An Evaluation from the Standpoint of International Law

The U.S. invasion of Panama

by Prof. Friedrich August Baron von der Heydte

Professor von der Heydte, of the Federal Republic of Germany, wrote this evaluation in January 1990.

The military action of the United States of America against Panama meets the criteria of an undeclared war of aggression in violation of international law. In the course of the fighting, the United States furthermore committed war crimes, and subsequently occupied the country in violation of international law. An appropriate reaction of world public opinion has as yet been prevented solely by the timing chosen by the Bush administration, parallel to the breathtaking upheavals in Eastern Europe, particularly Romania.

The United States of America is solely responsible for the outbreak of hostilities against Panama in violation of international law. The military invasion of regular American armed forces into a foreign national territory—the Republic of Panama—represents an armed invasion constituting an undeclared war of aggression.

Regrettably, the determination of a state of affairs in violation of international law cannot be evaded, so that one is compelled to draw historical parallels between this action by the U.S.A. and the invasion of Poland ordered by Hitler. Here, too, a nation which did not want war was invaded without a formal declaration of war—by Nazi Germany. Hitler created the transparent pretext with the attack upon the radio station of Gleiwitz which Hitler himself orchestrated. It is painful and shocking alike, that the leading power of the West, which presents itself as the worldwide guarantor of freedom and democracy, could sink so low as to invade the small nation of Panama. As in the case of Poland 50 years ago, Panama had incurred no guilt whatsoever for war hostilities directed against the United States, nor other activities which could be so construed, which might have justified the military action of the United States.

Washington can not make claim to any of the grounds of justification foreseen in international law and under the aegis of the United Nations Organization. According to the principles recognized by all nations, a military assault upon a foreign territory is justified, if at all, if, firstly, one's own territory is the object of an aggression or one's own central sovereign rights are violated by a foreign power; secondly, to prevent crimes against humanity in the terms of the United Nations Charter (e.g., mass murder/genocide such as the policy of annihilation perpetrated by the Nazis against the Jews, or systematic, large-scale mistreatment of population groups).

The exchange of gunfire in front of the headquarters of the Panamanian armed forces, for example, cited by President George Bush, in which one American soldier was killed, is thus not sufficient cause for the military action of the American armed forces against the Panamanian nation. Available information indicates, that this incident was caused by American personnel having penetrated a restricted area of the Panamanian armed forces without authorization.

Even if there had been provocations of one form or another by Panamanian authorities, the American action was out of proportion in every respect. The principle of proportionality prohibits exaggerated reactions to provocations. Hostile actions of other nations may be answered only with means which correspond to the posited abuse of law.

Presuming that there had been actual Panamanian transgressions, permissible responses would, at most, have been constituted by sanctions—e.g., a protest note, equivalent actions against Panamanian citizens in the United States or within American sovereign territory. The American action has nothing to do with sanctions, i.e., a response limited to specific means.

The efforts of the American government to justify its armed invasion of Panama are untenable:

- The argument that the intention was to bring General Noriega to trial in the U.S.A. disregards the protection of every head of state under international law. The personal qualities of character of a person who stands at the head of a state, how he may have come to power, and actions he may have committed prior to his having come to power, are irrelevant to his status in international law. I cannot and will not reply to, nor judge the issues with respect to the concrete case of General Noriega—these issues are, however, simply irrelevant in international law since, in the terms of international law, the status of one who stands at the head of a state

is a *Questio facti* and not a *Questio juri*. A military action against another state founded upon the person of a head of state—even in cases where the person at issue is demonstrably an evil criminal such as Ceausescu or Qaddafi—is therefore a breach of international law.

One is compelled to draw historical parallels between this action by the U.S.A. and the invasion of Poland ordered by Hitler.

• The American claim that the invasion of Panama, by means of the overthrow of Noriega, was to serve the reestablishment of democracy in Panama, disregards the fact, that the means by which a head of state or a government has obtained power, never justifies a military intervention from the outside. Every nation is sovereign with respect to its form of government. If other nations disapprove of the political conditions of a country, the sole instruments at their disposal are instruments of diplomatic and political influence. They may recall their ambassadors, apply economic and other sanctions; non-military support for resistance against a dictatorship is also permitted, which furthermore does not per se represent interference into the country's international affairs, but they may not launch a war. To declare the American invasion in Panama to have been the extension of aid requested by legitimate resisters against the regime, is out of the question for the very reason that the new head of government Guillermo Endara, installed with the aid of the United States, was not even informed of the imminent invasion beforehand.

• The intervention also cannot be justified as necessary measures to protect the life of American citizens in Panama. As mentioned above, international law permits military action against another nation only to put an end to crimes against humanity—such as genocide, mass enslavement, and mistreatment. In Panama, to the contrary, there was no such severe threat to American citizens *as such,* which might have justified such measures.

The commando action in Entebbe, where, in the face of previous lack of success and passivity of the community of nations against international terrorism, Israeli military personnel saved the lives of Israeli citizens, and in the course of the action violated the national sovereignty of Uganda and killed terrorists and citizens of a third country, has led to intensified discussion on the permissibility under international law of such an action. Even in the light of this debate, the American invasion of Panama cannot be justified by any stretching of interpretations as a "humanitarian intervention." At its conference in Madrid in 1976, the International Law Association reached agreement, that an intervention in defense of human rights is only permissible under the following conditions:

A. an immediate threat of genocide or other widespread arbitrary deprivation of human life in violation of international law;

B. an exhaustion of diplomatic and other peaceful techniques for protecting the threatened rights to the extent possible and consistent with protection of threatened rights;

C. the unavailability of effective action by an international agency, regional organization or the United Nations;

D. a proportional use of force which does not threaten greater destruction of values than the human rights at stake and which does not exceed the minimum force necessary to protect the threatened rights;

E. the minimal effect on authority structures necessary to protect the threatened rights;

F. the minimal interference with self-determination to protect the threatened rights;

G. a prompt disengagement, consistent with the purpose of the action; and

H. immediate full reporting to the Security Council and any appropriate regional organization and compliance with Security Council and applicable regional directives.

Not a single one of the criteria cited here were fulfilled with respect to the situation at the end in Panama nor by the execution of the military action. The references to the alleged threat to American citizens are therefore pure excuses in justification of a clear and evident breach of international law.

• President Bush also cannot invoke the claim that the American intervention was intended to secure adherence to the treaties on the Panama Canal.

The content of the treaty yields nothing which could justify an armed intervention. From General Noriega there issued no threat to the neutrality of the canal assured by treaty.

And, without being in possession of final evidentiary proof, much goes to indicate, that the Bush administration acted out of a purely power-politics "Nasser Complex" in its invasion of Panama. It seems evident, furthermore, that General Noriega had comprehensive knowledge of secret intelligence service and also simply illegal activities—such as the Iran-Contra affair—of various U.S. administrations. The intent was evidently to replace an uncongenial accessory—particularly with respect to earlier activities of President Bush—with less knowledgeable, more compliant people at the head of the government of Panama. The comparison with the Suez war of 1956, in which Great Britain, France, and Israel invaded Egypt, under Nasser, militarily, in order to maintain control over the Suez Canal, seems to me a very fruitful one, if one wants to understand the strategic, power-

politics background of the U.S. invasion of Panama. One can imagine Egypt having been conquered and occupied. A President Nasser, fleeing, forced out of the embassy of a third country under corresponding pretexts, brought to England, and brought to trial there!

There is no question in my mind, that all of the American efforts to justify their invasion of Panama will not be able to stand before international law. The government of the United States of America therefore attempts to invoke the "law" which it has itself posited. The directive of the American Attorney General Richard Thornburgh announced recently, to authorize arrests of persons by organs of the American Executive branch *abroad and without the consensus of the foreign authorities concerned,* is an expression of this self-posited "law," which flies in the face of international law.

Were this principle admissible, which intends to proclaim the whim of a world power as "law," then there were nothing to be criticized legally in the many violent kidnapings by the KGB and the Stasi, particularly in West Berlin in the 1940s and 1950s. In the end, most of these persons kidnaped by force were convicted in "trials" in the East bloc.

There is no more self-evident foundation of national sovereignty than the principle, that executive actions in foreign countries may only occur with the agreement of the country concerned.

That the United States of America wants to take leave of this principle of classical international law is consistent with a development which I recently characterized in a *Festschrift* essay,

> that it is characteristic of a world power that it make claim to being *legibus solutus*—especially when it is an issue of its imposing its interests beyond its national borders. Here recall only the military occupation of Afghanistan by the Soviet Union or the support for the Contras by the United States of America: Both measures can be grounded and justified only by the fact, that they were carried out by a world power. If a nation, which does not possess world power status, had implemented measures of this kind beyond its own borders, a cry of outrage would have gone throughout the world. . . .

That was my thesis published in the *Festschrift* for Schindler.

Aside from the already-ascertained violation of international law constituted by the initiation of hostilities against Panama, the military action of the United States is itself characterized by grave violations of the prevailing law of war.

On the whole, the military measures of the U.S.A. were out of proportion, i.e., were not consistent in extent and intensity with the military aims posited. Particularly with the air bombardment and heavy artillery fire upon numerous city quarters of Panama City, as a result of which thousands of civilians were killed and wounded, the United States committed a war crime which is proscribed internationally. It was a return to the bombing war of World War II.

For good reason, Anglo-American interests have in the past attempted to enforce their conception of law, according to which, under a broad interpretation of the concept of "military targets," it were permissible to affect large parts of the adversary civilian population by air attacks. The "eloquent silence" of the international military tribunal in Nuremberg on the issue of area- and terror-bombardment is consistent with this point of view. Nevertheless, principles have in the meantime crystalized out of international common law, which prohibit the use of weapons and methods of combat which affect combatants and non-combatants, military and civilian targets without distinction. The Addendum to the Geneva Red Cross Convention accepted by consensus in 1976, although it was not ratified by many states, prohibits in particular, in Art. 46, Par. 3:

> a) to attack without distinction, as one single objective, by bombardment or any other method, a zone containing several military objectives, which are situated in populated areas, and are at some distance from each other;
>
> b) to launch attacks which may be expected to entail incidental losses among the civilian population and cause the destruction of civilian objects to an extent disproportionate to the direct and substantial military advantage anticipated.

Also according to the terms of prevailing international law treaties, attacks upon military objects in the broadest sense are always impermissible, if the civilian losses occurring as side effects are in no proportion to the military advantages to be gained by the damage or destruction of the military object. There is no doubt that the U.S.A. in Panama has clearly violated these stipulations.

Moreover, the U.S. armed forces present in Panama must be appropriately characterized as an occupation army since hostilities have ceased. The occupation character of the U.S. military presence is also manifest in the mass internment of civilians suspected of having been followers of the Noriega regime. The term "concentration camp" is fitting here, because it precisely describes the "driving together," i.e., concentration of a collective of persons, who are distinguished by common characteristics such as race, religion or, as in this case, political point of view. The persons so affected are subjected, without the judgment of a court, in primitive tent camps surrounded by barbed wire, to a treatment tantamount to punishment. Since most of them are non-combatants—moreover in an undeclared war—these are not prisoner-of-war camps; they are concentration camps, such as those set up by the British in South Africa at the beginning of the 20th century.

A further aspect of the American disregard for the principles of law prevailing among civilized peoples is the massive pressure exerted against the Papal Nunciature in Panama. The behavior of the American occupation troops toward the Papal Nunciature in Panama is unjustifiable in international law. It is an unconditional principle of international law, that the freedom of movement of foreign diplomats be guaranteed, and their immunity and the right to refuge in diplomatic missions respected, and to guarantee the free access to the missions of foreign nations under all circumstances and for everyone. The pressure exerted by the American government by means of noise terror through rock music and the threat, confirmed in the meantime, to abrogate the immunity of the Vatican Embassy if Noriega did not surrender, is in violation of international law. This breach of international law is merely underscored by the fact, that Noriega has in the meantime surrendered and been brought to the U.S.A., and is thus by no means over and done with. Historical parallels can at most be found perhaps in disparate incidents of Hitler's Germany against Polish diplomats in 1939 and 1940, as well as in the action of Napoleon Bonaparte against Pope Pius VII between 1809 and 1814. Even the communist regime under Stalin did not dare to violate the integrity of foreign embassies.

Also Moscow condemned the American invasion in Panama, although the unprecedented American action against the binding principles of law of civilized nations is nothing but the application of the Brezhnev doctrine to the American sphere of interests. One might interpret this posture as a welcome turn by Gorbachov away from the Brezhnev doctrine.

The peoples' right to self-determination stands in opposition to the power politics of the world powers, which, as subjects of international law, claim for themselves a special status. It is a hopeful omen, that the principle of arbitrary whim has never been crowned with lasting success in the life of the peoples. The estrangement of the United States of America from the path of classical international law is consistent with a vast loss of culture in law "at home." Indeed, one must say, that the breach of international law becomes the mirror image of the erosion of the nation-under-law in the United States itself.

Professor Von der Heydte, a noted expert on civil and international law, is the author of the book-length study *Der moderne Kleinkrieg,* which was published in English in 1986 under the title *Modern Irregular Warfare: In Defense Policy and as a Military Phenomenon*. In 1962, he was named Brigadier General of the Reserves for the West German army, the Bundeswehr; from 1966-70, he was a member of the Bavarian State Parliament for the Christian Social Union party.

Colombian Liberals embrace drug mafia

by José Restrepo

The ruling Liberal Party of Colombia, under the influence of former President and drug mafia asset Alfonso López Michelsen, has officially embraced drug legalization in its 1990 electoral platform. According to the just-released document, the Liberal Party urges the Colombian government "to adopt and study a policy toward drug trafficking, following the course of world tendencies which propose drug legalization."

The statement was issued on the heels of López Michelsen's unilateral offer to the drug cartels just one week earlier, that they could expect "appropriate treatment" (i.e., amnesty) from the authorities, were they to release a score of kidnap victims and pledge to abandon their illegal trafficking activities. The López offer, made despite President Virgilio Barco's repeated refusal to negotiate a deal with the cartels, was immediately accepted by the so-called "Extraditables." López's initiative appears to have produced the first important chink in the government's anti-drug armor: Not wishing to have hostage blood on his hands, Barco publicly declared his willingness to be "flexible" on the issue.

A mafia 'musketeer'

The brazenness of López Michelsen and his mafiosi cohorts in fronting for the drug cartels is not undertaken without a certain degree of nervousness, however, for in their own self-congratulatory propaganda they worry openly about how the anti-drug forces around Lyndon LaRouche will counterattack. López's media mouthpiece, co-owner of the newspaper *El Tiempo* Roberto Posada Garcí Peña, editorialized on Jan. 21 that López's "patriotic service" and "historic act" will doubtless "revive the moral disciples of LaRouche" in their campaign of denunciation against the former Colombian President.

Wrote García Peña, under his pen-name D'Artagnan, "It was exactly positions like this which cost López the attacks of Lyndon LaRouche (former U.S. presidential candidate and founder of the American Labor Party [sic]), the power behind individuals who until recently distributed his writ-