

**THE WEINBERGER DOCTRINE AND PANAMA:
AN INTERVENTION PARADIGM?**

PAUL E. ROUSH
DEPARTMENT OF LEADERSHIP AND LAW
UNITED STATES NAVAL ACADEMY

For Presentation at the Joint Services Conference on Professional Ethics
JSCOPE XIII: "Constabulary Uses of Military Force." 10 January 1991

THE WEINBERGER DOCTRINE AND PANAMA: AN INTERVENTION PARADIGM?

INTRODUCTION

General Colin L. Powell, chairman of the Joint Chiefs of Staff, has been reported as favoring in the Persian Gulf a doctrine of "invincible force" -- the use of military power by American and coalition forces of sufficient magnitude to overwhelm any resistance. According to a recent article in the Washington Post, not only is "invincible force" the prevailing American approach to combat; it has assumed the status of "catechism" following the Panamanian intervention a year ago.¹ The assertion raises a number of questions. First, is it true? Second, was Panama its genesis? Third, what might be the consequences of using that approach more broadly? The answers to these and other questions require for their satisfactory resolution a more detailed examination of the events associated with Operation Just Cause, the American use of force in Panama.

On December 20, 1989, five days after the Panamanian National Assembly announced the existence of a state of war between Panama and the United States, President Bush told the American people that he had ordered U.S. military forces to Panama during the night. The State Department press guidance put forward the following objectives:

(1) to protect American lives; (2) to assist the lawful and democratically elected government in Panama in fulfilling its international obligations; (3) to seize and arrest General Noriega, an indicted drug trafficker; and (4) to defend the integrity of United States rights under the Panama Canal treaties.

The intervention involved approximately 24,000 United States military persons. Key military objectives were achieved in a matter of

¹Rick Atkinson and Robert Woodward, The Washington Post, December 2, 1990

hours. As a result of the fighting, approximately 800 Panamanians and 26 U.S. military personnel were killed. General Noriega initially went into hiding, then took refuge in the Papal Nunciature on December 24th. On January 3, 1990 he surrendered to United States military forces. He was turned over to Drug Enforcement Agency authorities, who arrested him and transported him to Florida. He was subsequently arraigned in the U.S. District Court in Miami on drug trafficking charges.

The foregoing chain of events represented the culmination of a two-and-a-half year campaign to oust the Noriega government.² The campaign involved political and economic sanctions, the net effect of which was to devastate the Panamanian economy. Despite the loss of life, destruction of property and social and economic dislocation, the intervention had the broad popular support of both the Panamanian people and the American people.³

My primary purpose in this paper is not to defend or even to discuss the details of the intervention. It is, rather, to show that the Panama incursion was part of a more-broadly applicable intervention paradigm -- one which has received surprisingly little attention. A second intent is to recreate for you something of the context within which that paradigm was nurtured, both pre- and post-natally. My third goal is to highlight some of the issues raised by the paradigm. Fourth, I will assess the fit of the paradigm with the conduct of the intervention. Finally, I will say a few words about its appropriateness from my personal perspective as a former

²Two useful chronologies of events preceding the intervention are: Frederick Kempe, Divorcing the Dictator, (New York: G.P. Putnam's Sons, 1990) and John Dinges, Our Man in Panama (New York: Random House, 1990).

³The point has been readily conceded even by those who oppose the intervention. See, for example, Charles Maechling, Jr. "Washington's Illegal Invasion" Foreign Policy, 79, Summer 1990, 113-131 and Richard L. Millett, "The Aftermath of Intervention: Panama 1990," Journal of Interamerican Studies and World Affairs, 32, Spring, 1990, 1-15.

Marine Corps officer who is now engaged in the ethical-leadership education of future officers in the Navy and Marine Corps.

OVERVIEW

For many observers, the commitment of American forces into combat in Panama in December 1989 came as something of a surprise. While the intervention may not have been predictable its conduct offered further confirmation of an approach that had been proclaimed five years earlier by then-Secretary of Defense Caspar Weinberger.

On November 28, 1984 the Secretary gave a speech before the National Press Club in Washington, D.C. which was, to paraphrase Lincoln, "little noted nor long remembered." It deserved notice. In his comments, Mr. Weinberger laid out the specifications under which American forces would -- and would not -- be committed into conflict situations. It was a statement both about the limits of American power and about thresholds for the use of that power. More importantly, the Weinberger Doctrine, as it has come to be known, was a statement that reflected with pristine clarity the views of the professional military leadership.

THE WEINBERGER DOCTRINE

In his speech, Secretary Weinberger listed six major tests to be met before American troops could be committed to combat overseas. First, the United States should not commit forces unless the engagement is deemed vital to our national interests or those of our allies. Second, the force should not be committed unless done wholeheartedly and with the clear intention of winning. Third, forces should not be committed without clearly defined political and military objectives and the appropriate force structure to achieve those objectives. Fourth, the relationship between objectives and the size, composition, and disposition of forces committed must continually

be reassessed and readjusted, if necessary. Fifth, forces must not be committed without some reasonable assurance of the support of the American people and their elected representatives in congress. Sixth, forces are not to be committed except as a last resort.

ORIGIN OF THE DOCTRINE

The military leadership for whom the Secretary was speaking when he set forth his six tests was forged in the crucible of Viet Nam. Lessons learned from that conflict were hammered out and refined over a decade of unremitting analysis. Those lessons permeate the doctrine. For example, the insistence that there be no intervention where national interests cannot be demonstrated is responsive to the fundamental failure in Southeast Asia. Incremental escalation is anathema, as is troop commitment without the intention of victory. Bitter experience has confirmed that deaths will be increased by an order of magnitude on all sides of the conflict⁴ and that intervention will not prevail under those constraints. While guarantees cannot be given, there must be at least the expectation of popular, sustainable support for clearly-stated objectives if we are to avoid profound alienation between citizen and soldier.⁵ Early call-up and involvement of the

⁴Admiral James Stockdale, prisoner of war in Hanoi for six years and winner of the Congressional Medal of Honor made the point well in In Love and War, (Annapolis, MD: Naval Institute Press, 1990) p. 512. In discussing the Christmas bombing of Hanoi in December 1972 he said, "The Vietnamese total military and civilian casualty figure over the ten-day bombing period -- a figure that for twelve years they have insisted is correct -- is 1,318 killed. (That was the lowest figure to come from any significant bombing of an industrial complex in half a century; there were numerous cases of 50,000 and 60,000 killed in raids in a single night in World War II) The sad thing about watching all this from the ground in downtown Hanoi was the realization that such a collapse of Vietnamese will could have been brought about in a like manner in any ten day period in the previous seven years and saved the lives of thousands, including most of those 58,012 Americans who died in Vietnam."

⁵For a detailed explanation of a catalyst in the military's consensus on this issue see Peter Braestrup, Big Story: How the American Press and Television Reported and

reserves is a means both of evoking commitment and of gauging the depth of public support. If circumstances change, the commitment must be reevaluated, and perhaps terminated.

While Viet Nam loomed large in the formulation of the doctrine it was not the whole story. A second element was the sense of impotence in the years immediately following that flawed undertaking. The establishment, with the assistance of the Soviets and Cubans, of pro-Marxist regimes in Mozambique and Angola in 1975, and Ethiopia in 1977, the Soviet sponsorship of the Marxist government in South Yemen in 1979, the fall of the Shah of Iran and the subsequent hostage-taking in 1979, the triumph of the Sandinistas in Nicaragua and the externally supported insurgency in El Salvador all made it clear that the American malaise and paralysis were no longer acceptable. If further evidence were needed it came in December 1979 with the Soviet invasion of Afghanistan.

A third ingredient was the increasing frustration with the legalist paradigm⁶ as a criterion for employment of military force in pursuit of national interests. The essence of the paradigm is that the international community comprises independent states having the rights of territorial integrity and sovereignty. Those sovereignty and territorial rights can be breached only if the state in question launches armed aggression against the territory and sovereignty of another state. In a word, only self defense or mutual defense in response to aggression can justify resort to force. The essence of the problem is that violence does not emanate solely, or even

Interpreted the Crisis of Tet 1968 in Vietnam and Washington (Abridged Edition) (New Haven, CT: Yale University Press, 1983).

⁶The term is taken from Michael Walzer. See his Just and Unjust Wars (New York: Basic Books, Inc., 1977) for an extended discussion of the theme.

primarily, as a result of one nation-state transgressing the territory of another nation-state. The frustration springs from the inability of the legalist paradigm to deal with violence initiated by states against their own citizens, from violence emanating from proxy wars⁷, and from insurgency and terrorism by non-state entities. That frustration is reinforced by those who attempt to legitimize terrorism in pursuit of parochial causes by making it the moral equivalent of taxing the wealthy⁸.

The primacy afforded to sovereignty rather than to human rights is a major element in the bias against the legalist position. Recognition of that prioritizing phenomenon, of course, no longer requires any special prescience. An early warning came from Alexander Solzhenitsyn, who understood it even from the bowels of the Soviet labor camps three decades ago. In his Nobel lecture (read for him in absentia) in 1970 he anticipated the current state of events and gave expression to some of the accompanying frustration and moral outrage:

A quarter of a century ago, with the great hopes of mankind, the United Nations was born. Alas, in the immoral world, it, too, became immoral. It is not a United Nations but a United Governments in which those freely elected and those imposed by force and those

⁷I have in mind, for example, those fought by Cuban military forces thousands of miles from their own borders, in which they were widely perceived to be acting as surrogates for the Soviets.

⁸George Quester, in "Some Explanations for State-Supported Terrorism in the Middle East," in Michael Stohl and George A. Lopez (Eds.), Terrible Beyond Endurance: The Foreign Policy of State Terrorism (New York: Greenwood Press, 1988), p. 227, makes the point about the needless confusion shed by those who attempt to categorize as terrorism the power a regime exerts over the territory it already controls. For him terrorism is "an approach that seeks to impose pain in an area where those perpetrating such pain can not yet hope to establish a military monopoly and system of law and order of their own." Those who support wars of national liberation may well have a vested interest in trying to desensitize the horror concomitant with the word "terrorism" by likening it to normal law enforcement activities. The unintended consequences include devaluing the norms of language and undermining respect for the rule of law.

which seized power by arms are all on a par . . . By an officious vote it rejected the review of PRIVATE COMPLAINTS -- the groans, shouts and pleadings of individual, common PLAIN PEOPLE -- insects too small for such a great organization. The UN never tried to make BINDING on governments, a CONDITION of their membership, the Declaration of Human Rights, the outstanding document of its twenty-five years --and thus the UN betrayed the common people to the will of governments they had not chosen ⁹

The failure to differentiate between between combatant and non-combatant in insurgencies offers guerrillas a tremendous advantage in fighting revolutionary war.¹⁰ It also leads to the death, unnecessarily, of numerous non-combatants. More importantly, it constitutes a violation of the law of war as laid down in the Hague and Geneva Conventions¹¹ and, in the absence of sanctions, reinforces contempt for the legalist position.¹²

⁹Alexander Solzhenitsyn, Nobel Lecture, (New York: Farrar, Straus and Giroux, 1972), p.26.

¹⁰Alan Ned Sabrosky, in "Red Star Falling? The Soviet Small War in Afghanistan," Small Wars and Insurgencies 1, No 1, April 1990, 74-83 points out the enormous difficulties of waging successful counterinsurgency warfare. "When so many countries have found themselves unable to prevail in the field against militarily inferior guerrillas or irregulars -- countries as different in culture, historical experience, aggregate capabilities and military outlook as the United States, France the Soviet Union, Vietnam (Hanoi), Cuba and Israel, to name a few -- this form of warfare requires renewed attention. We may have entered a military epoch as different from that which dominated the earlier part of this century as the era of mass warfare was different from the small professional armies of the seventeenth century."

¹¹For example, Walzer acknowledges that it is an objective of guerrillas to cause soldiers to attack civilians. He acknowledges that this is a war crime. He nevertheless claims war rights for the guerrillas if the support they receive from the people is voluntary, p. 185. Simultaneously, he claims non-combatant rights for those who provide aid to guerrillas in their war against the opposing forces. In discussing the rules of engagement used by U.S. forces in Viet Nam to respond to this rather convenient arrangement he relies upon the testimony of Jonathan Schell, p. 189, -- testimony which differs radically from my own experience as a Marine Corps officer in Viet Nam in 1967. Walzer also supplies a wonderfully benign view of the manner in which the insurgents in that conflict acquired the "support" of the people.

¹²George Will, "The Perils of Legality," Newsweek, September 10, 1990, 66. The author expresses that contempt as follows: "The phrase 'international law' often is virtually an oxymoron. Law without a sword is mere words: lacking an enforcement mechanism, 'law' is merely admonition or aspiration."

The U.N. Charter does not require armed intervention as a remedy for human rights abuses, including those which reach the stage of genocide. Until Pol Pot and his fellow Marxists in Cambodia/Kampuchea slaughtered 35% of the human beings inside those borders, the world dutifully honored the primacy of sovereignty. Even when the Vietnamese intervened, their motives were hardly humanitarian, given their own annual hemorrhage of tens-of-thousands of boat people. The same lack of timely response prevailed when Idi Amin turned on his people in Uganda. At the very least, the reverence afforded Article 2 Section 4 of the Charter in such cases is analogous to a father who slavishly obeys the speed limits while his child is bleeding to death.¹³ At least two major issues contribute to this state of affairs. One is the lack of sanctions in the international environment, cited above. Another is the apparent unwillingness to act until the number of victims attains staggering proportions. Quite clearly, there is international consensus that sovereignty rights are more important than the prevention of genocide.¹⁴

The fourth precursor to the formulation of Weinberger's six points was the emergence of the Reagan Doctrine, a set of principles never officially

¹³Is it too extreme to see in such behavior a post-World War II equivalent of the defense at Nuremberg? Is it simply a variation on the "following orders" theme?

¹⁴See Barbara Harff, Genocide and Human Rights: International and Legal Issues (Monograph Series in World Affairs, Vol 20, Book 3) (Denver, CO: University of Denver Press, 1984) p 18-9. She states that international law, which focuses on the rights of states, neither punishes nor prevents such genocidal behavior. Interference with established authority is deemed a greater evil under the legalist paradigm than is genocide. The just war doctrine with its greater focus on the rights of individuals might allow for intervention. She argues for a "reinterpretation of the noninterventionist doctrine that would establish humanitarian intervention as the last-resort answer to gross, large-scale violations of human rights." The questions, of course, are "How gross?" and "How large-scale?" My own bias is that thresholds of the magnitude contemplated will promote the status quo.

articulated; yet no less real for that omission. Reagan's approach contained three elements; first, the willingness to challenge Marxist ideas -- to declare Marxism an irrelevancy in the modern era; second, the emphasis on democracy -- which subsumes human rights -- as a more appropriate goal than human rights as an end in itself; and third, the willingness to emulate long-standing Soviet support for wars of national liberation by provision of support for insurgencies conducted against Marxist-Leninist regimes.¹⁵

In the first phase, the President and his administration articulated a rollback of Marxist power and a restoration of American status. One means of doing so was the provision of relatively low-cost support for anti-Marxist insurgencies in Angola, Nicaragua, and Afghanistan. Countering that support required far greater expenditures by an over-extended Soviet Union on behalf of its client states.¹⁶ A second means was demonstrated by the Grenada intervention in October 1983. The overthrow of the New Jewel Movement, which had enjoyed Cuban, Soviet, North Korean, East German, and Bulgarian support, had the overwhelming approval of the people of Grenada and of the United States.¹⁷

Phase two expanded the rollback effort beyond Marxism. With the ousting of Marcos in the Philippines and Duvalier in Haiti there was the

¹⁵See Bruce Weinrod, in "The Reagan Doctrine: Problems and Prospects," Small Wars and Insurgencies 1, No 1, April 1990, 9-14, for a more complete discussion.

¹⁶Earl C. Ravenal, "The Reagan Doctrine in Its Strategic and Moral Context," Small Wars and Insurgencies 1, No 1, April 1990, 22-38.

¹⁷See David T. Twining, in "The Weinberger Doctrine and the Use of Force in the Contemporary Era," Small Wars and Insurgencies 1, No 2, August 1990, 97-117, for a discussion of the support and the evidence of the role of Marxist states in the activities of the New Jewel Movement.

implication of "support for any democratic force in the world fighting against any repressive government, whether left or right."¹⁸

Also in October 1983 a truck bomb destroyed the Marine Corps Headquarters in Beirut with the loss of 241 servicemen. There were several important aspects in this incident. First, devising more effective responses to terrorism became a preoccupation of the administration. Second, it marked a significant departure from the approach taken in Viet Nam. The Secretary of Defense and the service chiefs had opposed the intervention from the start. After the bombing, they simply reassessed the situation and removed the troops from Beirut. National honor was not advanced as a cause for staying. Third, the incident probably marked a shift in influence from the Department of State to the Department of Defense, and especially to the service chiefs, in questions involving the use of force as an extension of policy. Almost certainly the bombing was a major contributor to the final formulation and enunciation of the Weinberger Doctrine.

FROM THE DOCTRINE TO THE INTERVENTION

Even after enunciation of the doctrine, other factors acted as reinforcers. For example, then-Vice President Bush's Task Force on Combatting Terrorism recommended the judicious employment of force to punish and deter terrorist acts just six weeks before the April 15, 1986 raid on Libya.¹⁹

The momentous events in the Soviet Union under the leadership of Mikhail Gorbachev were a major factor in reinforcing the themes of the Reagan and Weinberger doctrines. Gorbachev's decision not to intervene

¹⁸Earl C. Ravenal, p. 29.

¹⁹David T. Twining, p. 110.

militarily against democratic uprisings in Eastern Europe constituted renunciation of the Brezhnev Doctrine. Given the iron law that Marxism retains power only by force of arms, the undoing of Brezhnev's sanctions guaranteed the unraveling of the Soviet empire. The Soviet decision to withdraw from Afghanistan reinforced the perception of the relative ease with which support for insurgency can raise the ante for forces engaged in counter-insurgency, a factor given added significance by the pervasive collapse of Marxist economic systems. This confluence of events emboldened the Reagan administration to take advantage of Soviet flaccidity. There can be little doubt that the correlation of forces, to use the Soviet term, was shifting in favor of the United States, and that the shift was evident for all to see.

The loosening of Marxism's grip on hundreds of millions of people inspired the publication in 1989 of Fukuyama's celebrated "End of History" article.²⁰ It proclaimed not only the triumph of capitalism over socialism but "the total exhaustion of viable systematic alternatives to Western liberalism" and "the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government." That sort of prose had to create a sense among some in the administration that President Reagan's much-caricatured remarks about consigning Marxism to the ash heap of history were not so far-fetched, after all. Even his "evil empire" appellation seemed non-trivial in the light of the acknowledgment by both Pravda and Izvestia that 50 million Soviets had

²⁰Francis Fukuyama, "The End of History," The National Interest, 16, Summer 1989, 3-18

died at the bidding of Joseph Stalin, not counting the slaughter of World War II.²¹

It was the coming together of these seven factors -- the lessons of Viet Nam from the perspective of the American military leadership, the consequences of the post-Viet Nam malaise, the growing dissatisfaction with the legalist paradigm in force-employment decisions, the emergence of the Reagan Doctrine, intervention successes in Grenada and Libya, the winding down of the cold war, and the perceived changes in the correlation of forces between the United States and the Soviet Union -- which were the important precursors and reinforcers of the Weinberger Doctrine.²²

ISSUES RAISED BY THE DOCTRINE

Of the six tests set forth in the Weinberger Doctrine, perhaps the most contentious is the first. In essence, it is an appeal to national interests, rather than to the legalist paradigm. Anthony D'Amato deals with one aspect of the legalist approach, namely, the slowness with which change is

²¹For further data concerning excess deaths in the Soviet Union see Murray Feshbach, "The Soviet Union: Population Trends and Dilemmas," Population Bulletin, 37, No. 3, August 1982, 1-44. Feshbach, without question the leading authority in the West on population in the Soviet Union, pointed out that normal growth rates from the time of the Russian revolution in 1917 would have yielded a population in 1973 that was greater by 125 million to 200 million people (depending on whether low or high ranges of normal growth rates were used) than was actually the case. World War II losses of 20 million, Civil War losses of 2 million, deaths from epidemics between 1917 and 1923 of 3 million, and deaths from three major famines (1922-4, 1932-4, and 1946-7) of 12 million account for slightly less than one-third of the differential. He includes a chart on page 7 which, starting with the death of Stalin in 1953, shows that the slope of the actual population curve matches with considerable precision that of the normal or projected growth rate.

²²The long-overdue reassessment of our continuing military role in Western Europe, while still in embryonic form, may also have played a factor by suggesting the future reallocation of resources which have for four decades gone into the NATO commitment, but that is a topic that exceeds the scope of this paper.

understood and incorporated.²³ He does so by attacking analogically the notion that sovereignty is the central value of the United Nations charter. In the 19th century, he points out, United States courts refused to intervene in marital disputes when women sought legal remedy against beatings inflicted by their husbands. If a wife was unhappy at home she could always sue for divorce. The courts followed a "neutral principle" --that is, they would not intervene in the home on behalf of either spouse. Today, of course, courts do grant judicial protection to battered wives. The brutality and horror that wives had to endure at the hands of physically stronger spouses who treated them like chattel is now seen as abhorrent. It is clear to all of us that the advertised "neutrality" merely protected the physically and economically stronger marriage partner against the countervailing force of the police.

D'Amato continues:

The citizens of Panama were as powerless against Noriega and his henchmen as the 19th century American wives were against physically stronger husbands. . . Noriega and his co-thugs ruled Panama because they controlled the guns . . . there was an election in May 1989, and Noriega's candidate was defeated. No matter; Noriega had the power . . . The electoral victors were crushed.

On the other hand, D'Amato argues that intervention to impose democracy is as wrong as intervention to enforce the Brezhnev Doctrine. Its rightful exercise is not for anything, but against tyranny -- against rulers who abuse their citizens with the power derived from monopolistic control of weapons and instruments of oppression. Outside intervention under such circumstances is both legally justified and morally required by any state

²³Anthony D'Amato, "The Invasion of Panama Was a Lawful Response to Tyranny," The American Journal of International Law, 84, 1990, 516-524.

which has both the will and the resources so to act.²⁴ The argument is for early recourse to humanitarian intervention in order to obviate the issue of genocide.

Quite apart from the question of the value of the legalist paradigm are a whole range of issues dealing with national interests. What are they? Who decides? How can we avoid the temptation to find a national interest in every circumstance? Nuechterlein has attempted to categorize national interests by function and by intensity.²⁵ His four functions are defense interests, economic interests, world-order interests, and ideological interests. The intensity levels he suggests are survival, vital, major, and peripheral. The combination of these functions and intensity levels is one among numerous schemes that have been put forward to determine whether or not an interest merits resort to force of arms. Among the difficulties with interests is that they are rarely articulated. Citizens are almost never given the opportunity to confer upon them consensual legitimacy.

²⁴See Charles Maechling, Jr. "Washington's Illegal Invasion," Foreign Policy, 79, Summer 1990, 113-131, for an opposing view. He sees control of territory and the meeting of international obligations as the only tests. "The means by which a government takes power and maintains itself in power are irrelevant." That perspective, it seems to me, fails to see human rights as an international obligation.

²⁵Donald Nuechterlein, "The Concept of 'National Interest': A Time for New Approaches," Orbis, 23, No 1, Spring 1979, 73-92. A brief description of his functions is as follows: (1) defense interests -- the protection of the nation-state from physical violence or other externally inspired threat; (2) economic interests -- enhancement of the nation-state's economic well-being in relation with other states; (3) world-order interests -- maintenance of international political and economic structures in which the nation-state can feel secure and its citizens can operate peacefully outside their own borders; and (4) ideological interests -- protection and furtherance of a set of values which the citizens of a nation-state share and believe to be universally good. The intensity levels he suggested were (1) survival -- the very existence of the nation-state is in jeopardy; (2) vital -- the likelihood of serious harm to the state is such that compromise on the issue at hand is not an option; (3) major -- the well-being of the state may be adversely affected; and (4) peripheral -- the interests of individual citizens operating abroad are endangered.

The second of Secretary Weinberger's tests, the refusal to commit forces unless done wholeheartedly and with the clear intention of winning is also problematic. Its major flaw is a constitutional one. The American military officer takes a single oath. It is to support and defend the Constitution. He or she does not even swear to defend the nation. The Constitution is the ultimate ethical reference point for the military officer. That document grants to the president the authority to act as Commander in Chief, but it grants to the Congress the right to make rules for the governance of the armed forces. When acting in the capacity of Commander in Chief, the President is subject to the laws which congress enacts for the governance of those forces. That means that Congress could legislate an approach to the conduct of armed interventions just like those imposed in Korea or Viet Nam and it would be binding. The clarion call of the Weinberger Doctrine would, however, make such legislation the focus of national divisiveness which even Viet Nam did not evoke. The military has thought this issue through with exquisite care. In my judgment, this is an aspect of the Weinberger Doctrine with the potential for serious constitutional crisis.

The third through the sixth tests are conceptually simpler. There are problems, but their definition is more manageable. The major difficulty with stating clear objectives is that of defining, articulating, and consensually legitimizing the national interests. The problem with the relationship between objectives and forces is that there cannot be enough forces to be prepared to deal with the range of potential interests. The fifth test, public support, will always be precarious in a democracy, especially given the failure to articulate the national interests. The best hope for success includes clear and simple goals, short deployment, few casualties and success in

battle. Unfortunately, circumstances that facilitate that scenario may not always accord with actual vital national interests. Intervention, in other words, could be limited to situations which are feasible rather than important. The problem with the final test, intervention only as a last resort, is that it may be much easier and involve far less loss of life if done earlier rather than later.

THE DOCTRINE APPLIED TO PANAMA

I want to now assess how closely the paradigm was followed in the intervention in Panama. David Broder of the Washington Post dealt with that question in his newspaper's January 14, 1990 issue and found that the Panama intervention met all six tests, but the analysis was a relatively abbreviated and superficial one. The first test, that of national interests is especially noteworthy because the interests were stated in a way that has a legalist underpinning. In fact, the legality of the intervention in Panama was defended on at least four counts.

The first argument was made in terms of the right to conduct rescue missions to protect United States military personnel, nationals, and installations. While it is true that the problem in this particular case might have been avoided by simply letting General Noriega alone, the point, if it ever had relevancy, certainly had lost it by December, 1989.²⁶

Secondly, the right to self determination by the people of Panama was given primacy over the claims of the Noriega government to sovereignty rights. Repeatedly the administration referred to Endara as the "lawful and

²⁶See Tom Farer, "Panama: Beyond the Charter Paradigm," The American Journal of International Law, 84, 1990, 503-15, for a discussion defending the right to conduct rescue missions under carefully circumscribed circumstances, coupled with the need for wise governance to avoid such situations in the first place.

democratically elected government in Panama". Two points are at issue here. One is the rejection of the notion that the nature of a government is irrelevant to sovereignty. The other is implicit; namely, that the principle of equal sovereignty of states cannot be divorced from compliance by states with all the provisions of the Charter which enunciates that sovereignty.

Third, the United States asserted its right to protect its territorial integrity against the shipment of narcotics across its borders. Article 18 of the OAS Charter has been cited to condemn the intervention. It could as easily have been cited to support it. The provisions of Article 18 proscribe threats against "the personality of the State" and "against its political, economic, and cultural elements." International narcotics trafficking constitutes an assault against every one of those elements.

The fourth legal assertion of the American government was the right to enforce the provisions of the Panama Canal Treaty. The treaty, signed in 1977, calls for Panama to grant to the United States, until the year 2000, the rights that would be required in defending and protecting the canal. Whether or not Noriega was a threat against the canal is a point at issue, as is the question of the steps to be followed in the implementation of the rights granted by the treaty.²⁷

Obviously, the Bush administration wanted to provide a legal basis for the intervention. Its current elaborate efforts to lay a comprehensive legal foundation for the troop presence in Saudi Arabia is evidence that it does not desire to undo international law. But it may not be willing, in some cases, to

²⁷See Ved P. Nanda, "The Validity of United States Intervention in Panama under International Law," The American Journal of International Law, 84, 1990, pp 494-503 for a more-detailed discussion in opposition to the exercise of the right to defend the canal.

"obey the speed limit while the patient bleeds to death." A sense of proportion will be brought to the situation, and each case will be assessed on its own merits. The critical point of the first test of the Weinberger Doctrine is that even if the entire argument were to fail on legal grounds, it would still be made on the grounds of national interest. The President believed he had a solid legal basis, but if he did not, he believed the national interests subsumed in the legal arguments were sufficient to carry the day.

The second test, that of a sufficiently large force committed with the clear intention of winning, was probably met, as was the test requiring clearly defined objectives.

The intervention was sufficiently short that the reassessment and reevaluation of interests, forces and objectives never became necessary in any major sense. Had Noriega not chosen to turn himself in at the Papal Nunciature, and taken to the jungle instead, the situation could have been very different in this regard. The limited duration and relative success of the operation, when combined with the harmonious relationship between the military and the press all combined to maintain public support for the operation.²⁸

If the operation was not a last resort, it certainly was not an early or precipitous one. Millett has argued, in fact, that it could have been done two years earlier at far less cost in terms of resources and loss of life.²⁹

THE MEANING OF THE DOCTRINE

²⁸See Marc Cooper, "The Press and the Panama Invasion," The Nation, June 18, 1990, 850-4 for a discussion lamenting the uncritical support given the intervention in the media, particularly the print media.

²⁹Richard L. Millett, p. 3.

There are a number of messages that can be derived from the Weinberger Doctrine. The first has to do with discrimination in its use. The Secretary was very careful to point out that application of the paradigm is not automatic.³⁰ Every situation would have to be considered on a case-by-case basis. The rule of prudence is very strong. Intervention was possible in Panama, but there are many places where it would not be contemplated, even if human rights and other circumstances were much worse than in Panama. Obviously the Soviet Union could disregard human rights within its borders, and many other places, without the slightest chance of armed intervention by the United States. A major purpose of Weinberger's six tests was to forestall the use of force. It is at the opposite end of the spectrum from the challenge issued by President Kennedy in his 1961 inaugural address when he threw down the following gauntlet: "Let every nation know, whether it wishes us well or ill, that we will pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, to assure the survival and the success of liberty."³¹ Kennedy's statement, of course, is not true. It may have provided some of the visceral underpinning for subsequent intervention in Vietnam, but things have changed. There are very tangible limits on the price, the burden, and the hardships that the nation will endure -- and the thresholds are not terribly high.

The point about discrimination leads to the second message, namely that the intervention choice in the Weinberger Doctrine includes a moral calculus. While there are consequences from intervention, there are also consequences from non-intervention. While world public opinion is largely

³⁰Caspar Weinberger, "U.S. Defense Strategy," Foreign Affairs, 64 No 4, 1986, 675-97.

³¹Norman Podhoretz, Why We Were in Vietnam, (New York: Simon and Schuster, 1982), 50

unoffended by the knowledge, it is nevertheless true that governments in this century have slaughtered at least as many of their own people as have been killed in wars between nation-states. Accordingly governments which violate self-determination and other rights guaranteed by the UN Charter while claiming Charter rights to equal sovereignty may be at intervention risk under some circumstances.

The third message derives from the second. It is that the legalist paradigm is not entirely well. There may be no problem with its intentions, but some of the consequences are running a fever. This is especially the case regarding responses to violence by non-state entities, blurring of distinctions between combatants and non-combatants, and lack of sanctions for human rights abuses or cases of genocide. This message is broadly applicable. The United States and other democratic nations are among those who have had a causal role in the illness. That is, of course, the point of all this. The Weinberger Doctrine is a response, in large measure, to errors made by the United States.

There are probably many other messages. I will confine myself to one final point. The Doctrine sends a lamentable signal that the professional military can lower its vigilance as regards allegiance to the Constitution. As stated above, the Constitution subjects the military to civilian control by two entities; the President, as Commander in Chief and Congress as the transmission belt for the will and values of the people. In addition to submission to these two categories of civilian authority, there is a final burden levied on the military by the constitution, namely submission to the supreme law of the land. That comprises three parts. First is all the provisions of the Constitution. Second is conventional international law -- in essence, the treaties and other formal agreements between the United States

and other nations. Third is customary international law. This refers to instances where formal agreement may be lacking, but there is international consensus, nevertheless, with reference to a given concern, and United States intent to comply is signalled by Presidential Proclamation or Executive Order. The United Nations Charter and the Geneva Conventions would be examples of conventional international law. The prohibition against launching attacks against the civilian population, as such, is an example of customary international law.

At a personal level, if I am going to hold to the Constitution as an ethical reference point, there are certain precepts that I must help my students understand, including the following: (1) the United Nations Charter is binding upon them as military officers, (2) obedience to the supreme law of the land is not optional, (3) the pursuit of military victory as an ethical good is impermissible if it is proscribed by the President or the Congress, and (4) service to the President as an ethical good is wrong if such service contravenes congressional legislation governing the armed forces.

In a word, my difficulty with the Weinberger Doctrine is that it blurs the distinctions we need to make in order to be ethical military officers. The power we wield requires moral clarity of the highest order. This paper questions in its title whether or not the doctrine is to be the model for future armed-intervention decisions. For me the dilemma is very real.

Weinberger's six tests reflect many of the views that I have been contemplating ever since my Viet Nam experience more than two decades ago. Unfortunately, the paradigm needs a seventh test -- the Constitutional one. That omission is more important than inclusion of the useful points made in the other six. It does not, however, alter the fact that the

Weinberger Doctrine represents reality and constitutes a powerful influence in the armed-intervention, decision-making process.

Finally, with reference to the questions posed at the start of this paper, it turns out that General Powell served a tour as military assistant to Secretary Weinberger. He was powerfully influenced by the Secretary's 1984 speech in which the six criteria were first enunciated. Those criteria, of course, do not require the deployment of overwhelming force to guarantee success in battle. Some in the pentagon refer to the "invincible force" model as "Weinberger plus." Clearly, then, current planning is a derivative of the Weinberger doctrine. While there were lessons learned in Panama, the articulation of the doctrine came five years earlier, and its genesis occurred a quarter century ago in the jungles of South East Asia and on the campuses and city streets of America.