

# Chapter III

---

---

## State Practice During the Pre-United Nations Period

---

---

The State practices reviewed in Chapter III provide the background against which many of the traditionalist writers based and justified their pronouncements of the era.

A. *French Blockade of Argentina. 1838-1840.*<sup>1</sup> Following the adoption of an extremely restrictive import and export tariff policy by the Argentine government in the 1830s, many European powers whose nationals were trading with Argentina grew quite concerned. Under Article IV of the Treaty of Amity, Commerce, and Navigation between Great Britain and the United Provinces of Rio de la Plata, signed at Buenos Aires on 2 February 1825, British merchants had been accorded most-favored-nation status.<sup>2</sup> In 1836, when a frustrated French diplomat trying to negotiate a similar agreement with the Argentine government threatened naval intervention to roll back stiff duties, as well as to remedy the alleged mistreatment and imprisonment of French nationals,<sup>3</sup> Argentina responded with an even more stringent tariff law. Thereupon, France suspended diplomatic relations and several years later sent a fleet under Admiral Leblanc to initiate a blockade of the capital, Buenos Aires. The blockade was lifted after two years pursuant to a Convention between France and Argentina that was signed on 29 October 1840.<sup>4</sup> While the specific claims of France with respect to the protection of her nationals went unmentioned, both States agreed to accord the nationals of each other most-favored-nation treatment in the future.

The French blockade had a severe impact on Argentina. Between the second half of 1837 and the second half of 1838, imports dropped in value from 19

to 4 million paper pesos. Indirectly, however, the blockade, together with an earlier blockade by Brazil in 1826 and a subsequent joint blockade by France and Great Britain in 1845, had a beneficial effect on the Argentine beef industry. When the slaughter of animals for export stopped, cattle herds increased greatly. Where there had been an estimated 3 to 4 million cattle in 1837, the heads increased to 10 to 12 million head by 1850.<sup>5</sup>

Although Bonfils cited this incident as illustrative of a doctrine permitting forcible protection,<sup>6</sup> from the perspective of France it appears that the blockade was merely a military measure with the political and economic objectives of advancing France's commercial interests in Argentina. Perhaps more importantly France was defending a "point of honor" by not submitting to the policies of the Argentine government. The claims of French nationals were of tertiary importance.<sup>7</sup>

B. *Great Britain, Spain and France in Mexico. 1861.*<sup>8</sup> During the internal conflict ongoing in Mexico in the late 1850s, foreign nationals were indiscriminately insulted, robbed, injured, and murdered. Moreover, various financial obligations owed foreign nationals by the Mexican government were not met. The three major States that had nationals injured and debts unpaid—Great Britain, Spain, and France—collectively agreed in the Convention of London, signed 31 October 1861,<sup>9</sup> to intervene in Mexico with forces of sufficient size to seize and occupy different fortresses and military positions on the coast of Mexico. Article II of the Convention specified that:

The High Contracting Parties engage not to seek for themselves, through the employment of the coercive measures contemplated by the present convention, any acquisition of territory, nor any particular advantage, nor to exercise in the internal affairs of Mexico any influence tending to abridge the right of the Mexican nation freely to decide upon and establish the form of its government.<sup>10</sup>

The signatories of the Convention agreed that the expeditionary forces should consist of 6,000 Spaniards and 3,000 Frenchmen, with Great Britain contributing a naval division and a landing force of 700 Marines.

On 14 December 1861, the Spanish fleet sailed into the harbor of Vera Cruz and three days later disembarked troops that entered the city. The combined French and British expedition arrived at Vera Cruz on 7 January 1862, and at once began to disembark more troops.<sup>11</sup>

Subsequent conferences between the three Powers revealed growing dissension over the purpose of the intervention. France revealed intentions beyond

the mere exaction of damages for wrongs done to its nationals, while Great Britain and Spain continued to adhere to Article II of the Convention of London. Nevertheless, negotiations were initiated with the Mexican government.<sup>12</sup> As the negotiations proceeded, however, the lack of consensus of the parties to the Convention emerged. France sent substantial reinforcements, allegedly to guard against any disaster to the French troops as they marched into the interior of the country. Additional disputes arose over France's introduction back into the country of exiled Mexicans who had supported the prior monarchy in opposition to the two ruling Constitutionalists.<sup>13</sup>

The final rupture occurred at a conference held between the three Powers on 9 April 1862. Great Britain and Spain declared that, if France did not disassociate herself from the exiled Mexicans and continued to support the exiles' determination not to take part in pending negotiations with the Mexican government, they would withdraw their troops from Mexico. When the French refused, the British and Spanish terminated their role in the intervention, lowering their flags at Vera Cruz at sunset on 24 April 1862. France then initiated an independent policy aimed at the installation of a French-controlled monarch under Archduke Ferdinand Maximilian of Austria.<sup>14</sup>

Both Bonfils and Fauchille cited this incident as an example of the permissible use of force by States to rectify injustices to their nationals.<sup>15</sup> It does not appear, however, that the intervening States ever justified their actions in such legal terms. Implicit in the Convention of London, though, was the notion that an intervention for such purposes was permissible if conducted within narrow limits. That is to say, forcible intervention to rectify wrongs was legitimate so long as it did not severely impair the sovereignty of the country against which the action was undertaken.<sup>16</sup>

C. *Great Britain and Abyssinia. 1867-1868.*<sup>17</sup> Following a period of civil war, Theodore (Kassa) became Emperor of Abyssinia on 7 February 1855. Two Englishmen, Walter Plowden, who later was named British Consul to Abyssinia, and John Bell, aided Theodore's rise to, and consolidation of, power. Both Plowden and Bell, however, were killed during an uprising against Theodore in 1860. After their deaths, the Emperor began to lose hold over his army resulting in his "killing and burning alive thousands in a desperate attempt to save face by his frightfulness."<sup>18</sup>

In November 1861, the British government, having scant information regarding the situation in Abyssinia, decided to send Captain C. Duncan Cameron as Plowden's successor.<sup>19</sup> Upon receiving Cameron in July 1862,<sup>20</sup> the Emperor told the British consul the persons that had murdered Plowden

and Bell had been slain and that he intended to crush the Turks and the Egyptians.<sup>21</sup> In a letter to Queen Victoria, Theodore suggested the establishment of an Abyssinian Embassy in Great Britain.<sup>22</sup> When this letter, delayed in the mails, elicited no reply,<sup>23</sup> Theodore took it as an insult to himself and his nation, summarily imprisoning Cameron and certain other Englishmen.<sup>24</sup>

In May 1864, the British government sent Hormuzd Rassam, an assistant to Colonel W. L. Merewether, Political Resident at Aden, to obtain the release of Cameron and his fellow prisoners.<sup>25</sup> After many delays,<sup>26</sup> Rassam met with Theodore on 28 January 1866, and the latter announced the release of Cameron and his companions the following day.<sup>27</sup> In July 1866, however, the King again imprisoned Cameron, along with Rassam and 60 other Europeans, "on the pretext that . . . [the British] Government ha[d] an intention of sending troops to make war against him."<sup>28</sup>

The British government responded to Theodore's actions by sending a rescue expedition under Sir Robert Napier that arrived in Abyssinia in 1867.<sup>29</sup> Overcoming the rugged terrain, Napier's expedition finally encountered Theodore's army at Arogee on 10 April 1868. The British, possessing modern weapons with superior firepower, soon overwhelmed Theodore's forces and entered the fortress at Magdala on Easter Monday, 1868. Theodore committed suicide upon their entry.<sup>30</sup>

Although the Emperor's rivals urged Napier to settle the succession, Napier contented himself with the rescue of the prisoners and began his march back to the coast.<sup>31</sup> When Napier left Abyssinia, in May 1868, the country immediately plunged into civil war among rival chieftains.

Bluntschli cited this incident as illustrative of a "state's right and duty to protect its nationals abroad by all means authorized by international law,"<sup>32</sup> and in this case by the use of force. Great Britain, however, did not explicitly mention this international law argument in its ultimatum to Theodore. Instead, it advanced the broad rationale that

[i]t is impossible for the Queen any longer to endure such conduct on the part of your Majesty, and Her Majesty has therefore given orders that a military force . . . should without delay enter your dominions, and obtain from you by force a concession which you have hitherto withheld from friendly representation.<sup>33</sup>

The clear import of this language, of course, is that Great Britain considered its decision to use force to be a legitimate alternative to "friendly representation" and/or diplomacy.

D. *Great Britain in Honduras. 1873.*<sup>34</sup> In the summer of 1873, Honduran forces under the command of a General Stracber seized the castle at Omoa, Honduras, imprisoned the British subjects resident there and destroyed most of their property. In August 1873, when the British Man-of-War *Niobe* arrived at Omoa, its Captain made several demands of General Stracber, including a \$100,000 indemnity for the losses sustained by British subjects, the immediate surrender of the British subjects held prisoner and a 21-gun salute to the English flag.

General Stracber replied that the demands were unjust, as he had no money, was not responsible for the British subjects and that responsibility rest with the Honduran government. The captain of the *Niobe* thereupon reduced the indemnity portion of the demand to \$50,000, giving General Stracber until 2 p.m. on 19 August to comply with it and the other two demands. If not satisfied, the Captain warned that the *Niobe* would bombard the castle. When a satisfactory response was not forthcoming, the bombardment began at 3:45 p.m., continuing until the following day when General Stracber, at last accepting the British demands, turned over the British prisoners and signed a document binding the Honduran government to pay all the losses claimed.

Clark listed this incident as an example of the use of force to protect nationals by States other than the United States.<sup>35</sup> Again, although Great Britain apparently offered no international law argument in support of its use of force, the circumstances of this incident illustrate the readiness with which a decision to employ force to protect British subjects abroad was reached, a readiness presumably buttressed by the belief that such an action was compatible with the norms of international law.

E. *Great Britain and France in Egypt. 1876-1879.*<sup>36</sup> Under the rule of Mohamed Said, Egypt in 1854 granted a concession to Ferdinand de Lesseps, a retired official of the French diplomatic service, for the construction of a ship canal across the Isthmus of Suez. The grant of the Suez Canal concession was the first episode in an era of extravagant development and foreign speculation in Egypt. Egyptian rulers, in their rush to encourage foreign merchants, who supplied them with short-term loans and acted as import and export agents for Egyptian government monopolies, greatly extended the freedom of Europeans from the processes of Egyptian civil and criminal law. The privileged position accorded them naturally acted as a powerful magnet to attract persons from all over Europe to Egypt. Between 1854 and 1874, the number of European nationals resident in Egypt increased from roughly 15,000 to 85,000. More important than the numerical increase, however, was that European interests—in many cases

assisted by diplomatic intervention—acquired a virtual stranglehold on the economic life of the country.

Ismail, who succeeded Mohamed Said in 1863, sought simultaneously to modernize Egypt, to enrich his own extensive private estates and to establish an enlarged Egyptian Empire. He attempted to accomplish these goals with money borrowed from foreign merchants and through long-term loans contracted with foreign banking houses. However by 1875 Ismail's financial position had deteriorated so greatly that he asked the British government not only for assistance in managing the receipts and revenues of Egypt, but also for advice on all financial matters.

The British government sent, as an envoy to Egypt, the Paymaster-General, Stephen Cave. Cave's report recommended that a substantial loan be made to aid Egyptian finances. Following additional negotiations between Great Britain and France, which also had a large number of nationals who were creditors of Egypt, a joint proposal was presented to the Egyptian government, with an agreement being reached on 14 November 1875. Under the settlement a substantial portion of the Egyptian debt was liquidated and British and French nationals were appointed to a number of high financial posts within the Egyptian government. Pradier-Fodere cited this incident as a "very striking example of foreign intervention in the internal affairs of another state with a view to the protection of the nationals of the intervening powers."<sup>37</sup>

Although the example follows a discussion of the right to use force to protect nationals, it is clear that the actions of Great Britain and France involved only diplomatic, rather than forcible, measures. Bonfils also referred to this incident in his discussion of the protection of nationals abroad.<sup>38</sup> For him it illustrated the fact that "European Governments have intervened in favor of their nationals who had lent money to foreign governments, against weak states, incapable of resisting, but not against strong States. . . ."<sup>39</sup> Certainly this incident, although not illustrative of the principle of forcible protection, indicates once again that strong States were inclined to intervene with weaker ones, financially as well as forcibly, to protect the interests of their nationals.

*F. France and Portugal. 1893-1894.*<sup>40</sup> Pursuant to a decree of 9 November 1893, the Portuguese government declared the liquidation of the Portuguese Railway Company, many of whose creditors were foreigners, including numerous French citizens. Although the decree provided that a commission was to be formed to direct the disposition of the company's assets, only two of its nine members represented the interests of the foreign creditors. Coincidentally, the commission's decision, published on 5 January 1894, had the effect of favoring

the Portuguese government and certain preferred creditors to the detriment of the foreign creditors.

Frustrated by this turn of events, the French creditors asked their government for assistance in obtaining a fair share of the company's assets. The French government promptly adopted their claims and vigorously complained to Portugal.<sup>41</sup> Indeed, France went so far as to threaten the use of force should the wronged creditors not be compensated satisfactorily.<sup>42</sup> The Portuguese government quickly acceded to the French demands and compensated the French creditors in a more equitable manner. Thus, although force actually was not employed in this instance, it certainly was contemplated by France as the ultimate means of obtaining redress for its creditors.

Bonfils referred to this incident as an example of the use by States of the threat of force to protect their nationals who were creditors of foreign governments.<sup>43</sup> He viewed this type of protection as peculiarly susceptible to unfortunate consequences in terms of popular resentment against foreigners and the straining of international relations.<sup>44</sup>

*G. Boxer Rebellion. China. 1900.*<sup>45</sup> The last decade of the Nineteenth Century was marked by violent anti-colonial agitation in China. Behind much of this turbulence was the Society of Harmonious Fists, or "Boxers." Although opposed to Christianity and Europeans, the Boxers' prime goal was to evict the Manchus from the Throne and end the Ching dynasty that seemed incapable of preserving the Chinese Empire intact. By 1899, however, the Boxers increasingly directed their attacks against the "foreign devils," who they believed were the real source of China's ills.

During the spring of 1900, attacks on foreigners in China, largely at the instigation of the Boxers, became increasingly frequent. By 9 June the threat to the foreign legations located in the capital, Peking, had become very real. News of such danger prompted the governments affected (primarily Great Britain, France, Russia, Germany, the United States, Japan, Italy, and Austria-Hungary) to direct their naval forces in the area of China to take any action deemed necessary to save the legations. Admiral Seymour, the commander of the British fleet, assembled an international force of about 2,000 men on 10 June to proceed to Peking to defend the legations. The force made extremely slow progress toward Peking, however, as the Boxers had destroyed the railway lines. On 15 June, when it had become apparent that the relief force could advance no further, the decision was made to fall back to the coast.

Meanwhile, the attacks on the legations in Peking had increased in intensity, with the German Minister having been killed. Upon hearing this news, the

allied military forces attacked and captured Chinese government forts at Taku in order to establish a coastal beachhead. Next, in mid-July, they captured the city of Tientsin, where another group of foreigners was endangered. The latter part of July and early August were spent in building up an expeditionary force to rescue the legations. On 4 August, a relief column, numbering about 17,000 men, left Tientsin for Peking, arriving on 14 August, 1900.

The aftermath of the rescue included a number of punitive expeditions to areas with a reputation of anti-foreignism. The most noted of the punitive measures was the destruction of the city of Pao Ting Fu by a joint expedition of British, German, and French forces.<sup>46</sup> Moreover, a series of trials were held to punish persons responsible for the atrocities committed by the Boxers. Many executions and fines followed. Finally, on 1 February 1901, the Boxer Society was dissolved and membership in any "anti-foreign" society was declared to be a crime punishable by death. Later that same year, China agreed to pay a large indemnity and to prohibit the importation of arms for a period of two years.<sup>47</sup>

This incident was cited by Borchart,<sup>48</sup> Fauchille,<sup>49</sup> and Hyde<sup>50</sup> as an example of the forcible protection of nationals abroad. Probably the fact that China was viewed as semi-barbarous by most Western States, plus the exigencies of the moment, accounted most directly for this use of force, which the above commentators all regarded as permissible under international law.

H. *Franco-Turkish Conflict. 1901.*<sup>51</sup> During the last decade of the Nineteenth Century, several French creditors had difficulty with the Turkish government. Under a contract dated 7 November 1890, a French corporation agreed to construct docks in Constantinople. As soon as the docks were completed, however, the Turkish government seized them without compensating the French builders. Negotiations between the French and Turkish governments on the matter proved unsatisfactory to the French. In addition, substantial loans made to the Turkish government by two French banking concerns went unpaid. Finally, the Turkish government refused to honor a concession it made in 1894 to cede territory to a French group in return for destroying malaria-carrying mosquitos in an area of Turkey.

By 1901, it had become apparent to France that diplomatic measures alone were not going to resolve the claims. The French government therefore decided to employ forcible measures by seizing the customs house on the Turkish island of Mytilini and retaining the funds and goods contained therein until the Turkish government honored its commitments. A French fleet was sent to the Mediterranean which seized and occupied the customs house on 7 November 1901. Little force was involved in this action, since the governor of the island

actually acquiesced in the occupation and sent the Turkish garrison to the island's interior to avoid any encounter with the French forces. The Turkish government promptly agreed to the French demands and the occupation soon ended.

Bonfils referred briefly to the Mytilini incident in his discussion of the forcible protection of nationals who are creditors of foreign governments. Noting the obvious, however, that such intervention "excites the resentment of the people against foreigners [and] complicates international relations."<sup>52</sup> Despite the effects of this incident, one of many, it illustrates that the use of force to protect nationals abroad and enforce creditor's rights in such situations was common at the turn of the century.

I. *Great Britain, Germany and Italy in Venezuela. 1902.* As the result of civil war in Venezuela from 1898 to 1900, British, German and Italian nationals sustained large amounts of property damage.<sup>53</sup> The strenuous protests by Great Britain and Germany yielding no results, on 13 November 1902, the countries agreed on joint action.<sup>54</sup> In the event that Venezuela failed to accede to their demands, they agreed to utilize coercive measures.<sup>55</sup>

On 2 December 1902, the diplomatic representatives of the British and German governments at Caracas presented an ultimatum to the Venezuelan government which made clear that in the event of an unsatisfactory response, forcible measures would be employed.<sup>56</sup> On 3 December, Italy asked to be allowed to join in the ultimatum against Venezuela as an ally of Great Britain and Germany, a request quickly granted.<sup>57</sup> The demands not having been met, on 10 December the three States imposed a blockade under which they seized or disabled four small Venezuelan ships.<sup>58</sup> Three days later the Venezuelan government, through the U.S. Embassy in London, requested arbitration of the claims in question, proposing certain conditions. The allies finally agreed to this method of settlement.<sup>59</sup>

Fauchille referred to this incident as an example of the justifiable use of force by a State to compel another State "to fulfill its international obligations or to compensate for an injustice or an insult."<sup>60</sup> However, it does not appear that the three States justified their use of force in legal terms at the time.<sup>61</sup>

J. *Italian Invasion of Corfu. 1923.*<sup>62</sup> The establishment of Albania following the Balkan Wars of 1912-1913 left the delimitation of its borders as one of the unresolved issues facing the Great Powers when World War I commenced in 1914. Following the war, with Albania's frontiers still unfixed and border disputes increasing, the British government proposed that a Conference of

Ambassadors fix the frontiers. On 9 November 1921, that conference decided to delimit the Albanian borders on the basis of lines drawn up before the war, with a special delimitation commission to mark the borders. The commission arrived in Albania on 7 March 1922. The relationship of the commission and its Italian President, General Enrico Tellini, to the Greek government and the Greek delegate attached to the commission, was extremely strained throughout. On 27 August 1923, General Tellini and his staff were murdered near the Greek-Albanian frontier, in Greek territory.

Mussolini, by then in control of Italy, instructed his ambassador in Athens to make “the most energetic protests” to the Greek government. Following several communications with the Ambassador, on 29 August Mussolini issued a series of demands to the Greek government. These demands included an apology by the highest Greek military authority, a funeral service in the Roman Catholic Cathedral in Athens to be attended by all the members of the Greek government, a criminal investigation to be completed within five days after the arrival of an Italian military attaché, capital punishment for those persons responsible for the murders, an indemnity of 50 million Italian lire payable within five days; honor to be shown the Italian flag, and military honors to be paid to the corpses on the occasion of their transfer to an Italian vessel.

The following day the Greek government rejected the bulk of these demands, specifically, the investigation by the Greek authorities, capital punishment for the murderers, and the indemnity. Orders were issued immediately from Rome to Admiral Emilio Solari, commander of the Italian navy, “to proceed at once to the occupation of [the Greek island of] Corfu.”<sup>63</sup> On 31 August, Italian naval units bombarded and occupied the island, an occupation lasting until 27 September 1923.

Hindmarsh cited this incident as an example of the practice of powerful States to employ military force against offending weaker States to compel recognition of alleged international obligations.<sup>64</sup> The incident, on its facts, involved a “point of honor” in the protection of nationals abroad, all that remained following their murder.

K. *French Bombardment of Damascus. 1925.*<sup>65</sup> The peace settlement following World War I included the division of parts of the Ottoman Empire into “mandates” of the League of Nations under the tutelage of the victorious allies. One such area was Syria, which was placed under French control until such time as it was deemed ready to take its place as an independent nation. French rule proved oppressive to the Syrian population, however, and the resulting discontent led to full-scale revolution in 1925.

Originating with the Druzes, a fiercely nationalistic sect living in the mountains southeast of Damascus, the revolt quickly gained momentum. By 18 October 1925, Damascus was severely threatened, the revolutionaries having entered and occupied a part of the city.

At this point the French authorities, “without notice or declaration of martial law, and without warning to foreign residents other than French,”<sup>66</sup> first evacuated French troops and then proceeded to bombard the city with artillery and aircraft. The bombardment, which continued for 24 hours and caused extensive damage, ceased only when the city officials agreed to pay an indemnity of £100,000 in gold and 3,000 rifles. The indemnity, in fact, never was paid. The bombardment so increased the resistance of the rebels that the revolt was not put down until 1927.

Bowett has cited this incident as a classic example of a reprisal, distinguishing it from the use of force to protect the lives and property of nationals abroad, which he characterizes as a permissible action of self-defense.<sup>67</sup> The justification offered by France at the time centered on the contention that the Druze rebellion was merely “banditry and brigandage,” and hence any measures used to suppress it were merely police actions clearly within the exclusive jurisdiction of France, the legally constituted authority in Syria.<sup>68</sup> France cited no other principle of international law to support its actions. In fact, since no French nationals were being protected by the use of force, it seems apparent that France was merely re-establishing its control of the city in accordance with its mandate by the League of Nations.

*L. Japan and China. 1931-1932.*<sup>69</sup> On 18 September 1931, an explosion occurred on the Japanese-owned South Manchurian Railway in southern China. The Japanese argued that Chinese soldiers had caused the incident, a plausible (albeit actually untrue) claim because at the time there was serious friction between the Chinese and Japanese in the Japanese-leased territory along the railway zone. Additionally, the Chinese authorities’ desired the reduction and/or elimination of Japanese interests in Manchuria. Within 24 hours after the explosion, Japanese forces occupied Mukden and several other important towns in South Manchuria.<sup>70</sup>

The Japanese army, which soon controlled all of Manchuria, proceeded to set up an “independent” State of Manchukuo with a former Emperor of China at its head. On 25 August 1932, the Japanese government recognized the State of Manchukuo and concluded a treaty of alliance with it. The Manchukuo government assumed control over the custom houses of its ports and thereby became self-sufficient. The League of Nations formed an investigatory body, named the “Lytton Commission,” to investigate the situation. It issued a report

on 1 October 1932, condemning the Japanese invasion as an illegal act of aggression in violation of the Covenant of the League of Nations.<sup>71</sup>

The Japanese government responded to these charges of aggression with several arguments,<sup>72</sup> one of which was that the purpose of the invasion was merely to protect Japanese nationals and treaty rights in China. To support this claim, the Japanese government asserted not only that such a use of self-defense was recognized as an accepted principle of customary international law, but also that it was not prohibited by the Kellogg-Briand Pact of 1928 that outlawed war as an instrument of national policy.<sup>73</sup>

Hindmarsh concluded that the Manchurian invasion illustrated the improper use of the forcible protection rationale by powerful States as a tool to achieve control over weaker States.<sup>74</sup> His characterization proved correct given Japan's subsequent resort to the "forcible protection" argument in the face of facts rather clearly indicating that its motives were essentially aggressive, and by Japan's subsequent actions leading up to, and during, World War II.

*M. Germany in Czechoslovakia. 1938.*<sup>75</sup> Coincident with the rise of Nazism in Germany in the 1930s was an intense nationalism on the part of the German ethnic community in the Sudetenland, an area of Czechoslovakia. Beginning in 1937, Germany's support for the "Sudeten Germans" became increasingly overt. In April 1938, at Berlin's urging, the German nationalist party in Czechoslovakia presented the Czech government with a number of demands, popularly known as the "Karlsbad Program," relating chiefly to autonomy for the Sudetenland. Following the Czech government's rejection of these demands, Germany began to escalate its propaganda attacks against Czechoslovakia for alleged mistreatment of its German ethnic minority.

During the next several months, intense negotiations were conducted between Germany and Czechoslovakia and the latter's allies, Britain and France. This diplomatic activity culminated in the Munich agreement of 30 September 1938. Czechoslovakia ceded the Sudetenland to Germany and the Western governments of Great Britain and France acknowledged that Czechoslovakia was both politically and economically within Germany's sphere of influence. Confronted by a strong neighbor and with weak allies, the Czech government and its armed forces had little alternative but to acquiesce in the German demands. German troops subsequently entered and occupied the Sudetenland on 1 October 1938, meeting no resistance.

The Munich crisis clearly illustrates the abuses to which the principle of forcible protection may be put.<sup>76</sup> Indeed, as Brownlie has argued, the crisis was one of several incidents that led to the drafting of Article 2(4) of the United Nations Charter—which purports to prevent States from using force for such purposes.<sup>77</sup>

## NOTES

1. An extensive discussion of the French blockade of Argentina may be found in J. Cady, *Foreign Intervention in the Rio de la Plata: 1838-50*, at 22-91 (1929). *See also* Y. Rennie, *The Argentine Republic 54-55* (1945); H. Ferns, *Britain and Argentina in the Nineteenth Century 241-80* (1960).

2. 3 L. Hertslet, *Commercial Treaties* 44, 45 (1841). Cady stated that this treaty placed British merchants "on a status of absolute equality with Argentine citizens in the matter of trading privileges, port and tonnage dues, etc." J. Cady, *supra* note 1, at 18.

3. According to Cady:

[t]he specific claims . . . were neither numerous, important, nor particularly well founded. Two of them concerned instances of enforced service in the Argentine army. Another was the case of a French sutler in [the Argentine] army . . . who had been summarily imprisoned for six months for possession of property belonging to the Government. The most serious claim was that of the widow of a Swiss printer named Bacle, claiming French protection, who died at his home in January 1838, from illness contracted while serving a prison term for revolutionary intrigue. A fifth concerned an acknowledged claim of a French citizen named Despony, who had sustained, in the disorder of 1821, considerable damage to his business.

*Id.* at 26-27.

4. *Convention Between France and Buenos Ayres for the Settlement of Differences*, Oct. 29, 1840, 29 *Brit. & For. State Papers* 1089 (1840-1841).

5. Y. Rennie, *supra* note 1, at 55.

6. H. Bonfils, *Manuel de Droit International Public* 158 (1894).

7. "The particular merits of the claims were never . . . the primary subject of the dispute. . . . With a will for peace on either side, a settlement might easily have been arranged; in reality, it became a point of honor with each party not to surrender to the formal demands of the other." J. Cady, *supra* note 1, at 27.

8. A detailed discussion of this incident may be found in J. Musser, *The Establishment of Maximilian's Empire in Mexico* chs. 1-4 (1918).

9. *Convention Between Great Britain, Spain and France Relative to Combined Operations Against Mexico*, Oct. 31, 1861, 51 *Brit. & For. State Papers* 63 (1860-1861).

10. *Id.* at 64 (author's translation).

11. J. Musser, *supra* note 8, at 33.

12. The terms of the joint note were vague. Its apparent purpose was solely to open negotiations with Mexico. *See* 53 *Brit. & For. State Papers* 411-12 (1862-1863).

13. J. Musser, *supra* note 8, at 41.

14. *Id.*

15. *See* H. Bonfils, *supra* note 6, at 158; 1 P. Fauchille, *Traite de Droit International Public* 582 (1922). Both authors noted, however, that France's subsequent conduct constituted "flagrant intervention."

16. J. Musser, *supra* note 8, at 16.

17. A detailed description of the British intervention in Abyssinia may be found in F. Myatt, *The March to Magdala: The Abyssinian War of 1868* (1970). *See also* A. Jones & E. Monroe, *A History of Ethiopia 129-34* (1970); A. Moorehead, *The Blue Nile 257* (1962).

18. A. Jones & E. Monroe, *supra* note 17, at 29.
19. See 53 Brit. & For. State Papers 51-54 (1852-63); 54 *id.* at 1153-55 (1863-64).
20. 55 *id.* at 1423 (1864-65). Cameron was delayed in reaching Gondar, where Theodore resided, when the Foreign Office ordered him to accompany the Duke of Saxe Coburg on an excursion into the northern frontier of Abyssinia.
21. 53 *id.* at 55.
22. *Id.* at 62-63.
23. Cameron, who was to deliver the letter, was stopped on his way to the coast by a rebel chief in Tigre. The stop delayed the transmission of the letter, which did not reach Great Britain until February 1863. 55 *id.* at 1424. Rather than responding to the letter, the British government, apparently uneasy about an alliance with Theodore in a crusade against Islam, chose a "course of masterly inactivity." See F. Myatt, *supra* note 17, at 38-39.
24. Cameron had returned to Gondar in July 1863. *Id.*
25. Rassam arrived at Massowah in August 1864, and dispatched two letters to Theodore requesting an audience with the Emperor in Gondar. *Id.* at 1425.
26. Theodore did not respond to Rassam until August 1865. The latter was further delayed when he was ordered to Egypt for instructions. *Id.*
27. 60 *id.* at 1036-37 (1869-70).
28. *Id.* at 1066. The Emperor apparently had heard that "a railroad had been laid down between Egypt and Kassala, for the purpose of transporting British, French and Turkish troops thereon, for the purpose of invading Abyssinia." *Id.* at 1067.
29. *Id.* at 1088.
30. A. Jones & E. Monroe, *supra* note 17, at 133-34.
31. The victorious troops plundered Magdala "in the best traditions of the British Army at the time." Apparently little of the loot remained in private hands, however, for the only practicable way out of the fortress was "in the hands of the provost, backed by a guard of the 33rd Regiment." F. Myatt, *supra* note 17, at 165. The loot was auctioned for a total of 5,000 British pounds, which was then distributed to the soldiers according to rank. A. Moorehead, *supra* note 30, at 272. Upon his departure from Magdala on 17 April 1868, Napier ordered the fortress to be mined with explosives; by the next morning it had burned to the ground. *Id.* at 271.
32. M. Bluntschli, *Le Droit International Codifié* 223 (1874) (author's translation). More recent scholars have criticized this use of force in view of the apparent lack of proportionality between the injuries suffered by the imprisoned Europeans and the substantial loss of life inflicted upon the Abyssinians by the British. See A. Moorehead, *supra* note 17, at 258, and Farer, *Humanitarian Intervention: The View from Charlottesville*, in *Humanitarian Intervention and the United Nations* 149 (R. Lillich ed. 1973). On this issue of proportionality, however, it should be kept in mind that mid-Nineteenth Century Ethiopia was not an area to which one could send a few troops to rescue imprisoned nationals. The distance and terrain probably justified the sending of a force the size of Napier's, if not all of its actions once it arrived in Ethiopia.
33. 60 Brit. & For. State Papers 1088 (1869-1870).
34. For a description of this incident, see *Correspondence Respecting the Bombardment of the Fortress of Omoa, Honduras*, by the British Man-of-War *Niobe*, the 19th and 20th of August, 1873, 67 *id.* 959-60 (1875-1876).
35. J. Clark, *Right to Protect Citizens in Foreign Countries by Landing Forces* 37 (3d rev. ed. 1934) (quotes identical to 1912 ed.).
36. A description of Egypt during this period may be found in J. Marlowe, *Cromer in Egypt* ch. 1 (1970).

37. F. Pradier-Fodere, *Traite de Droit International Public* 628-29 (1885) (author's translation).
38. H. Bonfils, *supra* note 6, at 159.
39. *Id.* (author's translation).
40. For a brief discussion of this incident, see *Chronique des Faits Internationaux*, 1 *Rev. Gen. de Droit Int'l Pub.* 291 (1894).
41. *Id.* at 294, citing the Statement of Foreign Minister Casimir-Perier of March 9, 1894.
42. *Id.*, citing the Letter of M. Edmon Villey of January 10, 1894.
43. H. Bonfils, *supra* note 6, at 159.
44. *Id.* at 160.
45. A detailed discussion of the Boxer Rebellion may be found in L. Giles, *The Siege of the Peking Legations* (L. Marchant ed. 1970). See also V. Purcell, *The Boxer Uprising: A Background Study* (1963) and the factual summaries of the U.S. role in the intervention contained in Appendix I, at pages 141-42.
46. W. Martin, *The Siege in Peking* 139-40 (1900).
47. *Settlement of Matters Growing Out of the Boxer Uprising (Boxer Protocol)*, Sept. 7, 1901, 1 C. Bevans, *Treaties and Other International Agreements of the United States of America 1776-1949*, at 302 (1968).
48. E. Borchard, *The Diplomatic Protection of Nationals Abroad* 452 (1915).
49. 1 P. Fauchille, *supra* note 15, at 583.
50. 1 C. Hyde, *International Law Chiefly as Interpreted and Applied by the United States* 350-51 (1922).
51. A detailed analysis of this incident may be found in Moncharville, *Le Coflit Franco-Turc de 1901*, 9 *Rev. Gen. de Droit Int'l Pub.* 677 (1902). The facts found in the following two paragraphs of the text are taken therefrom.
52. H. Bonfils, *supra* note 6, at 160.
53. The British claims involved principally the destruction of British shipping and railway companies. See 95 *Brit. & For. State Papers* 1076-77 (1901-1902). The German claims involved injuries to German merchants and landowners through forced loans, the appropriation of supplies without payment, and the plundering of their houses and the devastation of their lands. *Id.* at 1120-21. The Italian claims involved personal injuries and damage to property occasioned by the Civil War, as well as many claims by bondholders. See *The Venezuelan Arbitration Before the Hague Tribunal*, 1903, at 848, 851 (1905) [hereinafter *The Venezuelan Arbitration*].
54. 95 *Brit. & For. State Papers* at 1083-84.
55. *Id.* at 1085.
56. *Id.* at 1100.
57. *Id.* at 1101.
58. *Id.* at 1110.
59. *Id.* at 1123-26.
60. 1 P. Fauchille, *supra* note 15, at 582 (author's translation).
61. The legal arguments that Great Britain, Germany, and Italy made at the subsequent arbitration of the dispute concerned the priority over other creditors in the claims process which the three States contended they deserved. See *The Venezuelan Arbitration*, *supra* note 53, at 759, 815, 857.
62. A detailed discussion of this incident may be found in J. Barros, *The Corfu Incident of 1923: Mussolini and the League of Nations* (1965). The facts found in the following two paragraphs of the text are taken therefrom.
63. *Id.* at 67.

64. A. Hindmarsh, *Force in Peace: Force Short of War in International Relations* 79-80 (1933).

65. For descriptions of this incident, see G. Haddad, *Fifty Years of Modern Syria and Lebanon* 75-78 (1950); S. Longrigg, *Syria and Lebanon under French Mandate* 157-62 (1958); Wright, *The Bombardment of Damascus*, 20 *Am. J. Int'l L.* 263 (1926).

66. S. Longrigg, *supra* note 65, at 159.

67. D. Bowett, *Self-Defence in International Law* 99 (1958).

68. Wright, *supra* note 65, at 265. Professor Wright disagreed with the French position and argued that international law should not countenance such a disproportionate use of force. Instead, he argued that a formal demand for discontinuance of the allegedly illegal acts should have been made and then, if such a demand had not been heeded, a monetary fine should have been imposed proportionate to the alleged crimes. *Id.* at 274.

69. For detailed discussing of this incident, see R. Storry, *A History of Modern Japan* 186-96 (1960), and I. Nish, *A Short History of Japan* 157-61 (1968). The facts found in the following two paragraphs of the text are taken from these accounts.

70. The explosion and subsequent invasion were part of a plan hatched by Japanese Army officers, apparently without orders from the military high command, and certainly not with the approval of the Japanese government, whose "weak diplomacy" Japanese military leaders had criticized. See R. Storry, *supra* note 69, at 186-87.

71. See generally Lauterpacht, "Resort to War" and the Interpretation of the Covenant during the Manchurian Dispute, 28 *Am. J. Int'l L.* 43 (1934).

72. These arguments are discussed in W. Willoughby, *Japan's Case Examined* 17-67 (1940).

73. Renunciation of War as an Instrument of National Policy (Kellogg-Briand Peace Pact or Pact of Paris), Aug. 27, 1928, 2 *C. Bevans, Treaties and Other International Agreements of the United States of America 1776-1949*, at 732 (1969).

74. A. Hindmarsh, *supra* note 64, at 81-82.

75. For detailed analyses of the events surrounding the Munich agreement, see J. Wheeler-Bennett, *Munich: Prologue to Tragedy* (1948), and V. Mastny, *The Czechs Under Nazi Rule* (1971).

76. See R. Falk, *Legal Order in a Violent World* 161 (1968):

To vindicate intervention under certain circumstances [including the forcible protection of nationals abroad] raises some serious world order problems. Any authorization of intervention creates a manipulative nexus that can itself be used as a justification for an abusive intrusion upon the legitimate autonomy of another state. An intervening state may claim to protect human rights so as to hide its dominant motive which is remote from altruism. One need only recall that Hitler explained his invasions of Czechoslovakia and Poland by the need to rescue German minorities from aggression.

77. Brownlie, *Thoughts on Kind-Hearted Gunmen*, in *Humanitarian Intervention and the United Nations*, *supra* note 4, at 139, 143.