

Chapter IV

Contemporary Case Studies of United States Forcible Protection of Nationals Abroad

As the views of the publicists and the evidence of State practice surveyed in the preceding chapters reveals, traditional international law has sanctioned a State's use of force to protect the lives and property of its nationals abroad. With the adoption in 1945 of the United Nations Charter, however, a new set of international norms governing the use of force emerged to challenge this traditional right. The impact of these norms and subsequent developments upon the right of forcible protection will be considered in the following chapter. The present chapter focuses instead upon those instances where the United States, in the post-Charter period, has claimed to act pursuant to such right.

Although occasionally invoked by France and other States during this period,¹ most prominently by Israel involving Entebbe, the main instances where the protection of nationals rationale has been used to justify forcible protection since 1945, involve the United States.

These case studies warrant extensive treatment not only because the political events surrounding many of the instances attracted great international attention. The legal debates they generated also shed considerable light on what one may characterize as a developing international consensus justifying the forcible protection of nationals abroad, on the grounds that it is a legitimate exercise of a State's inherent right of self-defense under Article 51 of the UN Charter.

The question then arises as to how one squares the tenets of Article 2(4), the broad prohibition of the use of force, with Article 51? Can the notion of

self-defense of a State be properly extrapolated to extend protection by force to a national living or transiting abroad?

A. Lebanon. 1958.

The spring of 1958 was a period of intense internal unrest for the small Middle East country of Lebanon. By midsummer, the convergence of internal, regional and international factors produced a situation where the United States deemed itself compelled to mount a medium-scale military intervention in Lebanon which lasted just over three months.

This brief treatment of the Lebanese crisis of 1958 will attempt to outline the most significant causative factors as well as the various legal explanations offered by the United States in support of its decision to intervene.² Particular emphasis will be given to the protection of nationals rationale, both as it influenced the initial decision to intervene and as it colored the subsequent justifications of this action.

Like many of the countries achieving independence during and after World War II, Lebanon was an artificially constructed State, in that historically it had no definite population or territory. An autonomous province of the Ottoman Empire until World War I, it originally consisted of the relatively small area surrounding Mount Lebanon on the Mediterranean coast. Under a Mandate from the League of Nations, granted in 1920, France transferred land from Syria to increase Lebanon to its present size. The population, always quite diverse, was and to this day remains bitterly divided along religious, ethnic and political lines. Officially, slightly more than one-half of the population is Christian, while several Muslim sects make up the remainder.³ However, since the first and only official census was held in 1932, the continued validity of this breakdown is open to question.⁴

With the termination of the French Mandate in 1943, Lebanon became a sovereign State, its political foundation resting upon the "National Covenant," an "unwritten understanding, or gentlemen's agreement," between the Christian and Muslim segments of the population.⁵ Under the National Covenant, the contending elements agreed that "(i) the Christians would not look to the West for 'protection,' (ii) the Muslims would not aspire for merger with the neighboring Arab States, (iii) Lebanon was to co-operate with all the Arab States but not to take sides in Arab disputes, and (iv) political and administrative offices would be equitably distributed among the recognized confessional groups."⁶ Pursuant to the last requirement, the President was to be a Maronite

Christian, the Prime Minister a Sunni Muslim, and the President of the Parliament a Shi'a Muslim.⁷

Following an initial period of political instability, Camille Chamoun was elected President of Lebanon in 1952 as a reformist. For the next few years Lebanese politics were reasonably stable and the Lebanese economy grew quite prosperous.⁸ By 1957, however, a number of factors began to appear that ultimately led to the crisis the following year. Internally, political opposition began to mount against Chamoun. The parliamentary elections saw the surprising defeat of many important opposition leaders. Rumors began to circulate that the President wanted to have the Constitution amended so that he might succeed himself. Charges of political corruption increasingly surfaced. The Muslims came to believe that they were being treated as "second class citizens" and demanded a larger role in the government. As the result of these internal political pressures, the opposition forces that had combined to form a "National Union Front" renewed their efforts to oust Chamoun as President.

Several regional developments during this period also contributed to the crisis in 1958. Relations with Lebanon's neighbor, Syria, became increasingly strained during the 1950s. The disagreement between the two Arab States stemmed primarily from Syria's adoption of socialist and nationalist policies in contrast to Lebanon's *laissez-faire* capitalism. In addition, the presence of large numbers of Syrian political refugees in Lebanon led to increased friction between the States.⁹ Further, by 1957 Lebanon had adopted policies and positions varying from the ones held and taken by most other Arab States. During the Suez crisis, for instance, Lebanon, unlike the other Arab States, remained neutral and refused to sever diplomatic relations with France and Great Britain.¹⁰ Increasingly, Lebanon seemed to be veering in a pro-Western direction, in contrast to the pan-Arab approach advocated by President Nasser of Egypt and by the leaders of Syria.¹¹

These regional stresses produced conflicting reactions in Lebanon itself. The Christian population regarded Arab unity as a threat to its Christian identity. The Muslims, on the other hand, supported Arab nationalism as a means of bettering their position in Lebanese politics and society. As President Chamoun, through his public statements, increasingly became identified as an opponent of Arab unity, he accordingly lost what popularity he had retained with the Muslim population.¹²

The crisis in 1958 also was fueled by developments on the international level. By 1957 the United States and the Soviet Union, antagonists in the "Cold War," had begun to look for potential allies in the Middle East. The Soviet Union viewed Arab nationalism as a vehicle for gaining influence in the

area, while the United States, through the Eisenhower Doctrine, sought to enlist Middle East nations in its efforts to block Soviet inroads into the area. The basic thrust of the Eisenhower Doctrine, which took the form of a Joint Resolution of Congress, was that the United States, upon the request of any State in the Middle East, would use its "armed forces to assist any such nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism...."¹³ The only State to accept this doctrine, as it turned out, was Lebanon.¹⁴ President Chamoun's decision in this regard sparked severe criticism from his opponents on two grounds. First, they argued that Lebanon's acceptance of the doctrine violated the National Covenant's requirement that the State remain completely neutral. Second, they argued that it brought Lebanon's policies squarely into conflict with Egypt and Syria, countries which a large number of Lebanese supported. While one need not accept Garnet's over-generalized assertion that "the dissension stirred up by the proposed ideological alliance led directly to the civil war and American intervention a year later,"¹⁵ it cannot be denied that President Chamoun's enthusiastic acceptance of the doctrine caused him more problems than it solved.

The above internal, regional and international factors combined to produce an extremely volatile political situation in Lebanon by the spring of 1958. Following the murder, on 8 May 1958, of Nasib il al-Matni, the editor of the leading opposition newspaper in Beirut, the anti-Chamoun leaders called a general strike and a wave of violence spread throughout the country.¹⁶ Although pro-government and opposition forces soon were engaged in open warfare, the 6,000-man Lebanese army under General Chebab remained neutral.¹⁷ To a large extent the army's neutrality prevented the civil strife from turning into a full-scale civil war.¹⁸

With the country in turmoil, President Chamoun on 21 May 1958, complained to the Arab League that Egypt and Syria, now comprising the United Arab Republic, were intervening in the internal affairs of Lebanon.¹⁹ On the following day, 22 May 1958, Lebanon lodged a similar complaint before the United Nations Security Council.²⁰ Both complaints, in essence, alleged that the United Arab Republic was infiltrating men and arms into Lebanon, and that it was conducting an intense propaganda campaign aimed at the overthrow of the Lebanese government. When recourse to the Arab League proved fruitless, Lebanon, on 6 June 1958, pressed its case in the Security Council where Foreign Minister Charles Malik argued that:

. . . there has been, and there still is, massive, illegal and unprovoked intervention in the affairs of Lebanon by the United Arab Republic . . . ;

. . . this intervention aims at undermining, and does in fact threaten, the independence of Lebanon . . . ; [and]

. . . the situation created by this intervention which threatens the independence of Lebanon is likely, if continued, to endanger the maintenance of international peace and security.²¹

After a bitter debate, during which the United Arab Republic denied these allegations,²² the Security Council, on 11 June 1958, adopted a resolution establishing the United Nations Observation Group in Lebanon (UNOGIL), whose principal task was “to ensure that there is no illegal infiltration of personnel or supply of arms or other material across the Lebanese borders. . . .”²³ While UNOGIL’s findings, according to an exhaustive survey of its operations, “indicated that the Lebanese government had exaggerated the degree of infiltration that might have been taking place . . . , the Group’s observations could not be regarded as conclusive evidence of the degree and nature of infiltration since its failure to achieve anything more than a highly limited access to alleged infiltration routes prevented any thorough investigation of the Lebanese allegations.”²⁴

During this period, U.S. policy towards the Lebanese crisis remained officially “hands off.” According to President Eisenhower, however, possible U.S. intervention was mooted as early as May 1958, when President Chamoun was informed that in such an eventuality “the mission of United States troops in Lebanon would be twofold: protection of the life and property of Americans, and assistance to the legal Lebanese government.”²⁵ As a precautionary measure, the Department of State on 16 June 1958, advised U.S. citizens against travel in or through Lebanon except for “imperative reasons.”²⁶ The protection of its nationals clearly was secondary as revealed by President Eisenhower’s description of the atmosphere in which his 14 July 1958, meeting with Congressional leaders took place: “The time was rapidly approaching, I believed, when we had to move into the Middle East, and specifically into Lebanon, to stop the trend toward chaos. *An additional factor* in my deep concern was the presence in Lebanon of a relatively large number of American citizens whose lives might be endangered.”²⁷

The *coup d’etat* which took place in Iraq on 14 July 1958, triggered a rapid change in U.S. policy towards Lebanon. The leftist revolutionaries who took over the country murdered the Iraqi royal family and dragged their dismembered bodies through the streets of Baghdad. In addition, a number of Europeans, plus at least three U.S. citizens, also were murdered.²⁸ Fearful that the Iraqi

coup was the forerunner of similar coups against other pro-Western countries in the area, President Eisenhower now readily acceded to President Chamoun's renewed request for military assistance. At about 3 P.M. on 15 July 1958, nearly 2,000 Marines in full battle gear waded ashore near Beirut. "In the unique spirit of the Lebanese civil war," recounts Kerr, "they were greeted at the water's edge by curious bathers and by soft drink vendors."²⁹ Although a near-incident occurred when the Marines moved down the highway toward Beirut,³⁰ skillful mediation by Ambassador Robert McClintock overcame this set-back. "The convoy proceeded into Beirut: a Lebanese army jeep in the lead, followed by the Ambassador's limousine flying both Lebanese and American flags and bearing both [General] Chehab and the Ambassador, followed finally by a contingent of American marines."³¹ No shots were fired and no casualties were incurred.

On the same day that US troops landed in Lebanon, legal justifications for their use began flowing from Washington. Although White House decisionmakers evidently accorded the protection of nationals aspects of the problem a fairly low priority,³² a press release issued in the President's name emphasized the plight of the 2,500 US citizens still in Lebanon, stating that the Marines had landed "to protect American lives and by their presence there to encourage the Lebanese government in defense of Lebanese sovereignty and integrity."³³ A contemporaneous Message to Congress paraphrased the above statement,³⁴ as did a subsequent radio and TV broadcast by the President that evening.³⁵ However, UN Ambassador Henry Cabot Lodge, addressing a hastily convened meeting of the Security Council, invoked protection of US nationals only as an ancillary argument.³⁶ Thereafter, the "protection of nationals" rationale justifying for US intervention was heard no more. Instead, the United States placed exclusive reliance upon the fact that the intervention had been pursuant to a request from the recognized government of Lebanon, and that it constituted an act of collective self-defense permitted under Article 51 of the United Nations Charter.³⁷

By 25 July 1958, ten days after the initial landing, "the American forces ashore numbered at least 10,600 men—4000 Army, 6600 Marines—more than the entire Lebanese Army."³⁸ By 8 August 1958, the number had reached a peak of 14,357 troops—8,515 Army and 5,842 Marines—from which it soon started to recede.³⁹ The troops, deployed exclusively in the vicinity of Beirut,⁴⁰ engaged in routine patrols with their Lebanese counterparts.⁴¹ Otherwise US troops saw no real action.⁴² By all accounts their conduct was exemplary. Typical are the remarks of Qubain, who mentions:

. . . the great restraint which they displayed, which indeed [has] no parallel in modern times. In the first place, the main body of troops remained stationed outside Beirut. Only a very small number were assigned duty inside the city. Even these were restricted mainly to guard duty at such places as the harbor, American institutions, and certain areas where American citizens lived. Areas controlled by the opposition were completely out of bounds to troops whether on or off duty.⁴³ Second, at no time did Americans interfere in the internal conflict or give support to government forces against the opposition. American forces rigidly abstained from supporting one faction against another.⁴⁴

Although occasionally the targets of snipers, the US forces held their own fire and inflicted no casualties upon the local population.⁴⁵ In turn, they suffered only two casualties, both army sergeants, one of whom was wounded and the second killed.⁴⁶ With a political accommodation that permitted the orderly transfer of power from President Chamoun to his successor worked out by Deputy Under-Secretary of State Robert Murphy, relative calm returned to the country permitting the withdrawal of all US troops during the month of October.⁴⁷ The Lebanese crisis of 1958 was over.

While some commentators have criticized the action of the United States on political grounds,⁴⁸ few observers have registered legal objections to the landing of US troops.⁴⁹ The strongest basis for their introduction into Lebanon, of course, was the existence of a formal invitation from Lebanon's recognized government.⁵⁰ The right of a State to furnish military assistance to another State pursuant to a request from the latter is universally recognized under international law. Provided that the right is not abused, as in the case of Lebanon,⁵¹ it affords ample legal justification for the landing of troops. Collective self-defense under the United Nations Charter also justified the action taken by the United States.⁵² It must be noted, however, that the factual basis for invoking this right was questioned in some quarters.⁵³

Finally, the "protection of nationals" rationale, relied upon initially by the United States⁵⁴ but subsequently ignored by it and most commentators as well,⁵⁵ arguably provided additional support for the decision to send in the Marines.

Contrasting legal views about the availability of the protection of nationals rationale in the context of Lebanon are set out in forthright fashion in articles by the late Professors Potter and Wright, apparently the only two authorities to have considered the legal issues involved in a systematic fashion. Professor Potter, in an article entitled *Legal Aspects of the Beirut Landing*, suggests that:

. . . [a] plausible basis for “intervention” in the instant situation, as in so many such cases, is to be found in the right to use force for the protection of nationals, and their property, of the intervening state, in absence of ability or willingness of the local state to perform this function. While well established in principle, however, such a right obviously depends upon proof of the need for such action under the conditions cited. In the present case there seems to have been actual and serious danger to United States citizens and their interests, and some inability, though not unwillingness, on the part of the Lebanese Government to protect them. President Eisenhower did not fail to invoke this basis for United States action at Beirut.⁵⁶

On the other hand, Professor Wright in *The United States Intervention in Lebanon*, concentrates exclusively upon the UN Charter norms which he regards as dispositive of the case stating:

[I]t has been suggested that the “self” which must be immediately menaced to permit self-defensive action [under Article 51 of the Charter] includes not only territory but also agencies of the government and its citizens in foreign territory. There have been many cases in which states have landed forces in foreign territory to protect embassies or other government agencies, as in the Boxer affair in 1900, or to protect the lives of their citizens. It is difficult to bring these extensions within the meaning of Article 51 of the Charter. The United States has, however, referred to the protection of American citizens in the Lebanon as one reason for its intervention in that country. To support this contention, it would be necessary to show that immediate danger to government agencies or American citizens in the Lebanon constituted “an armed attack” upon the United States.⁵⁷

Wright’s remarks urge that even if US citizens had been in clear and present danger, their country had no right to intervene forcibly to protect them. If this is true, then is it necessary to revisit and redraft Art. 51 and Art. 2(4) to allow States to intervene with force to protect their nationals and consulates?

To place the threat to US citizens into perspective, it must be remembered that for two months prior to the landing of Marines, civil strife had been rampant in Lebanon.⁵⁸ With 2,500 American nationals scattered throughout the country,⁵⁹ the possibility always existed that US citizens would get caught up in the fray.⁶⁰

The *coup d’etat* in Iraq and the death of several citizens there⁶¹ gave the United States all the more reason for concern over the fate of its citizens in the Middle East.⁶² Murphy, who arrived in Lebanon several days after the first contingents of Marines, records that “[s]ince Berlin in 1945, I had not been in a

more trigger-happy place than Beirut was at that time. Wild fusillades, bombings and arson were the order of the day and more especially the night.”⁶³ Given this state of affairs, it is a happy, and indeed a near miraculous fact that no instances of harm to US citizens were recorded.⁶⁴

The attitude of the US Embassy in Beirut, while admittedly self-serving to some extent, also affords a significant insight into the situation in Lebanon prior to the landing of US troops. Like all embassies, it had an emergency plan for such situations, which consisted of a three-phase evacuation program. If, after the initial alert,

... the situation further deteriorated, Phase A would be put into operation. This called for the voluntary evacuation at government expense of dependents of members of the staff. At the same time the embassy would discreetly recommend that dependents of the local American community also be sent out of the country. Phase B called for the mandatory evacuation of all nonessential government personnel and their dependents, with a similar recommendation for the private American community. Phase C contemplated the evacuation of all American citizens from the crisis area.⁶⁵

The Embassy placed Phase A into effect on 15 June, when the civil strife worsened, and declared Phase B operative immediately after the Iraqi *coup d'etat*.⁶⁶ Had Phase C thereafter been invoked, obviously a stronger factual predicate would have been laid to justify the measures of forcible protection subsequently taken. Yet simply because Phase C was not invoked, or just because no US citizens actually were harmed, does not mean that on 14 and 15 July, the key dates in question, US decisionmakers were not presented with a threat to US citizens sufficiently grave to justify, at least to themselves, the action they took.⁶⁷

B. The Congo. 1964.

The summer of 1960 saw the Congo (now Zaire) achieve independence from Belgium. Unhappily, within a week the Congolese Army mutinied against its Belgian officers and, following a complete breakdown of law and order,⁶⁸ Belgium, on 10 July 1960, sent paratroopers into the country to protect the lives and property of its nationals and other Europeans.⁶⁹ Shortly thereafter, the UN Security Council, calling upon Belgium to withdraw its troops, created a temporary security force whose mission was to cooperate with the Congolese government in the restoration of order.⁷⁰ This temporary force gradually metamorphosed into the United Nations Operation in the Congo (ONUC), which

between July 1960 and its withdrawal on 30 June 1964 attempted the unenviable tasks of controlling civil strife, ending the secession of Katanga, the country's largest province, and creating conditions conducive to the establishment of a strong and viable modern State.⁷¹

While ONUC achieved its second objective—ending the secession of Katanga—it was unable to fashion a strong central government capable of maintaining civil peace by the time of its withdrawal.

Indeed, in the spring of 1964 several separate revolts had broken out, the most serious in the Eastern Congo, where in late May, Albertville fell to rebels. Thereafter events moved rapidly. On 30 June 1964, the fourth anniversary of the Congo's independence, the UN force withdrew and the government of Prime Minister Cyrille Adoula resigned. Nine days later a new government, headed by Moïse Tshombe, took office. As the tempo of rebellion increased, however, the rebels on 5 August seized Stanleyville and, two weeks later, Paulis. Proclaiming a revolutionary regime, they named Christophe Gbenye, a former Minister of Interior, as President. An unending round of executions thereupon began,⁷² during which:

[w]ave after wave of 'intellectuals' or 'counterrevolutionaries' or 'American agents' were assassinated in all the main towns held by the rebels. The lack of cohesion and control permitted diverse groups to seize the occasion to liquidate their rivals on various pretexts. Many of the executions were public, performed in front of Lumumba monuments, with grotesque cruelty, including disemboweling of still living victims, consumption of the heart, liver and other portions, and various tortures.... In Stanleyville, Paulis, and Kindu alone, the executions totalled close to 10,000; in all, there were probably at least 20,000.⁷³

This reign of terror apparently was as purposeless as it was despicable. "The mediocre talents and often pathological character of [the] rebel leaders," Professor Young has noted, "rendered them incapable of directing or controlling social tensions which they unleashed, even in the interest of consolidating their own newly won power."⁷⁴

After six weeks, the tide began to turn. The forces of the central government, the Armée Nationale Congolaise (ANC), "reinforced by Katanga gendarmes and spearheaded (in most but not all cases) by small contingents of mercenaries,"⁷⁵ put the rebel army to rout. Seeking to snatch victory—or at least a stalemate—from the jaws of defeat, Gbenye announced on 26 September that the approximately 1,600 foreigners remaining in the Stanleyville area, made up of "500 Belgians, 700 people of other European nationalities and 400 Indians and Pakistanis,"⁷⁶ would not be allowed to leave; his intention

obviously was to use them as hostages for political bargaining purposes.⁷⁷ With the rebels thus holding “sixteen hundred trump cards,”⁷⁸ a feverish round of negotiations began involving not only the rebels and the central government, but also the United States, Belgium, Kenya, an Ad Hoc Commission on the Congo of the Organization of African Unity (OAU) and the International Committee of the Red Cross (ICRC).⁷⁹ Progress was not forthcoming and tensions heightened. By early November, the ANC, continuing its advance, neared Stanleyville.

When the ANC, preceded by white mercenary contingents, seized Kindu on 6 November, the plight of the hostages worsened still further, with Gbenye proclaiming that “all Belgian and American civilians would be treated as ‘prisoners of war’ in retaliation for the bombing of our liberated territory.”⁸⁰ On 11 November, during a radio broadcast, Gbenye stated that “the British, Americans, Belgians and Italians must get ready to dig their own graves.”⁸¹ Three days later, utilizing the rebel newspaper *LeMartyr*, he threatened that “we will make our fetishes with the hearts of the Americans and Belgians, and we will dress ourselves with the skins of the Americans and Belgians.”⁸² On the same day Radio Stanleyville announced that Dr. Paul Carlson, a U.S. medical missionary held by the rebels, had been sentenced to death for espionage.⁸³

The above threats, moreover, were not just rhetoric. As Ambassador Stevenson subsequently recounted to the UN Security Council, by mid-November “the total of those thus already tortured and slaughtered amounted to 35 foreigners, including 19 Belgians, 2 Americans, 2 Indians, 2 Greeks, 1 Englishman, 1 Italian, 2 Portuguese, 2 Togolese and 4 Dutch, many of them missionaries who had spent their lives in helping the Congolese people.”⁸⁴ The grim prospect that other hostages would meet a similar fate was strengthened by a captured telegram from a rebel general to an officer in charge of the hostages that had been held in Kindu. It ended: “In case of bombing of region, exterminate all [Americans and Belgians] without requesting further orders. . . .”⁸⁵

With the ANC now nearing Stanleyville, negotiations reached an impasse. Thomas Kanza, the representative of the rebels who had been in direct contact with the US Ambassador to Kenya, William Attwood, made it crystal clear that, in Professor Grundy’s words, “the rebels were not about to surrender their only major bargaining lever.”⁸⁶ According to Attwood, Kanza would not discuss evacuating the hostages, whom he termed “prisoners of war,” until the ANC advance had been stopped and a cease-fire put into effect.⁸⁷ That this use of innocent civilians flatly violated the Geneva Conventions⁸⁸ did not bother the rebels, who considered themselves not bound by international agreements “written by whites.”⁸⁹ Thus, political and legal arguments having failed, it

became increasingly apparent that military measures would have to be used to extricate the hostages from their three month ordeal.⁹⁰

These measures actually had been put in train in mid-November when US military planes transported the 545-man Belgian First Paratroop Battalion to Ile Ascension, where it was quartered by the British government.⁹¹ After further unavailing efforts to secure the release of the hostages,⁹² the paratroopers, with the express authorization of the central government,⁹³ landed at Stanleyville at dawn on 24 November and undertook an emergency rescue mission,⁹⁴ evacuating an estimated 2,000 people over a four-day period.⁹⁵ Included in this number were several hundred foreigners rescued during a follow-up landing at Paulis, 225 miles to the north.⁹⁶ The evacuees included “Americans, Britons and Belgians; Pakistanis, Indians, Congolese, Greeks, French, Dutch, Germans, Canadians, Spaniards, Portuguese, Swiss, and Italians; as well as citizens of Ghana, Uganda, Ethiopia, and the United Arab Republic.”⁹⁷

To justify US participation in the rescue operation,⁹⁸ the Department of State initially expressed the view that the action was taken “in exercise of our clear responsibility to protect United States citizens under the circumstances existing in the Stanleyville area.”⁹⁹ At the United Nations, Ambassador Stevenson extended the rationale behind the action stating that, “[w]hile our primary obligation was to protect the lives of American citizens, we are proud that the mission rescued so many innocent people of eighteen other nationalities from their dreadful predicament.”¹⁰⁰ Finally, President Johnson put the case in its broadest humanitarian terms when he assumed “full responsibility for those [decisions] made for our planes to carry the paratroopers in there in this humanitarian venture. We had to act and act promptly in order to keep hundreds and even thousands of people from being massacred.”¹⁰¹

Of course, the Congo rescue operation, as the Department of State reiterated several times, was carried out “with the authorization of the Government of the Congo,”¹⁰² and hence, technically, was not a case of unilateral forcible protection at all.¹⁰³ Nevertheless, viewing the operation in its total context, it is hard to avoid the conclusion that the United States treated the Congolese invitation more as an additional argument justifying its action than as the *sine qua non* of its legitimacy. The statement issued by the Department of State clearly was designed to show not only reliance upon an express invitation by the central government of the Congo, but also in compliance with all the requirements of the traditional doctrine of humanitarian intervention.¹⁰⁴

This operation is humanitarian—not military. It is designed to avoid bloodshed—not to engage the rebel forces in combat. Its purpose is to

accomplish its task quickly and withdraw—not to seize or hold territory. Personnel engaged are under orders to use force only in their own defense or in the defense of the foreign and Congolese civilians. They will depart from the scene as soon as their evacuation mission is accomplished.

We are informing the United Nations and the *Ad Hoc* Commission of the Organization of African Unity of the purely humanitarian purpose of this action and of the regrettable circumstances that made it necessary.¹⁰⁵

Add to this statement the acknowledged fact that both the United Nations and the OAU were unable to cope with a situation which by mid-November required immediate action,¹⁰⁶ and one reaches the inescapable conclusion that if ever there was a case justifying the forcible protection of lives, the Congo rescue operation was it.

Reviewing the operation in retrospect, perhaps the United States should not have been as surprised as it was at the criticism heaped upon it for its role in this humanitarian venture.¹⁰⁷ In the debates that the operation engendered at the United Nations, the virulence of many African delegates can be attributed, in varying degrees, to four principal factors.¹⁰⁸ First, they argued that the rescue operation was rife with racism, in that not until the lives of the white hostages had been threatened did the United States become concerned,¹⁰⁹ and that while most of these hostages had been rescued hundreds of blacks had been slain.¹¹⁰ When one considers what the world community's reaction would have been had the United States or other Western powers introduced troops immediately after the United Nations' withdrawal to protect those Congolese threatened by the rebels, however, such criticism must be regarded, to say the least, as unfair.

Since intervening earlier to protect Congolese surely would have been branded as a flagrant violation of the UN Charter, this supposed option was not really a viable one. Accordingly, the United States should not be criticized, either expressly or impliedly, for failing to intervene earlier on.¹¹¹ Moreover, the fact that the ANC slaughtered hundreds of blacks when it reached Stanleyville shortly after the airdrop is no argument that racist considerations motivated the rescue operation itself. The paratroopers, it should be noted, evacuated 400 Indians and Pakistanis as well as more than 200 Congolese,¹¹² and the vengeance meted out by the ANC while mopping up Stanleyville hardly would have been less had it reached the city hours or days later, especially if the hostages had been massacred in the meantime.

A second factor underlying the criticism put forth by many African delegates was the disrespect the rescue operation allegedly showed for the OAU

and its mediation efforts.¹¹³ Coming at a time when Pan-Africanism was riding high on the African continent, the failure to work through the regional organization to secure the release of the hostages engendered considerable ire. The airdrops, according to the delegate from the Congo Republic (Brazzaville), were clearly an attempt to humiliate the OAU.¹¹⁴

Such an attitude, while understandable, also is unjustified. Both the United States and Belgium had turned repeatedly to the OAU for assistance in obtaining the hostages release, but in every instance the OAU had proved to be either ineffective or uncooperative or both. This failure stemmed not only from the inherent weakness of the organization itself, but also, and perhaps primarily, from the resentment many African States had for the Tshombe government, a regime which they wished to see toppled. Given this anti-Tshombe attitude, the airdrops obviously would not have been approved had the United States and Belgium sought OAU authorization.¹¹⁵ Moreover, seeking such authorization not only was unnecessary, given the central government's approval,¹¹⁶ but would have removed the surprise element from the airdrops and thus, jeopardized the success of the entire rescue operation.

The third factor causing much African criticism was the memory of colonial injustices still fresh in the minds of many delegates. Such memories naturally were exacerbated by the dropping of paratroopers of the former colonial power, assisted by logistical support from one of the superpowers. As Attwood, in a passage worth quoting at length, put it:

We saw the Stanleyville rescue operations as a dramatic effort to save hundreds of helpless, innocent people. It was humanitarian, and it was necessary, since all other attempts to release them had failed. And the operation had to take place before the ANC column entered the city, for the panicky Simbas would probably have mowed down the hostages before fleeing from the mercenaries.

But if you could put yourself in the shoes of an average educated African, you got a quite different picture. When he looked at the Congo, he saw a black government in Stanleyville being attacked by a gang of hired South African thugs, and black people being killed by rockets fired from American planes. He did not know about the thousands of blacks who were tortured and murdered by the Simbas, but he did know that the mercenaries and their Katangan auxiliaries left a trail of African corpses in their wake.

Even more galling to the educated African was the shattering of so many of his illusions—that Africans were now masters of their own continent, that the OAU was a force to be reckoned with, that a black man with a gun was the equal of a white man with a gun. For in a matter of weeks, two hundred swaggering white

mercenaries had driven through an area the size of France, scattered the Simbas and captured their capital; and in a matter of hours, 545 Belgians in American planes had defied the OAU, jumped into the heart of Africa and taken out nearly two thousand people—with the loss of one trooper.

The weakness and impotence of newly independent Africa had been harshly and dramatically revealed to the whole world, and the educated African felt deeply humiliated: the white man with a gun, the old plunderer who had enslaved his ancestors, was back again, doing what he pleased, when he pleased, where he pleased. And there wasn't a damn thing Africa could do about it, except yell rape.¹¹⁷

Just what the United States could have done to avoid this verbal attack—short of foregoing participation in the rescue operation altogether—is difficult to imagine. Generalities to the effect that “it should have taken greater account of African sensitivities”¹¹⁸ are fine, but they offer little guidance to decisionmakers, past or present. In sum, given the legacies of the colonial past, the United States could not have avoided African criticism for its part in the rescue operation, no matter how humanitarian its motives may have been.

Finally, the fourth factor disturbing many African delegates was the role the United States was playing in supporting the Tshombe government, a role which included the supplying of military equipment and advisers, the flying of intelligence and transport as well as occasional combat missions, and the general underwriting, through the US Embassy and the CIA, of the ANC's mercenary-led efforts to reestablish the central government's authority over the Congo.¹¹⁹ African leaders, who originally had opposed the return of Tshombe and subsequently had condemned his central government, naturally resented any bolstering of his power, which was the inevitable by-product of the rescue operation.¹²⁰ As Grundy observes, “Africans hostile to Tshombe's cause would naturally seek to discredit the legitimacy of an operation that resulted in Tshombe's increased power.”¹²¹

The four factors discussed above naturally exacerbated the criticism of the operation leveled at the United States and Belgium during the United Nations debates. Replying to accusations in the Security Council that often bordered on and sometimes reached the slanderous, Ambassador Stevenson flatly stated that:

. . . [w]e have no apologies to make to any state appearing before this Council. We are proud of our part in saving human lives imperiled by the civil war in the Congo.

The United States took part in no operation with military purposes in the Congo. We violated no provision of the United Nations Charter. Our action was no threat to peace or to security; it was not an affront—deliberate or otherwise—to the OAU: and it constituted no intervention in Congolese or African affairs.¹²²

His views, of course, received support from Belgium¹²³ and Great Britain,¹²⁴ with Bolivia,¹²⁵ Brazil,¹²⁶ and the Republic of China¹²⁷ also approving this instance of forcible protection. Admittedly, most States condemned the rescue operation, generally because they regarded it, in retrospect, either to have been counterproductive in lives saved¹²⁸ or to have served as a “pretext” for what they regarded as an illegal intervention in the Congo’s affairs.¹²⁹ In general, they grounded their complaints more upon its political than its legal aspects.¹³⁰ The vague resolution finally adopted by the Security Council, “[d]eploring the recent events in [the Congo],”¹³¹ not unsurprisingly contains no official condemnation of either Belgium or the United States.¹³² Indeed, one writer actually has suggested that the resolution constitutes an implied if not an express approval of the rescue operation.¹³³

Two issues relevant to any forcible protection action for human rights purposes, and especially to the Congo rescue operation, warrant further brief discussion. Namely, whether in the present case the operation was not counterproductive insofar as the saving of lives was concerned, and whether the operation was not used to impose or preserve a preferred government on the Congo.¹³⁴

Insofar as the first issue is concerned, of the approximately 1,600 foreigners in the Stanleyville area only 27 were killed during the initial Stanleyville airdrops, and all 22 white hostages found dead at Paulis two days later had been killed by the rebels prior to that follow-up operation.¹³⁵ Having fled at the last minute, few if any of the rebels who carried out the massacre in Stanleyville apparently were killed by the paratroopers,¹³⁶ who themselves lost only one man.¹³⁷ The rebels and their supporters, it is true, suffered appalling casualties when the mercenary-led ANC troops who subsequently entered Stanleyville ran amok,¹³⁸ but such atrocities hardly can be attributed to the rescue operation itself and, in any event, would have been no less severe had the ANC fought its way into the city without the airdrop having taken place.

Similarly, although from the Stanleyville airdrop through the end of December “more than three hundred whites, eight of them Americans, were killed”¹³⁹ by the rebels, these deaths, which occurred throughout the entire Eastern Congo, cannot be attributed solely to the rescue operation having taken place.¹⁴⁰ On balance, then, while admittedly a matter of speculation not

susceptible of absolute proof either way, the Congo rescue operation would appear to have saved far more lives than it lost.¹⁴¹

Insofar as the second issue is concerned, there is little doubt, as numerous commentators have pointed out in their respective fashions,¹⁴² that the rescue operation's success contributed to the eventual downfall of the rebel regime. Since the rebels, contrary to international law, were using the hostages not only to prevent central government attacks but also to gain time to replenish their depleted arsenals, the rescue operation, by its very nature and success, obviously constituted a severe blow to their cause. However, the fact that the Stanleyville airdrop appears to have been coordinated with the ANC advance upon the city, frequently cited as authoritative evidence that the rescue operation was undertaken for political rather than humanitarian reasons,¹⁴³ certainly does not overcome the strong evidence that its primary objective actually was humanitarian in nature.¹⁴⁴ The reason for synchronizing the airdrop with the ANC advance was to reduce casualties and to avoid the rebels fleeing with the hostages. "The main purpose of the coordination," concludes Weissman, "was to assure the safety of the maximum number of hostages with the minimum cost."¹⁴⁵ The fact that a by-product of the rescue operation was the collapse of the rebel regime should not be read back to taint the entire mission, which as Ambassador Stevenson rightly stated was designed to save human lives.¹⁴⁶

C. The Dominican Republic. 1965

On 30 May 1961, an assassin's bullet struck and killed Rafael Trujillo, dictator of the Dominican Republic for over three decades. Trujillo's death presaged a period of unrest within the Dominican Republic that culminated four years later in violent revolution followed by forcible intervention by US (and subsequently Organization of American States [OAS]) forces. The purpose of this case study is to assess, in the context of the facts now available, the validity of the initial legal justification advanced by the United States in support of its intervention, that being the need to protect the lives of US nationals. To place the US argument in perspective, a short description of the events preceding and surrounding the crisis of 1965 is required.¹⁴⁷

Following Trujillo's assassination, Dominicans, in the first free elections held in the country in nearly 40 years, elected as their President, Juan Bosch, founder of the left-of-center Dominican Revolutionary Party (PRD). The Kennedy Administration welcomed Bosch's election, dispatched Vice President Johnson to his inauguration in February 1963, and increased Alliance for Progress (AID) programs in an effort "to construct a 'showcase of democracy' in the

Caribbean as a contrast to neighboring Communist Cuba.”¹⁴⁸ Bosch, unhappily, proved to be an ineffective leader once in office and soon came under heavy attack by opposition critics, especially for allowing Dominican communists to return from exile and reenter political life.¹⁴⁹ After just seven months in office he was ousted by an anti-communist *coup d'état* on 25 September 1963.¹⁵⁰

The Kennedy Administration reacted to the *coup d'état* by suspending diplomatic relations with the Dominican Republic and halting all economic and military aid.¹⁵¹ Such pressures had little effect upon the three-man junta that had replaced Bosch, however, and by mid-December the United States, with the Johnson Administration now in office, reversed its policy, recognized the new government, and resumed foreign assistance.¹⁵²

Despite this development, the junta, which soon came to be dominated by Donald Reid Cabral, an anti-communist holding decidedly conservative views, lost popularity steadily during 1964. Reid, in an effort to stave off domestic criticism and improve the junta's reputation abroad, scheduled “free elections” for 15 September 1965, but his subsequent announcement that he intended to run for the presidency and would win constituted the “final straw.”¹⁵³ By the late winter and early spring of 1965, only the timing and not the occurrence of another *coup d'état*, this time to oust Reid, was in doubt.¹⁵⁴

The uprising began in the early hours of Saturday, 24 April 1965, when “a small group of young colonels acting in concert with PRD leaders seized and imprisoned the Army Chief of Staff and declared themselves in revolt against the government.”¹⁵⁵ The rebels, calling themselves the “constitutionalists,” occupied the government radio station in Santo Domingo, the capital, and broadcast appeals calling for the ouster of Reid. When thousands of civilians took to the streets, the constitutionalist officers passed out arms to them in an apparent attempt “to broaden the base of the movement and counter any possible reaction from the bulk of the armed forces.”¹⁵⁶ Actually, they had nothing to fear from the regular forces at this point, since the military's leaders, while responding to Reid's request for assistance with pledges of support, obviously were waiting for the dust to settle before committing either themselves or their troops.¹⁵⁷ Certainly they did nothing to crush the uprising against Reid, and the latter, after an unsuccessful attempt to obtain US military intervention on the morning of Sunday, 25 April,¹⁵⁸ resigned and went into hiding.¹⁵⁹

Later that afternoon, reportedly after conferring by telephone with Bosch,¹⁶⁰ who at the time was living in Puerto Rico, the constitutionalists named Rafael Molina Urena, President of the Chamber of Deputies during Bosch's regime, as Provisional President.¹⁶¹ Molina's subsequent announcement that he intended to hold office only until Bosch's return, which reflected a pro-Bosch rather

than merely the anti-Reid view held by a majority of the constitutionalists, had the unfortunate effect of alienating many revolutionary leaders and driving not a few wavering military commanders into the anti-constitutionalist (or what came to be known as the “loyalist”) camp. For, according to Slater:

there no longer could be much doubt that a victory of the revolution would result in the direct return of Bosch to the Presidency, rather than in new elections as had originally been planned.^[162] This was another matter, for the regular military detested and feared Bosch, judging, undoubtedly correctly, that a triumphant Bosch backed by the defecting constitutionalist military and what amounted to a well-armed civilian militia would probably seek to destroy their power and position in the Dominican Republic. As a result, by late Sunday afternoon the bulk of the military, particularly the key San Isidro Air Force Base dominated by [General] Wessin y Wessin, had decided to actively resist the revolution.¹⁶³

The bombing of the National Palace and constitutionalist military encampments by planes from the San Isidro Air Base began about 4:30 P.M., plunging the Dominican Republic into civil war.¹⁶⁴

By the following morning—Monday, 26 April—the military situation had reached a stalemate and civil authority had broken down completely. While sensational reports of atrocities allegedly committed by the constitutionalists subsequently proved to be wildly exaggerated,¹⁶⁵ the carnage in the streets of Santo Domingo nevertheless was great,¹⁶⁶ with an estimated 2,000 people losing their lives in the fighting during a four day period.¹⁶⁷ The military standoff prompted loyalist leaders to make their first request for US military intervention, a request that the United States denied.¹⁶⁸ The Department of State, however, instructed the US Embassy “to inform both sides in Santa Domingo that the US government had received requests from American citizens wishing to be evacuated, and that the U.S. requested an immediate ceasefire to permit a safe and orderly evacuation.”¹⁶⁹ Preparations for this voluntary evacuation operation, which had been contemplated since the uprising began,¹⁷⁰ commenced Monday evening with the assembling and registering of US and other foreign nationals who wished to leave the country. Their actual evacuation—by land to the nearby port of Haina, from whence they were to be loaded aboard two ships of a US navy task force lying offshore, or by helicopter from the grounds of the Hotel Embajador to the decks of the *USS Boxer*—was scheduled for the following day.

On that day—Tuesday, 27 April—an unarmed detachment of about 50 Marines was sent ashore to secure the hotel grounds, establish a helicopter

landing area therein, and to generally facilitate the evacuation process. All went reasonably smoothly and by 3:15 P.M. the operation, which involved ferrying out 1,172 of the 2,500 US nationals supposedly in the country, had been completed.¹⁷¹ The only hitch occurred when a small band of constitutionalists arrived on the scene and engaged in a brief exchange of fire with unidentified persons on several upper story balconies of the hotel. Then, as Slater relates, they suddenly “burst into the hotel, lined the Americans [gathered in the lobby waiting to be evacuated] against the wall, and fired a number of machine-gun bursts over their heads.” No one was hurt, and it later turned out that the rebels had not been seeking deliberately to terrorize the Americans but were looking for an extreme right-wing propagandist who had taken shelter in the hotel.¹⁷² This incident, however, caused considerable concern at the US Embassy, whose “overwrought reporting” of it to Washington obviously influenced President Johnson’s thinking and strengthened the hand of those officials who already were urging a much larger US military intervention.¹⁷³

As the evacuation took place that Tuesday, the military tide slowly turned against the constitutionalists. Under continuous attack from General Wessin’s planes since Sunday, they now had to contend with a force of tanks from San Isidro attempting to enter the city. Faced with impending defeat, the leading constitutionalists, including Provisional President Molina Urena, sought help from the US Embassy to mediate the conflict. Ambassador W. Tapley Bennett, no fan of ex-President Bosch and ever-fearful of a leftist takeover,¹⁷⁴ flatly refused, advising the constitutionalists to surrender.¹⁷⁵ Although they ignored his advice, a number of them, including Molina Urena, apparently conceded defeat, for they immediately sought political asylum at various Latin American embassies.¹⁷⁶ One did not. Surprisingly, Francisco Caamano, a career officer who had served as chief of the police riot squad under Trujillo and certainly was not known as a Bosch supporter, after a dramatic reply to Bennett, rushed from the embassy to rally the constitutionalist forces opposing Wessin’s tanks at the Duarte Bridge.¹⁷⁷ Miraculously, the tide turned yet again: the tanks were driven back, the police stations fell, and by mid-afternoon of the next day—Wednesday, 28 April 1965—the city belonged to the constitutionalists.¹⁷⁸

During this surprising turnaround, US helicopters continued to airlift evacuees from the Hotel Embajador to the *Boxer*.¹⁷⁹ As the constitutionalists solidified their control of the city, however, Colonel Benoit, the head of a new junta conducting the loyalist’s operations, informed Ambassador Bennett that “the junta was in no position to guarantee the safety of Americans or other foreigners in Santo Domingo.”¹⁸⁰ Accordingly, “the junta was requesting a United

States intervention.”¹⁸¹ While the junta’s formal written request, submitted about 4 P.M. on the afternoon of the 28th, actually made no mention of the need to protect US nationals,¹⁸² Bennett relied upon this argument in his now-famous “critic” telegram recommending the immediate landing of US Marines, which arrived in Washington about 5 P.M.¹⁸³ Shortly thereafter, President Johnson decided to land a contingent of armed Marines,¹⁸⁴ 536 of whom came ashore in the early evening.¹⁸⁵ In an address to the nation later that night, the President reported that military authorities in the Dominican Republic had informed the United States that the lives of its nationals were in danger, and that the assistance of US military personnel was necessary to guarantee their safety.¹⁸⁶ As a result, the President stated, he had ordered the Secretary of Defense “to put the necessary American troops ashore in order to give protection to hundreds of Americans who are still in the Dominican Republic and to escort them safely back to this country. This same assistance will be available to the nationals of other countries, some of whom have already asked for our help.”¹⁸⁷

The following day—Thursday, 29 April—additional Marines with heavy equipment landed, bringing total US forces in Santo Domingo to 1,700 men.¹⁸⁸ The next day military transports ferried two battalions of the 82nd Airborne Division to the San Isidro Air Base. They immediately took up positions along the east bank of the Ozama River, an area in which there were no US or other foreign nationals to be evacuated.¹⁸⁹ Yet, in his address to the nation that evening, 30 April, President Johnson again invoked the protection of nationals argument that he had made two nights earlier, noting that over 2,400 US and other foreign nationals already had been evacuated from the Dominican Republic.¹⁹⁰ More significantly, however, the President, for the first time, advanced a new argument for US intervention, namely, that “people trained outside the Dominican Republic are seeking to gain control” of the country. While not saying so explicitly, Johnson clearly intended to leave the impression that “outside” communists threatened to take over the Dominican Republic. In the face of this potential threat, he continued, the Organization of American States (OAS) had the “immediate responsibility” to take prompt action to achieve a ceasefire before such an “international conspiracy” could take control.¹⁹¹

On 1 May, after the apparent failure of a tenuous ceasefire between the two opposing factions, President Johnson ordered additional troops flown in, raising the number of US forces to 6,200. They proceeded to enter constitutionalist (but apparently not loyalist) territory in an attempt to enforce the ceasefire.¹⁹² Nevertheless, in a written statement issued the same day the

President once again maintained that the mission of the troops was solely to protect and evacuate US and other foreign nationals.¹⁹³

Warning of a “tragic turn” of events, President Johnson addressed the nation for a third time the following day. The President now publicly asserted that the Dominican revolution had been “seized and placed in the hands of a band of Communist conspirators . . . [m]any of them trained in Cuba. . . .”¹⁹⁴ To counter this alleged new development, the President reported that he had ordered an additional force of 6,500 men to proceed to the Dominican Republic. He did not attempt to justify their dispatch by continued reliance upon protection of nationals arguments. Instead, the President proclaimed what came to be known as the “Johnson Doctrine,” namely, that “[t]he American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere.”¹⁹⁵ To prevent such an occurrence, he announced, the United States was consulting with the OAS regarding proposals for a multilateral response to this new threat posed by the Dominican crisis.¹⁹⁶

In the event, on 6 May 1965, the OAS, which much earlier had adopted a resolution calling for a ceasefire and the establishment of a neutral zone “within which the nationals of all countries will be given safe haven,”¹⁹⁷ approved a US-sponsored resolution creating an InterAmerican Force.¹⁹⁸ This force, largely made up of US troops that numbered over 23,000 by the middle of May, eventually ended hostilities, established a provisional government and supervised general elections before finally departing the Dominican Republic on 21 September 1966.¹⁹⁹ During this time, the OAS legal umbrella, not the protection of nationals rationale, gradually became the principal, if not exclusive, US justification for the continued presence of its troops in the Dominican Republic.²⁰⁰

Whether the OAS officially legitimized or merely acquiesced in the introduction of US troops has been the subject of much scholarly debate,²⁰¹ as has been the legitimacy of the OAS operation itself.²⁰² While both issues are beyond the scope of the present study—which focuses upon the current status of the right of forcible protection—it should be underscored that the OAS never criticized, much less condemned, the initial US action of sending troops to the Dominican Republic to protect the lives of its nationals and other foreigners. Nor, for that matter, did the United Nations.²⁰³

Criticism of the US action in general, however, was widespread. Senator Fulbright, Chairman of the Committee on Foreign Relations, who dramatically broke with President Johnson over the Dominican Republic even before he took issue with the latter’s policy in Vietnam, argued in the Senate that the

Administration had “cooked up” an invitation to intervene on the questionable grounds that the lives of US nationals were endangered.²⁰⁴ While admitting that “Santo Domingo was not a particularly safe place to be in the last days of April 1965,” the Senator contended that the “danger to American lives was more a pretext than a reason for the massive US intervention. . . .”²⁰⁵ Had the protection of US and other foreign nationals been the real reason for US action, he argued, the United States could have sent in troops “promptly and then withdrawn them and the incident would soon have been forgotten.”²⁰⁶

Scholarly comment almost unanimously agreed with the Senator’s appraisal.²⁰⁷ Although regarding “[t]he initial landing of four hundred Marines [to be] a permissible self-defense measure to protect the United States nationals,”²⁰⁸ Professor Nanda pointed out the obvious, that:

the United States’ action was not limited in its objective [to] protecting the lives of its nationals; furthermore, it was not limited in its scope or duration either. Hence, there are serious doubts that it met the required criterion of proportionality to justify the United States’ claim that since it had dispatched armed forces primarily to protect its citizens, the United States’ use of coercive measures in the Dominican Republic should be considered a permissible use of self-defense.²⁰⁹

Professor Friedmann took much the same view, although his conclusion had a much harder edge. While acknowledging, like Nanda, that “[t]here is respectable authority for the view that the original limited intervention to protect US citizens from imminent danger, in a situation of anarchy, did not violate international law,”²¹⁰ he believed the massive build-up and continued presence of US forces in the Dominican Republic to be “patently, by standards of international law, an illegal action. . . .”²¹¹

The present writer and almost all other participants at a 1972 conference that subsequently debated the Dominican crisis also expressed similar views,²¹² essentially supporting the continued existence of a limited right of forcible protection,²¹³ while at the same time recognizing and warning against the possibilities of the doctrine’s misuse.²¹⁴ Today, three decades after President Johnson ordered in US troops, one still may conclude, as a minimum common denominator, that “it is far easier to justify the initial American response than it is the prolonged American presence in the Dominican Republic.”²¹⁵

D. Iran. 1980.

On 4 November 1979, several hundred armed Muslim fundamentalist students overran the US Embassy in Tehran and took more than five dozen

diplomatic and consular staff, Marine guards and other US citizens hostage.²¹⁶ The Iranian government did nothing to prevent the takeover²¹⁷ or, subsequently, to secure the release of the hostages.²¹⁸ The militant students, among other demands, requested the United States to return the former Shah—who on 22 October had been allowed to enter the United States from his exile in Mexico to receive medical treatment—to Iran for trial, a demand that the United States rejected.²¹⁹

The United States immediately protested the seizure of the Embassy and its staff, but when Prime Minister Bazargan, a secular moderate opposed by the religious extremists, resigned on 6 November, it found itself with no one in Iran to negotiate. Thereafter President Carter dispatched two emissaries from the private sector—former Attorney General Ramsey Clark and former Foreign Service officer William Miller—on a secret mission to Tehran in an attempt to open up channels of communication. Carrying a letter from the President on White House stationery addressed “Dear Ayatollah Khomeini,” Clark and Miller got no further than Istanbul, Turkey, by which time the Ayatollah had learned of their trip and ordered that no one in Tehran should see them.²²⁰ After a week in Istanbul, during which time they made dozens of fruitless calls to Tehran, they concluded that there would be no movement on Iran’s part until a new constitution had been adopted and a new government put in place and thereafter returned to Washington.²²¹

While this mission and other efforts to secure the return of the hostages were under way, the United States requested that the UN Security Council meet to discuss ways to obtain the hostages release. Eventually it did on 4 December unanimously approving a resolution that called for the hostages immediate release.²²² When this resolution went unheeded by Iran, the Council met again and on 31 December, adopted another resolution demanding that Iran should free the hostages.²²³ It also decided to reconvene in January 1980, in the event of continued Iranian non-compliance, to discuss the imposition of sanctions under Articles 39 and 41 of the UN Charter. The Council met again on 13 January 1980, to consider a US draft resolution that would have mandated broad economic sanctions against Iran. A veto cast by the Soviet Union prevented its adoption and effectively removed the Security Council from the settlement process.²²⁴

In the meantime, the United States on 29 November 1979, instituted proceedings against Iran before the International Court of Justice, requesting the Court, pending its final Judgment in the case, to indicate certain provisional measures, first and foremost being that “the Government of Iran immediately release all hostages of United States nationality and facilitate the prompt and

safe departure from Iran of these persons and all other United States officials in dignified and humane circumstances.”²²⁵ Acting with commendable alacrity, the Court took the case, heard oral argument by the United States (Iran did not appear at the hearing), and on 15 December unanimously ordered Iran to restore the Embassy to US control and to ensure the:

immediate release, without any exception, of all persons of United States nationality who are or who have been held in the Embassy . . . or have been held as hostages elsewhere, and afford full protection to all such persons, in accordance with the treaties in force between the two States, and with general international law.²²⁶

The Court also enjoined both the United States and Iran not to take any action “which may aggravate the tension between the two countries or render the existing dispute more difficult of solution. . . .”²²⁷ As it had in the case of the two Security Council resolutions,²²⁸ Iran refused to obey the Court’s Order.

Diplomatic efforts during the winter and early spring of 1980 were no more successful in achieving the hostages’ release.²²⁹ Most prominent among these efforts was the establishment of a five-member UN Commission of Inquiry that was to undertake a fact-finding mission to Iran to hear Iran’s grievances and to allow for an early solution of the crisis. . . .”²³⁰ The Commission traveled to Tehran in early March but returned without having made any progress. A seemingly promising initiative involving the transfer of the hostages from the militants holding the Embassy into Iranian governmental control also fell through in early April when religious elements within Iran’s Revolutionary Council thwarted the efforts of President Bani-Sadr and Prime Minister Ghotbzadeh to end the crisis.²³¹ Thus, by mid-April 1980—over five months after the Embassy had been overrun and the hostages seized—“momentum for a negotiated solution seemed to have run out.”²³²

On 24 April 1980, some days after the beginning of the sandstorm season, and the “mission cut off” date recommended by the Joint Chiefs of Staff due to the possibility of sandstorms, with knowledge that a main highway ran adjacent to Desert I, in the face of the failure to secure their release through diplomatic or judicial means, the United States launched a rescue mission designed to free the hostages and return them to the United States.²³³ That evening (local time) eight Sea Stallion RH-53 helicopters lifted off from the *USS Nimitz* stationed in the Arabian Sea off the coast of Iran. They were to fly under cover of darkness over 500 miles inland to a previously-prepared airstrip codenamed “Desert I,” there to rendezvous with six Hercules C-130 cargo aircraft carrying

90 commandos. After refueling and loading the commandos and their equipment, the helicopters were to proceed to a remote site in the mountains south of Tehran, where they would be camouflaged to avoid detection the following day. That evening, 25 April, "Delta Force" was to enter Tehran in local vans and trucks, free the hostages at the Embassy, and then be evacuated by helicopter to an abandoned airport outside of Tehran codenamed "Desert II." Leaving the helicopters, they would get aboard transport aircraft waiting for them and be flown out of Iran under heavy US air cover.

Unfortunately, while operating through a sandstorm, two of the eight helicopters encountered mechanical and navigational difficulties and never reached Desert I.²³⁴ A third helicopter experienced hydraulic problems, which upon inspection at the desert site proved incapable of on-site repair. With only five workable helicopters at hand and knowing that a minimum of six were needed to accomplish the actual rescue the following night, the mission commander decided to abort the operation. Tragically, during refueling operations prior to the withdrawal, one of the helicopters collided with a C-130 and the resulting explosion and fire killed eight crew members and wounded another five. The force thereupon withdrew in the remaining C-130s. Evidence suggests that Iran was not even aware that US forces had been in the territory until President Carter officially informed it of the failed rescue operation several hours later.²³⁵

In a nationally televised broadcast at 7 A.M. that morning, President Carter in describing the aborted rescue operation characterized it as a "humanitarian mission" and specifically disavowed any hostility towards the Iranian people.²³⁶ According to the President, he "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 this crisis has continued."²³⁷ The following day, in a report to the Congress, the President reiterated the humanitarian nature of the mission and briefly explained why he considered it justified under international law, stating that "[i]n 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 unable or unwilling to protect them."²³⁸ The United States, in a contemporaneous report to the UN Security Council, also relied upon the protection of nationals rationale, claiming that the rescue operation was a permissible "exercise of its inherent right of self-defense, with the aim of extricating American nationals who have been and remain the victims of the Iranian armed attack on our embassy."²³⁹

The US legal argument, based upon the inherent right of self-defense that States still enjoy under Article 51, is a reprise of the argument the United States first advanced in the case of the seizure of the *Mayaguez* in 1975 and subsequently developed in the UN Security Council to justify Israel's raid on Entebbe in 1976.

Since Iran never took the failed US rescue operation to the Security Council, that body did not have the opportunity to debate or pass on either the legality of the operation or the validity of the US legal argument. Moreover, the reactions of States, while generally supportive of the United States,²⁴⁰ shed little light on their views regarding the legal basis of the US action under international law.²⁴¹

In the case of Iran, however, unlike the other incidents discussed in this Chapter, the International Court of Justice had the opportunity to consider, at least in passing, the question of what legal arguments, if any, were available to support such rescue operations. This opportunity arose from the fact, as will be recalled, that in its Order on provisional measures of 15 December 1979, the Court had instructed both Iran and the United States not to take any action that might exacerbate the dispute between the two countries.²⁴² The attempted rescue operation, of course, took place on 24 April 1980, over a month after the Court had held three days of hearings on the merits of the case and while it was in the course of preparing its Judgment issued exactly a month later. Thus, it could be argued that the operation constituted the international law equivalent of contempt of court, especially if the Court were to have found that it violated the UN Charter.

In the event, as the late Judge Dillard remarked, “[w]hat the Court did was very gentle. It chided the United States for its rescue operation but didn’t pass judgment on it.”²⁴³ While stating that it could not “fail to express its concern in regard to the United States’ incursion into Iran,” the Court nevertheless pointedly passed up the opportunity to question its legality, noting merely that it considered itself “bound to observe that an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations”²⁴⁴ This mild slap on the wrist, as the late Professor Stein notes in his perceptive critique of this aspect of the Court’s Judgment, “was coupled with an express disavowal of any finding that the rescue attempt was unlawful.”²⁴⁵ To quote from its Judgment:

[T]he Court must point out that neither the question of the legality of the operation of 24 April 1980, under the Charter of the United Nations and under

general international law, nor any possible question of responsibility flowing from it, is before the Court.²⁴⁶

Thus, as Stein aptly concludes, the Court:

[L]eft to another day, a day one suspects will never come, a definitive statement of its views regarding the law governing the use of force in defense of the lives of nationals abroad.²⁴⁷

Should the day ever arrive when the Court addresses this question, however, its decision may well turn on its acceptance or rejection of the US argument in the *Hostages Case*—that the forcible protection of nationals abroad is a proper exercise of the inherent right of self-defense against armed attack authorized by Article 51 of the UN Charter—rather than on whether such actions constitute an exception to the prohibition against the use of force found in Article 2(4) or are otherwise permissible under general international law.²⁴⁸

This characterization of the legal question, after all, seems to have been “accepted without question by the Court,”²⁴⁹ which not only mentions its being asserted by the United States before the Security Council,²⁵⁰ but also refers twice to the “armed attack on the United States Embassy”²⁵¹ and the “armed attack by the militants ... and their seizure of Embassy premises and staff...”²⁵² Professor Stein has called attention to what he labels the Court’s:

tantalizing suggestions that the category of “armed attacks” under Article 51 of the UN Charter extends well beyond major armed assaults.... If, indeed, the Court’s references to “armed attack” were studied rather than casual, operations such as the rescue mission are lawful not because the right of self-defense under the UN Charter is coextensive with the preexisting customary law right of self-defense, which extended beyond defense against ‘armed attack’ . . . , but because the right of self-defense against armed attack has arisen.²⁵³

The two dissenting judges in the *Hostages Case* appear to have accepted the majority’s analytical framework as well. Thus, Judge Morozov, after criticizing “the so-called rescue operation,” which he labeled “an invasion of the territory of the Islamic Republic of Iran,”²⁵⁴ maintained that the Court should have drawn attention to the undeniable legal fact that Article 51 of the Charter establishing [sic] the right of self-defense, may be invoked only “if an armed attack occurs against a member of the United Nations.” It should have added that . . . there is no evidence that any armed attack had occurred against the United States.²⁵⁵

Judge Tarazi, who prefaced his remarks on this score with the observation that “[i]t is not my intention to characterize [the rescue] operation or to make any legal value judgment in this respect,”²⁵⁶ nevertheless reflected in his opinion some of Judge Morozow’s concerns about attempts to treat the operation as a self-defense response to an armed attack.²⁵⁷ The legal framework for debate on the question is in place should the issue arise in some future case.²⁵⁸

Surprisingly, scholarly comment on the legality of the rescue operation has been relatively sparse. One US writer declared categorically that it was “a flagrant violation of international law,”²⁵⁹ while another of his colleagues found it to be “preemptively illegal.”²⁶⁰ A German scholar, rejecting the US self-defense argument, concluded that “it was from the very beginning nothing but a violation of the prohibition of the use of force and of Iran’s territorial integrity.”²⁶¹ Professor Ronzitti, who repeatedly refers to the rescue operation and the *Hostages Case* in his monograph,²⁶² presumably holds the same opinion, since he reaches the general conclusion that “the right to intervene to protect one’s own citizens abroad does not exist.”²⁶³

Two more detailed legal studies of the rescue operation reach the contrary conclusion, each perhaps by a different legal path. In the first, while finding the US self-defense argument “subject to considerable difficulties,”²⁶⁴ a British author nevertheless regards the operation as legally justified pursuant to a “restrictive” interpretation of Article 2(4), *i.e.*, that it was not a use of force against the political independence or territorial integrity of Iran, or in any other manner inconsistent with the purposes of the United Nations.²⁶⁵

In the second, Professor Schachter, who also believes that “an armed rescue action to save lives of nationals . . . is not prohibited by article 2(4) when the territorial government is unable or unwilling to protect them and the need for instant action is manifest,”²⁶⁶ applies this test to the rescue operation and concludes that “the action taken did not violate the U.N. Charter or international law.”²⁶⁷

It is not entirely clear from his exposition, however, whether his finding that Article 2(4) was “no problem” is grounded upon the belief that the rescue operation represented “an exception to the prohibition of article 2(4)”²⁶⁸ or, alternatively, that it constituted an exercise of legitimate self-defense.²⁶⁹ On balance, both the approach and language of his seminal chapter on the subject are somewhat confirmed by his subsequent writings.²⁷⁰ It is suggested that Professor Schachter justifies the Iranian rescue operation not by a restrictive reading of Article 2(4), but rather by an expanded concept of the right of self-defense under Article 51.

Finally, as in the case of the Lebanese crisis discussed earlier in this Chapter,²⁷¹ some mention of the factual predicate behind its invocation by the United States during the Iranian crisis seems warranted here. While this issue has not received much attention in Iranian crisis postmortems,²⁷² an adequate factual showing that the lives or safety of the hostages were in imminent danger—that, technically, the requirement of the “necessity” of the rescue operation had been met²⁷³—is the *sine qua non* of its being a valid exercise of the right of forcible protection. Put more pointedly by former Under Secretary of State Christopher, the question becomes: “was the United States legally justified in undertaking the rescue mission in April 1980 . . . even though the hostages, *at that moment*, may not actually have been in imminent danger?”²⁷⁴

The answer to this question is made more difficult in the case of Iran by the fact that the real or apparent threat to the lives and safety of the hostages was not short-lived, requiring a decision as to whether to undertake a rescue mission to be made once and for all within a relatively narrow time frame, but continued for a period of many months. Thus, this case differs markedly from the other instances surveyed in this Chapter, especially the Dominican Republic crisis, where US decisionmakers had relatively little time to assess the facts before deciding whether or not to mount a rescue mission. It also differs from these other instances in that here the foreign government involved was not just unable, but blatantly unwilling, to do anything to protect the lives and safety of US nationals, thus accentuating the actual and potential danger to them.

Since, as the Hostages Convention reaffirms in its Preamble, hostage-taking is *par excellence* an “act which endangers innocent human lives,”²⁷⁵ it is difficult to deny the fact that the US hostages at the Embassy were in “imminent danger” immediately after their seizure on 4 November 1979, a seizure that, it will be recalled, was endorsed and confirmed by the Ayatollah Khomeini within a fortnight. They were bound, blindfolded, paraded before TV cameras and threatened with trial and possible execution. Clearly the “necessity” requirement permitting a rescue mission could have been satisfied easily at that time.

If once satisfied, however, must the necessity requirement be satisfied again on 24 April 1980, when the actual rescue operation took place? Secretary Christopher’s rhetorical question, perhaps shaped by the fact that it was raised in the context of his summary and evaluation of Professor Schachter’s contribution to a joint publication effort, implies an affirmative answer.²⁷⁶ The latter’s analysis takes the position that:

[t]he illegality of their [prolonged] detention and the failure of international organs to obtain their release should not be enough to legitimize the use of force to effect their release. To allow the use of force in the absence of imminent peril would imply a “necessity” to use force to redress a legal wrong [which the UN Charter does not permit]. It would be significantly different from the necessity of self-defense to repel an attack or to save lives.²⁷⁷

Professor Schachter’s attempt to transmute a permissible exercise of the right of forcible protection into an illegal use of force to redress a legal wrong, using the passage of time and possible improvement in the treatment of the hostages as an alchemist’s converter, is not persuasive on a number of grounds. The taking of hostages being a wrongful act under international law, to then deny the State of the hostages’ nationality the right to forcibly protect the hostages simply because the State that has seized the hostages has lessened its threat to the hostages’ lives or limbs—evidenced, perhaps, by having placed them in an ordinary prison or permitted Red Cross access—is to eliminate an important sanction against the hostage-taking State. It improves the hostage takers negotiating position, and thereby encourages similar acts in the future.

Second, if “any taking of hostages is so grave a criminal act that a rescue action is instantly justified in law,” (a position Professor Schachter apparently rejects but admits has “appeal” since to him “[i]t appears realistic and practical”²⁷⁸), why should any remedial steps taken by the hostage-taking State—short of the unconditional release of all hostages—in effect, reduce the wrongfulness of the hostage-taking State’s act.

Finally, although there appears to be little if any State practice on point, there is no data that suggests that any State has acknowledged a diminution of its right to protect its nationals who have been illegally detained by another State merely because they have been held for some time and the threat to their lives and safety may have diminished somewhat since their wrongful detention commenced. Certainly the United States never took this position during the Iran crisis. Indeed, as Professor Stein perceptively points out, “[i]n the *Hostages* case, the United States made no effort to demonstrate to the Court that the rescue mission was undertaken in response to a new or more imminent peril to the hostages’ lives.”²⁷⁹

Even assuming, *in arguendo*, that international law required the United States to demonstrate that the hostages actually were in imminent danger at the time of the rescue operation, that burden of proof certainly would appear to have been met. As President Carter noted when initially explaining his reasons for ordering the mission, “the steady unraveling of authority in Iran and the

mounting dangers that were posed to the safety of the hostages themselves” made the attempt “a necessity”²⁸⁰ Secretary of Defense Brown seconded the President’s remarks, stressing the “danger posed to the hostages by the deteriorating security situation in Iran.”²⁸¹ Furthermore, he added, “[w]e have considerable concern for the physical and psychological effects on the hostages of prolonged captivity.”²⁸² Secretary Christopher, who subsequently reviewed what he had believed to be the risks to the hostages “not in retrospect, with the benefit of hindsight, but at the time of the crisis, when decisions actually had to be made,” spelled out US concerns in far more detailed fashion before concluding that, “[b]y any objective measure, it was certainly reasonable for the United States to operate on the assumption that the hostages were in grave, even mortal, peril at the time of the rescue mission.”²⁸³

Professor Schachter, who believes the question of whether the hostages were in imminent danger at the time of the rescue operation to be unanswerable, even with hindsight, takes a “margin of appreciation” approach to the matter. “The pertinent point,” he observes, agreeing with Christopher:

is whether, at the time, the US government had reason to fear that in the emotional atmosphere of Iranian revolutionary ferment the hostages would be executed, with or without a trial. As a general rule, it seems reasonable to recognize that the state whose nationals are imprisoned as hostages should have wide latitude to make the decision whether they are in extreme danger.²⁸⁴

Applying this approach to the publicly available facts, he concludes that:

whether or not the hostages were actually in extreme danger, the conditions were such as to lead the US government to believe they were. Faced with this fact and the not unrealistic conclusion at the time that peaceful means offered no promise of release, the United States had reasonable grounds to consider military action necessary to effect a rescue. On these premises, the action taken did not violate the Charter or international law.²⁸⁵

With this conclusion, if not with all his reasoning in reaching it, few reasonable observers can disagree. Moreover, by spelling out and applying a “margin of appreciation” approach to the determination of whether the requirement of necessity was satisfied in the case of the rescue operation in Iran, Professor Schachter has made an important contribution towards refining one of the criteria that will be used in judging the validity of future claims by States to exercise the right of forcible protection of their nationals abroad.

Fundamentally, as in the Iran case, a state's embassy and/or consulate constitutes the sovereign property of the foreign state which occupies it. If an embassy or consulate is attacked by foreign nationals, it constitutes an attack on the occupying state (the United States in the Iran case).

An attack on a state justifies a "self-defense" response against the attackers/occupiers of the state's embassy or consulate to secure the building and the rescue of its nationals per Article 51 of the UN Charter.

NOTES

1. Information about the forcible protection of nationals abroad by States other than the United States — principally France — is hard to obtain and often fragmentary or inaccurate. Moreover, with the one exception of Entebbe, such instances appear to have generated little legal debate either on the international level or within the States concerned. For a necessarily cursory and undoubtedly incomplete series of case studies of non-US forcible protection of nationals abroad, see Chapter V.

2. Background information about the crisis as well as detailed descriptive accounts of it may be found in M. Agwani, *The Lebanese Crisis, 1958* (1965); L. Meo, *Lebanon: Improbable Nation* (1965); and F. Qubain, *Crisis In Lebanon* (1961) [hereinafter cited as Qubain]. For differing views on the legal issues involved, compare Potter, *Legal Aspects of the Beirut Landing*, 52 *Am. J. Int'l L.* 727 (1958) with Wright, *United States Intervention in the Lebanon*. 53 *id.* 112 (1959). For a useful monograph, prepared under the supervision of the present writer and drawn upon throughout this chapter, see R. Osborne, *The Lebanese Intervention and International Law*, 31 Mar. 1969 (unpublished thesis in US Naval War College Library). See also C. Thayer, *Diplomat* ch. III (1959) for a vivid account of the actual intervention.

3. According to the official census, Lebanon's population consists of 392,000 Christians and 383,000 Muslims. L. Meo, *supra* note 2, at 229 n.1. *But see* text at and accompanying note 4 *infra*.

4. The most recent estimates place the population at 2,800,000. *The Middle East and North Africa 1989*, at 617 (36th ed. 1990). With a higher birthrate and lower emigration, most informed observers believe that Muslims now account for about 60% of the total population.

5. Qubain, *supra* note 2, at 17.

6. M. Agwani, *supra* note 2, at 1-2.

7. Qubain, *supra* note 2, at 18.

8. "The people of Lebanon enjoy one of the highest standards of living in the Middle East." *Id.* at 3.

9. *Id.* at 35-37.

10. *Id.* at 38.

11. *Id.* at 38-44.

12. *Id.* at 42.

13. Joint Resolution of 9 March 1957, § (1957). 2, 71 Stat. 5, *reprinted in* 36 DEP'T ST. BULL. 481.

14. See L. Meo, *supra* note 2, at 117-20.

15. R. Garnet, *Intervention and Revolution* 140 (1968).

16. The violence began in Tripoli, where according to unsubstantiated reports of the opposition, 168 of their members were killed. Qubain, *supra* note 2, at 74. It soon spread. For a succinct account, see R. Osborne, *supra* note 2, at 22-23:

Violence in Tripoli led to armed rebellion. On 9 May demonstrations began followed by a burning of the US Information Library. On 12 May the violence reached Beirut. Barricades were set up with burning oil drums. The road to Damascus was barred and a curfew was introduced. Commerce and industry came to a standstill and the large volume of tourists disappeared from the country. When the news of the upheaval in Tripoli reached Beirut, the United National Front held a meeting and the decision was made for armed revolt. On 13 May the United National Front attacked the Presidential Palace at Bayt al-Din. The Cairo radio began urging Lebanese Moslems to seize areas where they were in control and accede to the United Arab Republic. The country was sliding toward anarchy.

17. Despite Chamoun's demands that the army promptly put down the rebellion and end the strike, General Fuad Chebab, the commander-in-chief, refused to commit the army against what he considered a mass protest rather than subversion. From May to July he used his 6,000-man army to patrol the streets and to prevent clashes between Christians and Muslims. He wanted at all costs to keep the army, which was about two-thirds Christian and one-third Muslim, above the political fray that threatened to split the county. R. Garnet, *supra* note 15, at 144.

18. While the civil strife which occurred in Lebanon from May through July of 1958 went well beyond Garnet's "mass protest," see text accompanying notes 16 and 17 *supra*, it never really degenerated into civil war. Moreover, throughout the crisis an element of unreality, if not farce, often prevailed. Thus, according to Qubain:

[h]ad the Lebanese crisis not had such tragic aspects, it could have been easily described as a comic opera. There was something unreal about the whole affair—a succession of scenes taken virtually *in toto* from Ruritania: an army that would not fight; opposition leaders officially declared 'rebels,' with warrants out for their arrest, blandly walking the streets of Beirut in broad daylight with no one laying so much as a finger on them; pitched battles between the army and 'rebel' forces stopped, so that army trucks could bring water to the rebels and move their wounded to hospitals; a president virtually a prisoner in his own palace for over two months; a parliament that could not meet; opposition leaders, each with a private army of his own, establishing virtually independent government in his locality—levying taxes and administering justice; and a crisis that was long on bitter words, but short on actual casualties.

19. For President Chamoun's statement to the press reiterating such charges, see M. Agwani, *supra* note 2, at 74-76.

20. For the Lebanese complaint to the Security Council, see 13 U.N. SCOR Supp. (Apr.-Jun. 1958) at 33, U.N. Doc. S/4007 (1958), reprinted in M. Agwani, *supra* note 2, at 120-21.

21. 13 U.N. SCOR (823d mtg.) at 4, U.N. Doc. StP.V. 823 (1958), reprinted in M. Agwani, *supra* note 2, at 124.

22. 13 U.N. SCOR (823d mtg.) at 22-23, U.N. Doc. S/P.V. 823 (1958), reprinted in M. Agwani, *supra* note 2, at 147-59.

23. 13 U.N. SCOR Supp. (Apr.-Jun. 1958) at 47, U.N. Doc. S/4023 (1958), reprinted in M. Agwani, *supra* note 2, at 198.

24. Curtis, *The United Nations Observation Group in Lebanon*, 18 Int'l Org. 738, 751-52 (1964). Other observers are much more critical of UNOGIL's operations. See Kerr, *The Lebanese Civil War*, in *The International Regulation of Civil War* 65, 85-89 (E. Luard ed. 1972); R. Murphy, *Diplomat Among Warriors* 402 (1964); and Qubain, *supra* note 2, at 143-52.

25. D. Eisenhower, *The White House Years: Waging Peace 1956-1961*, at 267 (1965).
26. 39 DEPT ST. BULL. 31 (1958).
27. D. Eisenhower, *supra* note 25, at 270 (emphasis added). *See also* text *infra* accompanying note 32.
28. Qubain, *supra* note 2, at 115. *See* Baghdad Reports Americans Slain, N.Y. Times, July 16, 1958, at 15, col 1. *See also* C. Thayer, *supra* note 2, at 27.
29. Kerr, *supra* note 24, at 77.
30. For a graphic description, *see* C. Thayer, *supra* note 2, at 33-36.
31. Kerr, *supra* note 24, at 77.
32. *See supra* text at note 27. According to one key official who thereafter was instrumental in achieving a settlement of the crisis, President Eisenhower did not even mention the need to protect nationals when in a White House briefing he:

elaborated a little on his purpose in ordering US Marines to land in Lebanon. He said that sentiment had developed in the Middle East, especially in Egypt, that Americans were capable only of words, that we were afraid of Soviet reaction if we attempted military action. Eisenhower believed that if the United States did nothing now, there would be heavy and irreparable losses in Lebanon and in the area generally. He wanted to demonstrate in a timely and practical way that the United States was capable of supporting its friends.

R. Murphy, *supra* note 24, at 398.

33. 39 DEPT ST. BULL. 181 (1958) (emphasis added).
34. *Id.* at 182.
35. *Id.* at 184.
36. Explaining the landing of Marines he argued that:

[t]heir presence is designed for the sole purpose of helping the Government of Lebanon at its request in its efforts to stabilize the situation brought on by the threats from outside, until such time as the United Nations can take the steps necessary to protect the independence and political integrity of Lebanon. *They will also afford security to the several thousand Americans who reside in that country.* 13 U.N. SCOR (827th mtg.) at 7, U.N. Doc. S/P.V. 827 (1958), *reprinted in* 39 DEPT ST. BULL. 186 (1958) (emphasis added).

37. Ambassador Lodge's statement before the Security Council on 18 July 1958, to the effect that the "[f]orces of the United States now in Lebanon at the specific request of the lawfully constituted Government of Lebanon would not remain if their withdrawal were requested by that Government," 13 U.N. SCOR (833d mtg.) at 10, U.N. Doc. S/P.V. 833 (1958), *reprinted in* 39 DEPT ST. BULL. 196 (1958), demonstrates beyond doubt that the protection of nationals rationale had been discarded after three days of use. One explanation for the shift in legal justifications, of course, might be that over the 15-18 July period the safety of US nationals had been secured, thus depriving the United States of the factual basis for continued reliance upon this rationale.

38. R. Murphy, *supra* note 24, at 399-400. *See supra* note 17. *Cf.* D. Eisenhower, *supra* note 25, at 265, who places the Lebanese army at 9,000 men.

39. D. Eisenhower, *supra* note 25, at 286. "In support of these troops, the entire Sixth Fleet, consisting of about 70 ships with 40,000 men, moved to the east Mediterranean." Qubain, *supra* note 2, at 115.

40. According to President Eisenhower, the decision to have the troops occupy only Beirut and its airfield was:

. . . a political one which I adhered to over the recommendations of some of the military. If the Lebanese army were unable to subdue the rebels when we had secured their capital and protected their government, I felt, we were backing up a government with so little popular support that we probably should not be there.

D. Eisenhower, *supra* note 25, at 275 n.8. Would that subsequent Presidents had taken a similar approach when committing United States forces to the assistance of various governments in later years!

41. Qubain, *supra* note 2, at 120.

42. For a description of their “low profile” activities, see Kerr, *supra* note 24, at 81-83.

43. In one semi-humorous incident, “two American soldiers in a jeep lost their way and strayed into the rebel-held quarter of Beirut called El-Basta. Local irregulars surrounded their car, disarmed them and took them to their chief, Satib Salam, who served them Coca-Cola and gave them a kindly lecture about interference in the domestic affairs of foreign countries. They were then sent off in their jeep, minus their weapons.” *Id.* at 90 n.12.

44. Qubain, *supra* note 2, at 119-20. See also *id.* at 130.

45. “Two other points should perhaps be emphasized in this connection: (1) that on several occasions American troops, while on duty, were shot at by snipers, but in most cases, in accordance with their instructions, did not return the fire and (2) that not a single Lebanese suffered any injury of any kind—whether in his person or property—as a result of US military action.” *Id.* at 121.

46. Schulimson, *Marines in Lebanon: 1958*, at 32 (Historic Branch, G-3 Division Headquarters, US Marine Corps, 1966). Accord, Kerr, *supra* note 24, at 90 n.13; R. Murphy, *supra* note 24, at 408; and Qubain, *supra* note 2, at 120.

47. The withdrawal began on 8 October 1958, and was completed in less than three weeks. 39 DEPT. ST. BULL. 650-51 (1958).

On October 25, 1958, the final withdrawal of United States troops took place, almost without public notice. This lack of attention contrasted vividly with attitudes in the early days of our intervention when some international critics were crying that America’s purpose was to establish a permanent and imperialistic foothold in the Middle East.

D. Eisenhower, *supra* note 25, at 288.

48. See, e.g., Curtis, *supra* note 24, at 754.

49. But see Wright, *supra* note 2.

50. “The most plausible ground for the recent landing of military forces of the United States near Beirut is to be found in the invitation of the duly elected Government of Lebanon” Potter, *supra* note 2. According to Wright, “[t]he American declaration that it would withdraw when requested by Lebanon and its actual withdrawal when so requested indicate that this was the justification mainly relied upon.” Wright, *supra* note 2, at 124 n.38. See *supra* text at and accompanying note 37.

51. Responding to the argument that the right to intervene by invitation may be the subject of abuse, Qubain concludes that:

[t]his was clearly not the case with respect to the landing of American troops in Lebanon. Free elections had already taken place without the slightest interference from the troops, and a new President, supported and accepted by all factions, was elected. Furthermore, . . . the presence of American troops did serve a constructive

purpose in Lebanon itself, and contributed to the calming of the tense atmosphere in the area. Qubain, *supra* note 2, at 101.

52. See generally *supra* text at notes 32-37. President Eisenhower, who recognized that any action by the United States must conform “with the Charter of the United Nations,” obviously relied upon the concept of collective self-defense. D. Eisenhower, *supra* note 25, at 271. Describing his briefing of Congressional leaders, he notes that at one point Secretary of State Dulles “had to explain Article 51 of the United Nations Charter, which permitted a country to act on an emergency basis pending the first opportunity to turn the problem over as soon as the United Nations was able to act.” *Id.* at 272.

53. See *supra* text at note 24. For a strong argument supporting the collective self-defense thesis, see Qubain, *supra* note 2, at 123-26.

54. See *supra* text at notes 32-37.

55. See, e.g., Kerr, *supra* note 24, and Qubain, *supra* note 2.

56. Potter, *supra* note 2, at 728.

57. Wright, *supra* note 2, at 117.

58. See *supra* text at and accompanying notes 16-18. Of course, this fact cuts two ways. Questioning the motives for the action of the United States in a debate in the British Parliament, Mr. Hugh Gaitskell, leader of the opposition, tellingly remarked “that if it [the justification for US action] was simply the lives of Americans, then they have been in some danger throughout all these last weeks while the civil war has been taking place in Lebanon.” 591 Parl. Deb., H.C. (5th ser.) 1249 (1958).

59. See *supra* text at note 33. “In addition to our embassy personnel and other government employees, a good many Americans lived in Lebanon, most of them as teachers, missionaries, and businessmen. Beirut also was a popular seaside resort which attracted Americans residing throughout the Middle East and many tourists.” R. Murphy, *supra* note 24, at 398.

60. For instances of US citizens being trapped by crossfire, see, e.g., C. Thayer, *supra* note 2, at 23. That they were not intentionally the targets of the anti-Chamoun forces seems apparent from the statement of Mr. Sa’ib Salam, the opposition leader, made immediately after the landing of US troops. “Our national Lebanese liberation movement is proud of the fact that it has not threatened foreigners or their property in the two months of an all-out bloody revolution, because its only aim is to get rid of [President Chamoun]. . . .” See M. Agwani, *supra* note 2, at 295.

61. See *supra* text at note 28.

62. It is worth noting in this regard, however, that, while the United States chartered “four commercial aircraft to provide transportation for Americans who wish[ed] to leave Iraq,” it apparently never contemplated forcible action to protect them at that time. Indeed, five days after the *coup d’etat* the US Ambassador seemed quite content with assurances from the revolutionary regime “that they will honor their promise to protect American lives and property. Assurances have also been given that those Americans wishing to leave Iraq will be allowed to depart freely and that all necessary precautions shall be taken to assure safe departure.” 39 DEPT. ST. BULL. 199 (1958).

Also worthy of note is the fact that Great Britain, while accepting the protection of nationals rationale advanced by the United States in the case of Lebanon, 591 Parl. Deb., H.C. (5th ser.) 1243 (1958) (Mr. Lloyd), did not adopt it herself when justifying the subsequent dispatch of British troops to Jordan. *Id.* at 1438-39 (Prime Minister). But see the remarks of an opposition spokesman to the effect that “[t]here would, in my view, be only one justification for entering Jordan with troops. That is if British personnel were in danger and it was our duty to preserve the lives of British persons in Jordan. Then, I can visualize our putting troops in for that sole purpose.” *Id.* at 1304 (Mr. Crossman).

63. R. Murphy, *supra* note 24, at 400.
64. R. Osborne, *supra* note 2, at 61-62.
65. C. Thayer, *supra* note 2, at 9-10.
66. *Id.* at 20, 28. See *supra* text at note 26.
67. R. Osborne, *supra* note 2, at 74-75 (emphasis deleted):

Although a stronger case could be made if "Phase C" had been set, which required the evacuation of all Americans from the crisis area, it appears that a moment for deliberation did not exist and an immediate danger did exist after the Iraqi coup in which Americans were killed. The rebels in Lebanon had clearly announced their intent to violently overthrow the western aligned government and therefore it would be reasonable to assume that Americans would be harmed. The threat existed although no Americans were harmed, but a threat is sufficient to justify the exercise of a reasonable degree of self-defense.

68. For a description of this breakdown and a day-by-day account of its aftermath, see A. Merriam, *Congo: Background of Conflict* ch. VI (1961).

69. For Belgium's legal justification of this action, see McNemar, *The Postindependence War in the Congo*, in *The International Law of Civil War* 244, 273 (R. Falk ed. 1971), who quotes Prime Minister Gaston Eyskens as stating that:

The Belgian troops intervened when there was imminent danger and the government found itself in a situation of absolute necessity. The Belgian government like any government has a duty to observe a rule of international ethics and international law which imposes upon a country the protection of its nationals. The Belgian government intervened solely to prevent bloodshed and to offer the protection which was necessary for the preservation of human lives.

The above author, who acknowledges the continued existence of the right of forcible protection in such cases, nevertheless concludes that:

The Belgian case was weak on two grounds. The failure to seek Congolese consent was a violation of a specific treaty commitment and the aggravation of an extremely sensitive colonial issue. Second, the Belgian actions in Katanga were more extensive than necessary for the protection of nationals and significantly contributed to the province's ability to remain independent.

Id. For discussion of the question of consent and the principle of proportionality, see *infra* text at notes 102-104 & 142-146.

70. S.C. Res. 143, 15 U.N. SCOR Supp. (July-Sept. 1960) at 16, U.N. Doc. S/4387 (1960).

71. For a succinct account of ONUC's operations, see L. Miller, *World Order and Local Disorder* 66-116 (1967).

72. "One [witness] said the rebels carried out thousands of executions during their occupation of Stanleyville. He said that 'every day, any time of the day, some Congolese was being dragged to the Lumumba monument and executed.' Their hands were tied behind their backs and they were hacked to death with machetes. The more illustrious of those killed had their hearts cut out and eaten in public by the rebels." *The Times* (London), Nov. 25, 1964, at 12, col 2.

73. Young, *The Congo Rebellion*, *Africa Report* 6, 11 (April 1965). Another commentator concludes that "[a]t least 18,000 Congolese were executed by the rebels." Grundy, *The Stanleyville Rescue: American Policy in the Congo*, 56 *Yale Rev.* 242, 247 (1967).

74. Young, *supra* note 73, at 11.

75. *Id.* at 10. On the mercenaries and the key role they played in turning the tide of battle, see I. Colvin, *The Rise and Fall of Moise Tshombe* ch. XII (1968); D. Reed, *111 Days in Stanleyville* ch. 10 (1965). There is little doubt that, like most mercenary contingents, they quickly filled their quotas in the looting and wanton murder departments. One mercenary is reported to have admitted that “in Kindu we must have shot at least three thousand people. I’ll be honest with you: most of them unnecessarily.” *Id.* at 180. See also *infra* text accompanying note 138.

76. D. Reed, *supra* note 75, at 8.

77. *Case Studies In African Diplomacy*, No. 1, *The Organization of African Unity and the Congo Crisis 1964-65*, at 32 (C. Hoskyns ed. 1969). See *infra* text at note 86.

78. See the title of Chapter 4 of D. Reed, *supra* note 75.

79. For an insider’s view of these negotiations, see W. Attwood, *The Reds and the Blacks 195-217* (1967).

80. I. Colvin, *supra* note 75, at 190.

81. *Id.*

82. 19 U.N. SCOR (1174th mtg.) at 15, U.N. Doc. S/P.V. 1174 (1964) (Ambassador Stevenson), reprinted in 52 DEPT. ST. BULL. 18 (1965).

83. D. Reed, *supra* note 75, at 192.

84. 19 U.N. SCOR (1174th mtg.) at 15-16, U.N. Doc. S/P.V.1174 (1964), reprinted in *American Foreign Policy—Current Documents 1964*, at 777 (1967). See *infra* text accompanying note 90.

85. *Id.* at 16, reprinted in 52 DEPT. ST. BULL. 18 (1965). Fortunately, “the mercenary-led column captured Kindu, 300 miles south [of Stanleyville], just in time to prevent the mass murder of twenty-four Europeans. (Hundreds of Congolese ‘intellectuals’ had already been burned alive there by the . . . [rebels].)” W. Attwood, *supra* note 79, at 207. Compare *supra* text accompanying note 75.

86. Grundy, *supra* note 73, at 247. See *supra* text at notes 77-78.

87. W. Attwood, *supra* note 79, at 213. Attwood states that he was not authorized to discuss military operations, but points out that in any event it would have been impossible to impose a cease-fire so late in the day. “I doubt if . . . [Kanza] realized that nothing now could have stopped the gung-ho mercenary-led column from taking Stanleyville—not even Tshombe himself standing in the road and waving his arms.” *Id.*

Compare Attwood’s recollection that Kanza “said the ANC advance had to be stopped and a cease-fire put into effect before we could talk about the hostages,” *Id.* (emphasis added), with Garnet’s inaccurate and misleading assertion that “[t]here is little doubt from Attwood’s own account that had the United States ordered Tshombe to stop bombing Stanleyville, the US and Belgian hostages would have been released.” R. Garnet, *supra* note 15, at 251 (emphasis added). Attwood’s “own account,” of course, indicates nothing of the kind.

88. See, e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 3, 6 UST. 3516, T.I.A.S. No. 3365. “The rebels’ action in holding and threatening hostages is in direct violation of the Geneva Conventions and accepted humanitarian principles.” 19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 189, U.N. Doc. S/6062 (1964) (statement by US Government), reprinted in 12 M. Whiteman, *Digest of International Law* 212 (1971).

89. On 25 September, when an ICRC delegation flew to Stanleyville for two days of talks with the rebels about releasing the hostages, Gbenye and his associates professed not to know “what the International Committee of the Red Cross was. When told about the Geneva Conventions and particularly the ban on holding people as hostages, they said they had not

heard about that, either. In any case, they added, they did not consider themselves as bound by the Geneva rules. The conventions, they scoffed, were ‘written by whites.’” D. Reed, *supra* note 75, at 115.

90. On their ordeal, see generally *id. passim*. Ambassador Stevenson subsequently refuted what he termed “the astonishing thesis” that the threats to their lives were not real.

The threats were very real indeed; they had been carried out in the past and we had every reason to expect that they would continue to be carried out in the future. From mid-August onward after the rebel forces had taken Stanleyville, seizing and holding foreigners as hostages became a deliberate act of rebel policy, and in the following months this medieval practice was widely applied. Many of those hostages were deliberately killed. By the time the Belgian paratroopers arrived in Stanleyville, and before the outlaws even knew of their impending arrival, the total of those thus already tortured and slaughtered amounted to 35 foreigners. . . .

19 U.N. SCOR (1174th mtg.) at 15-16, U.N. Doc. S/P.V. 1174 (1964), *reprinted in* 52 DEPT. ST. BULL. 18 (1965). See *supra* text at note 84.

91. The Belgian Foreign Ministry confirmed this development on 20 November, adding by way of explanation that “[t]he Belgian and American Governments have considered it their duty in view of the threat to their nationals and civilians in general in the region of Stanleyville to take preparatory measures in order to be able to effect, if necessary, a humanitarian rescue operation.” 51 DEPT. ST. BULL. 840 (1964), *reprinted in* American Foreign Policy—Current Documents 1964, at 767 (1967).

92. See W. Attwood, *supra* note 79, at 209-14.

93. Prime Minister Tshombe, in a note to the United States dated 21 November 1964, stated that the Congo Government had decided:

to authorize the Belgian government to send an adequate rescue force to carry out the humanitarian task of evacuating the civilians held as hostages by the rebels, and to authorize the United States Government to furnish necessary transport for this humanitarian mission. I fully appreciate that you wish to withdraw your forces as soon as your mission is accomplished.

19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 187-88, U.N. Doc. S/6062 (1964), *reprinted in* American Foreign Policy—Current Documents 1964, at 768 (1967).

According to his biographer, Tshombe recalled that three weeks earlier “the United States and Belgium, fearing that the army advance would be too slow to rescue the hostages, [had] asked my authorisation to organise a parachute attack on Stanleyville.” I. Colvin, *supra* note 75, at 189. Thus, as in the case of the Dominican Republic, see *infra* text at notes 181-183 and accompanying note 186, an invitation to undertake a rescue operation apparently was solicited.

94. For a vivid description of the actual operation, see D. Reed, *supra* note 75, ch. 19. Reed and Colvin state that 22 white hostages were killed and at least 40 wounded (*Id.* at 259; I. Colvin, *supra* note 75, at 194), while Attwood places the number of dead at 27. W. Attwood, *supra* note 79, at 217. Apparently the discrepancy stems from the fact that five of the wounded later died. D. Reed, *supra* at 259. Three of the dead, including ironically Dr. Paul Carlson, were United States nationals. American Foreign Policy—Current Documents 1964, at 772 (1967).

95. 52 DEPT. ST. BULL. 16 (1965) (Ambassador Stevenson), *reprinted in* American Foreign Policy—Current Documents 1964, at 776 (1967).

96. 19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 195, U.N. Doc. S/6068 (1964) (Letter from Ambassador Stevenson to the President of the Security Council), *reprinted in* American Foreign Policy—Current Documents 1964, at 771 (1967). For a description of this operation, see D.

Reed, *supra* note 75, at 267-69. Prior to it, the rebels had killed 22 white hostages. Compare *infra* text at note 97.

Subsequent estimates of the total number of hostages rescued during the four day period ranged even higher than the figures given in the text. "The rescue operation was undertaken on November 24. As a result, more than 1,300 non-Congolese and over 1,000 black Africans were rescued from Stanleyville. In subsequent air and ground rescues, another 1,600 non-Congolese were saved." 52 DEP'T. ST. BULL. 222 (1965) (Assistant Secretary of State Williams).

97. See *supra* note 95. The Times (London), Nov. 28, 1964, at 8, col 1, reported that in the four day operation 80 white hostages had been killed in Stanleyville and Paulis. Compare *supra* text accompanying note 94 and at *infra* notes 135-136.

98. For a comprehensive treatment of Belgium's legal justification of its participation in the operation, see Gerard, *L'Operation Stanleyville-Paulis Devant le Parlement Belge et les Nations Unis*, 3 Revue Belge De Droit International 242 (1967). According to the author, the Belgian Government consistently maintained that the right of self-defense guaranteed States by Article 51 of the United Nations Charter included the right of forcible protection of a State's nationals abroad. *Id.* at 254-56. See *supra* text accompanying note 69. The British government's position was the same. 702 Parl. Deb., H.C. (5th ser.) 911 (1964) (Mr. Thomson): "We take the view that under international law a state has the right to land troops in foreign territory to protect its nationals in an emergency if necessary."

99. 19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 188, U.N. Doc. S/6062 (1964), reprinted in 12 M. Whiteman, *supra* note 88, at 211.

100. 19 U.N. SCOR (1174th mtg.) at 13, U.N. Doc. S/P.V. 1174 (1964), reprinted in 52 DEP'T. ST. BULL. 17 (1965).

101. 51 DEP'T. ST. BULL. 846 (1964).

102. See *supra* note 99. See also Cleveland, *The Evolution of Rising Responsibility*, 52 DEP'T. ST. BULL. 7, 9 (1965). For the Congolese note authorizing the operation, see *supra* text accompanying note 93.

103. A point repeatedly made by Professor Brownlie and other critics of the doctrine of humanitarian intervention. See, e.g., Brownlie, *Thoughts on Kind-Hearted Gunmen*, in *Humanitarian Intervention and The United Nations* 139, 143-44 (R. Lillich ed. 1973).

104. These requirements have been summarized conveniently by Farer, *The Regulation of Foreign Intervention in Civil Armed Conflict*, 142 Recueil Des Cours (Hague Academy of International Law) 297, 394 (1974-II), as follows:

- (1) that there be an immediate and extensive threat to fundamental human rights;
- (2) that all other remedies for the protection of those rights have been exhausted to the extent possible within the time constraints posed by the threat;
- (3) that an attempt has been made to secure the approval of appropriate authorities in the target State;
- (4) that there is a minimal effect on the extant structure of authority (e.g., that the intervention not be used to impose or preserve a preferred regime);
- (5) that the minimal requisite force be employed and/or that the intervention is not likely to cause greater injury to innocent persons and their property than would result if the threatened violation actually occurred;
- (6) that the intervention be of limited duration; and
- (7) that a report of the intervention be filed immediately with the Security Council and where relevant, regional organisations.

105. 19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 189, U.N. Doc. S/6062 (1964), reprinted in 12 M. Whiteman, *supra* note 88, at 212-13.

106. See *supra* text at notes 80-90. "It is clear from the statements of the rescued persons themselves that further delay would have meant an even greater number of wanton and tragic killings. Time, for the lives of those people, was calculable only in minutes." 19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 195, U.N. Doc. S/6068 (1964) (Letter from Ambassador Stevenson to the President of the Security Council), *reprinted in* American Foreign Policy—Current Documents 1964, at 771 (1967). *Accord*, 19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 194, U.N. Doc. S/6067 (1964) (Letter from the Belgian Ambassador to the President of the Security Council): "All [rescued hostages] stress their conviction that they owe their lives only to the intervention *in extremis* of the Belgian paratroops."

See also the statement by Under Secretary of State Ball that prior to the airdrop "the situation was deteriorating to the point where we felt that it couldn't hold very much longer, and, in fact, Mr. Hoyt, who is our consul in Stanleyville and who has been one of the hostages for 3 months, has told us, first of all, that it was the opinion of everyone there that if this had gone 24 hours longer they would all have been executed—they were going to be lined up against the wall—and, secondly, that only the airdrop saved their lives." 51 DEPT. ST. BULL. 843 (1964).

107. A quarter century ago the present writer, perhaps unduly reflecting official US reaction, remarked that "the criticism heaped upon the United States for its role in this humanitarian venture comes as something of a surprise." R. Lillich, *Intervention to Protect Human Rights*, 15 McGill L.J. 205, 214 (1969) *But see* R. Falk, *Legal Order in a Violent World* 326 (1968).

108. These factors are taken from an excellent review of the UN debates found in a Note, *The Congo Crisis 1964: A Case Study in Humanitarian Intervention*, 12 Va. J. Int'l L. 261, 266-74 (1972), written by Howard L. Weisberg, Esq., Class of 1973, University of Virginia School of Law and Member of the Maryland and District of Columbia Bars, under the supervision of the present writer.

109. The following quote from a speech by the delegate from the Congo Republic (Brazzaville) is illustrative: "Why, in a conflict in which the Congolese are fighting between themselves, should there be no concern for the safety of the civilian population in general and why should the fate of the whites be the sole consideration?" 19 U.N. SCOR (1170th mtg.) at 14, U.N. Doc. S/P.V. 1170 (1964). One writer, reviewing the operation, has suggested, somewhat cynically, that "[t]he State Department's humanitarian concerns were aroused only when it appeared that Americans and Europeans might be the next victims." R. Garnet, *supra* note 15, at 249. See *infra* text at note 111.

110. They were slain, of course, not by the Belgian paratroopers, but by the white mercenary-led ANC that reached Stanleyville several hours after the airdrop began. The time of the ANC's arrival has been put at "soon after nine o'clock" by I. Colvin, *supra* note 75, at 194, and as "[a]t 10:30 a.m." by D. Reed, *supra* note 75, at 261. See *infra* text at and accompanying note 138.

111. Garnet's criticism of the United States' slowness in acting (see *supra* text accompanying note 109) seems particularly unfair in view of his caustic comments on the rescue operation itself. See R. Garnet, *supra* note 15, at 250-51. One can imagine what his reaction to an earlier humanitarian intervention would have been!

112. 19 U.N. SCOR (1173d mtg.) at 12, U.N. Doc. S/P.V. 1173 (1964). See generally *supra* text at notes 95-97.

113. See *supra* text at note 79. See also *supra* text at notes 86-90.

114. 19 U.N. SCOR (1175th mtg.) at 23, U.N. Doc. S/P.V. 1175 (1964).

115. When Attwood informed President Kenyatta of Kenya, who was chairman of the OAU Ad Hoc Commission on the Congo, "that the paratroopers might have to mount a humanitarian rescue operation as a last resort," the latter "look pained" and replied that "that would be very bad. . . ." W. Attwood, *supra* note 79, at 214. Later, in response to Attwood's plea to remain friends, he stated frankly that "[w]e can be friends. . . only if you stop being friends with Tshombe." *Id.* at 215.

116. See *supra* text at and accompanying note 102.

117. W. Attwood, *supra* note 79, at 218-19. Omitted at the end of the second paragraph of the above quote are parentheses containing the following sentence: "The orgy of looting and killing that followed the capture of Stanleyville by the ANC was so bad that the Belgian paratroop commander was glad to pull his men out of the city for fear they'd start fighting the mercenaries." *Id.* at 218. See *infra* text at and accompanying note 138.

118. R. Falk, *supra* note 107, at 326. In a clause preceding the extract quoted in the text, Falk notes that the adverse African reaction "does not mean that the United States should have refused to join in the rescue. . . ." *Id.* Elsewhere he observes that "[t]he case for intervention is not altogether capricious since the alternative may be to allow one's countrymen to be slaughtered without cause." *Id.* at 329. Although his view is less than crystal clear on this point, it appears that Falk is troubled less by the legality than by "the appearances of the Stanleyville Operation. . . ." *Id.* at 331. Cf. Grundy, *supra* note 73, at 251, who affirms the operation's legality more explicitly, but who nevertheless criticizes it from a political perspective, concluding that the United States "was fortunate in getting off as easily as it did in the Congo." *Id.* at 255.

119. See generally S. Weissman, *American Foreign Policy in the Congo 1960-1964*, at 226-46 *passim* (1974).

120. Whether it actually was a by-product of the rescue operation or one of its principal objectives is discussed at *infra* notes 142-146.

121. Grundy, *supra* note 73, at 251.

122. 19 U.N. SCOR (1174th mtg.) at 13, U.N. Doc. S/P.V. 1174 (1964), *reprinted in* *American Foreign Policy—Current Documents 1964*, at 777 (1967).

123. 19 U.N. SCOR (1173d mtg.) at 3-10, U.N. Doc. S/P.V. 1173 (1964). See *supra* text accompanying note 98.

124. 19 U.N. SCOR (1175th mtg.) at 3-4, U.N. Doc. S/P.V. 1175 (1964). See *supra* text accompanying note 98.

125. 19 U.N. SCOR (1183d mtg.) at 14, U.N. Doc. S/P.V. (1964). "Bolivia thinks that this was clearly a rescue operation, regrettable from the political point of view of sovereignty, but essential morally and duly authorized by the legally responsible Government of the Congo."

126. 19 U.N. SCOR (117th mtg.) at 19-20 U.N. Doc. S/P.V. 1177 (1964):

Such an operation finds its justification in the very objective which inspired it, which was to frustrate the perpetration of a crime, recognized as such by international law and by all the norms of conduct governing relations among States, which consists in the use of innocent civilians as hostages, as a bargaining point in wartime. . . . Therefore the humanitarian action taken to save the lives of the hostages seems legitimate to the delegation of Brazil, both in regard to its means and to its motivations.

127. 19 U.N. SCOR (1177th mtg.) at 26, U.N. Doc. S/P.V. 1177 (1964): "In the circumstances, my delegation is fully satisfied with the statements made in this Council by the representatives of Belgium and the United States that the operation was necessary to save the lives of the hostages, and that it was a humanitarian mission, and nothing more."

128. See *infra* text at notes 135-141.

129. "[I]t is repugnant to use as a pretext the uncertainty of the fate of some 1,500 foreigners in order to attack a country and to interfere in its domestic affairs. . . ." 19 U.N. SCOR (1178th mtg.) at 10, U.N. Doc. S/P.V. 1178 (1964) (Morocco). Several other States used the same or similar language. "The use of the term 'pretext,' " as has been pointed out, actually "suggests a recognition of the concept of humanitarian intervention [or forcible protection], for such a charge tacitly admits the legitimacy of the subject matter to which that pretense is applied." Note, *supra* note 108, at 269. See *infra* text at notes 142-146.

130. Attempting to rebut an earlier assertion of this thesis, see R. Lillich, *Humanitarian Intervention: A Reply to Dr. Brownlie and a Plea for Constructive Alternatives*, in *Law and Civil War in The Modern World* 229, 243 (J.N. Moore ed. 1974), Professor Farer states that “to have legal significance for [Lillich, the African complaints] would apparently have to have assumed the form of flat claims of illegality.” Farer, *supra* note 104, at 396. This characterization of the present writer’s views obviously goes too far and reveals Farer, as is his wont upon occasion, once again setting up a straw man for easy demolition. Surely the fact that only a handful of States condemned the rescue operation on legal grounds is not *entirely* irrelevant to an assessment of its legality under international law, which after all is the issue at hand.

131. S.C. Res. 199, 19 U.N. SCOR Supp. (Oct.-Dec. 1964) at 328, U.N. Doc. S/6129 (1964) (100-1), *reprinted in* American Foreign Policy—Current Documents 1964, at 786 (1967).

132. Replying to a suggestion by the Ghanaian delegate that the resolution impliedly condemned the rescue operation, Ambassador Stevenson stated: “I think it is quite clear from the statements made during this debate that the overwhelming majority of the members of this Council do not so interpret that paragraph of the resolution. The fact that my delegation has voted for the resolution as amended makes it perfectly clear that we do not so interpret it.” 19 U.N. SCOR (1189th mtg.) at 12, U.N. Doc. S/P.V. 1189 (1964), *reprinted in* American Foreign Foreign-Current Documents 1964, at 789 (1967).

Farer faults the present writer for “[finding] comfort in the failure of the Security Council to condemn Humanitarian Intervention as such or the United States and Belgium, as if Security Council condemnation of those States were a conceivable option in the world of 1964.” Farer, *supra* note 104, at 396-97. His point may be well-taken, but it does not take one very far. The fact that the Security Council condemned neither the operation nor the States undertaking it certainly has *some* relevance. Even in “the world of 1964” the censure of a permanent member of the Security Council for an illegal use of force was not out of the question, as witness the formal condemnation of Great Britain the same year for a reprisal it had undertaken against Yemen. S.C. Res. 188, 19 U.N. SCOR Supp. (Apr.-Sept. 1964) at 9, U.N. Doc. S/5650 (1964) (9-0-2). See Lillich, *supra* note 130, at 244.

133. “After the Congo debates, the legal principle of Article 2(4) remains, but what that Article means has been altered by political evaluation. There is now an unwillingness on the part of the world community to read Article 2(4) as an absolute prohibition on the use of force in humanitarian intervention.” Note, *supra* note 108, at 274.

134. Compare the fifth and fourth requirements, respectively, of the traditional doctrine of humanitarian intervention, as summarized by Farer in the *supra* text accompanying note 104.

135. D. Reed, *supra* note 75, at 268.

136. According to Ambassador Stevenson, “only a very small number of rebels were killed as a consequence of that operation and these only in self-defense or because they were at the moment resisting attempts to rescue the hostages.” 19 U.N. SCOR (1174th mtg.) at 12, U.N. Doc. S/P.V. 1174 (1964), *reprinted in* American Foreign Policy—Current Documents 1964, at 776 (1967). Cf. D. Reed, *supra* note 75, at 259: “As far as anyone could tell, none of the Simbas who carried out the massacre was killed by the paratroopers. They all ran at the last minute.” Compare *infra* text at and accompanying note 138.

137. *Id.* at 264. “Two men were wounded by gunfire and three were injured in the drop. None of the American airmen was hurt.” *Id.*

138. See *supra* text accompanying note 117. See also D. Reed, *supra* note 75, at 264:

The mercenaries and the ANC were running wild in Stanleyville. They shot every Congolese they saw. They looted homes and stores. . . . A mercenary patrol paid a visit to the city zoo. They found that the lions were ravenously hungry. Gleefully, they released the lions, who ran off into the city.

Colonel Laurent, the mild-mannered commanding officer of the paratrooper regiment, was horrified. "I never saw such a bloodbath in my life," he said. "No prisoners were taken. They were shot up, cut up or beaten to death. It was brutal."

Laurent did not want the young paratroopers to see what was going on. He ordered his men to return to the airfield as soon as they had rescued everyone.

139. *Id.* at 273.

140. Although one "revisionist" historian, misciting Reed for support, has contended that the airdrops themselves "resulted in the execution of perhaps 300 whites. . . ." S. Weissman *supra* note 119, at 248.

141. In response to a complaint about "the terrible massacre" that occurred at Stanleyville, the British minister responsible replied that "[i]n my view, if the troops which were advancing overland to Stanleyville had advanced without the intervention of this aerial operation, I am convinced that the loss of life would have been much greater than it has been." 702 Parl. Deb., H.C. (5th ser.) 1278-79 (1964) (Mr. Thomson). For further speculations pro and con, see S. Weissman, *supra* note 119, at 253.

Colvin concludes that "[a] parachute drop was probably necessary," but that instead of the tactics that were adopted "[t]he parachute drops should have been planned in triple strength within hours of each other at Stanleyville, Paulis and Bunia." I. Colvin, *supra* note 75, at 196. As events transpired, the delay in mounting the Paulis airdrop caused many additional casualties there; moreover, a contemplated airdrop on Bunia never took place. D. Reed, *supra* note 75 at 271-72.

142. See, e.g., R. Garnet, *supra* note 15, at 250; R. Falk, *supra* note 107, at 333; Farer, *supra* note 104, at 394-96; Grundy, *supra* note 73, at 250-52; and S. Weissman, *supra* note 119, at 249-51.

143. See, e.g., Professor Frey-Wouters, *Remarks*, in *Humanitarian Intervention and the United Nations*, *supra* note 103, at 58 n.5.

144. Even Weissman acknowledges that "[t]he rescue motivation seems to have been predominant. . . ." S. Weissman, *supra* note 119, at 252 n.106. See also *id.* at 251, where he contends that a "secondary objective" of the rescue operation was to help the ANC recapture Stanleyville.

145. *Id.* at 250. See *supra* text accompanying note 106.

146. See *supra* text at note 122.

147. For background information about the crisis as well as detailed descriptive accounts of it, see T. Draper, *The Dominican Revolt* (1968); D. Kurzman, *Revolt of the Damned* (1965); A. Lowenthal, *The Dominican Intervention* (1972); J. Slater, *Intervention and Negotiation* (1970); and T. Szulc, *Dominican Diary* (1965). See also J. Moreno, *Barrios In Arms* (1970). For differing views on the legal issues involved, compare Fenwick, *The Dominican Republic: Intervention or Collective Self-Defense*, 60 *Am. J. Int'l L.* 64 (1966), with Bohan, *The Dominican Case: Unilateral Intervention*, 60 *id.* 809 (1966). For a useful monograph, prepared under the supervision of the present writer and drawn upon throughout this Section, see J. Tuttle, *The Case Study of the Dominican Crisis—1965: The Legality of the United States Action* (1969) (unpublished thesis, U.S. Naval War College Library).

148. T. Szulc, *supra* note 147, at 13. How much assistance actually was given, as opposed to being authorized, is not entirely clear. See J. Slater, *supra* note 147, at 13-14 and accompanying note.

149. For a sampling of opposition criticism—reasoned, biased and vitriolic—see J. Moreno, *supra* note 147, at 18-19.

150. Slater absolves Bosch of serious charges of maladministration, observing that "it is far from clear that anyone could have survived [as President], at least without making such far-reaching concessions to the forces of reaction as to make survival almost pointless. As Jose Figueres has put it, 'God Himself would have done a bad job in the Dominican Republic.'" J. Slater, *supra* note 147, at 15.

151. *American Foreign Policy: Current Documents 1963*, at 322 (1967).

152. *Id.* at 359. The reversal of policy was in train long before President Kennedy's assassination. "Thus, the usual interpretation of this period, seeing great significance in the fact that Johnson recognized the Dominican junta only three weeks after the assassination of Kennedy and stressing the sharp contrast between the Kennedy and Johnson policies toward the coup, is quite wrong." J. Slater, *supra* note 147, at 16-17.

153. *Id.*, at 19.

154. Indeed, US Ambassador W. Tapley Bennett, who had become increasingly concerned over the deteriorating situation in the Dominican Republic, wrote prophetically to the Department of State in early April that "[l]ittle foxes, some of them red, are chewing at the grapes. . . . A diminution of our effort or failure to act will result in a bitter wine." *Quoted in* R. Stebbins, *The United States In World Affairs 1965*, at 74-76 (1966). Both Bennett and Reid were in receipt of intelligence reports about planned coups, but they did not anticipate one before June, when campaigning for the presidential election was scheduled to start. Center for Strategic Studies (Georgetown University), *Dominican Action—1965: Intervention or Cooperation?*, at 9 (1966).

155. J. Slater, *supra* note 147, at 19.

156. *Id.* at 22.

Until that point, the civilians working with the constitutionalists were mostly middle-class, college-educated students, lawyers, engineers, technicians, and young businessmen, frustrated by a system in which they had no purpose and no meaningful future. With the passing out of the arms large sectors of the urban lower class joined the ranks, giving the movement something of a mass base as well as providing most of the *actual combatientes*.

157. The case of General Wessin, who commanded most of the Dominican Republic's tanks and 1,500 of its Army's crack troops, best illustrates the response of the military leaders to Reid's appeal. Neither the tanks nor the troops moved from the San Isidro Air Base while Reid remained in office. Center for Strategic Studies (Georgetown University), *supra* note 154, at 11.

158. Draper, *supra* note 147, at 55-56.

159. *Id.* at 57; J. Slater, *supra* note 147, at 22.

160. J. Slater, *supra* note 147, at 23 note.

161. T. Draper, *supra* note 147, at 57.

162. In 1968, Antonio Martinez Francisco, the Secretary General of the PRD during the revolution, said that the original agreement between Bosch and sympathetic military men called for a military junta to rule the country temporarily after the overthrow of the Reid government, pending the holding of new elections within ninety days. Once Reid had fallen, Martinez charges, Bosch ignored the agreement and called for a return to 'constitutionality,' that is, the immediate restoration of his Presidency.

J. Slater, *supra* note 147, at 23 note.

163. *Id.* at 23-24.

164. *Id.* at 25.

165. See *infra* text at notes 172-173. President Johnson, relying upon such reports, subsequently claimed that "some 1,500 innocent people were murdered and shot, and their heads cut off . . ." Johnson, *An Assessment of the Situation in the Dominican Republic*, 53 DEPT. ST. BULL. 19, 20 (1965). As Slater observes:

not only was not a single American attacked but there were remarkably few constitutionalist atrocities of any sort. What few attacks did occur were highly selective, aimed almost exclusively at a few extreme rightists, and then mainly at their

property. Indeed, many more innocent citizens died as a result of the Air Force bombing and strafing than at the hands of the constitutionalists.

J. Slater, *supra* note 147, at 33.

166. For a graphic description of the scene in Santo Domingo at about this time, see Szulc, *supra* note 147, at 18:

[I]n the ancient Dominican capital blood was flowing freely. Rebel army units and civilian bands were firing across the city at the positions of the Wessin forces. Planes streaked overhead, machine gunning the streets and dropping bombs on the rebels and the civilian population. Casualties were mounting and hospitals were filling up with the wounded.

167. *Id.* at 18 (four day period of April 25-28); J. Moreno, *supra* note 147, at 29 (four day period of April 27-30).

168. T. Szulc, *supra* note 147, at 20-21.

169. A. Lowenthal, *supra* note 147, at 85.

170. Johnson, *supra* note 165, at 21. "The Commander of Task Group 44.9, Captain Dare, had been ordered as early as 25 April to proceed to the vicinity of the Dominican Republic and prepare to evacuate approximately 1,200 United States nationals if this action should become necessary." Tuttle, *supra* note 147, at 28, citing Dare, *Dominican Diary*, 91 US Naval Institute Proc. 37, 38 (Dec. 1965). Moreover, on the following day—26 April—the Department of Defense had put on alert a Marine brigade at Camp Lejeune and the 82nd Airborne Division at Fort Bragg. T. Szulc, *supra* note 147, at 29.

171. See generally T. Szulc, *supra* note 147, at 31-34, and Dare, *supra* note 170, at 38-41.

172. J. Slater, *supra* note 147, at 33.

173. Szulc concludes that:

[T]he embassy's reports on this incident must have been greatly exaggerated because President Johnson later spoke of armed rebels running up and down the hotel's corridors firing into rooms and closets. Actually, nothing of the sort had occurred, but this overwrought reporting by the embassy evidently helped increase the President's concern and pushed the United States closer to the ultimate decision to intervene militarily in the Dominican Republic.

T. Szulc, *supra* note 147, at 33-34. Other accounts reinforce Szulc's views. See T. Draper, *supra* note 147, at 105-06, and A. Lowenthal, *supra* note 147, at 90 & 204 n.27.

174. US policy even before the revolution had frowned on the return of Bosch to the Presidency, and after the revolution began nowhere was that policy more faithfully implemented than at the US Embassy:

[T]he State Department had assigned the two top embassy positions to conservatives who instinctively distrusted not only Bosch but the PRD in general, and who had almost no ties with even the moderate left. 'Tap didn't seem to know anyone to the left of the Rotary Club,' one embassy official is quoted as remarking, while William Connett, the Deputy Chief of Mission, 'seemed to be ill at ease with people who were not correctly dressed.'

J. Slater, *supra* note 147, at 25.

175. Although there is absolutely no doubt that Bennett refused US mediation and made the accusations mentioned in the text [accusations that PRD officials had allowed "communists" to take advantage of the movement and had tolerated looting and atrocities], the former Ambassador has denied he told the constitutionalists to surrender. However, not only the constitutionalists but Martin [J. Martin, *Overtaken By Events* 653 (1966)] maintain that he did so.

J. Slater, *supra* note 147, at 227 n.24.

176. *Id.* at 29.

177. A participant at the now famous embassy confrontation vividly recalls that at the moment when Bennett labeled the revolution ‘Communist’ and told the leaders to surrender, a big, barrel-chested man whom he had never seen before jumped to his feet and said, ‘Son of a bitch! I know what I’m going to do.’ It was Francisco Caamano, and he was not going to strangle Bennett on the spot as the startled assemblage for a moment feared, but was on his way to the bridge to rally his forces for a last-ditch stand.

Id. at 29-30.

178. For a succinct account of this turn of events, see *id.* at 30.

179. T. Szulc, *supra* note 147, at 42.

180. *Id.* at 44.

181. *Id.* Needless to say, in making their second request for US intervention the junta was motivated by factors beyond just the protection of US nationals. One such factor was their own personal safety. “That night, when the first contingents of the 82nd Airborne Division arrived at San Isidro, they found the ‘strong man’ of the Dominican armed forces, the dreaded Wessin y Wessin, in tears: ‘If you had not come,’ he cried, ‘they would have killed us.’” J. Slater, *supra* note 147, at 30-31.

182. A. Lowenthal, *supra* note 147, at 101-02. See *infra* text accompanying note 186.

183. *Id.* at 102-03; T. Draper, *supra* note 147, at 118-21; and J. Slater, *supra* note 147, at 30.

184. Speaking of this decision at a news conference on 17 June 1965, the President noted that “[i]t was a decision we considered from Saturday until Wednesday evening. But once we made it, in the neighborhood of 6:00 or 6:30 that evening, they landed within one hour.” Johnson, *supra* note 165, at 21.

185. Dare, *supra* note 170, at 42. The President, according to one commentator, authorized the landing of only 500 Marines. A. Lowenthal, *supra* note 147, at 103. Other commentators give the number of Marines landed that evening as about 400. T. Szulc, *supra* note 147, at 73.

186. 52 DEPT. ST. BULL. 738 (1965), American Foreign Policy: Current Documents 1965, at 956 (1968) [hereinafter cited as American Foreign Policy - 1965]. Actually, although Colonel Benoit had made such representations to Ambassador Bennett, they were not contained in the junta’s written request. See *supra* text at notes 180-182. Their omission so concerned Under Secretary of State Thomas Mann that, following President Johnson’s decision to land US troops, he purportedly called Bennett and asked him to obtain from Benoit “a written statement for the record asking for US military assistance to restore order and specifically mentioning the need to protect American lives.” A. Lowenthal, *supra* note 147, at 104. Accordingly, by early Thursday morning, 29 April 1965, Benoit dispatched a follow-up communication to the US Embassy:

Regarding my earlier request, I wish to add that American lives are in danger and conditions of public disorder make it impossible to provide adequate protection. I therefore ask you for temporary intervention and assistance in restoring order in this country.

Senate Comm. on the Judiciary, 89th Cong., 1st Sess., Organization of American States Combined Reports on Communist Subversion 114 (Comm. Print 1965).

As Szulc notes—and as Mann, of course, well knew—Benoit’s request, “if nothing provided the legal justification for a United States landing if Washington chose to play it that way. It was somewhat reminiscent of the 1958 situation in Lebanon, where United States Marines landed at the request of President Camille Chamoun to help him restore order.” T. Szulc, *supra* note 147, at 44. Compare *supra* text at and accompanying notes 37, 50 & 93, and *infra* text at and accompanying note 204.

187. 52 DEPT. ST. BULL. 738 (1965), American Foreign Policy-1965, *supra* note 186, at 956.

188. T. Szulc, *supra* note 147, at 73.

189. *Id.* at 78.

190. 52 DEPT. ST. BULL. 742 (1965), American Foreign Policy - 1965, *supra* note 186, at 956. According to the President, US troops eventually evacuated 5,600 people from 46 countries from the Dominican Republic. Johnson, *supra* note 165, at 20.

191. 52 DEPT. ST. BULL. 742, American Foreign Policy - 1965, *supra* note 186, at 956-57. The US Representative to the OAS, Ellsworth Bunker, had made a similar argument before the OAS Council of Ministers earlier the same day. *Id.* at 957-58.

192. T. Szulc, *supra* note 147, at 90.

193. 52 DEPT. ST. BULL. 743 (1965), American Foreign Policy - 1965, *supra* note 186, at 959.

194. *Id.* at 745, American Foreign Policy - 1965, *supra* note 186, at 962-63.

195. *Id.* at 746, American Foreign Policy - 1965, *supra* note 186, at 963.

196. *Id.*, American Foreign Policy - 1965, *supra* note 186, at 963-64.

197. For the text of this resolution, see Senate Comm. on For. Rels., 89th Cong., 1st Sess., Background Information Relating to the Dominican Republic 52 (Comm. Print 1965).

198. For the text of this resolution, see 52 DEPT. ST. BULL. 862 (1965). The vote on the resolution, which required a two-thirds majority, was 15 for, 5 against (Chile, Ecuador, Mexico, Peru and Uruguay), and one abstention (Venezuela). *Id.*

199. N.Y. Times, Sept. 23, 1966, at 3, col 1.

200. See, e.g., the remarks of the Legal Adviser along these lines in Meeker, *The Dominican Situation in the Perspective of International Law*. 53 DEPT. ST. BULL. 60, 62 (1965):

We landed troops in the Dominican Republic in order to preserve the lives of foreign nationals — nationals of the United States and many other countries. We continued our military presence in the Dominican Republic for the additional purpose of preserving the capacity of the OAS to function in the manner intended by the OAS Charter.

201. See generally Humanitarian Intervention and the United Nations, *supra* note 103, at 76-82 *passim*. There is no doubt that “the US attempted to legitimize its military action by securing approval of the OAS.” Frey-Wouters, *The Prospects for Regionalism in World Affairs*, in 1 *The Future of the International Legal Order* 463, 536 (R. Falk & C. Black eds. 1969). Whether the various OAS resolutions constituted legitimation or merely acquiescence, however, is another matter. Prof. Frey-Wouters believes the Dominican intervention an example of how the United States often has sought OAS approval to provide “a multilateral legitimacy for essentially unilateral US action.” *Id.* at 539.

202. See e.g., A. Thomas & A. Thomas, *Working Paper*, in *The Dominican Crisis 1965 - Legal Aspects 1* (Hammarskjöld Forum, J. Carey ed. 1967); McLaren, *The Dominican Crisis: An InterAmerican Dilemma*, 4 Canadian Y.B. Int'l L. 178 (1966); and Nanda, *The United States Action in the 1965 Dominican Crisis: Impact on World Order - Part II*, 44 Denv. L.J. 225 (1967).

203. On 21 May 1965, the United States, Great Britain, Bolivia, China, Netherlands, and Northern Ireland all voted against a Soviet Union-sponsored resolution initially submitted to the Security Council on 4 May that would have condemned what it labeled US armed intervention in the internal affairs of the Dominican Republic. 20 U.N. SCOR (1214th mtg.) at 22, U.N. Doc. S/6328 (1965). Great Britain stated it “fully understood the reasons for the United States emergency action” and thanked the United States for evacuating British subjects from the country, 2 UN Monthly Chron., No. 6 at 6 (1965), while France, acknowledging US interest in protecting its nationals there, cautioned that “such operations must be limited in objective, duration, and scale, or run the risk of becoming armed intervention, for which there appeared to be no need in this case.” *Id.* at 7. France’s position seemed to recognize the necessity of the US action, while gently questioning its proportionality. On these two limitations on the right of forcible protection, see “Nanda, *The United*

States Action in the Dominican Crisis: Impact on World Order - Part I, 43 Denv. L.J. 439, 462-71 (1966), who concludes that “while the necessity of the [US] action can be defended on humanitarian grounds, the proportionality cannot be justified.” *Id.* at 479. Compare *infra* text at note 209.

204. 111 Cong. Rec. 23855, 23857 (1965):

In midafternoon of April 28 Col. Pedro Bartolome Benoit, head of a junta which had been hastily assembled, asked again, this time in writing, for US troops on the ground that this was the only way to prevent a Communist takeover; no mention was made of the junta's inability to protect American lives. This request was denied in Washington, and Benoit was thereupon told that the United States would not intervene unless he said he could not protect American citizens present in the Dominican Republic. Benoit was thus told in effect that if he said American lives were in danger the United States would intervene. And that is precisely what happened.

Compare *supra* text accompanying note 186.

205. 111 Cong. Rec. 23857 (1965).

206. *Id.* at 23858.

207. *But see, e.g.*, Fenwick, *supra* note 147.

208. Nanda, *supra* note 203, at 471.

209. *Id.* at 472. Compare *supra* text accompanying note 203.

210. Friedmann, *United States Policy and the Crisis of International Law*, 59 Am. J. Int'l L. 857, 867 (1965), citing Waldock, *The Regulation of the Use of Force by Individual States in International Law*, 81 *Recueil des Cours* (Hague Academy of International Law) 451, 467 (1952).

211. Friedmann, *supra* note 210, at 869. He subsequently reiterated and elaborated his views as follows:

There was a general consensus on the original US position of intervening to protect American lives and property and the sending in of a battalion; that is, it can be justified . . . in the limited sense that it is strictly limited to nationals, and therefore it is an extension of national interests intervention. That had been previously stated by international lawyers as a justifiable cause of intervention. . . .

Then came the radical shift which Johnson made by his famous statement that totally altered the situation and made it clear, I think, beyond a shadow of a doubt, that the subsequent massive and prolonged intervention was contrary not only to the U.N. Charter but to the OAS Charter; namely, intervention in the internal affairs of another small power by a big power, in order to effect a change of political regime.

Remarks, in *Humanitarian Intervention and the United Nations*, *supra* note 103, at 81-82.

212. Lillich, *Remarks*, in *id.* at 10:

When you are talking about evacuating citizens, this is a limited objective, and, of course, you must evacuate them as rapidly as possible. Applying this to the Dominican context, . . . it would, I would assume, justify perhaps the first day or so, but it wouldn't justify the 22,000 Marines for six months.

For the views of other participants, *see id.* at 76-82.

213. *See* text accompanying note 211.

214. For a particularly outspoken warning, *see* Rogers, *Remarks*, in *Humanitarian Intervention and the United Nations* *supra* note 103, at 72:

We see the constant misuse of the excuse of protection of one's own nationals for great power purposes, most recently, of course, in the movement of the Sixth Fleet into the Bay of Bengal—which was justified for a short moment by Kissinger's preposterous idea that it

was going to be used for the protection of US nationals—a shocking rationalization for a great power ploy.

215. R. Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 Iowa L. Rev. 325, 344 (1967).

216. For background information about the hostage crisis as well as detailed descriptive accounts of it, see, e.g., J. Bill, *The Eagle and the Lion: The Tragedy of American-Iranian Relations* (1988); W. Christopher et al., *American Hostages in Iran: The Conduct of a Crisis* (1985) [hereinafter cited as Christopher]; G. Sick, *All Fall Down: America's Tragic Encounter with Iran* (1985). See also *The Iranian Hostage Crisis: A Chronology of Daily Developments*, Report Prepared for the Committee on Foreign Affairs, US House of Representatives, by the Congressional Research Service, Library of Congress, 97th Cong., 1st Sess. (1981).

217. Case Concerning United States Diplomatic and Consular Staff in Tehran (US v. Iran) (Merits), 1980 I.C.J. 3, 30-33 (Judgment of May 24) [hereinafter cited as Hostages Case-Merits].

218. *Id.* at 33-35. On 18-20 November 1979, however, Iran did release 13 women and black hostages “not considered spies.” Their release was a unilateral Iranian gesture, not the result of negotiations. “[It] was probably seen in Tehran as a step to portray the regime as humanitarian and intent only on exposing the US government and its ‘nest of spies.’” Saunders, *Diplomacy and Pressure. November 1979-May 1980*, in Christopher, *supra* note 216, at 79. Although another hostage who became ill was released in July 1980, Saunders, *The Crisis Begins*, in Christopher, *supra*, at 68, Iran continued to hold the remaining 52 hostages until their release on 20 January 1981 following the so-called Algiers Accords, 20 I.L.M. 223 (1981).

219. The Ayatollah Khomeini, the de facto head of Iran's revolutionary government, endorsed the students' demands in a decree issued on 17 November expressly declaring that “the premises of the Embassy and the hostages would remain as they were until the United States had handed over the former Shah for trial and returned his property to Iran.” Hostages Case-Merits, *supra* note 217, at 34.

220. He learned of their trip from a report on the NBC evening news that Press Secretary Jody Powell had attempted to dissuade the network from carrying. Saunders, *Diplomacy and Pressure*, in Christopher, *supra* note 216, at 76. Saunders is justifiably critical of NBC's action, taken despite the knowledge that it might jeopardize a sensitive mission.

221. *Id.* at 76-77.

222. S.C. Res. 457, 34 U.N. SCOR, Res. & Dec. at 24, U.N. Doc S/RES/457 (1979).

223. S.C. Res. 461, 34 U.N. SCOR, Res. & Dec. at 24-25, U.N. Doc. S/RES/461 (1979). Eleven States voted for the resolution, with the Soviet Union, Czechoslovakia, Kuwait and Bangladesh abstaining. 80 DEPT. ST. BULL. 68 (Feb. 1980).

224. The text of the draft resolution may be found in 80 DEPT. ST. BULL. 70-71. Ten States voted for the resolution, the Soviet Union and the German Democratic Republic voted against it, Bangladesh and Mexico abstained, and China did not participate. *Id.*

225. Case Concerning United States Diplomatic and Consular Staff in Tehran (US v. Iran) (Provisional Measures), 1979 I.C.J. 7, 12 (Order of Dec. 15) [hereinafter Hostages Case-Provisional Measures]. See generally Mendelson, *Interim Measures of Protection and the Use of Force by States*, in *The Current Legal Regulation of the Use of Force* 337 (A. Cassese ed. 1986).

226. Hostages Case-Provisional Measures, *supra* note 225, at 21.

227. *Id.*

228. See *supra* text at notes 222-223.

229. They are described in considerable detail in Saunders, *Diplomacy and Pressure*, in Christopher, *supra* note 216, at 102-45.

230. Hostages Case-Merits, *supra* note 217, at 21.

231. See Saunders, *Diplomacy and Pressure*, in Christopher, *supra* note 216, at 135:

After an 8-3 vote in the Revolutionary Council, the issue was taken to Khomeini on April 6. Confirmed reports told us that Khomeini had asked whether the recommendation of the Revolutionary Council [to transfer the hostages] was unanimous. When he was told that there were three negative votes—Ayatollah Beheshti and two other clerics—Khomeini refused to approve the Council's recommendation.

232. *Id.*

233. For inside descriptions of the rescue operation and why it failed, see C. Beckworth & D. Knox, *Delta Force* (1983); P. Ryan, *The Iranian Rescue Mission: Why It Failed* (1985); Sick, *Military Operations and Constraints*, in Christopher, *supra* note 216, at 154-64. See also the 78 page study by the Special Operations Review Group, headed by Admiral J. L. Holloway, III, entitled "Rescue Mission Report," distributed in Washington, D.C., during the summer of 1980.

234. The first landed in the desert, with its crew being taken aboard another helicopter that proceeded to the landing site. The second returned to the *USS Nimitz*. Sick, *Military Operations and Constraints*, in Christopher, *supra* note 216, at 158.

235. *Id.* at 159. At 1 A.M. [EST] on 25 April the White House issued an announcement of the operation's failure, whose purpose and timing was "intended to insure that Iran would not mistake the events at Desert I for an invasion attempt and retaliate against the hostages." *Id.*

236. 80 DEPT. ST. BULL. 38 (June 1980).

237. *Id.* (emphasis added).

238. Letter from the President to the Speaker of the House and the President Pro Tempore of the Senate, 80 DEPT. ST. BULL. 42, 43 (Jun 1980).

239. 35 U.N. SCOR Supp. (Apr.-Jun.) at 28, U.N. Doc. S/13908 (1980) (Letter from Ambassador McHenry to the President of the Security Council).

240. Great Britain, Italy and the other European Community Member States supported the US action, as did Australia, Canada, Egypt, Israel and Japan. See N. Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity* 45-47 (1985). In addition to Iran, the Soviet Union, China and Cuba, as well as India, Pakistan and Saudi Arabia, condemned it. *Id.* at 47-48.

241. *But see* the Italian statement justifying the action under international law which, while "hardly a model of legal logicity," appears to reject the US self-defense argument and rest instead upon a State's purported inherent right to resort to self-help in such cases. *Id.* at 46. As explained by Professor Ronzitti, the Italian view seems to be that:

The 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. at 46-47. For evaluation of the viewpoint reflected in the Italian statement, one that has received support in the past from legal commentators, including the present writer, but has not attracted widespread, if any, support from States, see text at *supra* notes 54-57.

242. See *supra* text at note 227.

243. Dillard, Remarks, in *The Iran Crisis and International Law: Proceedings of the John Bassett Moore Society of International Law Symposium on Iran* 33 (R. Steele ed. 1981) [hereinafter cited as *The Iran Crisis and International Law*].

244. Hostages Case-Merits, *supra* note 217, at 43.

245. Stein, *Contempt, Crisis, and the Court: The World Court and the Hostage Rescue Attempt*, 76 Am. J. Int'l L. 499, 500 (1982). While the Court did not expressly find the rescue operation to be lawful, a slight tilt towards the recognition of a right of forcible protection of nationals abroad may be discernible, at least to some observers, from its failure to condemn the US action per se. See Lillich, *Remarks*, in *The Iran Crisis and International Law*, *supra* note 243, at 29 & 32. This point is noted and discussed in N. Ronzitti, *supra* note 240, at 61. In view of the Dissenting Opinions of Judges Morozov and Tarazi that condemned and challenged its legality respectively, see *infra* text at notes 254-257, one might have expected the Court to have denounced the rescue operation had a substantial number of the 13 judge majority believed that it violated the UN Charter. Thus, as in the case of the dog that did not bark in the Sherlock Holmes story, the Court's silence on the question of whether a right of forcible protection exists may not be entirely without significance. Cf. N. Ronzitti, *supra*, at 67-68:

The silence of the Court certainly does not imply that it acquiesces in the theory of the legality of a rescue mission through the use of force. However, the Court did not block the process leading to the creation of a new rule legitimizing recourse to force to protect nationals abroad, which would have been the case if it has censured the use of force in those circumstances.

246. Hostages Case-Merits, *supra* note 217, at 43.

247. Stein, *supra* note 245, at 500 n.7.

248. The two main and several other arguments are canvassed in this chapter.

249. Jeffery, *The American Hostages in Tehran: The I.C.J. and the Legality of Rescue Missions*, 30 Int'l & Comp. L. Q. 717, 723 (1981).

250. Hostages Case-Merits, *supra* note 217, at 18. See *supra* note 239.

251. *Id.* at 29.

252. *Id.* at 42.

253. Stein, *supra* note 245, at 500-501 n.8. This reading, of course, may require reassessment in light of the Court's later pronouncements on armed attack in the Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. US) (Merits), 1986 I.C.J. 14 (Judgment of June 27).

254. Hostages Case-Merits, *supra* note 217, at 55.

255. *Id.* at 56-57.

256. *Id.* at 64.

257. "One can only wonder, therefore, whether an armed attack attributable to the Iranian Government has been committed against the territory of the United States, apart from its Embassy and Consulates in Iran." *Id.* at 64-65.

258. *But see supra* text accompanying note 253.

259. Schweppe, *Iran: World Court Ruling of December 15, 1979 and May 24, 1980*, 14 Int'l Law. 529, 529 (1980).

260. Boyle, *International Law as a Basis for Conducting American Foreign Policy: 1979-1982*, 8 Yale J. World Pub. Order 103, 130 (1982). See also F. Boyle, *World Politics and International Law* 200 (1985).

261. Schweistfurth, *Operations to Rescue Nationals in Third States Involving the Use of Force in Relation to the Protection of Human Rights*, 23 German Y.B. Int'l L. 159, 179 (1980).

262. N. Ronzitti, *supra* note 240, at 12, 41-49, 57 & 61-62.

263. *Id.* at 65.

264. Jeffery, *supra* note 249, at 725.

265. *Id.* at 725-26, citing L. Henkin, *How Nations Behave* 142 (2d ed. 1979).

266. Schachter, *International Law in the Hostage Crisis*, in Christopher, *supra* note 216, at 332. Much of the material in Professor Schachter's chapter is taken, often *in haec verba*, from one of his earlier articles. See Schachter, *Self-Help in International Law: US Action in the Iranian Hostages Crisis*, 37 J. Int'l Affairs 231 (1984). See also Schachter, *The Right of States to Use Armed Force*, 82 Mich. L. Rev. 1620, 1628-33 (1984).

267. Schachter, *International Law in the Hostage Crisis*, in Christopher, *supra* note 216, at 334.

268. *Id.* at 331.

269. Professor Schachter introduces his discussion of the topic with the proposition that "article 51 seems on first blush to provide an adequate legal basis for the employment of military force after the seizure," *id.* at 328, and later devotes considerable space to considering whether the requirement of "necessity" for self-defense had been met, i.e. whether the hostages were actually in imminent danger at the time of the operation. See *infra* text at notes 284-285.

270. See e.g., O. Schachter, *International Law in Theory and Practice* 126, 128, 144 (1991).

271. See *supra* text at notes 56-66.

272. *But see* Lillich, *Remarks*, in *The Iran Crisis and International Law*, *supra* note 243, at 28 & 39; Stein, *supra* note 245, at 522-23 & n.99. See also Professor Schachter's consideration of the issue discussed *infra* at notes 277-285.

273. "The requirement of 'necessity' for self-defense is not controversial as a general proposition," Schachter, *International Law in the Hostage Crisis*, in Christopher, *supra* note 216, at 329, and it long has been thought applicable in the context of the forcible protection of nationals abroad. See, e.g., Waldock, *supra* note 210, at 467, who formulated three requirements governing the right of forcible protection as follows: "There must be (1) an imminent threat of injury to nationals, (2) a failure or inability on the part of the territorial sovereign to protect them and (3) measures of protection strictly confined to the object of protecting them against injury." He adds that "[e]ven under customary [international] law only an absolute necessity could justify an intervention to protect nationals." *Id.*

For an unusual but interesting examination of the necessity requirement arguing that necessity and not self-defense is the proper legal justification of the right of forcible protection, see Raby, *The State of Necessity and the Use of Force to Protect Nationals*, 26 Can. Y.B. Int'l L. 253 (1988).

274. Christopher, *Introduction*, in Christopher, *supra* note 216, at 12.

275. Paragraph 3 of the Preamble to the International Convention Against the Taking of Hostages, Dec. 17, 1979, G.A. Res. 34/146, 34 U.N. GAOR Supp. (No. 46) at 245, U.N. Doc. A/34/46 (1980), incorporates G.A. Res. 31/103, 31 U.N. GAOR Supp. (No. 39) at 186, U.N. Doc. A/31/39 (1977), which in Paragraph 4 of its Preamble contains the language quoted in the text.

276. See *infra* text at note 274.

277. Schachter, *International Law in the Hostages Crisis*, in Christopher, *supra* note 216, at 332.

278. *Id.*

279. Stein, *supra* note 245, at 522-23. In a footnote to the statement in the text, he goes one step further:

None of the documentation submitted to the Court suggested the existence of a new threat to the hostages; indeed, the US assertion that the mission had been carried out "in exercise of its inherent right of self-defense with the aim of extricating American nationals who have been and remain the victims of the Iranian armed attack on our Embassy," [1980] ICJ Rep. 3, para. 32, tends to negate the existence of a new threat to the hostages.

Id. at 523 n.99.

280. See *supra* note 236.

281. 80 DEPT. ST. BULL. 40 (June 1980).

282. *Id.*

283. See *supra* note 274.

284. Schachter, *International Law in the Hostage Crisis*, in Christopher, *supra* note 216, at 334.

285. *Id.* He pointedly adds: "Whether or not the rescue action was wise in a political and military sense is, of course, a different matter."