"The Cuban Missile Crisis and International Law",
a review by Carroll Quigley in The American Historical Review, Vol. 81 (February-June 1976),
of a book:
THE CUBAN MISSILE CRISIS: International Crises and the Role of Law,
by Abram Chayes.

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The Cuban Missile Crisis: International Crises and the Role of Law.
By Abram Chayes.
Published under the auspices of the American Society of International Law.

This is the first volume in a projected series, "International Crises and the Role of Law", to be published under the auspices of the American Society of International Law. Abram Chayes, now at Harvard Law School, was legal advisor to the State Department during the Cuban missile crisis, and he has been concerned with the subject ever since. The study, financed by the Carnegie Corporation and the Old Dominion Foundation (Mellon), adds little new except a 1968 letter from N. A. Schlei on Justice Department activities in August 1962. For the facts, historians must still turn to Elie Abel (1966), Graham Allison's Essence of Decision (1971), and the memoirs of participants.

Chayes examines the role of law in three aspects of the crisis: the use of blockade rather than alternative actions; the appeal to the Organization of American States; and the approach to the United Nations. He decides that the role of law was "substantial." The process by which he reaches this conclusion is more revealing of the corruption of contemporary legal thinking than of the events of October 1962. All three aspects of the crisis were political, not legal, but Chayes smuggles in a legal element by blurring distinctions through verbal ambiguities. He rejects the sharp distinction made by the participants between policy questions and legal questions on the grounds that power is reflected in both. He rejects William P. Gerberding's suggestion that legal analysis is rationalization, "something cooked up after the event," and he rejects Robert F. Kennedy's statement that the OAS vote was political, not legal, by phrasing his discussion of this vote in terms of "authorization" and "justification." The use of "authorization," a legal term, and of "justification" rather than "rationalization" helps disguise the fact that the blockade was a political act in an area (Caribbean) and with a weapon (the Navy) where the Soviet Union could not resist except by using a different weapon (strategic) or area (Europe) which neither side wanted. Calling the blockade a "quarantine" was part of the deception since international law insists that a blockade is a political act, not a
legal one. Chayes’ conclusion that "'mere' justification carries greater practical importance for the success or failure of great decisions than is commonly supposed by the analysts" (p. 48) neither refutes Gerberding nor supports Chayes' principal argument.

Like any honest brief for a poor case, this volume is full of inconsistencies. Chapter III ends with the statement that Article 2(4) of the United Nations Charter "was a significant factor in determining the decision against air strike or invasion and for . . . a quarantine." Chapter IV then turns to the "authorization" by the OAS, although, if a "quarantine" was legal, there was no need for any "authorization," and the appeal was political not legal.

Those who think this volume adds little to history will find it more valuable for evidence on the sociology of law at the highest levels of our society today.

-- CARROLL QUIGLEY
Georgetown University

Please email the editors (editors@carrollquigley.net) with corrections, questions, or if you have other works by Professor Quigley you would like to see posted.

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