

AIR WAR COLLEGE

AIR UNIVERSITY

LEGAL AND ETHICAL ASPECTS
OF THE DECISION FOR WAR:
A CASE STUDY

by

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Biography

Lieutenant Colonel Rafter joined the Canadian Forces in June 1988. Upon graduation from basic training, he entered the Royal Military College of Canada, graduating in May 1992 with a B.A. in History. He completed his training as a Logistics officer with a specialization in Movements and Transportation and was employed in a variety of operational and headquarters assignments throughout Canada, which include postings to Kingston (Ontario), Goose Bay (Labrador), Winnipeg (Manitoba), Cold Lake (Alberta), Ottawa (Ontario) and Toronto (Ontario). As an air mobility officer, he qualified as a loadmaster on the C-130 Hercules aircraft, and travelled extensively in support of Canadian Forces operations in the Canadian Arctic, the United States, Europe, Africa and Australia. Lieutenant Colonel Rafter also served as a NATO staff officer for three years in the Allied Movement Coordination Center (AMCC) at the Supreme Headquarters Allied Powers Europe (SHAPE) in Mons, Belgium. He has served as a United Nations peacekeeper in Haiti and as an air mobility advisor to the African Union's Darfur Integrated Task Force (DITF) in Addis Ababa, Ethiopia. Lieutenant Colonel Rafter is a graduate of the Canadian Forces Joint Command and Staff Program and holds a M.A. in War Studies (2003) and a M.A. in Defence Studies (2008).

Introduction

Throughout its history, the United States has rarely shied away from utilizing military force to confront perceived threats to its security and to support its interests abroad. The one element which sets the United States apart from virtually all other states which have historically maintained an expeditionary military capability, particularly in the post-Cold War environment, is the scope and size of the missions and military engagements that it is capable of undertaking. This fact, combined with the reality that by virtue of its nature as a free and democratic nation, it must provide transparency and remain accountable to its constituents, means that its actions are far more open to scrutiny and criticism from both within and outside. Furthermore, despite its status as the sole remaining superpower, it behooves the United States and its government to garner the support of allies, like-minded states, and even those nations with which it does not traditionally align itself, if its military actions are to be considered reasonable and justifiable. The key in ensuring this support is a timely provision of legitimate legal and moral justifications for war.

While it is true that both the executive and legislative branches of the American government have an important role to play in the approval mechanism to launch military operations, it is the President, in his capacity as Commander-in-Chief, who has the greatest overall influence on the decision-making process. This is not entirely surprising, as it is the President who will normally be called to task when the soundness of the decision to go to war is questioned. These war-making powers assigned to the President are enshrined in the United States Constitution, largely “as a result of the unity of the office of the presidency... [where] speedy and purposeful action is often requisite to counter moves from abroad and to deal with

rapidly changing international events [and because] Congress, it is claimed, is too cumbersome and ponderous a body to meet and deal with foreign policy and foreign military complexities.”¹

When hostilities involving United States military assets are initiated, the American populace, foreign governments, the national and international media, and any other parties who may have an interest in understanding the United States’ motivations for going to war, will turn to the President for an explanation or a clarification. The ability or inability to convincingly substantiate the military action taken, particularly to those whose ongoing support is vital to the United States, however, will have an important impact on American economic, foreign and military relations, as well as national interests. In situations where the use of military force is in direct response to an attack or verifiable and imminent threat to the United States, the case for war is often quite obvious and understandable. Where the President is further able to demonstrate that recourse to military action is both legally and morally defensible, the likelihood of negative repercussions will thereby be lessened. In fact, it can be argued that it is this capacity to frame the decision in legal and ethical terms that best serves the President in his efforts to substantiate a military reaction to a particular situation.

Over the past century, which constitutes the period of time when the majority of the United States’ expeditionary military operations have taken place, American Presidents have for the most part been able to effectively explain the rationale for war or military activities in terms of legal and ethical considerations. In instances where the substantiation has been less credible, Presidents have had to contend with domestic and international condemnation and opposition to the use of armed force. Given the existence of established Laws of Armed Conflict (LOAC), determinations regarding the legality of military action have proven far easier than confirming

¹ Ann Van Wynen Thomas and A.J. Thomas, Jr., *The War-Making Powers of the President: Constitutional and International Law Aspects* (Dallas, TX: SMU Press, 1982), xi.

the morality of these interventions. That said, many of these presidential explanations have been deemed more compelling when evidence which confirmed that moral principles played an important role in the decision for war was presented. The fact that a particular President seemed to truly believe that a moral imperative existed for war, has gone a long way in deflecting criticism in the past.

Although the end of the Cold-War brought with it an expectation that a new era of worldwide peace and cooperation would emerge, the ensuing two decades have been fraught with conflict and strife which ultimately resulted in war or war-like confrontations. Many of these involved the US military. Though the need to defend the use of armed forces has always existed, a growing political awareness among the general population, combined with improved media coverage and near-real time communications in recent years have made the need for legal and moral justification for military action by Commanders-in-Chief all the more important. Examples of specific instances in which Presidents were able to articulate why compelling arguments existed for international military engagements are relatively straightforward. During the 1999 air war in Kosovo, President Bill Clinton clearly evinced the fact that the United States' participation in the operation was legally justified since it equated to an intervention in an escalating humanitarian crisis, and that it was "acting out of a 'moral imperative' to help the people of Kosovo."² When the United States and its coalition allies undertook operations in Afghanistan in late-2001, they did so with the legal backing of a United Nations resolution, as well as an undeniable belief that they were morally obliged to root out those responsible for the reprehensible terrorist attacks of 9/11. President George W. Bush enjoyed widespread support for his decision to authorize the mission in South-West Asia, principally due to the solid legal

² James M. McCormick, "Clinton and Foreign Policy: Some Legacies for a New Century," *The Postmodern Presidency – Bill Clinton's Legacy in US Politics*, Steven E. Schier, Ed (Pittsburgh, PA: University of Pittsburgh Press, 2000), 60.

and moral arguments in favor of the operation. Conversely, the President's failure to credibly highlight the legal and moral justifications for the war in Iraq, despite his genuine belief that the United States was morally bound to redress Saddam's mistreatment of Iraqi citizens,³ resulted in an unprecedented erosion of confidence in the office of the President and a suspicion of American intentions.

Not all military operations undertaken by the United States achieved success, or accomplished the political goals enunciated prior to the start of hostilities. At times, military interventions that appeared to be legally and morally justifiable at their start, ended badly because the forces committed suffered from poor politico-military leadership and vision, among other problems. The fact that a sound legal and ethical basis may have existed for military action is no guarantee that the mission would end favorably. Legal and ethical validation for a resort to warfare simply provides a greater probability that the action will be seen as a valid response to an existing threat, that the reason for the decision will be understood and supported, and that in the long term, domestic, political and diplomatic relations will not be negatively impacted.

In order to validate the premises proposed above, a case-study from the Vietnam era will be elaborated upon hereafter. While both legal and moral justifications have been offered for more recent operations, that fact that they are ongoing to this day, and that the long-term consequences and final outcomes of the wars in both Afghanistan and Iraq have yet to be determined, makes a final conclusion difficult. For this reason, this paper will consider in detail the decision by President Richard Nixon to authorize the 1970 Cambodian incursion. The results of actions taken almost forty years ago are well-known, and unlikely to change.

³ Gary C. Jacobson, *A Divider, Not a Uniter: George W. Bush and the American People* (San Diego, CA: Pearson Education, Inc., 2007), 99.

From the very day that the Cambodian incursion was announced, and through the intervening decades, historians, political scientists and armchair generals have sought to rationalize and criticize President Nixon's decision to authorize this operation. Few, however, have been realistically able to place themselves in the shoes of the target of their criticism, and even fewer truly understand the context and situation which existed at the time the decision was taken. With these facts in mind and by utilizing recognized ethical models, as well as precepts related to the Law of Armed Conflict, this paper will demonstrate that from both a legal and ethical perspective, the President's actions were justified, and that a politician or military leader finding himself in comparable circumstances would approve of the President's judgment and choices, however unpopular they may have been. The paper will also show that the final findings can thereafter be applied to more contemporary situations, whether ongoing or in the future.

The Cambodian incursion

At the end of April 1970, American and Republic of Vietnam (RVN) forces launched a series of attacks into the territory of the officially neutral state of Cambodia. This operation, which came to be known as the Cambodian incursion, involved approximately 50,000 ground troops from the Army of the Republic of Vietnam (ARVN), as well as 30,000 US Army personnel.⁴ The incursion was accompanied and supported by an aerial bombardment campaign undertaken by American aircraft from both the Air Force and the Navy.⁵ Ordered by US President Richard Nixon, the stated purpose of the raids was to destroy Viet Cong (VC) and

⁴ Spencer C. Tucker, ed. *Encyclopedia of the Vietnam War- A Social, Political and Military History* (Santa Barbara, CA: ABC-CLIO, Inc. 1998), 95.

⁵ Edward R. Drachman and Alan Shank, *Presidents and Foreign Policy: Countdown to Ten Controversial Decisions* (New York: State University of New York Press, 1997), 151. In fact, the aerial bombardment which took place during the Cambodian Incursion was a continuation of a secret bombing campaign which had begun in March of 1969, without the knowledge of the US Congress or the American public.

People's Army of Vietnam (PAVN) sanctuaries and strongholds which had been established in Cambodia, and from which numerous attacks had been launched against the RVN. The President and his closest supporters, in particular his National Security Advisor, Henry Kissinger, ultimately hoped to "undercut the North Vietnamese invasion of that country so that Vietnamization and plans for the withdrawal of American troops could continue in South Vietnam."⁶ Prior to the deployment, there was no formal consultation with the US Congress or the Senate Foreign Relations Committee.⁷

A televised speech by Nixon on the 30th of April 1970, where he officially advised the American public about the operation, enflamed growing anti-war sentiment in the US, and resulted in condemnation and outrage from sources ranging from ordinary citizens, to journalists, to academics, to members of the Congress. Critics of the decision accused Nixon and his advisors of blatantly violating the US Constitution and ignoring international law, as well as showing a disconcerting lack of moral and ethical judgement. Despite the backlash in public opinion, the operation carried on as planned for almost two months, with American forces withdrawing to their bases in South Vietnam by the end of June.

From a purely military standpoint, the Cambodian incursion, dubbed Operation Toan Thang 43,⁸ was deemed a moderate success, in that it "set the NVA offensive timetable back at least a year, probably eighteen months, and possibly two years."⁹ Few could argue that the operation dealt the North Vietnamese forces a significant blow, with vast quantities of vital

⁶ James M. Griffiths, *Vietnam Insights: Logic of Involvement and Unconventional Perspectives* (New York: Vantage Press, 2000), 72.

⁷ William Bundy, *A Tangled Web – The Making of Foreign Policy in the Nixon Presidency* (New York: Hill and Wang, 1998), 153. The decision by the notoriously secretive Nixon was not taken in an attempt to deceive the Congress, but instead, to ensure security and deflect criticism that could delay start of the operation.

⁸ Joseph R. Cerami, "Presidential Decisionmaking and Vietnam: Lesson for Strategists," *Parameters* (Winter 1996-97), 69.

⁹ Phillip B. Davidson, *Vietnam at War – The History: 1946-1975* (Novato, CA: Presidio Press, 1988), 628. and Shelby L. Stanton, *The Rise and Fall of and American Army: US Ground Forces in Vietnam, 1965-1973* (Novato, CA: Presidio Press, 1985), 341.

materiel and equipment destroyed or captured.¹⁰ Notwithstanding the widely-reported successes, Nixon was nevertheless vilified for expanding the war, unleashing a humanitarian disaster in Cambodia and abusing his powers as President and Commander-in-Chief. Those who supported his decision at the time, at least openly, were definitely a minority of the population, especially in the United States.

Legal Issues

The legal aspects of conflicts of an international nature are unarguably complex, numerous and multifaceted – the 1970 Cambodian incursion is no exception in this respect. Nevertheless, those who have embarked on a detailed study of Operation Toan Thang 43 have usually limited their focus to three central themes relating to the legality of the operation: *the neutrality of Cambodia, the right to collective self-defence* and *the constitutional powers of the US President*. That many disparate experts have singled out these three facets of LOAC and American constitutional law in their examinations is no coincidence, given that they were repeatedly trumpeted by both Richard Nixon and members of his administration as the sources from which the legitimacy of the incursion was derived.

Customary international law and LOAC are very clear regarding the concept of neutral states, as well as the responsibilities of these states in ensuring that neutrality is maintained in times of conflict. Specifically, duties of a neutral “include obligations to prevent belligerents from transporting troops or supplies across neutral territory and to prevent neutral territory from being used for base camps, munitions factories, supply depots, training facilities,

¹⁰ J.D. Coleman, *Incursion: From America's Chokehold on the NVA to the Sacking of the Cambodian Sanctuaries* (New York: St-Martin's Press, 1991), 265 and Tucker, *Encyclopedia of the Vietnam War...*, 97. The operation resulted in the capture or destruction of 16 million rounds of ammunition; 14 million pounds of rice; 23,000 weapons; as well as 11,369 communist troops killed, 4,534 wounded and 2,328 captured.

communications networks, or staging areas for attacks.”¹¹ Prior to the attack, the Cambodian government had made some very public diplomatic representations to Hanoi in order to prevent violations of the country’s neutrality by the NVA and the VC, however, the efforts were largely symbolic. In an address given in New York City in late-May 1970, the Legal Adviser of the US State Department, John R. Stevenson, pointedly accused Cambodian officials of failing to do all that they should have to safeguard neutrality under the requirements of the LOAC, and even went as far as confirming that it was widely known that the previous Cambodian government under Prince Sihanouk had tacitly allowed and even condoned the shipment of communist arms and munitions through the Port of Sihanoukville.¹² As a result of this inaction and apparent deception on the part of the Cambodians, the US determined that Cambodia had surrendered its standing as a neutral state, and thus no longer enjoyed protection under the LOAC. Thus, the prohibition against attacking a neutral state was invalidated in this case, given the actions of the Cambodian government.

Not surprisingly, the decision to question Cambodia’s neutrality as a pretext to launching the operation met with some resistance by experts opposed to the incursion. Many in the media and in the anti-war movement questioned the assessment by US and RVN authorities that Cambodia had forfeited its neutrality, explaining that the apparent inaction was largely due to that nation’s physical inability to repel the PAVN forces, rather than a conscious decision by the Sihanouk and Lon Nol¹³ governments to allow the unrestricted use of their territory. Though he

¹¹ John Norton Moore, “Legal Dimensions of the Decision to Intercede in Cambodia,” *American Journal of International Law* 65, no. 1, (January 1971), 65.

¹² John R. Stevenson, “United States Military Action in Cambodia: Questions of International Law,” in *The Vietnam War and International Law: The Widening Context*, ed. Richard A. Falk, 23-32 (Princeton, NJ: Princeton University Press, 1972), 27.

¹³ J.D. Coleman, *Incursion – From America’s Chokehold...*, 214-216. Lon Nol, who had been Cambodia’s Prime Minister since 1966, was named President of the Khmer Republic on 18 March 1970, after a bloodless coup deposed Prince Sihanouk. An avid anti-communist, Lon Nol had been far more vocal than his predecessor in calling for the withdrawal of NVA and VC troops, however, he lacked the wherewithal to back up his demands with action.

did not dispute the possibility that this view may be valid in some respects, John Norton Moore, Director of the Center for National Security Law, provided additional legitimacy to the arguments in favor of the action in an opinion piece published in January of 1971. In the paper, he emphasized the following aspect of customary international law: “It is well established... that a belligerent Power may take action to end serious violations of neutral territory by an opposing belligerent when the neutral Power is unable to prevent belligerent use of its territory and when the action is necessary and proportional to lawful defensive objectives.”¹⁴ This legal opinion also highlighted the link between neutrality and a further justification presented for the cross-border operation, namely the right of self-defense.

The second legal argument on which American officials based their decision to undertake the incursion related to the inherent right of nations, in this case the US and the RVN, to practice collective self-defense. To a lesser extent, the stated principle of collective defense was also meant to include Cambodia itself, regardless of the fact that its government had not formally or directly approached the American government itself for military assistance. As communist forces had continued to flood into Cambodia in the spring of 1970, the Lon Nol government had put out a general plea for aid, and the US answered with the incursion. President Nixon argued that this indirect request further reinforced the rationale for the operation.¹⁵

PAVN troops had, for nearly five years, launched deadly strikes on American and RVN forces in South Vietnam from the relative safety of their Cambodian sanctuaries, and these attacks had intensified significantly in the weeks leading up to the incursion.¹⁶ President Nixon feared that without an armed intervention aimed at unseating the PAVN and VC, Cambodia

¹⁴ Moore, “Legal Dimensions of the Decision...,” 71.

¹⁵ Robert H. Johnson, “Vietnamization: Can It Work?” *Foreign Affairs* (Vol. 48, Issue 4, July 1970), 637.

¹⁶ NVA forces had also stepped up attacks on Cambodian towns in that same time period, signaling their intention to move on the capital of Phnom Penh.

would become “an open-ended staging area from which to mount attacks on South Vietnam that would jeopardize... US troop safety, and US troop withdrawal.”¹⁷ NVA attacks also posed an important threat to the process of Vietnamization,¹⁸ which could endanger the very survival of the RVN in the long-term. Since less drastic military and political measures had proven inadequate in evicting the North Vietnamese in the past, Nixon authorized the military operation in late-April 1970.

In addition to the LOAC, the Nixon administration also relied on United Nations agreements in justifying their actions. John Lawrence Hargrove, Director of Studies at the American Society of International Law, explained that Article 51 of the UN Charter did not exclude, in the case of a military attack... “an exercise of the right of self-defense on the territory of a foreign state which is not itself the attacker, even without the consent of this state.”¹⁹ Given that the United States and the Republic of Vietnam had already been engaged in collective measures of self-defense since 1965, Hargrove therefore extrapolated that the recourse to military action in such a case could be justified.

The Nixon administration further tied its rationale for the incursion to the premise of collective self-defense by relying on other key aspects of the UN Charter. In particular, legal advisors cited the passages which confirmed that the “use of armed force is prohibited except... where the Security Council has not acted, in individual or collective self-defense against an armed attack.”²⁰ Since the Cambodian government’s 22 April 1970 appeal to the United Nations

¹⁷ Griffiths, *Vietnam Insights: Logic of Involvement...*, 149.

¹⁸ William Shawcross, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia* (New York: Simon and Schuster, 1971), 89-90. **Vietnamization** was a military-economic program of South Vietnamese development which would permit rapid but phased withdrawal of US forces without radically upsetting the power balance in Southeast Asia and the handover of responsibilities to the RVN forces.

¹⁹ John Lawrence Hargrove, “Comments on the Articles of the Legality of the United States Action in Cambodia,” *American Journal of International Law* 65, no. 1, (January 1971), 81-82.

²⁰ John R. Stevenson, “The International Law Issues – Administration Position,” *Proceedings of the 15th Hammaraskjold Forum*, ed. Donald T. Fox, 24-33 (Dobbs Ferry, NY: Oceana Publications, Inc., 1971), 31.

for assistance in fighting the invaders had been ignored,²¹ the legality of the incursion was reinforced when the US stepped up and took the action that it deemed was necessary to ensure that collective self-defense was assured.

The final legal argument on which President Nixon relied in framing the rationale for the incursion is based largely in American constitutional law, but is also tied to the LOAC. Regardless of one's opinion regarding the US involvement in the Vietnam war itself, the build-up of PAVN forces in Cambodia unquestionably posed a real threat to US national security interests of the day. Some critics contended that the framers of the US Constitution had specifically intended to have Congress decide which threats imperilled national security, thereby limiting the President's power to do so, and in response, unilaterally choose to utilize a military solution.²² Conversely, political scientist and author Eugene Rostow, in quoting from Alexander Hamilton's well known Federalist Paper No. 23, aptly described that since "the circumstances that endanger the safety of nations are infinite... no constitutional shackles can wisely be imposed on the [executive] power to which the care of it is committed."²³ In essence, "[Nixon] maintained that as Commander-in-Chief he had the constitutional authority to order the Cambodian operation to protect US troops... [and] he did not have to consult Congress first."²⁴ This interpretation is in line with certain tenets of the US Constitution which confirm that the President's power "includes broad authority to make strategic and tactical decisions incident to the conduct of a Constitutionally authorized conflict."²⁵ Since the Gulf of Tonkin Resolution of 1964 had granted President Lyndon B. Johnson the authority to approve the use of force in the

²¹ Henry Kissinger, *White House Years* (Boston: Little, Brown and Co, 1979), 489.

²² Francis D. Wormuth, "The Nixon Theory of the War Power: A Critique," *California Law Review* (Vol. 60, No. 3, May 1972), 628.

²³ Eugene V. Rostow, "The 'Lessons' of Vietnam and Presidential Powers," *Strategic Review* (Vol XII, No. 4, Fall 1984), 36.

²⁴ Drachman and Shank, *Presidents and Foreign Policy...*, 166.

²⁵ Moore, "Legal Dimensions of the Decision...", 83.

entire region of Southeast Asia without a formal declaration of war by Congress, Nixon and his advisors considered the Cambodian incursion as being incident to the conduct of the Vietnam War, and thereby by extension, a Constitutionally approved conflict.

Moral and Ethical Issues

Just as Richard Nixon was accused by many of initiating an illegal military operation and overstepping his Constitutional authority, so too was he criticized regarding the morality of his decision. Following his address to the nation on April 30th, widespread protests and civil disobedience ensued throughout the United States. He was lambasted in the press, and the US Senate Foreign Relations Committee even went as far as convening hearings in which prominent American religious leaders questioned the moral leadership of the executive branch.²⁶ The choices that he made with respect to potentially escalating the conflict in Southeast Asia may have been unpopular, but this does not mean that they were ethically unsound.

In considering the morality of President Nixon's order for US and ARVN forces to embark on Operation Toan Thang 43, a number of moral philosophies or doctrines, including variations of each, may be considered. Two of these moral theories, *utilitarianism* and *Kantianism* (or Kant's Moral Theory), prove relevant in demonstrating that Richard Nixon did act in an ethical manner by authorizing this military action.

The most logical method of determining whether the actions were ethical is to apply the principles of *utilitarianism*, or more precisely, a more modern form known as *preference utilitarianism*. The basic premise of this newer theory is as follows: "the action that is best is the one that satisfies the most preferences, either in themselves, or according to their strength or their

²⁶ United States, Senate Committee on Foreign Relations, *Moral and Military Aspects of the War in Southeast Asia – Hearings, Ninety-First Congress, Second Session, May 7 and 12, 1970* (Washington: US Government Printing Office, 1970), 15.

order of importance.”²⁷ By the time the operation began, the American public had lost its appetite for the war in Vietnam, and widespread calls for a withdrawal of US troops were commonplace. In response, Nixon had already announced a large-scale downsizing of the number of troops in Southeast Asia, with the ultimate aim of an eventual complete withdrawal. This plan was tied closely to the program of Vietnamization. However, the increasing NVA attacks on US forces in South Vietnam in the spring of 1970, most of which originated in Cambodia, threatened this plan.

Thus, Nixon’s decision to authorize the incursion was taken in large part to ensure that the desire, or preference, voiced by Americans to pull out of the war remained viable. He and his advisors believed that this operation would deal a significant enough blow to the NVA and Viet Cong forces that they would no longer pose a serious threat to American troops, and that the process of handing over responsibility for its own security to the ARVN would continue unimpeded. The President also hoped that any military successes that resulted from the operation would compel the North Vietnamese to return to the negotiating table and accept a cease-fire under terms favourable to the US. In the eyes of the Nixon administration, such a peaceful resolution to the conflict would not only ensure the viability of a free South Vietnam, but would also be a victory in the larger battle between good and evil.

Since the start of the Cold War, successive American governments had emphasized that the struggle against Communism was a worthy moral crusade, based largely on protecting the values of democracy and freedom throughout the world. *Preference utilitarianism* helped validate the US predilection for a world order based on the concept of self-determination and devoid of political and military oppression. This corroboration drove many of the decisions

²⁷ Barbara MacKinnon. *Ethics: Theory and Contemporary Issues*, 2nd ed. (Belmont, CA: Wadsworth Publishing, 1998), 41.

taken by American leaders regarding the conduct of the war in Southeast Asia. It was therefore believed that a firm stand in Vietnam would counter “the much wider scheme of world domination by the Soviet Union and contribute to [the] larger global struggle against this new form of imperialism.”²⁸

In addition to the anti-communist element of the President’s thinking in authorizing the incursion, there also existed a larger view that failure in Vietnam would have wider repercussions on the cause of peace in the world. In his book *No More Vietnams*, Nixon himself wrote that “Our acquiescence in aggression would encourage further aggression; our defeat and humiliation in South Vietnam without question would promote recklessness in the councils of those great powers who have not yet abandoned their goals of world conquest.”²⁹ Though he did not relish the idea of escalating violence amidst an ongoing troop withdrawal, he saw the incursion as a morally necessary action required to meet the preferred option of a lasting peace.

The morality of the decision to order the incursion can also be assessed by utilizing *Immanuel Kant’s Moral Theory*, which posits that “an act has moral worth only if it is done with right intention or motive.”³⁰ In this case, it is not the final outcome of a choice that matters, be it positive or negative, but the reason that the action was taken in the first place. The theory also assumes that any other rational person, placed in the same position, would make the same decision. As described above, Nixon’s objective in instigating the operation was to neutralize the enemy’s ability to engage US forces in South Vietnam, and to induce the North Vietnamese to accept a diplomatic resolution to the war. This was also closely linked to what he believed

²⁸ David Arrnstrong, “No End of a Lesson: Vietnam and the Nature of Moral Choice in Foreign Policy,” in *Ethics and Statecraft – The Moral Dimension of International Affairs*, ed. Cathal J. Nolan, 75-96 (London: Praeger Publishers, 2004), 84.

²⁹ Richard Nixon, *No More Vietnams* (New York, NY: Arbor House Publishing, 1985), 114.

³⁰ MacKinnon, *Ethics: Theory and Contemporary Issues...*, 53.

was his legal and moral duty as commander-in-chief to safeguard American personnel.³¹ As mentioned above, considerations regarding communism and the US ability to contain its spread also had a role to play in the President's intentions with respect to the operation in Cambodia. Nixon emphasized this aspect of this decision when he said: "I would rather be a one-term President and do what I believe was right, than be a two-term President at the cost of seeing America become a second-rate power."³² That the desired outcome of the incursion was not wholly achieved in the long term is immaterial in this instance – Richard Nixon can be considered to have acted ethically because his overall intentions were honorable.³³

Conclusion

The decision by President Nixon to authorize the 1970 military incursion into Cambodia was unquestionably controversial. Much of the literature written about this operation, especially in the years immediately following its completion, is critical of the rationale and explanations provided by Nixon and his officials in justifying their actions. More recent studies, however, tainted far less by the widespread anti-war sentiment that existed in the US in the early-1970s, have provided more balanced and objective scrutiny.

Undoubtably, many will continue to believe that Richard Nixon made the wrong decision with respect to the Cambodian problem. As is normally the case, the voices and views of the vocal minority often eclipse those of the silent majority. The final assessment about whether the Cambodian incursion, regardless of its long-term impact, was the right thing to do at

³¹ Peter A. French, *Ethics in Government* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1983), 41.

³² Stephen Graubard, *Command of Office: How War, Secrecy and Deception Transformed the Presidency from Theodore Roosevelt to George W. Bush* (New York, NY: Basic Books, 2004), 394.

³³ Nixon was repeatedly accused of misleading Americans regarding his intentions with respect to this operation. Some theorized that his actions were intended only as a face-saving measure against the bellicose North Vietnamese who had refused to consider a diplomatic settlement on US terms, and as a way of containing the feared spread of Communism. It would be naïve to believe that Nixon did not consider the favourable political impact that would result from an orderly withdrawal from South Vietnam in the shortest time possible, and with the fewest casualties, however, these considerations were secondary to his belief that he was doing the right thing for the country.

the time is best summarized in a letter to the New York Times from the father of a US soldier killed in Vietnam:

Had the fathers of these young men known that this nation would countenance a sanctuary a scant 50 miles from Saigon, we would have counseled them against induction. That we did not is a burden we will always bear. A great percentage of our ground dead from 1965 to 1970 came from an enemy who with impunity was staged, trained and equipped in the Parrot's Beak of Cambodia. The perfidy... is anything but the US bombing of the sanctuary itself. The perfidy lies in the fact that for more than four years the United States of America, without serious recorded concern, allowed her fighting men to be attacked, maimed and killed from a position which was itself privileged from either ground or air retaliation.³⁴

With the above statement in mind, it becomes easier to support the decision made by the President. Few individuals have had to shoulder the burden of making such monumental decisions, needing to take into account public opinion and security, as well as political and military factors. From a legal perspective, Nixon and his advisors correctly questioned Cambodia's neutrality, championed the right of collective self-defense and referred to the constitutional role and responsibilities of the Commander-in-Chief in explaining their actions, fully believing that they were legally permitted and required to launch the operation. This legal point of view has since been supported by a growing number of experts. From an ethical perspective, the President truly felt that his actions were ethical, and that they would "end the war in Vietnam, and win the just peace desired [by Americans]."³⁵ Thus, contrary to the charges of many of Nixon's detractors, the decision to authorize the operation "was taken carefully, with much hesitation... and [he] assumed full responsibility."³⁶

³⁴ Richard Nixon, *The Real War* (New York: Warner Books, 1980), 110.

³⁵ President Richard M. Nixon, speech, 30 April 1970; speech on-line "Cambodian Incursion Address" available from <http://inspirationalspeakers.wordpress.com/2007/12/07/richard-m-nixon-cambodian-incursion-address/> (accessed 09/29, 2009).

³⁶ Kissinger, *White House...*, 502.

Richard Nixon's decision to approve the Cambodian incursion added fuel to the fire being stoked by anti-war activists in the 1970s, and also drew condemnation from opponents of the US, especially in the Soviet Union. That said, his determination to focus on the legal and moral aspects of the decision served as a valuable example for his successors, and remains a valid approach to this day. Though the voices of the silent majority³⁷ were often drowned out by protests of a vocal minority, and account of the subsequent demonstrations and clashes continue to fill the history books, the reality is that the incursion was widely supported, both at home and abroad. A CBS telephone survey taken in the US immediately after Nixon's speech of April 30th announcing the operation found respondents two to one in favor of the President's position, and opinion polls confirmed that Nixon's overall approval rating rose from 51 percent at the end of March to 57 percent at the beginning of May 1970.³⁸ Outside of the US, as least among allies, open criticism by sitting governments was rare.³⁹ Through it all, it was Nixon's continued assurances that the operation was both legally and morally sound that strengthened his position and helped deflect criticism of the US. It is also this strategy that bears emulation, if the interests and relations of the US are to continue to be safeguarded.

The actions taken by Richard Nixon with respect to justifying the Cambodian incursion of 1970 were rooted in considerations of the legal and ethical aspects of decision-making. In doing so, particularly in his capacity as Commander-in-Chief, he was by no means unique. Previous Presidents, as well as those who followed Nixon, also understood this important fact. That a decision by an American President to utilize military force may be permissible under

³⁷ Melvin Small, *Johnson, Nixon, and the Doves* (London: Rutgers University Press, 1988), 100 and 163. The term silent majority was first used by Nixon in a November 1969 speech in an attempt to attract inactive moderates to support the policies surrounding Vietnamization.

³⁸ Hal W. Bochun, *Richard Nixon, Rhetorical Strategist* (New York, NY: Greenwood Press, 1990), 66.

³⁹ Alexander J. Banks, "Britain and the Cambodian Crisis of Spring 1970," *Cold War History* (Vol. 5, No. 1, February 2005), 100 – 101.

international and constitutional law does not necessarily make it right. Equally, even if recourse to war may appear to be the right thing to do from an ethical perspective, it may not be supportable under the law. Only when a President is able to effectively show that he is both legally and morally justified in turning to war to address a threat to national security and interests is he thereby more likely to avoid a tempest of criticism and a degradation in internal and external relations. Despite all of his own personal foibles and character shortcomings, Richard Nixon understood this fact clearly, and took the steps necessary to safeguard his position and reputation. Had others followed his example in more recent years, some of the criticisms aimed at certain Commanders-in-Chief and their administrations could have been avoided.

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