcommittee," 23 January 1962.

answers, explanations in terms of one syllable or the "I do as I'm told" philosophy are a "luxury" which, if ever, we can no longer afford. Those favoring such a philosophy would do well to ponder the words of Elihu Root who justified the founding of the Army War College by saying:

". . . the officer who keeps his mind alert by intellectual exercise, and who systematically studies the reasons of action will be the stronger practical man and the better soldier."²⁶

VI. BELLIGERENCY

The primary purpose of this instruction is to familiarize the student with the legal aspects of internal defense/internal development operations, and this puts the focus on an insurgency-type "civil war." However, civil war can take on proportions far beyond those of insurgency. International law acknowledges a concept of "belligerency" to exist when a successful insurgency has escalated to take on characteristics such as those of our American Civil War, 1861-65.

In the event of a "belligerency" all of the customary international laws of war apply. This requires both sides to observe the rules for conducting hostilities, treatment of captives, sick and wounded and property. Some of the options available to the participants in an insurgency (particularly for loyalists) are removed.

The conditions required for "belligerency" are:

1. There must be a rebellion consisting of general hostilities.
2. The revolutionaries must act like an army, observing the rules of warfare and taking orders from a responsible authority.
3. The rebels must have an organized government which can govern effectively.
4. The rebels must control a substantial (meaningful) part of the territory of the state and be able to maintain their authority therein.

26. I Jessup, Elihu Root 258 (1938).

5. Third states face the practical necessity of "recognizing the belligerency."

In today's international political arena it is unlikely that the fifth condition will be met. This is because recognition calls for application of neutrality laws. States in sympathy with the loyalist government would refrain from extending recognition of belligerency because that puts the loyalists at a disadvantage. States interested in subverting the loyalists and supporting the rebels find their purpose best served by clandestine methods at this stage of the rebellion. If they recognized a belligerency, their hand would be forced. This leaves the rebellion in a status to which most of international law is not required to be applied. However, Common Article 3 of the Geneva Conventions of 1949 does apply, and you note the last paragraph of Article 3 provides a means whereby the parties to the conflict may agree to implement some or all of the other articles of the Conventions without affecting the legal status of the rebels.

VII. ARTICLE 3 PROVISIONS

The instructor will give close attention to Article 3, what its various provisions mean, and what experience has shown about the usefulness of this article. [Article 3 is set out in Appendix 6 of this study guide.] The principal provisions of the Article which will be discussed are:

1. The requirement of "quarter,"
2. Torture prohibited,
3. Hostage-taking prohibited,
4. Degradation prohibited,
5. Punishment in absence of fair trial prohibited.
6. Right of intercession by humanitarian (nonpolitical) organization secured.

VIII. STATUS OF PARTICIPANTS

The participants involved are the rebel fighter, ostensibly passive bystanders, loyalist government agents (police, armed forces, political officials), foreign volunteers or members of foreign armed forces sent to aid either the rebels or the loyalists. Discussion of the following seven fact situations will illustrate the legal status of these participants. Be familiar with these situations and formulate possible answers to them before coming to class.

A. The Insurgent Not in Uniform.

1. Suppose an insurgent in a civil war is captured by the government forces. He is dressed as a pedicab operator and when seized had just placed explosives in a government army barracks. He did it because he thought the government was oppressive and he joined the insurgents for patriotic reasons. What is his legal status from the viewpoint of the established government?

B. The Insurgent in Uniform.

2. If the insurgent in problem No. 1 had been wearing a fixed, distinctive sign recognizable at a distance, bore his arms openly, and was part of an organized unit, would he have the right to be treated more leniently by the government?

C. Private Foreigners Assisting the Insurgents.

3. It is possible that foreigners may be attracted to the insurgents' cause for a number of reasons. Consider these foreigners to be acting in their private capacity, without authorization from their government. Are they treated any differently from the national insurgent when captured?

D. Members of a Foreign Military Force Helping the Insurgents.

4. Suppose members of a foreign military force are sent by their government to assist the insurgents as advisors and instructors. Must they be treated any differently than a private foreigner who volunteers to do the same thing?

E. Members of a Foreign Military Force Helping the Established Government.

5. A foreign government, such as the United States, may, on occasion, send its troops to assist an established government put down an insurgency movement. What is the status of these forces in relation to the established government? Here note Appendix 7 for variations on the possible answer to this question.

F. Persons Captured by Insurgents.

6. It is inevitable that some persons engaged in counter-insurgency activities will be captured by the insurgents. What is their status when so captured?

G. The American Soldier in Internal Defense/Internal Development Operations.

7. Situation No. 5 has discussed the relationship between the American force and the established government it is assisting. What is the legal relationship between the American soldier and his own government? Here note Appendices 8 and 9.

IX. QUESTIONS ON THE VALUE OF LAW IN INTERNAL DEFENSE/INTERNAL DEVELOPMENT OPERATIONS

A. Don't people in these kinds of operations do just about what they please?

Suggested Answer. It depends on what people you are talking about. The American Army does not. It is one thing to violate a law in ignorance of it. It is quite another thing for an American officer to violate it knowingly and on his own initiative. The latter course is fraught with the gravest consequences to his career. He is not an authoritarian. He acts within a legal framework. He did not get his authority as an officer from buying a uniform at the PX. His authority is based on law. FM 27-10, the Geneva Conventions, the Uniform Code of Military Justice and the local status of forces agreement all represent orders from the highest echelons of our government.

Che Guevara, in his book, La Guerra De Guerrillas,²⁷ points out that the captives of guerrillas should be treated well in order to persuade them, and the world community, of the "correctness" of the rebel cause. He emphasizes the value to the rebel cause to conduct operations in as humane a manner as possible so as to gain world sympathy. If the rebels realize this cardinal point, we should also.

B. If it is necessary to break a law, won't it be broken?

Suggested Answer. "Necessary by whose judgment?" is the real question. Para. 3, FM 27-10 states that "Military necessity has been generally rejected as a defense for acts forbidden by the customary and conventional laws of war inasmuch as the latter have been developed and formed with consideration for the concept of military necessity." A concept which permits a law to be broken when it gets in the way is Kriegsraison, a German doctrine which the World War II War Crimes Trials condemned and our own law has always emphatically disavowed. (U.S. v. Von Leeb, XI Trials of War Criminals 541; para. 3, FM 27-10). Necessity in such cases rapidly degenerates to expediency, and "necessity" becomes the victim of the subjective judgment of each individual.

27. Translated in Army, March - May 1961.

C. How can anyone expect a person fighting in the jungle to pull out a law book and see if he can shoot the fellow shooting at him.

Suggested Answer. No one expects that. There is little law which protects one armed fighter against another armed fighter. What we have been discussing for the most part is the protection of helpless persons, not those still fighting. Article 3 of the 1949 Geneva Conventions deals with the helpless persons who have been wounded or captured. Even the distinction between insurgency and belligerency is, for our purposes, meaningful only after an enemy is rendered helpless.

D. Is not the effect of law in counterinsurgency being over-emphasized?

Suggested Answer. That all depends on what you expect the law in any field to accomplish. Law here can give purpose and direction to an internal defense/internal development operation. In civil actions it is indispensable. In military actions the law is neither a myth on the one hand, nor a panacea on the other, but just one standard among many which can be used to make the contest one more worthy of men than of animals. The professional soldier has also other standards, such as the principles of discipline inherent in a civilized army. This all works toward one end, the eradication of unnecessary suffering and destruction.

APPENDIX 1

PEACE CORPS PROGRAM WITH LIBERIA (12 March 1962)

The American Ambassador to the Liberian Secretary of State
Monrovia, March 5, 1962

Excellency:

I have the honor to refer to recent conversations between representatives of our two governments and to propose the following understandings with respect to the men and women of the United States of America who volunteer to serve in the Peace Corps and who, at the request of your Government, would live and work for periods of time in Liberia.

1. The Government of the United States will furnish such Peace Corps Volunteers as may be requested by the Government of Liberia and approved by the Government of the United States to perform mutually agreed tasks in Liberia. The Volunteers will work under the immediate supervision of governmental or private organizations in Liberia designated by our two governments. The Government of the United States will provide training to enable the Volunteers to perform more effectively these agreed tasks.

2. The Government of Liberia will accord equitable treatment to the Volunteers and their property; afford them full aid and protection, including treatment no less favorable than that accorded generally to nationals of the United States residing in Liberia; and fully inform, consult and cooperate with representatives of the Government of the United States with respect to all matters concerning them. The Government of Liberia will exempt the Volunteers from all taxes on payments which they receive to defray their living costs and on income from sources outside Liberia, from all customs duties or other charges on their personal property introduced into Liberia for their own use at or about the time of their arrival, and from all other taxes or other charges (including immigration fees) except license fees and taxes and other charges included in the prices of equipment, supplies and services.

3. The Government of the United States will provide the Volunteers with such limited amounts of equipment and supplies as our two governments may agree are needed to enable the Volunteers to perform their tasks effectively. The Government of Liberia will exempt from all taxes, customs duties and other charges, all equipment and such supplies introduced into or acquired in Liberia by the Government of the United States, or any contractor financed by it, for use hereunder.

4. To enable the Government of the United States to discharge its responsibilities under this agreement, the Government of Liberia will receive a representative of the Peace Corps and such staff of the representative and such personnel of United States private organizations performing functions hereunder under contract to the Government of the United States as are acceptable to the Government of Liberia.

APPENDIX 2

ECONOMIC AND TECHNICAL ASSISTANCE AGREEMENT WITH
ECUADOR (17 APRIL 1962)

Whereas the Government of the United States of America and the Government of the Republic of Ecuador desire to join in an Alliance for Progress based upon self-help, mutual effort and common sacrifice, designed to help satisfy the wants of the people of Latin America for better homes, work, land, health and schools.

Whereas the Act of Bogota recommended that there should be established an Inter-American program for social development directed to carrying out measures for improving rural living, land use, housing, community facilities, educational systems, training facilities, and public health, and for the mobilization of domestic resources....

Now, therefore, the Government of the United States of America and the Government of the Republic of Ecuador hereby agree as follows:

Article I. To assist the Government of the Republic of Ecuador in its national development and in its efforts to achieve economic and social progress through effective use of its own resources and other measures of self-help, the Government of the United States of America will furnish such economic, technical and related assistance as may hereafter be requested by representatives of appropriate agencies of the Government of the Republic of Ecuador and approved by representatives of the agency or agencies designated by the Government of the United States of America to administer its responsibilities hereunder. Such assistance shall be made available in accordance with written arrangements agreed upon between the above-mentioned representatives.

Article II. To foster its economic and social progress, the Government of the Republic of Ecuador will make the full contribution permitted by its resources and general economic condition to its development program and to programs and operations related thereto, including those conducted pursuant to this Agreement, and will give full information to the people of Ecuador concerning programs and operations hereunder....

Article III. The Government of the Republic of Ecuador will receive a special mission and its personnel to discharge the responsibilities of the Government of the United States of America hereunder and will consider this special mission and its personnel as part of the diplomatic mission of the Government of the United States of America in Ecuador for the purpose of receiving the privileges and immunities accorded to that mission and its personnel of comparable rank.

* * * * *

APPENDIX 3

ECONOMIC AND SOCIAL DEVELOPMENT IN THE BRAZILIAN NORTHEAST (13 APRIL 1962)

Whereas the Government of the United States of Brazil has recognized the improvement of the critical economic and social conditions in Northeast Brazil as an urgent problem requiring priority attention both through immediate measures and through a long-term development program, and has taken important steps to meet the problem by creating an agency, the Superintendency of the Development of the Northeast (SUDENE), which has been empowered to coordinate Brazil's programs for the Northeast, and which has produced a master plan which has been approved by the Brazilian Congress and given initial financial support by the Government of the United States of Brazil:

Whereas the Government of the United States of America shares the view of the Government of the United States of Brazil that the problems of the Northeast require urgent attention, and has sent a survey team to Brazil which has studied the problems of the Northeast and has submitted to the United States Government a report containing its recommendations for financial and technical assistance for the purpose of aiding in their solution, and is prepared to support the efforts of the Government of the United States of Brazil in the Northeast through measures based upon certain of those recommendations;

Whereas such cooperation, by combining the self-help efforts and reform measures of the Government of the United States of Brazil with the economic, technical and related assistance from the Government of the United States of America, will directly further the objectives of the Charter of Punta del Este and will be an important step in carrying out the Alliance for Progress;

Now, therefore, the Government of the United States of America and the Government of the United States of Brazil hereby agree as follows:

Article I Programs

In accordance with Article III and IV hereof the Government of the United States of America will supplement the efforts of the Government of the United States of Brazil:

A. In carrying out a program of immediate action projects intended to achieve speedy results in meeting some of the most urgent needs of the people of Northeast Brazil. These projects, designed to produce immediate benefit, are of the type included in the survey team report or the SUDENE master plan, or which may be mutually agreed to.

It is estimated that these projects will require expenditures totaling the equivalent of approximately \$58,000,000 or the equivalent of approximately Cr\$18,400,000,000 from Brazilian and external sources.

B. In undertaking at the same time the financing of the first two years of long-term development projects for the years 1962-1966 intended to improve fundamentally the ability of the Northeast and its residents to provide for themselves a better standard of living and to advance the economic integration of the Northeast with the rest of Brazil. The purpose of these projects, which are to be of the type included in the survey team report or the SUDENE master plan, or which may be mutually agreed to, will be accomplished through measures such as the counteracting of drought conditions through fuller use of available water supplies in the interior, improvement of roads, development of electrical power, expansion of primary and vocational education, health and sanitation, assistance to agricultural production, marketing and distribution, fisheries, and through studies and research concerning the resource potentials of the area. It is estimated that these projects will require expenditures for the long-term period totalling the equivalent of approximately \$692,000,000 or the equivalent of approximately Cr\$220,000,000,000 from Brazilian and external sources. In addition, activities are contemplated to promote the accelerated development of areas adjacent to the Northeast in order to create economic opportunities for people from the Northeast. Expenditures for the first two years (1962-1963) are estimated to total the equivalent of approximately \$216,000,000 or the equivalent of approximately Cr\$68,700,000,000 from Brazilian and external sources.

Article II Administration

The two Governments recognize that effective cooperation in the administration of these projects requires clear designation of coordinating and operating responsibility on both sides. Accordingly,

A. The Government of the United States of America designates the Agency of International Development (USAID) to carry out its responsibilities under these projects and will establish a special office in the Northeast area for this purpose with the necessary staff and facilities. USAID may sign agreements for individual projects with SUDENE or other appropriate agencies or organizations in accordance with applicable regulations.

B. The Government of the United States of Brazil is represented by SUDENE in accordance with the terms of Law No. 3.692, December 15, 1959, and Law No. 3.995, January 15, 1962, in the coordination of programs in Northeast Brazil. In the terms of this and related legislation, SUDENE is authorized to enter into projects and other agreements including loan agreements, to carry out specific projects. Activities under

these projects may be administered by SUDENE or by such other agency or organization as may be mutually agreed. In such cases as may be designated by the Government of the United States of Brazil, other agencies may be authorized to enter into project and other agreements under this Agreement directly with USAID and be authorized to receive loans or grants.

APPENDIX 4

U. S. TREATIES AND OTHER INTERNATIONAL AGREEMENTS (5 UST)

MUTUAL DEFENCE ASSISTANCE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF PAKISTAN

The Government of the United States of America and the Government of Pakistan,

Desiring to foster international peace and security within the framework of the Charter of the United Nations¹ through measures which will further the ability of nations dedicated to the purposes and principles of the Charter to participate effectively in arrangements for individual and collective self-defence in support of those purposes and principles;

Reaffirming their determination to give their full co-operation to the efforts to provide the United Nations with armed forces as contemplated by the Charter and to participate in United Nations collective defence arrangements and measures, and to obtain agreement on universal regulation and reduction of armaments under adequate guarantee against violation or evasion;

Taking into consideration the support which the Government of the United States has brought to these principles by enacting the Mutual Defence Assistance Act of 1949, as amended,² and the Mutual Security Act of 1951, as amended;³

Desiring to set forth the conditions which will govern the furnishing of such assistance;

Have agreed:

-
1. Treaty Series 993; 59 Stat. 1031.
 2. 63 Stat. 714; 22 U.S.C. § 1571 note.
 3. 65 Stat. 373; 22 U.S.C. § 1651 note.

ARTICLE I

1. The Government of the United States will make available to the Government of Pakistan such equipment, materials, services or other assistance as the Government of the United States may authorize in accordance with such terms and conditions as may be agreed. The furnishing and use of such assistance shall be consistent with the Charter of the United Nations. Such assistance as may be made available by the Government of the United States pursuant to this Agreement will be furnished under the provisions and subject to all the terms, conditions and termination provisions of the Mutual Defence Assistance Act of 1949 and the Mutual Security Act of 1951, acts amendatory or supplementary thereto, appropriation acts thereunder, or any other applicable legislative provisions. The two Governments will, from time to time, negotiate detailed arrangements necessary to carry out the provisions of this paragraph.

2. The Government of Pakistan will use this assistance exclusively to maintain its internal security, its legitimate self-defence, or to permit it to participate in the defence of the area, or in United Nations collective security arrangements and measures, and Pakistan will not undertake any act of aggression against any other nation. The Government of Pakistan will not, without the prior agreement of the Government of the United States, devote such assistance to purposes other than those for which it was furnished.

3. Arrangements will be entered into under which equipment and materials furnished pursuant to this Agreement and no longer required or used exclusively for the purposes for which originally made available will be offered for return to the Government of the United States.

4. The Government of Pakistan will not transfer to any person not an officer or agent of that Government, or to any other nation, title to or possession of any equipment, materials, property, information, or services received under this Agreement, without the prior consent of the Government of the United States.

5. The Government of Pakistan will take such security measures as may be agreed in each case between the two Governments in order to prevent the disclosure or compromise of classified military articles, services, or information furnished pursuant to this Agreement.

6. Each Government will take appropriate measures consistent with security to keep the public informed of operations under this Agreement.

7. The two Governments will establish procedures whereby the Government of Pakistan will so deposit, segregate or assure title to all funds allocated to or derived from any programme of assistance undertaken by the Government of the United States so that such funds shall not, except as may otherwise be mutually agreed, be subject to garnishment, attachment, seizure or other legal process by any person, firm, agency, corporation, organization or government.

ARTICLE II

The two Governments will, upon request of either of them, negotiate appropriate arrangements between them relating to the exchange of patent rights and technical information for defence which will expedite such exchanges and at the same time protect private interests and maintain necessary security safeguards.

ARTICLE III

1. The Government of Pakistan will make available to the Government of the United States rupees for the use of the latter Government for its administrative and operating expenditures in connection with carrying out the purposes of this Agreement. The two Governments will forthwith initiate discussions with a view to determining the amount of such rupees and to agreeing upon arrangements for the furnishing of such funds.

2. The Government of Pakistan will, except as may otherwise be mutually agreed, grant duty-free treatment on importation or exportation and exemption from internal taxation upon products, property, materials or equipment imported into its territory in connection with this Agreement or any similar Agreement between the Government of the United States and the Government of any other country receiving military assistance.

3. Tax relief will be accorded to all expenditures in Pakistan by, or on behalf of, the Government of the United States for the common defence effort, including expenditures for any foreign aid programme of the United States. The Government of Pakistan will establish procedures satisfactory to both Governments so that such expenditures will be net of taxes.

ARTICLE IV

1. The Government of Pakistan will receive personnel of the Government of the United States who will discharge in its territory the responsibilities of the Government of the United States under this Agreement and who will be accorded facilities and authority to observe

the progress of the assistance furnished pursuant to this Agreement. Such personnel who are United States nationals, including personnel temporarily assigned, will, in their relations with the Government of Pakistan, operate as part of the Embassy of the United States of America under the direction and control of the Chief of the Diplomatic Mission, and will have the same privileges and immunities as are accorded other personnel with corresponding rank of the Embassy of the United States who are United States nationals. Upon appropriate notification by the Government of the United States the Government of Pakistan will grant full diplomatic status to the senior military member assigned under this Article and the senior Army, Navy and Air Force officers and their respective immediate deputies.

2. The Government of Pakistan will grant exemption from import and export duties on personal property imported for the personal use of such personnel or of their families and will take reasonable administrative measures to facilitate and expedite the importation and exportation of the personal property of such personnel and their families.

ARTICLE V

1. The Government of Pakistan will:

- (a) join in promoting international understanding and goodwill, and maintaining world peace;
- (b) take such action as may be mutually agreed upon to eliminate causes of international tension;
- (c) make, consistent with its political and economic stability, the full contribution permitted by its manpower, resources, facilities and general economic condition to the development and maintenance of its own defensive strength and the defensive strength of the free world.
- (d) take all reasonable measures which may be needed to develop its defence capacities; and
- (e) take appropriate steps to insure the effective utilisation of the economic and military assistance provided by the United States.

2. (a) The Government of Pakistan will, consistent with the Charter of the United Nations, furnish to the Government of the United States, or to such other governments as the Parties hereto may in each case agree upon, such equipment, materials, services or other assistance as may be agreed upon in order to increase their capacity for individual and collective self-defence and to facilitate their effective participation in the United Nations system for collective security.

(b) In conformity with the principle of mutual aid, the Government of Pakistan will facilitate the production and transfer to the Government of the United States, for such period of time, in such quantities and upon such terms and conditions as may be agreed upon, of raw and semi-processed materials required by the United States as a result of deficiencies or potential deficiencies in its own resources, and which may be available in Pakistan. Arrangements for such transfers shall give due regard to reasonable requirements of Pakistan for domestic use and commercial export.

ARTICLE VI

In the interest of their mutual security the Government of Pakistan will co-operate with the Government of the United States in taking measures designed to control trade with nations which threaten the maintenance of world peace.

ARTICLE VII

1. This Agreement shall enter into force on the date of signature and will continue in force until one year after the receipt by either party of written notice of the intention of the other party to terminate it, except that the provisions of Article I, paragraphs 2 and 4, and arrangements entered into under Article I, paragraphs 3, 5 and 7, and under Article II, shall remain in force unless otherwise agreed by the two Governments.

2. The two Governments will, upon the request of either of them, consult regarding any matter relating to the application or amendment of this Agreement.

3. This Agreement shall be registered with the Secretariat of the United Nations.

Done in two copies at Karachi the 19th day of May one thousand nine hundred and fifty four.

For the Government
of the
United States of America

JOHN K EMMERSON
Charge d'Affaires a.i.,
of the
United States of America

For the Government
of Pakistan

ZAFRULIA KHAN
Minister of Foreign
Affairs and Commonwealth
Relations

APPENDIX 5

NICARAGUA--MILITARY MISSION--NOV. 19, 1953 (4 UST)

Agreement between the Government of the United States of America
and the Government of the Republic of Nicaragua.

In conformity with the request of the Government of the Republic of Nicaragua to the Government of the United States of America, the President of the United States of America has authorized the appointment of officers and noncommissioned officers to constitute a United States Army Mission, hereinafter referred to as Mission, to the Republic of Nicaragua under the conditions specified below:

TITLE I

Purpose and Duration

Article 1. The purpose of this Mission is to cooperate with the Ministry of War, Navy and Aviation of the Republic of Nicaragua and officials of the Nicaraguan National Guard, and to enhance the efficiency of the Nicaraguan National Guard in matters of training, organization and administration. The members of the Mission are, in the exercise of their functions, obliged to use the Spanish language.

Article 2. This Agreement shall enter into effect on the date of signing thereof by the accredited representatives of the Government of the United States of America and the Government of the Republic of Nicaragua.

Article 3. This Agreement may be terminated in the following manner:

(a) By either of the Governments, subject to three months' written notice to the other Government;

(b) By recall of the entire personnel of the Mission by the Government of the United States of America or at the request of the Government of the Republic of Nicaragua, in the public interest of either country, without necessity of compliance with provision (a) of this Article.

Article 4. This Agreement is subject to cancellation upon the initiative of either the Government of the United States of America or the Government of the Republic of Nicaragua in case either country becomes involved in foreign or domestic hostilities.

TITLE II

Composition and personnel

Article 5. This Mission shall consist of a Chief of Mission and such other personnel of the United States Army as may be agreed upon by the Department of the Army of the United States of America and by the Ministry of War, Navy and Aviation of the Republic of Nicaragua. The individuals to be assigned to the Mission shall be those agreed upon by the Ministry of War, Navy and Aviation of the Republic of Nicaragua or its authorized representative and by the Department of the Army of the United States of America or its authorized representative.

Article 6. Any member of the Mission may be recalled at any time by the Government of the United States of America provided a replacement with equivalent qualifications is furnished unless it is mutually agreed between the Department of the Army of the United States of America and the Ministry of War, Navy and Aviation of the Republic of Nicaragua that no replacement is required.

TITLE III

Duties, Rank and Precedence

Article 7. The personnel of the Mission shall perform such duties as may be agreed upon between the Minister of War, Navy and Aviation of the Republic of Nicaragua and the Chief of Mission, except they shall not have command functions.

Article 8. In carrying out their duties, the members of the Mission shall be responsible to the Minister of War, Navy and Aviation of the Republic of Nicaragua and this responsibility shall be enforced through the Chief of Mission.

Article 9. Each member of the Mission shall serve on the Mission in the rank he holds in the United States Army, and shall wear the uniform and insignia of the United States Army, but shall have precedence over all Nicaraguan officers of the same rank, except the Commander of the Nicaraguan National Guard.

Article 10. Each member of the Mission shall be entitled to all benefits and privileges which the laws and regulations of the Nicaraguan National Guard provide for Nicaraguan officers and noncommissioned officers of corresponding rank.

TITLE IV

Privileges and Immunities

Article 11. Members of the Mission and their dependents, while stationed in Nicaragua, shall have the right to import, export, possess and use currency of the United States of America and to possess and use the currency of the Republic of Nicaragua.

Article 12. Mission members shall be immune from the civil jurisdiction of Nicaraguan courts for acts or omissions arising out of the performance of their official duties. Claims of residents of the Republic of Nicaragua arising out of acts or omissions of members of the Mission shall be submitted to the Chief of Mission for appropriate disposition. Settlements of such claims by the Government of the United States of America shall operate as a complete release to both the Government of the United States of America and the Mission member concerned from liability for damages arising out of such acts or omissions. Determination as to whether an act or omission arose out of the performance of official duties shall be made by the Chief of Mission.

Article 13. The personnel of the Mission and the members of their families shall be governed by the disciplinary regulations of the United States Army.

Article 14. Mission members, whether they be accredited or non-accredited, or on temporary duty, shall not be subject to any tax or assessments now or hereafter in effect, of the Government of the Republic of Nicaragua or of any of its political or administrative subdivisions.

TITLE V

Compensation and Perquisites

Article 15. The members of the Mission shall receive from the Government of the Republic of Nicaragua such net annual compensation, expressed in United States currency, as may be established by agreement between the Government of the United States of America and the Government of the Republic of Nicaragua for each member of the Mission.

This compensation shall be paid in twelve (12) equal monthly installments, payable within the first five days of the month following the day it is due. Payments may be made in Nicaraguan national currency and when so made shall be computed at the rate of exchange in Managua most favorable to the Mission member on the date on which due.

The compensation provided herein, and any which the members of the Mission may receive from the Government of the United States of America, shall not be subject to any tax, now or hereafter in effect, of the Government of the Republic of Nicaragua or of any of its political or administrative subdivisions. Should there, however, at present or while this Agreement is in effect, be any taxes that might affect this compensation, such taxes shall be borne by the Government of the Republic of Nicaragua in order to comply with the provision of this Article that the compensation shall be net.

Article 16. The compensation agreed upon as indicated in the preceding Article shall commence upon the date of departure from the United States of America of each member of the Mission and, except as otherwise expressly provided in this Agreement, shall continue, following the termination of duty with the Mission, for the return trip to the United States of America. Compensation shall be paid for unused accrued leave at time of termination of duty and prior to departure from Nicaragua.

Article 17. The compensation due for the period of the return trip shall be paid to a detached member of the Mission before his departure from the Republic of Nicaragua and such payment shall be computed for travel by the shortest usually travelled route, regardless of the route and method of travel used by the member of the Mission.

Article 18. Each member of the Mission and his family shall be furnished by the Government of the Republic of Nicaragua with first class accommodations for travel, via the shortest usually travelled route, required and performed under this Agreement, between the port of embarkation in the United States of America and his official residence in Nicaragua, both for the outward and for the return trip. The Government of the Republic of Nicaragua shall also pay all expenses of shipment of household goods, baggage and automobile of each member of the Mission between the port of embarkation in the United States of America and his official residence in Nicaragua as well as all expenses incidental to the transportation of such household goods, baggage and automobile from Nicaragua to the port of entry in the United States of America. Transportation of such household goods, baggage and automobile shall be effected in one shipment, and all subsequent shipments shall be at the expense of the respective member of the Mission, except as otherwise provided in this Agreement or when such shipments are necessitated by circumstances beyond his control. Payment of expenses for the transportation of families, household goods and automobiles in the case of personnel who may join the Mission for temporary duty at the request of the Minister of War, Navy and Aviation of the Republic of Nicaragua shall be determined by negotiations between the Department of the Army of the United States of America, or its authorized

representative, and the Ministry of War, Navy and Aviation of the Republic of Nicaragua or its authorized representative, at such time as the detail of personnel for such temporary duty may be agreed upon.

Article 19. Should the services of any member of the Mission be terminated by the Government of the United States of America for any reason whatsoever prior to completion of two years of service as a member of the Mission, the cost of the return to the United States of America of such member, his family, baggage, household goods, and automobile shall not be borne by the Government of the Republic of Nicaragua, nor shall the expenses connected with transporting the replacing member to his station in Nicaragua, except the cost of shipment of his automobile, be borne by the Government of the Republic of Nicaragua.

Article 20. The personal and household goods, baggage and automobiles of members of the Mission, as well as articles imported by the members of the mission for their personal use and for the use of members of their families or for official use of the Mission, shall be exempt from import taxes, custom duties, inspections and restrictions of any kind by the Government of the Republic of Nicaragua and allowed free entry and egress upon request of the Chief of Mission. This provision is applicable to all personnel of the Mission whether they be accredited or non-accredited members, or on temporary duty. The rights and privileges accorded under this Article shall in general be the same as those accorded diplomatic personnel of the United States Embassy in Nicaragua.

Article 21. Compensation for transportation and travel expenses incurred during travel performed on official business of the Government of the Republic of Nicaragua shall be provided by the Government of the Republic of Nicaragua.

Article 22. The Ministry of War, Navy and Aviation of the Republic of Nicaragua shall provide the Chief of Mission with a suitable automobile, with chauffeur, for use on official business. Suitable motor transportation, with chauffeur, shall, on call of the Chief of Mission, be made available by the Government of the Republic of Nicaragua for use by the members of the Mission for the conduct of the official business of the Mission.

Article 23. The Ministry of War, Navy and Aviation of the Republic of Nicaragua shall provide suitable office space and facilities for the use of the members of the Mission.

Article 24. If any member of the Mission, or any of his family, should die in the Republic of Nicaragua, the Government of the Republic of Nicaragua shall bear the cost of transporting the body to such place

in the United States of America as the surviving members of the family may decide, but the cost to the Government of the Republic of Nicaragua shall not exceed the cost of transporting the remains from the place of decease to New York City. United States military authorities shall remove and dispose of the remains in accordance with the regulations of the Department of the Army of the United States of America. Should the deceased be a member of the Mission, his services with the Government of the Republic of Nicaragua shall be considered to have terminated fifteen (15) days after his death. Return transportation to New York City for the family of the deceased member and for their baggage, household goods and automobile shall be provided as prescribed in Article 18. All compensation due the deceased member, including salary for fifteen (15) days subsequent to his death, and reimbursement for expenses and transportation due the deceased member for travel performed on official business of the Government of the Republic of Nicaragua, but excluding compensation for accrued leave and not taken by the deceased, shall be paid direct to such person as may be authorized or prescribed by United States Military Law for appropriate disposition. All compensation due the deceased under the provisions of this Article shall be paid within fifteen (15) days of the decease of the same member.

TITLE VI

Requisites and Conditions

Article 25. So long as this Agreement is in effect, the Government of the Republic of Nicaragua shall not engage or accept the services of any personnel of any other foreign government nor of any individual who is not a citizen of Nicaragua, for duties of any nature connected with the Nicaraguan National Guard except by prior mutual agreement between the Government of the United States of America and the Government of the Republic of Nicaragua.

Article 26. Each member of the Mission shall agree not to divulge or in any way disclose any classified information of which he may become cognizant in his capacity as a member of the Mission. This requirement shall continue in force after the termination of the service with the Mission and after the cancellation of this Agreement.

Article 27. Throughout this Agreement, the term "family" is limited to mean wife and dependent children.

Article 28. Each member of the Mission shall be entitled to one month's annual leave with pay, or to a proportional part thereof with pay for any fractional part of a year. Unused portions to said leave shall be cumulative for year to year during service as a member of the Mission.

Article 29. The leave specified in the preceding Article may be spent in the Republic of Nicaragua, in the United States of America, or in any other country, but the expense of travel and transportation not otherwise provided for in this Agreement shall be borne by the member of the Mission taking such leave. All travel time shall count as leave and shall not be in addition to the time authorized in the preceding Article.

Article 30. The Republic of Nicaragua agrees to grant the leave specified in Article 28 upon receipt of written application, approved by the Chief of Mission with due consideration for the convenience of the Government of the Republic of Nicaragua.

Article 31. Members of the Mission who may be replaced shall terminate their services only upon the arrival of their replacements, except when otherwise mutually agreed upon in advance as provided in Article 5.

Article 32. The Government of the Republic of Nicaragua shall provide suitable medical and dental care to members of the Mission and their families. In case a member of the Mission becomes ill or suffers injury, he shall be placed in such hospital and receive the attention of such doctors as the Chief of Mission deems suitable. Such doctors and hospitals shall normally be chosen from doctors, hospitals and pharmacies, all acceptable to the Chief of Mission which shall have been designated in advance for regular use by the Ministry of War, Navy and Aviation of the Republic of Nicaragua in consultation with the Chief of Mission. All expenses incurred as the result of such illness or injury while the patient is a member of the Mission and remains in Nicaragua shall be paid by the Government of the Republic of Nicaragua. If the hospitalized member is a commissioned officer, he shall pay his cost of subsistence, but if he is an enlisted man, the cost of subsistence shall be paid by the Government of the Republic of Nicaragua. Families shall enjoy the same privileges agreed upon in this Article for members of the Mission, except that a member of the Mission shall in all cases pay the cost of subsistence incident to hospitalization of a member of his family.

Article 33. Any member of the Mission unable to perform his duties with the Mission by reason of long-continued physical disability shall be replaced.

Article 34. It is understood that the personnel of the United States Army, to be stationed within the territory of the Republic of Nicaragua under this Agreement, do not and will not comprise any combat forces.

IN WITNESS WHEREOF the undersigned, Thomas E. Whelan, Ambassador of the United States of America to Nicaragua, and Oscar Sevilla Sacasa, Minister of Foreign Affairs of the Republic of Nicaragua, duly authorized thereto, have signed this Agreement in duplicate, in the English and Spanish languages, in Managua, this nineteenth day of November, one thousand nine hundred and fifty three.

APPENDIX 6

ARTICLE 3 GENEVA CONVENTIONS 1949

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons.

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect legal status of the Parties to the conflict."

APPENDIX 7

JURISDICTION OVER OFFENSES BY UNITED STATES FORCES

IN KOREA (12 JULY 1950)

American Embassy, Taejon, Korea, July 12, 1950

The American Embassy presents its compliments to the Ministry of Foreign Affairs of the Republic of Korea and has the honor to state that in the absence of a formal agreement defining and setting forth the respective rights, duties and jurisdictional limitations of the military forces of the United States (excepting the United States Military Advisory Group to Korea, which is covered by the agreement signed in Seoul on January 26, 1950) and the Government of the Republic of Korea, it is proposed that exclusive jurisdiction over members of the United States Military Establishment in Korea will be exercised by courts-martial of the United States.

It is further proposed that arrests of Korean nationals will be made by United States forces only in the event Korean nationals are detected in the commission of offenses against the United States forces or its members. In the event that arrests of Korean nationals are made under the circumstances set forth above, such persons will be delivered to the civil authorities of the Republic of Korea as speedily as possible.

The Ministry of Foreign Affairs and the Government of the Republic of Korea will understand that in view of prevailing conditions, such as the infiltration of north Koreans into the territory of the Republic, United States forces cannot be submitted, or instructed to submit, to the custody of any but United States forces. Unless required, owing to the nonexistence of local courts, courts of the United States forces will try nationals of the Republic of Korea.

The American Embassy would be grateful if the Ministry of Foreign Affairs would confirm, in behalf of the Government of the Republic of Korea, the above-stated requirements regarding the status of the military forces of the United States within Korea.

Republic of Korea, Ministry of Foreign Affairs, Taejon, July 12, 1950

The Ministry of Foreign Affairs of the Republic of Korea presents its compliments to the American Embassy and acknowledges the receipt of the Embassy's note of July 12, 1950, at Taejon.

The Ministry has the honor to inform the American Embassy that the Government of the Republic of Korea is glad to accept the propositions as set forth in the Embassy's note of July 12, 1950, that:

(1) The United States courts-martial may exercise exclusive jurisdiction over the members of the United States Military Establishment in Korea;

(2) In the event that arrests of Korean nationals by the United States forces are made necessary when the former are known to have committed offenses against the United States forces or its members, such person will be delivered to the civil authorities of the Republic of Korea as speedily as practicable; and

(3) The Ministry of Foreign Affairs understands that in view of prevailing conditions of warfare, the United States forces cannot be submitted to any but United States forces; and that courts of the United States forces will not try nationals of the Republic of Korea, unless requested owing to the nonexistence of local courts.

STATUS OF UNITED STATES FORCES IN LEBANON (6 AUG. 1958)

The military authorities of the United States shall have the sole right to exercise all criminal and disciplinary jurisdiction over all persons subject to its military law. The United States undertakes to maintain discipline over all such persons and to insure full respect by them for the laws of Lebanon.

No civil action shall be brought in Lebanese courts against any person subject to the military laws of the United States, and claims arising out of the acts of any such persons will be referred to a foreign claims commission of the United States for appropriate disposition.

The forces of the United States, including its members and instrumentalities, shall be exempt from any form of taxation in Lebanon including but not limited to taxation on property, death, inheritance, estate, gift and income. Property of military forces of the United States shall be allowed to enter Lebanon without duty or inspection. Members of the forces of the United States shall be allowed to import without duty various items for personal use. Mail and packages addressed to members of the military forces and transmitted through United States postal facilities shall be allowed free entry without inspection. Official mail and packages of the military forces of the United States shall be allowed free entry without inspection and without regard to method of transmission.

Military forces of the United States shall have the right to take such measures as they deem necessary to provide adequate security for their installations, movement of supplies and personnel in Lebanon. Outside these installations, military police of the forces of the United States, subject to such further arrangements as may be made with the Lebanese authorities, will be used, insofar as such employment is necessary, to maintain discipline and order among the members of the United States forces.

The military forces of the United States shall have the right to make administrative and logistical support movements as required. Large movements which might disrupt the freedom of movement of the civilian population will be coordinated with the appropriate Lebanese authorities. Official vehicles of the forces of the United States shall be distinctly marked and shall be exempt by the Lebanese Government from registration, licensing or any tax payable in respect to the use of vehicles on the roads.

MUTUAL DEFENSE ASSISTANCE AGREEMENT - VIET-NAM

3 UST 2756 (Dec. 23, 1950);
3 UST 4673 (Jan. 19, 1952);
7 UST 837 (Mar. 1, 1955)

Article IV

To facilitate operations under this agreement, each Government agrees:

1. To grant, except when otherwise agreed, duty-free treatment and exemption from taxation upon importation, exportation, or movement within Indochina, of products, material or equipment furnished by the United States in connection with this agreement.
2. To receive within its territory such personnel of the United States of America as may be required for the purposes of this agreement and to extend to such personnel facilities freely and fully to carry out their assigned responsibilities, including observation of the progress and the technical use made of the assistance granted. Such personnel will in their relations to the Government of the country to which they are assigned, operate as part of the diplomatic mission under the direction and control of the Chief of such missions of the Government which they are serving.

Annex B

In recognition of the fact that personnel who are nationals of one country, including personnel temporarily assigned, will in their relations with the Government of the country to which they are assigned, operate as part of the Diplomatic Mission of the Government of their country under the direction and control of the Chief of that Mission, it is understood, in connection with Article IV, paragraph 2, of the Mutual Defense Assistance Agreement, that the status of such personnel, considered as part of the Diplomatic Mission of such other Government, will be the same as the status of personnel of corresponding rank of that Diplomatic Mission who are nationals of that country.

The personnel will be divided into 3 categories:

- (a) Upon appropriate notification of the other, full diplomatic status will be granted to the senior military member and the senior Army, Navy and Air Force officer assigned thereto, and to their respective immediate deputies.

(b) The second category of personnel will enjoy privileges and immunities conferred by international custom, as recognized by each Government, to certain categories of personnel of the Diplomatic Mission of the other, such as the immunity from civil and criminal jurisdiction of the host country, immunity of official papers from search and seizure, right of free egress, exemption from customs duties or similar taxes or restrictions in respect of personally owned property imported into the host country by such personnel for their personal use and consumption, without prejudice to the existing regulations on foreign exchange, exemption from internal taxation by the host country upon salaries of such personnel. Privileges and courtesies incident to diplomatic status such as diplomatic automobile license plates, inclusion on the "Diplomatic List", and social courtesies may be waived by both Governments for this category of personnel.

(c) The third category of personnel will receive the same status as the clerical personnel of the Diplomatic Mission.