10 DOWNING STREET

From the Private Secretary

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MR. CARTLEDGE (separate copies)

SEMINAR ON CONFLICT OF PRINCIPLES

I attach a draft summary record, to which I should welcome amendments and improvements.

CDP

Fine. But what about the reconciled conversation after dinner on Nicaragua?

3 October 1984

SEMINAR ON CONFLICT OF PRINCIPLES, CHEQUERS, 1 OCTOBER 1984

This seminar - a list of the participants in which is attached - addressed the question: Is Intervention Ever Justified?

The most notable feature was the failure of participants to fulfil their stereotypes. Academics raged red in tooth and claw through the jungle of law and morality, proclaiming the primacy of national interest. Politicians and civil servants pleaded for clear and internationally accepted rules.

Discussion turned first to the legal aspects. It was noted that international law recognised a number of grounds for intervention (generally those listed in the paper circulated to the seminar). But there was disagreement as to how far these could or should act as a constraint on national actions. Some argued that the situations in which intervention in another state had to be considered were usually on the margins of international law. A great deal turned upon the precise construction but the facts of a particular situation and historical experience showed that these could easily be twisted to suit a convenient interpretation, for example, manufactured invitations to intervene. The only realistic course therefore was to determine where one's best policy interests lay. The law could not rule, though legal arguments could generally be developed to support decisions taken on policy grounds. If international law supported a decision taken on grounds of national interest, that was an uncovenanted bonus.

Others were more rule-oriented, believing that existing international rules in fact permitted intervention in quite a wide range of situations, for instance intervention on request or with consent. It was important not to flout

these rules, indeed they should be strengthened. Otherwise carte blanche was given to the Soviet Union to intervene when and where it wanted. It was in our broader national interest that there should be a framework of international law, which was observed in practice.

An attempt, not entirely successful, was made to steer a middle course between these two views. This noted the ectoplasmic quality of international law in this area and the consequent ability of both the Soviet Union and the West to appeal to the law to justify what they chose to do for reasons of state. One had therefore to take account of the results of an intervention. Interventions should be carried out rapidly, successfully and leave a demonstrably better situation than existed before. Applying this to the ~~Soviet~~ American invasion of Grenada, one might say that in law the US action was wrong but that it would be hard in the light of the facts to get a jury to convict.

The only conclusion which could be reached was that we needed a respectable framework of international law which by and large we should observed unless there was very good reason not to do so.

The law not having provided much of a guide, discussion of moral aspects proceeded rather gingerly. Indeed the frontier between law, morals and real politics (Realpolitik) seemed at times invisible. One view seemed to be that there were virtually no relevant moral considerations, a situation which might be summed up as Thucydides rules OK: the strong do what they will, the weak ~~do~~ suffer what they must. Various rights could be adduced, for instance a right of vicinage entitling a strong country to intervene in the affairs of a smaller neighbour if these were conducted in a way to pose a threat to its interests. Lord Salisbury's justification of the partition of Poland on the grounds that it was a ceremonious anarchy and thus a danger to its

neighbours was recalled. Both considerations were in practice no more than recognition of spheres of influence and large countries right to act as they will within them.

Against this it was represented that countries often believed themselves to be guided by moral considerations when intervening. Theodore Roosevelt's citation of "chronic wrongdoing" as grounds for intervention was quoted. More widely it was argued that the notion that a particular action was regarded internationally as "wrong" still carried force, even though situations which were plainly "wrong" - Amin's Uganda, Pol Pot, Bokassa's tyranny - had been tolerated and not led to intervention. It was also argued that there was a clear moral basis for international law in this field in the sovereign independence of each state and its right to self-determination. (This latter claim led to the usual fruitless argument about who is and is not entitled to self-determination).

A suggestion was made that a distinction could be drawn between interventions which occur as part of the global East/West conflict and others. There was a moral distinction between the US and Soviet systems. The US (or like-minded countries) was justified in intervening to sustain justice and democracy, while Soviet intervention could never be justified since it's goal was to establish tyranny. It was recognised that these criteria were highly subjective. They also raised once again the mirror image problem: the Soviet Union could rely on the same body of international law and the same terms justice and democracy (though with different meaning) to justify its own interventions. Gromyko's proposal at the UN for a resolution demanding renunciation of "actions aimed at forcible change or undermining of the social systems of sovereign states" was a vivid illustration of this.

It was suggested that the UN Charter offered the best guide to what was and was not permissible. It was the only rule-book on which an international consensus existed. Condemnation by the UN remained a useful sanction, even against the Soviet Union (a view disputed by others).

Discussion moved on to practical measures to limit interventions. It was suggested that we confronted a new situation, with the existence of tiny sovereign states peculiarly vulnerable to subversion. The words of Lynden Pindling at the last CHOGM were recalled: if we don't have the capacity to defend ourselves, we don't deserve to be independent. The problem might be contained through encouragement of regional pacts. An alternative would be to follow the path of the Austrian State Treaty which set limits both on foreign policy and the level of armaments. Groups of small states might get together, accept such limitations and then seek specific guarantees from the super-powers.

To meet the yearning for clarity an attempt was made - by the academic participants - to establish some guidelines thus:

(i) it is the policy of the UK to adhere to the rules of international law;

(ii) in applying these rules, the governing consideration will be the UK's commitment to democratic principles, the maintenance of democratic regimes and preservation of human rights;

(iii) at the same time, the UK recognises that there are limits beyond which these principles can be applied only at an unacceptable political price.

Held up to the light by the official participants, it was pointed out that 'Soviet Union' could be substituted for 'United Kingdom' throughout. The attempt was abandoned.

The main points noted in conclusion were:

- there was a framework of international law and most wanted to see it built on and reinforced;

- moral factors were subjective: in the end the only guidance was what you believed to be right;

- the burden of proof to justify an intervention lay with the protagonist. It needed to be justifiable when you did it not just post facto.

While it would be nice to have a clear set of rules, this was in practice all that was available.

3 October 1984