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The United States Invasion of Grenada: Stranger than Fiction

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THE UNITED STATES INVASION OF GRENADA: STRANGER THAN FICTION

JOHN QUIGLEY*

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I. INTRODUCTION

While the State Department's three arguments for the legality of the 1983 U.S. military action in Grenada have been analyzed in the literature, the facts used by the Department to substantiate those arguments have not been scrutinized systematically. This article will highlight key legal issues that have not received detailed analysis and will assess the factual basis for the State Department's three justifications.

II. SUMMARY OF STATE DEPARTMENT JUSTIFICATIONS

The State Department's position on the legality of the 1983 Grenada invasion is stated in a letter written by Legal Adviser Davis R. Robinson to the American Bar Association on February 10, 1984.¹ The Legal Adviser asserted three justifications but stated that the Department "has not taken a position as to whether any one of these grounds standing alone would have provided adequate support for the action." The three grounds are (1) that the action was taken pursuant to a request from the Governor-General of Grenada; (2) that the action was legitimate regional collective action undertaken by the Organization of Eastern Caribbean States; and (3) that the action was taken to protect U.S. citizens in

1. Letter from Davis R. Robinson, Legal Adviser, United States Department of State, to Prof. Edward Gordon, Chairman, Committee on Grenada, Section on International Law and Practice, American Bar Association (Feb. 10, 1984), *reprinted in* 18 INT'L LAW. 381 (1984)[hereinafter Legal Adviser].

Grenada.²

III. SUMMARY OF POSITION OF ARTICLE

The author agrees with *Time* magazine that "the Administration has been somewhat disingenuous in its public explanations of U.S. policy" in the Grenada invasion.³ Although legally valid, the justifications upon which the State Department relies are factually unsupported. With respect to all three asserted justifications, the Department seriously misrepresented facts to bolster its claim of legality. For example, the Department asserted that U.S. nationals in Grenada were in danger, yet could not substantiate a basis for so believing. Arguing that it acted in response to a request from the Government of Grenada, the Department knowingly made three false assertions: (1) that Governor-General Paul Scoon had issued such a request (in fact he had not); (2) that when Scoon purportedly issued the request the United States had not yet decided to invade (in fact it had); and (3) that when Scoon purportedly issued this request he was the only vestige of governmental authority in Grenada (in fact there was a functioning government).

Arguing that its action was justified by a request from the Organization of Eastern Caribbean States (OECS), the Department falsely asserted that this request was spontaneous and that the request motivated the United States to invade. In fact, the OECS made its request only upon assurance that the United States would respond favorably; U.S. planning for the invasion was well advanced by the time of the request. Additionally, upon realizing that the action could not be grounded on Article 8 of the OECS treaty, the Department falsely claimed that the OECS had acted instead under Articles 3 and 6 of the treaty, though those two provisions provide no sounder basis for the action.

The Legal Adviser's caveat that none of the three justifications standing alone suffices to justify U.S. action casts doubt on all three. The Legal Adviser declined to assert that any of the three justifications provided a legal basis for the action. Further, he failed to explain how a deficiency in one may be compensated by

2. *Id.* at 382-85. This article addresses only the arguments made by the Legal Adviser in the cited letter. It does not address other possible arguments that could or have been made to justify the use of force in Grenada by the United States.

3. *TIME*, Nov. 7, 1983, at 48. The article stated, "[I]n Grenada American aims go well beyond those stated." *Id.*

the other two. Moreover, he asserted, "we have emphasized the mutually reinforcing nature of the elements of the position we did take."⁴ This is novel international law theory since no doctrine in international law permits a state to remedy a deficiency in one asserted justification for military intervention by relying on a different asserted justification. This approach is illogical and without precedent in the law regarding use of force.⁵

IV. FIRST JUSTIFICATION: RESCUE OF NATIONALS

The State Department first argued that the invasion of Grenada was justifiable as an operation to rescue endangered U.S. nationals. The Department did not assert this argument as a total justification because U.S. forces remained in Grenada after evacuating U.S. nationals.⁶ It did, however, rely on this argument as partial justification. President Reagan stated that the reason "of overriding importance" was the protection of "innocent lives, including up to a thousand Americans, whose personal safety is, of course, my paramount concern."⁷ Secretary of State George Shultz stated two reasons for Reagan's decision, the first being "his concern for the welfare of American citizens living on Grenada."⁸ Accordingly, the Legal Adviser stated that one basis for the action was "the need to protect the 1,000 United States citizens on Grenada who responsible United States authorities considered to be threatened by the anarchic conditions on the island."⁹

Several commentators called this alleged justification a pretext asserted as a cover for other reasons for the operation.¹⁰ Others

4. Legal Adviser, *supra* note 1, at 386.

5. The literature on justifications discusses each justification individually. None of the writers suggests that a state may combine more than one justification where no single one suffices. See, e.g., I. BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 214-349 (1963). Referring to the concept that an intervention justifiable on no single ground might be justifiable on the basis of several asserted grounds taken together as the "cumulative principle," Benton writes that, "Writers have not, to be sure, accepted the cumulative principle." E. BENTON, *INTERNATIONAL LAW AND DIPLOMACY OF THE SPANISH AMERICAN WAR* 107 (1908).

6. Legal Adviser, *supra* note 1, at 382.

7. *Grenada: Collective Action by the Caribbean Peace Force*, DEP'T. ST. BULL., Dec. 1983, at 67 [hereinafter *Collective Action*].

8. *Id.* at 69.

9. Legal Adviser, *supra* note 1, at 385.

10. Boyle, Chayes, Dore, Falk, Feinrider, Ferguson, Fine, Nunes & Weston, *International Lawlessness in Grenada*, 78 AM. J. INT'L L. 172 [hereinafter Boyle]; Sultan, *The International Rule of Law Under the Reagan Administration*, 10 DAYTON L. REV. 245, 252

stated that the assertion was irrelevant because U.S. forces remained after evacuating U.S. nationals and carried out functions unrelated to protection of U.S. nationals.¹¹ A group of scholars commissioned to study the operation by the Section of International Law and Practice of the American Bar Association concluded that the aim of protecting U.S. nationals was "collateral to the primary purpose of favorably resolving an internal political struggle."¹² Commentators who found this asserted justification valid were John Norton Moore, Maj. Ronald Riggs, and Laura Wheeler. Citing expressions of relief by evacuated U.S. nationals and the "judgment of the four experienced Foreign Service Officers on the scene," Moore stated that the evidence as to the danger was "unequivocal."¹³

Those commentators who asserted the irrelevancy of the rescue-of-nationals argument are correct. That argument could justify at most the initial landing and evacuation of U.S. nationals but not the overthrow of the Revolutionary Military Council (RMC) then in control in Grenada. Those commentators who called the rescue-of-nationals rationale a pretext were also correct. The following facts indicate that concern for the safety of U.S. nationals was a pretext:

(1) U.S. forces remained in Grenada after evacuating U.S. na-

(1985); F. BOYLE, *WORLD POLITICS AND INTERNATIONAL LAW* 272 (1985); E. HOYT, *LAW AND FORCE IN AMERICAN FOREIGN POLICY* 144 (1985). Schachter notes that "most other countries did not find that [rescue of U.S. nationals] a convincing ground [for U.S. action in Grenada] and apparently considered it a pretext for the action." Schachter cites as evidence of this reaction by other states the United Nations General Assembly resolution condemning the U.S. action as a violation of the U.N. Charter. G.A. Res. 38/7, 38 U.N. GAOR Supp. No. 47, at 19, U.N. Doc. A/Res/38/7 (1983); Schachter, *The Right of States to Use Armed Force*, 82 *MICH. L. REV.* 1620, 1632 (1984).

11. Nanda, *The United States Armed Intervention in Grenada—Impact on World Order*, 14 *CAL. WESTERN INT'L L.J.* 395, 411 (1984); W. GILMORE, *GRENADA INTERVENTION: ANALYSIS AND DOCUMENTATION* 64 (1984); Karas & Goodman, *The United States Action in Grenada: An Exercise in Realpolitik*, 16 *U. MIAMI INTER-AM. L. REV.* 53, 101 (1984); Levitin, *The Law of Force and the Force of Law: Grenada, the Falklands, and Humanitarian Intervention*, 27 *HARV. INT'L L.J.* 621, 649-50 (1986).

12. Committee on Grenada, Section of International Law and Practice, American Bar Association, *International Law and the United States Action in Grenada: A Report*, 18 *INT'L LAW* 331, 379 (1984) [hereinafter *Action in Grenada*](the members of the Committee included E. Gordon, Chairman; R. Bilder; A. Rovine; D. Wallace, Jr.).

13. Moore, *Grenada and the International Double Standard*, 78 *AM. J. INT'L L.* 145, 162 (1984)(in addition to asserting rescue of U.S. nationals, Moore asserts the broader doctrine of humanitarian intervention (protection of Grenadian nationals) as a justification); Riggs, *The Grenada Intervention: A Legal Analysis*, 109 *MILITARY L. REV.* 1, 33-36 (1985); Wheeler, *The Grenada Invasion: Expanding the Scope of Humanitarian Intervention*, 8 *B.C. INT'L & COMP. L. REV.* 413, 426 (1985).

tionals to accomplish other ends;

(2) the State Department did not view evacuation of U.S. nationals as its only means of protecting them but tried to make Grenada safe for U.S. nationals who remained;

(3) the State Department grossly exaggerated the level of domestic uncertainty in Grenada;

(4) the RMC showed solicitude towards U.S. nationals in the days immediately preceding October 25, 1983;

(5) most U.S. nationals in Grenada did not believe themselves to be in danger in the days immediately preceding the U.S. landing of October 25, 1983;

(6) State Department personnel in Grenada on October 22-23 endeavored to and did convince many of the U.S. nationals that they were in danger;

(7) U.S. officials did not make good faith efforts with the RMC to arrange transport for those U.S. nationals desiring to leave Grenada;

(8) arriving U.S. forces were unaware of the location of most of the U.S. nationals in Grenada and as a result reached most of them one to three days after landing;

(9) arriving U.S. forces did not immediately endeavor to approach any U.S. nationals;

(10) in the course of combat and evacuation, U.S. forces seriously endangered the lives of U.S. nationals; and

(11) during the hostilities between U.S. forces and the People's Revolutionary Army of Grenada, the latter did not endeavor to harm or seize any U.S. nationals.

A. U.S. Forces Remained in Grenada After Evacuating U.S. Nationals to Accomplish Other Ends

When an intervening military force that asserts rescue-of-nationals as a justification asserts additional justifications and accomplishes additional goals, doubt must be cast on the genuineness of the assertion that intervention was required to protect nationals. A rescue-of-nationals assertion is typically met with skepticism,¹⁴

14. A.V.W. THOMAS & A. THOMAS, JR., *DOMINICAN REPUBLIC CRISIS* 18 (1967). Schachter queries, "whether these other grounds for the U.S. action [in Grenada] vitiated the legality

but when additional justifications are given, grounds for skepticism are strengthened. Theoretically, a state may need to protect its nationals and intervene for another lawful purpose. The assertion of additional justifications, however, demands special caution in assessing the factual basis for an asserted need to intervene to rescue nationals.

B. The State Department Did Not View Evacuation of U.S. Nationals as its Only Way of Protecting Them but Stated that it Needed to Make Grenada Safe for U.S. Nationals

If the reason for military intervention is to protect endangered nationals, intervention should not exceed evacuation of nationals. That was not the course of action of the State Department in Grenada. It did not view evacuation as the only way to protect U.S. nationals. It stated that it would protect U.S. nationals by changing the domestic political order so that U.S. nationals could safely reside there. The fact that the Department contemplated making Grenada safe for U.S. nationals indicates that protecting U.S. nationals was not a genuine purpose of the intervention. If it had been, the U.S. forces would have evacuated them from the situation of supposed danger.

The fact that the Department contemplated making Grenada safe for U.S. nationals as one means of protecting them was indicated by Deputy Secretary of State Kenneth Dam in a colloquy in the Senate Foreign Relations Committee with Senator Paul Sarbanes. On October 27, 1983, Dam told the Committee that 378 U.S. nationals (out of approximately 1000 in Grenada) had been transported out of Grenada by U.S. forces.¹⁵ Sarbanes inquired about the others:

SENATOR SARBANES. Is it our intention to bring all of the American citizens out of Grenada?

MR. DAM. Not necessarily. I do not think that that question has even been faced. If I may, I will double check that.

[Pause.]

of the rescue action." He replies: "As a matter of law and logic, they should not have done so. But they understandably contributed to skepticism as to whether the essential motive for the U.S. action was the emergency rescue." Schachter, *supra* note 10, at 1631.

15. *The Situation in Grenada, Hearing before the Senate Comm. on Foreign Relations, 98th Cong., 1st Sess. 6 (1983)*[hereinafter *Hearing: The Situation in Grenada*](remarks of Kenneth W. Dam, Deputy Secretary of State).

MR. DAM. In every case, it is strictly a voluntary decision by the individual involved, and that goes for the students as well as other Americans.

SENATOR SARBANES. In other words, we have sent troops in to protect the safety of Americans and to bring them out, but an American can decide to stay there. Is that correct?

MR. DAM. Correct.

SENATOR SARBANES. Well, then, are our troops going to stay there to insure their safety?

MR. DAM. For a period of time, which is as short as possible, until law and order is restored.

SENATOR SARBANES. So in other words, as it develops, then, part of our purpose or objective is to make Grenada safe for Americans to continue to remain there?

MR. DAM. Well, we assume that it will become a normal functioning democracy and we certainly do not tell American citizens whether to stay or whether not to stay.

SENATOR SARBANES. But we intend to keep our military there until that happens. Is that right?

MR. DAM. Until law and order is restored and the government is functioning, yes.

MR. SARBANES. Well, I think the rationale for the action is beginning to evaporate on you. I can understand going in there to protect the safety of our people and bringing our people out. Now, you are not doing that. You have gone in but are now saying that people can stay. We are then going to change the environment there in such a way that we can assure them that they are going to be safe.

MR. DAM. Well, Senator, we do not intend to leave while weapons are being fired in Grenada. We do not want Americans to be killed.

SENATOR SARBANES. I understand that. Why do we not bring the Americans out then?

MR. DAM. Why not suppress the—

SENATOR SARBANES. Do we have plans to bring out the Americans?

MR. DAM. Suppress the disorders that are going on? It seems to me that is a far preferable solution than allowing the Cubans to stay to fire their weapons while we try to sneak the

Americans out the other side of the island.¹⁶

Dam's statement indicated that U.S. nationals could choose whether to stay, thus conceding that many of them did not feel a need to depart.¹⁷ A state may not use the rationale of protecting nationals to make another state safe for habitation by them. Advocates of the rescue-of-nationals rationale argue that it applies only where rescue of nationals is not a cover for some other purpose.¹⁸ The right of self-defense—the right to use force to protect nationals abroad—is limited by the requirement of proportionality.¹⁹ Thus, if the intervening state's purpose is political change in the territorial state, then the rescue-of-nationals justification does not apply, as Senator Sarbanes correctly indicated, because it goes beyond the aim of rescuing nationals. A similarly broad concept of protection of nationals was urged by the Belgian Foreign Minister with respect to the 1960 Belgian intervention in the Congo. The Belgian Foreign Minister told the Belgian Parliament that "security implied not only the protection of the life of the men and the honor of the women but also public order, that is, the opportunity to work and even to sleep in peace." This broad reading of the concept of protection of nationals was correctly criticized as "depriving it of any precise meaning and demonstrating clearly that it is simply a pretext."²⁰

C. The State Department Grossly Exaggerated the Level of Domestic Uncertainty in Grenada

Apparently, no U.S. nationals were harmed in Grenada. To substantiate its contention that U.S. nationals in Grenada were in danger, however, the State Department argued that anarchy reigned, that a 24-hour curfew had been imposed, enforced by shooting on sight, that it was uncertain who controlled the government, and that there had been political violence among Grenadians.²¹ Additionally, United Nations Ambassador Jeane Kirkpatrick

16. *Id.* at 43-44.

17. On the attitude of U.S. nationals towards departure, see text accompanying notes 57-69.

18. D. BOWETT, *SELF-DEFENCE IN INTERNATIONAL LAW* 105 (1958).

19. *Id.*

20. M. BENNOUNA, *LE CONSENTEMENT A L'INGÉRENCE MILITAIRE DANS LES CONFLITS INTERNES* 179 (1974).

21. *Collective Action*, *supra* note 7, at 68 (Reagan), 69 (Shultz), 72 (Kirkpatrick), 73 (Middendorf); *Hearing: The Situation in Grenada*, *supra* note 15, at 4. The text of the

and Deputy Secretary Dam stated that the Department feared that the RMC then in control in Grenada might take U.S. nationals hostage.²²

The Administration claimed it found documents in Grenada which indicated that the Grenada government, on advice of Cuba, had devised a plan to take U.S. nationals hostage. An unidentified "senior official" said,

It is clear from these documents and other information we now have that serious consideration was being given to seizing Americans as hostages and holding them for reasons that are not entirely clear, but seem to involve an effort to embarrass the United States and, more immediately, to forestall American military action in Grenada.²³

This and other "senior officials" declined to describe the documents in detail or to discuss specific information that might show a potential of a hostage-taking, alleging that the documents would be made public after being translated and analyzed.²⁴ To date, the documents have not been made public.

Contradicting the position that the RMC might take hostages, a State Department envoy present in Grenada on October 22-23 said he found no reason to believe that the RMC would harm U.S. nationals. James Budeit, an officer of the U.S. Embassy in nearby Barbados who flew to Grenada on October 22, stated his fear that a countercoup might arise against the RMC, and might involve armed conflict that could endanger U.S. nationals. Budeit said that the RMC "wasn't that firmly in control."²⁵

In fact, the Grenada situation was potentially harmless to residing U.S. nationals. While the RMC was probably not supported by the majority of Grenada's citizens, it was in effective control.

curfew announcement, from Radio Free Grenada on Oct. 19, 1983, is given in A. PAYNE, P. SUTTON & T. THORNDIKE, *GRENADA: REVOLUTION AND INVASION* 137 (1984)[hereinafter A. PAYNE].

22. See *Collective Action*, *supra* note 7, at 75, 80 (Kirkpatrick; Dam); *U.S. Military Actions in Grenada: Implications for U.S. Policy in the Eastern Caribbean*, Hearing before the Subcommittees on International Security and Scientific Affairs and on Western Hemisphere Affairs of the House Committee on Foreign Affairs, 98th Cong., 1st Sess. 32 (1983)[hereinafter *Hearing: U.S. Military Actions*](remarks of Kenneth W. Dam, Deputy Secretary Of State). Dam had no information that any U.S. nationals were harmed or threatened in the days preceding the invasion. *Id.* at 46.

23. N.Y. Times, Oct. 28, 1983, at A14, col. 5.

24. *Id.*

25. J. KWITNY, *ENDLESS ENEMIES: THE MAKING OF AN UNFRIENDLY WORLD* 417 (1984).

The violence occurring in Grenada on October 19 ended when the RMC imposed and enforced a curfew on October 20.²⁶ The State Department exaggerated the extent of the violence, which had taken place primarily in downtown St. George's—not in the areas of concentration of U.S. nationals, most of whom were the 650 students at St. George's Medical School.²⁷ The students were located principally at three sites south of St. George's—Grand Anse campus, True Blue (Point Salines) campus, and the Lance aux Épines residential area.²⁸ No violence was directed against the U.S. nationals, and moreover, the political differences between the two contending groups were not of an anti-U.S. character. Thus, the U.S. nationals were not viewed by any political group in Grenada as a threat to Grenadian sovereignty and had not been the target of anti-U.S. sentiment. The fact that the medical school had functioned unmolested during the 1979 coup that brought the New Jewel Movement to power supports this theory.²⁹

Although a possibility existed of further change of government—possibly a pro-Bishop countercoup³⁰—there was little reason to believe that such a countercoup, or any other foreseeable political change, would endanger U.S. nationals.³¹ Charles R. Modica, Chancellor of St. George's Medical School, called the invasion

26. This fact was cited by Senator Pell, arguing that a government was in place in Grenada under the Revolutionary Military Council. *Hearing: The Situation in Grenada*, *supra* note 15, at 35. Robert Pastor, who had been Senior Staff member in charge of Latin American and Caribbean Affairs on the National Security Council, 1977-1981, termed "the political situation" in Grenada at the time of the invasion as "no more uncertain, no more dangerous, no more violent than the political situation in countries that have experienced rapid political change. Indeed, I would argue that it was probably much less dangerous." *Hearing: U.S. Military Actions*, *supra* note 22, at 73 (statement of Prof. Robert Pastor, School of Public Affairs, University of Maryland). Pastor said that "the military coup in Chile and the revolution in Nicaragua were much more violent, and indeed Americans were killed in both." *Id.* at 83. Schachter notes with respect to the argument that U.S. nationals might have been taken hostage: "The Americans on the island were not hostages and threats had not been made against them. Whether they would have been seized as hostages to forestall a U.S. invasion or subject to hostile military action remains conjectural." Schachter, *supra* note 10, at 1631.

27. J. KWITNY, *supra* note 25, at 408.

28. See *infra* text accompanying note 90.

29. Vice-Chancellor Bourne said one factor that led him to adopt a wait-and-see attitude during the events in Grenada was that, "[F]ollowing the previous revolution no student had been in danger and we only lost one day of lectures." *Hearing: U.S. Military Actions*, *supra* note 22, at 187 (statement of Geoffrey Bourne, M.D., Vice-Chancellor, St. George's University School of Medicine).

30. J. KWITNY, *supra* note 25, at 417.

31. See *infra* text accompanying notes 69-70.

“very unnecessary” to save his students.³² Further, on October 24, White House spokesperson Larry Speakes said there was no indication of danger to U.S. nationals in Grenada.³³ Additionally, the discrepancy widened when the Department failed to explain how the U.S. nationals could be safe October 24 but in danger October 25, although no significant changes occurred between these dates.

On October 25, President Reagan was asked to explain why there was danger on October 25 but not on October 24:

Q: Mr. President, as late as yesterday, your own spokesman said that Americans on Grenada were in no danger. Did you have information that things had changed?

REAGAN: They were in no danger in the sense of that, right now, anything was being done to them. But we know that there was concern on the part of those, because already we'd been informed of several hundred who wanted to leave. But the airports were closed. There was no way of leaving. This was a case of not waiting until something actually happened to them. But we did manage to get some intelligence out of the island, intelligence information on this. And the tenuous situation was, as I said, the only authority that you could say of a governmental nature on that island was a 24-hour curfew with orders to “shoot on sight” anyone found moving in those 24 hours.³⁴

President Reagan's statement does not state facts that indicate danger existed. Reagan accurately stated that no harm had come to U.S. nationals. He suggested that “several hundred wanted to leave,” a statement factually accurate but not reflecting any danger to the U.S. nationals since the desire to leave was based on (1) fear of an invasion and (2) the urgings of U.S. diplomats.³⁵ Reagan also cited the fact that “the airports [were] closed” to indicate that, if danger existed, there was no escape. In fact, U.S. officials had made no effort to arrange air transport out of Grenada, though the RMC had agreed to permit it.³⁶

British diplomatic personnel in Grenada between October 22 and 24 found no imminent danger to the 250 British citizens in Grenada.³⁷ The Foreign Secretary, Sir Geoffrey Howe, told the

32. N.Y. Times, Oct. 26, 1983, at A20, col. 5.

33. N.Y. Times, Oct. 25, 1983, at A12, col. 4.

34. Wash. Post, Oct. 26, 1983, at A7, col. 4.

35. See *infra* text accompanying notes 64-69.

36. See *infra* text accompanying notes 72-84.

37. A. PAYNE, *supra* note 21, at 155.

House of Commons that the resident representative of the British High Commission in Grenada had been in contact with the British community and reported no immediate danger to them.³⁸ The British had a destroyer off Grenada for possible evacuation but found no need to use it.³⁹

A British diplomat visiting Grenada from Barbados reported the situation as of October 22-23 as "calm but tense."⁴⁰ On October 24, the 24-hour curfew imposed on October 20 was lifted, opening shops and offices, though schools remained closed, and an 8 p.m. to 5 a.m. curfew was imposed.⁴¹ At that point, conditions were returning to normal. The RMC was moving to establish a civilian government that would include the business sector.⁴² Three British analysts concluded, "the prospect of further chaos in Grenada, which Reagan felt it necessary to forestall was not likely. In fact, after the killings of Bishop and the others on 19 October, the strict curfew had effectively put a stop to further outbreaks of disorder."⁴³

The night before the invasion the situation was calm enough that RMC member Leon Cornwall was able to invite U.S. diplomat Budeit to accompany him to a local disco called the Sugar Mill. Budeit, however, declined the invitation: "I had to protect myself with my own government. I can't go to discos with them. Our president called them a gang of leftist thugs, although Cornwall seemed a nice enough guy."⁴⁴ Admittedly, the State Department received reports from its personnel in Grenada that may have led it to believe that the situation in Grenada was less stable than it actually was. For example, the plane carrying the first two State Department personnel that tried to land in Grenada after the

38. 47 PARL. DEB. H.C. (6th ser.) 27 (1983).

39. *Id.* at 25; London Times, Oct. 24, 1983, at 1, col. 2.

40. As quoted by Sir Geoffrey Howe, House of Commons, 47 PARL. DEB. H.C. (6th ser.) 27 (1983).

41. A. PAYNE, *supra* note 21, at 142.

42. *Id.* at 139. On October 24 the RMC informed the U.S. Embassy in Barbados by telex that it would yield to civilian rule within two weeks. The text of the telex was read to the O.A.S. on October 26 by Grenada representative, Ian Jacobs. Permanent Council, Organization of American States, *Acta de la sesión extraordinaria celebrada el 26 de Octubre de 1983*, at 5, O.A.S. Doc. OEA/Ser.G, Doc. CP/ACTA 543/83 (1983)[hereinafter *Acta de la sesión extraordinaria*].

43. *Id.* at 156. Pastor queried: "Is it possible that the 'marines got there just in time' before the new Grenadian government could prove to the international community that it was a government, and that it could assure the safety of U.S. citizens?" *Hearing: U.S. Military Actions*, *supra* note 22, at 84.

44. J. KWITNY, *supra* note 25, at 416.

RMC was formed was denied permission to land and had to divert to a nearby island. The Department took this as an indication of instability or lack of cooperation on the part of the RMC. The U.S. Embassy in Barbados telephoned Bourne to ask about possible reasons for the landing denial, and Bourne proceeded to investigate. He discovered that Gen. Hudson Austin's office did not have a telephone number for security forces at the airport and had therefore not passed the word to admit the plane. The problem was resolved, and the diplomats were later permitted to land.⁴⁵

On October 23, State Department personnel in Grenada reported that they had been shot at while landing; this was later discovered to be false. They further reported to the State Department that they were held at the airport by armed soldiers (yet later acknowledged this was not true) and that a diplomat they were replacing was mysteriously missing (he in fact was simply late getting to the airport).⁴⁶ This information may have created unwarranted apprehension in the State Department. Nonetheless, the Department had not met its burden and failed to demonstrate that the situation in Grenada posed imminent danger to U.S. nationals.

D. The RMC Showed Solicitude Towards U.S. Nationals During the Period Immediately Preceding October 25, 1983

The RMC, aware that the U.S. might argue danger to its nationals to justify a landing in Grenada, showed great concern for the well-being of students at the medical school. This fact does not indicate that the students would have been shown the same solicitude had the RMC been overthrown. However, it does indicate that little danger existed from RMC action, which was the fear cited by the State Department.⁴⁷

On October 20, the day after the RMC came to power, two soldiers visited Vice-Chancellor Geoffrey Bourne of the St.

45. *Hearing: U.S. Military Actions*, *supra* note 22, at 191 (statement of G. Bourne).

46. J. KWRINY, *supra* note 25, at 415. Dam said that arriving U.S. envoys "were met at the airport the first time by a bunch of teenagers with guns, which indicated that there was really a total breakdown of any normal governmental processes." *Hearing: U.S. Military Actions*, *supra* note 22, at 27.

47. *See supra* text accompanying notes 22-23. A strong practical reason for RMC solicitude beyond fear of a U.S. invasion was that the school's contribution to the Grenadian economy amounted to about one-fifth its operating budget. *Hearing: U.S. Military Actions*, *supra* note 22, at 176, 197 (statement of G. Bourne).

George's Medical School (the school's highest official in Grenada during the events in question). They inquired as to whether the students had sufficient food and water for the four-day curfew. Bourne informed them that the water available at the True Blue campus would suffice for only one more night and "they had water trucks down there within a couple of hours."⁴⁸ That same day Bourne received a good-will visit from Gen. Hudson Austin, the highest RMC official, who assured Bourne that the students would be safe.⁴⁹

The following day the RMC exempted a medical school driver from the curfew and provided Bourne with a pass and a police escort to travel anywhere he wished.⁵⁰ Throughout the four-day curfew, high-ranking army officers inquired about the students' welfare, guaranteed their safety, and stated the students could leave Grenada if they so desired.⁵¹

On October 22, two U.S. diplomats arrived in Grenada from Barbados⁵² and were assured by Maj. Cornwall that the students were safe.⁵³ In an October 24 telex sent to the U.S. Embassy in Barbados, the RMC stated that it would protect the lives and property of U.S. citizens and would provide air transportation by regular or chartered flights for anyone wishing to leave.⁵⁴ State Department officials said that they considered these assurances unreliable on the ground that the RMC's position was still unstable,

48. J. KWITNY, *supra* note 25, at 412; *Hearing: U.S. Military Actions, supra* note 22, at 187-88 (statement of G. Bourne).

49. *Hearing: U.S. Military Actions, supra* note 22, at 188, 191 (statement of G. Bourne). Bourne stated that Austin gave him his home telephone number in case of any difficulty. *Id.* at 191. He stated that Austin seemed sincere, but questioned whether Austin could be trusted if he had executed political colleagues. *Id.* at 195. At the same time, Bourne thought that, "any future government of Grenada would want the school to stay" because of the economic benefits to Grenada. *Id.* at 179.

50. J. KWITNY, *supra* note 25, at 412; *Hearing: U.S. Military Actions, supra* note 22, at 188 (statement of G. Bourne). Bourne stated that after Grenadian troops arrived in the Grand Anse area, the site of the larger medical school campus, faculty members were permitted to drive buses to a nearby concentration of off-campus students in order to take them to the Grand Anse campus, which they did without interference from the Grenadian army. *Id.* at 196.

51. J. KWITNY, *supra* note 25, at 412; *Hearing: U.S. Military Actions, supra* note 22, at 179 (statement of G. Bourne).

52. N.Y. Times, Oct. 23, 1983, at A12, col. 1. *London Times*, Oct. 24, 1983, at 10, col. 5. H. O'SHAUGHNESSY, *GRENADA: AN EYEWITNESS ACCOUNT OF THE U.S. INVASION AND THE CARIBBEAN HISTORY THAT PROVOKED IT* 151-53 (1984).

53. J. KWITNY, *supra* note 25, at 412.

54. *Statement of Grenada (Mr. Jacobs)*, 38 U.N. SCOR (2487th mtg.) at 42, U.N. Doc. S/P.V. 2487 (1983) (giving text of telex).

and claiming that it had actually impeded the departure of students from Grenada. However, there was no reason to believe that the RMC's position was unstable.⁵⁵ Even if it were, the possibility of a change in government presented no imminent danger to U.S. nationals. Moreover, as indicated below, the RMC did not impede departure of U.S. nationals.⁵⁶

E. Most U.S. Nationals Did Not Believe They Were In Danger

One circumstance cited by State Department officials to substantiate the existence of danger for U.S. nationals in Grenada was that many of those evacuated expressed gratitude for the evacuation and stated that they had been in danger.⁵⁷ Yet few U.S. nationals felt they were in danger at the time of Bishop's death and the institution of the 24-hour curfew.⁵⁸ The medical students had been treated well by Bishop and had gotten along well with the Cuban workers, who were their neighbors at Point Salines. The students and the Cubans had played softball together; Cuban doctors had taught at the medical school.⁵⁹ Both Vice-Chancellor Bourne and U.S. envoy Budeit stated that on October 22 and 23 only about fifteen percent of the medical students wanted to leave Grenada.⁶⁰ A group of 500 parents of St. George's medical students sent President Reagan a telegram on October 24 asking him not to send troops into Grenada.⁶¹ The parents were apparently not fearful for the safety of their children, at least if there was no U.S. invasion.

By October 24, however, 300 students wanted to leave.⁶² Between October 22 and October 24 there had been no deterioration in the internal situation in Grenada. Two factors account for the increase in the number of students who felt they were in danger.

55. See *supra* text accompanying notes 40-43.

56. See *infra* text accompanying notes 76-80.

57. *Collective Action*, *supra* note 7, at 81 (Deputy Secretary Dam).

58. H. O'SHAUGHNESSY, *supra* note 52, at 166.

59. P. Bourne, *Was the U.S. Invasion Necessary?*, L.A. Times, Nov. 6, 1983, at IV3, col. 4. Bourne was on the faculty of St. George's Medical School and is the son of Vice-Chancellor Geoffrey Bourne.

60. J. KWITNY, *supra* note 25, at 413. Bourne also estimated that 10% desired to leave as of October 22. *Hearing: U.S. Military Actions*, *supra* note 22, at 193.

61. N.Y. Times, Oct. 25, 1983, at A12, col. 2.

62. N.Y. Times, Oct. 25, 1983, at A1, col. 1 (quoting U.S. diplomats in Barbados). Bourne gives a similar figure. J. KWITNY, *supra* note 25, at 414.

First, on the evening of October 23 radio stations from other islands broadcast "rumors" that neighboring island states might invade Grenada. According to Bourne, "this scared the students very much . . . The news [of an impending invasion] had been very disturbing to them and now over fifty percent wanted to get out."⁶³ Thus, one apparent reason for student fear was the invasion itself. Second, U.S. envoy Budeit reported that he and the other four U.S. diplomats in Grenada on October 22-23 convinced students that they were in danger and should leave.⁶⁴ Budeit felt the students were in danger because of the possibility of a counter coup.⁶⁵ He stated that he explained this possibility to them in an effort to encourage them to leave Grenada. In fact, on October 24, he and Linda Flohr, another U.S. diplomat, pressured the students into making a quick decision, telling them, "You've got to make up your own minds. We're not going to stick around here forever." Budeit convinced married students living near St. George's radio station that in the event of a counter coup, the radio station would be the scene of action. Consequently, he "scared the hell out of those people." He claimed that he later saw the wives of some of these married students on the campus, where "they were weeping, crying." Upon seeing them cry he stayed away from them, feeling "[He] had done [his] bit, and gotten them out of there."⁶⁶ One medical student said that U.S. officials had convinced him it would be dangerous to stay.⁶⁷ The Administration failed to explain why

63. *Hearing: U.S. Military Actions*, *supra* note 22, at 193 (statement of G. Bourne).

64. J. KWITNY, *supra* note 25, at 413-14. Representative Mervyn Dymally said, "The anxiety level of the students was only raised after two American consular officers visited the island and, of course, after the invasion." *Hearing: U.S. Military Actions*, *supra* note 22, at 3 (statement of Mervyn M. Dymally, member of the House of Representatives from California).

65. J. KWITNY, *supra* note 25, at 417. Bourne said that the students harbored such fears but did not indicate whether the fears were the result of conversations with State Department officials. *Hearing: U.S. Military Actions*, *supra* note 22, at 178, 195.

66. J. KWITNY, *supra* note 25, at 414. The New York Times reported that the returning students were divided as to whether the invasion was necessary to protect them. N.Y. Times, Oct. 27, 1983, at A1, col. 5. Despite his statements indicating RMC restraint vis-à-vis the students, Vice-Chancellor Bourne stated that the U.S. action "was amply justified from the point of view of the students" because "we had a volatile and highly dangerous situation as far as the students were concerned, which could have become disastrous at any minute." *Hearing: U.S. Military Actions*, *supra* note 22, at 179. Bourne said, however, that the students were not in immediate danger, indicating that by working with Austin he had "bought the safety of the students." *Id.* at 178.

67. Wash. Post, Oct. 29, 1983, at A16, col. 3. Another of the U.S. diplomats, Kenneth Kurze, said he did not urge students to leave Grenada: "We have not recommended that they leave." A. PAYNE, *supra* note 21, at 155, *citing* Int'l Herald Tribune, Oct. 25, 1983. H. O'SHAUGHNESSY, *supra* note 52, at 166.

State Department officials in Grenada were telling students they were in danger at the same time that White House spokesperson Larry Speakes was telling the press they were not.⁶⁸

Thus, two factors apparently changed the minds of many of the students: the urging of the U.S. diplomats and the fear of an invasion. The fact that most U.S. nationals did not believe that they were in danger prior to October 24 does not necessarily mean that they were not in danger.⁶⁹ However, it is a strong indication that the situation in Grenada was not as chaotic as the State Department alleged.

F. State Department Personnel Endeavored to Convince the U.S. Nationals That They Were in Danger in Order to Make it Appear That They Were in Danger

As previously discussed, State Department personnel convinced many of the medical students that they were in danger. This could have been done by the State Department for one of two reasons. They might have genuinely been concerned for the students' safety or may have realized that an invasion justified on the basis of rescuing of nationals would be more credible if U.S. nationals believed they were in danger.

Possibly, the Department genuinely believed the students were in danger. The Department was heavily influenced by the view that East-West conflict was paramount in all parts of the world. Viewing the RMC as pro-Soviet, it may have believed that the RMC might take the students hostage. It may also have believed that a countercoup was possible. Even if it believed there might be a countercoup, no justification was given as to why such a countercoup would pose a danger to the students. A countercoup would have presumably brought the pro-Bishop forces back to power, and Bishop posed no danger to the students. Danger might have come from the civil strife brought on by an attempted countercoup. Such danger, however, was remote because most of the students were located away from population centers.

Another indication of the State Department's effort to make it appear U.S. medical students were in danger was that it tried to

68. N.Y. Times, Oct. 25, 1983, at A12, col. 4.

69. Captain W.T. DeCamp, U.S. Marine Corps, writes: "Americans on the island of Grenada were in grave and imminent danger whether they knew it or not." DeCamp, *Grenada: The Spirit and the Letter of the Law*, NAVAL WAR C. REV., May-June 1985, at 28, 29.

convince St. George's Medical School to declare that its students were in danger. According to a St. George's professor then in the United States, "on Wednesday 19 October, I received a call from a member of the board of trustees, a distinguished and very conservative man who said that the State Department was pressuring school officials in New York to say publicly that the students in Grenada were in danger so that Washington would have a pretext to invade the island."⁷⁰

It seems likely that the State Department, endeavoring to convince students they were in danger and urging the medical school to make a declaration of danger, was laying the groundwork for an invasion that would be launched for reasons unrelated to the safety of the students. By the time the Department officials urged the students to go home (Oct. 22-23), the decision to invade had been made and U.S. ships were already positioned to invade Grenada at dawn on October 25.⁷¹ That invasion would seem more legitimate if the U.S. nationals were in need of rescue, and it would be difficult to rescue them if they did not want to be rescued.

G. The State Department Did Not Try to Arrange Transport for Those U.S. Nationals Desiring to Leave Grenada

A principal reason the State Department gave for using military force to evacuate U.S. nationals was lack of other means to evacuate them. Had it been possible to evacuate them by other means, military force would not be justified.⁷² As indicated above, it was not until October 24 that a substantial number of U.S. nationals desired to leave. However, the Administration had already decided to send in troops at 5:00 a.m. on October 25 for a full-scale invasion.⁷³ U.S. diplomats carried on discussions with RMC officials on October 22 and 23 regarding transportation for U.S. nationals. The State Department's purpose in those discussions was not to secure the evacuation of U.S. nationals but to build a case as to why it was not possible to evacuate them without military force. One course for the diplomats might have been to evacuate the students prior to the invasion. Yet because a large number of students

70. Bourne, *supra* note 59, cols. 4-5. Bourne's statement to the same effect is reported in *The Village Voice*, Nov. 8, 1983, at 8.

71. See *infra* text accompanying notes 297-99.

72. D. BOWETT, *supra* note 18, at 105.

73. See *infra* text accompanying notes 276-99.

did not wish to leave until October 24, it was logistically infeasible to get them out before the invasion. No serious effort was made to evacuate them prior to the invasion. If the U.S. officials learned on October 24 that a large number of students wanted to leave and if these officials wanted to get them out safely, the invasion could have been postponed. However, that would have eliminated one rationale to justify the invasion.

Administration officials cited the RMC's alleged failure to permit flights out of Pearls Airport on October 24 as a major reason why it was unable to evacuate U.S. nationals and had to use military force. Secretary of Defense Caspar Weinberger stated:

Attempts were made to get Americans out; however, the Military Council failed to live up to its assurances that the airport would be opened on October 24 and foreigners would be free to leave. Therefore, the U.S. was unable to get any Americans out on charter flights prior to the U.S. invasion.⁷⁴

Deputy Secretary of State Dam said, to the same effect: "Charter flights were not allowed in [to Pearls Airport]."⁷⁵

These statements were false. Four charter flights flew in to and out of Pearls Airport on October 24.⁷⁶ A former Reagan administration official reported flying out of Pearls Airport that day on a charter flight.⁷⁷ An additional chartered Canadian flight would have used Pearls Airport on October 24, had the flight not been canceled by the charterer, Leeward Islands Air Transport, owned jointly by several Caribbean states that were collaborating with the United States in the invasion.⁷⁸

74. *Situation in Lebanon and Grenada: Hearing Before a Subcomm. of the House Comm. on Appropriations*, 98th Cong., 1st Sess. 58 (1983)[hereinafter *Hearing: Situation in Lebanon and Grenada*].

75. *Hearing: The Situation in Grenada*, *supra* note 15, at 28. A week later Dam acknowledged that charter planes had in fact been permitted to use Pearls airport on October 24. *Hearing: U.S. Military Actions*, *supra* note 22, at 37, 46.

76. N.Y. Times, Oct. 29, 1983, at A7, col. 3.

77. N.Y. Times, Oct. 29, 1983, at A7, col. 3 (Robert J. Myers, retired chief actuary of the social security system). That the State Department envoys did not try to use Pearls Airport on October 25 to fly out students is noted in *Hearing: U.S. Military Actions*, *supra* note 22, at 234 (statement of Colin Moore, Caribbean Action Lobby).

78. *Hearing: U.S. Military Actions*, *supra* note 22, at 47 (statement of Rep. Stephen J. Solarz of New York); Toronto Globe and Mail, Nov. 12, 1983, at 1, col. 2; Toronto Globe and Mail, Nov. 15, 1983, at 9, col. 1; Bourne, *supra* note 59, at IV3, col. 5; London Times, Oct. 25, 1983, at 1, col. 3. CARICOM (Caribbean Community) had banned flights to Grenada on October 22. London Times, Oct. 25, 1983, at 1, col. 3; LATIN AMERICA BUREAU, GRENADA: WHOSE FREEDOM? 84 (1984).

U.S. diplomats in Grenada at the time were making no effort to use Pearls Airport to evacuate U.S. nationals. Major Cornwall offered to allow chartered civilian planes to land at Pearls Airport to evacuate students. U.S. officials declined, claiming the short airstrip at Pearls would only accommodate planes holding no more than forty-six persons, so that evacuation would take too long to be done safely. They also said that the road to Pearls Airport was long and difficult and suggested evacuation by a U.S. battleship to be loaded by landing craft. Austin and Cornwall rejected this idea as smacking too much of a military occupation.⁷⁹ The diplomats then suggested they could use the Cunard cruise ship *Countess*, scheduled to arrive in Grenada on October 25, to evacuate the students from Grenada. Cornwall agreed. This plan was never formalized however, because officials in Washington reportedly refused the Cunard option. Thus, at the time of the invasion, the RMC had agreed to an evacuation plan.⁸⁰

Modica, the medical school chancellor, believed it possible to evacuate the students without an invasion. Concerned that the invasion endangered the students and that the State Department had concealed the impending invasion from him, he stated, "If they had [informed me], we would have taken the necessary actions to see that the students left peacefully."⁸¹ The Canadian Government publicly stated it suspected that the State Department pressured the Caribbean governments who own Leeward Islands Air Transport into cancelling the flight it had chartered for

79. *Hearing: U.S. Military Actions*, *supra* note 22, at 193 (statement of G. Bourne). Bourne was called by Austin on October 21 and asked how many students wanted to leave and by what means could they be transported out of Grenada. At Cornwall's request, Bourne arranged a meeting at a hotel between Budeit and Cornwall to discuss student departure arrangements. Bourne allayed Cornwall's fears about Budeit's suggestion of a helicopter landing by telling Cornwall that Budeit was only discussing possible actions in case of extreme necessity. *Id.* at 192-93.

80. J. KWITNY, *supra* note 25, at 413. Former NSC Caribbean specialist Pastor said, "[T]here appears to have been no effort by the Administration to . . . arrange an evacuation of U.S. citizens." *Hearings: U.S. Military Actions*, *supra* note 22, at 82. For a version of the Cornwall-State Department discussions where Cornwall refused to allow the use of the Cunard ship and alternatively agreed and disagreed to the departure of charter flights, see G. SANDFORD & R. VIGILANTE, *GRENADE: THE UNTOLD STORY* 8 (1985). Their version is less credible than Kwitny's for two reasons. First, they cite no sources. Second, their general account of the events surrounding the invasion is highly inaccurate. For a conclusion that U.S. officials could have arranged evacuation without invading, see *TIME*, Nov. 14, 1983, at 19. The Reagan administration rejected the Cunard option. *N.Y. Times*, Oct. 27, 1983, at A21, col. 5.

81. *N.Y. Times*, Oct. 26, 1983, at A20, col. 6. Modica reversed his view after discussions at the State Department. *N.Y. Times*, Oct. 27, 1983, at A29, col. 5.

October 24.⁸² The State Department could thus make it appear that the RMC was not permitting the flight. This in turn enhanced the State Department's argument that military action was needed to evacuate U.S. nationals.⁸³ Subsequently, the Canadian Government stated that it had found no evidence to implicate the United States in the flight cancellation.⁸⁴ Nonetheless, clearly Pearls Airport was available on October 24, and U.S. officials did not attempt to use it.

H. Arriving U.S. Forces Were Unaware of the Location of Most of the U.S. Nationals

A further indication that rescue of U.S. nationals was not a genuine reason for the invasion was that U.S. forces arriving in Grenada were not informed of the location of most of those nationals. The forces were aware of the location only of medical students but did not know the location of the several hundred other U.S. nationals in Grenada. Furthermore, they were only aware of the location of the 100 students at the True Blue campus near the Point Salines airstrip. They were not aware of the location or even the existence of 550 students at private housing sites and at the Grand Anse campus. This campus is located just south of the capital city of St. George's, in the residential area called Lance aux Épinés, just east of Point Salines.

When President Reagan was asked at a news conference on October 25 whether U.S. citizens in Grenada were safe, his answer indicated that he was unaware of the location of the students. He replied, "As far as we know, the citizens are safe. We have been monitoring that very closely."⁸⁵ However, at the time of the news conference, U.S. forces did not know the location of most of the U.S. students or others. As late as October 27, Reagan was still using the erroneous information that most of the students were at the True Blue campus. In a televised address, he stated, "Almost instantly our military seized the two airports, secured the campus where most of our students were and they're now in the mopping-up phase."⁸⁶ Defense Secretary Caspar Weinberger later acknowl-

82. Toronto Globe and Mail, Nov. 12, 1983, at 1, col. 2.

83. *Id.* Barrow, *The Danger of Rescue Operations*, 12 CARIBBEAN REV. 3, 4 (1983).

84. Toronto Globe and Mail, Nov. 15, 1983, at 9, col. 1.

85. Wash. Post, Oct. 26, 1983, at A7, col. 4.

86. N.Y. Times, Oct. 28, 1983, at A10, cols. 5-6.

edged to a House subcommittee that military commanders had not known the students' locations. When asked whether it were true that "operation commanders were not aware that the Medical School in Grenada had two separate campuses," Weinberger replied, "Initially it was not known that the medical school had two campuses."⁸⁷

If the operation were a rescue mission, U.S. civilian officials in Grenada during October 22-24 would have conferred with the vice-chancellor, Geoffrey Bourne, to plan an evacuation. Yet no indication exists that any such discussions were held with Bourne or other medical school officials.⁸⁸ State Department personnel must have known of the existence of the Grand Anse campus and the Lance aux Épines residential area because State Department envoy Budeit visited married students at their homes in the suburbs of St. George's.⁸⁹ Evidently they did not transmit that information to military commanders.

If rescuing students was a motivation for the landing, then the failure to get that information to the commanders was a serious error, one that put those students in danger. Major General H. Norman Schwarzkopf considered it an unfortunate, but not unusual intelligence failure. He told reporters that U.S. commanders were aware in advance that there were 103 students at the True Blue campus but unaware of 224 others at the Grand Anse campus and 202 more at the Lance aux Épines residential area.⁹⁰ The report prepared by Adm. Wesley McDonald, overall commander of the Grenada operation, similarly indicates a lack of knowledge regarding the location of the students:

Evacuee locating information was not available except that they were generally located in the St. Georges area. During execution of the operation, interviews with the first evacuees provided location information for other potential evacuees.⁹¹

Elsewhere in his report, McDonald writes:

87. *Hearing: Situation in Lebanon and Grenada*, *supra* note 74, at 56 (question of Rep. Joseph Addabbo, Chairman, Subcommittee on the Department of Defense, House Committee on Appropriations; response of Caspar Weinberger, Secretary of Defense).

88. Bourne mentions no discussion with the State Dept. officials with whom he was in contact about any procedures to evacuate students.

89. J. KWIRNY, *supra* note 25, at 413-14.

90. Wash. Post, Nov. 9, 1983, at A34, col. 1.

91. Commander in Chief, U.S. Atlantic Command, *Operation Urgent Fury Report at II-9* (1984).

NEO [non-combatant evacuation operation] related intelligence was inadequate as rescue operations began. The three separate locations of the medical students were not known to military planners at the start of URGENT FURY.⁹²

As a result of not knowing the locations of all the students, U.S. forces were not able to approach most of them on the first day of the operation.⁹³ This lack of information casts doubt on the State Department's claim that evacuation of the students was a motivation for the Grenada landing. It is inconceivable that commanders purportedly planning a rescue mission would not ascertain the location of those they were planning to rescue. Failure to do so is a strong indication that rescue of U.S. nationals was a pretext.

I. Arriving U.S. Forces Did Not Immediately Endeavor to Approach U.S. Nationals

Another factor suggesting that the rescue of U.S. nationals was a pretext was that arriving U.S. forces did not immediately proceed to those medical students whose location was known. U.S. forces made their initial landings at two sites in Grenada. The first, at 5:00 a.m., was by Marines at the Pearls Airport, a site near which there were no U.S. nationals. The second, at 5:30 a.m., was by U.S. Army Rangers at Point Salines, where a new airport was under construction, and very near to the True Blue campus, where 103 medical students resided. The Marines overcame resistance at Pearls quickly and made no effort to locate students. Upon landing, the Rangers encountered minor resistance from the People's Revolutionary Army units (PRA) but did not immediately proceed to the nearby True Blue campus.

After landing, one segment of the Rangers began clearing vehicles and debris from the Point Salines airstrip that had evidently been placed there to block its use by incoming U.S. aircraft. Another segment took up positions on high ground above the airstrip surrounding the PRA positions and the Cuban workers' dormitories.⁹⁴ No Rangers however approached the True Blue campus, located at the eastern end of the airstrip.

President Reagan, asserting that protection of the medical students was a "prime objective" of the operation, incorrectly claimed

92. *Id.* at VII-5.

93. See *infra* text accompanying notes 99-101.

94. Wash. Post, Nov. 9, 1983, at A34, col. 3.

that the arriving forces immediately went to the True Blue campus:

And one of our prime objectives in the actual invasion that was almost instantly done was the securing of that St. George's Medical College where several hundreds of the students were.⁹⁵

In fact, U.S. forces approached the True Blue campus only several hours later.⁹⁶ One reason for this delay was that the arriving Rangers first attacked a group of Cuban construction workers who had not planned to resist their entry into Grenada or their passage to the True Blue campus.⁹⁷ Since the Cuban dormitories were north of the airstrip, while the True Blue campus was off its eastern end (the airstrip is east-west), it was unnecessary for the Rangers, landing from the south, to go near the dormitories to approach the campus. Several of the Cuban workers expressed surprise that the Rangers had not gone immediately to the student dormitories. Alberto Diaz, a Cuban bricklayer, stated the Rangers "occupied a hill and took up attack positions. I was watching them and I thought they were doing this [landing in Grenada] to take the U.S. students away but they advanced to where we were."⁹⁸ When the Rangers arrived at the True Blue campus, they did not transport its residents from Grenada until the following day.

Although U.S. forces delayed in approaching those students of whose location they were aware, they did not approach the others until even later. Most of the U.S. students (426) were located at the Grand Anse campus and at the Lance aux Épinés residential area. U.S. forces didn't get to the Grand Anse campus until the afternoon of October 26.⁹⁹ On October 28, they found the students at the Lance aux Épinés residential area,¹⁰⁰ by accident while in

95. J.N. MOORE, *LAW AND THE GRENADA MISSION* 93 (1984). Reagan was wrong about the number of students at the True Blue campus. There were only 103, out of a total of 650.

96. The Marine Corps report on the combat states that Rangers "secured" the True Blue campus "by 1028 on D-Day." U.S. MARINE CORPS DEVELOPMENT AND EDUCATION COMMAND NEWSLETTER: OPERATIONAL OVERVIEW, Jan.-Mar. 1984, at 12 [hereinafter OPERATIONAL OVERVIEW].

97. L.A. Times, Nov. 6, 1983, at 6, col. 5; *JCS Replies to Criticism of Grenada Operation*, ARMY, Aug. 1984, at 28 [hereinafter *JCS Replies*] (indicating that U.S. Rangers attacked the Cuban construction workers). The Joint Chiefs of Staff report also appears as *JCS Analysis of the "Lind" Report*, ARMED FORCES J. INT'L, July 1984, at 12-18, 99. See also Quigley, *Parachutes at Dawn: Issues of Use of Force and Status of Internees in the U.S.-Cuban Hostilities on Grenada, 1983*, 17 U. MIAMI INTER-AM. L. REV. 199-248 (1986).

98. Granma Weekly Review, Nov. 13, 1983, at 7, col. 1.

99. See *infra* text accompanying notes 114-16.

100. The commander's report on activity for October 28, 1983 in Grenada, states, "TF

the area for other purposes.¹⁰¹ Failure to proceed immediately to the True Blue campus and to determine the location of the majority of the students strongly suggests that the rescue of the students was not a purpose of the landing.

J. U.S. Forces Seriously Endangered the Lives of U.S. Nationals

Whatever danger the U.S. medical students might have faced in Grenada was far less than the danger to which they were exposed by the October 25 landing.¹⁰² As indicated above, medical students were frightened by an invasion of neighboring Caribbean states.¹⁰³ Chancellor Modica, outraged by the danger to which the invasion subjected his students, said that if any were hurt the president "should be held accountable."¹⁰⁴

Before U.S. forces approached them, students at the True Blue campus were surrounded by combat for several hours. The Point Salines area, where U.S. Army Rangers landed, was defended by the People's Revolutionary Army of Grenada. Additionally, approximately 200 of the 600 Cuban workers had light arms and fought back following the Rangers' attack on them. The combat was conducted very close to the True Blue campus. Modica said there was firing close by.¹⁰⁵ After initial exchange of fire on the ground with light weapons, the Rangers relied on helicopter gunships to combat the People's Revolutionary Army and the Cuban workers. Those gunships flew over the True Blue campus and fired at the PRA and Cubans who were still very close to the campus. One student, via ham radio, reported "quite a bit of fire" at

[Task Force] conducted operations on Lance Aux Épines peninsula to ensure the safety of 202 U.S. citizens." Commander in Chief, *supra* note 91, chron. 4; Wash Post, Nov. 9, 1983, at A34, col. 1; Doe, *Grenada: Will Its Lessons Be Taught?*, ARMY TIMES, Nov. 5, 1984, at 32.

101. R. GABRIEL, *MILITARY INCOMPETENCE: WHY THE AMERICAN MILITARY DOESN'T WIN* 174 (1985).

102. LATIN AMERICA BUREAU, *supra* note 78, at 89. Pastor said, "U.S. citizens were more likely to have been endangered by the invasion than by the Grenada Government." *Hearing: U.S. Military Actions*, *supra* note 22, at 73. Rep. Dymally said, "The greatest danger to American lives on Grenada was an American invasion." *Id.* at 7.

103. See *supra* text accompanying note 63.

104. N.Y. Times, Oct. 26, 1983, at A20, col. 6. Pastor said, "The government [of Grenada] would be more likely to take hostages if there were an imminent or probable invasion than if the U.S. Government was in direct contact trying to gain assurances of safety for U.S. citizens. So in that sense an invasion would have endangered the lives of U.S. citizens rather than protected them." *Hearing: U.S. Military Actions*, *supra* note 22, at 82.

105. N.Y. Times, Oct. 26, 1983, at A20, col. 6.

the campus from U.S. helicopter gunships.¹⁰⁶ The gunships inflicted heavy casualties on the Cuban workers.¹⁰⁷ While another student was broadcasting from True Blue campus on a ham radio, artillery fire could be heard in the background.¹⁰⁸ The student ham radio operator sent a radio message to U.S. forces asking that the helicopters be diverted.¹⁰⁹ One student reported that U.S. shells aimed at Grenadians and the Cubans landed "less than 50 meters from our building on the campus."¹¹⁰ One student reported a bullet hitting the pillow on his bed in his dormitory.¹¹¹ Additionally, the invasion endangered students at the other locations. That was particularly true of the largest concentration of U.S. nationals on Grenada, the 224 medical students at the campus at Grand Anse, located south of the capital city of St. George's.¹¹² U.S. commanders learned of the existence of the Grand Anse campus from students at the True Blue campus.¹¹³

U.S. forces were unable to approach the Grand Anse campus until the afternoon of October 26. They used helicopters to transport the students to the Point Salines airstrip, where they were transferred to C-141 transport planes and flown to the United States. The helicopter operation was conducted when PRA forces were actively defending the St. George's area. U.S. aircraft strafed PRA units near the campus in a "devastating barrage" that lasted fifteen minutes and leveled two nearby hotels.¹¹⁴ The helicopters were met with heavy fire as they flew in and out of the Grand Anse campus.¹¹⁵ The U.S. Marine Corps report on the Grenada fighting indicates the danger to which the students were exposed:

[L]ift-off [with students from Grand Anse] commenced at 1600 [4:00 p.m., October 26]. In less than an hour, 224 students were evacuated *under fire* without any friendly casualties. *Three heli-*

106. Wash. Post, Oct. 26, 1983, at A10, col. 2.

107. N.Y. Times, Oct. 28, 1983, at A12, cols. 1-2.

108. N.Y. Times, Oct. 26, 1983, at A20, col. 2.

109. *Id.* at A20, col. 6.

110. Wash. Post, Oct. 28, 1983, at A17, col. 2.

111. *D-Day in Grenada*, TIME, Nov. 7, 1983, at 23 [hereinafter *D-Day in Grenada*].

112. "Enemy forces were in control of both locations [Grand Anse, Lance aux Épines] and could easily have killed the students." R. GABRIEL, *supra* note 101, at 168.

113. Commander in Chief, *supra* note 91, at II-9.

114. *Battle for Grenada*, NEWSWEEK, Nov. 7, 1983, at 72 [hereinafter *Battle for Grenada*].

115. The ground fire was sufficiently intense that several Marine helicopter pilots refused to land, forcing Rangers to jump from moving helicopters. R. GABRIEL, *supra* note 101, at 170. That the fighting near the medical school endangered the students is noted by Pastor in *Hearing: U.S. Military Actions*, *supra* note 22, at 83.

*copters were damaged in the assault with one helicopter destroyed. There were no losses to passengers or crew.*¹¹⁶

As the students ran towards the helicopters, "shots whizzed about them."¹¹⁷

An army analyst wrote, "Fully 35 hours after the start of the operation, these students [at the Grand Anse Campus] remained surrounded by Cuban and Grenadan forces, who might easily have slaughtered them had they been so inclined to retaliate for the invasion." Senator Sam Nunn, of the Senate Armed Forces Committee, commented, "we averted a tragedy by a narrow margin."¹¹⁸

Students in off-campus housing were in an even more precarious position because U.S. forces were unaware of their locations and thus could not take precautions to avoid combat near them. Fighting raged around the student and faculty residences in the hills north of Point Salinas.¹¹⁹ Students at the Lance aux Épines residential area were behind Grenadian lines throughout the entire four days of combat and were not reached by U.S. forces until October 28, after Grenadian resistance had been completely subdued.¹²⁰

Given what U.S. military intelligence knew about the strength of PRA forces, foreseeably, a landing would be met with considerable resistance. Unlike the evacuation of U.S. nationals from the Dominican Republic in 1965, where evacuees were collected in a field distant from armed conflict,¹²¹ the Grenada students whose locations were known were near a defended position. There was no possibility of landing near them without subjecting them to nearby gunfire. The failure to ascertain the location of the other students

116. OPERATIONAL OVERVIEW, *supra* note 96, at 18.

117. *D-Day in Grenada*, *supra* note 111, at 25. O'Shaughnessy calls the Grand Anse evacuation "the time of maximum danger to the lives of the U.S. medical students." H. O'SHAUGHNESSY, *supra* note 52, at 221. The danger was heightened by the fact that the operation involved units from the Army, Navy, Air Force, and Marine Corps, units that had not previously worked together. *Wall St. J.*, Nov. 15, 1983, at 21, col. 1.

118. Doe, *supra* note 100, at 32. Doe's reference to "Cuban forces" is inaccurate. There were no Cuban forces on Grenada in the sense of military units. The only substantial number of Cubans was the construction workers at Point Salines. Quigley, *supra* note 97, at 206. That Grenadian forces could have killed the students during this period was also noted by Illingworth, *Grenada in Retrospect*, in *AMERICAN INTERVENTION IN GRENADA: THE IMPLICATIONS OF OPERATION "URGENT FURY"* 139 (1985).

119. *Wash. Post*, Oct. 28, 1983, at A17, col. 2. Bourne referred to "the 150 students scattered around in various houses." *Hearing: U.S. Military Actions*, *supra* note 22, at 197.

120. *See supra* notes 100-01.

121. *N.Y. Times*, Apr. 29, 1965, at A1, col. 8.

caused them even more danger.

The likelihood that nationals will be endangered by a military intervention is one reason to oppose a rule that permits military intervention to protect nationals. Bennouna writes: "Dispatch of troops into the territory of another country is far from the most effective means to protect foreign nationals; it contributes, most often, to aggravating the situation, to exciting passions, and in the end to putting their lives in actual danger."¹²²

The danger to which the U.S. nationals were subjected because of the invasion of Grenada indicates that if the State Department was sincerely concerned for the safety of the U.S. nationals, it would not have launched an invasion but would have arranged their evacuation without use of military force. The fact that peaceful avenues for achieving that evacuation were not explored suggests that safe evacuation of U.S. nationals was not an objective of the October 25 landing.

K. The People's Revolutionary Army Did not Harm U.S. Nationals During the Hostilities

One reason given by the State Department to justify an evacuation of U.S. nationals was the fear that the RMC might take U.S. nationals hostage.¹²³ Yet when hostilities commenced, the PRA showed the same solicitude to U.S. nationals that it had shown in the days preceding the invasion. No U.S. national was taken hostage by or harmed by the PRA, though it had considerable opportunity to do so. This was particularly true of the 224 medical students at the Grand Anse campus who were not approached by U.S. forces until October 26,¹²⁴ and the 202 students at the Lance aux Épinés residential area who were not evacuated until October 28.¹²⁵ The PRA, which could not hold out long against a U.S. invasion, might have taken U.S. nationals as hostages in a last-ditch effort to stave off defeat. Thus, had the PRA been inclined to take hostages, the U.S. invasion provided it with the ideal situation.

Only two instances of contact were reported between PRA

122. M. BENNOUNA, *supra* note 20, at 181.

123. *See supra* text accompanying notes 22-23.

124. One author writes, "It is not clear to this day why Grenadian troops . . . did not take the medical students hostage at Grand Anse." P. BRAESTRUP, *BATTLE LINES: REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON THE MILITARY AND THE MEDIA* 108 (1985).

125. *Supra* notes 100-01.

soldiers and medical students during the fighting. In one, PRA soldiers by mistake burst into a house in which six medical students were living. When the soldiers realized that the inhabitants were medical students, they apologized and left.¹²⁶ One student who lived off-campus reported that thirty PRA soldiers entered the apartment he shared with four other students and took it over for three hours for use as a communications station. The soldiers did not harm the students.¹²⁷ Military analyst Richard Gabriel wrote: "According to the students themselves [those at Grand Anse], they never felt in any danger until the Americans arrived and it looked as if there might be a battle. No threats were ever made against either the students or the medical-school staff. Indeed, if the enemy had wanted to kill the students or hold them hostage, they had two full days to do so after the first American forces landed."¹²⁸

L. Rescue of Nationals was a Pretext

One cannot fully assess the hypothesis that the rescue of U.S. nationals was a pretext without analyzing what motivation the United States might have had for wanting to change the Government of Grenada. That analysis is undertaken in the next section, in the context of U.S.-OECS relations. However, even without that analysis, the above strongly suggests that the State Department did not invade Grenada to protect U.S. nationals. Former Attorney General Ramsey Clark said that the Administration made a "false claim" when it asserted that intervention was necessary to save the students.¹²⁹ Representative Peter Kostmayer told his colleagues on the House Foreign Affairs Committee, "I have not seen a single shred of evidence that the lives of American citizens were in danger in Grenada."¹³⁰ Historian Arthur Schlesinger, Jr., concluded,

126. J. KWITNY, *supra* note 25, at 417. Bourne said the soldiers told the six students that they would protect them. He said, "the word had gotten to the PRA [People's Revolutionary Army] that they were not to interfere with the students." *Hearing: U.S. Military Actions, supra* note 22, at 178.

127. *D-Day in Grenada, supra* note 111, at 24.

128. R. GABRIEL, *supra* note 101, at 169. Pastor said, "there were ample opportunities after the invasion for them [the Grenada army] to take hostages and, of course, none were taken." *Hearing: U.S. Military Actions, supra* note 22, at 73.

129. Clark, *Libya, Grenada, and Reagan*, 242 *NATION* 604, 605 (1986).

130. *Grenada War Powers: Full Compliance Reporting and Implementation*, Markup before the House Committee on Foreign Affairs, 98th Cong., 1st Sess. 5 (1983). Sally Shelton, who was U.S. Ambassador to Grenada, Barbados, and other Eastern Caribbean states 1979-1981, said of the claim of danger to the students that there was "no supporting

"It did not want evacuation. It wanted a pretext for war."¹³¹ The invasion in fact seriously endangered U.S. nationals and other foreign nationals, and the State Department knew in advance that it would. Although the Department could have evacuated U.S. nationals before invading, nationals were left in Grenada and exposed to serious danger to provide a pretext for the invasion and overthrow of the government. State Department personnel failed to arrange for the evacuation of U.S. nationals even after some of them decided they wanted to leave. Even if the U.S. nationals were in danger, that danger was seriously increased by the invasion itself. Logically, it would have been safer to arrange transport.

"The rescue operation," concluded Gabriel, "would be used as the public rationale for the invasion, but in fact its objectives went considerably beyond What the U.S. planned was nothing less than taking over the island and installing a regime more friendly to American interests."¹³²

This was not the first time the State Department asserted a need to rescue endangered U.S. nationals as a pretext for military intervention in the Caribbean. In 1965 it intervened in the Dominican Republic on the pretext of a need to rescue U.S. nationals. The following facts indicate that the rescue of U.S. nationals from the Dominican Republic was a pretext: (1) two days before the intervention the U.S. embassy in the Dominican Republic sent the State Department a cable suggesting intervention to ensure the defeat of the constitutionally elected government of Juan Bosch which was overthrown by military coup: "All members of the country team feel Bosch's return and resumption of control of the government is against U.S. interests in view of extremists in the coup and Communist advocacy of Bosch's return"; (2) the information that the U.S. ambassador provided to the State Department regarding the unsafe condition of U.S. nationals was provided by

evidence as yet." *Hearing: U.S. Military Actions*, *supra* note 22, at 58 (statement of former Ambassador Sally Shelton). Representative Dymally said that, "the claims that our students were in danger were spurious at best." *Id.* at 6.

131. *Wall St. J.*, Nov. 9, 1983, at 30, col. 4. *Accord* Holt, *Christian Science Monitor*, Dec. 7, 1983, at 34, col. 3 (Holt is the former chief of staff of the Senate Foreign Relations Committee). *See also* statement of Robert Pastor that, "the Reagan administration did not want to receive information about the students from their parents, or from the Grenadian Government unless that information reinforced their own fear they were in danger. More importantly, the Reagan administration did not seek out such information." *Hearing: U.S. Military Actions*, *supra* note 22, at 83. *See also id.* at 234 (statement of Colin Moore, "the security of the American students was merely a pretext for the invasion.").

132. R. GABRIEL, *supra* note 101, at 151.

pro-U.S. Dominican military officers; (3) those officers stating they could not assure safety of U.S. nationals were not in a position to do so as they were not at that time in power, controlling only an air base east of the capital city; (4) on the day preceding the intervention 1172 of the 2500 U.S. nationals in the Dominican Republic were evacuated by ship and helicopter without use of force; (5) after intervening the U.S. forces only evacuated an additional 200 U.S. nationals; (6) there was no indication that those 200 nationals could not have been evacuated by the same means used to evacuate the 1172; (7) neither before nor after the intervention was any harm done to the persons or property of U.S. nationals.¹³³

The Dominican Republic and Grenada episodes are the only two recent U.S. interventions in the Caribbean where the justification given was the rescue of U.S. nationals. In both instances, the assertion was a pretext for an intervention effectuated to remove a government. Fearful that the rescue-of-nationals rationale would be used as a pretext, the Organization of American States (OAS) included a provision in the OAS Charter that precludes intervention for any purpose whatever, including rescue of nationals.¹³⁴ Whatever may be the customary international law on the topic,¹³⁵ with respect to the Western Hemisphere, rescue of nationals is precluded by OAS Charter article 18, which states that "No State . . . has the right to intervene . . . for any reason whatever, in the internal . . . affairs of any other State," and article 20, which 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 grounds whatever." The pretextual use of the rescue-of-nationals rationale in the Dominican Republic and Grenada invasions illustrates the wisdom of the OAS Charter provisions. It also demonstrates the need to limit that doctrine under customary law to forestall such uses of the doctrine by states intervening for other purposes.

The hypothesis should also be considered that the State Department honestly believed that the U.S. nationals in Grenada

133. On the facts, see 2 A. CHAYES, T. EHRLICH & A. LOWENFELD, *INTERNATIONAL LEGAL PROCESS* 1152-57 (1968), and sources cited therein. For agreement with the statement in the text that protection of nationals was a pretext, see M. BENNOUNA, *supra* note 20, at 180.

134. Akehurst, *Humanitarian Intervention*, in *INTERVENTION IN WORLD POLITICS* 95, 109 (H. Bull ed. 1984).

135. Akehurst cites extensive state practice to make a convincing case that customary law does not permit force to protect nationals abroad. *See id.*

were in imminent danger and that a military operation was the best way to extract them from that danger. Because there is little evidence of such a danger, the author views this only as a remote possibility.

Administration officials claimed that the taking of hostages at the U.S. Embassy in Iran in 1979 made them fearful of a similar action in Grenada.¹³⁶ This mind-set may have inclined the Department to view situations of unrest as potential hostage situations even where little such potential exists. The fact that the Department exacerbated whatever danger existed may be explained by ineptitude, by the haste with which the operation was planned, and by the difficulties of coordinating the activities of the four services involved in the operation.

If the Department genuinely believed that an invasion was the best means possible to protect U.S. nationals, further doubt is cast on the rescue-of-nationals justification. An inherent danger in implementation of the rescue-of-nationals justification is that the intervening state makes a unilateral decision of the necessity to intervene. But if an intervening state honestly concludes there is danger where none exists, based on misperception of international situations, then the rescue-of-nationals justification is more suspect still. A government could intervene in the most innocuous of situations, sincerely believing its nationals were in danger.

This problem is particularly acute for the United States in the contemporary period. Considering the extent to which the United States is unpopular in many Third World states, it is very likely that any group challenging a Third World government friendly to the United States will criticize the United States. If civil warfare develops in such a state, the State Department may view U.S. nationals resident there as potential hostages.

The potential for abuse of the rescue-of-nationals justification is magnified by the fact that public opinion in the United States may well share the State Department's view of the danger of hostage-taking. Thus, it may support military intervention based on that justification. The State Department's awareness of this fact encourages the State Department to intervene in situations where the Department believes (honestly but erroneously) that U.S. nationals are in danger.

136. *D-Day in Grenada*, *supra* note 111, at 44.

With Grenada, it is more likely, as concluded above, that the State Department knew there was no imminent danger to U.S. citizens and used that rationale as a pretext for an invasion to change the Government of Grenada.

V. SECOND JUSTIFICATION: REQUEST FROM THE ORGANIZATION OF EASTERN CARIBBEAN STATES

A second ground asserted by the State Department to justify the Grenada intervention was that the Organization of Eastern Caribbean States (OECS) requested the United States to intervene. The Department stated that the OECS is a regional organization that has the power under its constituent treaty to take military action in Grenada (a member of the OECS) under the circumstances present in Grenada; that the OECS asked the United States for assistance in that endeavor; that the OECS had the right to make that request to the United States; and that the United States had the right to respond affirmatively.

A. *The OECS Did Not Act for the Reasons It Asserted*

The OECS statement gave three reasons for the OECS requesting United States intervention in Grenada: (1) deterioration of public order; (2) suppression of the population by the RMC; and (3) the threat to OECS member states from "the extensive military buildup in Grenada over the last few years" that had created "a situation of disproportionate military strength between Grenada and other OECS countries. This military strength in the hands of the present group has posed a serious threat to the security of the OECS countries and other neighboring states."¹³⁷

Indicating why it decided to act, the OECS emphasized the regional threat over the other two concerns: "Member governments considered it of the utmost urgency that immediate steps should be taken to remove this threat." It characterized its action as "a preemptive defensive strike in order to remove this dangerous threat to peace and security." The OECS added that it was being undertaken as well "to establish a situation of normalcy in Grenada," an evident reference to the other two concerns (deterioration of public order and suppression of the Grenadian population by the RMC).

137. *Collective Action*, *supra* note 7, at 67-68.

It is doubtful that this OECS statement expresses the real reasons the OECS decided to act. The alleged concern over Grenadian military strength is suspect because the accession to power of the RMC meant that Grenada was no longer on good terms with Cuba. Much of this concern over the Grenadian military buildup in public statements had been premised on Cuba's military assistance to Grenada. But after the RMC took power, it was doubtful that Grenada would continue military collaboration with Cuba. Cuba refused the RMC's request to help defend Grenada against the anticipated U.S. invasion—an indication of the lack of military cooperation between Cuba and the RMC.¹³⁸

A more likely motive for the OECS action was the fear of leftist forces coming to power elsewhere in the Caribbean. At their October 21 meeting, OECS leaders "expressed the fear that the bloody leftist military takeover on Grenada could embolden Havana-leaning revolutionaries in their own nations."¹³⁹ St. Lucia Prime Minister John Compton feared Grenada would push the Caribbean into the socialist camp.¹⁴⁰ Jamaican Prime Minister Edward Seaga voiced similar fears (Jamaica participated with Barbados as non-OECS states calling for U.S. intervention in Grenada). Ambassador Kirkpatrick quoted the following statement by Seaga as the reason why both Jamaica and the United States "accede[d] to the request of the OECS for assistance in its effort to establish collective security for the region." Seaga stated:

It is the inescapable fact that revolution breeds revolution because it makes no allowance to institutionalize opposition and to change administrations peacefully. During the past week we witnessed in Grenada not only a revolution spawning its own destruction but a brutal military takeover of a civilian Government.

It may be felt that these matters do not concern us, but most certainly they do. If a whole Government can be wiped out

138. Note of Cuban Government to Revolutionary Military Council of Grenada, read by President Fidel Castro at press conference, Wash. Post, Oct. 27, 1983, at A10, col. 4. On the poor relations between the RMC and Cuba, see H. O'SHAUGHNESSY, *GRENADA: REVOLUTION, INVASION AND AFTERMATH* 148-150 (1984) [hereinafter H. O'SHAUGHNESSY, *INVASION*].

139. *D-Day in Grenada*, *supra* note 111, at 27. Pastor said that the OECS leaders decided, "that a Marxist military government in the eastern Caribbean was unacceptable." *Hearing: U.S. Military Actions*, *supra* note 22, at 85 (statement of R. Pastor).

140. St. Lucia Prime Minister John Compton, who evidently was a prime mover behind the OECS action, feared that Grenada would push the Caribbean into the socialist camp. G. SANDFORD, *supra*, note 80, at 2.

overnight, by either political or military extremists and the Governments of the Caribbean remain silent and passive, then no Government elected by the people can be safe from madmen of one type or another who would seek to replace a Government of the people, elected by the people, with one selected by whichever chosen few of whatever nature.

If we ignored the occurrence of brutal military takeovers or political overthrows of Government, we would immediately give heart to every subversive group within the region to engineer disorder and instability as a means of overthrow. No democratic system of government would have a chance of carrying out the programmes of development which it was elected to implement if, in its midst, was a group of subversives, anarchists, terrorists, bent on destruction of the foundations of stability which underpin the whole system of democracy. The far-reaching consequences of such neglect on our part would be awesome and would have the effect of creating an unsure and an insecure future for all of us.

For the sake of the democratic system of government which we all agree to be the one which allows the maximum freedom of choice to peoples and protects their right to elect a government of their choice, we cannot ignore the events in the English-speaking Caribbean.¹⁴¹

Seaga expressed concern not over possible military action by Grenada against other Caribbean states but over possible domestic political repercussions in the Caribbean states because of the domestic political changes in Grenada. He was evidently worried that there might be leftist takeovers of government in other Caribbean states and strongly suggested that this was the primary reason for supporting the Grenada intervention. Kirkpatrick cited the Seaga statement as "the best justification" for the decision by both Jamaica and the United States to intervene in Grenada, implying that this was the primary reason the United States intervened in Grenada.

The OECS member states governed with the exception of Grenada, by governments of the political center or right, were alarmed by the New Jewel Movement that assumed power in Grenada in 1979, fearing its possible demonstration effect in their own populations. The governments cooperating with the United States in Grenada were "only the closest allies of the United States in the re-

141. See *Collective Action*, *supra* note 7, at 76 (Kirkpatrick).

gion, those Commonwealth Caribbean countries with the most right-wing governments."¹⁴² The existence of a leftist government in Grenada gave courage to leftists in their own states. The weakening of the Grenadian New Jewel Movement resulting from the anti-Bishop takeover by other New Jewel Movement members provided the OECS states with an opportunity to eliminate a leftist government in Grenada. In the weeks following their action in Grenada, several OECS governments arrested leading leftist figures in their own states. This suggests that the OECS governments' primary aim was to put down leftism in the Caribbean.¹⁴³ One newspaper reported that, "A climate of militant antiradicalism—even vigilantism—is rising here in the Caribbean in the wake of the United States-Caribbean invasion of Grenada."¹⁴⁴ Leftists were interrogated and their homes searched in Barbados. Jamaican Prime Minister Seaga read in Parliament the names of twenty-five persons he called "security risks."¹⁴⁵

B. The Reasons the OECS Asserted Were Legally Insufficient Under the OECS Treaty

The reasons the OECS stated are legally insufficient even assuming their factual validity. The 1981 OECS treaty does not permit military intervention to restore order in a member state whose internal mechanisms have broken down. Article 8 of that treaty is the only provision providing for military intervention. Article 8 establishes and describes the functions of the OECS Defence and Security Committee, identified by article 5 as a principal institution of the OECS. Article 8, paragraph 4, states, in part:

The Defence and Security Committee shall have responsibility for coordinating the efforts of Member States for collective de-

142. A. PAYNE, *supra* note 21, at 156. Professor A.W. Singham, Dept. of Political Science, Brooklyn College, referred to the leaders of three states that participated in the Grenada action as being "part and parcel of an ideological mold which is known in the eastern Caribbean as the New Right." *Hearing: U.S. Military Actions, supra* note 22, at 125 (statement of Prof. A.W. Singham).

143. Trinidad opposed the invasion, apparently because of opposition to it in the Trinidadian Left. *Christian Science Monitor*, Nov. 4, 1983, at 10, col. 1. Shortly after the invasion, Seaga also expelled four Soviet diplomats and the only Cuban government-related person in Jamaica, a correspondent for the Cuban news service, *Prensa Latina*, alleging that the five had plotted to kill a Jamaican foreign ministry official. *Cuba on the Defensive, TIME*, Nov. 14, 1983, at 31.

144. *Christian Science Monitor*, Nov. 28, 1983, at 11, col. 1.

145. *Id.*

fence and the preservation of peace and security against external aggression.¹⁴⁶

External aggression is the only circumstance that can trigger military action by OECS member states under the 1981 OECS treaty. A situation of disorder in a member state is not "external aggression." Similarly, protecting the rights of the Grenadian people is not a valid justification for intervention by the OECS. Lack of human rights by the population of a member state is not considered "external aggression." Likewise, the alleged fears over the possibility of Grenadian military action against other OECS states cannot trigger military action under the OECS treaty. "External aggression" requires aggression, not just a fear of future military action,¹⁴⁷ and also requires that the aggression come from outside the OECS. Because Grenada is a member state of the OECS, even an actual aggressive armed attack by it against another OECS state would not constitute "external aggression."

The 1981 OECS treaty does not provide a basis for the OECS action in Grenada for an additional reason—Article 8 requires a unanimous vote of member states before initiating military action. Article 8, paragraph 5, states, in part: "The decisions and directives of the Defence and Security Committee shall be unanimous . . ." Since Article 8, paragraph 1, defines the Committee as consisting of ministers responsible for defense "of the Member States," a representative of each member state must vote in favor of a resolution calling for military action. Grenada was not represented at the October 21 meeting when the decision to intervene was made. The other six members voted in favor.¹⁴⁸

Most commentators on the OECS role in the Grenada intervention concluded that these two factors represent fatal defects to the State Department's reliance on the OECS treaty as a justifica-

146. Treaty Establishing the Organization of Eastern Caribbean States, June 18, 1981, 20 I.L.M. 1166 (1981).

147. The Legal Adviser disavowed the anticipatory self-defense justification given by the OECS. See *infra* note 208.

148. One press report said that Montserrat and St. Kitts-Nevis had abstained. This report was, according to its author Stuart Taylor, based on a statement by a State Department official in a private conversation not for attribution. Telephone interview with Stuart Taylor (Aug. 1, 1985). However, officials of both Montserrat and St. Kitts-Nevis have told the author that these two members voted in the affirmative on the October 21 OECS decision to request U.S. intervention in Grenada. Telephone interview with William Valentine Herbert, Ambassador of St. Kitts-Nevis to the United States (Aug. 23, 1985). Telephone interview with Jane Higgs, political officer at the British Embassy, Washington, D.C., Aug. 2, 1985 (Montserrat is a British dependency).

tion for United States intervention.¹⁴⁹

C. The United States Prompted the OECS Decision to Request the United States to Intervene

The State Department claims that the United States acted in response to the OECS request of October 21; however, it is more likely that the United States solicited the OECS request. Four factors support this conclusion: (1) the OECS States are not capable of significant military action; (2) no troops from any OECS member state participated in the invasion of October 25, 1983; (3) U.S. officials discussed with Caribbean leaders the possibility of military action against Grenada well in advance of the October 21 OECS decision; and (4) the OECS request to the United States was drafted by the State Department.

1. The OECS States Have Little Military Capability

Several OECS states have virtually no military organization; others have only a small number of troops.¹⁵⁰ Thus, a decision by the OECS for military intervention would be meaningless absent prior agreement from states with military capability to carry it out. Three non-OECS States were involved: Jamaica, Barbados, and the United States. Of the three, the United States was the only one capable of effective assistance because Jamaica's and Barbados' military organizations are small.¹⁵¹ The OECS would not have

149. Joyner, *Reflections on the Lawfulness of Invasion*, 78 AM J. INT'L L. 131, 136-37 (1984); Boyle, *supra* note 10, at 173. Karas & Goodman, *supra* note 11, at 85-86; Dore, *The U.S. Invasion of Grenada: Resurrection of the "Johnson Doctrine"?* 20 STAN. J. INT'L L. 173, 183-84 (1984); *Action in Grenada*, *supra* note 12, at 345; W. GILMORE, *supra* note 11, at 43-44. *Contra* Moore, *supra* note 13, at 163-64; Riggs, *supra* note 13, at 51-53.

150. Kirkpatrick told the Security Council that most OECS states have no army or armies of less than 200 men. *Collective Action*, *supra* note 7, at 75. Deputy Secretary of State Dam said, "none of them [OECS states] have an organized military force; they have constabular forces, constables." *Hearing: The Situation in Grenada*, *supra*, note 15, at 8. Maj. Gen. George Crist, U.S. Marine Corps, who was in charge of liaison with the Caribbean contingents, stated, "When I first met them, which was at about 11 o'clock on a Sunday night at the Barbados defense headquarters . . . they said we are very small countries. We do not have military forces. We are basically police. And there they are with weapons, troops. They have murdered their leaders. What can we do? Can you help us?" *Hearing: U.S. Military Actions*, *supra* note 22, at 42 (statement of Maj. Gen. George Crist, U.S. Marine Corps).

151. On October 15, Barbados Prime Minister Tom Adams had asked for U.S. military intervention in Grenada—an indication that he did not think the Caribbean states could do it alone. The request was reported in a cable to the State Dept. from U.S. Ambassador

taken its October 21 decision absent a prior agreement from the United States to send troops into Grenada. U.S. Ambassador to Barbados, Milan Bish, was in close contact with the OECS conferees in Georgetown, and, by some accounts, even attended their meetings.¹⁵² Barbados, Jamaica, and the OECS states knew of Reagan's antipathy to Grenada and his likely willingness to accept a request for intervention.¹⁵³

2. No OECS or Other Caribbean Troops Took Part in Combat in Grenada

The Administration repeatedly referred to a "multinational force" despite the fact that no OECS or other Caribbean troops took part in combat in Grenada. This suggests that the Administration was using OECS participation as cover for a U.S.-initiated operation.¹⁵⁴

President Reagan, announcing the invasion on October 25, at 9:00 a.m., gave the impression that Caribbean troops were part of the initial invasion force:

We acceded to the request to become part of a multinational effort with contingents from Antigua and Barbuda, Barbados, Dominica, Jamaica, St. Lucia, St. Vincent and the Grenadines and the United States . . . Early this morning, forces from six Caribbean democracies and the United States began a landing or landings on the island of Grenada in the eastern Caribbean.¹⁵⁵

As Reagan spoke, no Caribbean personnel had arrived in Grenada. Similarly, J. William Middendorf, U.S. Ambassador to the Organization of American States, told the OAS Permanent Council on October 26:

[A] collective security force, made up of contingents from four member states of the OECS—Antigua and Barbuda, Dominica,

Milan Bish in Barbados. See Bennett, *Grenada: Anatomy of a "Go" Decision*, READER'S DIGEST, Feb. 1984, at 72, 73. That Barbados knew it needed extra-Caribbean assistance for a Grenada invasion was reported to the Canadian External Affairs Ministry October 21 by Noble Power, Canadian High Commissioner in Barbados. Power reported that the Barbados Government wanted an invasion but considered it "unrealistic" without outside support. *Toronto Globe and Mail*, Nov. 17, 1983, at 2, col. 2.

152. A. PAYNE, *supra* note 21, at 149.

153. *Id.*

154. For a description of the personnel provided by the participating states, see H. O'SHAUGHNESSY, *supra* note 52, at 8-9.

155. *Collective Action*, *supra* note 7, at 67.

St. Lucia, and St. Vincent and the Grenadines, supplemented by units from Barbados, Jamaica, and the United States—disembarked on Grenada yesterday at dawn.¹⁵⁶

In fact, only 300 Caribbean troops were flown into Grenada on October 25, beginning mid-afternoon,¹⁵⁷ and they were assigned only two duties—civilian police work and guarding of detainees.¹⁵⁸ They were never intended to and did not engage in combat.¹⁵⁹ There are no reports of any deaths or injuries among them.

Reagan and Middendorf must have known that Caribbean forces had not landed at dawn and were not to have a combat role. Middendorf's statement is particularly disingenuous. He implies that the bulk of the force was OECS, because he claims that an OECS force was "supplemented" by units from Barbados, Jamaica, and the United States.¹⁶⁰ In fact there were several thousand U.S. troops. Of the 300 Caribbean personnel, 150 were Jamaican, and the other 150 were from Barbados and the OECS states combined.¹⁶¹ The OECS personnel were not even military units but civilian police. Deputy Secretary of State Dam accurately described them to a Senate committee as "constables."¹⁶²

In principle, there is no reason why the operation could have been accomplished without Caribbean forces participating. If it is lawful for the United States to respond to an OECS request, U.S. forces alone could carry out the operation. But the fact that the Administration found it necessary to lie about Caribbean participation suggests that the Administration knew that it was on thin legal grounds and tried to make the operation seem something different from what it was.

156. *Id.* at 72.

157. *Guardian*, Oct. 26, 1983, at 1, col. 3 (quoting Secretary of State Shultz). The Joint Chiefs of Staff stated that the first U.S. troop transport planes arrived at 2:05 p.m. carrying 82nd Airborne Division personnel. The Caribbean forces were evidently flown in some time later in the afternoon. *JCS Replies*, *supra* note 97, at 32.

158. Drew Middleton, in *N.Y. Times*, Oct. 28, 1983, at A12, col. 1. Jamaican Prime Minister Edward Seaga said the Jamaican troops were helping guard prisoners. *N.Y. Times*, Oct. 28, 1983, at A1, col. 5; *N.Y. Times*, Oct. 28, 1983, at A12, col. 5. See photograph of Barbadian soldier guarding Cuban detainees in *N.Y. Times*, Oct. 30, 1983, at A22. The role of the Caribbean personnel as guards and police is indicated as well in *Operational Overview*, *supra* note 96, at 23.

159. Halliday, *An Ambiguous Turning Point: Grenada and Its Aftermath*, in *NORTH AMERICAN CONGRESS ON LATIN AMERICA REPORT ON THE AMERICAS*, Nov.-Dec. 1984, at 20, 21.

160. *Collective Action*, *supra* note 7, at 72.

161. *Wash. Post*, Oct. 28, 1983, at All, col. 4.

162. *Hearing: The Situation in Grenada*, *supra* note 15, at 43.

3. U.S. Officials Discussed Possible Military Action in Grenada with Caribbean Leaders

Senior Jamaican officials said that the OECS request to the U.S. was made only after the United States indicated willingness to respond affirmatively.¹⁶³ According to these officials, for several months prior to October 1983 U.S. officials tried to convince Caribbean leaders to take military action against Grenada.¹⁶⁴ Barbados Prime Minister Tom Adams said that on October 15 "an official of the [Barbados] Ministry of Defense and Security reported to me that he had been tentatively approached by a United States official about the prospect of rescuing Maurice Bishop from his captors and had been made an offer of transport."¹⁶⁵ Adams said that this possibility was taken up by the Barbados Government, and that on October 19 the cabinet decided "to proceed with a rescue plan, in collaboration with eastern Caribbean countries and larger non-Caribbean countries with the resources necessary to carry out such an intricate operation."¹⁶⁶ Thus, the Barbados cabinet's decision on October 19 was based on a U.S. inquiry, indicating the seriousness with which the Barbados government took the October 15 communication.

The State Department denied approaching any Barbados official to suggest military action in Grenada, but acknowledged contact with Caribbean leaders around October 15 over the possibility of military intervention in Grenada. The Department claimed,

163. Wash. Post, Oct. 27, 1983, at A20, col. 1. As to whether the United States prompted the request, one author concludes, "[W]e are unlikely to know the truth until all the records are made public." Levitin, *supra* note 11, at 648.

164. *Id.* See Wash. Post, Oct. 28, 1983, at A10, col. 4.

165. Transcript of Adams radio-television address of Oct. 26, 1983, at 1 [hereinafter Adams Transcript]. The transcript was made available to the A.B.A. committee studying the Grenada invasion by the State Department. *Action in Grenada*, *supra* note 12, at 342. Excerpts appear in W. GILMORE, *supra* note 11, at 102-105. Adams' reference to an October 15 U.S. approach was reported in Wash. Post, Oct. 30, 1983, at A14, col. 2; London Times, Oct. 28, 1983, at 5, col. 2; N.Y. Times, Oct. 28, 1983, at A16, col. 1. The U.S. official was reportedly from the staff of the U.S. Embassy in Barbados. LATIN AMERICA BUREAU, *supra* note 78, at 80. U.S. officials have acknowledged discussing with Caribbean leaders the possibility of military action in Grenada as early as October 15. N.Y. Times, Oct. 30, 1983, at A1, col. 7. Rep. Dymally stated, "The suggestion that the invasion was conceived by the OECS is not exactly correct. An emissary from the State Department traveled to Barbados, prior to the meeting of the OECS ministers, with a memorandum suggesting that a U.S. invasion was a possibility." *Hearing: U.S. Military Actions*, *supra* note 22, at 3.

166. Adams Transcript, *supra* note 165, at 2. It is not clear what the Barbados cabinet meant by "rescue of Bishop." Given Adams' evident apprehension about the forces that had detained Bishop, it likely included removing them from power.

however, that the approach came from the (unnamed) Caribbean leaders. It said the approaches "took the form of Caribbean leaders relaying to us through normal diplomatic channels their increasing concerns and apprehensions about the breakdown of order and growing violence and their belief that direct action might be necessary to prevent more deaths by a tyrannical, illegal government."¹⁶⁷

Jamaica Prime Minister Seaga said that State Department officials were involved in discussions with Caribbean officials about Grenada prior to October 21. He denied, however, that the Department prompted the Caribbean nations to request U.S. intervention. He said that a State Department official "added to the concern over the turn of events in Grenada and the expanding Cuban and Soviet influence on the island."¹⁶⁸

On October 20, according to Adams, he was approached by Prime Minister John Compton of St. Lucia (an OECS member), who suggested "a Caribbean initiative to intervene in Grenada on a multi-national basis to restore law and order and to lead the country to an early election."¹⁶⁹ Adams took that suggestion to the Barbados cabinet, which voted in favor that same day. The OECS met in the evening of October 21 and decided to intervene in Grenada and to ask the United States, Barbados, and Jamaica to participate.

Prior to that meeting the State Department seriously considered intervention to replace the RMC. A 5:00 p.m. White House meeting chaired by Rear Admiral Poindexter (former assistant to National Security Advisor Robert McFarlane) considered the possibility of seizing the island.¹⁷⁰

No U.S. official attended the October 21 OECS meeting, held at the Dover Convention Center in Bridgetown, Barbados. However, Charles A. Gillespie, Deputy Assistant Secretary of State for Caribbean Affairs, waited in an anteroom outside the meeting room.¹⁷¹ The presence of such a high State Department official

167. Wash. Post, Oct. 28, 1983, at A10, col. 2. Deputy Secretary of State Dam denied any U.S. prompting: "There were no authorized discussions between the U.S. Government and officials of any Caribbean or Central American country regarding the need for military actions on Grenada before the request for assistance from the OECS nations on October 21." *Hearing: U.S. Military Actions*, *supra* note 22, at 51.

168. Wash. Post, Oct. 28, 1983 at A11, col. 4. In the same interview Seaga indicated concern about being considered a U.S. puppet. *Id.*, at col. 5.

169. Adams Transcript, *supra* note 165, at 3.

170. Bennett, *supra* note 151, at 74.

171. *Id.*

must, at the least, have indicated to the OECS states that the Department was interested in the outcome of the meeting. Gillespie and Bish were apparently kept apprised of the discussion, for Bish took action when one OECS representative balked at the invasion plan. During the discussion Lester Bird, Foreign Minister and Deputy Prime Minister of Antigua and Barbuda, objected to an invasion. Bish phoned Bird's father, Antigua and Barbuda Prime Minister Vere Bird, and reportedly persuaded him that an invasion would be advisable.¹⁷²

The contacts between U.S. and Caribbean officials prior to and on October 21 indicate that the OECS acted in the belief that the U.S. would favorably respond. O'Shaughnessy concluded that the OECS decision was taken "on the basis of the State Department's willingness to invade."¹⁷³ While at least most of the OECS members were quite willing to call for an invasion and were not coerced into doing so, they would not have done so absent assurances that the United States would welcome such a request.

4. The United States Drafted the OECS Request for U.S. Intervention.

A final indication that the United States prompted the OECS decision is that it drafted the written request in which the OECS asked for U.S. military intervention in Grenada. The New York Times reported that the request was "drafted in Washington and conveyed to the Caribbean leaders by special American emiss-

172. H. O'SHAUGHNESSY, *supra* note 52, at 159. Pastor concluded that the State Department encouraged the OECS to ask it to invade. "I do not think that the U.S. forced the OECS to make the request . . . the U.S. did not encourage the OECS governments to consider other options. By diverting the fleet, the United States provided a dramatic demonstration of its seriousness and of the availability of the military option. Did the U.S. discourage consideration of other options? Right after the establishment of the RMC, Milton Cato, the Prime Minister of St. Vincent, offered to meet with Hudson Austin, and Austin immediately accepted, but the meeting was never held. Who discouraged Cato, and why?" *U.S. Military Actions*, *supra* note 22, at 85-86. And further: "[T]he sending of the fleet and a number of other acts contributed to shaping the environment, and may have encouraged them to think perhaps more aggressively than they would have if we hadn't diverted these ships. It may have discouraged them from looking to other alternatives." *Id.* at 125. St. Lucia denied that the U.S. had suggested the OECS action. *Acta de la sesión extraordinaria*, *supra* note 42, at 23 (statement of Charles Flemming).

173. H. O'SHAUGHNESSY, *supra* note 52, at 165. Former Ambassador Shelton claimed that the OECS states "may not have been quite so likely to take the unprecedented initiative of appealing for a U.S. invasion if the United States had not made it clear to them subtly, or perhaps not quite so subtly, that it would be responsive to such a request." *U.S. Military Actions*, *supra* note 22, at 125.

ries"¹⁷⁴ on October 23, when U.S. Ambassador Frank McNeil flew to Barbados to confer with Charles and get her signature on a written request.¹⁷⁵ U.S. drafting of the request does not negate the OECS desire for intervention. However, it does show a strong U.S. role in the process by which the OECS made its request.

The United States was highly motivated to urge the OECS to request intervention in Grenada. Even prior to the October 23 killing of Marines in Beirut, Lebanon, the Administration was anxious for an opportunity to live up to its strong anti-communist rhetoric.¹⁷⁶ The Administration viewed United States interests as threatened by Third World disorders, which it saw as encouraged by a U.S. disinclination to use force. Thus, it sought to rekindle in the Third World the fear that the United States was prepared to use force to protect its interests.¹⁷⁷ The Administration was looking "for any opportunity that came along where we could take a direct punch at the other side's nose with maximum chance of success and minimum risk of tangling with the Soviets themselves."¹⁷⁸ "Grenada provided that opportunity."¹⁷⁹ Moreover, Reagan had recently indicated that the leftist government of Grenada was a stra-

174. N.Y. Times, Oct. 30, 1983, at A20, col. 1.

175. *Hearing: The Situation in Grenada*, *supra* note 15, at 5 (remarks of Deputy Secretary of State Dam).

176. Richard Gabriel quotes an unidentified C.I.A. official as saying, "This Administration came to power with the intention of punching someone in the nose." R. GABRIEL, *supra* note 101, at 150.

177. Klare, *Grenada Syndrome*, NATION, Nov. 12, 1983, at 453.

178. *Weighing the Proper Role*, TIME, Nov. 7, 1983, at 44. TIME did not name the official. Colin Moore stated, "The basic reason for the U.S. invasion of Grenada is America's continuing fear of and hostility to socialist regimes, whether democratic or Marxist." *Hearing: U.S. Military Actions*, *supra* note 22, at 237.

179. TIME, Nov. 7, 1983, at 44. The Nation concluded that the killing of Bishop "provided the excuse for Reagan to militarize the Caribbean and orchestrate an ideological confrontation with global implications." NATION, Nov. 5, 1983, at 420. Rep. Dymally: "Is it not ironic that as soon as Maurice Bishop had been overthrown and killed, we suddenly decided that our vital interests were at stake in Grenada?" *Hearing: U.S. Military Actions*, *supra* note 22, at 6. Pastor stated: "[T]he Reagan Administration had come to that judgment [that a Marxist military government in the eastern Caribbean was unacceptable] long before, but had recognized that it could not take action without the acquiescence or support of the eastern Caribbean nations." *Id.* at 85. Pastor further claimed: "The U.S. chose to respond to the request for military action by the OECS rather than the diplomatic-political strategy agreed to by the larger, 13-nation CARICOM [Caribbean Common Market] . . . the Administration was delighted with the opportunity to change the Grenadian government by force." *Id.* at 101. The Toronto Globe and Mail summarized to this effect the opinion of Caribbeans in Canada: "Most West Indian Expatriates believed the United States, long wanting an excuse for invading Grenada, had found an opportunity and exploited it with the complicity of weak Caribbean governments." Toronto Globe and Mail, Nov. 12, 1983, at 20, col. 2.

tegic threat to the United States. In a March 23, 1983, televised address on military policy, Reagan had displayed an aerial photograph of the airport under construction at Point Salines. He said:

On the small island Of Grenada . . . the Cubans, with Soviet financing and backing, are in the process of building an airfield with a 10,000-foot runway. Grenada doesn't even have an air force. Who is it intended for? The Caribbean is a very important passageway for our international commerce and military lines of communication. More than half of all American oil imports now pass through the Caribbean. The rapid build-up of Grenada's military potential is unrelated to any conceivable threat to this island country of under 110,000 people, and totally at odds with the pattern of other eastern Caribbean States, most of which are unarmed. The Soviet-Cuban militarization of Grenada, in short, can only be seen as power projection into the region . . .¹⁸⁰

Reagan's attention to Grenada in an address on U.S. military policy in general indicates the importance he attributed to it. He gave no other area of the world such detailed treatment in that address.

Before a joint session of Congress on Central America and Caribbean policy, Reagan referred back to the photographs of the Point Salines airport and suggested its usage as a refueling base for Nicaragua-bound planes:

Because of its importance, the Caribbean Basin is a magnet for adventurism. We are all aware of the Libyan cargo planes refueling in Brazil a few days ago on their way to deliver medical supplies to Nicaragua. Brazilian authorities discovered the so-called medical supplies were actually munitions and prevented their delivery. You may remember that last month, speaking on national television, I showed an aerial photo of an airfield being built on the island of Grenada. Well, if that airfield had been completed, those planes could have refueled there and completed their journey. If the Nazis during World War II and the Soviet today could recognize the Caribbean and Central America as vital to our interests, shouldn't we also?¹⁸¹

The leftist government of Grenada ranked as a major problem in the Administration's order of priorities.

The U.S. Atlantic Command staged military exercises which called for the seizure of Grenada. The first exercise was Ocean

180. N.Y. Times, Mar. 24, 1983, at A20, col. 3.

181. N.Y. Times, Apr. 28, 1983, at A12, col. 1.

Venture 1981, conducted off Puerto Rico.¹⁸² The island state assaulted was code-named "Amber and the Amberines." The full name of Grenada is Grenada and the Grenadines. An area on Grenada near Point Salines is called Amber. The exercise was conducted by the Army Rangers, which participated in the actual invasion. The objective of Ocean Venture 1981 was to capture "Amber," install a "government friendly to America," and keep troops there until elections. In the exercise, "Amber" was supported by "Orange" (an apparent reference to Cuba), which in turn was supported by "Red" (an apparent reference to the U.S.S.R.). At a press conference the Ocean Venture 1981 commander stated "Amber" was "exporting terrorist activities to neighboring islands." He said the exercise scenario called for the rescue of "twenty U.S. citizens held hostage there after negotiations with the Amber Government had broken down." The exercise was conducted to demonstrate "U.S. capabilities to respond in the Caribbean Basin."¹⁸³ Further in 1981 the C.I.A. planned a covert operation to overthrow the Government of Grenada but dropped the plan reportedly because the Senate Intelligence Committee objected.¹⁸⁴ In 1981 the Administration told Bishop that his ties to Cuba threatened the peace of the region, and in 1982 Reagan complained to Adams and Seaga of the "spread of the virus" of communism from Grenada.¹⁸⁵

In early 1983, the Grenada Government accused the United States of planning to invade Grenada.¹⁸⁶ In late September 1983, the 2d Battalion of the 75th Rangers Division practiced capture of an airport and hostage-rescue at Ephrata Municipal Airport in

182. Wash. Post, Oct. 23, 1983, at A24, col. 3. For an article suggesting that Ocean Venture 1981 indicated the Administration's inclinations with respect to Grenada, see London Times, Nov. 7, 1983, at 5, col. 1. Lowenthal said that the invasion of Grenada was "foreshadowed" by the 1981 mock invasion. *Hearing: U.S. Military Actions, supra* note 22, at 140 (statement of Abraham Lowenthal, Visiting Research Fellow, United States-Mexican Studies, University of Southern California.).

183. C. SEARLE, *GRENADA: THE STRUGGLE AGAINST DESTABILIZATION* 37-38 (1983).

184. Wash. Post, Oct. 23, 1983, at A24, col. 3.

185. TIME, Nov. 7, 1983, at 26. For a detailed account of the Reagan administration political and economic policies to isolate Grenada, see E. NITZBURG, A. FETISOV & P. IAKOVLEV, *TRAGEDIA GRENADY* [The Tragedy of Grenada] 92-105 (1984). House Speaker Thomas O'Neill stated that Secretary of State Alexander Haig, two weeks after taking office, said in a private conversation with O'Neill that he considered it desirable to send troops to Grenada to overthrow its government. Televised statement of Rep. Thomas O'Neill, CBS television network, Mar. 5, 1986. Confirmed by author with press officer in office of Speaker O'Neill, telephone conversation, Mar. 6, 1986.

186. Wall St. J., Mar. 29, 1983, at 1, col. 3. *Id.*, Apr. 1, 1983, at 1, col. 3.

Washington State.¹⁸⁷ That battalion was one of two that parachuted into the Point Salines airport on October 25, 1983.

The Marine Corps unit that landed in Grenada on October 25 had undertaken, prior to its departure for Lebanon, a tactical exercise involving possible diversion from Lebanon to the Caribbean for seizure of an island. According to the Marine Corps after-study of the Grenada operation, the

exercise that concluded the pre-deployment training cycle for BLT 2/8 [Battalion Landing Team 2/8 of the Second Marine Division, the team that made the Grenada landing] was developed around a scenario that required the MAU/PHIBRON [Marine Amphibious Unit/Amphibious Squadron] to divert from its transit to Lebanon in order to seize the island of "Andros" in the Caribbean Sea. Although it was not precisely the same mission that actually diverted the MAU/PHIBRON to Grenada, there were some similarities.¹⁸⁸

Like Ocean Venture 1981 the "Andros" exercise was doubtless based on Grenada. Training for a Grenada invasion prior to leaving for Lebanon indicates that the Administration considered imminent invasion of Grenada a serious possibility.

U.S. motivation cannot be viewed in isolation from its policy in the region in preceding decades and its policy towards Grenada since the 1979 coup that brought the New Jewel Movement to power. The United States has taken a strong stand against leftist regimes in the Caribbean and has endeavored to bring such regimes down by force as evidenced by Cuba in 1961 and the Dominican Republic in 1965. The United States had the desire to overthrow a leftist government in Grenada and had shown itself, in other contexts, willing to use force for that purpose. The ouster of Prime Minister Bishop by a faction of the New Jewel Movement enjoying less popular support than Bishop presented an ideal opportunity to achieve this goal because neither the population nor Cuba would support the government.¹⁸⁹

187. LATIN AMERICA BUREAU, *supra* note 78, at 79.

188. OPERATIONAL OVERVIEW, *supra* note 96, at 1-2. No date for the exercise is indicated. BLT 2/8 departed for Lebanon on October 18.

189. Pastor stated: "Even Fidel Castro issued a strong condemnation of the regime, and Michael Manley pledged publicly to seek the expulsion of the New Jewel Party from the Socialist International. The Grenadian regime was totally isolated." *Hearing: U.S. Military Actions*, *supra* note 22, at 86.

D. The State Department Contradicted the OECS Analysis of the Legal Basis for OECS Action

The OECS, as indicated above, cited Article 8 of the OECS treaty as authority for its October 21 decision to intervene in Grenada.¹⁹⁰ Commentators focused on that article in their discussion of the legality of the OECS action.¹⁹¹ The Legal Adviser, apparently concerned about the weakness of the OECS' reliance on Article 8, claimed that the OECS acted under two other articles of the OECS treaty. Presumably the OECS knew why it was acting. If it says it acted under article 8, as it does, then it probably was acting under article 8 and not some other article of the OECS treaty.¹⁹²

Yet the State Department cited Articles 3 and 4 as providing the basis for the October 21 OECS decision. Reference to these two Articles was made by Deputy Secretary of State Kenneth Dam, who said, "[The OECS treaty] contains a number of provisions—in Articles 3, 4, and 8—which deal with local as well as external threats to peace and security."¹⁹³ In fact, none of the articles refer to "local" threats to the peace. Article 8 refers to external threats to the peace, and Articles 3 and 4 refer to neither.

Article 4 is titled "General Undertaking as to Implementation." It reads, in full:

Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of this Treaty or resulting from decisions taken by the institutions of the Organisation; in particular, each Member State shall take all steps to secure the enactment of such legislation as is necessary to give effect to this Treaty and decisions taken thereunder.¹⁹⁴

Article 4 simply requires member states to carry out decisions of

190. *Hearing: The Situation in Grenada*, *supra* note 15, at 5, says that the OECS acted under Article 8. Its request to Jamaica was made under Article 8. *Statement of Jamaica (Richardson)* 38 U.N. SCOR (2489th mtg.) at 27, U.N. DOC S/P.V. 2489 (1983). Prime Minister Charles of Dominica, chair of the OECS, said the OECS decision of October 21 was under Article 8. *Id.* at 7.

191. The text of the OECS treaty is cited *supra* note 146.

192. One flaw in the analysis in the text is that, as indicated *supra* note 174, the OECS request was drafted by the State Department not by the OECS. This makes it difficult to determine the true basis on which the OECS purported to act.

193. *Collective Action*, *supra* note 7, at 81.

194. Treaty Establishing the Organization of Eastern Caribbean States, June 18, 1981, art. 4, 20 I.L.M. 1166 (1981).

the OECS. It does not give the OECS any power to take any action. The Legal Adviser does not refer to article 4 in his argument justifying the OECS action. The Legal Adviser asserts that the OECS acted under Articles 3 and 6. Contradicting both the OECS and Deputy Secretary Dam, the Legal Adviser writes that Article 8 is irrelevant:

[M]uch of the analysis to date has focused exclusively on the language of Article 8 of the OECS Treaty. Article 8, however, defines the jurisdiction of the Defense and Security Committee of the OECS, a subordinate body under that treaty. The decision to take military action on Grenada was reached by the heads of government of the OECS nationals, who—unlike the Defense and Security Committee—have plenary authority under Article 6 of that Treaty. Article 3(2) of the OECS Treaty expressly empowers the heads of government to pursue joint policies in the field of mutual defense and security, and “such other activities calculated to further the purposes of the Organization as the member States may from time to time decide.”

It is clear from statements of the OECS Secretariat that all OECS members present at the October 21 meeting of heads of government voted in favor of collective action. The provisions of Article 6 of the OECS Treaty provide that actions may be taken without the presence of a Member State if the absent state later ratifies the decision or abstains from voting. Given the authority of the Governor-General [of Grenada, Sir Paul Scoon] discussed above, his request for collective action manifestly constituted ratification on the part of Grenada. Perhaps the most important aspect of the debate over the OECS Treaty is that all members of the OECS regard the action taken as consistent with the treaty. We submit that the views of the members of a regional treaty on questions of treaty interpretation are entitled to a weight greater than those of third-state commentators.¹⁹⁵

Thus, while Deputy Secretary Dam finds justification for the OECS action in Articles 3, 4, and 8, the Legal Adviser rests the legality of the action on Articles 3 (mentioned by Dam) and 6 (not mentioned by Dam).

The Department's difficulty in agreeing on an argument stems from the fact that none of these articles provides justification for the OECS action. The Legal Adviser's quoted argument is unsound. His first assertion is that the October 21 decision was taken

195. Legal Adviser, *supra* note 1, at 383-84.

pursuant to Article 6¹⁹⁶ rather than pursuant to Article 8. Article 8, as he correctly indicates, defines the competence of the Defense and Security Committee.¹⁹⁷

196. Article 6 reads as follows:

ARTICLE 6. Composition and Functions of the Authority

1. The Authority shall be composed of Heads of Government of the Member States.

2. Any member of the Authority may, as appropriate, designate a Minister to represent such member at any meeting of the Authority.

3. Only Member States possessing the necessary competence in respect of matters under consideration from time to time shall take part in the deliberations of the Authority.

4. The Authority shall be the supreme policy-making institution of the Organisation. It shall be responsible for, and have the general direction and control of the performance of the functions of the Organisation, for the progressive development of the Organisation and the achievement of its purposes.

5. The Authority shall have power to make decisions on all matters within its competence. All such decisions shall require the affirmative vote of all Member States present and voting at the meeting of the Authority at which such decisions were taken provided that such decisions shall have no force and effect until ratified by those Member States, if any, which were not present at that meeting, or until such Member States have notified the Authority of their decision to abstain. Such decisions by the Authority shall be binding on all Member States and on all institutions of the Organisation and effect shall be given to any such decisions provided that it is within the sovereign competence of Member States to implement them.

6. The Authority may make such recommendations and give such directives as it deems necessary for the achievement of the purposes of the Organisation and for ensuring the smooth functioning of the institutions of the Organisation.

7. The Authority may establish, and designate as such, institutions of the Organisation in addition to those specified in sub-paragraphs (b), (c), (d) and (e) of paragraph 1 of Article 5 of this Treaty, as it deems necessary for the achievement of the purposes of the Organisation.

8. Subject to the relevant provisions of this Treaty, the Authority shall be the final authority for the conclusion of treaties or other international agreements on behalf of the Organisation and for entering into relationships between the Organisation and other International Organisations and third countries.

9. Subject to the relevant provisions of this Treaty, the Authority shall take decisions for the purpose of establishing the financial arrangements necessary for meeting the expenses of the Organisation and shall be the final authority on questions arising in relation to the financial affairs of the Organisation.

10. The Authority shall meet at least twice a year. It shall determine its own procedure including that for convening meetings, for the conduct of business thereat and at other times, and for the annual rotation of the office of Chairman among its members in accordance with the principle of alphabetical order of the Member States.

11. The Authority shall in addition meet in extraordinary session whenever it deems necessary in accordance with the regulations laid down in its rules of procedure.

197. Article 8 reads, in full:

ARTICLE 8. Composition and Functions of the Defence and Security Committee

The Legal Adviser asserts that the October 21 decision was taken not by the Defense and Security Committee (composed of ministers of member states responsible for defense) but by the Authority (composed of heads of government of member states).¹⁹⁸

In the Security Council debate, OECS member St. Lucia claimed that the October 21 meeting was held under Article 8 and that it was a meeting of the Defense and Security committee, not of the Authority:

The Defence and Security Committee of the Organization of Eastern Caribbean States decided to seek assistance to combat a threat to the security of its members and to respond to a request by a legal authority in Grenada, a member of the Organization of Eastern Caribbean States, to remove a threat from within.¹⁹⁹

The Barbados representative also told the Security Council that

1. The Defence and Security Committee shall consist of the Ministers responsible for Defence and Security or other Ministers or plenipotentiaries designated by Heads of Government of the Member States.

2. Only Member States possessing the necessary competence in respect of matters under consideration from time to time shall take part in the deliberations of the Defence and Security Committee.

3. The Defence and Security Committee shall be responsible to the Authority. It shall take appropriate action on any matters referred to it by the Authority and shall have the power to make recommendations to the Authority. It shall advise the Authority on matters relating to external defence and on arrangements for collective security against external aggression, including mercenary aggression, with or without the support of internal or national elements.

4. The Defence and Security Committee shall have responsibility for coordinating the efforts of Member States for collective defence and the preservation of peace and security against external aggression and for the development of close ties among the Member States of the Organisation in matters of external defence and security, including measures to combat the activities of mercenaries, operating with or without the support of internal or national elements, in the exercise of the inherent right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations.

5. The decisions and directives of the Defence and Security Committee shall be unanimous and shall be binding on all subordinate institutions of the Organisation unless otherwise determined by the Authority.

6. Subject to any directives that the Authority may give, the Defence and Security Committee shall meet as and when necessary. It shall determine its own procedure, including that for convening meetings, for the conduct of business thereat and at other times, and for the annual rotation of the Office of Chairman among its members in accordance with the principle of alphabetical order of the Member States.

198. Reagan, too, said it was the Authority that acted, not the Defense and Security Committee. Letter to the Congress, Oct. 25, 1983, *printed in Collective Action, supra* note 7, at 68. So does Moore. Moore, *supra* note 13, at 164.

199. 38 U.N. SCOR (2491st mtg.) at 18, U.N. Doc. S/P.V. 2491 (1983).

the Defense and Security Committee of the OECS made the October 21 decision.²⁰⁰

However, the Legal Adviser's view that the Authority made the October 21 decision is supported by the October 23 written request sent by the OECS to the United States and to Jamaica. That communication states:

Under the authority of Article 8 of the treaty establishing the Organization of Eastern Caribbean States, the authority proposes therefore to take action for collective defense and preservation of peace and security against external aggression by requesting assistance from friendly countries to provide transport, logistics, support and additional military personnel to assist the efforts of the O.E.C.S. to stabilize this most grave situation within the Eastern Caribbean.²⁰¹

Barbados Prime Minister Adams provides support for the position that the Authority made the October 21 decision. He stated that the OECS held two separate meetings that evening: a meeting of the Defense and Security Committee, and a meeting of the Authority, but he neglects to clarify at which meeting the decision was made:

That evening the OECS, Antigua and Barbuda, Dominica, St. Kitts Nevis, St. Lucia, St. Vincent and the Grenadines, with Montserrat held a meeting—first a formal meeting of their Ministers of Defense and then a meeting of their governing Authority, and unanimously agreed to invoke article 8 of their treaty of association and to seek the assistance of friendly countries to stabilise the situation and to establish a peacekeeping force.²⁰²

The discrepancy between the St. Lucia statement and the OECS October 23 request is probably due to the manner in which the October 23 request was drafted. As indicated above, that request was drafted by the State Department and taken to Barbados by a State Department emissary for approval²⁰³ and was issued

200. *Id.* at 72-73 (statement of Mr. Moseley, Barbados). The October 21 meeting was held in Barbados.

201. N.Y. Times, Oct. 26, 1983, at A19, col. 5 (request to U.S.); W. GILMORE, *supra* note 11, at 98-101 (request to Jamaica, identical to that to the United States, as given by Prime Minister Edward Seaga on Oct. 25, 1983, speech to Jamaica House of Representatives, as reported in *The Daily Gleaner* (Kingston) Oct. 26, 1983, with cover letter signed by Eugenia Charles as Chairman of OECS).

202. Adams Transcript, *supra* note 164, at 3, also in W. GILMORE, *supra* note 11, at 103-04.

203. *Supra* notes 174-75.

over the signature of Charles alone. Thus, it is unclear whether the other member states were involved in its approval or whether the issue arose at the October 21 meeting. No documentary evidence exists on this point. The idea that the meeting should be considered to be a meeting of the Authority probably originated in the State Department, and most likely in the Legal Adviser's office.

Even if the October 21 meeting was held under Article 6, that would not justify the OECS decision to intervene in Grenada. The Legal Adviser relies on Article 6 to avoid two strictures of Article 8: (1) its requirement that a decision must receive the affirmative votes of all member states; and (2) its requirement that OECS military action may be taken only to stop "external aggression."²⁰⁴ On the first point, the Legal Adviser acknowledges that under Article 8 a vote is valid only if all member states vote affirmatively while he distinguishes the procedure of Article 6, which requires an affirmative vote only of those states present and voting, provided that the remaining states subsequently either ratify the vote or abstain. The Legal Adviser claims that the alleged request from Scoon constitutes a ratification.²⁰⁵ As indicated below, it is doubtful that Scoon issued such a request prior to the invasion. Further, even if he did, he was unauthorized to do so, because of his constitutional position and because the RMC was the functioning Government of Grenada.²⁰⁶

On the second point, the Legal Adviser claims that the Authority has power to order OECS military action under Article 3, an article that lists the purposes and functions of the OECS. Article 3 contains no limitation on military action to "external aggression." The Legal Adviser thus concludes that the Authority may, under Article 3, take military action in absence of "external aggression." This conclusion is baseless, however, because Article 3 does not authorize the Authority to take military action. In fact, Article 3 does not mention the Authority. It merely lists purposes and

204. Unlike the Legal Adviser, Dam argued that the unanimity requirement of Article 8 had been met, and that there was a danger of external aggression (he stretches Article 8 to include danger of external aggression) in view of the Cuban military presence in Grenada and the "vacuum of authority" there. *Hearing: The Situation in Grenada, supra* note 15, at 34.

205. Dam, who claimed that the OECS relied on Article 8, stated that the alleged Scoon request constituted unanimity for purposes of that article, and, in addition, that the "vacuum of authority" in Grenada permitted the OECS to act without a vote from Grenada. *Hearing: The Situation in Grenada, supra* note 15, at 30-31.

206. See *infra* text accompanying notes 212-47, 317-33.

functions but does not grant power to take specific action.²⁰⁷

The Legal Adviser claims that Article 3, paragraph 2, grants

207. Article 3 reads in full:

ARTICLE 3. Purposes and Functions of the Organisation.

1. The major purposes of the Organisation shall be:

(a) to promote co-operation among the Member States at the regional and international levels having due regard to the Treaty establishing the Caribbean Community and the Charter of the United Nations;

(b) to promote unity and solidarity among the Member States and to defend their sovereignty, territorial integrity and independence;

(c) to assist the Member States in the realisation of their obligations and responsibilities to the international community with due regard to the role of international law as a standard of conduct in their relationship;

(d) to seek to achieve the fullest possible harmonisation of foreign policy among the Member States; to seek to adopt, as far as possible, common positions on international issues and to establish and maintain wherever possible, arrangements for joint overseas representation and/or common services;

(e) to promote economic integration among the Member States through the provisions of the Agreement Establishing the East Caribbean Common Market; and

(f) to pursue the said purposes through its respective institutions by discussion of questions of common concern and by agreement and common action.

2. To this end the Member States will endeavor to co-ordinate, harmonise and pursue joint policies particularly in the field of:—

(a) External Relations including Overseas representation;

(b) International Trade Agreements and other External Economic Relations;

(c) Financial and Technical Assistance from external sources;

(d) International Marketing of Goods and Services including Tourism;

(e) External Transportation and Communications including Civil Aviation;

(f) Economic Integration among the Member States through the provisions of the Agreement Establishing the East Caribbean Common Market;

(g) Matters relating to the sea and its resources;

(h) The Judiciary;

(i) Currency and Central Banking;

(j) Audit;

(k) Statistics;

(l) Income Tax Administration;

(m) Customs and Excise Administration;

(n) Tertiary Education including University;

(o) Training in Public Administration and Management;

(p) Scientific, Technical and Cultural Co-operation;

(q) Mutual Defence and Security; and

(r) Such other activities calculated to further the purposes of the Organisation as the Member States may from time to time decide.

Treaty Establishing the Organization of Eastern Caribbean States, June 18, 1981, art. 3, 20 I.L.M. 1166 (1981).

the Authority the power to order OECS military action, relying on the fact that the Authority is identified in Article 6 as the "supreme policy-making institution of the Organisation." However, Article 3 never mentions the Authority. Article 6's language does not, however, empower the Authority to make particular kinds of decisions. The power to take military action is given to the Defense and Security Committee, not to the Authority.

A crucial obstacle to the Legal Adviser's interpretation is that Article 3 is merely a listing of purposes and functions. It does not provide any institution of the OECS with the power to undertake decisions in any field. Like Articles 1 and 2 of the United Nations Charter, characterizing the fields in which the organization will function but leaving to subsequent provisions the specific powers to be exercised by the organization, Article 3 merely identifies the areas in which the OECS may act; it does not state what action may be taken in those areas.

The Legal Adviser relies on two items listed in Article 3, paragraph 2: item "q" (mutual defence and security), and item "r" (such other activities calculated to further the purposes of the Organization as the Member States may from time to time decide). He concludes that this bare enumeration of functions gives the Authority the power to order military action in a member state. This argument is unfounded because Article 3 does not specify what the Authority (or any other organ of the OECS) may do with respect to those fields of activity. It is a mere enumeration of fields of activity. A treaty which grants an international organization the power to take military action spells out the situations in which military action may be taken. For example, the United Nations Charter does so in chapter 7. Likewise the OECS treaty does so in Article 8. The Legal Adviser attempted to avoid the "external aggression" requirement of Article 8, but Article 3 does not indicate the instances in which military action may be taken by the OECS. One may not derive a power to take military action from a provision that does not indicate under what circumstances military action may be taken.

Similarly, the Legal Adviser's reliance on paragraph "r" is groundless since that paragraph merely gives the organization power to involve itself in additional fields of activity determined from time to time by member states. It does not give the organization power to send troops into a member state.

The Legal Adviser's interpretation cuts against the principle

of construction that a specific provision takes precedence over a general provision. Only Article 8 of the OECS treaty specifies when military action may be undertaken. Therefore, the drafters clearly intended that OECS military action was governed by Article 8. Article 8 limits OECS military action to situations of external aggression. The member states drafting the treaty clearly did not grant the OECS power to take military action in any situation not involving external aggression. If the Legal Adviser's interpretation were correct, that limitation would have no meaning.

Attempting to justify the OECS action, the Legal Adviser advanced an absurd interpretation of the OECS treaty, an interpretation not made by any OECS member state and one which is contradicted by the OECS, which, as indicated, stated that it took its October 21 decision under Article 8. Significantly, in advancing his Article 3 analysis, the Legal Adviser acknowledges that Article 8 does not provide a legal basis for the October 21 decision. Thus, he undercuts the view of the OECS itself that Article 8 provides a lawful basis for the decision. Additionally, he undercuts the views of Secretary of State Shultz, Deputy Secretary Dam, and OAS Ambassador Middendorf, all of whom rely on Article 8 as the basis for the OECS decision, and hence for U.S. action in Grenada.

The Legal Adviser also repudiated two additional arguments that the OECS used to justify its action: anticipatory self-defense and humanitarian intervention. The Legal Adviser wrote:

I would like to turn briefly to a discussion of the arguments which have been put forward by some commentators, but which the United States did not make in support of its actions on Grenada. We did not contend that the action on Grenada was an exercise of the inherent right of self-defense recognized in Article 51 of the United Nations Charter for the same reason that the United States eschewed such arguments in support of the actions taken by the United States and other Rio Treaty members in response to the Cuban missile crisis We did not assert a broad doctrine of "humanitarian intervention." We relied instead on the narrower, well-established ground of protection of United States nationals.²⁰⁸

208. Legal Adviser, *supra* note 1, at 385-86. Schachter is in accord with the Legal Adviser that the OECS action cannot be justified as self-defense. Schachter, *supra* note 10, at 1640-41. Contradicting the Legal Adviser, Deputy Secretary of State Dam upheld the Caribbean states' claim of self-defense as a justification for the invasion of Grenada. *Hearing: U.S. Military Actions*, *supra* note 22, at 26, 38. For an argument that the OECS action was justified as a response to aggression by Cuba, see Fraser, *Grenada—the Sovereignty of a*

The Legal Adviser claimed that the U.S. action was legally grounded on the OECS action. The OECS in turn based its action on anticipatory self-defense and humanitarian intervention. The OECS statement explaining its October 21 decision gave three justifications: internal disorder in Grenada, violation of human rights of Grenadians by the RMC, and self-defense against a threat posed by the military buildup in Grenada.

The Legal Adviser asserts that the United States does not rely on those arguments. However, the United States does rely on the OECS action, and the OECS action is based on those arguments. The United States cannot rely on the OECS action without relying on the OECS' grounds for acting. Logically the only other basis for U.S. reliance on the OECS action would be if the United States found some legal justification for the OECS action other than those given by the OECS. However, no other justifications have been provided.

Thus, the Legal Adviser, apparently realizing the weakness of the OECS arguments and desiring to distance the State Department from them, has undercut not only the OECS position but also the Department's own position, because the Department's position is based on the OECS action.

VI. THIRD JUSTIFICATION: REQUEST FROM THE GOVERNMENT OF GRENADA

Because United States action cannot be justified solely on the rescue-of-nationals rationale, having extended beyond that aim, and because the OECS request argument is weak, the State Department relied primarily on an alleged request by the Government of Grenada. This argument is listed first by the Department's two primary expositors of its legal position on Grenada, Deputy Secretary Dam and Legal Adviser Robinson, in their enumeration of the three justifications they assert.²⁰⁹ The Department argued that the Governor-General has certain executive powers under the Grenada constitution; that while the cabinet would ordinarily be the government, there was no functioning cabinet or other governmental authority, and that therefore the Governor-General re-

People, New Jewels are Sometimes Rough Diamonds!, 7 W. INDIAN L.J. 205, 233-61 (1983).

209. *Collective Action*, *supra* note 7, at 80 (statement of Deputy Secretary Dam); Legal Adviser, *supra* note 1, at 382. Neither Dam nor the Legal Adviser claims that this argument is primary, but the order of listing is indicative.

mained the only constitutional authority. Dam stated that the Governor-General "has executive power" and that at the time he was the "sole remaining authoritative representative of the Government on Grenada."²¹⁰

Scholars have focused primarily on whether Sir Paul Scoon, Governor-General of Grenada and the author of the alleged request, had the constitutional authority to issue such a request. Opinions are divided on this issue.²¹¹ The discussion that follows does not treat the issue of Scoon's powers under the Grenada Constitution. The author agrees with those analysts, particularly Gilmore, who conclude that the Governor-General's position is not one of executive authority, and that the Governor-General may only act with the consent of the Government of Grenada, which in this instance was the RMC. The discussion focuses rather on three issues that have received less attention. First, the Department has not proved Scoon issued a request for outside military intervention prior to the invasion. Second, if Scoon did issue such a request at the time claimed by the Department, the U.S. decision to invade Grenada preceded that request. This undermines the Department's position that the intervention was a response to a request from Scoon. Third, if Scoon issued such a request, that request was legally invalid because regardless of Scoon's status under the Grenada constitution, there was no vacuum of authority in Grenada at the time, so that Scoon was not the holder of residual authority as argued by the Department.

A. *The State Department Has Not Proven That a Request Was Made*

Little evidence exists that Scoon made a request for outside military intervention prior to the invasion.²¹² The *Economist* con-

210. *Hearing: The Situation in Grenada*, *supra* note 15, at 5, 30. Although disputed today, it has traditionally been recognized that a government may request outside military intervention to suppress rebels. Whether that justification applies to Grenada is considered *infra* text accompanying notes 317-33.

211. Questioning Scoon's authority are Schachter, *supra* note 10, at 1644-45; Joyner, *supra* note 148, at 139; Nanda, *supra* note 11, at 414; W. GILMORE, *supra* note 11, at 64-73. Upholding it are Moore, *supra* note 13, at 159-61; Vagts, *International Law Under Time Pressure: Grading the Grenada Take-Home Examination*, 78 AM. J. INT'L L. 171; Dieguez, *The Grenada Intervention: "Illegal" in Form, Sound as Policy*, 16 N.Y.U.J. OF INT'L L. & POL. 1167, 1191 (1984).

212. One author, finding no evidence to substantiate or reject the claim, writes: "The matter will probably not be resolved conclusively until the United States diplomatic files are

cluded that, "the Scoon request was almost certainly a fabrication concocted between the OECS and Washington to calm the post-invasion diplomatic storm. As concoctions go, it was flimsy."²¹³ Errol Barrow, former prime minister of Barbados, referred to the alleged request from Scoon as a "belated excuse," a "story that not even the most uncritical follower of the events is tempted to entertain."²¹⁴ Former Attorney General Ramsey Clark calls the reference to an invitation a "false claim."²¹⁵ Available information supports the view of Clark, Barrow, and the *Economist*.

The State Department's statements of October 25 and 26 regarding Grenada did not mention a request from Scoon.²¹⁶ The first mention by Department officials came on October 27,²¹⁷ one day after Prime Minister Charles made the first mention of such a request, as she spoke to the United Nations Security Council.²¹⁸ The Department explained that it had not mentioned the alleged request earlier because it feared for the safety of Scoon, who was taken from his residence to an offshore U.S. ship on the morning of October 26.²¹⁹ Deputy Secretary Dam stated, "We were unable to make this request public until the Governor General's safety had been assured . . ."²²⁰ The Legal Adviser, similarly, stated, "We were unable to cite his request in our first statement of the United States position because of fears for his safety. At the time, his home was still surrounded by heavily armed forces."²²¹

The Legal Adviser's statement that Scoon's house was surrounded by "heavily armed forces" is correct but misleading. He made it appear that Scoon's home was attacked. Scoon's home was

opened thirty years hence." Levitin, *supra* note 11, at 646.

213. *THE ECONOMIST*, Mar. 10, 1984, at 31, 34. Schachter, citing this passage, expresses doubt as to whether Scoon issued a request. Schachter, *supra* note 10, at 1644 n.66. Fred Halliday of the London School of Economics, similarly concluded that the request was "concocted by the pliant Scoon and his American prompters after the event." Halliday, *supra* note 159, at 21. See also Halliday, *Controlling the Caribbean*, *NEW STATESMAN*, Nov. 4, 1983, at 8.

214. Barrow, *supra* note 83, at 4. Barrow was prime minister from 1966 to 1976. An attorney, he leads the parliamentary opposition in Barbados.

215. Clark, *supra* note 129, at 605.

216. *Collective Action*, *supra* note 7, at 67 (Reagan), 69 (Shultz), 72 (Middendorf).

217. *Collective Action*, *supra* note 7, at 76 (Kirkpatrick). See also *Hearing: The Situation in Grenada*, *supra* note 15, at 5 (statement of Deputy Secretary Dam).

218. See *U.N. CHRONICLE*, Dec. 1983, at 18; *N.Y. Times*, Oct. 27, 1983, at A19, col. 1.

219. On Scoon's departure with U.S. forces, see *Wall St. J.*, Nov. 15, 1983, at 21, col. 1; *N.Y. Times*, Oct. 27, 1983, at A19, col. 5.

220. *Collective Action*, *supra* note 7, at 80.

221. Legal Adviser, *supra* note 1, at 382.

surrounded by the PRA because a U.S. commando unit landed late Monday night, October 24 or early on the morning of October 25, and had entered Scoon's home. Then, PRA forces surrounded Scoon's house and engaged the U.S. force. A stand-off continued until the morning of Wednesday, October 26.²²² Thus, the fact that Scoon's home was surrounded does not mean that Grenada forces were threatening his life.

The Department's claim that it delayed announcing Scoon's request for his safety is undermined by the fact that Prime Minister Charles, in announcing the invasion at the White House on the morning of October 25, said:

It is the intention of the member governments of the OECS that once the threat has been removed, they will invite the Governor General of Grenada to assume executive authority of the country under the provisions of the Grenada Constitution of 1973 and to appoint a broad-based interim government to administer the country pending the holding of general elections.²²³

If it was too dangerous to announce Scoon's alleged request it would have likewise been too dangerous to announce that he was invited to head an interim government. If genuine concern over Scoon's safety existed, the prudent course was to omit mention of any possible connection between him and the invading states. As Charles spoke, flanked by President Reagan and Secretary of State Shultz, the Grenada army surrounded Scoon's home. A more likely reason for the failure to mention a Scoon request until October 26 is that, as will presently be explained, such a request was not obtained until Scoon's departure from Grenada on October 26.

Most commentators do not question the assertion that Scoon issued a request. Boyle and the ABA report expressed doubt.²²⁴ The principals vary considerably in their accounts as to the time and manner of Scoon's alleged request. When Prime Minister Charles first claimed there had been a request, she said Scoon

222. For an account of this episode, see R. GABRIEL, *supra* note 101, at 160-61. The Joint Chiefs of Staff indicated that Grenadian forces "appeared to be moving to surround the governor's house" after the Seals team was inside, suggesting that those forces had not surrounded the house previously. *JCS Replies*, *supra* note 97, at 31.

223. *Collective Action*, *supra* note 7, at 68.

224. Those accepting the validity of the request are Joyner, *supra* note 149, at 139; Moore, *supra* note 13, at 159; Vagts, *supra* note 211, at 171; Nanda, *supra* note 11, at 412; W. GILMORE, *supra* note 11, at 64-74; Wheeler, *supra* note 13, at 428. Those expressing skepticism are F. BOYLE, *WORLD POLITICS AND INTERNATIONAL LAW* 273 (1985); Committee on Grenada, *supra* note 12, at 345-47.

made it prior to the OECS meeting of October 21.²²⁵ The St. Lucia representative at the United Nations said the October 21 OECS decision was in response to a request from Scoon.²²⁶ Scoon contradicted this version of the timing of the alleged request when he first spoke on the subject on October 31. On BBC-TV, Scoon said that he first decided on the need for outside assistance on the evening of October 23.²²⁷ Scoon told the Guardian that on October 24 he sent Barbados Prime Minister Adams a letter inviting OECS intervention.²²⁸ Thus, Scoon denied making the request at the time indicated by Charles. State Department officials have specified two other dates. Deputy Secretary Dam stated, "[W]e were informed, on October 24, by Prime Minister Adams of Barbados that Grenada's Governor General, Sir Paul Scoon, had used a confidential channel to transmit an appeal to the OECS and other regional states to restore order on the island,"²²⁹ which is consistent with Scoon's statement. However, the Legal Adviser claimed "[W]e were first advised of it on October 23."²³⁰

Scoon's claim that he sent a written request to Adams was contradicted by Adams. On October 26, Adams claimed oral communication between Scoon and other Caribbean leaders occurred prior to the invasion but makes no mention of a written request from Scoon on October 24. Regarding a written communication from Scoon Adams stated: "He [Scoon] has now given his sanction and Brigadier [Rudy] Lewis, head of the Caribbean forces in Grenada is in possession of his signed letter of invitation to the OECS and other participating governments."²³¹ Adams thus implied that Scoon's signed letter appeared only after the invasion. "Commonwealth diplomatic sources" similarly reported that the letter was signed only after incoming troops fought their way to Scoon's

225. Statement of Prime Minister Charles, *supra* note 218, at 18, reported in *The London Times*, Oct. 28, 1983, at 5, col. 1; *Guardian*, Oct. 27, 1983, at 6, col. 1; A. PAYNE, *supra* note 21, at 151. *N.Y. Times*, Oct. 27, 1983, at A19, col. 1. Charles repeated the claim to the OAS, again saying Scoon made the request before the October 21 OECS meeting. *Acta de la sesión extraordinaria*, *supra* note 42, at 26.

226. The representative of St. Lucia, Mr. St. Aimee, said in the Security Council on October 27 that the OECS acted on October 21 "to respond to a request by a legal authority in Grenada." 38 U.N. SCOR (2491st mtg.) at 18, U.N. Doc. S/P.V. 2491 (1983).

227. *Panorama*, BBC-TV transcript, (Oct. 31, 1983), quoted in *Committee on Grenada*, *supra* note 12, at 346.

228. *Guardian*, Nov. 1, 1983, at 1, col. 6

229. *Collective Action*, *supra* note 7, at 80.

230. Legal Adviser, *supra* note 1, at 382.

231. Adams Transcript, *supra* note 165, at 5.

home.²³²

Scoon's issuing a written request after the invasion would not be fatal if it were a confirmation of an earlier oral request. However, Scoon did not claim that he made an oral request prior to the invasion; rather he claimed that the letter he sent to Adams on October 24 was his only communication prior to the invasion, a claim which Adams contradicted. Evidently, the letter signed by Scoon as incoming troops reached him (October 25 or 26) was the first manifestation of Scoon's desire for intervention.

Although Scoon mentioned no pre-invasion oral request, Adams claimed some communication between Scoon and Caribbean leaders.²³³ Adams claimed that following the OECS decision to intervene, Scoon's "opinion and approval were obtained, and arrangements were made for him to issue a formal invitation to intervene when politically safe for him to do so."²³⁴ Thus any possible pre-invasion oral request by Scoon would have been a response to a solicitation from the OECS that he issue such a request. A request in response to a solicitation by the intervenors casts doubt on its validity.

The letter was apparently composed outside Grenada, carried to Grenada for Scoon's signature on October 24, and signed by him that same day.²³⁵ According to Scoon, the letter was delivered to him by a diplomat from a non-participating country whose identity he declined to divulge.²³⁶

Adams indirectly confirmed that Scoon did not compose the letter. Adams' reference (quoted above) to the Scoon letter is cautious with respect to who may have composed it. To repeat, Adams said that "Brigadier Lewis is in possession of his [Scoon's] signed letter."²³⁷ Adams did not say that Scoon wrote a letter and gave it to Lewis. This is consistent with Adams' statement that "arrangements were made for him [Scoon] to issue a formal invitation to

232. *Guardian*, Oct. 28, 1983, at 6, col. 2.

233. Adams Transcript, *supra* note 165, at 5.

234. *London Times*, Dec. 10, 1983, at 4, col. 8. The statement was made in a speech Adams gave to the Royal Commonwealth Society, London, excerpted in W. GILMORE, *supra* note 11, at 109.

235. *Toronto Globe and Mail*, Nov. 2, 1983, at 2, col. 4. Scoon's statement to Canadian Press writer Larry Black was confirmed to the author by Black in a telephone conversation of July 3, 1985. Scoon made the statement during an interview with Black in Grenada Nov. 1, 1983.

236. *Toronto Globe and Mail*, Nov. 2, 1983, at 2, col. 4.

237. See *supra* text accompanying note 231.

intervene when politically safe for him to do so."²³⁸

An Adams aide confirmed Scoon's account that a letter was brought to him for signature. According to Debora Hughes, Adams' press officer, letters were taken into Grenada by the invading forces for Scoon's signature, including a letter dated October 24 addressed to each of the participating states and two copies. Lewis carried one batch of letters and a "courier" in the U.S. forces carried the other. Whichever group reached Scoon first would get him to sign the letters.²³⁹

The letter's wording clearly indicated that Scoon did not compose it. Addressed to Adams, the letter recites: "I am also seeking assistance from the United States, from Jamaica, and from the Organisation of Eastern Caribbean States."²⁴⁰ Only states that participated in the event are named; while other states in the region that may have been potential intervenors were absent from the list. The naming of the actual intervenors suggests that whoever composed the letter already knew those states were planning to intervene.

While Scoon did not compose the letter, he may have signed it on October 24, as he claims.²⁴¹ Late on the night of October 24, a U.S. commando force landed in Grenada and went to Scoon's home. The U.S. commando force spent October 25 in his house, surrounded by and fighting against PRA forces and left only after the main invasion force extricated it in the morning of October 26.²⁴²

Only Scoon's letter to Barbados has been made public although the State Department claims to have a letter from Scoon

238. See *supra* text accompanying note 234.

239. George, *Did Washington Ghost-Write Scoon's Appeal?*, NEW STATESMAN, Nov. 11, 1983, at 5. In a letter to the author on July 15, 1985, George confirmed the Hughes statement, which he said was made during a telephone call he made to Hughes in Barbados from London. George telephoned again several days later to verify, and Hughes confirmed her initial account.

240. The full text of the letter was printed in London Times, Nov. 10, 1983, at 6, col. 2. It also appears in J.N. MOORE, *supra* note 95, at 87.

241. *Supra* note 228.

242. OPERATIONAL OVERVIEW, *supra* note 96, at 16 (stating that the commando team had been barricaded in Scoon's house "since early on D-Day" and was "rescued" along with Scoon at 7:10 a.m. Oct. 26, 1983). Confirmed by U.S. Navy spokesperson Commander Michael Sherman, quoted in Toronto Globe and Mail, Nov. 7, 1983, at 11, col. 2; Bennett, *supra* note 150, at 76; *Battle for Grenada*, NEWSWEEK, Nov. 7, 1983, at 75; *D-Day in Grenada*, *supra* note 111, at 25. The commando team has been identified as being either Navy Seals or the Delta force. Wall St. J., Nov. 15, 1983, at 1, col. 4.

addressed to the United States.²⁴³ Since a request from Scoon is the Department's principal legal justification for the Grenada action, curiously it has not made public the intervention-request letter from Scoon it claims to have.

A final ground for doubting that Scoon issued a request for intervention is his discussions with Commonwealth country officials over the weekend before the invasion both by telephone and in person. None of these communications indicate that he wanted military intervention.²⁴⁴

Scoon's failure to put any request in writing until after the invasion, and his signing a letter handed him by the invading forces, raises a serious question as to the voluntariness of, and motive behind, such an alleged request. After U.S. forces fought their way into his house, Scoon must have clearly realized that the RMC would lose the battle. Thus, Scoon must have been under pressure to sign the letter. Even if the U.S. forces did not threaten Scoon (and there is no evidence that they did) Scoon's failure to sign would have put him in an uncomfortable situation. By signing, Scoon promoted the invading forces' view that he was the only lawful authority in Grenada and that he was the head of whatever government existed in Grenada. A refusal to sign would have relegated him to a much lesser role.

The contradictory accounts of how the request was made beg the conclusion that the State Department has failed to prove Scoon made such a request prior to the invasion, since an intervening state claiming a request from lawful authority must prove that such a request was made. One is reminded of the U.S.S.R.'s early claim after its Czechoslovakia intervention in 1968 that it had been requested to intervene.²⁴⁵ When that claim proved difficult to substantiate,²⁴⁶ the U.S.S.R. substituted the argument that is now known as the Brezhnev doctrine.²⁴⁷ Here the State Department

243. London Times, Nov. 10, 1983, at 6, col. 2. Ivan J. Barnes, Foreign News Editor of the London Times, stated in a letter to the author dated July 10, 1985: "Repeated enquiries at the White House and the State Department by our correspondents failed to produce a text of the letter received by the Reagan administration."

244. LATIN AMERICA BUREAU, *supra* note 78, at 88.

245. TASS statement, Aug. 21, 1968, reprinted in 7 I.L.M. 1283 (1968).

246. Declaration of the Presidium of the Central Committee of the Czechoslovakian Communist Party, Aug. 21, 1968 (stating that the entry of U.S.S.R. troops had occurred without the consent of the Czechoslovakian Government), reprinted in 7 I.L.M. 1285 (1968).

247. Pravda, Sept. 25, 1968, reprinted in N.Y. Times, Sept. 27, 1968, at A3, col. 1; 7 I.L.M. 1323 (1968).

clings to its claim that there was a request but offers little evidence to substantiate this theory.

B. The Decision to Invade Was Made Prior to the Alleged Request

The Administration's decision to invade Grenada was almost certainly made before the alleged request from Scoon. Few commentators have addressed whether the alleged Scoon request preceded the U.S. decision to invade.²⁴⁸ Nanda prefaces his discussion of Scoon's legal authority by "[a]ssuming . . . that Sir Paul Scoon did seek outside legal assistance before the U.S. decided to intervene."²⁴⁹ According to the A.B.A. report, Scoon asked for outside help on October 23, "several hours after President Reagan decided, provisionally, to proceed with the military assistance requested by the OECS."²⁵⁰ Thus, both Nanda and the A.B.A. committee imply that the request, to have legal significance, must precede the decision to intervene. Boyle is emphatic on the point, stating, "Since Sir Paul's request for assistance came well after Reagan's order to invade, the former becomes completely immaterial to analyzing the legality or illegality of the U.S. invasion."²⁵¹

To the contrary, the Legal Adviser claimed that the request preceded the decision and served as a motive for the decision: "It [Scoon's request] was clearly an important factor in the decision reached by the President on October 24 to respond favorably to the request of the Organization of Eastern Caribbean States (OECS) for United States assistance."²⁵² Boyle's conclusion correctly times the situation while the Legal Adviser's assumption is incorrect. The Department disingenuously claimed that the decision to invade was partially motivated by a request from Scoon. The Department asserted that the decision to invade was made only on October 24. Like the Legal Adviser, Secretary of State Shultz asserts the final decision was made on October 24. Shultz claims that a "tentative decision" was made by Reagan at a 4:00-

248. Joyner, *supra* note 149, at 138-39; Moore, *supra* note 13, at 159-61; Vagts, *supra* note 211, at 170-171; W. GILMORE, *supra* note 11, at 64-74.

249. Nanda, *supra* note 11, at 412.

250. Committee on Grenada, *supra* note 12, at 346. In fact, Scoon did not ask for outside help on October 23, *supra* note 228, and the Reagan decision of October 23 was firm, not provisional. See *infra* notes 279-305 and accompanying text.

251. Boyle, *supra* note 224, at 273.

252. Legal Adviser, *supra* note 1, at 382.

7:00 p.m. meeting on October 23, followed by "a sort of semifinal military decision" at a 2:15-3:30 p.m. meeting on October 24, followed by a written "directive" at 6:00 p.m. on October 24.²⁵³

Assistant Secretary of State Langhorne Motley is more cautious. He claims that "on October 22, after receiving confirmation of the OECS request, the President signed orders to prepare for a broader mission to restore order in Grenada in cooperation with Caribbean forces." Without clearly indicating how "final" a decision that was, Motley continues, "Finally, on the evening of October 24, after informing the British Government and the congressional leadership that immediate military action was necessary, the President ordered U.S. participation in the operation to proceed."²⁵⁴

The Administration's decision to send troops to Grenada was in fact made on October 22, as indicated by events preceding the invasion. Immediately after Bishop's arrest on October 13, the Administration began planning for military action in Grenada. The U.S. Ambassador to France, J. Evan Galbraith, stated on French television on October 26 that the U.S. invasion of Grenada was an "action which had begun two weeks ago."²⁵⁵

The Defense Department acknowledges that, at that time, it was planning for military action in Grenada, but claims the planning was limited to evacuation of civilians. In a letter to a Congressional committee, the General Counsel of the Defense Department wrote, "Subsequent to the arrest of Grenadian Prime Minister Bishop on October 13, the Joint Chiefs of Staff were instructed to investigate the possibility of conducting U.S. Naval presence and possible non-combatant evacuation operations if the need to evacuate American citizens from the island arose."²⁵⁶

Simultaneously, the Administration, according to Barbados Prime Minister Adams, approached the Barbados Government and suggested military action to rescue Maurice Bishop from

253. *Collective Action*, *supra* note 7, at 70.

254. Motley, *The Decision to Assist Grenada*, DEP'T ST. BULL., Mar. 1984, at 71.

255. N.Y. Times, Nov. 6, 1983, at A20, col. 5; *Hearing: The Situation in Grenada*, *supra* note 15, at 10 (remarks of Senator Pell). Galbraith later disclaimed the statement. *Hearing: The Situation in Grenada*, *supra* note 15, at 11 (remarks of Deputy Secretary of State Dam).

256. *Resolution of Inquiry with Respect to United States Activities Regarding Grenada*, *Committee Print of the House Committee on Foreign Affairs*, 98th Cong., 2d Sess. 4 (1984) (letter from General Counsel, Dept. of Defense, of Jan. 31, 1984, to Dante B. Fascell, Chairman, House Committee on Foreign Affairs).

custody.²⁵⁷

On October 17, a meeting was called at the State Department by Assistant Secretary Motley to form a planning group on Grenada.²⁵⁸ Motley told the participants—middle-level officials of the State Department, Central Intelligence Agency, Joint Chiefs of Staff, Defense Department, and National Security Council—to begin serious planning for a noncombatant evacuation operation of the U.S. medical students. On that date, National Security Advisor McFarlane informed President Reagan of the discussion at this meeting, and Reagan ordered planning to proceed for an evacuation operation.²⁵⁹

On October 19, the Joint Chiefs of Staff formulated a list of military resources available for an evacuation operation.²⁶⁰ Grenada Prime Minister Maurice Bishop was executed, following which U.S. Ambassador Milan Bish sent Washington a cable that Prime Minister Adams had asked that the United States intervene in Grenada.²⁶¹ This request was apparently made pursuant to the Barbados cabinet decision of that day to undertake military action to rescue Bishop and to seek aid in that endeavor from "larger non-Caribbean countries with the resources necessary to carry out such an intricate operation."²⁶² Motley's inter-agency group recommend that planning commence for a full-scale invasion, not merely an evacuation.²⁶³

Serious planning for an operation both to evacuate U.S. nationals and to overthrow the RMC commenced on October 20.²⁶⁴ At 8:00 a.m., Rear Admiral Poindexter held a secret meeting in the White House crisis center of a "crisis pre-planning group,"²⁶⁵ which decided that the situation called for consideration by a higher-level body, the National Security Council's Special Situation Group (SSG), chaired by Vice-President George Bush.²⁶⁶

Under Secretary of Defense Fred C. Iklé chaired a 10:00 a.m. meeting at the Pentagon to discuss logistics for a military opera-

257. See *supra* note 165 and accompanying text.

258. H. O'SHAUGHNESSY, *supra* note 52, at 155.

259. G. SANDFORD & R. VIGILANTE, *supra* note 80, at 4; Bennett, *supra* note 151, at 72.

260. Bennett, *supra* note 151, at 73.

261. *Id.*

262. See *supra* text accompanying note 166.

263. H. O'SHAUGHNESSY, *supra* note 52, at 155.

264. London Times, Nov. 23, 1983, at 5, col. 6.

265. Bennett, *supra* note 151, at 73.

266. *Id.*

tion.²⁶⁷ At roughly the same time, the National Security Council's "crisis manager" collected maps which illustrated the location and readiness level of U.S. military units in the Western Hemisphere and compiled a file of maps, aerial photographs, diplomatic cables, and intelligence reports known as a national security decision directive (NSDD) for use by President Reagan in making a decision.²⁶⁸ A draft of the directive was available late that afternoon, when Bush, at Reagan's behest, convened the Special Situation Group.²⁶⁹ Meeting participants agreed on the need for secrecy regarding the Grenada planning; officials involved in the planning were advised to maintain regular schedules to avoid public suspicion.²⁷⁰ The participants also decided to divert immediately towards Grenada the Marine contingents that had departed for Lebanon on October 18.²⁷¹ Following the meeting, McFarlane gave Reagan a new draft of the directive. Reagan then told McFarlane to continue the planning.²⁷² The operation was code-named "Urgent Fury."²⁷³ The State Department prepared instructions for Ambassador Bish, who was to attend the OECS meeting planned for Barbados that evening. The instructions apparently directed Bish to encourage the OECS to vote to invade Grenada.²⁷⁴

On October 21 at 4:00 p.m. President Reagan ordered the planning of a more detailed type.²⁷⁵ At a 5:00 p.m. meeting at the White House, attending members discussed whether the operation should be a noncombatant evacuation mission or a takeover of the government. The Joint Chiefs of Staff were instructed to prepare for both.²⁷⁶ Late that evening, in Barbados, Prime Minister Charles told U.S. diplomat Charles A. Gillespie that the OECS states had voted to ask the United States to join them to remove the RMC. Gillespie cabled that request to the State Department.²⁷⁷

This groundwork culminated in a decision on October 22 to

267. *Id.*

268. *Id.*

269. *D-Day in Grenada*, *supra* note 111, at 27; Wash. Post, Oct. 26, 1983, at A7, col. 3.

270. Bennett, *supra* note 151, at 74.

271. *D-Day in Grenada*, *supra* note 111 at 27; H. O'SHAUGHNESSY, *supra* note 52, at 156; Wash. Post, Oct. 26, 1983, at A7, cols. 3-4.

272. Bennett, *supra* note 151, at 74.

273. *Id.*

274. H. O'SHAUGHNESSY, *supra* note 52, at 156-158. See also *supra* text accompanying note 172.

275. Bennett, *supra* note 151, at 74.

276. *Id.*

277. *Id.* On U.S. prompting of the OECS decision, see text accompanying notes 150-79.

invade. The plan consisted of an operation both to evacuate U.S. nationals and to overthrow the RMC. At 2:45 a.m., Shultz and McFarlane discussed the OECS decision of the previous evening.²⁷⁸ At 3:30 a.m., Bush convened key advisors,²⁷⁹ and it was decided in a conference call between Washington and Augusta involving Shultz, McFarlane, Motley, Vessey, Meese, and the CIA, that the ships heading towards Grenada should be deployed for possible action, but without arousing suspicion.²⁸⁰ They further decided to speed planning for an invasion.²⁸¹ At 4:00 a.m., a military team discussed logistics.²⁸² At 5:15 a.m., Shultz and McFarlane informed Reagan of the OECS decision. Reagan then phoned Bush and Weinberger.²⁸³ At 9:00 a.m., an SSG meeting in Washington²⁸⁴ distributed a newly revised NSDD.²⁸⁵ The NSDD provided a plan to "land U.S. and allied Caribbean military forces in order to take control of Grenada no later than dawn Tuesday," meaning October 25.²⁸⁶ The NSDD specified three objectives that make it clear that the aim was to assume power in Grenada. The aims indicated were: (1) "ensuring the safety of American citizens on Grenada," (2) "in conjunction with OECS friendly government participants, the restoration of democratic government on Grenada," and (3) "elimination of current, and prevention of further, Cuban intervention on Grenada."²⁸⁷ Reagan, participating in the meeting from Georgia by telephone,²⁸⁸ was asked by Bush about the threefold objective. Reagan answered, "If we've got to go there, we might as well do all that needs to be done."²⁸⁹ The consensus at this meeting was to invade. "Everyone was gung-ho," one participant reported.²⁹⁰

278. *Collective Action*, *supra* note 7, at 69 (Shultz news conference).

279. *Id.*

280. Telephone interview with Bennett (June 13, 1985)(citing unpublished draft version of Bennett, *supra* note 151).

281. *D-Day in Grenada*, *supra* note 111, at 27.

282. *Ten Days of Urgent Fury*, ALL HANDS, May 1984, at 34 [hereinafter *Ten Days*](official U.S. Navy publication).

283. *D-Day in Grenada*, *supra* note 111, at 27; *Collective Action*, *supra* note 7, at 70 (Shultz news conference).

284. H. O'SHAUGHNESSY, *supra* note 52, at 160; Wash. Post, Oct. 26, 1983, at A7, col. 4; *Collective Action*, *supra* note 7, at 70 (Shultz news conference).

285. Bennett, *supra* note 151, at 74.

286. *Id.*

287. *Id.* at 75.

288. *Collective Action*, *supra* note 7, at 70 (Shultz news conference); *D-Day in Grenada*, *supra* note 111, at 27.

289. Bennett, *supra* note 151, at 75.

290. *D-Day in Grenada*, *supra* note 111, at 27. No high official at any time in the planning argued against invading Grenada. *Testing Time: Reagan was Reagan*, NEWSWEEK, Nov.

On October 22, the Joint Chiefs of Staff informed the man who was to command the mission that an invasion of Grenada was to occur at dawn October 25:

Late on 22 October, in response to Presidential direction, the Joint Chiefs of Staff provided the Commander in Chief Atlantic, Admiral Wesley McDonald, with confirmation of the expanded mission. Operation Urgent Fury was to be conducted not later than dawn 25 October. CinCLant [Commander in Chief Atlantic] had little more than 48 hours to assemble his forces, plan, and execute the operation.²⁹¹

The term "expanded mission" refers to a mission whose purpose is both to remove the RMC (in contrast to earlier planning that had focused on evacuation of U.S. nationals) and to the fact that the mission's participants had expanded to include personnel of Caribbean island states.

At a Sunday morning meeting of the National Security Planning Group,²⁹² President Reagan commented on the impact on the Grenada operation of the previous night's bombing of the Marine barracks in Beirut: "If this [the Grenada operation] was right yesterday, it's right today, and we shouldn't let the act of a couple of terrorists dissuade us from going ahead."²⁹³ Reagan also told meeting participants "that he would not be deterred in Grenada by the problems in Lebanon and affirmed that the invasion would go ahead."²⁹⁴ The Sunday morning discussion of the Beirut bombing indicates that a decision to invade Grenada had already been made. The issue was whether to postpone the Grenada invasion, which had been set for Tuesday.²⁹⁵ One "senior adviser" reported Reagan's intent to proceed with the Grenada invasion despite the Beirut bombing: "He felt very strongly that this was the right thing to do and it should not be aborted because of what happened in Lebanon."²⁹⁶ That morning, the U.S. ambassador to Trinidad

7, 1983, at 82 [hereinafter *Testing Time*].

291. Lt. Col. Michael J. Byron, U.S. Marine Corps, *Fury from the Sea: Marines in Grenada*, 110/5/975 U.S. NAVAL INSTITUTE PROCEEDINGS, May 1984, at 119, 124. Another account claims that McDonald was appointed on the morning of October 22. *Ten Days*, *supra* note 282, at 34.

292. *Collective Action*, *supra* note 7, at 70 (Shultz news conference); N.Y. Times, Oct. 26, 1983, at A1, cols. 5-6; *D-Day in Grenada*, *supra* note 111, at 28.

293. Bennett, *supra* note 151, at 75.

294. N.Y. Times, Oct. 30, 1983, at A20, col. 6 (article by Bernard Gwertzman).

295. *Testing Time*, *supra* note 290, at 82.

296. *Id.*

also reportedly told representatives of Jamaica, Barbados, and the OECS states, meeting in Trinidad, that the Administration had decided to invade Grenada.²⁹⁷

The October 22 order to McDonald was passed to lower-ranking officers on October 23. Maj. Gen. Schwarzkopf, deputy commander of the invasion force, said that on the evening of October 23, he received "top secret orders" to report to Norfolk, Virginia, for an operation against Grenada. He said that the decision to land troops in Grenada was kept in strict secrecy October 23 and 24.²⁹⁸

A Navy source indicated that in the early afternoon on October 23, the commanders were informed of their mission:

Not until about 40 hours before H-hour [40 hours before 5:00 a.m. October 25 would be 1:00 p.m. October 23] were commanding officers of the ships told what the mission in Grenada would be—to evacuate U.S. citizens, neutralize any resistance, stabilize the situation and maintain the peace. That didn't leave much time to get the ships ready.²⁹⁹

Defense Secretary Weinberger gave a similar account regarding the length of time the military had to prepare the invasion. He told a House subcommittee, "We had less than 48 hours to plan and execute the operation."³⁰⁰

A U.S. Marine Corps report confirms that operational commanders were informed on October 23 of the nature and launch time of their mission:

[P]lanning initially centered on a NEO [non-combatant evacuation operation], but on 23 October, the MAU [Marine amphibious unit] and PHIBRON [amphibious squadron] amphibious staffs were advised that the operation—now code named URGENT FURY—would be a joint and combined operation with U.S. and Eastern Caribbean paramilitary forces participating. D-Day was set for 25 October, with H-Hour at 0500.³⁰¹

At a 4:00 p.m. meeting, President Reagan gave what Secretary Shultz called a "tentative" order for the invasion.³⁰² At 6:00 p.m., McFarlane gave Reagan a copy of an updated invasion plan. Rea-

297. A. PAYNE, *supra* note 21, at 151.

298. Wash. Post, Nov. 9, 1983, at A34, col. 1.

299. *Ten Days*, *supra* note 282, at 19.

300. *Hearing: Situation in Lebanon and Grenada*, *supra* note 74, at 40.

301. OPERATIONAL OVERVIEW, *supra* note 96, at 4.

302. *Collective Action*, *supra* note 7, at 70 (Shultz news conference).

gan signed the document and told McFarlane that the signature meant that the plan would be carried out.³⁰³

By Sunday night the Pentagon had advance teams landing in Grenada. Late that night, four Navy Seals drowned 25 miles from Grenada in the capsizing of a boat used to sneak into Grenada to undertake reconnaissance.³⁰⁴ Another team reached Grenada and determined that the Pearls Airport was not appropriate for an amphibious landing, resulting in the decision to take Pearls Airport by helicopter.³⁰⁵ The fact that the Navy was sending men ashore in Grenada on Sunday night indicates that by this time a decision to invade must have been made.

On October 24 at 6:00 p.m. Reagan signed a formal order for the invasion.³⁰⁶ Shultz depicts this as the decision to invade.³⁰⁷ Monday night a U.S. commando team landed in Grenada to evacuate Scoon. They reached his home but were surrounded by the People's Revolutionary Army.³⁰⁸ The U.S. invasion in force began at 5:00 a.m. October 25, the hour established in the October 22 decision.

The October 22 decision was considered revocable until the moment of the invasion. Yet the orders given to the commanders in the field on October 23 seem to have been firm orders. The decision to invade was made on October 22, with orders to operational commanders on October 23. *Time* said the decision was made late Saturday.³⁰⁹ The *Economist* said it was "75% made on Saturday."³¹⁰ Thus, the Legal Adviser's claim that the decision was a response to the request is unfounded. Scoon does not claim to have made a request until October 24 and probably did so on October 25.

While the U.S. decision was not made in response to a request

303. Bennett, *supra* note 151, at 76; Wash. Post, Nov. 6, 1983, at A21, col. 3.

304. L.A. Times, Nov. 6, 1983, at 6, col. 1; Bennett, *supra* note 151, at 76.

305. Bennett, *supra* note 151, at 76.

306. *Collective Action*, *supra* note 7, at 70 (Shultz news conference).

307. *Id.*

308. L.A. Times, Nov. 6, 1983, at 6, col. 4; LATIN AMERICA BUREAU, *supra* note 78, at 90; A. PAYNE, *supra* note 21, at 158; Guardian, Nov. 3, 1983, at 6, cols. 6-7.

309. Referring to President Reagan's options Sunday morning upon learning of the Marine deaths in Beirut, *Time* claimed he "momentarily. . . considered abandoning the invasion." *D-Day in Grenada*, *supra* note 111, at 28.

310. *ECONOMIST*, Mar. 10, 1984, at 32. Payne, Sutton, and Thorndike concluded "that the critical decision of principle to prepare militarily for an invasion was taken at this [9:00 a.m.] Saturday meeting." A. PAYNE, *supra* note 21, at 150.

from Scoon, if he expressed consent prior to the invasion (assuming he had the capacity to do so), that would legitimize the U.S. entry into Grenada. The essence of aggression is military entry accomplished without the consent of the territorial state. If the territorial state expresses its consent prior to the entry, then the entry is not accomplished against its consent.³¹¹ Hence the entry would be consensual. Thomas and Thomas write in this regard, "If a state consents to an interference within its protected sphere of interests prior to or simultaneously with the act of interference, the act can be said to be legitimate by principle or traditional international law."³¹² Consent of the territorial state is the key. Here the United States took its decision to intervene absent an expression of consent from Grenada. Thus it intended to commit aggression. Its leaders are responsible under the Nuremberg principles for planning a war of aggression.³¹³ By setting a time for the invasion and setting the invasion planning in motion, they manifested an intent to commit aggression.

Boyle, as indicated above, took the view that since the alleged request "came well after Reagan's order to invade, the former becomes completely immaterial to analyzing the legality or illegality of the U.S. invasion."³¹⁴ But because consent of the territorial state is the issue, the causal connection between the decision and the request is not decisive. The Legal Adviser claims such a connection, but such a connection is not necessary to the U.S. argument, at least as regards aggression as opposed to planning a war of aggression. Intervention may be accomplished with the consent of the territorial state even if it is not in response to a request from that state. If an outside state decides to intervene, and before it does so the territorial state expresses its willingness to have the intervention, the intervention would not occur against the will of

311. I. BROWNLIE, *supra* note 5, at 321.

312. A.V.W. THOMAS & A. THOMAS, JR., *NON-INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS* 91 (1956)[hereinafter A.V.W. THOMAS].

313. The "planning" and "preparation" of a "war of aggression" are defined as constituting "crimes against peace" by article 6(a) of the Charter of the International Military Tribunal in the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 1945, 82 U.N.T.S. 79. I. BROWNLIE, *supra* note 5, at 196-99. An example of planning of aggression being found unlawful though the actual introduction of troops was not (consent given prior to entry of troops) is provided by the Judgment of the International Military Tribunal at Nuremberg with respect to the Nazi takeover of Czechoslovakia in 1939. *Id.* at 211; R. WOETZEL, *THE NUREMBERG TRIALS IN INTERNATIONAL LAW* 160 (1962); C. POMPE, *AGGRESSIVE WAR AN INTERNATIONAL CRIME* 23-24 (1953).

314. F. BOYLE, *supra*, note 224, at 273.

the territorial state and hence would not be aggression.³¹⁵

While Scoon claims to have made a request prior to entry of U.S. forces, it is unlikely, as indicated above, that he did so. He did, however, express his consent after entry of U.S. forces into Grenada. If consent is given only after entry of foreign forces, the entry, having been accomplished without the consent of the territorial state, is unlawful. However, expression of consent after entry of foreign forces would legitimize the further stay of the foreign troops in the territorial state. From that point forward, the occupation would not be illegal. A major problem in such a scenario, however, is the voluntariness of the consent given by the territorial state. Consent granted after entry of foreign troops is suspect. It may well have been given with a knife at the throat.³¹⁶ Assuming, however, that it is freely given as an expression of the sovereign will of the territorial state, the consent legitimizes the further stay of the foreign forces. It does not, however, legitimize the initial entry.

For reasons to which we now turn, this reasoning does not le-

315. A. THOMAS, *supra* note 308, at 91. Apparently disagreeing with this view is Charpentier, who, in discussing a request for intervention, writes: "It is nonetheless required, of course, that the request be spontaneous, that it does not conceal the importuning of the requested state, that it reflect the interests of the state that makes it so that the state that responds can reasonably prove that it would not have intervened if it had not been requested." Charpentier, *Les effets du consentement sur l'intervention*, 2 MÉLANGES SÉFÉRIADÈS 489, 495 (École des Sciences Politiques "Panteios" d'Athènes ed. 1961). The author agrees that the intervention is illegitimate if the request was issued only at the instigation of the intervening state and against the will of the territorial state. But he does not believe that the intervening state must prove that it would not have intervened if it had not been requested. As suggested in the text, even if the intervening state would have intervened regardless of any expression of consent from the territorial state, the intervention is legitimate if the territorial state expresses consent prior to the intervention. Another possible fact scenario, though one not raised by the Grenada situation, would involve expression of consent prior to entry but where the expression of consent does not come to the attention of the intervening state prior to the entry. The authorities of the territorial state issue an invitation, but it is not received prior to the entry. Such would seem to be a valid expression of consent. The validity of the expression of consent should not turn on whether the intervening state becomes aware of it prior to the entry. The rationale here is that the key element is the expression of consent by the territorial state, not the intent of the intervening state. This is the view adopted by the International Military Tribunal at Nuremberg with respect to the German entry into Austria in 1938. The Tribunal found no aggression on the theory that an invitation was sent, though due to the inefficiency of the Austrian post the invitation was not received by Germany prior to its introduction of troops into Austria. R. WOETZEL, *supra* note 313, at 160; Sohn, *Gradations of Intervention in Internal Conflicts*, 13 GA. J. INT'L & COMP. L. 225 (1983).

316. "If it [the intervening power] exerted pressure to obtain from the victim [state] modification of its behavior, then the consent is precisely the result sought, the culmination of the intervention." Charpentier, *supra* note 315, at 494.

gitimize the further stay of U.S. forces in Grenada.

C. The Governor-General Had No Authority to Request Military Intervention: The RMC was a Functioning Government

At the time of the alleged request, the RMC was the functioning government in Grenada. Therefore, even if Scoon did issue a request for intervention prior to its commencement, and even if his position as Governor-General is one that would give him the executive power claimed by the State Department, intervention based on his request would nonetheless be unlawful. The State Department claims a "vacuum of responsible governmental authority"³¹⁷ existed in Grenada, and that, therefore, its reliance on Scoon's request was not misplaced as he acted as the "sole source of governmental legitimacy."³¹⁸ In fact, as the Department was well aware, the RMC was exercising governmental functions in Grenada. Apart from this factual inadequacy, the Department's argument is flawed because international law does not permit military intervention in the event of a "vacuum of authority."

The Legal Adviser asserts that Scoon "was the recognized head of state of longstanding tenure confronted by the breakdown of government in his nation."³¹⁹ Deputy Secretary Dam describes the situation as "a collapse of law, order, and governmental institutions."³²⁰ Both are wrong with respect to the factual situation existing in Grenada at the time. As Gilmore states, "the RMC was, through the instrumentalities of repression available to it, in effective control of the entire territory of the state within the meaning of international law."³²¹ The A.B.A. report, similarly, states, "There is reason to argue that under applicable rules of recognition, General Austin's Revolutionary Military Council was entitled to recognition as the de facto, if not the de jure, government of Grenada."³²²

The Department was well aware that the RMC was in effective control, as it had been dealing with the RMC as the government of Grenada since the RMC took power on October 19. State Depart-

317. Kirkpatrick, 38 U.N. SCOR (2491st mtg.) at 38, U.N. Doc. S/P.V. 2491 (1938).

318. *Hearing: U.S. Military Actions*, *supra* note 22, at 11 (statement of Deputy Secretary Dam).

319. Legal Adviser, *supra* note 1, at 383.

320. *Collective Action*, *supra* note 7, at 81.

321. W. GILMORE, *supra* note 11, at 73.

322. Committee on Grenada, *supra* note 12, at 349.

ment emissaries had conducted talks with the RMC in Grenada in its capacity as the government of Grenada.³²³ The RMC had effectively imposed a twenty-four-hour curfew on Grenada from October 20 to 23.³²⁴ It ended that curfew October 24, leading to a return to most normal activity, with no significant breach of public order.

The RMC was exercising governmental functions; therefore, Scoon cannot be regarded by other states as governmental authority in Grenada. As Wright stated in analyzing another intervention situation:

It is presumed that a government in firm possession of the territory of a state, even if not generally recognized, can speak for the state. This was the opinion of Chief Justice Taft in the Tinoco Arbitration between Great Britain and Costa Rica in 1923. There is a presumption, on the other hand, that a government, even if generally recognized cannot speak for the state if it is not in firm possession of the state's territory. In international law the *de facto* situation is presumed to overrule the *de jure* situation—*ex factis jus oritur*.³²⁵

To be effective, a request for military intervention must come from a government actually in power. On this principle Soviet reliance on a request from the Kadar Government for military intervention in Hungary in 1956 was challenged in the United Nations. At the time it issued its request, the Kadar Government was not in actual control.³²⁶

Even if Scoon could be considered "the sole remaining source of governmental legitimacy," as Dam argued,³²⁷ he could not speak for Grenada because he was not controlling Grenada. Thus, the Department's argument fails because it is factually incorrect.

But even if the Department were correct that there existed a "vacuum of authority" in Grenada, it could still not rely on a request from Scoon to intervene militarily. This is so because no doctrine permits intervention in such a situation. The Legal Adviser states the Department's argument that international law permits intervention to restore order where order does not exist:

323. *Id.* This despite Deputy Secretary Dam's statement that "there was nobody really to negotiate with." *Hearing: U.S. Military Actions*, *supra* note 22, at 27.

324. Committee on Grenada, *supra* note 12, at 349.

325. Wright, *United States Intervention in Lebanon*, 53 AM. J. INT'L L. 112, 120 (1959). A report of the Tinoco Arbitration appears in 18 AM. J. INT'L L. 147 (1924).

326. Sohn, *supra* note 315, at 226. *Accord Charpentier*, *supra* note 315, at 496.

327. *Collective Action*, *supra* note 7, at 80-81 (Deputy Secretary Dam).

The request of lawful authority is a well established basis for providing military assistance, whether the requesting State is seeking assistance in the exercise of its inherent right of self defense recognized in Article 51 of the United Nations Charter [which the Legal Adviser is not asserting], or for other lawful purposes, such as maintenance of internal order [which the Legal Adviser is asserting].³²⁸

As authority for this proposition, the Legal Adviser cites Lauterpacht's 1955 edition of Oppenheim's treatise.³²⁹ However, Oppenheim only discusses requests by governments in factual control under challenge by insurgents. The difficulty is seen in the Legal Adviser's phrasing. He writes that a request of lawful authority is a basis for providing military assistance where the requesting authority's purpose is "maintenance of internal order." The implication there—and in all the literature on the subject, including Oppenheim—is that a functioning government is requesting assistance to maintain internal order. It must be in a position of exercising authority but unable to put down a group that challenges its control.

As the Legal Adviser concedes such was not the situation in Grenada.³³⁰ When a government breakdown in a state occurs, the party granted executive power under the local constitution may not ask for outside military intervention unless that party is in factual control. This would be so even if there were no question over Scoon's role under the Grenada Constitution. One can assume a situation where an individual has been elected chief executive under a state's constitution but has been overthrown by a coup. Assume that the coup leaders depart the state, leaving no one in charge. At this point the president controls nothing; there is no army, no one is attempting to control the state. It is the logic of the Legal Adviser's view that in this situation that chief executive would have the power to invite outside military intervention. But there is no doctrine permitting a figure not in actual control to make such a request.

This hypothetical exemplifies the absurdity of the Legal Ad-

328. Legal Adviser, *supra* note 1, at 382.

329. 1 Lauterpacht, OPPENHEIM'S INTERNATIONAL LAW 305 (1955).

330. See *supra* text accompanying note 210. *Time* pointed out that the Grenada invasion involved intervention to unseat a government: "[N]ever before in this century have U.S. troops actually invaded a country to fight against a ruling government." *D-Day in Grenada*, *supra* note 111, at 47-48.

viser's assertion regarding the "breakdown of government." A "breakdown of government" in reality occurs only where there are contending factions. Here the Legal Adviser is asserting something else—a vacuum of authority. But one is hard put to cite to previous situations of vacuum of authority. There is always either a government exercising peaceful control or a situation of contending factions. No intervention situations that have arisen have involved a "vacuum of authority," that is, a situation where no one is exercising control or contending for control.

In asserting a right to intervene militarily in a situation of alleged breakdown of government, the Department is asserting novel law. Bowett, listing the situations in which it has been argued that outside states have a right to intervene militarily in the territory of another state, does not list breakdown of government.³³¹ Boyle, writing with respect to Grenada, states correctly that "chronic disorder in a country does not permit neighboring states to intervene for the purpose of re-establishing minimum public security."³³² Clearly the RMC was exercising factual control. The United States thus overthrew a functioning government by intervening. It did not fill a void.³³³

331. D. Bowett, *The Interrelation of Theories of Intervention and Self-Defense*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 41-46 (J.N. Moore ed. 1974). Joyner and Grimaldi assert that a state may intervene to restore domestic order in another state when anarchy prevails if the anarchy endangers the intervening state. "International law recognizes the legality of certain interventionary actions taken in order to 'abate' an intolerable regional nuisance. When conditions in the territory of a neighboring state approach anarchy, and the constituted municipal authorities are unable to restore domestic order, then the abatement theory holds that a neighboring state threatened by the chaotic situation has a legal duty to intervene, by armed force if necessary, in order to put down the disturbance and thereby ensure that those disruptive conditions do not spill over and affect its internal stability." Joyner & Grimaldi, *The United States and Nicaragua: Reflections on the Lawfulness of Contemporary Intervention*, 25 *VA. J. INT'L L.* 621, 674 (1985). Joyner and Grimaldi cite von Glahn, who writes: "If no selfish aims are involved in the intervention in question, if no territorial aggrandizement or other gain is contemplated or realized, then it is difficult, in many instances, to deny a right, based on self-defense or self-preservation, to violate the ban on intervention for the sake of abating the nuisance at one's doorstep." G. VON GLAHN, *LAW AMONG NATIONS: AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW* 168 (1981). The principle asserted by Joyner-Grimaldi and von Glahn differs from that of the Legal Adviser, who does not base his argument on the threat to neighboring states. The Legal Adviser asserts invitation from the "last vestige of authority" in the state as the legal basis in a situation of anarchy. See *supra* text accompanying notes 317-18. In any event, the principle asserted by Joyner-Grimaldi and von Glahn is questionable. Von Glahn cites little state practice and none in the post-U.N.-Charter era. Even if such a principle were to be found in customary law, it would not be valid among member states of the OAS in light of the strict anti-intervention propositions stated in articles 18-20 of the OAS Charter.

332. F. BOYLE, *supra* note 224, at 273.

333. States intervening militarily, even absent any request, have justified their actions

VII. CONCLUSION

It is a serious threat to international order when a state possessing military power is able to use that power to install favorable regimes in other states. It is a further threat to international order when states so acting distort evidence to make their actions appear lawful. The State Department knowingly fabricated information in order to justify the 1983 Grenada invasion. The falsification perpetrated by the State Department was not successful in the United Nations, where both the Security Council and General Assembly condemned the U.S. action by a substantial majority. The Department's arguments based on rescue of nationals and on a request from lawful authority were belied by facts known to the Department. The Department knew there was no serious danger to U.S. nationals, that it was still possible to evacuate U.S. nationals without military force, and that introduction of military force would seriously endanger U.S. nationals.

Long interested in overthrowing the leftist government of Grenada, the Department urged the Organization of Eastern Caribbean States to issue a request for intervention, even though such a

asserting that the state lacks order. But these assertions have been limited to situations in which the intervening state alleges that the lack of order threatens to "spill over" into the intervening state, across a common border. Thus, the United States asserted the need to send troops into Mexico to pursue Villa, following an attack by Villa at a town in the United States, in part on the ground that disorder reigned in northern Mexico and that therefore the only way to assure that attacks into the United States would not be repeated was for U.S. military intervention. Finch, *Mexico and the United States*, 11 AM. J. INT'L L. 399, 401 (1917). Italy sought to justify its use of military force in Ethiopia in 1935 by referring, *inter alia*, to chronic disorder in Ethiopia that threatened Italian territory (neighboring Eritrea). I. BROWNIE, *supra* note 5, at 347. Japan sought to justify its use of military force in China in 1931 by referring, *inter alia*, to a desire to bring about "the restoration of order in that country." Hyde, *Legal Aspects of the Japanese Pronouncement in Relation to China*, 28 AM. J. INT'L L. 431 (1934). As occupant of Korea, Japan shared a border with China at that time. In all three cases, the alleged disorder in the state in question was alleged to be relevant only because the disorder might affect a neighboring state. In the U.S.-Mexico case, there had already been an attack into the United States. In the Grenada case, the State Department is not alleging that the alleged disorder in Grenada might have "spilled over" into the United States or into island states in the vicinity of Grenada. In any event, the doctrine propounded by the United States, Italy, and Japan in the three cases mentioned has probably not survived the United Nation Charter, even if it were good law prior to adoption of the Charter. In the three cases mentioned, the only one in which the asserted justification met with significant acceptance was the U.S.-Mexico case, and there a raid into the United States had occurred. In the Grenada case it was asserted in defense of the U.S. action, (though not by the Legal Adviser) that there was a danger of an attack by Grenada against neighboring island states. That is a different matter from disorder that might "spill over."

request could not properly be made under the OECS treaty. After the OECS voted to issue a request to the United States, the Department drafted a request to itself from the OECS. When reliance on article 8 of the OECS treaty was subjected to telling criticism, the Department abandoned that theory and developed a new and equally implausible justification for the invasion—reliance on articles 3 and 6 of the OECS treaty.

The Department tried to create the impression that U.S. forces entered Grenada in response to an invitation from the Grenadian Governor-General. U.S. forces hand-carried letters of invitation prepared for the Governor-General's signature. Then the Department falsely claimed it had received both an oral and a written communication from the Governor-General prior to the invasion.

That the Department went to such lengths to falsify facts to make the Grenada invasion appear legal reflects a disturbing disdain for the rules of international conduct. The Department's falsification reflect the frailty of the prohibition against use of force between states. Exceptions to that prohibition have strong basis in reason yet are subject to manipulation which can render the exception more dangerous than the harm it is supposed to cure. Specifically, the rescue of endangered nationals exception is subject to abuse by the United States in a world in which resentment against the United States exists in many quarters. If U.S. nationals can be deemed to have been in imminent danger in Grenada, they can be so deemed in many states where the United States might desire to intervene militarily.

Consent of the territorial state and action under regional treaties are exceptions to the prohibition on use of force whose susceptibility to abuse is also revealed by the Grenada situation. The OECS countries and rightist elements in Grenada cooperated in the Department's efforts to make the invasion appear consensual. In a world in which political division is sharp, such local elements are often available to provide an appearance of consent.