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## International Law and the American Hostages in Iran

*by Dr. Walter L. Williams, Jr.\**

For over ten weeks at this writing, the Iranian Government has held fifty-three United States citizens in close confinement. Fifty-one of these Americans have privileged status as U.S. embassy personnel.<sup>1</sup> The Iranian Government has held these Americans hostage for the return to Iran of Mohammed Riza Shah Pahlavi, the former Iranian Head of State. The Iranian demand upon the U.S. Government for return of the Shah, made when he was permitted to visit the U.S. solely to secure emergency medical treatment, continues now, although the Shah has departed U.S. territory.

The seizure of these Americans and the resulting crisis in U.S.-Iranian relations have drawn the close attention of governments and peoples around the world. In modern times, probably no other event has more compellingly raised the questions of international legal re-

sponsibility for protection of aliens in their person and their civil liberties, and of the permissible sanctions of self-help available to a government to protect its nationals abroad. Those two questions are the focus of this brief article for the *Army Lawyer*.

These are important questions for military lawyers to consider. Although the current Iranian crisis is a dramatic illustration of the pertinency of these questions, an appraisal of the turbulent world scene suggests that in the immediate future the United States and other countries must expect other instances of substantial mistreatment of their nationals abroad, including those having diplomatic status. The military strategies that governments may employ to protect their nationals abroad obviously will give rise to a wide range of legal problems

calling for the services of military lawyers. Further, situations threatening serious personal deprivation to American citizens may arise where U.S. military elements are on the immediate scene and able to offer effective protection if employed immediately. The emergency situation may not permit the luxury of awaiting authorization to act from high governmental levels. In that context, military commanders will have to rely upon their lawyers for advice as to the permissibility under international law of military action to protect American citizens abroad. Thus, for military lawyers, a basic understanding of international law concerning the protection of aliens is vital. In dealing with the situation of the American hostages in Iran, this article discusses one of the most critical situations that arise: foreign governmental action intentionally taken against American citizens that causes them substantial personal deprivation and threatens them with still more extreme deprivation.

To show that the Iranian Government has engaged in multiple major violations of international law in the case of the American hostages does not require a lengthy legal brief. First, the confinement of the Americans clearly is an act chargeable to the Iranian Government. A well-organized group of Iranian private citizens, reported to be students, conducted the initial seizure of the American Embassy in Teheran and confinement therein of American citizens. To the present, this writer is unaware of any conclusive evidence that, prior to the seizure, the Ayatollah Ruhollah Mussavi Khomeini (at that time the actual if not formally proclaimed Head of Government) or any other Iranian official ordered, authorized, or with foreknowledge passively permitted the seizure. However, regardless of its involvement in the initial seizure of the Embassy and the American citizens, the Iranian Government failed to take any action whatsoever to terminate the seizure. Further, the Ayatollah Khomeini and lesser officials quickly approved and expressly adopted as governmental action the seizure and the continued confinement of the American citizens, as well as the characterization of their status as hostages for the return of the Shah to Iran. The

Iranians holding the Americans hostage have repeatedly said that they would release the Americans at the Ayatollah Khomeini's direction, but that direction has not been given. Thus, under any analysis the holding of the American hostages is an act of the Iranian Government.

The Iranian seizure and confinement of the Americans is a gross violation of conventional and customary international law. In our brief survey of the law here, we should note that, fundamentally, we are confronted with serious deprivations of civil liberties accorded by international law to these American citizens present in Iran. At this point in the analysis, we are not concerned with the special privileged status of most of these Americans as embassy personnel. Under the U.S.—Iranian *Treaty of Amity, Economic Relations, and Consulate Rights*,<sup>2</sup> all American citizens presents in Iran are entitled to "receive the most constant protection and security" within the territory of Iran. If held "in custody," which presumes custody by properly empowered officials pursuant to regular process and for reasonable cause, Americans are "in every respect" to "receive reasonable and humane treatment." On their demand their diplomatic or consular representatives is to be "accorded full opportunity to safeguard" their interests. Each is to be "promptly informed of accusations against him, allowed full facilities reasonably necessary to his defense and given a prompt and impartial" determination of his case.

These foregoing rights of the American hostages have been outrageously violated. This pertains not only to the specific details of their confinement, but as to the confinement itself. From the outset of their seizure, the publicly pronounced objective has been to hold the Americans as hostages for the return of the Shah to Iran, with various threats of increased deprivation to them (criminal proceedings, prison confinement, even death) if the Shah does not return. Additionally, emphatic threats have been made that the hostages will be killed if the U.S. government attempts any use of force to release them. Under the laws of all states, if a guard were to deliberately kill a defenseless prisoner, that would be murder.

Further, as regards holding these Americans as hostages, even under the law of war in situations of armed conflict, two of the most important prohibitions in the *Geneva Convention Relative to the Protection of Civilians in Time of War*<sup>3</sup> (both Iran and the U.S. are parties) are the express prohibitions against the holding of civilians as hostages and of taking reprisals against civilians. These prohibitions, resulting from the massive cruelties against civilians in World War II, dramatize the unlawful conduct of the Iranian government in holding these Americans as hostages and in subjecting them to continuous deprivations as reprisal for the failure of the U.S. Government to return the Shah to Iran. Those deprivations include confinement in circumstances closely approximating solitary confinement; subjecting them to threats of possible long-term imprisonment or execution, and continuously exposing them to the possibility of death or injury if the incessantly demonstrating Iranian crowds should get out of control.

As regards the various Iranian assertions that the hostages might or will be tried for crimes of espionage if the Shah does not return to Iran, the very fact that conducting the trials turns on the return of the Shah shows that the true objective for holding the Americans is not for the purpose of trial for alleged crimes. Further, no formal charges have been made against any individual nor, to this writer's knowledge, has any specific act of criminal espionage by any individual even been formally alleged. At this point, the special status of virtually all of the American captives as U.S. embassy personnel becomes relevant. Under the *Vienna Convention on Diplomatic Relations*,<sup>4</sup> to which the U.S. and Iran are parties, these Americans, regardless of the particular subcategory of privileged status that applies to each individual, all share in a minimum "floor" of protection under that convention: the immunity from any form of arrest or detention and from criminal prosecution for acts performed in the course of their duties.<sup>5</sup> The appropriate remedy for the Iranian Government, if it in good faith believed that at least some of the American captives had committed criminal espionage, would

be to demand that the U.S. government withdraw those persons from Iran.<sup>6</sup> Indeed, under the Vienna Convention, even in time of armed conflict, the host state is obligated not only to allow these personnel to depart at their will, but also, to provide adequate facilities to assist in their departure.<sup>7</sup>

These foregoing rights are also, in general, long-standing hallowed rights under customary international law, which have been incorporated into these bilateral and multilateral international agreements.<sup>8</sup> The conduct of the Iranian Government has rightly been condemned as a violation of international law by the general world community, through statements of governmental officials, and by the chief authoritative judicial and political agencies of the United Nations Organization, the International Court of Justice and the Security Council. All have called for the immediate release of the Americans.

With the Iranian Government standing in violation of international law, the question is what are the permissible sanctions that may be employed against that government to terminate continuing deprivations against the American citizens. First, the principal sanctioning goals in a situation of violation of international law of protection of aliens are (a) immediate deterrence and (b) restoration, that is, sanctions may be employed first, to deter a government from acting to cause impermissible deprivation to aliens or to increase the level of such deprivation and, second, to terminate an impermissible deprivation, where the target government's action is one of continuing nature, e.g., unlawful confinement. The anticipated or actual deprivation may range from very minor effect to grave injury or death. The nature and extent of the deprivation obviously affects the nature of the sanction that may lawfully be employed.

As regards the range of permissible sanctions in the Iranian situation, we should first consider the employment of sanctions by community agencies acting for the global community under the U.N. Charter. Undoubtedly, in either the situation of immediate deterrence or of restoration, the Security Council acting under Chapter

VII of the U.N. Charter could either authorize or order the employment of non-military sanctions by any or all member states and could authorize the employment of military sanctions of whatever degree of coerciveness it judged necessary to deter or to terminate the Iranian Government's unlawful conduct against American citizens. The U.S. Government indeed requested the Security Council to order economic sanctions against Iran, in light of the Iranian Government's failure to obey the orders of the Security Council and of the International Court of Justice to release the American hostages. However, events have highlighted the difficulties of exclusive reliance on community sanctions. These difficulties include (a) where aliens are threatened with imminent deprivation, securing timely deterrent community action by the Security Council under even the optimum of operating circumstances; (b) the Council's lack of authority to order the national employment of military forces, or itself to deploy a U.N. military unit, absent prior agreement by member states to place military forces at the Council's disposal, and (c) the power of any Permanent Member of the Security Council to exercise a veto to prevent the Council from characterizing the propriety of the offending state's conduct and/or deciding to authorize or order *any* sanctions. The Soviet veto of the Council's resolution ordering economic sanctions against Iran is therefore characteristic of these systemic difficulties. In view of the U.S. Government's prominent role in the tidal wave of world condemnation of the Soviet Union's massive act of aggression in unlawfully invading Afghanistan, a Soviet veto was largely foregone.

What then are the permissible sanctions in self-help to deter or to terminate unlawful deprivations by a foreign government against aliens? Traditional customary international law permitted the state to which the alien owed allegiance to use all necessary forms of sanctioning strategies from harsh diplomatic notes to the substantial application of armed force.<sup>9</sup> Today, under the U.N. Charter, a state clearly may employ in self-help all sanctioning strategies short of the threat or use of armed force,

without prior authorization by the Security Council.<sup>10</sup> Thus, in the Iranian situation, the U.S. Government already has lawfully employed certain diplomatic and economic sanctions against Iran and lawfully may intensify those sanctions in the future. Also, military strategies that do not constitute a present threat of use or actual use of armed force against a state likewise are permissible. Examples are strategies already employed by the U.S. Government in the Iranian situation, such as the alerting of military units or the movement of military units under conditions indicating that although the future use of military force may be a possibility, no present threat of use or actual use of force is intended.

The crucial question concerning use of sanctions in self-help to protect nationals abroad is whether the threat of use or use of armed force against the offending state is permissible under the U.N. Charter. The text of the Charter is the starting point for analysis. The principal relevant clauses of the Charter are Articles 2(4) and 51. Article 2(4), the principal prohibition on the use of force, provides that, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." In turn, Article 51 states, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. . . ." Further, both the letter and the spirit of the language of the Purposes of the U.N. Charter and of the Charter provisions in general, are that states are expected to settle their disputes without resort to force. If a continuing unresolved dispute situation is a threat to international peace, the issue should be taken before the Security Council, as the authoritative community agency empowered to characterize the situation and to determine appropriate action.

In discussing the question of the impact of

these U.N. Charter provisions upon the use of force in self-help to protect nationals abroad in situations similar to the Iranian case, we shall consider first, the use of force for the goal of immediate deterrence. In the situation where that goal is operative, the features we posit here for discussion are that the alien is threatened with imminent, substantial personal deprivation, yet at least a reasonable expectation exists that if his government acts swiftly the deprivation can be prevented. Although the situation may occasionally be one in which the alien has not yet suffered any deprivation, our model's factual prerequisites of notice to his government of the emergency and of his government being able to mount a timely military action suggest that the situation more generally will be one in which the alien already has suffered some deprivation, *e.g.*, seizure, and at a later date is threatened with an imminent substantial increase in deprivation, *e.g.*, serious bodily harm or death or a significant period of penal confinement. In our posited situation, the objective is one of conservation of vital human values in an emergency situation threatening destruction or substantial damage to those values.

When the posited emergency situation arises, does Article 2(4) bar use of force in self-help to protect one's nationals abroad? Many authorities<sup>11</sup> have asserted that Articles 2(4) and 51 should be counterpoised, with the result that only one objective for the use of force in self-help would be permissible under the Charter, the use of force in individual or collective self-defense, until such time as the Security Council takes effective action. Moving from that premise, some authorities have relied on the concept of self-defense to justify the use of force to protect one's nationals abroad.<sup>12</sup> Others have challenged whether situations of protection of nationals abroad could be viewed, literally or in policy, as a response to an "armed attack" against the sanctioning state.<sup>13</sup> From the latter perspective, if the Security Council does not act or cannot act with sufficient swiftness, and if use of military force were necessary to prevent substantial harm to aliens, their state must either passively permit their death or grave

damage or else be in violation of the Charter by using force unlawfully. That view obviously interprets the intent of the framers of the Charter to be that regardless of the emergency conditions, it would be preferable that any number of human lives be destroyed or damaged rather than risk the potential abuses of forcible self-help in international relations, even in the limited instances of emergency situations.<sup>14</sup>

One understands, then, why some authorities have relied on the principle of self-defense. First, since the principle is enshrined in Article 51, it provides a convenient device to opt out of the challenge of confronting head-on the question of interpretation of the prohibition on the use of force in Article 2(4) in the context of use of force in self-help to protect one's nationals, and it allows one to continue to preserve at least an apparent verbal symmetry of these Charter provisions. Secondly, the use of force in protection of nationals, especially in emergency protection, is related to use of force in self-defense; there is much that is analogous. Both are illustrations of self-help to conserve, to protect interests from substantial deprivations by the target state, and in situations like the Iran case, where Embassy premises and personnel are seized, the symbolic identification of those persons with their state is closer than if, for example, fifty American tourists had been seized. When one is considering the use of forcible self-help to deter substantial deprivation of national by a foreign government in an emergency situation, as we are here, the temptation to merge the two is especially strong.

However, the contexts for these two forms of self-help are decidedly different and confusion of the forms by treating both as self-defense is bad thinking and bad policy. It is an argument that, "equates the protection of nationals abroad with the preservation of the state itself."<sup>15</sup> The context for the development of policy and law as to self-defense against armed attack pertains to response to unlawful use of armed force against the territorial integrity or political independence of the defending state. "Self-defense, properly understood, is but the most dramatic of self-help . . . the test for law-

fulness commonly applied is that the target state . . . is faced with a threat to its territorial integrity or political independence so imminent that it must itself immediately resort to the unilateral use of the military instrument in order to protect itself."<sup>16</sup> The context of the use of force in self-help to protect one's nationals abroad involves various forms of unlawful action of the offending government occurring in its own territory against groups of aliens varying in many characteristics (*e.g.*, number, age, sex, reasons for presence in foreign country, nature of relationship to their own government) and having differing forms and extents of personal deprivation (*e.g.*, loss of freedom of movement, psychic trauma, physical injury). None of these features appears to bear close relation to the objective features of the conduct of the offending state in the self-defense context, the substantial use of force in "armed attack," nor to the major interests involved in the very continuation of the existence of the defending state, its territorial integrity and political independence. Further, the sense of crisis level in the perspectives both of officials and of the body politic is very high in avowed situations of self-defense, and wide latitude is granted by international law to the defending state in its determination of the necessary and proportionate response of unlawful armed attack. These factors might well result in excessive force (in destructiveness, in duration and/or in geographic ambit) being used in self-help to protect nationals abroad, where a more restrictive perspective on necessity and proportionality would seem to be required.<sup>17</sup> Indeed, one could argue that the news media's highlighting of the rather casual reference to Article 51 of the U.N. Charter by U.S. Government spokesmen in press conferences early in the Iranian situation has served unduly to heighten the sense of crisis and of grievance in the American public. Correspondingly, this may make it more difficult politically for the U.S. Government at some future date to continue to opt for non-use of military force in the Iranian situation.

Thus, the conclusion here is that Article 51 of the U.N. Charter does not apply to forcible self-help to protect nationals abroad. However,

this does not mean that Article 2(4) of the Charter bars forcible self-help in the emergency deterrence situation we are discussing. In brief, the framers of the Charter, as rational persons, obviously realized that emergencies might arise in which aliens could be killed or suffer other serious deprivation by unlawful coercion before effective U.N. action could be taken. Further, no basis in policy or practice exists to suggest that national officials of the world community, at the establishment of the United Nations or today, would interpret Article 2(4) to prohibit their use of force to protect their nationals from such unlawful coercion where forcible self-help was the only hope for timely action. "Laws are made for men and not for creatures of the imagination."<sup>18</sup> To interpret Article 2(4) to require a "forced sacrifice" of human values, indeed of human lives, on the altar of absolutism in applying the general principle prohibiting forcible self-help would not only invite the contemptuous repudiation of governments. That interpretation would deny the ultimate goal to which Article 2(4) and the entirety of the Charter are committed: the promotion of fundamental human dignity throughout the world community. Even in the early years of the United Nations organization, so fervent a supporter of the Charter limitations on unilateral use of force as Professor Philip C. Jessup, distinguished professor of international law and later a member of the International Court of Justice, recognized the exceptional situation of forcible self-help in the emergency deterrence situation. "It would seem that the only possible argument against the substitution of collective measures under the Security Council for individual measures by a member state would be the inability of the international organization to act with the speed requisite to preserve life."<sup>19</sup> Thus, properly interpreted, Article 2(4), like any proscription of law, is subject to limitations in application by exceptional situations, here the need for forcible self-help to protect nationals in an emergency deterrence situation. As regards the Iranian situation, if the crisis were to escalate, for example, by the threat of imminent death or injury to the

American hostages, and a reasonable appraisal of the circumstances indicated that immediate forcible self-help without the delay of securing Security Council authorization or other community action was the only means of preventing this new and more serious deprivation to American citizens, forcible self-help would be permissible under the Charter. Of course, the U.S. Government would be obligated to give immediate notice to the Council and would be subject to Council appraisal of the decision to use force and the manner in which force was used in the situation.

We have been discussing the permissibility, under the Charter, of forcible self-help to protect nationals in an emergency deterrence situation. What of the situation where a foreign government already is subjecting aliens to unlawful, continuing coercion that is not so injurious as manifestly to threaten imminent death or serious injury, yet is a very substantial deprivation of their rights in the protection of their person and of their civil liberties? Undoubtedly, this describes the situation of the American hostages in Iran, as of this writing. In that situation, the sanctioning goal of the U.S. Government is not that of emergency deterrence, but of restoration, the termination of the continuing, unlawful confinement of the American hostages and of the deprivational consequences and risks associated with that confinement under the current circumstances in Iran. The question is whether forcible self-help by the U.S. Government in this restoration situation would be permissible under the U.N. Charter. Obviously, if the Security Council authorizes the United States to act, forcible self-help in accord with whatever conditions were set by the Council would be permissible. (Here, action by the United States would be both in self-help and to vindicate Security Council authority under the Charter.) Correspondingly, if the Council, exercising its Charter authority to which the U.S. Government is subject, refused to authorize forcible self-help by the United States, then U.S. use of force would be impermissible. The Council would have authoritatively characterized the current Iran situation

as one not presently justifying the use of armed force.

However, what if the Council was prevented from functioning to authorize forcible self-help by the United States, due to the exercise of the veto power by one of the Permanent Members? We have already noted the Soviet veto of the U.S. request for Security Council economic sanctions against Iran. Just as likely is the probability of a Soviet veto of any proposal that the Council authorize forcible self-help. Our conclusion is that whenever the Council, rather than acting by majority vote to disapprove the use of forcible self-help, is prevented by the veto power from acting to express existing majority support for authorizing forcible self-help, unilateral decision to use force in self-help is permissible under the Charter. "A rational and contemporary interpretation of the Charter must conclude that Article 2(4) suppresses self-help insofar as the organization assumes the role of enforcement. When it cannot, self-help prerogatives revive."<sup>20</sup> Much of the preceding discussion concerning the permissibility of forcible self-help in an emergency deterrence situation when timely community action is impossible under optimum operation conditions applies with even greater vigor to the problem of the failure of the Council to be able to function due to the exercise of the veto power.<sup>21</sup> That this is the proper interpretation of the limitation on use of force under Article 2(4) is supported both by interpretation in accord with the principle of effectiveness in implementing the principal purposes of the U.N. Charter and with the principal of subsequent conduct of the parties to the Charter for nearly thirty-five years.<sup>22</sup> To interpret the Charter otherwise would be "an invitation to lawbreakers who would anticipate a paralysis in the Security Council's decision dynamics."<sup>23</sup> Indeed, with the inability of the Council to act, to hold that a state "can, with impunity, attack the nationals . . . of other states without any fear of response . . . is simply to honor lawlessness."<sup>24</sup>

We have concluded that forcible self-help to protect nationals from substantial unlawful deprivation by foreign government is permissible

under the U.N. Charter in emergency deterrence situations and, if the Security Council is prevented by veto from functioning to authorize forcible self-help, in restoration situations. This conclusion does not suggest that, if not barred by the Charter, forcible self-help is without limits. Under contemporary conventional and customary international law, all uses of armed force, in any context, are subject to the requirements of necessity and proportionality. As regards the question of forcible self-help by the United States at some point in the Iranian situation, factors to be considered in the situation existing at that time would include: (a) the present extent of deprivation in terms of such criteria as the type of deprivation and the number, sex, age and health of the nationals; (b) the imminency of further deprivations and their anticipated extent under the same criteria; (c) the outcome of prior attempts to secure lawful conduct of the offending government and the anticipated outcome of any further attempts to protect one's nationals without use of force; (d) the degree of expectation that forcible self-help would achieve the goal of protection, involving such criteria as the anticipated extent of resistance by the offending government to the military operation; the extent of violence that the offending government or its citizens might exercise against the foreign nationals because of the exercise of forcible self-help, and the extent of the risk of death or injury to one's nationals by the self-help operation itself; (e) the destructiveness of the weaponry to be employed, and the planned duration and geographic ambit of the military operation, and (f) the extent of the risks of death or injury to noncombatant citizens of the offending state or of third states. If a good faith, knowledgeable appraisal of the then-existing Iranian situation under this framework of analysis provided an affirmative response to the requirements of necessity and proportionality, United States use of forcible self-help would be permissible. If not, then regardless of the threshold question of U.N. Charter limits on forcible self-help, forcible self-help in the particular instance would be impermissible under international law.

## FOOTNOTES

- \* Professor of Law, Marshall-Wythe School of Law, College of William and Mary, B.A., M.A., LL.B., University of Southern California; LL.M., J.S.D., Yale University.
- <sup>1</sup> Fifty Americans are confined in the U.S. embassy building in Teheran, and three in the premises of the Iranian Foreign Ministry. Two of the Americans at the embassy are private citizens.
- <sup>2</sup> *Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran*, 8 U.S.T. 899. All quoted provisions of the Treaty are from Article II.
- <sup>3</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*. T.I.A.S. 3365. Article 34 prohibits taking civilians as hostages and Article 33 prohibits reprisals.
- <sup>4</sup> *Vienna Convention on Diplomatic Relations*. 500 U.N.T.S. 95; 23 U.S.T. 3227; T.I.A.S. 3227.
- <sup>5</sup> Articles 29, 31 and 37.
- <sup>6</sup> Article 9.
- <sup>7</sup> Article 44.
- <sup>8</sup> As regards the customary international law on the protection of aliens, see concise discussion and authorities cited in Lillich, "Forcible Self-Help by States to Protect Human Rights," 53 *Iowa L.R.* 325, 326 et seq. (1967); Mirvahabi, "Entebbe: Validity of Claims in International Law," XVII-4 *The Military Law and Law of War Review* 627, 648 (1978).
- <sup>9</sup> See authorities cited *supra*, note 8. See, also, Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives," in Moore (ed.), *Law and Civil War in the Modern World* 229 (1974), citing various authorities.
- <sup>10</sup> Thomas & Thomas, *Non-Intervention* 312 (1956); Lillich, *supra*, note 8. Both in drafting and in practice for nearly thirty-five years under the Charter, the state parties have restricted the Charter limitation on sanctions in self-help to those involving threat or use of armed force.
- <sup>11</sup> See discussion in Lillich, *supra*, note 8, at 334, 337; Mirvahabi, *supra*, note 8, at 645; Wright, "The Legality of Intervention Under the United Nations Charter," 51 *Am. Soc'y Int'l L. Proceedings* 79, 88 (1957). "Apart from self-defense and collective self-defense, self-help by states is now illegal." Brownlie, "Humanitarian Intervention," in Moore (ed.), *supra*, note 9, 217.
- <sup>12</sup> E.g., Bowett, *Self-Defence in International Law* 92 (1958); Waldock, "The Regulation of the Use of Force by Individual States in International Law," 81 *Recueil des Cours* 455 (II-1952); Fenwick, "The Dominican Republic: Intervention or Collective Self-Defense," 60 *Am. J. Int'l L.* 64 (1966); Mirvahabi, *supra*, note 8, at 632-637.

- <sup>18</sup> See discussion in Lillich, *supra*, note 8, at 337; Brownlie, *International Law and the Use of Force by States* 299-301 (1963).
- <sup>19</sup> "It is true that the protection of nationals presents particular difficulties and that a government faced with a deliberate massacre of a considerable number of nationals in a foreign state would have cogent reasons of humanity for acting, and would also be under very great political pressure. The possible risks of denying the legality of action in a case of such urgency, an exceptional circumstance, must be weighed against the more calculable dangers of providing legal pretexts for the commission of breaches of the peace in the pursuit of national rather than humanitarian interests." Brownlie, *supra*, note 13 at 301.
- <sup>20</sup> Lillich, *supra*, note 8, at 336.
- <sup>21</sup> McDougal, "Authority to Use Force on the High Seas," *XX Naval War College Review* 19, 29 (Dec. 1967). Mirvahabi, *supra*, note 8, at 632-637, applies the concept of self-defense extensively in analyzing the permissibility of the Israeli use of forcible self-help in the Entebbe situation, with no apparent recognition of the differing contexts of use of force in self-defense and in protection of nationals abroad, yet gives only cursory mention to the application of self-help to protect nationals as a sanctioning strategy under the international law of protection of aliens, at 648.
- <sup>22</sup> "The use of self-defense terminology instead of humanitarian intervention phraseology, however, evokes more readily national security fears that occasionally may lead to more extensive uses of force." Lillich, *supra*, note 8, at n. 77, 337-338.
- <sup>23</sup> Westlake, *International Law* 306 (1902).
- <sup>24</sup> Jessup, *A Modern Law of Nations* 170 (1949).
- <sup>25</sup> Reisman, *Nullity and Revision* 850 (1971). See also, Lillich, *supra*, note 9; Nanda, "The United States' Action in the 1965 Dominican Crisis: Impact on World Order—Part I," 43 *Denver L.J.* 439, 458 (1966); McDougal, *supra*, note 16, at 28-29; Lillich, *supra*, note 8, at 344-345.
- <sup>26</sup> "Surely to require a state to sit back and watch the slaughter of innocent people in order to avoid violating blanket prohibitions against the use of force is to stress blackletter at the expense of far more fundamental values. . . . Furthermore, it is a realistic assumption that no state with the capability to act will allow its own nationals and the nationals of other states to be killed or injured abroad. . . ." Lillich, *supra*, note 8, at 344-345.
- <sup>27</sup> See McDougal, *supra*, note 16, at 28-29; Lillich, *supra*, notes 8 and 9.
- <sup>28</sup> Reisman, "Sanctions and Enforcement," in III, Black and Falk (eds.), *The Future of the International Legal Order* 273, 332-333 (1971).
- <sup>29</sup> McDougal, *supra*, note 16, at 28.