

# **Legal and Ethical Aspects of the Decision for War**

## **A Case Study**

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Throughout its history, the United States rarely shied away from using 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 maintaining 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 it must provide transparency and remain accountable, means that its actions are far more open to scrutiny and criticism from both within and without. Despite its status as the sole remaining superpower, the US government must garner the support of allies, like-minded states, and nations with which it does not traditionally align itself if its military actions are to be considered reasonable and justifiable. The key to ensuring this support is a timely provision of legitimate legal and moral justifications for war.

While it is true the executive and legislative branches of the American government have an important role to play in the approval mechanism to launch military operations, the president, as commander in chief, has the greatest overall influence on the decision-making process. This is not entirely surprising, as the president will normally be criticized when the decision to go to war is questioned. The war-making powers assigned to the president are enshrined in the US 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.”<sup>1</sup>

When hostilities involving US military assets are initiated, the American populace, foreign governments, national and international media, and any other parties who have an interest in understanding

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the motivations for going to war will turn to the president for an explanation or a clarification. The ability or inability to convincingly validate the military action taken—particularly to those whose ongoing support is vital to the United States—will have an important impact on American economic, foreign, and military relations, as well as national interests. In situations where use of military force is in direct response to an attack or a verifiable and imminent threat to the United States, the case for war is often quite obvious and understandable.

When the recourse to military action is both legally and morally defensible, the likelihood of negative repercussions will be lessened. In fact, it can be argued that this capability to frame the decision in legal and ethical terms best serves the president in substantiating a military reaction to a particular situation.

Over the past century, which constitutes the period of time when the majority of US expeditionary military operations have taken place, American presidents have effectively explained the rationale for war or military activities in terms of legal and ethical considerations. In instances where the substantiation has been less credible, presidents contended 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 the morality of these interventions. Many presidential explanations have been more compelling when evidence confirmed that moral principles were present and played an important role in the war decision. The fact that a particular president truly believed 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 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 warlike confrontations—many involving 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, has made the need for legal and moral justification for military action by the commander in chief all the more important.

Examples of specific instances where presidents articulated why compelling arguments existed for international military engagements are relatively straightforward. During the 1999 air war in Kosovo, Pres. Bill Clinton clearly explained that US participation in the operation was legally justified since it equated to an intervention in an escalating humanitarian crisis and that the United States was “acting

out of a 'moral imperative' to help the people of Kosovo."<sup>2</sup> 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 (UN) 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.

Pres. George W. Bush enjoyed widespread support for his decision to authorize the Southwest Asia mission, principally due to the solid legal 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 the United States was morally bound to redress Saddam's mistreatment of Iraqi citizens, resulted in an unprecedented erosion of confidence in the office of the president and a suspicion of American intentions.<sup>3</sup>

Not all US military operations 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 suffered from poor politico-military leadership and vision, among other problems. Having a sound legal and ethical basis for military action is no guarantee that the mission will end favorably. Legal and ethical validation for warfare simply provides a greater probability that the action will be seen as a valid response to an existing threat, the reason for the decision will be understood and supported, and, in the long term, domestic, political, and diplomatic relations will not be negatively impacted.

To validate the premises proposed, a case study from the Vietnam era is elaborated upon. While both legal and moral justifications have been offered for more recent operations, they are ongoing to this day. The long-term consequences and final outcomes of the wars in both Afghanistan and Iraq have yet to be determined, making a final conclusion difficult. For this reason, this paper considers the decision by Pres. Richard Nixon to authorize the 1970 Cambodian incursion. The results of actions taken almost 40 years ago are well known and unlikely to change.

From the day the Cambodian incursion was announced, and through the intervening decades, historians, political scientists, and armchair generals have sought to rationalize and criticize Nixon's decision to authorize this operation. Few, however, have been able to place themselves in the shoes of the target of their criticisms; even fewer truly understand the context and situation at the time the decision was made. With these facts in mind and by using recognized ethical models as well as precepts related to LOAC, this paper demonstrates that from both legal and ethical perspectives, the president's actions were justi-

fied. Politicians or military leaders finding themselves in comparable circumstances would approve of the president's judgment and choices, however unpopular they may have been. The paper also shows 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.<sup>4</sup> The incursion was accompanied and supported by an aerial bombardment campaign undertaken by American aircraft from both the Air Force and the Navy.<sup>5</sup> Ordered by Nixon, the stated purpose of the raids was to destroy established Vietcong (VC) and People's Army of Vietnam (PAVN) sanctuaries and strongholds in Cambodia, 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.”<sup>6</sup> Prior to the deployment, there was no formal consultation with the US Congress or the Senate Foreign Relations Committee.<sup>7</sup>

In a televised speech on 30 April 1970, Nixon officially advised the American public about the operation, enflaming growing antiwar sentiment in the United States and resulting in condemnation and outrage from sources ranging from ordinary citizens to journalists, academics, and 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,<sup>8</sup> was deemed a moderate success in that it “set the NVA [North Vietnamese Army] offensive timetable back at least a year, probably 18 months, and possibly two years.”<sup>9</sup> Few could argue that the operation dealt the North Vietnamese forces a significant blow, with vast quantities of vital materiel and equip-

ment destroyed or captured.<sup>10</sup> 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 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. 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-defense, 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 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 neutrality is maintained in times of conflict. Specifically, duties of a neutral state 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, communications networks, or staging areas for attacks.”<sup>11</sup>

Prior to the attack, the Cambodian government made some very public diplomatic representations to Hanoi 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 to safeguard neutrality under the requirements of the LOAC. He even confirmed 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.<sup>12</sup> As a result of this inaction and apparent deception on the part of the Cambodians, the United States determined that Cambodia had surrendered its standing as a neutral state and 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 the antiwar movement questioned the US and RVN authorities' assessment that Cambodia had forfeited its neutrality. They explained 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 Nol governments to allow the unrestricted use of their territory.<sup>13</sup> Though not disputing 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 1971. 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."<sup>14</sup> This legal opinion presented further justification for a neutral country conducting cross-border operations: 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 United States and the Republic of Vietnam, 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 for military assistance. As communist forces continued to flood into Cambodia in the spring of 1970, the Lon Nol government put out a general plea for aid, and the United States answered with the incursion. Nixon argued that this indirect request further reinforced the rationale for the operation.<sup>15</sup>

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. These attacks intensified significantly in the weeks leading up to the incursion.<sup>16</sup> Nixon feared that without an armed intervention aimed at unseating the PAVN and the VC, Cambodia 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."<sup>17</sup> NVA attacks also posed an important threat to the process of Vietnamization, which could endanger the very survival of the Republic of Vietnam in the long term.<sup>18</sup> 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 relied on UN agreements in justifying its 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."<sup>19</sup> 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."<sup>20</sup> Since the Cambodian government's 22 April 1970 appeal to the UN for assistance in fighting the invaders had been ignored, the legality of the incursion was reinforced when the United States took the action that it deemed necessary to ensure that collective self-defense was assured.<sup>21</sup>

The final legal argument Nixon relied on 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 buildup of PAVN forces in Cambodia unquestionably posed a real threat to US national security interests of the day. Some critics argued that the framers of the US Constitution had specifically intended to have Congress decide which threats imperiled national security, thereby limiting the president's power to do so. In response, Congress unilaterally chose to utilize a military solution.<sup>22</sup>

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."<sup>23</sup> 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."<sup>24</sup> 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.”<sup>25</sup> Since the Gulf of Tonkin Resolution of 1964 had granted Pres. Lyndon B. Johnson the authority to approve the use of force in the entire Southeast Asia region without a formal declaration of war by Congress, Nixon and his advisors considered the Cambodian incursion as being incidental to the conduct of the Vietnam War and, thereby, by extension, a constitutionally approved conflict.

### **Moral and Ethical Issues**

Just as 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 30 April address to the nation, widespread protests and civil disobedience ensued throughout the United States. He was lambasted in the press, and the US Senate Foreign Relations Committee convened hearings where prominent American religious leaders questioned the moral leadership of the executive branch.<sup>26</sup> 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 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 Immanuel Kant’s moral theory), prove relevant in demonstrating that 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 theory states that “the action that is best is the one that satisfies the most preferences [of individuals], either in themselves, or according to [the action’s] strength or . . . order of importance.”<sup>27</sup> 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 a 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. Nixon and his advisors believed that because this operation would deal a significant blow to the NVA and VC forces, they would no longer pose a serious threat to American troops and, thus, the process of handing over responsibility to the ARVN for its own security would continue unimpeded. The president also hoped that any military successes resulting from the operation would compel the North Vietnamese to return to the negotiating table and accept a cease-fire under terms favorable to the United States. 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 beginning of the Cold War, successive American governments 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 American leaders' decisions 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."<sup>28</sup>

In addition to the anticommunist 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 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."<sup>29</sup> Though he did not relish escalating violence amidst an ongoing troop withdrawal, he saw the incursion as a morally necessary action to meet the preferred option of a lasting peace.

The morality of the decision to order the incursion can also be assessed by utilizing Kant's moral theory, which posits that "an act has moral worth only if it is done with right intention or motive."<sup>30</sup> In this case, it is not the final outcome of a choice that matters—be it positive or negative—but the reason the action was taken in the first place. The theory also assumes that any rational person, placed in the same position, would make the same decision. As described above, Nixon's ob-

jective 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, as commander in chief, believed was his legal and moral duty to safeguard American personnel.<sup>31</sup>

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."<sup>32</sup> That the desired outcome of the incursion was not wholly achieved in the long term is immaterial in this instance—Nixon can be considered to have acted ethically because his overall intentions were honorable.<sup>33</sup>

## Conclusion

Nixon's decision 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 that Nixon and the administration provided in justifying their actions. More recent studies, however, tainted far less by the widespread antiwar sentiment that existed in the United States in the early 1970s, have provided more balanced and objective scrutiny.

Undoubtably, many will continue to believe that 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 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 [troops] 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.<sup>34</sup>

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 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 would "end the war in Vietnam, and win the just peace desired [by Americans]."<sup>35</sup> Thus, contrary to the charges of many of Nixon's detractors, [his] decision to authorize the operation "was taken carefully, with much hesitation . . . and [with assumption of] full responsibility."<sup>36</sup>

Nixon's decision to approve the Cambodian incursion added fuel to the fire being stoked by antiwar activists in the 1970s and also drew condemnation from opponents of the United States, especially in the Soviet Union. 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 majority were often drowned out by protests of a vocal minority and accounts 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.<sup>37</sup> A CBS telephone survey taken immediately after Nixon's 30 April speech announcing the operation found respondents two-to-one in favor of the president's position. 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.<sup>38</sup> Outside the United States, as least among allies, open criticism by sitting governments was rare.<sup>39</sup> Through it all, it was Nixon's continued assurances that the operation was legally and morally sound that strengthened his position and helped deflect criticism of the United States. It is this strategy that bears emulation if the interests and relations of the United States are to continue to be safeguarded.

The actions taken by Nixon justifying the 1970 Cambodian incursion were rooted in 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 following Nixon, also understood this important fact: while a decision by an American president to use military force may be permissible under international and constitutional law, that 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 effectively shows that he is both legally and morally justified in turning to war to address a threat to national security and national 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, 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.

#### Notes

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

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

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

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 1969, without the knowledge of the US Congress or the American public.

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 Congress but instead to ensure security and deflect criticism that could delay start of the operation.

8. Joseph R. Cerami, "Presidential Decisionmaking and Vietnam: Lessons for Strategists," *Parameters* 26 (Winter 1996-97): 69.

9. Philip B. Davidson, *Vietnam at War: The History, 1946-1975* (New York: Oxford University Press, 1988), 628; and Shelby L. Stanton, *The Rise and Fall of an American Army* (New York: Presidio Press, 1985), 341.

10. J. D. Coleman, *Incursion: From America's Chokehold on the NVA Lifelines to the Sacking of the Cambodian Sanctuaries* (New York: St. Martin's, 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, and 23,000 weapons; additionally, 11,369 communist troops were killed, 4,534 wounded, and 2,328 captured.

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 (Princeton, NJ: Princeton University Press, 1972), 27.

13. Coleman, *Inursion*, 214–16. 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 anticommunist, 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.

14. Moore, "Legal Dimensions of the Decision," 47.

15. Robert H. Johnson, "Vietnamization: Can It Work?" *Foreign Affairs* 48, no. 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.

17. Griffiths, *Vietnam Insights*, 149.

18. William Shawcross, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia* (New York: Simon and Shuster, 1979), 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. Stevenson, "United States Military Action in Cambodia," 31.

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

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

23. Eugene V. Rostow, "The 'Lessons' of Vietnam and Presidential Powers," *Strategic Review* 12, no. 4 (Fall 1984): 36.

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

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

26. Senate, *Moral and Military Aspects of the War in Southeast Asia: Hearings before the Committee on Foreign Relations*, 91st Cong., 2nd sess., 1970, 15.

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

28. David Armstrong, "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 (London: Praeger Publishers, 2004), 84.

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

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

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: 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 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 favorable 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.

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

35. Richard M. Nixon, "Cambodian Incursion Address" (speech, Washington, DC, 30 April 1970), <http://inspirationalspeakers.wordpress.com/2007/12/07/richard-m-nixon-cambodian-incursion-address> (accessed 29 September 2009).

36. Kissinger, *White House Years*, 502.

37. Melvin Small, *Johnson, Nixon, and the Doves* (London: Rutgers University Press, 1988), 100, 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. Bochin, *Richard Nixon: Rhetorical Strategist* (New York: Greenwood Press, 1990), 66.

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

## ***Abbreviations***

ARVN	Army of the Republic of Vietnam
LOAC	law of armed conflict
NVA	North Vietnamese Army
PAVN	People's Army of Vietnam
RVN	Republic of Vietnam
UN	United Nations
VC	Vietcong

