

THE RULE OF LAW IN UNCONVENTIONAL WARFARE *

Judge GUILLERMO S. SANTOS

Introduction—

The subject which we shall discuss tonight evokes a seemingly impossible synthesis of dichotomous and discordant trends in international law and relations.

The rule of law to which most of the civilized world today aspire seeks order, abhors uncertainties and requires clear definitions and fine distinctions for its application. Unconventional warfare, by its nature and as it is waged today, presents fact-situations which often defy categorization and, in truth, to be efficient and effective often requires, indeed demands ruses, stealth, deception, treachery and ultimately lawless violence. The former represents or embodies the innate desire of mankind for order, for the regime where freedom and justice prevail in the various aspects of relationships among men and between nations. Thru the latter, the aggressor state—assuming that it can be identified—seeks to promote its interests, whether social, political or economic, through subversion and/or violence.

Our subject, in its most simple frame of reference, requires a definition of “unconventional” warfare, a term of recent vintage. Then we are asked how this type or form of modern warfare—which has been denominated “unconventional” for the reason that it is unorthodox, or, perhaps, because it defies, or was designed to, circumvent, conventions—is comprised under present rules or norms of warfare. Finally, we are invited to speculate on the ways by which the rule of law may be made to prevail in unconventional warfare situations.

I

The Rule of Law—

The rule of law, in its most elemental concept, is that condition in a society where the law, as determined by the people, who are the ultimate repository of sovereignty in democratic states, defines and regulates the relations among individuals.¹ In the international

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¹ See African Conference on the Rule of Law, A REPORT OF THE PROCEEDINGS OF THE CONFERENCE AT LAGOS, NIGERIA, Jan. 3-7, 1961, p. 85; Whitney North Seymour, “THE EVOLVING WORLD CONCEPT OF THE RULE OF LAW—AN AMERICAN VIEW”; also, Dr. Justino Jimenez de Arechaga, “SOME THOUGHTS ON

plane, it is that condition where the states accept and observe the rules or conventions freely arrived at as norms in their dealings. The concept is now of wide acceptance and has sank into the consciousness of peoples in most parts of the world. Several nations claim it as their heritage, although not always with a clear perception of its meaning and implications. It has appeared in various forms in different legal systems and therefore assumes a number of aspects. All these, however, have one precept in common—that the individual and the components of a society or state live and exist under a regime of law—not arbitrary force, nor the whim or caprice of any individual or group of individuals, or of the state. It is thus of the essence of the concept that the primacy of force is ruled out by the society; that no person or group in a state or society is above the law; that all are bounden to accord it observance and obedience; and that those who transgress its precepts shall receive their due thru independent judges under a system of penalties or sanctions pre-determined and fixed by the law. Thus is order maintained in social groups and the rights of the individuals to freedom and justice assured; thus only may the right of the several states in the international community to co-exist in peace be guaranteed. Thus, finally, is the primacy of force in domestic and international relations minimized.²

The rule of law, in the philosophical sense of the term, has been built up and formed slowly and laboriously. The history of mankind may in a sense be said to be a continuous and protracted struggle to achieve it as a common heritage for all. But the struggle for law in the international sphere presents even more formidable obstacles and difficulties. The antagonism in national aspirations, the deep-seated disharmonies borne of racial, cultural and ideological orientations; the conflict in social, political and economic interests; and, antecedent historical associations among nations and states—which are the elements that make up the “syndrome of parochialism”³—conspire to this end. But the growing acceptance of the

THE RULE OF LAW”, *Journal of the International Commission of Jurists*, 1963, pp. 269 *et seq.*

² See SEATO Publication, *COLLECTIVE SECURITY: SHIELD OF FREEDOM*, 1963, on “THE RULE OF LAW”, pp. 26-27. “Society cannot exist without law. Most of the law which governs the relation between nations have developed not by legislation, but out of centuries of traditions and customs, treaty and agreement. Everything that is done to enlarge this law of nations, therefore, helps strengthen foundations of peace. The United Nations has made important contributions towards enlarging the world’s rule of law to meet both the facts of international life and various national interests.” The rule of law in international relations is the thesis of two major contemporary works—(1) McDougal & Feliciano, *Law and Minimum World Public Order* (Yale, 1961); and (2) Clark & Sohn, *World Peace Thru World Law* (Harvard, 1958).

³ Prof. Harold D. Lasswell, in his *Introduction to Law and Minimum World Public Order*, p. xxi.

concept of the rule of law by most states is a happy augury for the realization of the rule of law in international relations. For as it becomes an accepted mode or way of life in the various states which make up the family of nations, its validity and feasibility as a norm in the conduct or relations of states in the international community increases.

Unconventional Warfare—

But unconventional warfare polarises the opposite trends in international relations. Its novel techniques of subversion and aggression are designed and calculated to circumvent known rules and conventions of warfare. It has threatened the peace of the world after the last war to an alarming scale. It has brought the world to the brink of nuclear war in at least two instances—earlier in Korea and recently in Cuba; but for fear, respectively, on the parts of the political elites in the United States and later of the policy determinants in Russia. Since 1945 to 1962, or a period of 17 years, 35 of the 104 (then, now 114) members of the United Nations, or about $\frac{1}{3}$, had been affected in their territories in one way or another and in various degrees of seriousness by unconventional warfare.⁴ Unconventional warfare (also, at this stage of our discussion, limited wars or conflicts) have ranged in scope from Korea, where United Nations casualties were placed at 44 thousand South Koreans, 27 thousand Americans, 3 thousand others and 1 million 350 thousand enemy dead and wounded over a 3-year period, 1950-1953, to the alleged landing by Indonesia of 100 odd guerrillas at Labie on the eastern part of Johore sometime in the middle of last year.

Unconventional wars—or limited wars and conflicts—were the only kind that have occurred since WW II.⁵ Of the 23 war situations recorded, 17 have not necessarily been small or short wars. By striking a statistical time-manpower balance of all the 17 limited wars, one finds that they have averaged about $2\frac{1}{2}$ years in duration and nearly 600 thousand men engaged.⁶ In none of these wars have atomic weapons been used; but they have been available in several instances; and, in at least two situations its use was threatened—i.e. the Soviet missile threat at the time of the Anglo-French-Israeli attack upon Egypt and the delivery and installation by the United States of

⁴ Foreword to *The Annals of the American Academy of Political and Social Sciences*, Vol. 341, May, 1962, "ON UNCONVENTIONAL WARFARE", p. viii, henceforth "*The Annals*".

⁵ Hanson W. Baldwin, "LIMITED WAR" in *AMERICAN STRATEGY FOR THE NUCLEAR AGE*, henceforth "*AMERICAN STRATEGY*", edited by Walter F. Hahn & John C. Neff, p. 252 (1960).

⁶ Per General Maxwell D. Taylor, former US Army Chief of Staff in "*LIMITED WAR*", *supra*.

atomic launchers during the Formosa Straits crisis.⁷ In 1963, the US and the USSR were in proximate confrontation over the attempted installation of atomic weaponry in Cuba by the Russians.

There is support in the inference that they will continue and that the rate of incidence may rise.⁸ In the year 1963 alone, the magnitude of unconventional or limited warfare may be gleaned from the following: The US has 50 thousand troops stationed in South Vietnam where a protracted warfare has been carried on with North Vietnam, and with the Chinese Communists giving substantial aid to the guerrillas operating therein. In nearby Laos, leftists, who have received increasing amount of Chinese aid and the rightists and neutralists have carried on intermittent warfare. In Indonesia, authorities trained and equipped 6 thousand guerrilla fighters in North Borneo to oppose the Federation of Malaysia. In the Middle East, 28 thousand UAR troops have been involved in a civil war in Yemen with 1,500 Soviet advisers cooperating with the UAR. A United Nations team was hard placed in trying to restrain the UAR troops from attacking Saudi Arabia; and British troops protecting the border of recently established Saudi Arabia engaged in clashes with UAR troops. Simultaneously, the Arab states maintain military pressure against Israel and at least 100 clashes have taken place on the Israeli-Syrian border alone within the year. After the French relinquished control of Algeria, Morocans and Algerians engaged in skirmishes in their common boundary within the Sahara desert. Fighting was resumed at Angola where about 3,000 guerrillas trained in the Congo and equipped by various African states crossed the border and were attacked by Portuguese troops. In Cuba, with aid from Soviet Russia, several land, sea and air encounters have taken place with US-aided Cuban exiles. Cuba also promoted subversion in other Latin American states, particularly Venezuela. The tension on the Tibetan border between India and China remains at critical points and so was the tension between India and Pakistan on the Kashmir border. In northern Italy, the question of the German minority led to embittered relations between Italy and Austria. Somalia's territorial claims resulted in conflicts on the border between Somalia, Ethiopia and Kenya. Armed conflict was imminent between Haiti and the Dominican Republic. Relations between Bolivia and Chile were tense.⁹

⁷ See "LIMITED WAR", *supra*.

⁸ Theodore Ropp, *War in the Modern World* (1959), p. 366; also "AMERICAN STRATEGY"; James D. Atkinson, *UNCONVENTIONAL WARFARE*, pp: 301 *et seq.*

⁹ *Encyclopedia Britannica*, BOOK OF THE YEAR 1964, p. 444.

The foregoing fact-situations of unconventional and/or limited wars, throughout the period after WW II, and more particularly in the year 1963, provide us with factual bases for our inquiry into the origin, nature and employment of unconventional warfare.

Some Definitions; Categories—

Unconventional warfare covers a wide spectrum of unusual and unorthodox aggressions, often times peaceful sometimes violent. A term which was used for the first time during and/or immediately after the close of WW II to describe this peculiar form of warfare,¹⁰ it has been defined differently by various authors.¹¹

¹⁰ James D. Atkinson, "UNCONVENTIONAL WARFARE" from the AMERICAN STRATEGY, *cit. supra*, p. 301. Prof. Atkinson attributes the use of the term 'unconventional warfare' to the late General William J. Donovan to mean the abandonment of the traditional distinctions between peace and war. He points out that the communists, without specifically using the term, has practiced unconventional warfare from more than 4 decades. Lenin enlarged Marx' theory of class struggle into the concept of universal conflict. On this broad battlefield, according to Lenin, the techniques of cultural, psychological, political, conspiratorial and economic warfare will not be used so much to support military operations as in the past; rather they would supplement and even supplant the orthodox use of armed forces. The union of these 2 streams is accomplished in the modern synthesis by Mao Tze-Tung. This analysis rings a familiar echo in Castro's Cuban revolution.

¹¹ Re aptness of the term: The term 'unconventional warfare' has been said to be not a particularly apt term from the viewpoint of international law. For it could be misinterpreted to imply a type or form of warfare not in accord with international conventions which are a major source of the laws of war. Actually, warfare in any type, i.e. total, general, limited or revolutionary, or in any form, conventional or unconventional, regular or irregular, orthodox or modern, is governed by international law.—Morris Greenspan in "INTERNATIONAL LAW AND ITS PROTECTION FOR PARTICIPANTS IN UNCONVENTIONAL WARFARE" from *The Annals*, *cit. supra*, ON UNCONVENTIONAL WARFARE, p. 3.

Re ambiguity of the term: "The seminar entertained a number of questions concerned with methods applicable to the study of unconventional warfare. One of these, not surprisingly, had to do with problems of definition. Although several of the papers had dealt with such problems, *there was a reiterated comment that the separate definitions need to be brought within a systematic pattern.* There seems to be agreement on the conclusions: first, that the present language (at least in English) for the distinctions of unconventional war and violent political questions is ambiguous and, second, that the directive influence of definitions both in the military and academic community makes the development of a sound taxonomy important." See *The Annals*, Dr. Russell Rhyne, UNCONVENTIONAL WARFARE AND QUESTIONS, p. 102.

Some definitions—Prof. James D. Atkinson—"Unconventional warfare embraces a broad spectrum of conflicts which includes such diverse activities as propaganda, economic warfare, sabotage, espionage, subversion, strikes, civil disturbances, terrorism, political and guerrilla warfare. These methods of conflicts are used either singly or in concert within the framework of an overall grand strategy. Unconventional warfare employs both non-violent and violent techniques; indeed, its most distinctive characteristic is that it blends violence and non-violence into a new synthesis of warfare." From the AMERICAN STRATEGY, *cit. supra*, p. 302.

Col. Slavko N. Bjelajac—"UNCONVENTIONAL WARFARE IN THE NUCLEAR ERA"—Unconventional warfare defies exact definition because it encompasses the broad and shadowy no man's land between formal peace and formal war. Broadly considered, it is that diversity of actions and measures which a people

Two definitions from the military and legal standpoints will afford us with desirable perspectives. Brigadier General William P. Yarborough,¹² defines it thus—"Unconventional warfare encompasses the interrelated fields of guerrilla warfare, escape and evasion, and conduct of subversion against hostile states during war time and is itself part of a broader area known as special warfare. The latter in addition to unconventional warfare includes psychological warfare and counter-insurgency operations. In this sense, unconventional warfare is distinguished from nuclear war, conventional war, brush-fire or small wars and the cold war. The nuclear and large-scale conventional wars provide opportunities for unconventional warfare activity; the brush-fire and cold war situations currently bring guerrilla and counter-guerrilla actions into constant interplay as an integral element."¹³ Morris Greenspan¹⁴ defines it as—"x x x [A] shapeless and insidious kind of warfare that avoids the title of war; it is fought by subterranean armies composed of volunteers, revolutionists, guerrillas, spies, saboteurs, provocators, corrupters, subverters; it is a waging of war not only by military means, but politically, economically and psychologically. This kind of war is not designed to overturn a state by hard blows; rather, it nibbles at the foundations of the state, removing the underpinnings by a process of erosion, until the whole structure crumbles and falls. It is a war

can bring to bear against an enemy, either an invader or an oppressive government, short of confronting him formally on the battlefield. Unconventional warfare may consist of violent actions like guerrilla attacks, civil insurrections, mass riots, sabotage or terrorism or of such non-violent techniques as propaganda, infiltration, strikes, boycott, and espionage. Indeed, its most distinctive characteristic is that of blending violence and non-violence into a new synthesis of warfare. See *Modern Guerrilla Warfare*, p. 440 (1963), F. M. Osanka, editor.

¹² Brigadier General, U.S. Army, is Commanding General of the US Army Special Warfare Center and Commandant of the US Army Special Warfare School, Fort Bragg, North Carolina. He is a graduate of the United States Military Academy (1936), the Command and General Staff College, the British Staff College, and the US Army War College. He has been Chief of Troop Information and Education Department, Armed Forces Information School; a faculty member of the Advanced Study Group, US War College, Provost Marshall of US Forces, Austria and Deputy Chief of the United States Military Advisory Assistance Group to Cambodia. He has commanded a parachute infantry company, a parachute infantry battalion, a regimental combat team, an infantry battle group, a counter intelligence corps group and a military intelligence group. From *The Annals*, p. 1, *cit. supra*.

¹³ UNCONVENTIONAL WARFARE: ONE MILITARY VIEW, from *The Annals*, p. 2.

¹⁴ LL.B., Los Angeles, California, Barrister-at-Law of Greys' Inn, was research assistant in law at the London School of Economics before he entered into practice at the English Bar. During his World War II service in the British Army, he served under the Legal Adviser, Civil Affairs Branch, General Headquarters, Middle East, and as a Public Prosecutor, Assistant Legal Adviser, and Judge in the British Military Administration, Eritrea. He currently is engaged in legal research and writing and is the author of *THE MODERN LAW OF LAND WARFARE* (1959).—*The Annals*, p. 30, *cit. supra*.

that in "peace" time operates at a level below that of outright provocation and the instigators do not appear in the open. Yet, by taking over state after state in this fashion, the world balance of power may be effectively shifted from one side to the other without outright, all-out war."¹⁵

There are thus two main categories into which unconventional warfare may, for general purposes, be grouped:¹⁶ those operations waged in support of a conventional war effort where a country is occupied by enemy forces, such as the guerrilla and underground activities in WW II against the Germans, Italians and Japanese in the occupied territories. The other are those operations carried out in the cold war of a revolutionary, politico-military type of conflict, such as those fought in Indo-China, Malaya and Cuba, and the conflicts still being waged in Algeria, Laos and South Vietnam. These two categories or aspects of unconventional warfare not only require different types of organization and training for their effective implementation but also different types of organization and means for countering them.¹⁷

The former category is the historical concept of guerrilla or irregular or partisan warfare. This was what Clausewitz described as "a people's war" which depends on the intimate support of the population at large.¹⁸ Their operation and implementation is summed up in Mao Tze Tung's slogan: "Enemy advances, we retreat; enemy halts, we harass; enemy tires, we attack; enemy re-

¹⁵ INTERNATIONAL LAW AND ITS PROTECTION FOR PARTICIPANTS IN UNCONVENTIONAL WARFARE, from *The Annals*, p. 30.

¹⁶ Slavko N. Bjelajac, in UNCONVENTIONAL WARFARE, AMERICAN AND SOVIET APPROACHES, from *The Annals*, p. 75. Along the same line of analysis, see Russel Thyne in PATTERNS OF SUBVERSION BY VIOLENCE, from *The Annals*, p. 66—"subversion came to be listed as part of unconventional war in parallel with guerrilla warfare, but they have developed somewhat separately. It is only in the modern synthesis that they have been merged."

"One of the aspects of unconventional warfare is the use of violence applied concurrently to the weakening of the state and to the corruption of its social bases. Two main streams of external development are discernible. The first of these involve the techniques of guerrilla warfare. It is illustrated by the pattern of opposition to Napoleon's armies by Spanish irregulars; the second is that of revolutionaries utilizing violence as a principal tool for altering society. It is illustrated by the Arab revolt during WW I and by the Nazi take over in Germany, which is one of the few examples of successful subversion of an economically developed state. The union of these 2 streams is accomplished in the modern synthesis by Mao Tze-Tung." p. 65.

¹⁷ Col. Bjelajac's dichotomy springs from the operational standpoint from which the military naturally views unconventional warfare. Dr. Rhyne's may be said to be the result of a historical approach. A third dichotomy is that advanced by Greenspan, that—"Unconventional warfare" must be related both to international and internal conflict" which is a convenient taxonomy for legal students of this phenomenon.

¹⁸ Karl von Clausewitz, *On War*, trans. by O. J. Matrijs Jolles (New York, 1943), p. 459, cited in Greenspan's *cit. supra*, *The Annals*, p. 33.

treats, we pursue."¹⁹ The latter category although already utilized earlier in some instances have been perfected quite recently by communist revolutionaries Lenin, Mao Tze-Tung and Castro, who successfully utilized this modern form of unconventional operations to achieve their revolutionary ends.²⁰

From the foregoing definitions and fact-situations, we come to the following conclusions as to the origin, nature and employment of unconventional warfare. It is a development and extension of the techniques of guerrilla or irregular or partisan warfare and was first employed by the Soviets in its essential form after WW II with the bi-polarization of power and the advent of the cold war.²¹ Its essential feature—the synthesis of guerrilla tactics and sub-belligerency techniques were developed after WW II as part of the Soviet drive for the loyalty and/or territorial bases of newly emerging countries.²² Its characteristic features which distinguish it from other types or forms of warfare are thus discernible as—(1) its utilization of guerrilla or irregular forces or tactics; (2) its reliance upon sub-belligerency and non-violent techniques, e.g. espionage, deception, penetration and subversion; and (3) its synthesis of violent and non-violent tactics and techniques in pursuing its ends. Unconventional methods of warfare have been employed predominantly by the Soviet Bloc²³ to promote their political and military goals in the cold war and as a key instrument in their concept of peaceful co-existence²⁴ for two practical considerations—(1) its methods are less susceptible of detection, and (2) it minimizes escalation of conflicts to nuclear confrontation.

¹⁹ Mao Tze-Tung, *Selected Works* (New York, 1955), Vol. I, p. 212, cited in Henry A. Kissinger, *Nuclear Weapons & Foreign Policy* (New York, 1957), p. 347; *Id.*, p. 33.

²⁰ *The Strategy of Deception, A STUDY OF WORLD-WIDE COMMUNIST TACTICS*, edited by Jeanne J. Kirkpatrick (Farrar, Straus & Co., 1963); *Modern Guerrilla Warfare*, Franklin Mark Osazaka, editor—Ernesto "Che" Guevara, *LA GUERRA DE GUERRILLAS*; also *The American Strategy for the Nuclear Age*, Hahn & Neff, editors, *cit. supra*.

²¹ See SEATO publication, *cit. supra* on "EVENTS IN EUROPE," pp. 33-40, citing instances in Albania, Bulgaria, Rumania, East Germany, Holland, Hungary, Czechoslovakia, East Berlin, Turkey and Greece; and "EVENTS IN ASIA," pp. 40-45, citing Korea.

²² See Dulles, Allen W., *THE CRAFT OF INTELLIGENCE*, Britannica's Yearbook, 1963, p. 11, *et seq.* The book, of course, is a biased source, but is fully documented.

²³ See *The Annals*, particularly Col. Slavko N. Bjelajac's UNCONVENTIONAL WARFARE, AMERICAN AND SOVIET APPROACHES, pp. 74-81 at p. 76. The United States and other powers of the world also resort to unconventional warfare devices/techniques—e.g. the British and French in the Suez and the U.S. in Cuba. See also David Wise and Thomas B. Rose, *The Invisible Government* (Random House, New York), particularly: GUATEMALA, CIA'S BANANA REVOLT, pp. 160-183.

²⁴ *Id.*, p. 18; "The Communist's concept of peaceful co-existence in no way limits or changes the foreign policy of the Communist Party of the Soviet Union.

II

Law & Unconventional Warfare—

The study of a problem of legality and an exploration of legal alternatives designed to meet unconventional warfare situations have—as recently as January, 1962—been the concern of disciplines allied to the law, i.e., the political and social sciences.²⁵ As a general proposition, we submit that the laws applicable in unconventional warfare situations are to be found in the corpus of domestic laws, the Charter of the UN and portions of the international law on warfare.

A systematic and analytical determination of the application of rules of international law to unconventional warfare situations should, again, we submit, be approached from three aspects. These are, first, the rules of international law on the prevention of warfare; second, those that relate to the regulation of armed hostilities

On the contrary, the Party explicitly holds that the struggle for life and death between the Communists and non-Communists world is the law of history, and that this struggle can neither be abrogated nor altered by any agreements by the governments." Citing *Komunist*, a Soviet publication, 14 to 18 November 1959.

A more profound study of the nature of unconventional warfare will show that it is unorthodox in a still another sense. The final objective of warfare is the conquest of the enemy state, traditionally, thru the annihilation of its armed forces. Unconventional warfare, skirts the armed forces of the target state and strikes at the state's vital elements—its ultimate bases of power and its will to resist. It has, therefore, placed more reliance upon capture of the population's loyalty thru its hold upon the predominant bases of political powers, the working masses, the laborers and/or the peasantry. Its crucial struggle are not fought on battlefields, but takes place in the minds of the people.

²⁵ The articles on unconventional warfare included in *The Annals of the American Academy of Political and Social Sciences*, Vol. 341, May, 1962, were discussed in a pre-publication seminar held in Menlo Park, California on January 4 and 5, 1962 under the auspices of the Stanford Research Institute, see Appendix, *The Annals*, p. 102. Thus—"A number of points were raised which suggested potentially useful research tasks. One of these had to do with a problem of legality. Guerrilla violence tends to begin with a series of acts, each of which looks like an instance of ordinary crime, and the more open societies tend to treat them as such. When gangs extend crime or vilification, even within the confines of a single city, the resulting problem is too great a challenge to be handled by local codes and local police. When outrages are distributed over as broad an area as a nation and are ideologically co-ordinated and externally supported, they strain the legal order beyond its tolerable limits.

It was agreed that exploration of legal alternatives designed to meet problems of this sort was a topic worthy of study. One device, preventive detention, was mentioned as being effective and widely used, but there seemed to be a feeling that there is a considerable latitude for abuse in that solution as practiced. It was also contended that international law already covers the point, because the Conventions of 1949 are applicable to conditions of civil and colonial war even before there might be a recognition of belligerency. Unfortunately, those conventions also appear to be so hedged by constraint—a guerrilla must wear clearly visible identification, for instance, and must carry his arms openly in order to qualify for consideration under them—that they seemed unlikely to play a very persuasive role in daily operations."

in unconventional warfare situations; and, third, those that refer to or provide for sanctions against the violations of these rules. The last would include the sanctions which may be applied to the initiator of unconventional warfare and to those who violate the applicable regulatory conventions in combat situations.

On Prevention—

Warfare—of any type and in any form as long as it involves a contest of arms between states—has been outlawed.²⁶ Aggressive resort to armed forces, as a general principle, is illegal. For the modern law of war has reached that stage where resort to armed forces, as a general principle, is illegal. For the modern law of war has reached that stage where resort to armed force other than in self-defense, individual and collective, and the carrying out of collective enforcement actions pursuant to the UN Charter, is illegal *per se*.²⁷ Therefore, it can be stated, as a general proposition, that unconventional warfare, in its violent form—however novel its aspect may take—is proscribed by international law. The UN Charter does not leave any room for doubt in this regard. Thus, it recites that the Organization was established “to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind.” This objective it seeks to achieve through “effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law, the adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”²⁸

It would seem also clear that the UN Charter not only proscribes aggression or resort to armed force in the relations of state with one another; it also eschews any and all aggression of any nature, whether political, economic or even ideological, so long as the aggression threatens the fabric of world peace.²⁹ Since unconventional warfare in its subversive phase or form involves aggression conducted not through armed hostilities but through the sub-belligerency techniques of coercion thru political infiltration and subversion thru deception and penetration, it is, therefore, in the

²⁶ Salonga & Yap, *Public International Law* (1956), pp. 355-357.

²⁷ Draper, G.I.A.D., *The Red Cross Conventions*. (London, 1958), p. 98.

²⁸ Charter of the UN, Chap. 1, Art. 1, par. 1; see Lissitzyn, Oliver J., *The International Court of Justice, Its Role in the Maintenance of International Peace and Security* (UN Studies: No. 6, 1951) p. 39.

²⁹ See McDougal & Feliciano, *op. cit.*, on *Aggression and Self-Defense*, pp. 190, *et seq.*, particularly “indirect aggression” etc.

context of the foregoing purpose and precept of the UN Charter, also illegal.³⁰

On Regulation — Guerrilla Phase

With respect to regulation—the Hague Convention of 1907, on the Laws and Customs of War on Land, the Geneva Conventions of 1929 on Prisoners of War, and the Wounded and Sick, and the Geneva (Red Cross) Conventions of 1949 provide for certain rules in irregular, partisan, or guerrilla, i.e. unconventional warfare situation.³¹ Thus international law under these Convention extends protection to participants in unconventional warfare. This protection has been stated very succinctly and quite comprehensively, thus ³²—

“Unconventional warfare is governed by international law. In the context of the cold war, it must be considered in relation to both international and internal wars. In international war, volunteers are lawful ³³ as are troops belonging to an authority not recognized by the enemy.³⁴ Guerrillas are lawful combatants if they belong

³⁰ See Dulles, Allen W., *THE CRAFT OF INTELLIGENCE*, *Britannica Book of the Year* 1963, p. 12, citing President Truman's statement in his address to the Congress of the United States on March 12, 1947 that changes in the status quo by coercion or by such subterfuges as political infiltrations are in violation of the UN Charter.

³¹ Draper, *op. cit.*, p. 1, *et seq.* “In August 1949 at Geneva a diplomatic conference attended by representatives of sixty-three States established the texts of four substantial conventions for the protection of war victims. These conventions constituted both an emphatic vindication of humanitarian principles and a noteworthy contribution to the volume and appearance of the modern law of war. The First Convention was entitled the “Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field” and was a revision of the Convention of a similar name of 1929. The Second Convention, the “Geneva Convention for the Amelioration of the Condition of Wounded and Sick and Shipwrecked Members of Armed Forces at Sea,” revised the Tenth Hague Convention of 1907 for the adaptation to Maritime Warfare of the Geneva Convention of 1906. The Third Convention, styled the “Geneva Convention relative to the Treatment of Prisoners of War,” revised the Convention of the same name of 1929. The Fourth Convention, and perhaps the most important of the group, was the “Geneva Convention relative to the Protection of Civilian Persons in time of War.” All these four Conventions came into force in October of 1950 and are now part of the law of war.”

³² Greenspan, Morris, “*International Law & Its Protection for Participants in Unconventional Warfare*”, *The Annals*, p. 30.

³³ Greenspan, *op. cit.*, citing The Hague Conventions V (1907), Art. 17 (Concerning the Rights and Duties of Neutral Powers and Persons in War on Land) fn. 2 on p. 32. Tengku Abdul Rahman Putra of Malaysia has accorded belligerent status to Indonesian “volunteers” captured in Johore. (*Manila Times*, Nov. 26, 1964, p. 6); also MALAYSIA'S JUNGLE WAR, *The Asia Magazine*, 29 November 1964.

³⁴ *Id.*; Geneva Convention I (1949), Art. 13, Sec. 3, (Wounded & Sick in Armed Forces in the Field); Geneva Convention II (1949), Art. 13, Sec. 3 (Wounded, Sick & Shipwrecked Members of Armed Forces at Sea); Geneva Convention III (1949), Art. 4 (Prisoners of War), fn. 3, p. 32.

to an organized resistance movement to a party to the conflict,³⁵ are commanded by persons responsible for their subordinates, wearing fixed distinctive signs, carry their arms openly, and obey the laws and customs of war.³⁶ Lawful participants in a *levee en masse*

³⁵ *Id.*; Geneva Conventions I & II (1949), Art. 13, Sec. 2 and Geneva Convention III (1949), Art. 4, Sec. 2; fn. 8, p. 33.

³⁶ *Id.*; The "four conditions are not new. They repeat Art. I of The Hague Regulations Respecting the Laws and Customs of War on Land, annexed to The Hague Convention IV (1907), which applied thme to militia and volunteer corps not forming part of the regular army. What is new is that they are now specifically applied to resistance movements, a general term which embraces guerrillas." Draper, *op. cit.*, p. 33.

"Art. 4 of that Convention lists the classes of persons entitled to prisoner of war status. It includes members of organized resistance movements operating inside their own territory, even if it be occupied, provided that they (a) are commanded by a person responsible for his subordinates, and (b) have a fixed distinctive sign recognizable at a distance, and (c) carry arms openly, and (d) conduct their activities in accordance with the laws of war. It may well be thought that the effectiveness of any resistance movement that complies with these requirements will be considerably reduced if not destroyed. Resistance movements work secretly and wear no uniform. It is not an unreasonable assumption that this part of the Article is a further triumph for those States which have been Occupants, but have never been occupied. Nevertheless, for these members or organized resistance movements operating within or without occupied territory who comply with the above conditions, the Prisoners of War Convention demands that they be treated as prisoners of war. Thus for such activities there will be no question of trial upon capture for they are, in the eye of the Convention, lawful combatants. Should they fail to comply with these conditions then other considerations prevail and they come within the Civilian Convention. If their illegal activities have been carried out in occupied territory, they are liable to trial before the courts constituted by the Occupant under Articles 64-66, subject to the judicial safeguards provided in Articles 71 to 75. Organized resistance movements must be distinguished from a *levee en masse*. Members of the former may lawfully operate in or out of occupied territory. Members of the latter cannot lawfully operate with an area that is already occupied for they must be "inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces." An open rising in occupied territory, if not carried out by members of organized resistance movements fulfilling the above conditions, exposes all who participate to trial by the Occupant's courts for violation of the penal law imposed to safeguard the occupant's civil and military authority in the area." Draper at pp. 39-40.

"Apart from the "common articles" which have already been considered in Chapter 1, the first article that demands attention is Article 4, defining who are "prisoners of war" for the purpose of the Convention. An individual entitled to the status of a prisoner of war under the Convention must not only "have fallen into the power of the "enemy" but must also belong to one of the categories specified in the Article. If he does not belong to one of these categories, he will, as a general rule, be entitled to the protection afforded by the Fourth Convention. If the individual is not entitled to prisoner of war status but has taken part in hostilities he is liable to be treated as a war criminal. Over and above the members of the regular and auxiliary armed forces, Article 4 includes "members" of organized resistance movements operating in or outside their own territory, even if the territory is occupied, provided that they fulfill four conditions: (a) they are commanded by a person "responsible" for his subordinates, (b) they have a fixed distinctive sign recognizable at a distance, (c) they carry arms openly, and (d) they conduct their operations in accordance with the laws and customs of war. This provision will exclude clandestine or underground activities, the participants in which will have such legal protection as is conferred upon protected persons in occupied territory by the Fourth, i.e., the Civilians Convention. This inclusion of

must comply with the last two conditions.³⁷ In countering guerrilla activity, reprisals may not be used against prisoners of war³⁸ or civilians³⁹ in occupied territory. Hostages may not generally be taken.⁴⁰ If inhabitants in guerrilla areas are deported, their welfare must be safeguarded.⁴¹ Captured lawful combatants can only be sentenced by a competent tribunal.⁴² In occupied territory, the death penalty against an unlawful combatant is only possible if the pre-occupation law of that territory allowed it.⁴³ Espionage, sabotage, corruption and propaganda may be employed in war.⁴⁴ In civil and colonial wars both sides must obey the code laid down in Article 3 of the Geneva Conventions of 1949.⁴⁵

resistance movements, such as properly organized and operating partisans, must be considered a distinct step forward. The practical scope of the definition was as has already been pointed out, be reduced by the fact that effective resistance movements inevitably operate underground and do not disclose their identity until they strike." Draper at p. 52.

³⁷ The Hague Regulations (1907), Art. 2; Geneva Convention III (1949), Art. 4A, Sec. 6; in each of Geneva Conventions I & II (1949), Art. 13, Sec. 6; fn. 2, p. 37.

³⁸ *Id.*; Geneva Convention III (1949), Art. 13; fn. 22, p. 38.

³⁹ *Id.*, Geneva Convention IV (1949), Art. 33 (Protection of Civilians); fn. 23, p. 38.

⁴⁰ Geneva Convention III (1949); Geneva Convention IV (1949), Art. 34; fns. 24 & 25, p. 38. Reports from the Congo that Americans and Europeans including native Congolese were held as hostages by Congo rebels which prompted US intervention on "humanitarian" grounds. Associated Press dispatches from Stanleyville, Congo also showed a Chinese machine gun captured from Congolese rebels. (*Manila Times*, 30 November 1964, p. 5-A.)

⁴¹ Geneva Convention IV (1949), Art. 49; Greenspan, *The Modern Law of Land Warfare* (Los Angeles, 1959), p. 267; fn. 27, p. 38.

⁴² Geneva Convention III (1949), Art. 5; p. 38.

⁴³ Geneva Convention IV (1949), Art. 68, p. 39.

⁴⁴ Greenspan, *op. cit.*, pp. 38-39.

⁴⁵ *Id.*; pp. 39-40; see also Draper, *Red Cross Conventions*, thus—"The purpose of the Article (3) is to regulate conflicts not of international character, e.g., civil wars and insurrections by the establishment of a legal obligation to observe certain minimum standards of conduct. This Article solely to armed conflicts "not of an international character occurring in the territory of one of the High Contracting Parties." It sets out the minimum obligations to be observed by "each Party to the conflict." The general principle underlying the specific prohibitions such as "murder, mutilation, cruel treatment and torture" is that those persons taking no part in the hostilities, including surrendered combatants, wounded and sick, are "in all circumstances to be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex birth or wealth, or any other similar criteria." The ICRC and similar bodies may offer their services to the parties to the conflict, but the Article refrains from placing the latter under any obligation to accept such services. The parties are expressly recommended to enter into agreements for the application of "all or part of the other provisions" of the Conventions. Finally, and most important, the Article makes it clear beyond peradventure that its application "shall not affect the legal status of the Parties to the conflict." This Article represents both a substantial innovation in the law of war and a considerable extension of the international obligation of States. It reflects a modern tendency in international law which has been described by the editor of Oppenheim in these words, ". . . the observance of fundamental human rights has, in so far as it is the subject-matter of legal obligations, ceased to be one of exclusive domestic jurisdiction of States, and has become a matter of legitimate concern for the United Nations and its members." Not surprising-

Most of the principles enunciated in the foregoing have been provided in the customs of and/or conventions on war prior to WW II. The significant developments under the Geneva (Red Cross) Conventions of 1949 of special import to our subject consist in: first, the extension of the application of the rules qualifying guerrillas for belligerency status to resistance movements;⁴⁶ the second, its application to conflicts not of an international character, e.g. civil wars and insurrections, by the establishment of a legal obligation to observe certain minimum standards of conduct;⁴⁷ and, the third, which has peripheral but substantial bearing on our subject, the civilian conventions.⁴⁸

On Sanctions—

Finally, with respect to sanctions, the UN Charter in outlawing resort to war, breaches of the peace, or any situation that will lead to war, provides sanctions against aggressor nations. It also provides for the machinery whereby conflicts between nations which are likely to result in war may be peacefully settled through the UN organization. The former provide sanctions escalating from moderate measures to expulsion from the UN and UN police action. The Charter also provides, in conflict-situations short of war, means for the settlement of disputes through the International Court of Justice.⁴⁹

A final sanction applicable to both situations of initiation and/or violation of regulations—are proceedings for war crimes, ample precedents for which have been developed in a massive scale through the Nuremberg and Tokyo international proceedings and the several national war crimes trials undertaken after WW II.⁵⁰

The Guerrilla Aspect—

These in broad outlines are the rules or conventions of international law applicable to unconventional warfare situations. Clear-

ly, agreement on this Article was only achieved with much difficulty. No less than 25 meetings during the course of the Diplomatic Conference were devoted to its discussion and formulation. Governments, by tradition and inclination, regard rebels and traitors as worse offenders than ordinary criminals. Equally, they resent any attempt by outside bodies, including the International Committee of the Red Cross, to intercede on behalf of such rebels. Yet, as it has been pointed out many times, the soldier or civilian wounded or captured in a civil war is no less in need of care and decent treatment than the soldier wounded or captured in repelling an invader of his country. Thus the need for some minimal rules of humane treatment was very great." at pp. 13-14.

⁴⁶ Draper, *Red Cross Conventions*, pp. 83-45 and 52-53—"a distinct step forward," at p. 52.

⁴⁷ *Id.*, pp. 102-103, as "revolutionary," p. 102.

⁴⁸ *Id.*, pp. 112-114, as "The greatest contribution to the law of war," at p. 112.

⁴⁹ Lissitzn, *International Court of Justice*, pp. 41, *et seq.*

⁵⁰ Salonga and Yap, *op. cit.* p. 363; Glueck, Sheldon, *War Criminals, Their Prosecution and Punishment* (Harvard University, 1944).

ly, the guerrilla aspect is more or less thoroughly covered and in combat situations unconventional warfare would seem to have received sufficient attention in the continuing efforts at the Hague and Geneva Conventions to humanize the atrocities of armed conflicts and, lately, to balance the contending claims to recognition of guerrilla operations in conventional wars. Two significant developments in the Geneva Conventions of 1949 on guerrilla and/or partisan warfare are particularly noteworthy.⁵¹ These consist in the enlargement by the said Conventions of their application to resistance movement and the present consensus under the conventions that internal conflicts shall be subject to minimum requirements. The first innovation—whatever the shortcomings of the 4 classic requirements for belligerency status of guerrilla or irregular troops, specifically, that these are weighted in favor of occupant powers and/or that they undermine the effectiveness of guerrilla operations⁵²—was the result of the experience of WW II. It finds validity not only in that it may mitigate the atrocities of guerrilla warfare operations; it is also a recognition of the cardinal right of populations of target states to rise in arms against an aggressor. For the right of the population to resist invaders of state sovereignty is fundamental. This development will tend to stabilize world order, and gives a concession to target states which may be the victims of aggression. Finally, in unconventional warfare situations, e.g. Korea, Vietnam, etc. where so-called “volunteer” troops were utilized, the 4 requirements for belligerency status operate in favor of target states and militates against the interest of the aggressor. The second gives recognition to the right of revolution and, therefore, enhances libertarian movements, apart from promoting the observance of humanitarian methods of warfare in civil strifes, which often enough rise to fratricidal intensity. But from the standpoint of international law it is even more significant in its recognition that international law extends to the domestic affair of states in the interests of humanitarian considerations and civilized warfare.⁵³ The significance of this innovation may, finally, be assessed from the fact that it may apply to contemporary conflicts which have occurred in Algeria, Kenya and Cyprus and similar situations.⁵⁴

Subversive Phase—

But these salutary advances in the regulation of the guerrilla aspect of unconventional warfare are pitifully not in evidence in regard to the prevention of and the imposition of sanctions for the

⁵¹ See footnotes 46 and 47, *supra*.

⁵² McDougal and Feliciano, *op. cit.*, pp. 85, 549; Draper, *op. cit.*, p. 39.

⁵³ Draper, *op. cit.*, pp. 102-103.

⁵⁴ *Id.*, pp. 15-16 and footnote 47.

subversive phase of unconventional warfare. For the terms of the UN Charter outlawing "acts of aggression", "breach of the peace", and "threats to peace"—it has been aptly observed—are deliberately comprehensive but also designedly ambiguous.⁵⁵ It is, therefore, in this regard that international law is confronted by "the most difficult problem which today confronts world public order x x x characterizing and preventing unlawful violence or aggression."⁵⁶

It has thus been feasible, although the difficulties were formidable, to arrive at a UN consensus in unconventional warfare situations which have ripened into actual armed conflicts.⁵⁷ But it will not be easy—perhaps it is next to impossible—where the unconventional operations are limited to the sub-belligerency techniques of coercion and political infiltration thru penetration, deception and subversion. In this latter situation, unconventional warfare have been executed and waged with fatal results without any preventive measures taken, much less any sanction imposed.⁵⁸ These situations precisely account for the greater part of unconventional warfare as an instrument of policy or as a weaponry system in the cold war. The tactics and techniques of unconventional warfare consisting of, but not limited to deception, penetration and subversion, thus pose one of the greatest challenge to world peace today.⁵⁹

The subversive phase of unconventional warfare—which have resulted in "conquest without war" and which, therefore, has been aptly called the "invisible" war—has, in the contemporary cold war posture, compelled the nations of the Free World, individually and collectively, to formulate defensive measures. Unilaterally, most nations have provided for measures to combat unconventional warfare situations through domestic legislation consisting in the main of anti-subversion or anti-communist measures.⁶⁰ Collectively, re-

⁵⁵ McDougal and Feliciano, *op. cit.*, p. 61.

⁵⁶ *Id.*, p. 59, on "Major Problems and General Principles, etc."

⁵⁷ Korea, Palestine, Congo.

⁵⁸ See SEATO, *op. cit.*, pp. 33-41; Lissitzn: "Security against aggression cannot be assured if the meaning of aggression is indefinite and sanctions uncertain," at p. 105.

⁵⁹ THE CRAFT OF INTELLIGENCE, *Britannica Book of the Year 1963*, p. 50; SEATO, *op. cit.*, pp. 41-45.

⁶⁰ *The Reference Shelf*, Vol. 20, No. 7, Julia E. Johnson, Compiler, "SHOULD THE COMMUNIST PARTY BE OUTLAWED" (1949); R.A. No. 1700, Anti-Subversion Act.

"Sec. 4. After the approval of this Act, whoever knowingly, wilfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines and/or its successor or of any subversive association as defined in section two thereof shall be punished by the penalty of *arresto mayor* and shall be disqualified permanently from holding any public office, appointive and elective, and from exercising the right to vote; in case of a second conviction, the principal penalty shall be *prision correccional*, and in all subsequent convictions the penalty of *prision mayor* shall be imposed; and

course have been made to regional defense arrangements, i.e. ANZUS, CENTO, NATO and SEATO under Art. 52 of the UN Charter. These measures, individual and collective, on the part of the free world are calculated to supplement the guaranties of the UN Charter for world order as their immediate—objectives. But, in a deeper sense, these reveal not merely that it is difficult indeed to formalize legal alternatives or recourses to unconventional warfare situations; they also underline the fact that most nations of the Free World consider the UN Charter inadequate to insure a regime of law vis-a-vis the threat that unconventional warfare poses to world peace and order.

The rule of law in these situations is thus in its embryonic stage. For the most part, unconventional warfare situations or aggression thru subversion are not comprised under specific rules of international law, but are governed—except for guerrilla warfare situations—by indefinite and ill-defined provisions of the UN Charter. As a general proposition, therefore, the rule of law on the subversive aspect of unconventional warfare is still minimal.

Legal Alternatives—Some Bases and Developments—

Certain developments, however, point to the possibility, howsoever remote, that legal alternatives to meet the problems incident in its subversive phase may be evolved. The formulation of these legal alternatives is doubly difficult, in view of the prolixity of subversive tactics and the complexities of these operations. The experiences of the UN in dealing with actual unconventional warfare situations which precipitated the "Uniting for Peace" and the "Peace Thru Deeds" Resolutions and others as measures against "indirect aggression";⁶¹ the growing awareness that an intermediate status between

any alien convicted under this Act shall be deported immediately after he shall have served the sentence imposed upon him: Provided, That if such member is an officer or a ranking leader of the Communist Party of the Philippines or of any subversive association as defined in section two hereof, or if such member takes up arms against the Government, he shall be punished by *prison mayor* to death with all the accessory penalties provided therefor in the Revised Penal Code: and provided, finally, that one who conspires with any other person to overthrow the Government of the Republic of the Philippines or the Government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means, for the purpose of placing such Government or political subdivision under the control and domination of any alien power, shall be punished by *prison correccional* to *prison mayor* with all the accessory penalties provided therefor in the same Code."

⁶¹ The UN has in a number of cases succeeded in bringing an end to armed conflicts by means of negotiations, e.g. in Palestine through mediation and conciliation; in the Suez crisis, through the establishment of the UN Emergency Force (UNEF); in the Netherlands-Indonesia dispute, through mediation; in Korea, through collective military action in the Congo, upon request of the Congolese government, through UNUC, under Arts. 39 and 40 of the UN Charter. (*Britannica Book of the Year 1962*, p. 344, citing E. M. Miller, *AMERICAN JOURNAL OF INTERNATIONAL LAW*, January, 1961, p. 1, *et seq.*) The UN has since through 1960 engaged in a major operation to bring peace and unity to

"war" and "peace" should be recognized in western thinking;⁶² the growing realization for the felt need to redefine aggression in more comprehensive and realistic terms;⁶³ the determination to construe the Charter as a living instrument for peace;⁶⁴ the growing recognition of the paramountcy of international order to state interests;⁶⁵ and, finally, the trends in the decisions and advisory opinions of the International Court of Justice⁶⁶ will—in time, provide the efficient bases for the consensus on legal alternatives to the problems it poses.

that African republic. Under the General Assembly resolution "Uniting for Peace" adopted in 1950 the UN was able to take action in Suez, Hungary, Lebanon and Jordan and the Congo. Recently, the 102nd veto of Russia prevented UN intervention in the Malaysia-Indonesia dispute.

⁶² McDougal and Feliciano, *op. cit.*, p. 8, *et seq.*

⁶³ *Id.*; pp. 191 *et seq.*

⁶⁴ Former Secretary General Dag Hammarskjöld distinguished two different conceptions of the United Nations: "One group," he said, "saw it as a static machine served by a Secretariat representing conflicting interests and ideologies, a forum for debate and negotiation which could not act unless all parties to a dispute agree on every step. The other group conceived of it primarily as a dynamic instrument served by a truly active, objective and international Secretariat, an organization with a distinct personality, strong and independent enough to promote peaceful settlements under the Charter. Governments would have to choose . . . between a traditional view of international organizations or a newer view which better met the needs of persons and open the way for states to cooperate effectively in the future." (*Britannica Book of the Year 1962 ON THE UNITED NATIONS*, p. 693.)

⁶⁵ Secretary General U Thant on the United Nations: "The Charter shows some formal advances over the covenant in the matter of sovereignty. For example, the use of force by a state in a manner inconsistent with the purposes of the Organization and obligates the members to supply armed force and other assistance to the Security Council and to apply measures called for by the Council . . . There have also been practical application of the crashing attitude toward the sanctity of sovereignty. The acceptance of a United Nations peace keeping force on the territory of a sovereign state is one such instance and the provision on contingent of national armies to serve under UN command is another. . . ."

We can thus see how far the world has actually gone since 1919 in making the ideas and ideals of the covenant of the League of Nations into acceptable reality. If we are to make the next step toward world authority and then onward to a world government it will be by the greater authority and prestige of the institutions and agencies of the UN and by the development of the provisions of the Charter into the statute of the International Court. If we can make those documents accepted as binding law, as every government in the UN is pledged to accept, then we are on the right path to world authority." (From address delivered at the University of Berkeley, April 2, 1964.)

⁶⁶ In the Corfu Channel case submitted by the United Kingdom and Albania the International Court of Justice unanimously decided that the United Kingdom had violated international law by sending its warships, without the consent of Albania, into Albanian territorial water for the purpose of sweeping mines or collective evidence bearing on the responsibility of the Albanian government for the presence of mine fields in the Corfu Channel which has previously caused damage to British warships. The implications of this pronouncement are far-reaching. It is to be noted that the Court did not refer to the UN Charter. For the first time the Court put the weight of its authority behind the proposition that the use of force by way of intervention or self-help in the relations between states is now forbidden by general international law. Lissitzn, 26.

The International Court of Justice in an advisory opinion upheld the international personality of the UN and its capacity to present international

BIBLIOGRAPHY OF REFERENCES *

A. BOOKS

- ¹ Baalagon, Uldarico, *The Hukbalahap Movement in the Philippines* (1956).
- ² Britannica, YEARBOOKS, 1962, 1963, and 1964.
- ³ Clark, Glenville & Sohn, Louis B., *World Peace Thru World Law* (Harvard, 1958).
- ⁴ Draper, G.I.A.D., *The Red Cross Conventions* (London, 1958).
- ⁵ Dulles, Allen, THE CRAFT OF INTELLIGENCE, *Britannica* 1963.
- ⁶ Fenwick, Charles G., *International Law* (1948).
- ⁷ Glueck, Sheldon, *War Criminals, Their Prosecution & Punishment* (1944).
- ⁸ Goodrick, Leland M., & Hambro, Edward, *Charter of the United Nations* (1946).
- ⁹ Greenspan, Morris, *Modern Law of Land Warfare*, (Berkeley & California, 1959).
- ¹⁰ Hahn, Walter F. & Neff, John C., editors, *American Strategy for the Nuclear Age* (1960).
- ¹¹ Halcombe, A. N., *Strengthening the United Nations* (1957).
- ¹² Henderson, William, editor, *Southeast Asia, Problems of United States Policy* (Cambridge, 1963).
- ¹³ Kirkpatrick, J. J., *The Strategy of Deception: A Study in World-Wide Communists Tactics* (1963).
- ¹⁴ Lissitzn, Oliver J., *The International Court of Justice* (United Nations Studies No. 6, 1951).
- ¹⁵ MacArthur, Gen. Douglas, *Memoirs, No Substitute for Victory, The True Story of the Korean War*, Readers Digest, August & November, 1964.
- ¹⁶ McDougal, Myres & Feliciano, Florentino, *Law and Minimum World Public Order* (Yale, 1961).
- ¹⁷ Millis, Walker, *Arms and the State* (1958).
- ¹⁸ Osanka, Franklin M., editor, *Modern Guerrilla Warfare* (1962).
- ¹⁹ Ropp, Theodore, *War in the Modern World* (1959).
- ²⁰ Salcedo, Angel; Reyes, Manuel; Gloria, Claro, *The Armed Forces and the Law* (1960).
- ²¹ Salonga, Jovito R. & Yap, Pedro L., *Public International Law* (1956).
- ²² Sellin, Thorsten, editor & Lambert, Richard D., assistant editor; Zauwoodny, J. K., Special Editor, *The Annals of the American Academy of Political & Social Sciences—UNCONVENTIONAL WARFARE* (1962).
- ²³ Wilson, George C., *International Law* (9th ed., 1944).
- ²⁴ W. anthrop, Col. William, *Military Law & Precedents*, Vols. 1 & 2 reprint 1920.
- ²⁵ Wise, David & Roze, Thomas B., *Invisible Government* (1964).

B. JOURNALS / BULLETINS / MANUALS

- ¹ AFRICAN CONFERENCE ON THE RULE OF LAW (Lagos, Nigeria, Jan. 3-7, 1961).
- ² COLLECTIVE SECURITY: SHIELD OF FREEDOM, A SEATO Publication (1963).
- ³ HANDBOOK OF THE U.N. AND THE SPECIALIZED AGENCIES (1949).
- ⁴ JOURNAL OF SOUTHEAST ASIAN HISTORY (March 1964), published by the Dept. of History, University of Singapore for Dann. V. Harts' (Syracuse) Filipino Resistance in Negros 1942-1945).

claims. As authority of the Court's opinion, action was undertaken by the UN to obtain reparation for the deaths and injuries to its agents in Palestine. As a result, Israel has already paid \$54,620.00 and expressed regret with respect to the death of Count Bernadotte, the UN mediator in Palestine, and negotiation on other claims are pending. Lissitzn, 25.

In an advisory opinion handed down in response to a request of the UN General Assembly the International Court of Justice in July, 1962 held that the General Assembly was competent to declare the expenses of the UN force in the Suez area and the Congo "expenses of the Organization" which the members were legally obliged to pay. x x x 9 of the 14 Judges held that the only limit to the Assembly's power to make contribution obligatory was that they must be in pursuance to a purpose of the UN. (*Britannica BOOK OF THE YEAR 1963*, ON INTERNATIONAL LAW, p. 464.)

⁵ MANUAL ON MARTIAL LAW, ARMED FORCES OF THE PHILIPPINES (1950) based on Santos, Guillermo S., MARTIAL LAW IN THE PHILIPPINES—NATURE, PRINCIPLES & ADMINISTRATION (1948).

⁶ PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW (Washington, D.C., April 1956) for Quincy Wright, "THE PROSPECT OF INTERNATIONAL LAW", pp. 1-11 and John F. Dulles, "THE INSTITUTIONALIZING OF PEACE", pp. 11-29.

⁷ THE INTERNATIONAL COURT OF JUSTICE—Selected Documents, United States Government Printing Office.

⁸ THE AMERICAN JOURNAL, Vol. IV, No. 1, June 1964 for Hovet Jr., Thomas, "UNITED NATIONS DIPLOMACY".

C. ARTICLES / SPEECHES

¹ Andrasy, Jurat (Prof. of International Law, University of Zagreb) "UNITING FOR PEACE" from AMERICAN JOURNAL OF INTERNATIONAL LAW (AJIL), July 1956, p. 563.

² Duetsch, Ronald (Associate Pres.) "SPOTLIGHT ON INDO-CHINA—LAOS, VIETNAM, CAMBODIA" (*Fookien Times* YEARBOOK, 1964).

³ Hall, Clarence, "THE COMMUNITY THAT SAVED ITSELF (Brazil), *Readers Digest* (RD), December, 1964, p. 99.

⁴ Kennewick, R. E., VERDICT ON THE UN (Philippines Free Press, 17 October 1964).

⁵ Lazo, Mario Dr., "DECISION FOR DISASTER, THE TRUTH ABOUT THE BAY OF PIGS", *Readers Digest*, October 1964, pp. 110 *et seq.*

⁶ Nixon, Richard, SOME REFLECTIONS ON CUBA, CASTRO AND KENNEDY, *RD*, December 1964, p. 141.

⁷ Nuride, Lester and Barrett, Rouger W., "LEGALITY OF GUERRILLA FORCES UNDER THE LAWS OF WAR" from AJIL, July 1946.

⁸ Reed, David, "GHANAS COMMUNISMS' NEW FOOTHOLD IN AFRICA," *Readers Digest*, August 1964, p. 70.

⁹ The Associated Press, "WORLD'S TROUBLE SPOTS—CYPRUS, CUBA, CONGO & MALAYSIA", in *The Fookien Times*.

¹⁰ Trianin, I. P., "QUESTIONS ON GUERRILLA WARFARE IN LAW OF WAR", translation by Dr. John N. Hazard, from the original publications in *Izvestia Akademii Nauk, USSR*, Ottellnie Ekonomeki 1 prara No. 4 (1945), from AJIL, July 1940.

¹¹ U Thant (Secretary-General, UN)—THE UNITED NATIONS, speech at the University of California, Berkeley, April 2, 1964 (*Fookien Times*).

¹² Wascow, Arthur I., "NEW ROADS TO A WORLD WITHOUT WAR", *Yale Review*, Autumn 1964, pp. 85 at 100.

¹³ Wright, Quincy (of the Board of Editors, AMERICAN JOURNAL OF INTERNATIONAL LAW) "THE PEVENTION OF AGGRESSION from AJIL, July 1956, p. 515.

¹⁴ Foreign Affairs, April 1964, for the following: Mc. George Bundy, *The Presidency and the Peace*, p. 353; Roswell Gilpatrick, *Our Defense Needs: The Long View*, p. 366; Roberto Ducci, *The World Order in the Sixties*, 379; Philip W. Quigg, *Latin-Amsrican: A Broad Appraisal*, p. 399; and, Thomas W. Wolfe, *Shifts in Soviet Strategic Thought*, p. 475.

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