

INTERNATIONAL LAW
AND
BASIC HUMAN RIGHTS

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I feel fortunate that I have this opportunity to talk about human rights and international law, because too often people think of international law as being purely a law between states. We feel concerned about what the major states are going to do to each other, and we forget that behind them there are three billion individuals, all of them worried about their rights and duties. What I wish to give you today is a view of international law from below, where human beings are asking for help, rather than from above, from the lofty world of states. This is an area of international law in which, over the years, we developed perhaps more law than in other areas. If you look at the jurisprudence of international tribunals, you discover that more cases deal with problems of human rights than with rights and duties of states themselves.

There is also another misconception: namely, that this is a new area of law; that really this branch of international law developed in the 19th century as part of the century of imperialism; that this is the part of international law which the big powers imposed on the smaller ones, especially on the Latin Americans, and which the West imposed on the other parts of the world.

If you look at history, you very soon discover that this is a misleading theory. International law in this area can be traced very far back to problems between city-states of Italy, between the Moorish kings and the Christian kings in Spain, then between the other powers of Western Europe: England and France, England and the Netherlands, and between France and Spain. For some reason, many of the cases of that period seem to involve the Portuguese.

Protection of Citizens Abroad. One of our first cases—quite well known—is the Bernard Dongrasilli case in 1295 in which King Edward the First of England gave Mr. Dongrasilli permission to engage in privateering against Portugal in order to recover the value of plundered ships that the Portuguese had taken.¹ And, already in 1295, in the documents relating to this case, you find all the basic ingredients of the rules of protection of individual rights in international law. First, that it is a right, in fact a duty, of a state to protect its subjects. Much later this principle was, in a way, codified by the eminent Swiss jurist Vattel who, in 1758, wrote that

Whoever ill treats a citizen indirectly injures the state, which must protect that citizen. The sovereign of the injured citizen must avenge the deed and, if possible, force the aggressor to give full satisfaction or punish him, since otherwise the citizen will not obtain the chief end of civil society, which is protection.

Thus Vattel codified what was already practiced for the previous 500 years.

The other factor which the English practice recognized in 1295 was that both the foreign state and all of its subjects were responsible for what the state or its citizens had done. The procedure to recover damage was then as follows. The victim should try to obtain a remedy in the local courts; secondly, there should be diplomatic negotiations; and only if these should fail, would more forceful means be permissible. And then comes the basic rule, which, again goes all the way back to the 13th century; and if one should search the Italian jurisprudence, one can find it even in the 11th century. That rule is that if justice is denied, a state can authorize enforcement action, and the action that was authorized in those days, interestingly enough, was the use of naval force.

The injured person was authorized to equip a ship and go on the high seas and find a ship of the other side and capture it, bring it back to port, if possible, have it sold properly, have the value ascertained and this value deducted from what the other country was owing to him for a denial of justice. This method of issuing special letters of marque and reprisal persisted up to at least the 17th century in that fashion, but it later became confused with general reprisals ordered in wartime and with privateering which sometimes shaded into piracy. All these three things are, however, quite different. What I am talking about is the limited right of reprisal in order to obtain proper compensation for the damage a person has suffered. From the very beginning this was a right exercised by a state to protect its citizens against another state, but exercised for a long time through the private self-help of the individual, who was, however, properly authorized to do it by the state.

In the 17th century, King Charles the Second and, to some extent, Cromwell before him, felt it might be safer to use the public navy to obtain adequate compensation. Of course, as a compromise at the beginning, both methods were used. The injured citizen can go out and try to do it himself, but at the same time the government can authorize the navy to do it as well, and when the whole amount is collected, by whichever means, the procedure comes to an end. There was, of course, a very elaborate system of accounting to ensure that the one authorized to engage in reprisals did not get too much. Some, nevertheless, engaged in private robbery on the side, and over the years the danger of abuse increased.

It was only later, in the 18th century, at the time of Vattel whom I have mentioned before, that the protection of rights of individuals became much more clearly an activity between states, and the governments began to use their navies to obtain redress for their

citizens. And it just happens that this is about the time that the United States came into existence and that for the United States, practice mostly has been in the second area, though you still find in the 1830's treaties concluded by the United States with other countries saying that private reprisals, while normally prohibited, might be permissible in some cases, in particular if the other party denies justice. So you still have that old rule persisting up to the 19th century. And there was, in fact, one case in which a person injured was trying to get through Congress permission to obtain letters of marque and reprisal in a case against a Latin American country—the Aves Island claim in 1857. In that case our Government said to the other country: if you fail to comply with the rules, if you continue to deny justice, we might issue the letters of reprisal. Thus this practice persisted beyond the middle of the 19th century.

But the practice of the United States was mostly of a different kind: to send the Navy or the Marines to protect our citizens; if necessary to occupy a customs station or a town in order to get back the property which was taken away or to protect the lives of individuals. The authors disagree about the number of such cases. Some say that there have been 140 cases, some list only 70, others say that there were even less than that, that there were 50 or so, the other cases being really cases of public action rather than action to protect the individual. But in the 19th century, and even this one up to the 1920's, there have certainly been many cases in which military forces, in particular naval forces, have been used in order to protect citizens.

To some extent this practice has been codified in the regulations for the government of the Navy of the United States in 1913, and almost the same provision is still in the *U.S. Navy Regulations 1948*. These regulations provide

that on occasions where injury to the United States or the citizens thereof is committed or threatened, in violation of the principles of international law or a treaty, the senior officer present should consult with the diplomatic representative or consul of the United States and should take such steps as the gravity of the situation demands. The responsibility for action taken by a naval force, however, rests wholly upon the commanding officer thereof. One easily can see the difficult problem facing the commanding officer. He has to decide such a case on the spot; consult with the diplomatic officer if possible, but otherwise he has to decide by himself that action is required. In at least one case, the *Barrundia* affair at the beginning of the 20th century in Central America, the commander of a U.S. war vessel was relieved of his command by the Navy Department for action taken under the advice of the American Minister in that country, when this did not meet with the approval of his own superior officer.² So a naval commander has to take such action on his own risk very often; though, of course, now that instant communication with naval headquarters is possible, that problem is less likely to arise.

As a result of this practice, one author has said that the American Navy had been sent to every quarter of the globe to protect life and property of fellow citizens, and that American naval officers were entrusted with this diplomatic task because they could best unite force with persuasion.³

Professor Buerghenthal brought to my attention an article by Colby M. Chester, entitled "Diplomacy of the Quarter Deck,"⁴ which was defined as the "necessity to meet the questions of international law and render decisions at once without time for the mature consideration of diplomatic usage." Such diplomacy is exercised very often on curt orders from home governments of the naval officer which are restricted to a

brief mandate: "Protect American interests, we rely upon your judgment."⁵ As naval officers you can see the difficulties which you may face if this approach should continue to be necessary. One cannot be surprised that there is some reluctance to make the necessary judgments, that there is some feeling that it might be dangerous to permit such action, the costly mistakes have sometimes been made, and that some other way should be found for dealing with the problem.

Throughout the 19th century, in a parallel way, there developed another system of protection of citizens abroad, namely through diplomatic action. Professor Borchard from Yale wrote a book about it in 1915. Later we turned this problem around and gave it the name of responsibility of states for injuries to aliens. The number of precedents, the number of both diplomatic cases and decisions of arbitral tribunals is really tremendous. When Professor Baxter and I some time ago started working on this question, we were able to prepare a draft convention and a short commentary in a few years, but when we started trying to collect all the international practice and put it in some systematic fashion, we soon found out that in our lifetime we would not have a sufficient number of man-years to complete the task. Consequently, the commentary remains, rather disappointingly, only half completed, but still our attempt has shown the tremendous scope of the material existing in this particular area.

The normal approach in case of an international claim is to try to obtain, first, satisfaction by diplomatic means, to persuade the other side to go to an arbitral tribunal or to an international court, and only as a last resort, perhaps, was it permissible to use force. I think the rule probably was stated best, though in a limited area, by one of the Hague Conventions of 1907—the Second Convention, or Porter Conven-

tion (so-named after Admiral Porter who was instrumental in preparing it). It prohibited the use of force for the recovery of contract debts; but people often forget that there is a second paragraph to it stating that this prohibition does not apply if the other party concerned refuses to go to arbitration or makes the arbitration impossible or after the award has been rendered refuses to execute it. Thus this convention is very closely connected with arbitral or judicial settlement of disputes and applies only if the other party, in good faith, participates in arbitration procedure. If it does not, then, in a way, the convention permits the use of force to obtain the payment of a debt.

We have thus traced through some 700 years one of the ways by which international law protects individuals, but it must be remembered that this method is limited to the protection by a country of its own citizens who have suffered an injury abroad.

Protection of Minorities. The next area in which we started protecting individuals was the area of minorities. And here, starting with some cases in the Balkans in the second half of the 19th century and then extending through very elaborate procedures developed by the League of Nations in the interwar period, a special system was established for protecting individuals belonging to minorities—racial, national, or religious—especially in countries of Eastern Europe and the Middle East. In those cases, before the League of Nations days, humanitarian intervention was used. One has to note, however, that there is an important difference between humanitarian intervention in this sense and military intervention, sometimes also called humanitarian, which is used to protect a state's citizens abroad. If you protect your own citizens abroad, this is really a case simply of self-help, which could be used in the past where other procedures of

international law like arbitration have failed, and those rules are subject to the basic rules applicable to the use of force in international law, including the rules which are now embodied in the Charter of the United Nations.

Quite different from that is the true procedure of humanitarian intervention which was developed by the Concert of Europe, originally, I suspect, only to protect the minorities within the Ottoman Empire; for example, the Lebanese case around 1860. Even previously, the principal European powers found it necessary to protect the Belgians from the Dutch, and to protect the Greeks from the Turks. You remember when the combined navies of Europe defeated the Turkish Fleet at the Battle of Lepanto in 1827. You might say this was one case of collective naval intervention. There was also the naval blockade of the port of Antwerp in 1832. From this point on throughout the 19th century there were several cases in which the powers of Europe authorized military or naval action to protect various minorities. And some of the decisions, including those relating to three cases just mentioned, were executed through collective action of the Concert of Europe. It was not simply done by an action of a particular state nor was any state entitled to take steps on behalf of the Concert of Europe without proper prior authorization.

One of the reasons given for developing the League of Nations into an international institution for the protection of minorities was to avoid humanitarian intervention by individual states. Intervention as such was sometimes done purely for humanitarian reasons, sometimes for hidden political reasons, and sometimes resulted in an occupation of vast territories, in which there was no withdrawal when the problem was solved. The League therefore argued that it is necessary to take it out of the hands of the individual states and put it into international hands.

Protection of Peoples in Colonial Territories. Another strand in this pattern of international concern for the rights of individuals emerged in the area of protection of colonial peoples. Beginning in the second half of the 19th century—though one could go to the Congress of Vienna in 1815 as far as certain acts such as those relating to slavery in Africa were concerned—there has been a conscious effort to protect the colonial peoples from excessive abuse by the Western Powers. Some self-restrictive agreements were adopted for just this purpose. Under the League of Nations they were broadened and put under clearer international supervision in the so-called mandates system. This was later taken over by the United Nations and transformed into a trusteeship system. And, as you know, the United States is a trustee for territories in the Pacific that originally belonged to Germany and then were put under a Japanese mandate. Over the years a mantle of protection was developed and now includes an international commission to supervise the mandates called the Trusteeship Council. It supervises the few remaining areas under trusteeship, carefully reviews reports submitted by the administering authority, hears petitions, and even sends investigative committees to ensure that the situations described in the report are as reported.

So we have at least three basic strands which can be traced to the period before 1945—diplomatic protection which, in a way, developed from the older private reprisals idea and which, in turn, merged into the concept of the responsibility of states for injuries to aliens; secondly, we have minorities protection, which was originally connected with humanitarian intervention; and thirdly, we have the trusteeship system which succeeded the mandates system.

Protection of Human Rights by the United Nations. When the Charter of

the United Nations was drafted in 1945, the framers had to take all these previous developments into account. There was also the additional fact that human rights were violated on a gross scale, especially by the Nazis, just before and during the Second World War. As you know, millions of people, not only Jews but also people of various Eastern European nationalities, had been massacred. That is why there existed in San Francisco a feeling that it was possible to go much further in the protection of human rights in the new charter than we went in the Covenant of the League of Nations. In consequence, provisions requiring the United Nations to promote the protection and the observance of human rights and fundamental freedoms are scattered throughout the charter, and a special commission was established on the subject—the Commission on Human Rights.

In fact, there was a strong pressure in San Francisco to put a bill of rights into the charter itself, and the only excuse for not doing it was lack of time. It had been decided that the conference had to end on a certain date, and whatever was not drafted by that date could not be included in the charter. But a promise was given that one of the first jobs of the United Nations would be to produce such a bill of rights of a universal scope. It soon became obvious that to provide a comprehensive international agreement or treaty or covenant on the subject was going to take a long time. People were impatient; they wanted to draft something quickly. To satisfy this demand, it was suggested that there be adopted a Universal Declaration of Human Rights by means of a resolution of the General Assembly. This was drafted relatively quickly and was adopted in 1948. It was a very broad document, written in a rather general fashion, but it listed in a clear and unambiguous manner the human rights which the United Nations promised to promote and protect. At the time of its

adoption it was thought that this resolution was purely declaratory in character and, like other resolutions of the General Assembly, did not really create any binding obligations. However, over the years a doctrine was developed that the Universal Declaration was really a binding document. In later documents of a similar character—like the declaration against colonialism and the declaration on racial discrimination—it was said that those new declarations and the old ones were binding and that states were obliged to apply them in good faith. So, retroactively, in 1968 a United Nations Conference on Human Rights met in Teheran and decided that the Universal Declaration was meant to be a binding document from the very beginning. The declaration was subject to various interpretations of specific provisions. The provisions were vague and general, and, as a result, it could be argued in each particular case whether any provision of the declaration was really applicable. Nevertheless, important progress thus was made in developing human rights standards of a universal character.

But progress in this area did not stop there. About 20 years or more were spent working on two covenants on human rights; one on economic and cultural social rights, and the other on civil and political rights. The purpose was to be more precise, to define more exactly the protection to which one is entitled, in even more detailed fashion than was done in the Constitution of the United States. And perhaps for that reason the document might be less perfect because the more detailed it becomes, the greater is the likelihood of introducing some mistakes. If the document can be limited to more general propositions, one can rely on the courts to find within the broad language of the old provision any new details that may be needed to meet varying circumstances.

The United Nations embarked on this big enterprise, and the covenants

were prepared first by the Commission on Human Rights and then revised by the Third Committee of the General Assembly. Each body has gone over them carefully, months at a time, and finally in 1966 reached an agreement on these very comprehensive general documents. It is not yet in force; it has been ratified, interestingly, by two Latin American states, Costa Rica and Ecuador—Costa Rica has always been a pioneer in this area—and by three Mediterranean states, Cyprus, Syria, and Tunisia; but the big powers are conspicuous by their absence. The covenants need 35 ratifications before they can come into effect, and it is going to take some time before it happens. But everybody feels that sooner or later the United States and other big powers will be faced by the fact that the covenants are in force, and if they do not ratify them, they will be considered, in a way, pariahs of the world community.

The Covenant on Civil and Political Rights provides for certain enforcement machinery, though it is rather weak. It provides simply for a committee to which each state is obliged to present reports. Nevertheless, in some international organizations—such as the International Labor Organization where some more than 100 conventions on labor problems have been adopted—these reports provide a very good picture of the existing situation and provide a basis for evaluating what might be going on in a particular state, and for trying to push them to do better in the future. Most states do not like to be criticized year after year, and under the pressure of public opinion they mend their ways as soon as public discussion of their reports shows conditions exist that are not acceptable.

In addition, the Covenant of Civil and Political Rights provides that states may agree that in case of a dispute about an alleged violation of the covenant by one state, another state can file a complaint, or they call it simply a

“communication,” with the committee. The committee can either itself deal with the matter or appoint a special conciliation committee to study the case in detail, to find, if possible, an amicable solution, and to present a report on the facts and possibilities of settling the matter. Relying again on pressure of public opinion, it may be hoped that the state concerned will accept the suggestions of the committee before its noncompliance is publicly exposed. There is, finally, an additional optional protocol which provides for the right of individuals to approach the committee. This is necessary because experience shows that states are very reluctant—unless they have special political interests such as those of Austria in the case of the Bolzano region of Italy or those of Greece with respect to Cyprus—to bring a case before an international body against another state. As one State Department official once explained to me, either the state is friendly and we do not want to jeopardize our friendship by submitting a case against it, or the state is unfriendly and we do not want to cause further deterioration in our relations with it. So whichever way you look at it, there is always a good excuse not to take any action. Therefore, it is felt that unless the individual concerned can complain and take it out of the area of being a dispute between states, you are not going to get very far for a long time. That such a procedure is possible is proven by the European experience.

Protection of Human Rights in Europe and the Americas. The Europeans first took a step of providing not only for a European body, the Council of Europe, composed of government delegates, but also for a European consultative assembly composed of members of national parliaments. The assembly very soon started pushing the governments by arguing that, as European states are dedicated to human rights, they ought

to have a convention spelling out those rights in detail and providing machinery for seeing to it that everybody follows the rules. For a few years the big countries and the governments in general were resisting the pressure, but eventually the parliamentarians caused so much commotion in the council and in the national parliaments that the Council of Ministers had to agree on something. On the basis of a draft prepared largely by the parliamentary assembly itself, a European Convention on Human Rights was written. Again, it was said, that is nice, you have got a convention, but who is going to ratify it? Slowly but surely, starting with the small states, everybody ratified it except France, which had Algeria as the excuse at that time. Later, after the loss of this excuse, France somehow forgot to ratify the convention, though several Frenchmen played a major role in its preparation.

But apart from that, several other European countries went even further. The convention, in addition to defining the rights, had an optional provision for the right of individuals to bring complaints. Again people said, which state is going to be so crazy to agree to something like this? Again, some small states were the first, then Germany, and finally, 2 years ago, even the United Kingdom agreed to do it. Italy is faced by a similar decision, because until now she has always had the excuse that she could not do it as long as the British had not ratified this optional clause. Now that the British have accepted the right of individuals to file complaints, Italy has lost her excuse. But, still, Italy is not alone, as six other European countries have not yet accepted this clause. On the other hand, those that have done so have discovered that, while they have always applied the basic principles of human rights, there have been a few areas of law in which they were really not up to par. For instance, the British discovered that their immigration pro-

cedures did not provide any proper administrative review of the decisions of the inspectors about admission of aliens and their families. The Germans and the Austrians found that some of their criminal law procedures did not comply with the standards of the convention; and similar weaknesses were found in other countries. Thus even in countries which have always been considered as the leaders in the protection of human rights, some shortcomings were discovered, and they were only corrected when the people concerned were given the right to petition the international commission.

Many of the cases before the European Commission were dismissed on the ground that there was a failure to exhaust local remedies available in national courts or that there was really no denial of justice by a state. Still, a number of cases were decided by the commission, and a few of them were even sent to a European Court of Human Rights. This court was also only optional, but, after a while, enough states accepted it so a number of cases could be submitted to it, including a very important one about linguistic problems in Belgium. There were also some cases relating to particular individuals, involving, for instance, the length of detention in Germany and Austria pending trial. The European Court found in one case that the detention, though prolonged, was justified, but in the other case, that the detention was not justified.

So, what we now have is living proof that such decisions are not only possible, but are acceptable to the states. Once the right of petition is accepted, it works in practice pretty well, and there is no reason really for a state to fear it.

In the Americas we have an Inter-American Commission on Human Rights with very limited jurisdiction. Nevertheless, after a period of time it was able to arrogate to itself certain powers, and it proved to be useful in the

Dominican Republic. Now we are preparing a more elaborate convention on human rights for the Americas and, in addition, there are proposals for a commission and even a court.

Protection of Human Rights of Military Personnel. Provisions on human rights are also contained in those parts of international law which are of special interest to the military. The Status of Forces Agreements, especially the NATO Agreement in article 7, paragraph 9, contain a small codification of human rights for the benefit of armed forces abroad. The Hague and Geneva Conventions on the laws of war, prisoners of war, rights of civilians in occupied territories, et cetera, also contain human rights provisions. Some of them have been, of course, enforced by national courts, but there have been also international tribunals, especially at Nuremberg and Tokyo. The United Nations has prepared, though it is not yet in force, a code of offenses against the peace and security of mankind which tries to codify the Nuremberg and Tokyo experience. Also, a special international criminal court has been proposed, and a statute of it has been drafted by the United Nations.

Thus we can see that in several areas of international law we have had tremendous developments since 1945. The canard that individuals are not subjects of international law no longer has any basis. It is generally accepted that individuals now have clear rights under international law and various remedies to secure their observance. On the other hand, they are responsible personally for violations of international law, as some Germans and Japanese discovered after the war.

Human Rights in Southern Africa. I have tried to paint, up to this point, the positive developments. Of course, we have also some skeletons in our closets here, and mostly they are scattered

around southern Africa. First, we have the violations of human rights in South Africa itself that have persisted since 1946. The problem is racial segregation, in particular apartheid, which now has been declared by the General Assembly to be a crime against humanity. At the present time the United Nations is working on the possibility of a procedure that would deal with these alleged criminals, who practiced apartheid, if they can be caught outside of South Africa.

Southern Rhodesia is involved in a similar problem to some extent. However, it is complicated by the fact that it was a colonial territory which, theoretically, is still under the jurisdiction of the United Kingdom. The United Nations adopts a resolution every so often advising the United Kingdom that it should send a military force there to restore democracy and the principle of "one person, one vote" and to abolish their constitution and impose a much better one upon them. Here is a case in which the United Nations is encouraging Western imperialism in a part of Africa for the benefit of Africans.

The next case is a case of South-West Africa. It was a mandate of South Africa under the League, it was never transformed into a trusteeship, and we have had a dispute going on with respect to it between the United Nations and South Africa since 1945. What is the status of South-West Africa, and can the United Nations, as successor of the League, do anything about it? There have been some opinions of the International Court of Justice that the United Nations is the successor and is entitled to supervision of the mandate in place of the League.

We have also had a particular dispute (you might call it a case of humanitarian intervention), in which Ethiopia and Liberia brought a case before the International Court of Justice against South Africa. This case was dismissed finally by the Court after a checkered career on

the ground that Liberia and Ethiopia really had no right to complain to the Court about how South Africa treats people in South-West Africa. The Court held that if the two complaining states could have shown that their own interests were involved, that issue could possibly have been brought before the Court, but as presented, the case was not within the Court's jurisdiction. This decision naturally offended all the African countries very much, and they claimed that this demonstrated that this was a Western-dominated Court, that it is not going to protect African interests, and that something else will have to be done.

As a result the Afro-Asian group pushed a resolution through the United Nations terminating the mandate of South Africa over South-West Africa, appointing a special commission to take charge of it and a commissioner to administer it, and ordered South Africa to deliver the mandate to them. South Africa replied that this was all completely illegal and that she would not comply with the resolution. The commission tried to get into South-West Africa a few times but was refused entry. No attempt was made to try to force the issue, or to visit in South-West Africa without South Africa's permission.

In view of this crisis, the General Assembly has adopted many resolutions. The Security Council has also adopted resolutions criticizing South Africa and has ordered members of the United Nations to do something about it. There is a very interesting provision in one of the resolutions of the Security Council calling upon all states to increase their moral and material assistance to the people of Namibia (this is the new name of South-West Africa) in their struggle against foreign occupation. (Security Council resolution 269 (1969).) Some of the resolutions of the General Assembly against Southern Rhodesia and Portugal are even more

explicit, as they ask all states to help the rebels against the Governments of those countries.

The last area of Southern Africa with which I will deal is the Portuguese colonies. Portugal contends that it does not have any colonies, that the areas are not subject to any supervision of the United Nations because they are simply African provinces of Portugal, and the inhabitants of those colonies have exactly the same rights as citizens of Portugal. The United Nations claims that they are colonies, that Portugal is accountable to the United Nations, that they are subject to the declaration about anticolonialism which is supposedly binding on all members, and, as a result, Portugal is violating the charter by not providing self-determination for these colonies.

To enforce its decision, the General Assembly has recommended economic sanctions against these three countries controlling southern Africa. However, the only economic sanctions against that part of the world that have been actually enacted are those against Southern Rhodesia. There is a binding decision of the Security Council on the Southern Rhodesian sanctions, and the Government of the United States, by an Executive order, has enacted those sanctions as binding on all the citizens of the United States.

This is where the story ends for the moment but, of course, there still exist some very important problem areas. How much further can we go in the area of human rights? Is it currently possible to provide for further enforcement of human rights? Should there be developed the old concept of humanitarian intervention into a new concept of intervention by the United Nations or by a regional organization under the auspices of the United Nations in cases where this is required? The issues involved here can be shown best in the so-called second Congo case which is mentioned in Professor Lillich's article.⁶

In this instance the United States provided transportation for Belgian paratroops going to Stanleyville in order to rescue a group of Americans and Europeans and some Congolese, who were threatened with death by a group of Congolese rebels. In the process of rescuing them, the army of the rebellion was more or less destroyed, but that was purely incidental. Nevertheless, this caused a tremendous uproar in Africa. The Organization of African Unity adopted a strong resolution against it, and the African states went to the United Nations and got the Security Council to adopt a resolution condemning this kind of intervention, despite its humanitarian character, and asked the Organization of African Unity to take such further action as may be necessary.

So you have here the end of the old rule and the beginning of the new: that even in the most justifiable cases, there should no longer be intervention by individual states; that it is the purpose of the Charter of the United Nations, of the various procedures developed under the charter, to take collective action on behalf of the world community and in the name of mankind whenever it is required; and that no state can intervene by itself on the basis of its own judgment. Perhaps this is a wish that goes beyond the realities and that we have gone too far in trying to abolish the old

before the new is really firmly in place. I suppose the best remedy for this problem would be not to try to continue to operate under past rules but to try to make the new concepts work better and more quickly. To this end we should try to develop more efficient means for the United Nations to do the job that needs to be done in such cases rather than try to hamper the work of the United Nations in this area. Therefore, in this coming 25th year of the United Nations, one of the topics that might be before it is to make this area of international protection of human rights more effective through strengthening the power of the United Nations. That is the power to effectively deal with problems and in this way relieve the states, especially the big powers, of the very difficult task of deciding whether to take action on their own and to run into the kind of difficulty that the United States ran into in the Dominican Republic or which faced the joint action by the United States and Belgium in the Congo. So it is not really taking an important privilege away from the big powers, but it is a means for relieving them of a burden which they should not have to shoulder and which they have no desire to shoulder anymore. If we can find a more effective means, so much the better for them and for mankind.

FOOTNOTES

1. Grover Clark, "English Practice with Regard to Reprisals by Private Persons," *American Journal of International Law*, October 1933, p. 694.
2. Colby M. Chester, "Diplomacy of the Quarterdeck," *American Journal of International Law*, July 1914, p. 445.
3. Charles O. Paulin, *Diplomatic Negotiations of American Naval Officers, 1778-1883* (Baltimore: Johns Hopkins Press), p. 8-9.
4. Colby.
5. *Ibid.*, p. 443, 445.
6. Richard B. Lillich, "Forcible Self-Help by States to Protect Human Rights," *Iowa Law Review*, October 1967, p. 325, 338-40.