

8-1-1985

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Laura K. Wheeler, *The Grenada Invasion: Expanding the Scope of Humanitarian Intervention*, 8 B.C. Int'l & Comp. L. Rev. 413 (1985), <http://lawdigitalcommons.bc.edu/iclr/vol8/iss2/5>

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The Grenada Invasion: Expanding the Scope of Humanitarian Intervention

I. INTRODUCTION

In the early morning hours of October 25, 1983, over nineteen hundred U.S. marines landed on the small island of Grenada and began a large scale evacuation of the more than 1000 U.S. citizens who were residing in Grenada.¹ The United States' primary justification for its action was the protection of the U.S. citizens.² Due to the chaotic state of the Grenadian government, U.S. authorities believed that intervention was necessary to prevent the citizens from being taken hostage.³

The events which led to the political state of chaos in Grenada began thirteen days prior to the U.S. intervention, when the government under Prime Minister Maurice Bishop collapsed.⁴ Bishop had gained power in 1979 by overthrowing the constitutional government established under Sir Eric Gairy.⁵ Bishop, founder of the New Jewel Movement,⁶ established a socialist government in Grenada.⁷ Although Bishop had built strong ties with Cuba and the Soviet Union,⁸ a growing number of his followers began criticizing him for not following hardline Marxist practices.⁹ Deputy Prime Minister Bernard Coard, the leader of the

1. N.Y. Times, October 26, 1983, at A1, col. 6; United States Forces in Grenada: Letter to the Speaker of the House and the President Pro Tempore of the Senate, 19 WEEKLY COMP. PRES. DOC. 1493, 1493-94 (October 25, 1983) [hereinafter cited as *Forces in Grenada*]. In addition to the 1900 U.S. forces, 300 troops from the Organization of Caribbean States landed on Grenada. *Forces in Grenada*, *supra* this note, at 1494.

2. N.Y. Times, October 26, 1983, at A16, col. 2. In addition to the protection of U.S. citizens, the U.S. administration justified the U.S. action in Grenada as a joint effort, with the Organization of Caribbean States, to restore law and order in Grenada. Situation In Grenada: Remarks and a Question-and-Answer Session With Reporters, 19 WEEKLY COMP. PRES. DOC. 1487, 1487 (October 25, 1983) [hereinafter cited as *Situation in Grenada*]. This article does not consider the collective self-defense justification for the intervention. Rather, the article focuses on the justification of the protection of U.S. citizens.

3. N.Y. Times, October 26, 1983, at A1, col. 2; Address by Deputy Secretary of State Kenneth Dam, 83 DEP'T ST. BULL. 79,80 (No. 2081, 1983) [hereinafter cited as *Dam Statement*].

4. N.Y. Times, October 26, 1983, at A16, col. 4; *Dam Statement*, *supra* note 3, at 80.

5. N.Y. Times, October 27, 1983, at A20, col. 1.

6. *See id.* New Jewel Movement stands for the Joint Endeavor for Welfare, Education and Liberation. *Id.*

7. *Id.*, October 26, 1983, at A21, col. 1.

8. *Id.* For a discussion of Bishop's relationship with the Soviet Union and other eastern bloc nations, see American Bar Association, Section of International Law and Practice, Report of the Committee on Grenada, January 25, 1984, at 2-4.

9. *Dam Statement*, *supra* note 3, at 80. For a discussion of the events which led to Bishop's overthrow, see *From a Grenadian Diplomat: How Party Wrangle Led to Premier's Death*, N.Y. Times, October 30, 1983, at A20, col. 1.

resistance, attempted to overthrow Bishop at a meeting of the government's Central Committee.¹⁰ On October 14, 1983, Bishop was placed under house arrest.¹¹ When Bishop's supporters tried to free him a few days later, Coard's followers broke up the demonstration by shooting into the crowd and killing many of the supporters.¹² Later that day, followers of the Coard faction executed Bishop and several of his cabinet members and close followers.¹³

After Bishop's execution, the government of Grenada was dissolved.¹⁴ Although General Hudson Austin then became chairman of a sixteen-member Revolutionary Military Council, neither he nor any other person officially controlled the government.¹⁵ Austin also retained his leadership over the People's Revolutionary Army (P.R.A.).¹⁶ The P.R.A. immediately imposed a shoot-to-kill curfew on all the residents of Grenada.¹⁷ In addition, the P.R.A. closed the airport, preventing the departure of U.S. citizens who wished to leave the island.¹⁸ Given this chain of events, U.S. officials became concerned for the safety and welfare of the U.S. citizens living in Grenada.¹⁹ Consequently, President Reagan initiated the rescue mission to prevent the citizens from being hurt or taken hostage.²⁰

Although the U.S. public reacted favorably to the invasion of Grenada and the rescue of U.S. citizens,²¹ most of the world community severely criticized the invasion.²² The U.S. action was characterized as "grotesque,"²³ "deplorable and

10. *Dam Statement*, *supra* note 3, at 80.

11. *Id.*

12. *Id.*, *Forces in Grenada*, *supra* note 1, at 1493.

13. N.Y. Times, October 26, 1983, at A1, col. 6; Statement by Ambassador Jeane J. Kirkpatrick, U.S. Permanent Representative to the United Nations, in the Security Council, on the Situation in Grenada, 83 DEP'T ST. BULL. 74, 74 (No. 2081, 1983) [hereinafter cited as Kirkpatrick]. In addition to Bishop, those executed included: Grenada's Minister of Education, Miss Jacqueline Greff; Grenada's Foreign Minister, Mr. Unison Whiteman; Minister of Housing, Mr. Norris Bain; the leader of the Grenadian Bank and the General Workers Union, Mr. Vincent Noel; and Mr. Fitzroy Bain, another prominent trade union leader. *Id.* (quoting Prime Minister Seaga of Jamaica).

14. *Dam Statement*, *supra* note 3, at 80.

15. *Id.*; see Statement of Ambassador Middendorf before the OAS Permanent Council, October 26, 1983, 83 DEP'T ST. BULL. 72, 72 (No. 2081, 1983) [hereinafter cited as *Middendorf Statement*].

16. *Middendorf Statement*, *supra* note 15, at 72.

17. *Dam Statement*, *supra* note 3, at 80.

18. See N.Y. Times, October 26, 1983, at A16, col. 4; Kirkpatrick, *supra* note 13, at 75.

19. N.Y. Times, October 26, 1983, at A16, col. 4; *Dam Statement*, *supra* note 3, at 80.

20. N.Y. Times, October 26, 1983, at A18, col. 1.

21. See, e.g., Auchincloss, Walcott & Fineman, *Americans at War*, 102 NEWSWEEK 52, 54 (November 7, 1983); *Swelling Applause for the Grenada Rescue*, Executive Memorandum #39, November 3, 1983 [hereinafter cited as *Executive Memorandum*]. See also *Ceremony for Medical Students From Grenada and U.S. Military Personnel*, Remarks at the White House Ceremony, November 7, 1983, 19 WEEKLY COMP. OF PRES. DOC. 1536.

22. N.Y. Times, October 27, 1983, at A21, col. 1; see, e.g., *id.*, October 26, 1983, at A18, col. 3.; *id.*, October 27, 1983, A19, col. 1; *id.*, November 3, 1983, at A21, col. 1.

23. Editorial in EL NACIONAL, CARACAS, quoted in *The World Looks at Grenada*, WORLD PRESS REVIEW, December 1983.

wholly unjustified,"²⁴ and "cold-blooded aggression."²⁵ Furthermore, despite the U.S. pronouncement that the overriding purpose of the action was the rescue of the U.S. citizens,²⁶ many nations expressed the opinion that the protection of citizens was merely a pretext to justify the invasion.²⁷ Immediately after the U.S. action was publicized, the President of the U.N. Security Council called an emergency meeting of the Council to discuss the situation in Grenada.²⁸ At the meeting, the representatives from Nicaragua and Guyana proposed a draft resolution that condemned the U.S. action.²⁹ Although this resolution was vetoed by the United States, the United States was the only member of the fifteen-member council that supported the landing of U.S. marines on Grenada.³⁰ Moreover, by a vote of 108 to 9 with 27 abstentions, the U.N. General Assembly adopted a resolution "deeply deploring" the U.S. action and characterizing it as a "flagrant violation of international law."³¹

International law prohibits the use of force in international relations.³² The use of force by a nation is permitted, however, when that nation is acting in self-defense.³³ Many legal scholars argue that an additional exception to the

24. Remark of Representative Faforwa of Nigeria at United Nations Security Council Meeting, October 26, 1983, S/PV 2489, at 17.

25. Remark of Representative Natorf of Poland, *id.* S/PV 2489, at 21.

26. *Situation in Grenada*, *supra* note 2, at 1487.

27. *See, e.g.*, Remarks of Representative Hoang Bich Son of Viet Nam, United Nations Security Council, October 26, 1983, S/PV 2489, at 13-15 ("[t]he pretext of protecting [U.S.] nationals smacks too much of the old colonialist gunboat diplomacy of past centuries to need further condemnation today."); remarks of Representative Natorf of Poland, *id.* at 18-20 ("[t]he fallacious arguments raised by the American Administration lack any justification and are totally unacceptable."). *See also* remarks of Representative Sahnoun of Algeria, *id.* at 42; remarks of Representative Vongsay of Lao People's Democratic Republic, *id.* at 82; remarks of Representative de Figueredo of Angola, October 28, 1983, S/PV 2491 at 76.

28. N.Y. Times, October 26, 1983, at A18, col. 3.

29. *Id.*, October 27, 1983, at A19, col. 1. For the text of the draft resolution see S/16077/Rev.1. Zimbabwe also joined in sponsoring the resolution. *See* October 26, 1983, S/PV 2489, at 3-5.

30. Meeting of UNSC, October 28, 1983, S/PV 2491 at 197. The nations voting for the resolution were China, France, Guyana, Jordan, Malta, Netherlands, Nicaragua, Pakistan, Poland, Union of Soviet Socialist Republics, and Zimbabwe. Those nations which abstained were Togo, United Kingdom of Great Britain and Northern Ireland, and Zaire. *Id.*

31. G.A. Res. 3817 (XXXVIII), *noted in*, N.Y. Times, November 3, 1983, at A21, col. 1. Those voting against the resolution were United States, Antigua and Barbuda, Barbados, Dominica, El Salvador, Israel, Jamaica, Saint Lucia, Saint Vincent, and Grenada. *Id.*

32. U.N. CHARTER art. 2, para. 4 states: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." *Id.* In addition to the U.N. Charter, the Charter of the Organization of American States (OAS) supports the principle of non-intervention. *See* OAS CHARTER, art. 15, art. 17. Article 17 states that "the territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any ground whatsoever . . ." *Id.* at art. 17. For a discussion of the OAS Charter and the protection of human rights see Cabranes, *Human Rights and Non-Intervention in the Inter-American System*, 65 MICH. L. R. 1147 (1967).

33. U.N. CHARTER art. 51 provides: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United

prohibition against the use of force exists when a nation intervenes in the affairs of another nation for humanitarian purposes.³⁴ Two doctrines exist which embody the principle of intervention on humanitarian grounds: the protection-of-nationals doctrine, which permits intervention by a state to protect its own citizens, and the doctrine of humanitarian intervention, which sanctions the use of force to prevent violations of human rights, regardless of the nationality of the victim.³⁵ The legality of intervention on humanitarian grounds is recognized by both jurists³⁶ and state practice.³⁷ Given the apparent ineffectiveness of collective measures from the United Nations, many scholars support the use of unilateral intervention to protect human rights.³⁸

Proponents of humanitarian intervention have set forth criteria to assess the legality of a state's rescue measures.³⁹ When conducting a rescue effort in the territory of another nation, a state must use only the amount of force necessary to achieve the purpose of the mission.⁴⁰ Furthermore, the rescue effort must be promptly disengaged as soon as its purpose is achieved.⁴¹ Scholars have also set forth criteria which define the situations which would warrant the initiation of an act of humanitarian intervention.⁴² The legitimacy of the initiation of the intervention is judged by the immediacy of the human rights violation,⁴³ the extent of the violation,⁴⁴ the existence of an invitation by the recognized government of the state,⁴⁵ and the availability of alternative recourse.⁴⁶

This article examines the current validity of the right of humanitarian inter-

Nations, until the Security Council has taken measures necessary to maintain international peace and security . . ." *Id.*

34. *E.g.*, McDougal & Reisman, *Humanitarian Intervention to Protect the Ibos*, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 167, 178 (R. Lillich ed. 1973) [hereinafter cited as McDougal & Reisman]; Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325, 344-45 (1967) [hereinafter cited as Lillich, *Forcible Self-Help*]; Moore, *Toward an Applied Theory for the Regulation of Intervention in LAW AND CIVIL WAR IN THE MODERN WORLD* 3, 24-25 (J.N. Moore ed. 1974) [hereinafter cited as Moore, *Regulation*]; Stowell, INTERVENTION IN INTERNATIONAL LAW 51-62 (1921).

35. Fairley, *State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box*, 10 GA. J. INT'L & COMP. L. 29, 32 (1980).

36. *See, e.g.*, McDougal & Reisman, *supra* note 34, at 178; Lillich, *supra* note 34, at 344-45; Moore, *Regulation, supra* note 34, at 24-25.

37. *See* Fonteyne, *The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter*, 4 CALIF. W. INT'L L.J. 203, 205-13 (1974).

38. *See, e.g., id.* at 257-58.

39. *E.g.*, Moore, *Regulation, supra* note 34, at 24-25; Lillich, *Forcible Self-Help, supra* note 34, at 347-51; Fonteyne *supra* note 37, at 258-68.

40. Lillich, *Forcible Self-Help, supra* note 34, at 349-50.

41. Moore, *Regulation, supra* note 34, at 25.

42. *E.g.*, Moore, *Regulation, supra* note 34, at 24-25; Lillich, *Forcible Self-Help, supra* note 33, at 347-51; Fonteyne, *supra* note 37, at 258-68.

43. Lillich, *Forcible Self-Help, supra* note 34, at 347-48; Moore, *Regulation, supra* note 34, at 25; Fonteyne, *supra* note 37, at 260.

44. Lillich, *Forcible Self-Help, supra* note 34, at 348-49; Moore, *Regulation, supra* note 34, at 25; Fonteyne, *supra* note 37, at 258-60.

45. Lillich, *Forcible Self-Help, supra* note 34, at 349; Fonteyne, *supra* note 37, at 267-68.

46. Moore, *Regulation, supra* note 34, at 25; Fonteyne, *supra* note 264-65.

vention under the U.N. Charter. The article discusses the criteria used by legal scholars to determine the propriety of the initiation of an interventionist act. The article next examines the United States' reliance on humanitarian grounds as a justification for the Grenada rescue effort. This article does not address whether the United States used the proper means to carry out the intervention. Rather the sole focus of the article is on the legitimacy of the initiation of the Grenada rescue effort. In analyzing the necessity of the U.S. action in Grenada, the article reviews the Iranian hostage crisis and the need for states to act before hostages are taken. The author concludes that, in light of the various criteria proposed by legal scholars, the initiation of the U.S. intervention in Grenada to protect the U.S. citizens was proper under international law.

II. THE HISTORICAL DEVELOPMENT OF INTERVENTION FOR HUMANITARIAN PURPOSES

In order to advance the importance of the sovereignty of nations, traditional international law repudiated intervention by one state in the affairs of another.⁴⁷ In the nineteenth century, many scholars espoused a theory of absolute non-intervention, contending that intervention in the affairs of another state is never permissible.⁴⁸ On the other hand, a substantial body of writers believed that while non-intervention was the rule, intervention could be justified when it was necessary to protect human rights.⁴⁹ This latter approach to intervention gained acceptance from many twentieth century scholars.⁵⁰ Although the doctrine of non-intervention became a norm of customary international law,⁵¹ an exception to this norm was recognized when human rights were being protected.⁵² This exception of intervention for humanitarian purposes was exemplified by two doctrines: the protection-of-nationals and humanitarian intervention.⁵³

The protection of nationals as a basis for intervention developed out of a state's responsibility towards resident aliens.⁵⁴ Although states were traditionally permitted to treat persons within their borders as they wished,⁵⁵ international

47. See 1 L. OPPENHEIM, *International Law* 319 (H. Lauterpacht 8th ed. 1955).

48. See R. VINCENT, *NON-INTERVENTION AND INTERNATIONAL ORDER* 45-633 (1974).

49. See, e.g., H. GROTIUS, *DE JURE BELLI AC PACIS* 627 (J. Scott ed. 1929); W.E. HALL, *A TREATISE ON INTERNATIONAL LAW* 338 (8th ed. 1924). For a detailed listing of the many authorities who supported humanitarian intervention in the nineteenth century see Stowell, *supra* note 34, at 55-58.

50. See, e.g., 1 L. OPPENHEIM, *supra* note 47, at 312 ("[there exists] a substantial body of opinion and of practice in support of the view that there are limits to [the] discretion [of States in the treatment of their own nationals] and that when a State renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible.")

51. See 1 L. OPPENHEIM, *supra* note 47, at 305.

52. *Id.* at 312.

53. Fairley, *supra* note 35, at 32.

54. BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 349-54, 448 (1915).

55. See BORCHARD, *supra* note 54, at 349.

law required each state to accord to aliens a minimum standard of treatment with regard to their life, liberty, and property.⁵⁶ If a state did not fulfill this obligation, the alien's sovereign state was permitted to enforce compliance with this minimum standard.⁵⁷

The right of a state to use force to protect nationals within the territory of another state has been acknowledged by modern legal scholars.⁵⁸ One scholar has argued that the right to protect citizens abroad is limited to those circumstances where the foreign state has not furnished such protection.⁵⁹ The frequent state practice of intervening to protect citizens abroad also supports the validity of this doctrine.⁶⁰

While the protection-of-nationals principle permits intervention by a state on behalf of its own citizens, the doctrine of humanitarian intervention sanctions the use of force to protect persons from abusive treatment regardless of their nationality.⁶¹ The customary international law right of humanitarian intervention has been justified on the theory that the offending state has abused its sovereign rights by mistreating its own nationals.⁶² Consequently, the state is not entitled to invoke a claim of absolute sovereignty against the intervening nation.⁶³

The primary purpose for the development of the doctrine of humanitarian intervention was to protect citizens from abusive acts by their own government.⁶⁴ The doctrine, however, has also been extended to support the use of force by a

56. *Id.* at 39.

57. *Id.* at 349-52. Measures of enforcement available to the protecting state ranged from diplomatic discussions to actual war. A. THOMAS & A. THOMAS, *NON-INTERVENTION* 307 (1956) [hereinafter cited as THOMAS & THOMAS].

58. *E.g.*, BORCHARD, *supra* note 54, at 448-53; BOWETT, *SELF DEFENCE IN INTERNATIONAL LAW* 87 (1958); BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 289-301 (1963); JESSUP, *A MODERN LAW OF NATIONS* 169 (1949); 1 L. OPPENHEIM, *supra* note 48, at 309; see generally DUNN, *THE PROTECTION OF NATIONALS* (1932).

59. JESSUP, *supra* note 58, at 169. Jessup states:

Traditional international law has recognized the right of a state to employ its armed forces for the protection of the lives and property of its nationals abroad in situations where the state of their residence, because of revolutionary disturbances or other reasons, is unable or unwilling to grant them the protection to which they are entitled.

Id.

60. See BROWNLIE, *supra* note 58, at 289-301; THOMAS & THOMAS, *supra* note 57, at 312-26.

61. Fairley, *supra* note 35, at 32. Stowell defines humanitarian intervention as "[t]he reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice." STOWELL, *supra* note 34, at 53 (1921).

62. See A. Thomas & A. Thomas, *The Dominican Republic Crisis 1965*. 13 IXTH HAMMERSKJOLD FORUM (1967) quoted in Lillich, *Intervention to Protect Human Rights*, 15 MCGILL L.J. 205, 210 (1969).

63. See *id.*

64. Lillich, *Forcible Self-Help*, *supra* note 34, at 332. For a complete history of the doctrine including a summary of 19th century examples of humanitarian intervention see GANJI, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 22-43 (1962).

state to protect its own nationals and the nationals of a third state.⁶⁵ Humanitarian intervention has been acknowledged by both legal scholars⁶⁶ and state practice.⁶⁷

III. THE EFFECT OF THE U.N. CHARTER ON HUMANITARIAN INTERVENTION

The U.N. Charter reinforces the principle of non-intervention and stresses the importance of state sovereignty.⁶⁸ Article 2(4) expressly forbids "the threat or use of force against the territorial integrity or political independence of any state."⁶⁹ Article 2(7) prevents intervention by the United Nations in matters which are essentially within the domestic jurisdiction of any state.⁷⁰ Subsequent resolutions of the U.N. General Assembly further embody the Charter's strong protection of the sovereign equality of States.⁷¹ For example, the U.N. Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States asserts that "[t]he strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace."⁷²

65. Lillich, *Forcible Self-Help*, *supra*, note 33, at 332; see Suzuki, *A State's Provisional Competence to Protect Human Rights in a Foreign State*, 15 *TEX. INT'L L.J.* 231, 243 (1980); Fairley, *supra* note 35, at 35. Fairley has argued that the legal distinction between protection-of-nationals and humanitarian intervention exists in theory but should be abolished in practice: "[w]ith respect to the use of force by states for humanitarian ends, it is submitted that the utility of the two-fold classification of customary international law collapses for the purpose of assessing the legal propriety of humanitarian intervention in the post-1945 era." *Id.*

Although the U.S. authorities classified the U.S. action to protect the citizens as "protection-of-nationals," *Dam Statement*, *supra* note 3, at 81, the authorities could have labeled the action "humanitarian intervention" since the intervention was for humanitarian reasons. This article adopts Fairley's approach and collapses the doctrines of humanitarian intervention and protection-of-nationals for the purpose of assessing the legality of the initiation of the Grenada invasion. As used in this article, the term humanitarian intervention includes the doctrine of protection-of-nationals.

66. *E.g.*, McDougal & Reisman, *supra* note 34, at 178; Moore, *Regulation*, *supra* note 34, at 24-25; 1 L. OPPENHEIM, *supra* note 47, at 312; Lillich states that "[t]he doctrine of humanitarian intervention appears to have been so clearly established under customary international law that only its limits and not its existence is subject to debate." Lillich, *Intervention to Protect Human Rights*, 15 *MCGILL L.J.* 205, 210 (1969) [hereinafter cited as Lillich, *Intervention*].

67. See Ganji, *supra* note 64, at 22-42.

68. U.N. CHARTER art. 2, para. 4; U.N. CHARTER art. 2, para. 7.

69. U.N. CHARTER art. 2, para. 4; see *supra* note 32 for the text of art. 2, para. 4.

70. U.N. CHARTER art. 2, para. 7 states: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . ." *Id.*

71. See Fairley, *supra* note 35, at 43-44; *E.g.*, Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625 (XXV) 25 U.N. GAOR Supp. (No. 14), U.N. Doc. A/8018 (1970); Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, G.A. Res. 2131 (XX) 20 U.N. GAOR Supp. (No. 14), U.N. Doc. A/6014 (1965).

72. Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625 (XXV) 25 U.N. GAOR Supp. (No. 14), U.N. Doc. A/8018 (1970).

Although one of its express purposes is the protection of human rights,⁷³ the Charter fails to include a provision permitting intervention to enforce this purpose.⁷⁴ The Charter's only exception to the prohibition against the unilateral use of force is the right to use force in self-defense.⁷⁵ In addition, Chapter VII of the Charter provides for the right of collective self-defense against threats of international disorder.⁷⁶

The prohibitions against the use of force stated in the U.N. Charter and the absence of any provisions which sanction intervention on humanitarian grounds have led many scholars to challenge the validity of the doctrine of humanitarian intervention.⁷⁷ On the other hand, some scholars express the view that, despite the Charter's provisions, the two doctrines have maintained their vitality.⁷⁸ Proponents of humanitarian intervention can be classified into two groups: those who believe that intervention is only permissible by a state to save its own nationals,⁷⁹ and those who support intervention to protect human rights regardless of the nationality of the victim.⁸⁰ Those scholars who support humanitarian intervention to protect only nationals view intervention as an extension of the nation's right of self-defense.⁸¹ By equating the protection of nationals with the protection of the state itself, Article 51 is used to justify intervention to protect nationals.⁸²

Many critics, however, argue that a broad interpretation of Article 51 presents many problems.⁸³ First, the wording of Article 51 emphasizes that an "armed attack against the state" is necessary before the state can invoke the right of self-defense.⁸⁴ Literally, abusive acts against nationals in a foreign country would

73. U.N. CHARTER art. 1, para. 3 states: "the purposes of the United Nations are: . . . promoting and encouraging respect for human rights . . ." *Id.*

74. See Lillich, *Forcible Self-Help*, *supra*, note 34, at 334.

75. U.N. CHARTER art. 51. See *supra* note 33 for the text of article 51.

76. See U.N. CHARTER ch. VII.

77. See, e.g., Brownlie, *Humanitarian Intervention* in LAW AND CIVIL WAR IN THE MODERN WORLD 217, 218-19, 226 (J.N. Moore ed. 1974).

78. E.g., McDougal & Reisman, *supra* note 34, at 178; Moore, *Regulation*, *supra* note 34, at 24-25; Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives* in LAW AND CIVIL WAR IN THE MODERN WORLD 229, 241 (J.N. Moore ed. 1974) [hereinafter cited as Lillich, *Reply*].

79. See, e.g., Bowett, *The Interrelation of Theories of Intervention and Self-Defense*, in LAW AND CIVIL WAR IN THE MODERN WORLD 38, 44-45 (J. Moore ed. 1974); Waldock, *The Regulation of the Use of Force by Individual States in International Law*, 81 RECUEIL DES COURS 455, 466-67 (1952).

80. E.g., McDougal & Reisman, *supra* note 34, at 178; Moore, *Regulation*, *supra* note 34, at 24-25; Lillich, *Forcible Self-Help*, *supra* note 34, at 344-45.

81. Bowett, *supra* note 58, at 92. Bowett states:

It has been contended that an injury to the nationals of a state constitutes an injury to the state itself, and that the protection of nationals is an essential function of the state. On this reasoning it is feasible to argue that the defense of nationals, whether within or without the territorial jurisdiction of the state, is in effect the defense of the state itself.

Id.

82. See *id.* at 92, 184-89.

83. E.g., Brownlie, *supra* note 58, at 429; Fonteyne, *supra* note 37, at 251; see JENKS, A NEW WORLD OF LAW 30 (1969).

84. Fonteyne, *supra* note 37, at 251 n.208.

not constitute an armed attack against the state itself.⁸⁵ Second, critics fear that the use of the doctrine of self-defense as the legal basis for intervention on humanitarian grounds would encourage a disproportionate use of force in the intervention.⁸⁶ Furthermore, equating the protection of nationals with the protection of the state itself creates a greater inclination on the part of the state to resort to force when any group of citizens is in danger, regardless of its number.⁸⁷

The second group of scholars that support humanitarian intervention state that such intervention conforms with the U.N. Charter.⁸⁸ These scholars take a restrictive view of Article 2(4) and state that intervention which is not directed at a sovereign state's political independence or territorial integrity is not prohibited under Article 2(4).⁸⁹ Consequently, these proponents maintain that Article 2(4) does not preclude the temporary imposition caused by a rescue effort in a foreign state.⁹⁰ Such an interpretation of Article 2(4) has been questioned by those who view any act of armed intervention as at least a temporary infringement upon the target state's territorial integrity.⁹¹ Moreover, many situations in which human rights are violated require more than a temporary imposition.⁹²

Proponents of the restrictive view of Article 2(4) argue that one of the purposes of the U.N. Charter is the protection of human rights and only a restrictive view of the prohibition against the use of force is consistent with that purpose.⁹³ Article 55 reinforces the United Nations' commitment to the promotion of human rights.⁹⁴ In addition, Article 56 recognizes the individual state's obligation to protect human rights.⁹⁵ Although the framers of the U.N. Charter envisioned that the United Nations would be able to protect human rights effectively,⁹⁶ the machinery necessary to implement this ability never mate-

85. *See id.*

86. *See* Fonteyne, *supra* note 37, at 252; Lillich, *Forcible Self-Help*, *supra*, note 34, at 337.

87. *See* Fonteyne, *supra* note 37, at 252.

88. *See, e.g.*, McDougal & Reisman, *supra* note 34, at 177; Lillich, *Reply*, *supra* note 78, at 236-37.

89. *See, e.g.*, Lillich, *Reply*, *supra* note 78, at 236-37; Moore, *The Control of Foreign Intervention in International Conflict*, 9 VA. J. INT'L L. 205, 262 (1969) [hereinafter cited as Moore, *Intervention*]. Reisman and McDougal argue:

Since a humanitarian intervention seeks neither a territorial change nor a challenge to the political independence of the state involved and is not only not inconsistent with the purposes of the United Nations but is rather in conformity with the most fundamental peremptory norms of the Charter, it is a distortion to argue that it is precluded by Article 2(4).

McDougal & Reisman, *supra* note 34, at 177.

90. *See* McDougal & Reisman, *supra* note 34, at 177.

91. *E.g.*, Brownlie, *supra* note 77, at 222-23; Bowett, *supra* note 79, at 44-45.

92. Fonteyne, *supra* note 37, at 255.

93. *See* McDougal & Reisman, *supra* note 34, at 177; Lillich, *Reply*, *supra* note 78, at 236-37.

94. U.N. CHARTER art. 55 provides that "[t]he United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." *Id.*

95. U.N. CHARTER art. 56 states: "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." *Id.*

96. *See* Fonteyne, *supra* note 37, at 257.

rialized.⁹⁷ The United Nations failed to formulate the collective security measures proposed in Chapter VII of the Charter.⁹⁸ Given the lack of effective international measures to protect human rights, many scholars acknowledge the right of unilateral action by states to enforce human rights.⁹⁹ If the United Nations does develop the capacity to deal with the abuses of human rights, a state's ability to resort to forcible self-help may be precluded.¹⁰⁰ Until such international measures are developed, however, humanitarian intervention will continue to prevail.¹⁰¹

IV. THE CRITERIA WHICH LIMIT THE DOCTRINE OF HUMANITARIAN INTERVENTION AND AN ASSESSMENT OF THE GRENADA ACTION IN LIGHT OF THESE CRITERIA

While many scholars recognize the right of a state to engage in humanitarian intervention to save its citizens, a state's use of this doctrine is not unrestricted. The enormous potential for abuse in the invocation of humanitarian intervention,¹⁰² has led proponents of humanitarian intervention to agree that the use of force under this exception must be limited.¹⁰³ Commentators examine the duration of the mission and the degree of coercive measures employed to determine whether a state has properly carried out its rescue efforts.¹⁰⁴ According to criteria proposed by these legal scholars, a state must use only the amount of force necessary to conduct the mission¹⁰⁵ and must promptly disengage the mission after its purpose is achieved.¹⁰⁶ Furthermore, authorities have listed various criteria which limit the circumstances in which humanitarian interven-

97. *Id.*; See also Lillich, *Reply*, *supra* note 78, at 245; Lillich, *Forcible Self-Help*, *supra* note 34, at 335.

98. See Fonteyne, *supra* note 37, at 257 n.230.

99. See, e.g., McDougal & Reisman, *supra* note 34, at 178; Fonteyne, *supra* note 37, at 258. For a listing of those scholars who acknowledge the doctrine of humanitarian intervention see Lillich, *Reply*, *supra* note 78, at 241.

100. See Lillich, *Reply*, *supra* note 78, at 244; Moore, *Regulation*, *supra* note 34, at 25.

101. See Lillich, *Forcible Self-Help*, *supra* note 34, at 345 n.116. Fonteyne argues that "[a]s long as the world community appears unable or unwilling to promptly respond in a collective manner to those dramatic situations where the very nature and existence of man are threatened, individual initiatives by concerned States will have to be relied upon if a viable world is to be maintained." Fonteyne, *supra* note 37, at 269.

102. See Bowett, *supra* note 79, at 45. One commentator has noted that "[a]ny 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." FALK, *LEGAL ORDER IN A VIOLENT WORLD* 161 (1968).

103. See, e.g., Moore, *Regulation*, *supra* note 34, at 24-25; Lillich, *Intervention*, *supra* note 89, at 218; Nanda, *The United States' Action in the 1965 Dominican Crisis: Impact on World Order — Part I*, 43 DENVER L.J. 439, 475 (1966) [hereinafter cited as Nanda].

104. See Moore, *Regulation*, *supra* note 34, at 25; Lillich, *Forcible Self-Help*, *supra* note 34-50; Nanda, *supra* note 103, at 475.

105. See, e.g., Lillich, *Forcible Self-Help*, *supra* note 34, at 349-50.

106. See Moore, *Regulation*, *supra* note 34, at 25; Fonteyne, *supra* note 37, at 263-64.

tion may be initiated.¹⁰⁷ In judging the legitimacy of the initiation of an interventionist act, authorities examine the immediacy of the violation of human rights,¹⁰⁸ the extent of the violation,¹⁰⁹ the existence of an invitation by the recognized government¹¹⁰ and the availability of alternative recourse.¹¹¹ By applying these four criteria to the factual circumstances present in Grenada, this article evaluates whether the initiation of the U.S. rescue effort to protect its citizens was justified.

A. *The Immediacy of the Violation of Human Rights*

In order to initiate a legitimate act of humanitarian intervention, the intervenor must make a good faith determination that there exists an imminent threat of a violation of human rights.¹¹² The only violations of human rights which would justify intervention are violations of the most fundamental human rights such as the right to life.¹¹³ The torturing and killing of a state's nationals are sufficient to establish a basis for intervention.¹¹⁴ A state, however, need not wait until there has been an actual deprivation of human rights before intervening.¹¹⁵ Rather, a state is justified in intervening when it has made a good faith determination that its citizens are threatened.¹¹⁶

When a state's citizens have been taken hostage, the state is justified in making a determination that an imminent threat to its citizens exists and a rescue mission is necessary.¹¹⁷ The Israeli rescue of its citizens from the Entebbe airport illustrates a state's justified reliance on the presence of a hostage situation as indicative of imminent danger.¹¹⁸ The circumstances which necessitated the Israeli rescue effort began on June 27, 1976, when a group of terrorists hijacked a plane en route to Paris and forced it to land at Uganda's Entebbe airport with

107. See Moore, *Regulation*, *supra* note 34, at 25; Lillich, *Forcible Self-Help*, *supra* note 34, at 347-49; Fonteyne, *supra* note 37, at 258-61.

108. Lillich, *Forcible Self-Help*, *supra* note 34, at 347-48; Moore, *Regulation*, *supra* note 34, at 25; Fonteyne, *supra* note 37, at 260.

109. Lillich, *Forcible Self-Help*, *supra* note 34, at 348-49; Moore, *Regulation*, *supra* note 34, at 25; Fonteyne, *supra* note 37, at 258-60.

110. Lillich, *Forcible Self-Help*, *supra* note 34, at 349; Fonteyne, *supra* note 37, at 267-68.

111. Moore, *Regulation*, *supra* note 34, at 25; Fonteyne, *supra* note 37, at 264-65.

112. Fonteyne, *supra* note 37, at 260.

113. See *id.* at 258-59; Moore, *Intervention*, *supra* note 89, at 264.

114. Fonteyne, *supra* note 37, at 259.

115. Thapa, *Humanitarian Intervention*, 40 (unpublished thesis in McGill University Law School Library, 1968) quoted in Fonteyne, *supra* note 37, at 260. Thapa states that "[since] The main basis of humanitarian intervention is the protection of humanity, there cannot be a principle forcing the intervening party to wait until the destructive act has been committed. Such intervention being preventive rather than punitive, the existence of the imminent danger is sufficient . . ." *Id.* at 40.

116. Fonteyne, *supra* note 37, at 260.

117. See Note, *Use of Force for the Protection of Nationals Abroad: The Entebbe Incident*, 9 CASE W. RES. J. INT'L L. 117, 133 (1977).

118. See *id.*; Krift, *Self-Defense and Self-Help: The Israeli Raid On Entebbe*, 4 BROOKLYN J. INT'L L. 43, 57 (1977).

over 250 hostages.¹¹⁹ Although some of these passengers were released, the terrorists continued to hold 110 Israeli citizens and threatened to kill these passengers unless their demands were met within forty-eight hours.¹²⁰ When the government of Israel stated that it would negotiate with the terrorists, the terrorists extended the previous deadline an additional seventy-two hours.¹²¹ On the morning of July 4, 1976, just hours before the second deadline, Israeli forces raided the Entebbe airport and rescued the hostages.¹²² After the Entebbe rescue operation, both supporters and critics of the action acknowledged the fact that there existed a real and imminent threat to the lives of the Israeli hostages.¹²³

As the Entebbe incident illustrates, a hostage situation is a strong indication to a state that its citizens are faced with imminent danger.¹²⁴ However, due to the limitations on conducting effective rescue efforts,¹²⁵ a state should not have to wait until a hostage situation arises before implementing a rescue effort to save its citizens.¹²⁶ The circumstances surrounding the Iranian hostage crisis illustrate the practical constraints upon humanitarian intervention when a state fails to intervene before its citizens are taken hostage.¹²⁷

On November 4, 1979, Moslem students attacked the U.S. Embassy in Tehran and seized over 100 diplomatic personnel.¹²⁸ The takeover was part of an anti-American campaign launched against the United States for its alleged sup-

119. N.Y. Times, June 28, 1976, at A1, col. 2.

120. *Id.*, June 30, 1976, at A1, col. 7; *Id.*, July 1, at A1, col. 4; *Id.*, July 2, at A1, col. 1. The demands of the terrorists were that fifty-three "freedom fighters" imprisoned in various countries be freed in exchange for the release of the hostages. Forty of these prisoners were in Israeli jails. *Id.*, June 30, 1976, at A1, col. 7.

121. N.Y. Times, July 2, 1976, at A1, col. 1.

122. *Id.*, July 5, 1976, at A1, col. 1. For a detailed account of the rescue operation see STEVENS, NINETY MINUTES AT ENTEBBE (1976).

123. See N.Y. Times, July 5, at A4, col. 4; *Id.*, July 5, 1976, at A3, col. 8. Uganda's president, Idi Amin, criticized the action as an attack to Uganda's territorial integrity. Nevertheless, he expressed thanks that the military had "repulsed the attack." *Id.*, July 5, 1976, at A3, col. 8. A draft resolution sponsored by Benin, Libya, and Tanzania condemned the Israeli attack and called upon Israel to make full compensation to Uganda. This resolution never gained support and was withdrawn prior to voting. 31 U.N. SCOR (1943d mtg.) 76, U.N. Doc. S/PV 1943 (1976). For comments of those supporting the Israeli action see remarks of representatives from France, Germany, Sweden, United Kingdom, and the United States, 31 U.N. SCOR (1943d mtg.) 76. The U.S. delegate argued that "[there is] a well-established right to use limited force for the protection of one's own nationals from an imminent threat of injury or death in a situation where the state in whose territory they were located was either unwilling or unable to protect them." *Id.*

124. See Krift, *supra* note 118, at 133.

125. See Fairley, *supra* note 35, at 56.

126. See Moore, *Grenada and the International Double Standard*, 78 AM. J. INT'L L. 145, 156 (1984) [hereinafter cited as Moore, *Grenada*].

127. Fairley, *supra* note 35, at 56-58; Fairley states that "The Iranian crisis graphically illustrates the point that humanitarian intervention will fall short of fulfilling its primary objective so long as the human rights violator takes the comparatively easy precautions necessary to prevent access [to the hostages] . . ." *Id.* at 57.

128. N.Y. Times, November 5, 1979, at A1, col. 6.

port of the recently ousted Shah of Iran.¹²⁹ The militant students demanded the Shah's return from the United States in exchange for the hostages.¹³⁰ Despite the United States rejection of this demand, the students remained committed to their original purpose.¹³¹

The U.S. authorities expected help from the Iranian government.¹³² A few days after the embassy takeover, however, the ruling government collapsed.¹³³ Ayatollah Khomeini then took control of Iran.¹³⁴ A strong supporter of the students' actions, the Ayatollah reinforced the commitment to keep the U.S. citizens hostage until the Shah was released.¹³⁵ Furthermore, the militant students stated that Iran would kill the hostages if the United States used military force in a rescue attempt.¹³⁶ President Carter had previously ruled out military action as a means to free the hostages.¹³⁷ Military experts and other authorities stated that an attempt to free the hostages had almost no chance of success,¹³⁸ and that such a rescue effort would only inflame the students and further endanger the lives of the hostages.¹³⁹ Consequently, the President resorted to diplomatic efforts to obtain the release of the hostages.¹⁴⁰ The hostages were eventually released after being held in captivity for 444 days.¹⁴¹

The inability of the United States to rescue the Iranian hostages supports a view of humanitarian intervention which would permit intervention regardless of whether the citizens have been taken hostage. The requirement of the immediacy of a threat to human rights should be satisfied as long as the state has made a good faith determination that its citizens are in danger.¹⁴²

The circumstances present in Grenada support the U.S. determination that there existed an imminent threat of danger to its citizens on Grenada.¹⁴³ Given the disintegration of political authority and the violent killings, U.S. authorities

129. *Id.*, at A10, col. 3.

130. *Id.*, November 6, 1979, at A1, col. 6.

131. *Id.*

132. *Id.*, November 5, 1979, at A1, col. 5. Foreign Minister Ibrahim Yazdi had promised the Carter Administration he would try to gain the release of the U.S. hostages and to end the occupation of the embassy. *Id.* at A12, col. 3.

133. N.Y. Times, November 7, 1979, at A1, col. 6.

134. *Id.*

135. *Id.* at A14, col. 4.

136. *Id.* at A1, col. 6.

137. *Id.*, November 7, 1979, at A14, col. 6.

138. *Id.*

139. *See id.*, November 7, 1979, at A14, col. 2.

140. *Id.* at A14, col. 6. The U.S. government did, however, attempt to rescue the hostages. *Id.*, April 25, 1980, at A1, col. 6. This rescue effort failed due to equipment failure. *Id.* at A14, col. 3. For a discussion of the Iranian hostage rescue attempt see N.Y. Times, April 26, 1980, at A7, col. 1. *See also* P. SALINGER, AMERICA HELD HOSTAGE (1981).

141. *Id.*, Jan. 21, 1981, at A1, col. 1.

142. *See* Fonteyne, *supra* note 37, at 260.

143. *See* Moore, *Grenada, supra* note 126, at 156.

feared that further violence would occur in Grenada.¹⁴⁴ Moreover, the imposition of a twenty-four hour shoot-to-kill curfew intensified U.S. authorities' concerns that U.S. lives were in danger.¹⁴⁵ In addition to imposing the curfew, the P.R.A. also closed the airport, cutting off all exits from the island.¹⁴⁶

In light of the facts known, the U.S. authorities were justified in making a determination that the U.S. citizens were in imminent danger.¹⁴⁷ In addition, the U.S. citizens who were present on Grenada confirmed the existence of imminent danger upon their return to the United States.¹⁴⁸ Although the citizens had not been taken hostage, the situation in Grenada indicated that there was a strong possibility that, had they not been rescued, they would have been taken hostage by the revolutionary forces.¹⁴⁹

B. *The Extent of the Threat of the Violation of Human Rights*

In addition to imposing the requirement that the threat of a violation of human rights must be immediate, scholars also state that the threat of the human rights violations must be substantial.¹⁵⁰ The more people affected by the abusive act, the stronger the case is for intervention.¹⁵¹ Not only do the numbers of people involved determine the extent of the violation, but the seriousness of the threatened violation also determines whether the intervention is warranted.¹⁵² For example, the U.S. justified the initiation of the rescue mission in the Dominican Republic as an emergency action taken to preserve more than 5,000 lives.¹⁵³ On April 24, 1965, a group of military rebels attempted to overthrow a junta that had governed the Dominican Republic since 1963.¹⁵⁴ Immediately thereafter, fighting between the two groups broke out and many civilians began to fear for

144. *Dam Statement*, *supra* note 3, at 80; *Forces in Grenada*, *supra* note 1, at 1494.

145. *Dam Statement*, *supra* note 3, at 80.

146. N.Y. Times, October 26, 1983, at A16, col. 4.

147. See Moore, *Grenada*, *supra* note 126, at 156.

148. See Joyce, *First Evacuees Arrive in U.S. from Grenada*, N.Y. Times, October 27, 1983, at 1, col. 3.

149. N.Y. Times, October 27, 1983, at 21, col. 5. Evidence of a Cuban build-up and the lack of any concrete guarantees for the citizens' safety led U.S. officials to believe that "the Grenadian leaders might be using the Americans on the island as a bargaining chip." *Id.* Deputy Secretary of State Kenneth Dam specifically stated that "[s]ometimes action is necessary to keep a bad situation from getting worse Inaction would have made a hostage situation more likely and increased the costs in lives of any subsequent rescue operation." *Dam Statement*, *supra* note 3, at 80.

150. See Lillich, *Forcible Self-Help*, *supra* note 34, at 348; Fonteyne, *supra* note 37, at 258-59.

151. See Lillich, *Forcible Self-Help*, *supra* note 34, at 348; Fonteyne, *supra* note 37, at 259.

152. See Lillich, *Forcible Self-Help*, *supra* note 34, at 348-49. Lillich notes that "it is necessary to examine the type as well as the extent of human rights deprivation . . ." *Id.*

153. See Mann, *The Dominican Crisis: Correcting Some Misconceptions*, 53 DEP'T ST. BULL. 730, 734 (1965).

154. N.Y. Times, April 26, 1965, at 1, col. 8. The political situation in the Dominican Republic prior to April 24, 1965, was very unstable. The government had changed eight times between May 1961 and May 1965. *Id.*; see also Meeker, *The Dominican Situation in the Perspective of International Law*, 53 DEP'T ST. BULL. 60, 61 (1965).

their safety.¹⁵⁵ Although many persons wished to leave the country, the lack of commercial airlifts and the indiscriminate shooting by the rebel forces disrupted their evacuation efforts.¹⁵⁶ The disorder in the Dominican Republic became progressively worse as mobs terrorized the entire city of Santo Domingo.¹⁵⁷ When the U.S. officials were informed that the lives of the U.S. citizens were in jeopardy and could no longer be protected by the police force or other authorities,¹⁵⁸ President Johnson initiated a rescue mission which began with the landing of 500 marines in Santo Domingo.¹⁵⁹

Similar to the U.S. action in the Dominican Republic, the U.S. action in Grenada was undertaken to prevent the death or injury of many persons.¹⁶⁰ The U.S. marines were sent to Grenada to evacuate over 1,000 U.S. citizens.¹⁶¹ Reports of the political upheaval in Grenada and the imposition of the shoot-to-kill curfew substantiated the claims that these citizens were in jeopardy.¹⁶² Moreover, the citizens confirmed the danger when they returned to the United States.¹⁶³ Overall, the fact that a great number of U.S. citizens were threatened with a massive deprivation of human rights strengthens the humanitarian justification for the intervention.¹⁶⁴

C. Invitation by a Recognized Government

When the recognized government of a state specifically requests another state to assist it in protecting the people within its border, the assisting state's rescue effort is justified.¹⁶⁵ In most situations, however, the state does not receive a clear and unambiguous request to intervene.¹⁶⁶ Rather, the request may be tainted by duress.¹⁶⁷ Furthermore, when different factions are struggling for control, the legitimacy of a request from one of these factions is questionable.¹⁶⁸ Unless the invitation from the recognized government is clear and unambiguous, it cannot

155. 53 DEP'T ST. BULL. 19-20 (1965), President Johnson in describing the situation in the Dominican Republic prior to the U.S. intervention stated "[s]ome 1500 innocent people were murdered and shot, and their heads cut off, and six Latin American embassies were violated and fired upon . . ." *Id.*

156. Mann, *supra* note 153, at 733-34; see Meeker, *supra* note 154, at 61.

157. N.Y. Times, April 27, 1965, at A1, col. 4; Mann, *supra* note 153, at 733; Meeker, *supra* note 154, at 61.

158. Meeker, *supra* note 154, at 61.

159. Mann, *supra* note 153, at 734.

160. See *Dam Statement*, *supra* note 3, at 80.

161. *Id.* Of these 1,000 citizens, most were either students, missionaries, or retirees. The U.S. citizens represented the largest body of foreigners on the island. *Id.*

162. *Id.*; *Forces in Grenada*, *supra* note 1, at 1493.

163. Joyce, *First Evacuees Arrive in U.S. from Grenada*, N.Y. Times, October 27, 1983, at 1, col. 3.

164. See Moore, *Grenada*, *supra* note 126, at 156.

165. See THOMAS & THOMAS, *supra* note 57, at 91.

166. Lillich, *Forcible Self-Help*, *supra* note 34, at 349.

167. See Fonteyne, *supra* note 37, at 268.

168. *Id.*; see also Bowett, *supra* note 79, at 42.

serve as the sole justification for an intervention.¹⁶⁹ The existence of a request, however, is not a prerequisite to the initiation of humanitarian intervention.¹⁷⁰ Rather, an invitation to intervene constitutes one factor which will support a state's action.¹⁷¹

In the Grenada incident, the request from Grenada's Governor General, Sir Paul Scoon, constitutes an additional factor in support of the U.S. intervention.¹⁷² The United States, via the Organization of Eastern Caribbean States (O.E.C.S.), received a request from Scoon asking for help to halt the anarchy which was occurring in Grenada.¹⁷³ The United States claimed that this request constituted an invitation of a lawful governmental authority and, as such, is a "recognized basis under international law for foreign states to provide requested assistance."¹⁷⁴ Scholars have questioned Scoon's position as the lawful authority in Grenada.¹⁷⁵ The people of Grenada recognized Scoon solely as a British figurehead.¹⁷⁶ In addition, Scoon had failed to take an active role in the governmental decisions of Grenada.¹⁷⁷ The political instability in Grenada, however, strengthens Scoon's role as the lawful authority.¹⁷⁸ Given the questionable nature of Scoon's authority, his invitation to intervene is not conclusive, but should be considered as one factor which supports the legitimacy of the rescue operation.¹⁷⁹

D. *The Existence of Alternative Measures*

Because the resort to force is such a severe measure, the right should only be invoked when there exists no other effective measure for protecting the human rights involved.¹⁸⁰ Before resorting to force, the prospective intervenor must make attempts to settle the situation peacefully.¹⁸¹ In addition, international

169. See Lillich, *Forcible Self-Help*, *supra* note 34, at 349. Lillich argues that "anything less than an unambiguous request from a de jure government should be regarded as only one factor pointing towards [the legitimacy of the operation]." *Id.*

170. See *id.*; Fonteyne, *supra* note 37, at 268.

171. Lillich, *Forcible Self-Help*, *supra* note 34, at 349.

172. See Moore, *Grenada*, *supra* note 126, at 156, 159. Moore argues that Scoon was the appropriate authority to issue the request for aid. *Id.* at 153 n.26, 159. For a discussion of Scoon's role in Grenada see *id.* at 159-61. See also Pace, *In the Eye of the Grenada Storm*, N.Y. Times, October 27, 1983, at A20, col.2.

173. *Dam Statement*, *supra* note 3, at 80.

174. *Id.* at 80-81.

175. See, e.g., Joyner, *The United States Action in Grenada: Reflections on the Lawfulness of the Invasion*, 78 AM. J. INT'L L. 131, 138-39 (1984).

176. See N.Y. Times, October 27, 1983, at 18, col. 5.

177. See Joyner, *supra* note 175, 138-39.

178. See Moore, *supra* note 126, at 159.

179. See Lillich, *Forcible Self-Help*, *supra*, note 34, at 349.

180. See DeSchutter, *Humanitarian Intervention: A United Nations Task*, 3 CALIF. W. INT'L L.J. 21, 29-30 (1972); Fonteyne, *supra* note 37, at 264-65.

181. Fonteyne, *supra* note 37, at 264; Jenks, *supra* note 83, at 30; see also Note, *A Proposed Resolution Providing for the Authorization of Intervention by the United Nations, a Regional Organization, or a Group of States in a State Committing Gross Violations of Human Rights*, 13 VA. J. INT'L L. 340, 349-50 (1973).

organizations should be given the opportunity to deal with the situation before the state resorts to forcible self-help.¹⁸² If it appears, however, that non-coercive means would prove ineffective, this requirement is waived.¹⁸³

Due to the political upheaval present in Grenada, U.S. authorities believed that any diplomatic efforts to rescue the citizens would prove futile.¹⁸⁴ Consequently, the United States made no concerted effort to protect the lives of its citizens through non-coercive means.¹⁸⁵ In fact, the United States ignored assurances from the Revolutionary Military Council, which stated that the U.S. citizens were safe.¹⁸⁶ In a cable, which was sent the day before the invasion, the Revolutionary Military Council stated that the U.S. citizens were not in danger and would be allowed to leave the island if they desired.¹⁸⁷ The U.S. authorities responded to these assurances by stating that "in the absence of a functioning government, there could be no credible assurances of [the U.S. citizens'] well-being and future prospects."¹⁸⁸

In addition to dismissing peaceful means of settlement, U.S. authorities also failed to invoke international measures to protect its citizens in Grenada. One of the criteria for the initiation of humanitarian intervention mandates that a state attempt to achieve a solution through an international organization before resorting to forcible self-help.¹⁸⁹ Even though the O.E.C.S. was involved in the Grenada invasion, the United States failed to contact the United Nations and ask it for its help in protecting the U.S. citizens in Grenada.¹⁹⁰

The U.S. failure to pursue international security measures can be justified by showing that there was no prospect of timely and effective action by an international organization.¹⁹¹ As many scholars have noted, the United Nations has not provided effective measures to deal with threats to human rights.¹⁹² Furthermore, the U.S. authorities believed that immediate intervention was necessary to

182. McDougal & Reisman, *supra* note 34, at 188; Fonteyne, *supra* note 37, at 264-65; Moore, *Regulation*, *supra* note 34, at 25; Jenks, *supra* note 87, at 30. Jenks argues that "[w]herever practicable any such intervention should be undertaken by or on behalf of the United Nations, or through the appropriate regional organisation . . ." *Id.*

183. Fonteyne, *supra* note 37, at 264-65.

184. *See Dam Statement*, *supra* note 3, at 80.

185. *See id.*

186. *Boston Globe*, October 27, 1983, at 1, col. 3.

187. *Id.*

188. *Dam Statement*, *supra* note 3, at 80.

189. *See Moore, Regulation*, *supra* note 34, at 25.

190. *See Dam Statement*, *supra* note 3, at 82.

191. *See Moore, Regulation*, *supra* note 34, at 25. Jessup states that "[i]t would seem that the only possible argument against the substitution of collective measures under the Security Council for individual measures by a single state would be the inability of the international organization to act with speed requisite to preserve life." Jessup, *supra* note 58, at 170.

192. Lillich, *Forcible Self-Help*, *supra* note 34, at 345 n.116. Lillich notes that "the collective machinery to protect human rights envisaged by the United Nations Charter still awaits establishment." *Id.* *See Thiele, Norms of Intervention in a Decolonized World*, 11 J. INT'L L. & POL. 141, 146 (1978); *see also*, Nossiter, *Iran is the Target but U.N. Can Only Fire Words*, N.Y. Times, December 2, 1979, sec. 4, at 1, col. 1.

rescue the U.S. citizens on Grenada.¹⁹³ In light of the U.S. determination that prompt effective action was necessary and the United Nation's apparent inability to provide this action, the United States' failure to pursue international measures is justified.¹⁹⁴

V. CONCLUSION

The United States' landing of troops on Grenada for the evacuation of U.S. citizens should be considered permissible under the twin doctrines of protection-of-nationals and humanitarian intervention. Although these doctrines have not received unanimous support from legal scholars, they remain the only effective means for dealing with imminent threats of massive deprivations of human rights. While the U.S. justification for its action has been criticized, the statements of citizens rescued from the island and reports of the political upheaval on the island support the conclusion that the U.S. intervention was necessary and that the situation may have become worse if the U.S. had not acted. Until the United Nations provides an effective method for dealing with such potential human rights deprivations, a state's right to resort to force must be upheld.

The circumstances present on Grenada justified the U.S. intervention and met the criteria imposed by legal scholars. First, there existed an imminent threat of danger to the citizens. Second, the great number of lives that were in jeopardy supported a finding of wide-scale potential for human rights violations. Third, the request of aid from Governor General Scoon, while not conclusive, constitutes an additional factor in support of the intervention. Finally, the United States had no effective alternative to ensure the citizens' safety other than unilateral self-help. Overall, in light of the factual circumstances present in Grenada, the initiation of the U.S. intervention to protect the U.S. citizens was permissible under international law.

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193. See *Dam Statement*, *supra* note 3, at 80.

194. See Moore, *Regulation*, *supra* note 34, at 25; Fonteyne, *supra* note 37, at 269.