Conclusion

At the time of his death, Professor Lillich's manuscript was lacking only a concluding statement of the contemporary law governing the forcible protection of nationals abroad. Although we were determined to present his work without substantive alteration, we did want this volume to be as comprehensive as possible. An editorial consensus emerged that we should append a chapter as a complementary snapshot of the law as it exists today. The following article, written by a co-editor of this volume and originally published in the Dickinson Law Review in the Spring of 2000, fit the bill. It is reproduced here with the kind permission of The Dickinson Law School of The Pennsylvania State University.† We hope that it is an appropriate punctuation mark for Professor Lillich's research and analysis, and that it may serve as a point of departure for those scholars who will build on his impressive body of work

Forcible Protection of Nationals Abroad

Thomas C. Wingfield

"It was only one life. What is one life in the affairs of a state?"
—Benito Mussolini, after running down a child in his automobile (as reported by Gen. Smedley D. Butler in address, 1931)[1]

"This Government wants Perdicaris alive or Raisuli dead."
—Theodore Roosevelt, committing the United States to the protection of Ion Perdicaris, kidnapped by Sherif Mulai Ahmed ibn-Muhammed er Raisuli (in State Department telegram, June 22nd, 1904)[2]

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Introduction

As the two epigraphs above demonstrate, perhaps the best criterion for discriminating tyrannies from democracies is the sincere, proven emphasis placed upon the value of a single human life. The forcible protection of nationals abroad, when undertaken by a sovereign for non-pretextual reasons, is the clearest expression of that distinction in state practice. The academic challenge in evaluating such uses of force is to distinguish such protection from other legitimate uses of force, and then to distinguish these uses from other, illegitimate uses of force. Such an examination is heavily dependent upon the historical context of the threat, and of the acting state. For, as the Rev. Jesse Jackson has stated, "a text without a context is a pretext."[3]

To properly understand the "text" involved, it is important to have as clear a definition as possible. Arend and Beck define "protection of nationals" as "the use of armed force by a state to remove its nationals from another state where their lives are in actual or imminent peril."[4] Arend and Beck add four qualifications to this definition. First, consent obviates the analysis, rendering the operation something other than coercion or intervention.[5] Second, the threatened nationals need not be within the territory of the threatening state, merely within its exclusive jurisdiction. The classic example of this would be a rescue from a ship flying the threatening state's flag.[6] Third, a Chapter VII authorization would, like consent of the territorial state, obviate the analysis. Assuming the Security Council is not acting *ultra vires*, a use of force pursuant to such an authorization is almost by definition lawful.[7] Fourth, and finally, an intervention to protect the citizens of the threatening state is a humanitarian intervention, not the protection of nationals abroad. While the primary discriminator is the nationality of the victims rescued, the dimensions of the two types of intervention can vary significantly. The use of force in the protection of nationals abroad is, at its most pure, a rescue operation, lasting no longer than the evacuation itself. Humanitarian intervention, on the other hand, can involve lengthy nation-building or even government-replacement in the territorial state.[8] A lengthier, but more precise, definition would then read: "the use or threat of imminent use of armed force by a state to safeguard, and usually remove, its nationals from the territory or exclusive jurisdiction of another state, without the consent of that state or the authorization of the UN Security Council, where the lives of those nationals are in actual or imminent peril."

This article will briefly examine the historical foundation for the forcible protection of nationals abroad, recount a number of post-Charter uses of force

to protect nationals, describe and evaluate alternate modern theories supporting such actions, and conclude with a description of the law today.

Historical Development

While an exhaustive historical review of the legality of the use of force in the protection of nationals could consume several volumes, the views of three publicists provide a firm basis for the subsequent, principally post-Charter analysis.

Vattel wrote what is perhaps the seminal paragraph on the protection of nationals:

> Whoever offends the State, injures its rights, disturbs its tranquility, or does it a prejudice in any manner whatsoever, declares himself its enemy, and exposes himself to be justly punished for it. Whoever uses a citizen ill, indirectly offends the State, which is bound to protect this citizen; and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is, safety.[9]

The justification for intervention in such a case is more than just a right; it becomes a duty of the sovereign. The duty, however, is tempered by a respect for the sovereignty of other nations:

> The prince . . . ought not to interfere in the causes of his subjects in foreign countries, and grant them protection, excepting in cases where justice is refused, or palpable and evident injustice done, or rules and forms openly violated, or, finally, an odious distinction made, to the prejudice of his subjects, or of foreigners in general.[10]

This duty, and this tension, has been echoed by all subsequent thoughtful commentators.

Hall, writing at the end of the 19th Century, returned to the fundamental nature of this duty: "At the root of state life lies the circumstance that the bond which exists between a state and its subjects is not severed when the latter issue from the national territory."[11] However, Hall adds with British understatement, "the clashing laws of states of European civilization still place many persons in situations that are frequently difficult and occasionally serious."[12] It is at this point that the sovereign's duty to protect his subject emerges:

> The duty of protection is correlative to the rights of a sovereign over his subjects; the maintenance of the bond between a state and its subjects while they are abroad implies that the former must watch over and protect them with in the due limit of the rights of other states. ... It enables governments to exact reparation for oppression they have suffered, or for injuries done to them otherwise than by process of law; and it gives the means of guarding them against the effect of unreasonable laws, laws totally out of harmony with the nature and degree of civilization by which a foreign power affects to be characterized, and finally of an administration of laws bad beyond a certain point. When in these directions a state grossly fails in its duties; when it is either incapable of ruling, or rules with patent injustice, the right of protection emerges in the form of diplomatic remonstrance, and in extreme cases of ulterior measures.[13]

The nature and extent of these "ulterior measures" were principally a British concern in the 19th Century, but became an American concern early in the 20th Century, as the United States Navy and Marine Corps extended America's ability to respond to "laws bad beyond a certain point."

Borchard, an American writing early in the 20th Century, addresses with textbook matter-of-factness the use of such force in the protection of nationals abroad:

> The display of force and the threat to use it . . . have frequently proved an effective means of obtaining redress . . . . This display of force usually takes the form of a national war-ship appearing before the port of the foreign country alleged to be in default. The moral influence exerted by the presence of a war vessel is great, and . . . in quarters of the world subject to frequent domestic disorder has served not only to prevent an abuse of aliens' rights, particularly of the nationals of the country to which the vessel belongs.[14]

Although such displays were frequently effective, they occasionally escalated to actual uses of force:

> The army or navy has frequently been used for the protection of citizens or their property in foreign countries in cases of emergency where the local government has failed, through inability or unwillingness, to afford adequate protection to the persons or property of the foreigners in question.[15] . . . The occasions on which troops have been landed have varied, although it has always been under circumstances where the protective faculties of the local government have been so weakened that the security of aliens, particularly nationals of the interfering state, seemed so precarious that some measure of self-help was deemed necessary.[16] . . . While the landing of troops in the cases above mentioned has

been purely protective, they have not always been able to avoid belligerent operations to effect their purpose.[17]

Vattel, Hall, and Borchard describe a legal regime which existed from the early 17th Century until the middle of the 20th Century. It was only with the entry into force of the U.N. Charter that an entirely new analytical framework was put into place, ostensibly outlawing the aggressive use of force, but preserving the "inherent" right of self-defense. Although centuries of state practice were not entirely irrelevant, future uses of force to protect nationals abroad would have to be justified within the new Charter paradigm.

The first step in understanding this new framework is to review the significant uses of force in the Charter era (post-1945), providing the factual background for testing theory and examining state practice.

Uses of Force in the Charter Era

United Kingdom Threatens Intervention in Iran—1946

When rioting broke out in Iran in the summer of 1946, less than a year after the Charter had entered into force, the British government was concerned for the safety of British residents working for the Anglo-Iranian Oil Company. With the permission of the Iraqi government,[18] Britain dispatched a contingent of troops to Basra, Iraq, near the Iranian border. The U.K. also ordered two warships to anchor off Basra. They did this "in order that they may be at hand for the protection, should the circumstances demand it, of Indian, British and Arab lives, and in order to safeguard Indian and British interests in South Persia, troops are being sent from India to Basra."[19] The rioting subsided, and no entry was necessary. The Iranian government still protested the threat of force as a violation of Article 2(4) of the UN Charter and an infringement of Iranian sovereignty.[20] Britain responded that it would have intervened in case of a "grave emergency,"[21] that is, if the Iranian government had been unable or unwilling to protect the lives of British residents.

Second Threat of Intervention in Iran by U.K.—1951

The Iranian government precipitated another crisis when it nationalized the Anglo-Iranian Oil Company in 1951. The British government once again feared that the heightened tensions between the two countries might put British residents in Iran at risk. Accordingly, the U.K. dispatched several warships to Iraqi waters, and deployed a number of combat aircraft to British bases within Iraq.[22] British policy statements on the move were unusually clear

and to the point. Foreign Secretary Morrison stated that Britain had "every right and indeed the duty to protect British lives."[23] He went on to elaborate before the House of Commons:

> As I have repeatedly informed the House, His Majesty's government are not prepared to stand idly by if the lives of British nationals are in jeopardy. It is the responsibility of the Persian government to see to it that law and order are maintained and that all within the frontiers of Persia are protected from violence. If, however, that responsibility were not met it would equally be the right and duty of His Majesty's government to extend protection to its own nationals.[24]

Iran, on the other hand, saw the positioning of air and naval forces just outside its own borders as a threat of force unwarranted by the situation. Iran stated that the U.K. had no right to "intimidate" Iran,[25] and that Iran was "completely the master of the situation."[26] Iran took this policy position one step further, and declared before a meeting of the Sixth Committee of the UN General Assembly that even if British nationals had been mistreated, any action to intervene and protect them could not be justified as a lawful exercise of self-defense.[27]

The Cairo Riots—1952

A more subtle response to a more serious threat occurred in January, 1952, when large-scale rioting broke out in Cairo. This time, British property was damaged and British lives were lost.[28] In response, the U.K. developed a contingency plan to use its troops in the Suez Canal zone to move in to Cairo and Alexandria to protect endangered British residents.[29] The British government communicated its willingness to take action in a diplomatic note on January 27th, stating that it held the government of Egypt fully responsible for all damage to British property and any threat to the safety of British residents in Egypt. Further, the note warned, the U.K. reserved the right to take whatever action was required to safeguard the lives and property of its nationals.[30] The note had the desired effect, and the previously quiescent Egyptian army moved in to put down the rioters. Then-Foreign Secretary Eden explained, "the belief that we had the forces and the conviction that we were prepared to use them were powerful arguments in prodding the Egyptian army to quell the riots."[31]

Anglo-French Intervention in Egypt in 1956 (the Suez Crisis)
Fearing that their nationals were threatened by Israeli-Egyptian war in October, 1956, Britain and France made a series of diplomatic entreaties for the belligerents to cease hostilities. When this course failed, the British and the French bombed Egyptian airstrips near the Suez Canal and, four days later, inserted a contingent of troops to occupy key points along the canal. While France emphasized other rationales, Britain relied heavily on the right to protect its own citizens abroad.[32] The British Representative to the UN, speaking before the Security Council, said:

> In Egypt there are many thousands of British and French nationals. The chain of events which began with the Israel [*sic*] moves into Egypt has developed into hostilities and hostilities have created a disturbed situation. In those circumstances, British and French lives must be safeguarded. I again emphasize . . . that we should certainly not want to keep any forces in the area for one moment longer than is necessary to protect our nationals.[33]

Then-Prime Minister Eden stated before the House of Commons that "there is nothing . . . in the Charter which abrogates the right of a Government to take such steps as are essential to protect the lives of their citizens."[34] He went on to explain that, when the Security Council was paralyzed by a veto (as it was in this case), that states had the right to intervene "in an emergency," to protect the lives of nationals abroad.[35] He added that this right was based on the inherent Article 51 right to self-defense,[36] and that this right could be exercised anticipatorily—that is, the injured state need not first receive the equivalent of an armed attack against its citizens before moving preemptively against the threat.[37]

Foreign Secretary Lloyd outlined three criteria for the lawful exercise of the right of protection of nationals abroad within the larger right of self-defense: first, that the nationals of the intervening state be under "an imminent threat of injury;" second, that there is a "failure or inability" by the local sovereign to protect foreign citizens; and third, that the action of the intervening state be "strictly confined to the object of protecting the nationals against injury."[38]

Finally, the Lord Chancellor, before the House of Lords, stated that "self-defence undoubtedly includes a situation in which the lives of a State's nationals abroad are threatened and it is necessary to intervene on that territory for their protection."[39]

In addition to this rationale, the British and the French also pursued the military operation to maintain international freedom of navigation through the

canal, and to stop hostilities between Egypt and Israel.[40] The problem of overlapping justifications will reappear frequently in state practice.

The Belgian Intervention in the Congo—1960

Immediately upon declaring its independence from Belgium in July 1960, the Congo's army mutinied and touched off a week of rioting, looting, and atrocities against foreign nationals.[41] As the Congolese government was completely unable to maintain order, Belgium ordered a contingent of paratroopers already in the Congo to protect Belgian and other threatened foreign nationals.[42] Before the Security Council, the Belgian Ambassador to the UN stated that his government had "decided to intervene with the sole purpose of ensuring the safety of European and other members of the population and of protecting human lives in general."[43] This rationale mixes pure self-defense (protecting a state's own nationals), collective self-defense (protecting other foreign nationals within another state), and humanitarian intervention (protecting the citizens of the threatened state).

In Security Council debate, France argued that the Belgian troops' "mission of protecting lives and property is the direct result of the failure of the Congolese authorities and is in accord with a recognized principle of international law, namely, intervention on humanitarian grounds."[44] Argentina based its support of the Belgian intervention not on the legality of self-defense, but on the moral imperative of the situation:

> Now, we are convinced that the protection of the life and honour of individuals is a sacred duty to which all other considerations must yield. We cannot reproach the Belgian government for having assumed this duty when Belgian nationals were in danger. Any other State would have done the same thing.[45]

The United States was more guarded in its statements, and urged that Belgium should withdraw once the UN had provided military forces to stabilize the situation. In an interesting gloss on the doctrine of humanitarian intervention, Belgium actually adopted the U.S. position in a statement that is a model of concise legal advocacy: Belgium would withdraw "its intervening troops as soon as, and to the extent that, the United Nations ensures the maintenance of order and the safety of persons."[46]

United States Intervention in the Dominican Republic—1965

In April, 1965, the Constitutional Party forced the resignation of Dominican President Reid Cabral. Cabral's National Reconstruction Government

immediately organized to regain control of the country. By the end of the month, the situation was sufficiently out of hand that the United States felt compelled to land 400 Marines to evacuate American citizens and other foreign nationals from the country.[47] According to U.S. Ambassador to the UN Adlai Stevenson,

> In the absence of any governmental authority, Dominican law enforcement and military officials informed our Embassy that the situation was completely out of control, that the police and the Government could no longer give any guarantee concerning the safety of Americans or of any foreign nationals, and that only an immediate landing of United States forces could safeguard and protect the lives of thousands of Americans and thousands of citizens of some thirty other countries.[48]

This introduces a hybrid form of invitation—less than the pure consent rendered by an invitation from the *de jure* sovereign, but more than a simple, unilateral decision to intervene based on an external analysis of the situation. The warnings and requests of mid-to-high level officials of the defeated but arguably still lawful government fall squarely within this gray area. While this type of request does not forestall a legal analysis of the grounds for intervening (as would an invitation from the sovereign), it does add weight to the factual arguments establishing the state of chaos in a country, and therefore helps weed out instances of purely pretextual intervention.

However valid the basis for forcible protection of nationals may have been at the outset, U.S. involvement quickly escalated and policy diversified. The number of troops increased, their stay in-country was extended, and subsequent government statements announced that the United States was acting to prevent the establishment of a second communist government in the Western Hemisphere.[49] To no one's surprise, Britain supported the initial deployment, France was ambivalent, and Cuba was opposed.[50]

The Mayaguez Incident—1975

On May 12th, 1975, Cambodia seized an American merchant ship. Cambodia claimed the *Mayaguez* was in its territorial waters, and on a spy mission. The United States insisted that the ship had been in international waters at the time of its seizure, and that it had not been on a spy mission. On May 13th, the U.S. demanded she be released within 24 hours. Cambodia did not comply, so the United States launched an airstrike against the facility at which it was being held. The Cambodians still did not comply, so on May 14th, the U.S.

mounted a heliborne Marine infantry assault against the ship. This did achieve the desired result, and the ship and crew were freed.[51]

Between the airstrike on the 13th and the assault on the 14th, the U.S. requested the assistance of the Secretary General of the UN in securing the release of the ship. In the request, the U.S. reserved the right to take "such measures as may be necessary to protect the lives of American citizens and property, including appropriate measures of self-defense under Article 51 of the UN Charter."[52]

Cambodia condemned the assault, claiming it was "a brutal act of aggression."[53] Cambodia also stated that the attack was not militarily necessary, in that it had already begun preparations to release the ship.[54] China sided with Cambodia, labeling the assault an "act of piracy."[55] Algeria and Thailand also condemned the attack, the latter because its bases had been used as a staging area for the assault team.[56]

The Evacuation of U.S. Citizens from Lebanon—1976

When the long-running civil war in Lebanon reached a threshold threatening the lives of the few Americans remaining in the country, the United States evacuated a small group to a warship on June 28th, 1976, and again on July 27th.[57] Interestingly, the U.S. consulted no domestic authority before the first evacuation, but pursued a different course before the second. Instead of requesting the approval of the *de jure* Lebanese government, whose influence over events asymptotically approached irrelevance, the U.S. coordinated with those actually in control of the territory—the PLO and several other Palestinian groups.[58] While this coordination, like that with the Dominican quasi-authorities eleven years earlier—had little influence on the academic legality of the operation, it did provide an improved chance of conducting the operation with as few casualties as possible. In this case, no U.S. servicemen or Lebanese civilians were killed.[59]

The Israeli Raid on Entebbe—1976

On June 27th, 1976, a French airliner enroute from Tel Aviv to Paris was hijacked by four Palestinian terrorists. After a brief stop in Libya, the aircraft flew to Uganda, where it was joined by six additional terrorists. The terrorists freed all of the non-Israeli passengers, and specifically threatened the lives of those who remained. The government of Uganda was at best uncooperative in attempts to negotiate a settlement, and appeared to be providing support to the terrorists.[60]

The evening of July 3rd and 4th, Israeli commandos stormed the main terminal at the Entebbe Airport in Uganda. Killed were all of the terrorists who were holding 96 Israelis hostage, along with several hostages who stood up in the middle of the melee, a number of Ugandan soldiers, and one Israeli commando. To prevent pursuit, the Israelis also destroyed the operational Ugandan fighters (approximately 10) on the tarmac.[61]

The unique aspect of this raid was that the nationals in question were taken to the foreign country against their will.[62] This suggests that the foreign nationals concerned were less responsible for weighing the risks involved in travelling to and living in the dangerous country in question. It is also more difficult for the intervening state to fashion a pretext in the rush of a terrorist event than over the course of a long-deteriorating civil situation. Finally, the actions required to rescue people in a confined hostage setting are necessarily less intrusive than to secure an area with a foreign capital against riots. These three reasons appear to make intervention in the case of a terrorist event less problematic than even traditional protection of nationals abroad.

Israel made a forceful case for its rescue mission at a meeting of the Security Council on July 9th. It claimed that it had the right "to take military action to protect its nationals in mortal danger."[63] This right, Israel claimed, was based on the inherent right of self-defense, "enshrined in international law and the Charter of the United Nations," and supported by state practice.[64] Israel stated that this exercise of self-defense met the standard of the *Caroline* case: "Necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation."[65] Finally, Israel explained that the use of force was not directed at Uganda *per se*, and employed only as much force as was necessary to secure and extract its nationals.[66]

The United States was the only country to make a clear statement supporting the legality of the Israeli raid. At the same Security Council meeting, the U.S. first stated that the intervention was "a temporary breach of the territorial integrity of Uganda."[67] While this sort of breach is normally considered a violation of the UN Charter, this case, the U.S. argued, fit within an exception. "There is a well-established right," said the U.S., "to use limited force for the protection of one's own nationals from an imminent threat of injury or death in a situation where the State in whose territory they are located is either unwilling or unable to protect them."[68] The U.S. stated that this right flows from the inherent right of self-defense and allows "necessary and appropriate" force to protect a nation's own citizens.[69] By these criteria, the U.S. concluded, the raid on Entebbe was a lawful use of force under international law. The U.S. found

the force used to be proportional to the limited goal of freeing the passengers, and the use of force had ended once this goal had been achieved.[70]

France also supported the Israeli intervention, in a manner of speaking. While stating that "at first sight . . . the surprise attack by an armed force on a foreign airport for the purpose of achieving by violence an objective" appeared to violate international law, the Israeli action had not been designed to infringe the territorial integrity or political independence of Uganda, but merely to save lives.[71] The French brought up an additional legal point, that the UN General Assembly's Resolution on the Definition of Aggression listed acts which were only *prima facie* evidence of acts of aggression, and that it was up to the Security Council to determine if, "in the light of other relevant circumstances," aggression had actually been committed.[72]

The French Threat to Intervene in the Western Sahara—1978

On October 25th, 1978, two French technicians were captured in Mauritania by Polisario guerillas. Two days later, the French Defense Minister refused to rule out a military raid to free them. A French parachute corps was moved to Senegal, and French aircraft participated in airstrikes on Polisario military formations on December 12th, 13th, and 18th. On December 23rd, the two technicians were turned over to the UN Secretary General in Algeria.[73] Although the force was not applied in the form of a rescue mission, its indirect application had the desired result.

The Egyptian Raid on Larnaca—1978

The first non-Western use of force to protect nationals abroad was, at best, a learning experience for all involved. Egypt sent a planeful of commandos to Larnaca, Cyprus, on February, 19th to free Egyptian and other hostages taken the day before. Although the Egyptians received permission to land, they did not receive permission to storm the aircraft. The Cypriot authorities were successfully concluding negotiations with the terrorists, and the passengers had begun to leave the aircraft, when the Egyptians decided to attack. The Cypriot military opened fire on the Egyptians, arrested the terrorists, and helped the hostages to safety.[74]

The Egyptians defended their actions less as the protection of nationals abroad (although several of the hostages were Egyptian, and an Egyptian had been killed by the terrorists in the initial seizure of the hostages), and more as an amorphous commitment "to fight terrorism and to bring all those who use such methods to justice."[75]

The U.S. Hostage Rescue Attempt in Iran—1980

On the evening of 24-25 April, 1980, the United States launched a commando raid into Iran to rescue 50 hostages who had been held since November 4th of the previous year. The raid ultimately failed due to weather, equipment malfunction, and bad luck.

Although the hostage incident preoccupied the United States from late 1979 to early 1981, and was responsible for an enormous amount of diplomatic maneuvering, the specific question of using force in the protection of nationals abroad was fairly straightforward. The ICJ decision in the hostages case, rendered on May 24th, characterized the actions of the "students" holding the hostages as fairly educible to the Iranian government: "[T]he approval given to these nacts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that State."[76] This retrospective linking of the "students" actions to the Iranian State permitted action against that state as though it had perpetrated those actions in the first place.

President Carter stated:

> I ordered this rescue mission prepared in order to safeguard American lives, to protect America's national interests, and to reduce the tensions in the world that have been caused among many nations as the crisis continued. . . . The mission . . . was a humanitarian mission. It was not directed against Iran; it was not directed against the people of Iran. It was not undertaken with any feeling of hostility toward Iran or its people.[77]

In his report to Congress, he declared: "In carrying out this operation, the United States was acting wholly within its right, in accordance with Article 51 of the United Nations Charter, to protect and rescue its citizens where the government of the territory in which they are located is unwilling or unable to protect them."[78]

While usual countries supported or condemned the raid in political terms, the Italian Foreign Minister Colombo, echoing Reisman, provided an illuminating legal comment:

> There was . . . on the part of Iran alone an extremely serious infringement of the rules of international law. The State which falls a victim to such an infringement has the power, under international law, to resort to self-help. Even the United Nations Charter recognizes this right as inherent, the exercise of which is subordinate to the powers and duties conferred on the Security Council, for restoring the rule of law. But the Charter also recognizes the right of each

> permanent member of the Security Council to veto. Each permanent member must be aware of the responsibility it takes upon itself when vetoing a resolution of the Security Council, by pointing the way to self-help.[79]

U.S. Intervention in Grenada—1983

On October 25th, 1983, the U.S. launched Operation *Urgent Fury*, a large amphibious and air assault on the island nation of Grenada. This was in response to an increasingly anarchic situation, precipitated earlier in the month by a *coup d'etat* against the island's Marxist Prime Minister, Maurice Bishop, by hard-line members of his own government. On October 19th, Bishop and scores of others were killed in an unsuccessful attempt to regain control of the island's government. Later that same day, General Hudson Austin, head of the new "Revolutionary Military Council," announced a four-day, 24-hour, shoot-on-sight curfew. Concerned for the safety of American tourists and medical students on the island, and alarmed by the presence of a large number of armed, Cuban paramilitary construction workers on the island (completing work on an airstrip large enough to support heavy military aircraft), the United States took action.[80]

Although the Grenadian operation appeared to have the classic factual predicate for a traditional forcible protection of nationals scenario, it was not for two specific reasons. First, the operation was conducted at the request of the Governor-General of Grenada, whose constitutional authority, particularly in the absence of any other *de jure* government, was unsurpassed by any other claimant to power.[81] Second, the operation was a textbook example of collective self-defense, in that the United States' assistance was forcefully and urgently requested by the Organization of Eastern Caribbean States.[82] Despite the fact that there appear to be three independently sufficient legal justifications for the U.S./OECS intervention, 79 governments expressed some level of disapproval of the operation, and on November 2nd, the UN General Assembly voted 108 to 9 to condemn the intervention as a "violation of international law."[83] This was somewhat offset by the overwhelming support for the operation shown by the people of Grenada.[84]

The U.S. Intervention in Panama—1989

Six years later, another small nation in the Western Hemisphere had had its democratic election invalidated by a military strongman, and the latent threat to local citizens and foreign nationals gradually escalated to unacceptable levels. As Arend and Beck describe:

> On December 20, 1989, the United States launched an invasion of Panama code-named Operation 'Just Cause.' In a special press briefing given that day, Secretary of State James Baker emphasized that the 'leading objective' of the US military action had been 'to protect American lives.' [footnote omitted] Earlier on D-Day, President Bush had tersely explained the rationale for his decision to use force: 'Last Friday, [General Manuel] Noriega declared his military dictatorship to be in a state of war with the United States and publicly threatened the lives of Americans in Panama.' On Saturday, 'forces under his command shot and killed an unarmed American serviceman, wounded another, arrested and brutally beat a third American serviceman and then brutally interrogated his wife, threatening her with sexual abuse. That, said the president, 'was enough!' [footnote omitted] It was time to act.[85]

Two factors make the analysis of the intervention more difficult. First is the sheer scale of the operation: ten thousand American troops eventually seized control of the entire country, removed the *de facto* head of state to face drug trafficking charges in the U.S., and reinstalled the *de jure*, democratically-elected government.[86] Second, President Bush cited four overlapping justifications for the intervention: "to safeguard the lives of Americans, to defend democracy in Panama, to combat drug trafficking and to protect the integrity of the Panama Canal Treaty."[87] Of these, claimed Secretary of State Baker, the protection of American lives was "the leading one."[88]

Reaction to the invasion was generally negative—mildly so in Europe, and stridently so in Latin America.[89] The communist world was also condemnatory, with the Soviet Union calling the operation "a violation of the United Nations Charter and of the universally accepted norms of behavior between sovereign states."[90] China simply labeled it "a violation of internal law."[91] The United States, Britain, and France vetoed a Security Council resolution condemning the invasion.[92]

The U.S. Intervention in Liberia—1990

On August 5th, 1990, the United States landed 255 Marines in the Liberian capital of Monrovia to evacuate U.S. and any other nationals desiring to leave the country. This was in immediate response to an announcement the day before by rebel leader Prince Johnson, who called for the arrest of all foreign nationals in the capital. Johnson apparently wished to attract international attention to his rebel faction, and provoke an international response to the seven-month-old rebellion.[93] In this, he was successful.

Without seeking or receiving permission from embattled President Samuel K. Doe or either of the rival rebel faction leaders, the Marines evacuated

approximately one thousand foreign nationals from Monrovia over a two-week period.[94] On August 24th, a West African peacekeeping force arrived in Monrovia to enforce a cease-fire.[95]

Professor Lillich drew this conclusion from the international community's reaction to the evacuation:

> [T]he renewed assertion by the United States of the right of forcible protection of its nationals during the Liberian disorder, the fact that hundreds of other foreign nationals from dozens of States were evacuated with what must have been the enthusiastic (if not explicit) approval of their governments, and the near-complete absence of legal or other criticism of the rescue operation all combine to indicate that the international community, now more than ever in the post-Cold War period, is prepared to accept, endorse or, at the very least, tolerate the forcible protection of nationals abroad in appropriate cases.[96]

Theoretical Bases for Action

The two major theories addressing the legality of the use of force in the protection of nationals abroad are the "restrictionist" theory, which views any such use of force as unlawful, and the "counter-restrictionist theory," which, as its name implies, holds the opposite view. Within the counter-restrictionist theory, there are several intermingled sub-theories supporting the general premise of allowing intervention.

The Restrictionist Theory

This theory, which states that there is no lawful basis for the forcible protection of nationals abroad, rests on three assumptions. First, it assumes that the sole principal goal of the United Nations is the maintenance of international peace and security. Second, it holds that the UN has a monopoly on the lawful use of force, with the narrow exception for self-defense in the case of armed attack on the territory of a state. Third, it maintains that if states were permitted to use force to protect their nationals abroad, or for any other reason beyond clear individual or collective self-defense, they would broaden this narrow mandate, using it as a pretext for any desired policy ends.[97]

Restrictionists concede that, under the pre-Charter legal regime, states did have the right to use force unilaterally in the protection of their nationals. However, they say, this right was often abused, placing weak states at the mercy of stronger ones wishing to advance national policy through violence. To end this practice, they conclude, the framers of the UN Charter specifically outlawed the unilateral use of force, except for the most obvious cases of national

self-defense against armed attack, and then only to the extent that the Security Council had not yet acted. According to Ian Brownlie, "[t]he whole object of the Charter was to render unilateral use of force, even in self-defense, subject to UN control."[98]

Arend and Beck concisely summarize the textual basis for the restrictionist argument:

> For their rendition of the *jus ad bellum*, the restrictionists draw heavily upon Articles 2(4) and 51 of the UN Charter. In their view, the language of Article 2(4) clearly indicates a general prohibition on the use of force by states. [footnote omitted] No state is permitted to threaten or use force 'against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.' Article 51, which provides for 'individual and collective self-defense,' constitutes merely a narrow exception to the general prohibition of 2(4). [footnote omitted] States may defend themselves, restrictionists argue, but only after an actual 'armed attack' upon state *territory* has occurred. [footnote omitted] Typical of the restrictionist view is that described by Waldcock, himself a counter-restrictionist: '2(4) prohibits entirely any threat of use of armed force between independent States except in individual or collective self defense under Article 51 or in execution of collective measures under the Charter for maintaining or restoring peace.' [footnote omitted] The UN Charter's prohibition, the French restrictionist Viraly suggests, has the broadest range it is possible to imagine.' [footnote omitted][99]

The restrictionist theory, in its purest form, allows no use of force against any terrorist or other groups who are using force below the invasion-level of an armored column crossing a national border.

The Counter-Restrictionist Theory

The counter-restrictionist theory is actually a constellation of four overlapping, nonexclusive subtheories.

The first subtheory involves the survival or revival of the pre-Charter customary rule allowing forcible protection of nationals abroad. Derek Bowett argues for the survival of the customary rule. He believes that a reading of the Charter's *travaux preparatoires* shows that the framers intended to preserve the "inherent" right of self-defense, with the contours acquired from customary international law up to that point. More persuasively for Bowett, state practice since the Charter was ratified has confirmed that a significant number of states have exercised the right to protect nationals abroad, extending the customary international law norm into the present.[100]

The other version of this subtheory holds that the norm has been revived in the modern era. Arend and Beck explain:

> In their view, the UN founders mistakenly assumed that 'self-help' would no longer be necessary 'since an authoritative international organization [could now] provide the police facilities for enforcement of international rights. [footnote omitted] Unfortunately for the international system, submit Michael Reisman, Richard Lillich, and other scholars, the UN enforcement mechanisms have been confounded at virtually every turn by dissension among the Security Council's permanent membership. [footnote omitted] Article 2(4)'s prohibition on the threat or use of force, they assert, must hence be conditioned on the United Nations' capacity to respond effectively. When the UN fails to do so, customary law revives and states may intervene to protect nationals. [footnote omitted][101]

In summary, this subtheory posits that, whether it survived the entry into force of the Charter, or was extinguished by it and later revived by UN mal-, mis-, or nonfeasance, the customary norm under international law permitting the use of force in the protection of nationals abroad is alive today.[102]

The second subtheory describes the protection of nationals abroad as a permissible use of force below the Article 2(4) threshold. The article itself directs: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any way inconsistent with the UN's purposes."[103] Here, the key is that Article 2(4) has two dimensions: a *quantitative* aspect regarding the *amount* of violence or coercion, and a *qualitative* aspect regarding the end to which the violence or coercion is directed. An oversimplified reading of Article 2(4) may leave the impression of a simple, and low, threshold, forbidding all uses or even threats of force not flowing from self-defense or Chapter VII authorization. The two-dimensional approach, however, keys on the language ". . . against the territorial integrity or political independence of any state . . . ." A legitimate use of force in the protection of nationals abroad does not take or hold territory, or threaten the government elected, or tolerated, by the people. Such a use of force is qualitatively different, and not the type which the framers of the Charter, with fresh memories of German and Japanese aggression, sought to circumscribe. A brief operation which, at its conclusion, has affected neither the territorial integrity nor the political independence of the threatening state would not appear to have violated the qualitative prong of the Article 2(4) prohibition.[104]

The third subtheory is a complement of the second; it holds that a threat to even a single national abroad is the equivalent of an "armed attack" against the nation, allowing for a protective, and not punitive, response proportional to the injury received or threatened. That is, the forcible protection of nationals abroad is permissible self-defense under Article 51.[105] Since Article 51 appears not to create, but to simply recognize, "the *inherent* right of self-defense," counter-restrictionists believe the Charter provides "a local habitation and a name" for the customary right of the first subtheory. The problem with this subtheory appears to be that, like Article 2(4), Article 51 has both qualitative and quantitative aspects. The former fits well with the first subtheory, in that an "inherent" right could quite plausibly follow the contours of customary international law. The latter, however, suggests that there is a high threshold, "armed attack," below which the use of force is inappropriate.

The counterargument to this last point is that it is difficult to imagine that the framers of the Charter would create a legal no-man's land, wherein a rogue state would be able to inflict violent injury, but the aggrieved state would not be able to respond in self-defense.[106] The key to reconciling this apparent lacuna is proportionality: self-defense operates across the spectrum of violence, and a small "armed attack" against a national abroad may be met with a necessary and proportional nonpunitive response designed to protect the victim from further harm. To the extent that Article 51 permits reaction against less-than-overwhelming uses of force, it demands a reciprocal limitation on the scope, duration, and intensity of the protective response. The customary international legal doctrines comprising the law of armed conflict—military necessity, proportionality, and chivalry—provide these limitations even in the absence of an absolute prohibition by Article 51.

Finally, the fourth subtheory is grounded in a respect for human rights. Specifically, McDougal and Reisman reject the restrictionist premise that the UN has one overriding purpose, the maintenance of international peace and security. They argue that the UN has two such fundamental premises, each deserving equal weight: the maintenance of international peace and security, and the protection of human rights.[107]

This view is grounded in the Preamble, Articles 1, 55, and 56, and a large and growing corpus of human rights law.[108] Under this view, human rights violations are themselves threats to international peace and security. If the Security Council fails to act under Chapter VII, McDougal and Reisman argue, "the cumulative effect of articles 1, 55, and 56 [would be] to establish the legality of unilateral self-help."[109]

Conclusion

This article defined forcible protection of nationals abroad, reviewed commentary on the concept by publicists from the late 18th Century to the end of the pre-Charter era, and then surveyed the major uses of force in the protection of nationals abroad during the Charter era.

Lessons of State Practice

Arend and Beck provide an outstanding structural review of state practice in the Charter era. They examine four broad areas—the nature of intervening states, the circumstances of intervention, the scope of intervention, and state justification for intervention—and explore subcriteria within each. From their analysis emerge several fascinating points about how states have protected nationals beyond their borders.[110]

The nature of the intervening states reveals two patterns: they have been almost exclusively Western, and there have been very few of them. Of the 16 episodes they describe, 13 involved the use of force by just four countries: the United States, Great Britain, France, and Belgium. Generally, these powers have been the only ones in a position to effectively project military power in a troubled region.[111]

The circumstances of the intervention have varied considerably. The number of endangered nationals has ranged from the thousands (in the Congo and the Dominican Republic) to just two (in the Western Sahara). The governmental situation has also varied, from the anarchy of no government at all (Liberia, the Dominican Republic) to a malevolent government actively threatening the nationals concerned (Uganda, Iran). The nationality has likewise varied, from the rescue of own-country nationals (Entebbe, *Mayaguez*) to the evacuation of all foreign nationals in a troubled area (the Congo, Liberia, Grenada). Interestingly, almost all such operations have occurred in areas that were, until the Charter era, under "Great Power" protection, usually as former colonies. Iran, Palestine, Egypt, Cambodia, the Congo, the Dominican Republic, Lebanon, Uganda, the Western Sahara, Grenada, Panama—all were under varying degrees of Great Power control until recently. This resulted in two situations: the turbulence which often accompanies recent independence, and a power which is both familiar with and, in a moral sense, responsible for, the former territory.[112]

The scope of the intervention ran the gamut from brief excursions measured in minutes (Entebbe, *Mayaguez*) to months-long stays (the Dominican Republic, Egypt). The longer-term operations, however, were only initially character-

ized as the protection of nationals abroad. Once that phase of the operation had passed, new missions with new justifications took their place. The true protective missions were extremely limited in the territorial scope, temporal duration, and military intensity of their effects.[113]

Finally, the state justifications for the interventions varied as well. Most states have relied on multiple rationales for their operations, with the protection of nationals near the top of the list in most cases. However, as operations lengthened or diversified, new justifications would be advanced once the nationals sought to be protected were secure.[114]

A Coherent Legal Model for the Protection of Nationals Abroad

The four subtheories advanced by the counter-restrictionists each contain helpful elements. A model which includes the most authoritative portions of all four would provide a solid legal basis for undertaking such operations in the Charter era.[115]

The first subtheory, regarding the survival or revival of the customary norm allowing protection of nationals, is perhaps best understood as a synthesis of the two. To the extent that such an understanding does not run afoul of the plain language of the Charter, it appears that a narrowly construed form of self-defense did survive the entry into force of the Charter, and that a long line of customary international law informs its use today. The second portion of this argument, however, is the more controversial. To the extent that the UN did not deliver on the security it promised in return for a limitation on the national exercise of self-defense, that inherent right must necessarily expand to meet the new threats. Without violating the plain meaning of the Charter, nations should and must protect their citizens when no another authority, national or international, is willing or able. In this sense, this additional portion of the inherent right of self-defense has been revived as the UN has often proved incapable, as an organization, of maintaining international peace and security.

The second subtheory, that such actions are below the qualitative threshold of Article 2(4), is a close call, but, in the case of a pure rescue operation, in accord with the facts. If no territory is held, and if the political structure is not materially threatened, it is difficult to argue that a rescue operation breaks the 2(4) threshold.

The third subtheory, that such operations are lawful exercises of the inherent right of self-defense, guaranteed by Article 51, is perhaps the strongest argument. By allowing the threshold of an “armed attack” to float at the level of the provocation, a militarily necessary, proportionate, and chivalrous response

will guarantee compliance with international law. If a single citizen is placed in harm's way, and only that force necessary to bring her to safety is employed, then the protecting nation has gained no military advantage over the threatening nation, the *status quo* is maintained, and international peace and security are preserved. Again, it is difficult to see how such an outcome violates the object and purpose of the Charter, or the intentions of its framers.

Finally, the fourth subtheory argues for the equality of human rights with international peace and security. Since the framing of the Charter, we have learned more and more about the nature of regimes which threaten international peace and security. None of these governments have the requisite respect for the individual which is the basis for civil protections against tyranny. Far from being in tension with international peace and security, human rights are very much the foundation of international peace and security. A reading of the Charter which places these two concepts in opposition is, consciously or not, of greater service to the Benito Mussolinis of history than the Theodore Roosevelts.

Notes

1. Benito Mussolini, *quoted by* Gen. Smedley D. Butler, *reprinted in* THE POCKET BOOK OF QUOTATIONS 379 (Henry Davidoff ed., 1952).
2. Theodore Roosevelt, *quoted in* BARBARA TUCHMAN, PRACTICING HISTORY 115 (1981).
3. Rev. Jesse Jackson, remarks on *Nightline*, December 15, 1987.
4. ANTHONY CLARK AREND AND ROBERT J. BECK, INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM 94 (1993).
5. *Id.* Ronzitti further restricts the scope of consent with several criteria:

> First of all, consent must come from an authority whose expression of will is ascribable to the local State. … Secondly, the expression of will of the local State must be valid, not vitiated by the so-called 'vices de volonte.'. . . [T]he consent of the injured State must not only not be given by error, obtained by fraud, or procured by coercion but must also comply with the territorial sovereign's internal provisions regarding competence to be bound. … Thirdly, the action by the intervening State must be strictly confined to the limits of the consent given by the local sovereign. The State whose nationals are in mortal danger, even if it is permitted to enter foreign territory, is not automatically allowed to resort to force, if it lacks authorization to do so. … Moreover, the action of the intervening State must not infringe upon the rules by which a State is duty bound not as regards a particular subject of international law but as regards the international community as a whole. … [T]he consent of the State cannot function as an *erga omnes* defence. … Finally, the consent must not be contrary to a peremptory rule of international law. [footnotes omitted]

NATALINO RONZITTI, RESCUING NATIONALS ABROAD THROUGH MILITARY COERCION AND INTERVENTION ON GROUNDS OF HUMANITY 84-86 (1985). Ronzitti continues, stating that treaties are a valid vehicle of consent: "Practice shows that, by virtue of a treaty, a right to

intervene in foreign territory for carrying out activities which would certainly be unlawful without the treaty so providing, is sometimes given. [footnote omitted] *Id.* at 115. For an examination of treaty-based intervention, *see David Wippman*, Treaty-Based Intervention: Who Can Say No?, 62 U. CHI. L. REV. 607 (1995).

6. AREND AND BECK, *supra* note 4, at 94. *See also* RONZITTI, *supra* note 5 at 135-148. Ronzitti also addresses the use of force against pirates and slavers. *Id.* at 137-141.

7. *Id.*

8. *Id.*

9. E. VATTEL, THE LAW OF NATIONS 161 (J. Chitty ed. 1883). *See also Louis B. Sohn*, International Law and Basic Human Rights, *in* RICHARD B. LILLICH AND JOHN NORTON MOORE EDS, U.S. NAVAL WAR COLLEGE INTERNATIONAL LAW STUDIES: READINGS IN INTERNATIONAL LAW FROM THE NAVAL WAR COLLEGE REVIEW 1947-1977, VOL. 62, 587, 588 (1980). Professor Sohn traces the use of force in the protection of nationals abroad back as far as the 11th Century. *Id.*

10. E. VATTEL, *supra* note 9 at 165.

11. WILLIAM EDWARD HALL, A TREATISE ON THE FOREIGN POWERS AND JURISDICTION OF THE BRITISH CROWN 2 (1894). Hall continues, describing the connection between the sovereign and the subject, and the sovereign's power over the subject:

> The legal relations by which a person is encompassed in his country of birth and residence cannot be wholly put aside when he goes abroad for a time; many of the acts which he may do outside his native state have inevitable consequences within it. He may for many purposes be temporarily under the control of another sovereign than his own, and he may be bound to yield to a foreign government a large measure of obedience; but his own state still possess a right to his allegiance; he is still an integral member of the national community. A state therefore can enact laws, enjoining or forbidding acts, and defining legal relations, which oblige its subjects abroad in common with those within its dominions. It can declare under what conditions it will regard as valid acts, done in foreign countries, which profess to have legal effect; it can visit others with penalties; it can estimate the circumstances and facts as it chooses.
>
> *Id.*

12. *Id.* at 3.

13. *Id.* at 4.

14. EDWIN M. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD 446 (1928).

15. *Id.* at 448.

16. *Id.* at 450. Borchard lists the bases for intervention:

> Among the various purposes for which troops and marines have been landed, are the following: [footnote omitted] (1) for the simple protection of American citizens in disturbed localities, the activity of the troops being in the nature of police duty; [footnote omitted] (2) for the punishment of natives for the murder or injury of American citizens in semi-civilized or backward countries; [footnote omitted] (3) for the suppression of local riots, and the restoration and preservation of order; [footnote omitted] (4) for the collection of indemnities, either with or without the delivery of a previous ultimatum; [footnote omitted] (5) for the seizure of custom-houses, as security for the payment of claims; [footnote omitted] and for purposes such as the maintenance of a stable government, the destruction of pirates infesting certain areas, and other objects.

Id. at 449-50.

17. *Id.* at 452.
18. AREND AND BECK, *supra* note 4, at 95.
19. RONZITTI, *supra* note 4, at 26.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 26-27.
24. *Id.* at 27.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.* at 27-28.
29. *Id.* at 28. The troops were present in the Canal Zone pursuant to a treaty with the government of Egypt, signed on August 26, 1936. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.* at 29.
35. *Id.* Foreign Secretary Lloyd echoed this comment before the House of Commons, and added that the Security Council was, in any case, incapable of taking swift and decisive action. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. AREND AND BECK, *supra* note 4, at 96.
41. RONZITTI, *supra* note 5, at 30.
42. *Id*
43. *Id.*
44. *Id.* at 31.
45. *Id.* at 32.
46. *Id.* at 31. Two other instances in Africa, both in 1964, do not meet the criteria of protection of nationals abroad in that they were undertaken with the approval of the local sovereign. This, of course, renders the action a cooperative one between nations, and not an intervention with adversary sovereigns.

The first was the evacuation of British citizens in Zanzibar, following a *coup d'etat* against the sultan. The new government quietly invited the British, who had dispatched a warship to the area, to evacuate its own citizens. *Id.* at 32.

The second incident was a joint U.S. – Belgian operation, again in the Congo, to rescue foreign nationals from rebels. AREND AND BECK *supra* note 4, at 97. According to Professor Lillich, diplomacy and alternative measures had gotten nowhere: "[T]he United Nations got bogged down in debate upon it. They finally decided to let the Organization of African Unity attempt to do something: they tried and they were very, very unsuccessful." *Richard B. Lillich*, Forcible Self-Help Under International Law, *in* RICHARD B. LILLICH AND JOHN NORTON MOORE EDS, U.S. NAVAL WAR COLLEGE INTERNATIONAL LAW STUDIES: READINGS IN INTERNATIONAL LAW FROM THE NAVAL WAR COLLEGE REVIEW 1947-1977, VOL. 62, 587, 597 (1980) [*hereinafter* Forcible Self-Help]. The subsequent intervention was highly successful, and conducted with the permission of the Congo's government. However, this situation highlights

the tenuous nature of such permission: Congolese Foreign Minister Bomboko consented to the operation, but after it had been set in motion, Prime Minister Patrice Lumumba overruled him. The practical effect of the *post hoc* withdrawal of permission was negligible, but it does serve to emphasize the role of timing in such operations. M. Akehurst, *The Use of Force to Protect Nationals Abroad*, INT'L REL. 5: 7 (1977). Professor Sohn noted that, while the scope of the mission was strictly limited to rescue of the hostages, a certain amount of force was required to effect their release: "In the process of rescuing them, the army of rebellion was more or less destroyed, but that was purely incidental." Sohn, *supra* note 9, at 597.

47. RONZITTI, *supra* note 5, at 33. Ronzitti states that " the island was, to all effects, in the throes of anarchy." *Id.*

48. AREND AND BECK, *supra* note 5, at 397-98.

49. RONZITTI, *supra* note 5, at 33.

50. AREND AND BECK, *supra* note 4, at 98.

51. RONZITTI, *supra* note 5, at 35-36.

52. *Id.* at 36.

53. AREND AND BECK, *supra* note 4, at 98.

54. RONZITTI, *supra* note 5, at 36.

55. AREND AND BECK, *supra* note 4, at 98.

56. RONZITTI, *supra* note 5, at 36.

57. AREND AND BECK, *supra* note 4, at 97-98.

58. AREND AND BECK, *supra* note 4, at 99.

59. RONZITTI, *supra* note 5, at 37.

60. *Id.*

61. AREND AND BECK, *supra* note 4, at 99.

62. *Id.*

63. RONZITTI, *supra* note 5, at 37.

64. Id.

65. *Id.*

66. *Id.*

67. 31 U.N. SCOR (1941st mtg.) 31, U.N. Doc. S/p.v. 1941 (1976), *quoted in Richard B. Lillich*, Introduction to Volume II: The Use of Force, Human Rights, and General International Legal Issues, *in* RICHARD B. LILLICH AND JOHN NORTON MOORE EDS, U.S. NAVAL WAR COLLEGE INTERNATIONAl LAW STUDIES: READINGS IN INTERNATIONAL LAW FROM THE NAVAL WAR COLLEGE REVIEW 1947-1977, VOL. 62, IX, XI (1980) [*hereinafter* Introduction].

68. *Id.*

69. *Id.*

70. *Id.*

71. RONZITTI, *supra* note 5, at 38.

72. *Id.*

73. *Id.* at 40.

74. *Id.* at 40-41.

75. *Id.* at 41.

76. *Id.* at 44.

77. *Id*. This Presidential Statement places an unusual emphasis on feelings. The author was present at a White House conversation, when a participant in the rescue mission was asked if he would have killed the Iranian "student" guarding the three Americans he had been assigned to recover. "Let's just say," replied the commando, "that meeting me would have been a significant emotional event in his life." Notes of conversation on file with the author.

78. *Id.* at 45. Ronzitti provides an excellent explanation:

> [Under Reisman's theory,] [t]he Charter does not abrogate a State's right to resort to self-help, including the use of armed force, which belongs to it under customary international law. The Charter simply suspends the right to resort to self-help, since it entrusts the Security Council with the task of safeguarding the rights of member States. Whenever this mechanism does not function, for example when the action of the Security Council is paralysed by veto, the States are free to resort to self-help, under the terms permitted by customary international law.

Id.

79. *Id.* at 46.

80. AREND AND BECK, *supra* note 4, at 101. *See generally John Norton Moore*, Grenada and the International Double Standard, 78 A. J. I. L. 145 (1984) and *Ronald M. Riggs*, The Grenada Intervention: A Legal Analysis, 109 MIL. L. REV. 1 (1985).

81. Moore, *supra* note 80, at 148 and 159-61. Moore explains:

> Constitutional niceties of internal authority are difficult to construct when the only general Constitution of a nation has been previously suspended in express violation of its provisions and a subsequent attempted coup has announced the dissolution of the Government that suspended the Constitution but was unable to consolidate effective power. It does seem clear in this setting, however, that the authority of the Governor-General to represent Grenada was stronger than that of anyone else.

Id. at 159.

82. *Id.* at 147-48.

83. AREND AND BECK, *supra* note 4, at 101. President Reagan reported that the condemnatory General Assembly vote had not "upset my breakfast at all." *Id.*

84. Moore, *supra* note 80, at 151-53. Moore quotes the results of a CBS News poll, conducted on November 6th: 62% felt the Americans had come "to save the lives of Americans living here," 65% said they believed the airport under construction was being built for Cuban and Soviet military purposes, 76% stated they believed Cuba wanted to take control of the Grenadian government, 81% said the American troops were "courteous and considerate," 85% stated they felt they or their family were in danger while General Austin was in power, 85% said they felt the American purpose in invading was to "free the people of Grenada from the Cubans," and 91% were "glad the Americans came to Grenada." *Id.* at 152.

85. AREND AND BECK, *supra* note 4, at 93. Professor Lillich recommended the following additional sources on the invasion of Panama:

> Compare *Abraham Sofaer*, The Legality of the United States Action in Panama, in: Columbia Journal of Transnational Law (Colum. J. Trans. L.) vol. 29, 1991, 281, with *Louis Henkin*, The Invasion of Panama Under International Law: A Gross Violation, in: Columbia Journal of Transnational Law (Colum. J. Trans. L.) vol. 29, 1991, 293. *See also Anthony D'Amato*, The Invasion of Panama Was a Lawful Response to Tyranny, in AJIL, vol. 84, 1990, 516; *Tom Farer*, Panama: Beyond the Charter Paradigm, in: AJIL, vol. 84, 1990, 503; *Ved Nanda*, The Validity of the United States Intervention in Panama Under International Law, in: AJIL, vol. 84, 1990, 494; *John Quigley*, The Legality of the United States Invasion of Panama, in: Yale JIL, vol. 15, 1990, 276; *James P. Terry*, The Panama Intervention: Law in Support of Policy, in: Naval War College Review, vol. 43, 1990, no. 4, 110; Panel, The Panama Revolution, in: American Society of International Law Proceedings (ASIL Proc.), vol. 84, 1990,

182; Recent Developments, International Intervention—The United States Invasion of Panama, in: Harvard International Law Journal (Harv. ILJ), vol. 31, 1990, 633.

Richard B. Lillich, Forcible Protection of Nationals Abroad: The Liberian "Incident" of 1990, 35 GERMAN YEARBOOK OF INTERNATIONAL LAW 205, 206 (1993) [*hereinafter* Liberia].

86. AREND AND BECK, *supra* note 4, at 102.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* Included in the evacuated were French, Canadian, Italian, Lebanese, and even Iraqi citizens. *Id.*

95. *Id.* at 102-103. For a more in-depth treatment of the incident, *see Richard B. Lillich*, Forcible Protection of Nationals Abroad: The Liberian "Incident" of 1990, 35 GERMAN YEARBOOK OF INTERNATIONAL LAW 205 (1993). Lillich, *supra* note 85, at 205.

96. Lillich, Liberia, *supra* note 85, at 222-23.

97. AREND AND BECK, *supra* note 4, at 105. *See also* Riggs, *supra* note 80, at 22.

98. AREND AND BECK, *supra* note 4, at 106.

99. *Id.*

100. *Id.* at 107.

101. *Id.* Reisman himself continues: "A rational and contemporary interpretation of the Charter must conclude that Article 2(4) suppresses self-help [only] insofar as the organization can assume the role of enforcer." When the UN fails in its mission "self-help prerogatives revive." [footnote omitted]. Any interpretation which fails to take this into account would merely provide "an invitation to lawbreakers who would anticipate a paralysis in the Security Council's decision dynamics." Michael Reisman, *Sanctions and Enforcement*, *in* C. Black and R. Falk (eds), THE FUTURE OF THE INTERNATIONAL LEGAL ORDER, 3: 850 (1971), *quoted in* AREND AND BECK, *supra* note 4, at 107-08.

102. Professor McDougal summarized this position eloquently:

> [T]he first important fact is that the machinery for collective police action projected by the Charter has never been implemented. We don't have the police forces for the United Nations, the collective machinery that was expected to replace self-help. In other words, there has been a failure in certain of the major provisions for implementing the Charter.
>
> If, in the light of this failure, we consider how we can implement the principal purposes of minimizing coercion, of insuring that states do not profit by coercion and violence, I submit to you that it is simply to honor lawlessness to hold that the members of one state can, with impunity, attack the nationals—individuals, ships, aircraft or other assets—of other states without any fear of response. In the absence of collective machinery to protect against attack and deprivation, I would suggest that the principle of major purpose requires an interpretation which would honor self-help against prior unlawfulness. The principle of subsequent conduct would certainly confirm this. . . .

Myers McDougal, *Authority to Use Force on the High Seas*, 20 NAVAL WAR COLLEGE REVIEW 19, 28-29 (Dec. 1967), *quoted in* Lillich, Introduction, *supra* note 67, at XI.

103. AREND AND BECK, *supra* note 4, at 108.

104. *But see* RONZITTI, *supra* note 5, at 8-9.

105. Riggs, *supra* note 80, at 24.

106. Ronzitti acknowledges the problem of assuming that an "armed attack" can involve only aggressive international war:

> [P]ractice shows that, when a State intends to wrongfully use armed coercion, it does so in one of two ways: i) by using force against the territory of another State, or ii) by exerting armed coercion within its own territory against foreign instrumentalities (e.g. embassies) or citizens (individuals or State organs, such as foreign representatives). Whereas in the former case the victim may react in self-defence, in the latter this is not possible, since it is declared that there has been no 'armed attack'.

RONZITTI, *supra* note 5, at 66. He continues:

> [I]n recent years, particularly unpleasant episodes have repeatedly occurred, such as the taking of hostages, and transnational terrorism. These events are the cause of a continual state of danger. Unless the international community acquires suitable instruments, capable of preventing and representing [*sic*] such criminal events, resorting to unilateral armed force is likely to continue to increase on the part of those States whose nationals become the victims of terrorist attacks, in order to fill the vacuum created by the lack of effective control mechanisms.

Id.

107. AREND AND BECK, *supra* note 4, at 109. *See also* Riggs, *supra* note 80, at 23.

108. AREND AND BECK, *supra* note 4, at 109. Arend and Beck summarize McDougal and Reisman's position:

> The Preamble's "repeated emphasis upon the common interests in human rights," argue Reisman and McDougal, "indicates that the use of force for the urgent protection of such rights is no less authorized than other forms of self-help," [footnote omitted] Under Article 1(3), they suggest, "promoting and encouraging respect for human rights" is set out as a fundamental purpose of the United Nations. [footnote omitted] Similarly, Article 55 of the Charter points to the UN objective of promoting "human rights" observance, while Article 56 authorizes "joint and separate action [by Members] in cooperation with the Organization for the achievement of the purposes set out in Article 55." [footnote omitted]

Id.

109. *Id.* AREND AND BECK, *supra* note 4, at 109. *See also* RONZITTI, *supra* note 5, at 2.

110. AREND AND BECK, *supra* note 4, at 103.

111. *Id.*

112. *Id.* at 103-04.

113. *Id.* at 104.

114. *Id.*

115. Riggs, *supra* note 80, at 25-33.

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