NOTE

COMPARING THE 1993 U.S AIRSTRIKE ON IRAQ TO THE 1986 BOMBING OF LIBYA: THE NEW INTERPRETATION OF ARTICLE 51

I. INTRODUCTION

During the night of June 27, 1993, twenty-three streaks of light skimmed the desert sands of Iraq, rapidly converging on a location in southwest Baghdad. The flight of United States Tomahawk cruise missiles, each carrying almost 1,000 pounds of explosives, raced by the Baghdad skyline searching for the designated target: the command and control complex of the Iraqi Intelligence Service. The night was filled with deafening explosions as the missiles struck the grounds of the intelligence complex, sending plumes of flame into the night sky. When the explosions ceased and the din faded, the intelligence complex had been devastated and eight Iraqi civilians were dead.1

In stark contrast to all of the noise and tumult which characterized the immediate consequences of the United States airstrike on Iraq, the voice of the world community in questioning the legality of the attack has been markedly quiet, if not entirely inaudible. The majority of states have expressed no objections to the airstrike and seem to have largely accepted the legal justification provided by the United States.2 According to the United States' ambassador to the United Nations, Madeline K. Albright, the attack was prompted by an Iraqi assassination attempt on former-President George Bush.3 Furthermore, she stated that the attack was authorized by

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2 See infra notes 21-26 and accompanying text.

Article 51 of the United Nations Charter, which specifically permits the use of force in self-defense.\(^4\)

The most remarkable aspect of the international community’s quiet acceptance of the United States’ reliance on Article 51 for justifying the airstrike is not simply that so many states acquiesced to the United States’ actions. Iraq is certainly no favorite of the world community, especially after its recent aggression against Kuwait leading to the costly Persian Gulf War,\(^5\) its attempted genocide against the Kurds,\(^6\) and its deliberate efforts to thwart attempts by U.N. inspectors to enforce U.N. Security Council resolutions.\(^7\) Rather, the truly remarkable aspect of the general world-wide acceptance\(^8\) of the legality of the airstrike only becomes clear after

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\(^4\) Id. Article 51 gives a state a temporally limited right to self-defense in response to an “armed attack” by another state. U.N. CHARTER art. 51. It further requires that such actions must be immediately reported to the Security Council. Id. For the text of Article 51, see text accompanying note 47.


\(^6\) Under the leadership of Saddam Hussein, the government of Iraq has conducted a campaign of genocide against the four million Kurdish people of northern Iraq. Evidence collected by human rights agencies indicates that hundreds of thousands of Kurds have already been killed by mass executions, torture, chemical attacks, Iraqi land mines, and random killings. In addition, some 4,000 Kurdish villages and hamlets have been systematically destroyed by Iraqi forces. The amount of evidence collected to date is so compelling that researchers intend to bring an action in the International Court of Justice against Iraq for the crime of genocide. Judith Miller, *Iraq Accused: A Case of Genocide*, N.Y. TIMES, Jan. 3, 1993, Section 6 (Magazine), at 12.

\(^7\) After its defeat in the Persian Gulf War, Iraq agreed to grant U.N. inspectors reasonable access to facilities in Iraq which were suspected of being used for the production of nuclear, biological or chemical weapons. On numerous occasions, however, Iraq refused to adhere to its obligations under the cease-fire agreements and denied U.N. inspectors access to several facilities. See, e.g., Paul Lewis, *Iraq Again Refuses to Let a U.N. Team Close Missile Sites*, N.Y. TIMES, July 12, 1993, at A1; *Iraq Thwarts U.N. Arms Inspection*, 1993 FACTS ON FILE 513, 515-516.

\(^8\) There are a few exceptions to this general approval. In addition to Iraq, several other states have condemned the U.S. action, including China, Bangladesh, Yemen, Iran, and Sudan. Paul Holmes, *Concern in China, Misgivings in Europe*, Reuter Libr. Rep., June 28, 1993, available in LEXIS, World Library, Reuter North American News File; Adamishin Defends Foreign Ministry Statement on US Bombing Of Iraq, BBC, Summary of World Broadcasts, July 3, 1993, at Su/1731/C2, available in LEXIS, World Library, BBCSWB File.
comparing it to the reaction of the international community following a relatively recent and extremely similar use of U.S. military force: the 1986 airstrike against Libya.

In April 1986, when the United States armed forces conducted a bombing raid against targets in Libya under circumstances very similar to those of the 1993 Iraq strike, the world community responded with almost unanimous condemnation and disapproval. Moreover, the international community resoundingly rejected the United States' reliance on Article 51 as legal authority for the Libya raid—the same authority which has been widely accepted by the world community following the 1993 Iraq raid.

An important change has taken place in the legal interpretation of Article 51: a broadened construction which sets a crucial precedent in international law. This Note analyzes the apparent shift in the interpretation of Article 51 as exemplified by the different responses of the international community to the 1986 Libya raid and the 1993 Iraq strike, and examines the significance of this shift to the future of international law.

II. FACTUAL BACKGROUND

A. The 1993 Airstrike on Iraq

Proclaimed as a hero by the Kuwaiti people for liberating their nation, former-President Bush was invited by the Kuwaiti government to visit Kuwait and attend a special ceremony in Kuwait City in appreciation of his leadership during the Persian Gulf War. On April 14, as Mr. Bush was beginning his three-day visit to Kuwait, Kuwaiti authorities arrested fourteen men for smuggling plastic explosives into Kuwait and subsequently uncovered evidence that the explosives were intended to be used to...
assassinate the former President.\textsuperscript{14}

Convinced by evidence presented by the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) that the Iraqi government had orchestrated the plot,\textsuperscript{15} President Bill Clinton ordered an airstrike against Iraq.\textsuperscript{16} On June 26, 1993, United States naval forces launched the attack against the Iraqi intelligence headquarters.\textsuperscript{17} The twenty-three Tomahawk cruise missiles largely succeeded in destroying most of the intelligence compound,\textsuperscript{18} although three missiles missed their targets and

\textsuperscript{14} During the night of April 12, 1993, the suspects in the plot against former-President Bush smuggled approximately 80 kilograms of explosives, hidden within the frame of a Toyota Land Cruiser, into Kuwait. \textit{White House Background Briefing on Action Against Iraq, U.S. NEWSWIRE}, June 26, 1993, available in LEXIS, Nexis Library, Wires File [hereinafter \textit{White House Briefing}]. The car bomb could be detonated either by manual remote control or by timer, and had the power to "kill people within a radius of 400 yards." \textit{Id.}

On June 4, 1994, after a year-long trial, a Kuwaiti court sentenced five Iraqis and one Kuwaiti to death by hanging for their involvement in the assassination plot. Seven other Iraqi and Kuwaiti conspirators received prison sentences ranging from six months to 12 years, and one Kuwaiti was acquitted. \textit{Six Condemned in Bush Death Try, 1994 FACTS ON FILE 466, 466.}

\textsuperscript{15} Both the FBI and the CIA conducted investigations, which confirmed that the strike team had smuggled the large car bomb into Kuwait in order to assassinate former-President Bush. \textit{Id.} According to a senior Administration official, two of the main suspects, Ra'ad al-Asadi and Wali al-Ghazali, "told the FBI that they had been recruited and received orders in Basra, Iraq, from individuals they believed to be associated with the Iraqi Intelligence Service," and al-Ghazali "told the FBI that he was recruited for the specific purpose of assassinating President Bush in Kuwait City." \textit{Id.}

FBI forensic experts further linked the assassination plot to Iraq after examining the components of the bomb, certain aspects of which had been found "only in devices linked to Iraq and not in devices used by any other terrorist group." \textit{Id.} The experts also concluded that other explosives seized in the plot included components built by the same person or persons who had built similar devices previously recovered from Iraq. \textit{Id.}


\textsuperscript{17} The Iraqi Intelligence Service's central command and control complex was selected as the target of the attack because of its apparent close involvement with planning and equipping the assassination strike team. \textit{Id. See White House Briefing, supra note 14.}

exploded in a nearby residential neighborhood, killing eight Iraqi citizens.\(^\text{19}\)

The international community responded to the airstrike with general approval. The members of the United Nations reacted mildly when informed of the strike at a special meeting convened by the United States on June 27, 1993.\(^\text{20}\) Britain\(^\text{21}\) and Israel\(^\text{22}\) expressed staunch support for the action, while Russia, Germany, Italy, Japan, and South Korea voiced unanimous if somewhat more subdued support.\(^\text{23}\) China was the only permanent member of the U.N. Security Council which questioned the legality of the attack,\(^\text{24}\) although France expressed certain reservations.\(^\text{25}\) All other members of the Council voiced their approval of the attack—including all three of the

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\(^\text{19}\) *U.S. Missile Attack, supra* note 1, at 481. The civilians who were killed included two children and a prominent Iraqi painter, Layla al-Attar, who ran the state art gallery. *America v. Islam, supra* note 18, at 39.


\(^\text{21}\) Prime Minister John Major’s office issued a statement declaring that state terrorism “must be met with an unambiguous response and must be deterred by all proper and legitimate means . . . . We regard the American response as entirely justified.” Marshall, *supra* note 13, at 16. British Foreign Secretary Douglas Hurd stated, “[t]his operation was a justified and proportionate exercise of the right of self-defense and a necessary warning to Iraq that state terrorism cannot and will not be tolerated.” Holmes, *supra* note 8.

\(^\text{22}\) Martin Walker, *Clinton Hails Strike as Success; Six Dead as Missiles Miss Iraqi Target*, GUARDIAN, June 28, 1993, at 1.

\(^\text{23}\) Holmes, *supra* note 8.

\(^\text{24}\) *Id.* The Chinese Foreign Ministry issued a statement expressing its concern about the attack: “We are opposed to any act that contravenes the U.N. [C]harter and norms governing international relations. Nor are we in favor of any action, including use of force, that may aggravate tension in the region.” *Id.*

\(^\text{25}\) France stated that it did not seek “either the destabilization or the dismemberment of the Iraqi state.” *U.S. Missile Attack, supra* note 1, at 481.
Islamic member nations on the Security Council.26

B. The 1986 Bombing of Libya

The events leading to the raid on Libya are remarkably similar to those preceding the airstrike on Iraq. Libyan President Mu'ammar Qaddafi had lost the support of most states by supporting a series of terrorist attacks against Western European civilians.27 These attacks included the bombing of a West Berlin nightclub on April 5, 1986, which killed a U.S. serviceman and a Turkish national and injured about 200 others, including more than sixty U.S. soldiers and their dependents.28 U.S. intelligence agencies conclusively linked the bombing in Berlin to the Libyan government, discovering evidence that the terrorists involved in the incident had been organized and supported by Libya.29 Learning of this connection, President Ronald Reagan ordered a bombing raid on April 14, 1986, against military and paramilitary targets in Libya, including airfields, intelligence facilities, and terrorist training camps.30 The raid inflicted serious damage to Libya's military infrastructure, and an unknown number of Libyan civilians were

26 The three Islamic members of the security council are Pakistan, Djibouti and Morocco. Stephen Robinson, UN Support for Raid on Baghdad, DAILY TELEGRAPH, June 28, 1993, at 1. Other Moslem nations, including Egypt, Jordan and Iran, criticized the airstrike for injuring civilians. U.S. Missile Attack, supra note 1, at 481. Of the Arab countries, only Kuwait supported the raid. Id.

27 The most egregious of these terrorist acts were the massacres at the Rome and Vienna airports, and the hijacking of the Achille Lauro cruise ship and subsequent murder of Leon Klinghoffer, an elderly American confined to a wheelchair. For a review of Libyan sponsored terrorist activities, see David Turndorf, Note, The U.S. Raid On Libya: A Forceful Response to Terrorism, 14 BROOKLYN J. INT'L L. 187, 187 n.3-4, 190-92 (1988).

28 U.S. Presses Allies on Libya And Weighs Military Action; West Berlin Disco Bombing Kills 2, 1986 FACTS ON FILE 243, 243 [hereinafter U.S. Presses Allies on Libya]. Another American later died from injuries caused by the bomb explosion; thus, two Americans were killed by the terrorist attack. Gregory Francis Intoccia, American Bombing of Libya: An International Legal Analysis, 19 CASE W. RES. J. INT'L L. 177, 185 n.77 (1987).


30 Turndorf, supra note 27, at 1 n.1.
killed.  

The reaction of the international community was singularly disapproving. Of the United States' traditional allies, only Britain, Israel, and South Africa actively supported the raid. Canada offered only qualified support for the raid. Significantly, almost all other states, including some of the United States' allies, expressed grave concerns over the legality of the raid. The Soviet Union deplored the raid and canceled a pre-summit meeting with the United States in protest. China called it an "encroachment upon the territory of a sovereign state under the pretext of striking terrorism."  

32 Britain supported the raid by allowing the United States to launch the raid from British air bases. Andrew H. Malcolm, *While Across the Atlantic, Anglophilia Rules*, N.Y. TIMES, Apr. 26, 1986, at A4. British Prime Minister Margaret Thatcher strongly defended her decision to aid the United States, explaining, "It was inconceivable to me that we should refuse U.S. aircraft and U.S. pilots to be able to defend their own people . . . . If one always refused to take any risks because of the consequences, then the terrorist governments will win and one can only cringe before them." *U.S. Jets Bomb Libyan Targets*, supra note 9, at 260.  
33 Israeli Prime Minister Shimon Peres applauded the U.S. raid, stating that "[t]he American action benefitted the whole free world, which was becoming more and more a victim of irresponsible terrorism. It is good that a major power like the United States took steps to cut off the arm of the terrorists, at least one of them." *Israelis Praise It While Arabs Vow to Avenge It*, CHIC. TRIB., Apr. 16, 1986, at A9 [hereinafter *Israelis Praise*].  
34 *U.S. Jets Bomb Libyan Targets*, supra note 9, at 260.  
35 Canadian Prime Minister Brian Mulroney stated that he agreed with the objectives of the raid, but deplored the killing of innocent civilians. *Id.*  
36 U.S. allies who objected to the raid include Greece, Holland, France, West Germany, Belgium, Spain and Italy. Bhatia, *supra* note 29, at 55-56. France obstinately refused to grant the U.S. aircraft permission to enter its airspace, forcing the pilots to fly a course more than twice the length than would have otherwise been necessary. *Id.* at 258, 260. The United States did not ask Spain for overflight permission, "probably because the Spanish government's answer was already no," according to Spanish Prime Minister Felipe Gonzalez. *Id.* at 260. West Germany and Italy tempered their disapproval of the raid by also condemning Libya's actions that had precipitated the crisis. *Id.*  
37 A Kremlin statement attacked the raid as "a new criminal action fraught with a serious threat to universal peace and security. *Id.* Soviet foreign ministry spokesperson Vladimir B. Lomeiko asserted that the United States had "shown contempt for international law and morality." *Id.*  
38 *Israelis Praise*, supra note 33, at A9.
The Third World nations uniformly condemned the raid.³⁹

In the United Nations, the overwhelming majority of states objected to the raid. U.N. General Secretary Javier Perez de Cuellar issued a statement declaring that "... [the Secretary General] deplores last night's military action by one member state against another ..."⁴⁰ The General Assembly of the United Nations issued a resolution supported by seventy-eight members who condemned the attack.⁴¹ Furthermore, the Security Council attempted to issue its own resolution condemning "the armed attack by the United States of America in violation of the Charter of the United Nations and the norms of international conduct."⁴² President Reagan's reliance on Article 51 as authorization for the airstrike had clearly been rejected.

III. LEGAL BACKGROUND

A. Article 51 of the U.N. Charter

Article 51 originated with the ratification of the U.N. Charter in 1945. Having witnessed the horrors and brutality of the Second World War, the drafters of the Charter wrote the document "[t]o maintain international peace and security."⁴³ The guiding principle behind the Charter is that international aggression should be avoided whenever possible and condemned as a violation of international law.⁴⁴ This prohibition against warfare is

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³⁹ Intoccia, supra note 28, at 189. Saudi Arabia stated that the raid violated "all international norms." Israelis Praise, supra note 33, at A9. Kuwait called the raid an "act of terrorism." Id. Egypt, a traditional enemy of Libya, expressed "alarm and strong resentment." Id. Jordan, which severed diplomatic relations with Libya in 1984, called the raid "a grave act," adding that "the results would be graver." Id. India objected that the airstrike was in total disregard of international law and a clear act of aggression. Id. Indian Prime Minister Rajiv Gandhi lambasted the United States, calling the raid a "dastardly, blatant and unprovoked act of aggression" and offered India’s "firm support and solidarity to Libya in this critical hour." U.S. Jets Bomb Libyan Targets, supra note 9, at 260.

⁴⁰ Israelis Praise, supra note 33, at A9.


⁴² Zverina, supra note 31. The nine countries supporting the resolution were: Bulgaria, China, Congo, Ghana, Madagascar, the Soviet Union, Thailand, Trinidad and Tobago, and the United Arab Emirates. Id. Australia, Denmark, and France joined Britain and the United States in vetoing the U.N. resolution condemning the raid. Id.

⁴³ U.N. CHARTER art. 1, para. 1.

⁴⁴ Id. art. 1-2.
presented in Article 2(4):

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.45

Understandably, the U.N. Charter does not permit many exceptions to this general rule.46

However, one exception to the rule is found in Article 51, which permits the use of force in self-defense. The wording of this article is important:

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. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.47

In the context of the present discussion of the raids on Libya and Iraq, the key phrase in Article 51 is "armed attack." This ambiguous phrase has created a hotbed of debate in recent years.48

The meaning of "armed attack" may have appeared self-explanatory to the drafters of the U.N. Charter who had just experienced a war which was heralded by Hitler's massive blitzkrieg assaults into Germany's neighboring

43 Id. art. 2, para. 4.
45 U.N. CHARTER art. 51.
46 See Feder, supra note 46, at 403, 412-18; Intoccia, supra note 28, at 203.
Whether the Nazi invasion of Poland, accomplished by scores of tanks, planes, and soldiers, constituted an "armed attack" is largely a rhetorical question.

In recent decades, however, the world has witnessed the rise of a new and perhaps more sinister form of warfare. This form of international aggression does not always announce itself with the thunder of tanks and planes, and its soldiers do not always wear a military uniform. International scholars have dubbed this new strategy "low-intensity warfare," of which state-sponsored terrorism is a significant part. Low-intensity warfare does not readily lend itself to the international law terms of the U.N. Charter. Moreover, determining the line at which low-intensity warfare becomes an "armed attack" has been a perplexing task for international legal scholars.

B. Interpreting Article 51: The Restrictive and Expansive Views

Whether any act of international aggression qualifies as an act which would trigger the legal use of force in self-defense largely depends upon the breadth of interpretation given to the phrase "armed attack." Two main schools of thought have developed in past decades regarding the meaning of "armed attack": one advocates a restrictive interpretation of the phrase,
while the other argues for an expansive view of the term.\textsuperscript{53}

The restrictive view maintains that "armed attack" should be given a narrow and literal definition.\textsuperscript{54} Thus, only an actual attack by a large military force would trigger the self-defense exception to the general prohibition against warfare. This view emphasizes the overriding influence of Article 2(4) and recognizes the potential for abuse of Article 51 if self-defense justifications are accepted too readily.\textsuperscript{55} An overly expansive interpretation of "armed attack" would provide a ready excuse to any state seeking to attack another. As long as the aggressor state could vaguely characterize its action as a pre-emptive strike in self-defense against some possible future threat posed by the other state, Article 51 would justify the aggression.\textsuperscript{56}

The expansive view holds that a literal interpretation of "armed attack" places undue constraints on a state's ability to respond legitimately to international aggression.\textsuperscript{57} The expansivists point out that under a truly literal construction of Article 51, pre-emptive actions against even a clearly imminent attack are not permitted.\textsuperscript{58} Thus, a state adopting a purely restrictive view of Article 51 may be faced with the absurd situation of having to watch a squadron of enemy bombers reaching striking distance to launch cruise missiles, unable to act until the last minute when the aircraft actually enters its airspace.

The expansive view argues that the restrictivists fail to appreciate the serious problems posed to civilized nations by low-intensity warfare.\textsuperscript{59} As the expansivists explain, it is no longer necessary to attack with scores of tanks in order to inflict grave injury on a foreign state. These scholars point

\textsuperscript{53} The two interpretations of "armed attack" are discussed fully by Feder, supra note 46, at 402-12.

\textsuperscript{54} Id. at 404.

\textsuperscript{55} Id. at 404-05.

\textsuperscript{56} For example, U.S. Deputy Secretary of State Kenneth W. Dam suggested that the mining of Nicaragua's harbors in 1984 could be justified by characterizing it as "an act of collective self-defense," presumably on the theory that if Soviet influence were allowed to develop in Nicaragua, the Soviet Union would gain a "foothold" in Central America, which could eventually threaten the neighboring United States. Bernard Gwertzman, House Group Joins in Opposing Mining Nicaraguan Ports, N.Y. TIMES, April 12, 1984, at A1. This theory, while plausible, is difficult to reconcile with Article 51's requirement of an "armed attack," no matter how expansive an interpretation is given to the phrase.

\textsuperscript{57} See Coll, supra note 50, at 116-18.

\textsuperscript{58} Feder, supra note 46, at 408.

\textsuperscript{59} Coll, supra note 50, at 111-14.
to the recent rise in terrorist activity and the need for nations to defend against this threat without having to wait for a terrorist group to detonate a bomb in the rotunda of their capitol building.\footnote{Professor Coll notes, "There are situations besides the defense of U.S. territory and American lives in which force should be used, either directly or indirectly. The [U.N.] [C]harter's prohibitions on the use of force in international relations should be read as a proscription on aggressive force, not as a ban on the right of free societies to defend their interest and way of life against the complex modalities of violent peace." \textit{Id.} at 116.}

The restrictivist viewpoint has prevailed during the past decades and is supported by the majority of the U.N. Security Council.\footnote{Feder, \textit{supra} note 46, at 414.} However, the United States leads the minority of states who have argued for a more expansive interpretation of Article 51.\footnote{The mining of Nicaragua's harbor in 1984, the Libya bombing raid in 1986, and the invasion of Panama in 1989 are all examples of the United States justifying the use of military force by relying on an expansive interpretation of Article 51. John Quigley, \textit{The Legality of the United States Invasion of Panama}, 15 \textit{YALE J. INT'L L.} 276, 287-92 (1990).} This dispute has been the source of a great deal of friction between the United States and the international community, reflected in the controversy over the Libya raid. The restrictivist international majority has, until now, been steadfast in its opposition to the expansivist arguments of the United States.

IV. ANALYSIS

The similarities between the 1986 attack on Libya and the 1993 attack on Iraq are striking. Both were carefully calculated airstrikes targeting military or paramilitary facilities which supported terrorist activities that threatened the lives of American citizens.\footnote{Former-President Bush was the specific target of the Iraqi assassination plot, but many Americans in Bush's entourage almost certainly would have been killed if the bomb had detonated. The 176 lb. bomb had the capacity to level a large area of Kuwait City, killing hundreds of people. Preston, \textit{supra} note 20, at A12.} Both were conducted at night with relatively little collateral damage and few civilian casualties.\footnote{Although some 45-100 civilians were killed in the 1986 Libya raid, this fact was seldom cited as a reason behind the international community's condemnation of the raid.} Both were attempts to thwart the audacity of a particularly belligerent leader of a third world state.\footnote{It is difficult to argue that the international community condoned the Iraq strike simply because of its animosity for Saddam Hussein. Although the majority of nations harbor a strong dislike for Hussein, Mu'ammar Qaddafi was certainly no less reviled by the world in...} Most importantly, in both instances the United States...
justified the legality of its use of force by relying on Article 51 of the U.N. Charter.66

Accordingly, the international community's response to the 1993 strike is surprising since it differed so drastically from its response to the 1986 bombing raid. In stark contrast to the quiet acceptance of 1993, a majority of countries, including many of the United States' allies, responded to the raid on Libya with words of indignation and condemnation. Most significantly, the majority of states openly and specifically criticized the United States for violating international law.

The strongly negative response to the raid on Libya reflects the traditional restrictive view of Article 51: At the time of the U.S. bombing raid, Libya was not engaged in a current, ongoing "armed attack" against the United States,67 and consequently the U.S. actions could not properly be called

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66 In his letter to Congress, President Clinton explained the legal justification for the Iraq strike:

Consequently, in the exercise of our inherent right of self-defense as recognized by Article 51 of the United Nations Charter and pursuant to my constitutional authority with respect to the conduct of foreign relations and as commander in chief, I ordered [the strike against Iraq].

Letter from President Clinton to Congress (June 28, 1993), available in LEXIS, Nexis Library, Wires File.

President Reagan's letter to Congress declared, in similar fashion, "These strikes [against Libya] were conducted in the exercise of our right to self-defense under Article 51 of the United Nations Charter." Letter from President Reagan to Congress (Apr. 16, 1986), DEP'T ST. BULL., June 1986, at 8. In his address to the American people, Reagan again stated, "Self-defense is not only our right, it is our duty. It is the purpose behind the mission undertaken tonight—a mission fully consistent with Article 51 of the U.N. Charter." President's Address to the Nation (Apr. 14, 1986), DEP'T OF ST. BULL., June 1986, at 1.

67 An expansivist would dispute this point, arguing that while Libya may not have been actually attacking the United States at the time of the April bombing raid, the recurring past terrorist acts committed by Libya constituted a pattern of continuing international aggression against the United States that justified Article 51 measures. The expansivist would accuse the restrictivist of focusing too narrowly on the "lull between battles" rather than on the continuing "war" between Libya and the United States. The Security Council rejected similar arguments made by Israel throughout the period of 1968 to 1978 to justify its forceful and militant response to P.L.O. terrorist activities. Feder, supra note 46, at 414-18. This argument, known as the "accumulation of events" theory or the Nadelstichtaktik (needle prick) doctrine, is summarized by Feder: "According to this doctrine of international law, . . . each specific act of terrorism, or needle prick, may not qualify as an armed attack that entitles the victim state to respond legitimately with armed force. But the totality of the incidents may
"self-defense." The restrictivists' fear that states will abuse an expansive interpretation of Article 51 for their own illegitimate ends is clearly reflected in China's statement condemning "encroachment upon the territory of a sovereign state under the pretext of striking terrorism."68

In contrast, the reaction to the 1993 airstrike on Iraq reflects a strongly expansive view of Article 51. Iraq was not involved in a current, ongoing attack against the United States at the time of the cruise missile strike, nor had it exhibited any threat of imminent attack. In fact, the incident which the United States claimed to be the "armed attack" justifying Article 51 measures, the assassination attempt on former-President Bush, was never carried to fruition.69 Nevertheless, the international community acquiesced in Ambassador Albright's characterization of the Iraqi plot as an "attack."70

These two different reactions from the members of the international community reflect a clear shift in interpretation of Article 51 from a restrictive view to a more expansive view. The meaning of "armed attack" has apparently evolved during the last decade, and the world now seems to be on the verge of legalizing the sort of international use of force which heretofore has been prohibited.

Admittedly, the international community's acceptance of the 1993 raid on Iraq can hardly be characterized as a thundering approval for an altogether new and widely expanded view of Article 51. The majority of states have allowed the United States to justify its actions by relying on Article 51, but underlying murmurs of objection are still being voiced by dissenting elements in those governments and by international legal scholars.71 Obviously, a total rejection of the restrictivist view of "armed attack" in

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68 See Israelis Praise, supra note 33, at A9.
69 A restrictivist would argue that allowing an attempted, but subsequently frustrated, attack to justify Article 51 response measures would be to hopelessly blur the meaning of armed attack to the point of rendering the phrase meaningless.
70 During the June 27, 1993 Security Council meeting, Ambassador Albright stated, "[I]n our judgment, every member here today would regard an assassination attempt against its former head of state as an attack against itself, and would react." Albright, supra note 20.
favor of a widely expansive one has not yet been made.

However, the quiet and somewhat subdued approval of the 1993 Iraq strike exhibited by the international community is nonetheless highly significant when viewed in the context of prior attempts by the United States to justify its use of armed intervention on grounds of self-defense. In the past, such attempts have been overwhelmingly rejected. The 1986 raid on Libya, while most closely paralleling the circumstances of the 1993 airstrike on Iraq, is only one of several incidents in which the international community has charged the United States with violating international law through military intervention in a foreign state under a false claim of self-defense. The 1989 invasion of Panama also exemplifies the United States' use of limited military force against an alleged threat to American nationals and its reliance on Article 51 for justification of that use of force. After the invasion of Panama, many members of the international community rejected the validity of the Article 51 defense and criticized the United States for violating international law.

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72 In 1989, President Bush responded to the murder of an American military officer and the abuse of another officer and his wife in Panama by commencing "Operation Just Cause," the United States military intervention in Panama to oust the allegedly corrupt Panamanian leader, Manuel Noriega. For a summary of the events leading to the invasion and President Bush's subsequent justification of the invasion, see U.S. Forces Invade Panama, Seize Wide Control; Noriega Eludes Capture, 1989 FACTS ON FILE 941 [hereinafter U.S. Forces Invade Panama]. The Bush Administration justified the incursion by alleging that the Panamanian Defense Force constituted a threat to the Americans living in the Canal Zone, and specifically relied on Article 51 as giving the United States the right to intervene. Id. at 942. The United States also relied on Article 21 of the Charter of the Organization of American States, which prohibits members from resorting to military force except in self-defense, and Article 4 of the 1979 treaty covering the neutrality and operation of the Panama Canal. Susan F. Rasky, Fighting in Panama: Legal Case; Administration Says International Agreements Support Its Actions, N.Y. TIMES, Dec. 21, 1989, at A22.

73 The international community largely rejected the United States' interpretation of Article 51. On December 22, 1989, the Organization of American States voted 20 to 1 to adopt a resolution "deeply deploring" the U.S. intervention and calling for the withdrawal of U.S. troops. Noriega Seeks Refuge with Papal Envoy in Panama, 1989 FACTS ON FILES 961, 961. On December 29, the U.N. General Assembly voted 75 to 20 in favor of a resolution that "strongly deplored" the invasion as a "flagrant violation of international law." Id. A U.N. Security Council resolution condemning the invasion was blocked on December 23 by vetoes from the United States, Great Britain, and France. Id. Other nations criticizing the U.S. intervention in Panama included: Argentina, Brazil, Costa Rica, Cuba, Guatemala, Mexico, Nicaragua, Peru, the Soviet Union, and Venezuela. U.S. Forces Invade Panama, supra note 72, at 942-943.
Importantly, the circumstances of the Panama invasion were markedly different from those of the 1986 Libya raid and the 1993 Iraq airstrike, and accordingly, the conclusions which can be drawn from the comparison are limited. However, the harsh criticism which the United States faced after the Panama invasion reflects the strong reluctance of the international community to accept an Article 51 justification for the use of military force by the United States. Thus, while the international support for the 1993 Iraq airstrike has not been a resounding thunder of approval, the existence of a notable measure of support is indeed remarkable in light of the international community’s past history of rejecting Article 51 justifications by the United States.

The shift away from a restrictivist interpretation of Article 51 becomes even more pronounced when the legal justification for the 1993 airstrike on Iraq is considered. The legal justification for the Iraq strike is probably much weaker than it was for the 1986 bombing raid, as revealed by examining the minor variations in the circumstances of the two raids.

First, the terrorist activities which led to the 1986 Libya raid resulted in over fifty American casualties (including two deaths), while the 1993 assassination plot was discovered before any life was harmed or lost. Secondly, in 1986, the Libyan government expressed its clear intention to launch future terrorist attacks against American nationals. In contrast, the United States found no conclusive evidence that Iraq intended to attempt

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74 The objective of the invasion of Panama was the removal of Noriega, the generalissimo President of the nation who served as a key link in the illegal drug trafficking chain from the South American drug cartels to the United States. Id. at 942. In contrast, the strikes against Iraq and Libya were motivated by those nations' alleged terrorist activities.

75 For criticisms from legal scholars of the invasion of Panama as a violation of international law, see Tom J. Farer, Panama: Beyond the Charter Paradigm, 84 AM. J. INT’L L. 503 (1990); Quigley, supra note 62.

76 See U.S. Presses Allies on Libya, supra note 28 and accompanying text.

77 Id. at 209-10. During the period of 1984-1986, Libyan president Mu’ammar Qaddafi on numerous occasions expressed his intent to harm U.S. citizens. In a June 1984 speech, he announced to a Libyan audience that “we are capable of exporting terrorism to the heart of America.” Text of the State Department Report In Libya Under Qaddafi, N.Y. TIMES, Jan. 9, 1986, at A6. During the previous September, he declared, “[W]e have the right to fight America, and we have the right to export terrorism to them.” Id. In a January 1986 press conference, Qaddafi threatened to “pursue U.S. citizens in their country and streets” if the United States took action in response to Libya’s involvement in the Rome and Vienna terrorist attacks. Id.
future assassinations against American officials. Thus, the Iraq airstrike was less conclusively a self-defensive pre-emptive strike than was the Libya raid. Finally, the United States made a good faith effort to use diplomatic coercion to dissuade Libya from continuing its terrorist activities. Again in contrast, the United States resorted to military force against Iraq almost as soon as the evidence of the assassination plot was confirmed, without any attempt to use diplomatic channels to punish Iraq.

Importantly, it is not entirely clear that Article 51 does authorize the use of force in response to an attempted but subsequently frustrated assassination plot. International law authorities point out that the attack on Iraq is best characterized as a "reprisal" and not as a pre-emptive strike against an imminent attack, and thus is less arguably a proper case of self-defense.

Whether the airstrike on Iraq was legal in the minds of international law scholars is largely irrelevant, however, since international law is decided and formulated by the conduct of nations and not within the ivied halls of academia. In other words, the question of whether scholars believe that the raid was legal is not nearly as important as whether the governments of the world believe that it was legal. Thus, while there are perhaps strong arguments questioning the legality of the Iraq strike, the interesting development is that in spite of these arguments, the international community is apparently beginning to accept a broadened application of Article 51 as legal justification for the use of force.

V. CONCLUSIONS

This apparent shift toward a broadened interpretation of Article 51 carries serious implications for the future of international relations. The restrictive

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78 Jenkins, supra note 71, at 18.
79 Ratner & Lobel, supra note 71, at 24.
80 After Libyan-sponsored terrorists bombed the Rome and Vienna airports, President Reagan severed economic ties between the United States and Libya in an attempt to coerce Libya into ceasing its support of terrorism. The United States urged other nations to join in an economic embargo against Libya, but only Canada participated in the embargo. Western European countries rejected the idea of an embargo, fearing retaliation against their citizens or doubting the ability of sanctions to deter Qaddafi. The list of these countries includes Britain, West Germany, Italy, Switzerland, Norway and Japan. Intoccia, supra note 28, at 182-86.
81 For criticism of the legality of the Iraq airstrike, see Ratner & Lobel, supra note 71; Jenkins, supra note 71.
view of Article 51 has already been stretched by the United States and Israel. Furthermore, if the legal constraints heretofore imposed by the restrictivists are relaxed, it is impossible to predict what actions nations may take against the continuing threats posed by low-intensity warfare. There is certainly no shortage of targets from which to choose, considering the many threats facing civilized nations today, including terrorism, assassinations, illegal drug trafficking, proliferation of nuclear weapons, and regional instability.

However, a broadened interpretation of Article 51 should not be condemned simply because it gives more power to nations who have the potential to abuse that power. The threat posed by low-intensity warfare is certainly legitimate and is a formidable menace that must recognized. At some point, the danger to international stability created by radical leaders, such as Hussein and Qaddafi, who are permitted to go unpunished exceeds the danger posed by the potential for nations to abuse an expanded interpretation of Article 51 for their own illegitimate ends.

Ultimately, the final judgment of whether this new shift in international law will have a positive effect on world stability may only be revealed in the approaching years after nations have had a chance to test the limits of this expanded power which has very subtly been granted to them. With great power has always come great responsibility, and this old adage is particularly true in the modern world where nations wield truly awesome military and paramilitary forces against each other.

There is a great opportunity here for the civilized nations of the world to use a broadened interpretation of Article 51 to combat and defeat the forces of terrorism in all of its insidious forms. There is also a great potential for nations to abuse this power by using military force against others in contrived claims of pre-emptive self-defense. Whether future legal historians will remember the 1993 Iraq airstrike crisis as the moment when the world decided to take a stand against terrorism, or as the moment when international law fatally loosened its grip on the wild forces of international instability, will be determined in the years to come.

Stuart G. Baker

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82 See supra note 62.
83 The U.N. Security Council has issued 11 resolutions condemning Israel’s use of force against Lebanon, rejecting Israel’s Article 51 arguments. Feder, supra note 46, at 414.