CONTemporary Uses of Force Against Terrorism: The United States Response to Achille Lauro—Questions of Jurisdiction and Its Exercise

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I. FACTUAL BACKGROUND

On October 7, 1985, four Palestinian terrorists aboard the Italian vessel Achille Lauro seized the ship thirty miles north of Port Said. The seizure began a dramatic series of events. The terrorists demanded the release of Palestinian prisoners and entry into Syria. During the takeover the terrorists killed one of the twenty-eight United States citizens aboard and threatened others.

After failing to achieve their demands, the terrorists returned the vessel to Egypt where they surrendered and were taken into custody by Egyptian authorities. They remained in Egypt awaiting their release pursuant to an alleged agreement between Egypt and the Palestine Liberation Organization (PLO). Subsequently, on October 11, while on board an Egyptian airliner bound for Tunis, United States Navy F-14 fighter planes intercepted the terrorists and forced them to land at Sigonella airbase in Sicily. Upon their arrival in Sicily, the terrorists were taken into custody by Italian authorities to await indictment and prosecution.

The complex series of events leading to the interception of the Egyptian airliner is but one example of how the world community combats international terrorism. Since the 1976 Israeli raid on Entebbe, over ten major attempts to use force against terrorism have been undertaken. Although the Achille Lauro incident raises many

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2 Id.
4 Id. at 33.
5 The U.S. Sends a Message, TIME, Oct. 21, 1985, at 22. The terrorists and their alleged leader Abdul Abbas were being flown to Tunis under an agreement between Egypt and the Palestinian Liberation Organization (PLO) under which Egypt would release the individuals into PLO custody. Id.
6 Id.
7 The events became more complex when Italy allowed the alleged ring-leader of the plot, Mohammad Abbas, to leave for Yugoslavia two days later. Abbas was allegedly carrying an Iraqi diplomatic passport. After Abbas was permitted to flee Italy, Italian authorities issued an arrest warrant for him, charging him with murder, kidnapping, hijacking, and the transportation and possession of arms and explosives. Abbas' release sparked untold controversy, including the near collapse of Italy's coalition government. Philadelphia Inquirer, Oct. 27, 1985, at 3-A, col. 3. Abbas' release presents many questions of international extradition law which are beyond the scope of this Article.
questions under international law, this Article focuses on only two aspects: (1) the international jurisdictional bases available to the United States and the inherent discrepancies therein, and (2) the validity of exercising jurisdiction by forcible means under the principles of international law.

II. CLAIMS OF JURISDICTION UNDER INTERNATIONAL LAW

A. Jurisdiction Over International Crimes

Jurisdiction permits a state, under international law, to prescribe or enforce rules of law. The international community recognizes different forms of jurisdiction. Prescriptive jurisdiction allows a state to make rules of law, either through the legislative branch or through some other branch of government. Enforcement jurisdiction permits a state under international law to enforce a rule of law using the executive or judicial branches. Generally, states do not have jurisdiction to enforce a rule of law unless they have jurisdiction to prescribe a rule.

The law of nations permits the exercise of criminal jurisdiction by a state under five general principles: territorial, national, protective, passive personality, and universality. Under the territorial principle, jurisdiction is based on the place where the offense was committed. National jurisdiction is based on the nationality or national character of the offender. Jurisdiction under the protective principle is based on whether the national interest, security, territorial integrity, or political independence of the state was affected. Although terrorist

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9 RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW § 6 (1965).
10 Id. at comment a.
11 Id. See also Zagari and Rosenthal, United States Jurisdictional Considerations in International Law, 15 CAL. W. INT’L L.J. 303, 316 (1985).
12 S.S. Lotus, (Fr. v. Turk.) 1927 P.C.I.J., ser. A, No. 10; Judgment of Sept. 7. Hudson, The Sixth Year of the Permanent Court of International Justice, 22 AM. J. INT’L L. 1 (1927); United States v. Smith, 680 F.2d 255 (1st Cir. 1982), cert. denied, 459 U.S. 1110 (1983). It should be noted that the scope of this Article concerns only the enforcement mechanisms employed by the United States, since no question has been raised concerning the United States capacity to legislate on terrorism.
14 Rivard, 375 F.2d at 885 n.5.
15 Id. at n.6.
16 Id. at n.7.
acts such as the seizure of the *Achille Lauro* cause considerable repercussions to the security of United States citizens abroad, it is unlikely that this incident injured the territorial integrity of the United States. The passive personality principle bases jurisdiction on the nationality or national character of the victim and provides a strong base for instituting enforcement action in the *Achille Lauro* incident, since one United States citizen was killed and others threatened. For example, Israel used the passive personality principal to justify the seizure of Adolf Eichmann in 1960. Eichmann, responsible for “Dienstelle Eichmann,” was charged with the murder of millions of Jews during the Second World War. Eichmann fled to Argentina during the War where he was later captured by Israeli nationals and taken to Israel to be tried for war crimes. Israel claimed various grounds for jurisdiction, but concluded that jurisdiction over Eichmann should be based solely on the national character of the victims.

The final basis of jurisdiction is the universality principle. This basis for jurisdiction holds that all nations may pursue criminals

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Article 7 provides: *Protection — Security of the State.* “A State has jurisdiction with respect to any crime committed outside its territory by an alien against the security, territorial integrity or political independence of that State, provided that the act or omission which constitutes the crime was not committed in exercise of a liberty guaranteed the alien by the law of the place where it was committed.” *Id.* See RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW § 33 (1965) and Note, Extraterritorial Jurisdiction and Jurisdiction Following Forcible Abduction: A New Israeli Precedent in International Law, 72 Mich. L. Rev. 1087 (1974).

  18 See RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW § 33 (1965).
  22 The authority to deal with the “Jewish question.”
  23 Silving, *supra* note 21, at 312.
  24 N.Y. Times, May 25, 1960, at 1, col. 5.
charged with heinous crimes recognized by the law of nations.\textsuperscript{28} Custody gives the state jurisdiction to try and punish the offender.\textsuperscript{29} The universality principle usually relates to offenses defined in international conventions. Under these conventions nations agree to prosecute and punish certain crimes irrespective of the place of the offense.\textsuperscript{30} Offenders may be nationals of other states, foreign domiciliaries, or individuals without permanent residence.\textsuperscript{31} Crimes subject to jurisdiction under the universality principle include the inhumane treatment of prisoners of war,\textsuperscript{32} piracy,\textsuperscript{33} drug\textsuperscript{34} or slave trafficking,\textsuperscript{35} and aircraft hijacking.\textsuperscript{36}

Since these crimes tend to have a broad effect on the order of the world community as a whole,\textsuperscript{37} most nations have significant interests in prosecuting suspected offenders. Although nations may use the universality principle as a basis for jurisdiction in a variety of criminal actions,\textsuperscript{38} disputes still exist as to whether terrorist attacks and crimes


\textsuperscript{29} Rivard, 375 F.2d at 885 n.8.


\textsuperscript{31} Id.


\textsuperscript{37} McDougal & Feliciano, supra note 26, at 719. See also Garcia-Mora, Criminal Jurisdiction of A State Over Fugitives Brought From A Foreign Country Force or Fraud, 32 Ind. L.J. 427 (1957); Morgenstern, Jurisdiction in Seizures Elicted in Violation of International Law, 29 Brit. Y.B. Int'l L. 265 (1952); Zagari and Rosenthal, supra note 11, at 310.

\textsuperscript{38} Akehurst, Jurisdiction in International Law, 46 Brit. Y.B. Int'l L. 145, 161 (1972-73) where the author notes that hijacking is probably not covered by the definition of piracy in international law.
relating to terrorism should fall under the realm of this jurisdiction.39 It is against the backdrop of varying theories of jurisdiction that the crime in question must be defined, since one problem in establishing a jurisdictional base over acts of international terrorism is the difficulty of defining the terrorist acts themselves.40

B. Crimes Against Humanity

Classical writers in international law such as Grotius recognized that certain offenses may be categorized as abhorrent to all nations.41 When individuals act with the intent to violate a fundamental interest or right protected by international law,42 the act may not be adequately punished under the normal criminal jurisdiction of the state.43 Where the exercise of domestic jurisdiction is inadequate, extensions of jurisdiction based on the universality principle have been permitted under international law.44 For example, states have established tribunals for the trial of grave offenses that a national tribunal does not ordinarily entertain.45 States also may assert jurisdiction over offenses committed by aliens abroad if nations are affected.46 Yet, international criminal law and the concept of delicti juris gentium47 involve theoretical problems. Professor Schwarzenberger has suggested that international law should acknowledge the presence of international crimes. International criminal law, however, assumes that authority may be exerted over world powers, and thus ignores the veto provisions contained in the United Nations Charter.48 Another problem with the establishment of a clear body of international crime is the distinction between offenses committed by states and individuals. Previous jurists have acknowledged the existence of international criminal law, but limited its scope to interstate relations (droit penal interetaitique).49 Such law seeks to repress acts by states which are

39 See Note, supra note 17, at 1099.
40 See M. Bassionoi, INTERNATIONAL TERRORISM AND POLITICAL CRIMES 478-79 (1975); Dugard, Towards the Definition of International Terrorism, 67 AM. SOC. INT'L L. PROC. 96 (1973); M. Bassionoi & V. Nanda, supra note 30.
41 H. Grotius, 2 DE JURE BELLI AC PACIS 504 (Carnegie ed.).
42 This includes the knowledge that the act may violate a fundamental interest.
44 Id.
47 Offense against the law of nations.
49 Pella, Towards an International Criminal Court, 44 AM. J. INT'L L. 37, 55-56 (1950).
ACHILLE LAURO

violative of the "fundamental interests of the moral and material order."\(^{50}\)

The decision of the Nuremberg Tribunal after World War II, however, has heavily influenced modern international criminal law.\(^{51}\) The Nuremberg Tribunal established the principle that criminal responsibility for crimes against humanity, especially war crimes, should fall on individuals, not states.\(^{52}\) Such "[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provision of international law be enforced."\(^{53}\) Under the Charter of the Nuremberg Tribunal,\(^{54}\) crimes against humanity include:

- murder, extermination, enslavement, deportation and other inhuman acts against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection [sic] with any crime against peace or any war crime.\(^{55}\)

The Charter created individual criminal liability for these acts, whether committed during war\(^{56}\) or in times of peace.\(^{57}\) Additional responsibility for these crimes fell on those who conspired in or organized the perpetration of these crimes.\(^{58}\) The principles of the Nuremberg Tribunal, formulated by the International Law Commission in 1950, had been previously adopted by the General Assembly\(^{59}\) and subsequently considered customary international law by some nations.\(^{60}\) Although the competence to assert jurisdiction over individuals accused of crimes against humanity exists, the accused has a right to a fair trial on the facts and the law.\(^{61}\)

Following the Nuremberg decisions, the United Nations promul-
gated the Draft Code of Offenses Against the Peace and Security of Mankind. Although the Draft Code adopted the principle of individual criminal responsibility for crimes against humanity, it is also concerned with state actions. Article 2(6) includes, as an offense against mankind, the "undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another state." While this provision primarily deals with state-organized terrorism directed against another state, certain evidence suggests that organized terrorist groups and persons in such groups can be liable under the provision. The Draft Code does not address the question of whether a state's failure to apprehend and prosecute terrorists is an international offense. However, acts by private individuals against a civilian population, such as murder or conspiracy or incitement to this murder, are crimes against international peace. Commentators have suggested that if a distinction exists between the Draft Code and international penal law, the Draft Code must be more narrowly construed. Naturally, certain international offenses do not endanger the peace and security of mankind. Although he acknowledges that a specific provision including such offenses is not present within the Draft Code, Pella has suggested that the Code embodies both the Nuremberg principles and offenses against the peace and security of mankind. Clearly,

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63 Id. Art. I provides: "Offenses against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punishable." Id. at 134. See also Garcia-Amador, State Responsibility in the Light of the New Trends of International Law, 49 Am. J. Int’l L. 339, 345-46 (1955); Johnson, The Draft Code of Offenses Against the Peace and Security of Mankind, 4 Int’l & Comp. L.Q. 445, 460-61 (1955).

64 Draft Code, supra note 62, art. 2, at 135-37.

65 Id. at 135.

66 Id. at comment to art. 2(6). The International Law Commission noted that art. 2(12) is the applicable section with respect to individual liability.


69 Draft Code, supra note 62, art. 2(10), at 136.

70 Id. at art. 2(12).


72 Id.

these bodies of law categorize murder and acts of violence, such as occurred on board the *Achille Lauro*, as an international crime. However, no provision of either the Nuremberg principles or the Draft Code specifically authorizes nations to assert jurisdiction over acts of international terrorism. Thus, in order to examine how jurisdiction may be asserted, international piracy law will be analyzed in the next section.

C. *The Seizure of the Vessel as an Act of Piracy*

1. United States Practice

The United States Constitution authorizes Congress to define and punish acts of piracy.\(^{74}\) Under United States law the crime of piracy is to be defined by the law of nations.\(^{75}\) During the beginning of the nineteenth century, United States courts characterized piracy as "depredation of the seas"\(^{76}\) and "robbery and murder committed on the high seas."\(^{77}\) Pirates were considered "hostes humani generis" and punishable in the tribunals of all nations.\(^{78}\) Traditionally, the United States has pursued an active policy of apprehending pirates and suppressing piracy, as a result of pirate attacks upon United States merchant ships in the Mediterranean in the early 1800s.\(^{79}\) The United States has justified this course of action by asserting that all nations have the "equal and untramelled right to navigate on the high seas."\(^{80}\)

2. Piracy Under the Law of Nations

Historically, international law defined piracy as "every unauthorized act of violence by a private vessel on the open seas with the

\(^{74}\) U.S. CONST. art. I, § 8 gives Congress the power to "define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations."

\(^{75}\) 18 U.S.C. § 1651 (1982), *Piracy under law of Nations*. "Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life." *Id.*


\(^{78}\) Smith, 18 U.S. (5 Wheat) at 153.

\(^{79}\) 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 654 (1973).

\(^{80}\) United States v. Marino-Garcia, 679 F.2d 1373, 1380 (11th Cir. 1982), *reh'g denied, 685 F.2d 1389, cert. denied, Pauth-Arzuza v. United States, 459 U.S. 1114
intend to plunder." In addition, pirates have been categorized as persons or ships at sea engaged in a professional manner in attacking property and persons. Some claim that every maritime state has universal jurisdiction over pirates and may give chase and apprehend pirates in the territorial sea of another nation. States also are obligated to suppress piracy and assume jurisdiction over pirate ships. The real problem lies in determining whether, under international law, a seizure of a vessel by persons on board a ship, such as the Achille Lauro incident, constitutes an act of piracy allowing nations to exercise universal jurisdiction over the offenders.

One interpretation of customary international law on piracy excludes seizures of ships by persons on board the ship as a piratical act. Another view of international law suggests that unauthorized acts of violence committed on the open sea by mutinous crew or passengers against the vessel should be considered piratical. The latter view, according to certain scholars, can apply to general criminal

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82 Genet, The Charge of Piracy in the Spanish Civil War, 32 AM. J. INT'L L. 253 (1938). The author provided these elements for a piratical act: (1) an act of criminal violence; (2) an illegal attempt against goods or person; (3) a menace directed against the security of general commerce; and (4) on the sea.

83 Id. See also Jurisdiction With Respect to Crime, supra note 17 at 35.


85 Piracy, 26 AM. J. INT'L L. 739, 810 (Supp. 1932). Article 3 provides:

1. Any act of violence or of depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends without bona fide purpose of asserting a claim of right, provided that the act is connected with an attack on or from the sea or in or from the air. If the act is connected with an attack which starts from on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without national character.

2. Any Act of voluntary participation in the operation of a ship with knowledge of facts which make it a pirate ship.

3. Any act of instigation or of intentional facilitation of an act described in paragraph 1 or paragraph 2 of this article.

Id. at 743. The comment to article 3 acknowledged that this article was the most important one in the convention. Id. at 769. However, "single acts" of violence at sea were not considered piratical, nor were mutiny or revolts aboard the ship. Id. at 794. See also I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 244 (1979).

86 L. OPPENHEIM, supra note 81, at 609.
acts on the high seas\textsuperscript{87} if the vessel has been commandeered or seized.\textsuperscript{88} As early as 1925, Professor Edwin Dickinson stated that hijackers "are no less pirates than the pirates of old."\textsuperscript{89} The anomalies and disputes in the definition of piracy continued until 1937 when an attempt was made to suppress piracy during the Spanish Civil War.\textsuperscript{90} France, Germany, Italy, and the United Kingdom concluded the Nyon Agreement, which stated that submarine attacks upon merchant vessels are contrary to established rules of international law.\textsuperscript{91} Although the Nyon Agreement did not propose to expand the legal concept of piracy,\textsuperscript{92} it did acknowledge that certain acts on the high seas are "contrary to the most elementary dictates of humanity" and should be treated as piratical.\textsuperscript{93}

3. The Convention on the High Seas

An attempt was made in 1958 by the United Nations to establish a uniform concept of international piracy in the Convention on the High Seas.\textsuperscript{94} Prior to the 1958 Convention, the International Law Commission (ILC), guided largely by the Harvard Research in International Law,\textsuperscript{95} submitted a report to the General Assembly.\textsuperscript{96} The ILC excluded "[a]cts committed on board a vessel by the crew or passengers and directed against the vessel itself, or against the persons or property on the vessel" as piracy.\textsuperscript{97} Article 15 of the Convention on the High Seas adopted the ILC's formulation in its basic form, creating these requirements for an act of piracy: (1) an illegal act of violence, detention or depredation; (2) for private ends; (3) on the high seas.

\textsuperscript{87} Id. at 614.
\textsuperscript{88} Id.
\textsuperscript{89} Dickinson, Is the Crime of Piracy Obsolete?, 38 Harv. L. Rev. 334, 358 n.82 (1925). Professor Dickinson suggested that hijackers should be treated as pirates because they commit depredations along the routes of commerce, are a menace to all nations, and such depredations may tend to become less discriminating.
\textsuperscript{90} See Genet, supra note 82.
\textsuperscript{91} 4 Encyclopedia of Public International Law 58 (Institute for Comparative Public Law and International Law 1982).
\textsuperscript{92} Id. at 59.
\textsuperscript{93} Id. at 58.
\textsuperscript{95} See supra note 83; M. McDOUGAL & W. BURKE, The Public Order of the Oceans 809-10 (1962).
\textsuperscript{97} Id. Commentary to article 14 of the ILC Report provided the same definition as the Harvard Research. See supra note 8.
seas; and (4) directed against another ship or aircraft.98 In addition, the Convention stated that if the act is committed on the high seas or any other place outside the jurisdiction of a particular state, any and all states are authorized to arrest and seize the pirates.99 The rationale for codifying the right of universal jurisdiction to all nations is founded upon the high regard for the preservation of order on the high seas.100 The right to seize pirates and pirate ships may be carried out only by warships or military aircraft.101 Although not defined in the Convention, the "high seas" include any areas beyond the territorial sea, which extend outward three miles from the coast.102 All states are obligated to cooperate to the fullest extent in repressing piracy on the high seas.103

4. Modern Piracy

The seizure of the Achille Lauro by Palestinian terrorists was certainly an illegal act of violence that was committed on the high seas.104 The two remaining elements for an act of piracy, "for private ends" and "directed against another ship or aircraft," require further clarification.

Although noted scholars have asserted that the Convention on the High Seas adequately serves the goal of repressing piracy,105 the rapid increase in terrorist activities on the high seas brings into question the practicality of the Convention’s provisions on piracy. Indeed, the

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98 Article 15 in full text provides:
Piracy consists at any of the following acts:
(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
(a) on the high seas, against another ship or aircraft, or against person or property on board such ship or aircraft;
(b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Convention on the High Seas, supra note 94.

99 Id. at art. 19.
100 M. McDougal & W. Burke, supra note 95, at 876.
104 N.Y. Times, supra note 1.
105 M. McDougal & W. Burke, supra note 95, at 879.
pirates of old were terrorists, yet terrorism is not specifically included within the purview of the Convention.

A strikingly similar situation to the Achille Lauro seizure occurred on January 22, 1961, when political foes of Portuguese Premier Salazar seized the luxury liner Santa Maria in the Caribbean. The group of captors took command of the ship killing one officer and wounding several others during the course of the seizure. The British Admiralty and United States Navy dispatched ships, but Brazil eventually granted the captors asylum. The Santa Maria incident caused much debate over whether the persons who seized the vessel were pirates or mere rebels. Although several experts doubted the charge of piracy, the head of the United States Delegation to the Geneva Conference on the Law of the Sea acknowledged that the victim state could have made out a piracy claim. Commentators that classified the seizure of the Santa Maria as a rebel or insurgent act based their conclusions on a variety of factors including: (1) the political nature of the seizure, (2) the private gain requirement, and (3) the fact that no attack was made against another ship. According to these theories, politically motivated acts should not be considered "for private gain." These acts, however, can be given the status of belligerent or insurgent acts according to the laws of war. Venezuelan revolutionaries received this treatment when they seized the German ship Falke and attacked a Venezuelan port.

However, other commentators on the Santa Maria incident found no justification in the law of insurgency for attacks against innocent civilians. Professor Franck has argued that even if the motives of

107 N.Y. Times, Jan. 23, 1961, at 1, col. 3.
108 Id.
109 Id. at Jan. 31, 1961, at 1, col. 1.
112 Ambassador Authur H. Dean, N.Y. Times, Jan. 31, 1961, at 1, col. 5.
113 Vali, supra note 111, at 174.
114 Van Zwanenberg, supra note 111, at 804; McDougal & W. Burke, supra note 95, at 821-22.
115 Van Zwanenberg, supra note 111, at 804.
116 Id. at 806; Green, supra note 110, at 499. See Sundberg, Piracy and Terrorism, in M. Bassiouni & V. Nanda, supra note 30, at 461-65.
117 Green, supra note 110, at 502.
the seizure were political, the attackers also sought some type of personal gain. According to Professor Franck, the ILC's recommendations, which the General Assembly basically adopted, failed to justify the limitation of piracy to external rather than internal acts. During the drafting of the Convention, the Chinese unsuccessfully proposed that internal acts aboard ships be included as piratical and that universal jurisdiction be granted for internal acts. Under the Convention of the High Seas, however, only the seized ship's flag state can pursue the vessel if it is taken internally, whereas all nations can pursue the vessel and its captors if taken externally. Therefore, the distinction between external and internal seizures is anomalous at best, and given modern terrorist seizures such as the Achille Lauro and the accompanying violence, this distinction should be taken out of the Convention.

Further criticism of the Convention on the High Seas may be found when considering the past alleged "political piratical" acts, and the possibility that these acts will be used increasingly in the future with Articles 15 and 16. Although Article 15 of the Convention would specifically exclude internal seizures of vessels as acts of piracy, Article 16 would accord pirate status to governmental ships seized internally by a mutinous crew. This distinction appears unfounded. By excluding internal seizures from the definition of piracy, the Convention appears to term seizures by crews of governmental ships piratical, yet defines non-governmental seizures as non-piratical if they are for "political ends."

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120 Id. at 219.
121 Regime of the High Seas, 2 Y.B. INT'L L. COMM'N 18 (1956).
122 Franck, supra note 119, at 221.
123 Id. at 220-22.
125 Article 16 provides: "The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship." Convention on the High Seas, supra note 94.
trend to recognize the right of national liberation movements to overthrow despotic governments are inappropriate when the violent acts are directed against innocent citizens. As one commentator has suggested, the appropriate review of the political nature of a seizure is to balance the need of political groups against the need for freedom and security of the high seas. Certainly, personal security of life and property far outweigh the need for radical groups to prey upon the innocent.

Another problem with the Convention arises when considering the developments of the Law of the Sea Treaty. As commentators have noted, the geographical area of the high seas may be diminishing as a result of this Treaty. Should the territorial sea be extended and the high seas narrowed, territorial states will have a wider area of exclusive jurisdiction, along with the discretion not to prosecute potential pirate/hijackers. This fact, accompanied by incidents such as the *Santa Maria* which are technically not covered by the Convention, could create a situation where attacks on vessels would go unpunished. Clearly, what is needed in the future is a provision defining piracy which includes all internal seizures of vessels irrespective of the place of the seizure and of the political nature of the seizure. Suggestions have been made for the creation of an international criminal body to define and develop sanctions against acts of piracy, but what is immediately needed is the authorization by nations to pursue pirates/hijackers universally as international criminals. The anomalies in defining international sea piracy must be clarified to avoid situations where hijackers of vessels may go unpunished. States must be authorized to protect themselves and their citizens from offenses committed on the high seas.

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127 Id. at 92.
128 Id. at 99.
130 Id. at 477.
131 See id. at 482, where the author refers to the Guatamalan/Mexican incident of 1958, where Guatamala launched rocket attacks against Mexican fishing boats claiming they were pirates. See also McDowell, *Contemporary Practice of the United States*, 69 Am. J. INT’L L. 861, 875 (1975), where the author discusses the Cambodian seizure of the U.S. merchant vessel *Mayaguez*.
133 Id. at 491-93.
D. Terrorism as an International Crime

1. United Nations Efforts

As seen in the section on piracy, inconsistencies in international legislation may contribute to jurisdictional problems. Similar inconsistencies are found in the law of terrorism.

Prior to the establishment of the United Nations in 1945, efforts were made by the League of Nations to codify principles regarding terrorism; however, the League was unable to achieve worldwide acceptance of these principles. After the United Nations came into being, conventions were established dealing with the protection of civilian persons in time of war, aircraft hijacking, internationally protected persons including diplomats, and hostage taking. These conventions created general prohibitions against certain classes of acts. Some commentators have suggested that international terrorism is proscribed by *jus cogens*. It is unlikely, however, that these conventions apply to all acts of terrorism. Even today, with frequent terrorist attacks against innocent persons, the world community cannot agree on a method or means for controlling international terrorism. In the United States, courts have not recognized that terrorism is considered a clear violation of the law of nations, although this

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137 Tokyo Convention, *supra* note 36.


141 For example, the 1973 U.N. Convention applies only to diplomatic personnel (Article 2), and the hijacking conventions apply only with respect to acts on board aircraft. See Montreal Convention, *supra* note 36.


143 Tel-Oren v. Libyan Arab Republic, 726 F.2d 474 (D.C. Cir. 1984).
position has been severely criticized. These conventions do, however, demonstrate a general acceptance of principles that the world community seeks to promulgate: the protection of human life, liberty, and property. Another problem that the United Nations has faced in developing a clear code prohibiting terrorism is the problem of defining terrorism in a manner which does not conflict with the interests of Third World nations. Third World countries have argued consistently that violent acts of legitimate national liberation movements should not be considered terroristic.

The 1979 United Nations Hostage Convention represents the broadest effort to date in defining terroristic acts and jurisdictional rights. Created after the Entebbe incident in 1976, the Convention generally requires international cooperation in preventing, prosecuting, and punishing international hostage taking incidents. The Convention also extends the applicable convention on the laws of war to international acts of hostage taking. Clearly, hostage taking is considered an international offense. The seizure or detention of hostages,

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148 Id. at 603, 607.
149 Id. at 607.
150 Id.; see supra note 73; Boyle, "The Entebbe Hostage Crises" in Terrorism: Political Violence and International Crime 562 (Hwakhan ed. 1984). Professor Boyle notes that if the taking of civilian hostages is prohibited during wartime under article 34 of the Geneva Convention of 1949, [6 U.S.T. 3516, 3540, T.I.A.S. No. 3365], the same provision should logically extend to peacetime hostage takings.
151 Hostage Taking Convention article 1 provides:
1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offense of taking of hostages ('hostage taking') within the meaning of this Convention.
2. Any person who:
   (a) attempts to commit an act of hostage taking, or
   (b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage taking likewise commits an offense for the purposes of this Convention.
152 Id. at art. 1.
and threats to kill, injure or to continue to detain them in order to compel a third party to behave in a certain way, also are prohibited. Those who act as accomplices or participants in any part of the hostage taking are as responsible as the actual takers. All parties to the Convention may exercise jurisdiction over the offense under the classical theories of international jurisdiction. Commentators on the Hostage Convention have construed the provision "each state party shall take such measures as may be necessary to establish its jurisdiction over any offense in Article I" as meaning that states must enact legislation making hostage taking an offense, and further the Convention purposes by pursuing offenders. The United States has enacted legislation concerning hostages and terrorism in general. The Hostage Convention also requires states "to

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153 Id.
154 Id.
155 Id.
156 Id. See also Shubber, The International Convention Against the Taking of Hostages, 52 Brit. Y.B. Int'l L. 205, 209 (1982).
157 Hostage Taking Convention, supra note 139, at art. I(2).
158 Id. at art. 5 provides:
1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offenses set forth in article I which are committed:
   (a) in its territory or on board a ship or aircraft registered in that State;
   (b) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;
   (c) in order to compel that State to do or abstain from doing any act; or
   (d) with respect to a hostage who is a national of that State, if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offenses set forth in article I in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude criminal jurisdiction exercised in accordance with internal law.
159 See supra note 13, at art. 5.
160 Shubber, supra note 156, at 220.
[W]henever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts to do so, shall be punished by imprisonment for any term of years or for life.
take all practicable measures to prevent taking of hostages" and to exchange information on terrorist activities.¹⁶³

2. Other Modern Efforts

Modern developments including recent United Nations efforts,¹⁶⁵ regional conventions, and works of independent world jurists,¹⁶⁷ point toward the concept of state responsibility in the law of terrorism. As noted in the piracy and international criminal law sections of the Convention on the High Seas,¹⁶⁸ states have a general duty in certain circumstances to act with due diligence to prevent the commission of acts of international terrorism within their jurisdictions.¹⁶⁹ Due diligence includes the duty to apprehend, prosecute, punish, or extradite.¹⁷³ Under the ILC's 1984 Convention, a breach of any of the rules regarding apprehension or extradition, including the re-

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¹⁶³ Article 4 provides:
States' Parties shall cooperate in the prevention of the offenses set forth in Article I, particularly by:
(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offenses within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;
(b) exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those offenses.

¹⁶⁴ Id. at art. 4(b).

¹⁶⁵ On December 10, 1985, the General Assembly adopted a resolution unanimously declaring all acts of terrorism as criminal. N.Y. Times, Dec. 10, 1985, at A4, col. 3.


¹⁶⁸ See supra notes 68, 103 and accompanying text.

¹⁶⁹ Article 9 I.L.A. 1984 Convention; Lillich & Paxman, supra note 68, at 222-35.

¹⁷⁰ Lillich & Paxman, supra note 68, at 284; 7 J.B. Moore, A Digest of International Law 1059 (1906); Texas Cattle Claims, 8 M. Whiteman, Digest of International Law 749 (1967); Janes Case (United States v. Mexico), 4 R. Int'l Arb. Awds. 82 (1927); Neer Case (United States v. Mexico), 4 R. Int'l Arb. Awds. 60 (1926).

¹⁷¹ Lillich & Paxman, supra note 68, at 287.

¹⁷² Id. at 294.

¹⁷³ Id. at 300.
quirement to exercise due diligence in pursuing terrorists, "entails state responsibility."" According to the International Law Association, "mere statements of rules with no provisions for who is responsible to enforce them would be an empty gesture."

The United States had the authority to assert jurisdiction over the Achille Lauro terrorists under the theory of general international criminal law, the law of terrorism, or arguably, the law of piracy. Once a state has established a valid jurisdictional base, the exercise of that jurisdiction must be in accordance with international law. The remaining section discusses the rights of third party states to exercise jurisdiction by forcible means when other nations fail to enforce customary norms of international law. While Egypt's reasons for relinquishing jurisdiction and failing to prosecute the terrorists involved in the Achille Lauro case were basically politically motivated, the failure to exercise rights granted under international law tends to weaken the effect of such accepted standards of law.

III. CLAIMS TO EXERCISE JURISDICTION BY FORCE

A. Current United States Policy

In an effort to combat international terrorism, the Reagan Administration has responded by developing measures to prevent terrorist attacks, planning measures to effectively react to terrorist incidents, and seeking an international consensus against terrorism. In addition to creating new legislation with respect to terrorism, United States policy strives to bring the perpetrators of these crimes to justice.

In the past United States courts have held that the concept of *male captus bene detentus* is an acceptable method of asserting criminal jurisdiction over individuals, provided those individuals are entitled to a fair trial. Although the noted Ker/Frisbie rationale has been

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174 See supra note 167, at art. 13.
175 See supra note 167, at 206 (explanation to art. 13).
177 See supra notes 161, 162.
179 Badly captured, well detained.
weakened domestically, United States courts have permitted seizures of criminals abroad when achieved without protests from the state where the abduction occurs. The current United States trend has been to increase enforcement jurisdiction in certain areas. While the exercise of force to obtain criminals located in other nations has been criticized, the United States, along with other nations, has established such a trend. The United States response stems from the past failures of international treaties on terrorism and their provisions on enforcement. This response represents a current trend which must be analyzed under international law in the world community context. The following sections discuss the use of force in international law, possible justifications for United States intervention, and the future prospects for such actions.

B. The Restrictions on the Use of Force Under International Law

The United Nations Charter requires the settlement of disputes by peaceful means and abstention from the threat or use of force against the territorial integrity or political independence of any state. Created at the end of the Second World War, the Charter’s basic aim was to reduce international armed conflict. Article 2(4) was

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181 Mapp v. Ohio, 367 U.S. 643 (1961); Wolf v. Colorado, 338 U.S. 25 (1949), which developed the judicially imposed exclusionary rule, attempting to deter illegal police conduct.


183 Zagaris and Rosenthal, supra note 11, at 317, where the authors note the increased enforcement jurisdiction in the interdiction of vessels carrying illegal aliens and narcotics on the high seas.


185 See Note, supra note 17, at 1087.


187 U.N. CHARTER art. 2, para. 3 provides in full: “All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”

188 U.N. CHARTER art. 2, para. 4 provides: “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 and Principles of the United Nations.”

designed specifically to ensure that international peace and security would be maintained, and that war would not be used as a means for conducting foreign policy. Article 2(4) must be construed in light of Article 1 of the Charter which provides that the first purpose of the organization is "the maintenance of international peace and security by taking of effective collective measures to prevent or remove threats to the peace and to suppress acts of aggression or other breaches of the peace." Commentators present at the framing of the Charter seem to suggest that certain uses of force may be justified. One question which has arisen with respect to the construction of Article 2(4) is whether the requirement that the "territorial integrity" of a state be respected is satisfied as long as no territory is actually taken from the state. Another question under Article 2(4) is whether the "political independence" of a state is violated if it is driven by the threat of force to take action that it would not normally undertake. The General Assembly attempted to clarify these issues in the Definition of Aggression, the Declaration of Principles of Law Concerning Friendly Relations and Cooperation Among States, and the Essentials of Peace Resolution. The Definition of Aggression concluded that "the attack by armed forces of a state in the territory of another state, or any military occupation, however temporary in such territory, is considered aggression." The first use of force by a state in contravention of the Charter constitutes prima facie evidence of aggression. Naturally, the key phrase in determining aggression

191 Id. at 45.
192 Id.
194 L. GOODRICH & E. HAMBRO, supra note 190, at 51.
198 Definition of Aggression, supra note 195, at art. 3(a).
199 Id. at art. 2.
is "in contravention of the Charter." In determining whether an act violates Article 2(4), other provisions of the Charter must be reviewed, as well as doctrines emanating from these provisions.

C. Exceptions to the General Prohibition of the Use of Force

Professor Brownlie has categorized the general exceptions to the prohibition of the use of force as individual self-defense, collective self-defense, actions authorized by a competent international organ or a treaty provision, actions to terminate trespass, and necessity arising from natural catastrophe. Also considered an exception to the prohibition of the use of force is the doctrine of protection of nationals abroad. Others scholars have contended, however, that in addition to the general right of self-defense, only two other uses of force are permissible under international law: actions taken by the Security Council under Chapter VII of the Charter, and enforcement actions by regional arrangements or agencies under Article 53 with the authorization of the Security Council. In determining the permissible uses of force for self-defense, the construction of Article 51 is critical. Article 51 provides:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United 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 anytime such action as it deems necessary in order to maintain and restore international peace and security.

1. The Right of Self-Defense

Divergent views exist concerning the meaning of the phrase "armed attack" in Article 51 in relation to the doctrine of anticipatory self-
defense. The prohibitions against the use of force in the United Nations Charter are contextual, not absolute. They provide ample justification for the use of force against force in pursuit of the other values also inscribed in the Charter—freedom, democracy, peace. The Charter does not require that people submit supinely to terror, nor that their neighbors be indifferent to their terrorization.

The values that the United States seeks to defend by the forcible exercise of jurisdiction include the protection of its nationals, property, and security both abroad and at home. Additionally, terrorism can be considered a type of warfare involving indiscriminate attacks upon innocent persons. Although the terrorists did not commit an "armed attack" while aboard the jet, there arguably existed an "im-

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203 Anticipatory self-defense, commonly referred to as preventive war, or preemptory self-defense, attempts to eliminate a source of a threat or attack before it actually occurs. McDougall & Feliciano, supra note 26, at 231-32.
207 Id. at 429; Note, Attack on Osirak: Delimitation of Self-Defense Under International Law, 4 N.Y.L. Sch. J. Int'l & Comp. L. 131, 135 (1982).
209 Nanda, supra note 202, at 418.
minent threat” to the security of United States citizens abroad in two respects: (1) had the terrorists been permitted to go free, they could have returned to disturb world order, and (2) future terrorists would believe inaction by victim states constitutes a sanction to continue in crime. Indeed, the United States could ill afford to deliberate on the future treatment of the Achille Lauro terrorists. If the United States had not acted quickly, the terrorists may have returned to the PLO and escaped any punishment for their acts. Therefore, the United States actions fulfilled the classic imminency requirement. Furthermore, it cannot be said that the United States has failed to seek peaceful resolutions to the question of terrorism, nor that the interception of the jet was disproportionate to the threat imposed. To further evaluate the United States actions from a self-defense perspective, especially in light of Egypt’s involvement, two other doctrines of international law must be examined: intervention and self-help.

2. The Doctrines of Intervention and Self-Help

a. Intervention

Intervention, in the broadest sense, has been characterized as “an act of interference by one state with the internal or external affairs of another state in order to induce a certain behavior of the latter, whereby the intervening state employs coercion and violates the sovereign will of its victim.” Professor Henkin calls intervention “the military interaction by other nations in the internal struggles of other


212 The Caroline case is frequently referred to as the locus classicus of the law of anticipatory self-defense. Britain destroyed a United States vessel en route to providing supplies to Canadian insurgents, after British protests over the supply route were ignored. Secretary of State Daniel Webster formulated the test of “instant, overwhelming, leaving no moment for deliberation” as the requirement for anticipatory self-defense. J.B. Moore, supra note 170, at 409-14. Letter from D. Webster to Fox, 29 British and Foreign State Papers, 1129, 1138 (1840-41).

213 The United States has been present and party to the Convention on Terrorism. For examples of Conventions relating to terrorism to which the United States is party, see supra notes 94, 135-39 and accompanying text.

214 See Grimaldi & Joyner, supra note 210, at 657 (force must be proportionate to danger).

215 Opperman, Intervention, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 233 (R. Bernhardt ed. 1982).
Other writers have viewed intervention as the use of force by one state against another to induce respect of the enforcing state’s rights under international law. The general norm in international law, however, requires nations to refrain from intervention in the internal affairs of other nations. Every state should theoretically have the capacity to exercise exclusive jurisdiction over its own territory without interference from another state. The United States interception of the jet was indeed a military intervention into Egypt’s affairs and conforms to recent United States practice. Although intervention is considered to be prohibited in international law where states are derelict in their responsibilities to protect persons within their own borders, other states have been permitted to intervene on behalf of these persons. Therefore, the doctrines of intervention and self-help have been viewed as classic exceptions to the general prohibition of the use of force.

b. Self-Help

The doctrine of self-help involves “the unilateral protection and

216 Henkin, supra note 26, at 153.
218 Schroder, Non-Intervention, in 7 Encyclopedia of Public International Law 358 (R. Bernhardt ed. 1982).
219 Id.
220 See, e.g., Novogrod, Indirect Aggression, in Bassiouni & Nanda, supra note 30, at vol. 1, 213.
221 For example, the United States has intervened in Grenada, El Salvador, and the Middle East. However, each act of intervention must be analyzed separately according to the situation. See Joyner, The United States Action in Grenada: Reflections on the Lawfulness of Invasion, 78 Am. J. Int’l L. 131 (1984); Doner, The United States Invasion of Grenada: Resurrection for the Johnson Doctrine, 20 Stan. J. Int’l L. 173 (1984); Nanda, supra note 202.
222 Lillich, supra note 217, at 329, 333. Professor Lillich cites article 2(7) of the U.N. Charter for the proposition that if the United Nations may intervene in a crisis situation, the doctrine of intervention is not dead. Id. at 338.
enforcement of rights" by force and tends to take on a remedial character. Self-help should be "reserved to reactions against violations of a State's rights that do not occur in the form of an armed attack." The doctrine of self-help, of which intervention is a part, is not without its critics. In 1949, the International Court of Justice (ICJ) rejected the United Kingdom's argument in the Corfu Channel case that "Operation Retail," a minesweeping operation in Albanian territorial waters, was needed for self-preservation or self-help. The court held that it can regard the alleged right of intervention only as the manifestation of a policy of force, such as has in the past given rise to most serious abuses.

Scholars have construed the Corfu Channel case as holding that only those self-help measures which are "manifestations of a policy of force" are illegal, and not as a general prohibition against self-help measures. The ICJ's decision reflected the concern over potential abuses of force by nations under the guise of "self-help." Therefore, in order to be legitimate, self-help measures must be subject to review by the international community as a whole and must be evaluated in terms of world community interests. Relevant to this inquiry are two examples of self-help actions: (1) the customary right of nations to protect their nationals, and (2) recent hostage rescue operations.

c. The Protection of Nationals Abroad

The right of nations to protect their nationals abroad was a customary international right before the creation of the Charter. In the Spanish Moroccan Claims Arbitration, the arbitrator stated, "it cannot be denied that at a certain point the interest of a State in exercising protection over its nationals and their property can take

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225 D. Bowett, supra note 205, at 11.

226 Bryde, supra note 224, at 215.

227 See e.g., McDougal & Feliciano, supra note 26, at 137, 207-17; I. Brownlie, supra note 200, at 255.

228 Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J.S.

229 Id. at 35.

230 D. Bowett, supra note 205, at 15.


232 Schwenninger, supra note 231, at 428.

233 D. Bowett, supra note 205, at 87.
precedence over territorial sovereignty, despite the absence of any
convention provisions." Jurists have recognized that the protection
of nationals abroad can be equated with the preservation and pro-
tection of the state itself. States which intervene in other states' affairs on behalf of nationals do so because the non-protecting state
does not afford necessary protection. Normally, states may intervene
on behalf of their nationals only where no other means of redress
are available. The intervention must be considered a necessity,
similar to the requirements of anticipatory self-defense. In the past
the United States has assumed criminal jurisdiction over aliens
committing offenses against United States citizens abroad, especially where
other countries do not apprehend or prosecute those offenders.

States which utilize force to protect nationals because of a breach
of an obligation by a non-protecting state are justified if the non-
protecting state does not conform to a standard of "due diligence." Due
diligence requires that all measures reasonable under the cir-
cumstances be taken to protect the nationals of another state. The
due diligence requirement must be analyzed on a case by case basis.
In early Twentieth Century arbitration cases, states were held liable
for the failure to apprehend, punish, and extradite terrorists or crim-
inals, depending upon the reasonableness of the states' criminal
processes. A state's failure to exercise due diligence in apprehending and
prosecuting criminals within its jurisdiction, however, does not au-
tomatically give other states the right to intervene, especially in the
post-Charter era.

d. An Analogy to Hostage Rescue Attempts

Much discussion has arisen concerning the legality of hostage rescue
attempts. Such attempts are uses of force by states invoking the

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234 Anglo-Spanish Arbitrations, Beni-Madan, Rzini Claim, 2 U.N.R.I.A.A. (1925)
at 616.
235 Lillich, supra note 217, at 336; D. Bowett, supra note 205, at 91.
236 P. Jessup, supra note 204, at 169; L. Oppenheim, supra note 81, at 309;
Waldock, supra note 205, at 455.
237 D. Bowett, supra note 205, at 88.
238 Rodick, The Doctrine of Necessity in International Law (1928), at 32.
239 Id. at 35.
240 D. Bowett, supra note 205, at 89; Lillich & Paxman, supra note 68, at 260,
276-79.
241 Lillich & Paxman, supra note 68, at 246.
242 Id.
243 Id. at 254-60, 276-305.
244 See e.g., Jefferey, The American Hostages in Tehran: The I.C.J. and the
customary right to protect nationals. In addition to the “due diligence” standard discussed above, however, several other customary elements must be present to justify state action in protecting its nationals abroad.\textsuperscript{245} There must be “an imminent threat of injury to the nationals,” and the measure of protection must be “strictly confined to the object of protecting them.”\textsuperscript{246} The latter requirement is derived from the Article 2(4) prohibition against the impairment of another nation’s territorial integrity or political independence.\textsuperscript{247}

In the past ten years, more than ten rescue raids have been undertaken\textsuperscript{248} with the majority resulting in successful rescues.\textsuperscript{249} The number of rescue attempts, however, pales in comparison to the number of terrorist attacks occurring within the last two decades. For example, since 1968 terrorists have committed over 200 criminal attacks. Seventy-two of these attacks have been aimed at United States citizens in foreign countries. Thus, over thirty percent of all terrorist attacks since 1968 have involved United States victims.\textsuperscript{250}

One of the most successful and controversial rescue attempts was the Israeli raid at Entebbe Airport in 1976.\textsuperscript{251} Israeli commandoes


\textsuperscript{245} Grimaldi \\& Joyner, \textit{supra} note 210, at 651-53.

\textsuperscript{246} I. \textit{Brownlie}, \textit{supra} note 200, at 299; Grimaldi \\& Joyner, \textit{supra} note 210, at 651-53; D. \textit{Bowett}, \textit{supra} note 205, at 95-97; Lillich, \textit{supra} note 217, at 337.


\textsuperscript{247} \textit{See generally The Dominican Republic Crisis 1965} (J. Carey ed. 1967).

\textsuperscript{244} \textit{See supra} note 8, \textit{N.Y. Times, Nov. 26, 1985, at A10, col. 1. The following rescue attempts have been undertaken: July 3, 1976 Israeli raid at Entebbe Airport; June 13, 1977 rescue of school teachers from the South Moluccans; October 18, 1977 commando rescue of hijacked Lufthansa plane; February 19, 1978 killing of Egyptian commandos in Cyprus; April 24, 1980 unsuccessful attempt to free hostages in Iran; May 5, 1980 storming of the Iranian Embassy in London; January 28, 1982 rescue of kidnapped Brig. General James L. Dozier; November 7, 1985 raid against Colombian rebels; and the most recent and tragic of rescue attempts, the November 24, 1985 Egyptian commando raid in Malta to rescue passengers hijacked on an Egyptian airliner. Id.}

\textsuperscript{249} \textit{N.Y. Times, Nov. 26, 1985, at A1, cols. 5,6.}

\textsuperscript{250} \textit{Supra} note 248.

\textsuperscript{251} \textit{See generally Boyle, International Law in Time of Crisis: From the Entebbe Raid to the Hostage Convention, 75 Nw. U. L. Rev.} 769 (1980); Knisbacher, \textit{The
rescued 103 passengers and crew members, although a number of persons, including hostages, were killed.²⁵² Various commentators acknowledged Uganda's responsibility to take jurisdiction over the hijackers and hostages.²⁵³ The United Nations Security Council later failed to condemn the Israeli action.²⁵⁴ According to several scholars, this decision implies that international law was not violated²⁵⁵ because force was not used against the "territorial integrity" or "political independence" of Uganda.²⁵⁶

On April 24, 1980, the United States launched "operation Blue Light," which involved transport planes and helicopters attempting to rescue the hostages held in the United States Embassy in Tehran.²⁵⁷ The plan was aborted after the tragic deaths of United States servicemen in a mid-air collision.²⁵⁸ In the subsequent Case Concerning United States Diplomatic and Consular Staff in Tehran,²⁵⁹ the International Court of Justice did not specifically rule on the legality of rescue operations.²⁶⁰ The legality of such operations still remains unsettled in international law.²⁶¹

In the Achille Lauro incident, the United States acted consistently with the doctrine of the protection of nationals abroad by intervening on behalf of those United States citizens who were victims of the terrorist attack. Egypt failed to take jurisdiction, prosecute, or extradite the offenders despite requests from the United States.²⁶² Egypt validly could have held the offenders under the Hostage Convention and arguably under the international law of piracy.


²⁵² Id.
²⁵⁵ Boyle, supra note 253, at 576.
²⁵⁶ Henkin, supra note 26, at 145.
²⁵⁷ See supra note 248.
²⁵⁸ Id.
²⁶⁰ Id.
²⁶¹ Jefferey, supra note 244, at 722-23; Note, supra note 244, at 517. See Lillich, The I.C.J.'s Decision and Other Public International Law Issues in The Iran Crisis and International Law, 25-32 (R. Steele ed. 1981). Professor Lillich's remarks on page 32 indicate that the case of the proponents of the doctrine of rescue operations
²⁶² Newsweek, Nov. 21, 1985, at 31.
Egypt's decision to release the offenders to the PLO was a political one, perhaps motivated by fear of alienating Arab neighbors or instigating reprisals. Whatever the reasons given by Egypt, the key factor in evaluating the United States action is Article 2(4). It cannot be said that the United States violated Egypt's "territorial integrity" or "political independence" by intercepting the jet. At best, Egypt's jet was inconvenienced for a few hours.

The interception served as a positive reinforcement of the prohibition against terrorism. This action was motivated by the rationale of deterrence and sought to protect United States citizens abroad. In addition, the interception was strictly confined to the purpose of bringing the offenders to justice. This precision-timed maneuver deserves much praise. This action by the United States, however, raises many international law issues which need future clarification. The remaining section discusses several proposals.

IV. Conclusions and Prospects for the Future

Clearly, international criminal law provides that individuals who commit international crimes are responsible for their acts. In the Achille Lauro incident, the four hijackers and their leader were subject to United States jurisdiction under various theories: the passive personality principle, the universality principle, the law of hostages, the law of terrorism, and arguably, international sea piracy. With respect to piracy, future efforts should be made to incorporate seizures of ships on the high seas into codified law. Such seizures, when taking place on board ships, should be defined as acts of piracy. In order to prevent these types of piratical acts in the future, every nation must have the freedom to pursue and apprehend such criminals.

Conflicts in international jurisdiction and the resulting discrepancies must be clarified in the future to establish guidelines with respect to the right to pursue offenders. The United States interception of the Egyptian jet clearly was justified under classical theories of state responsibility, self-defense, self-help, the protection of nationals abroad and hostage rescue operations. Article 2(4) was not violated to the extent Egypt claimed, and such rescue actions undoubtedly will be repeated.

In evaluating future uses of force against terrorism, several points must be made. The rights of the hostages are at stake in any such situation. Before any action can be taken, the military feasibility

of the operation must be evaluated carefully. The ultimate goal is the preservation of life. The United States response to the Achille Lauro incident was executed only after the hostages were secure in Egypt. In contrast, Egypt recently launched a commando raid in Malta on November 25, 1985, in which only twenty to thirty passengers were rescued, while the rest were killed.264

The author is not criticizing the Egyptian effort to rescue the hostages, but its timeliness does raise questions. It must be realized, however, that decisions to utilize force usually must be made in urgent circumstances when the time for decision-making is short. Nations must therefore seek to establish functional hostage rescue operations before the acts are committed. These operations must be designed to handle the most unexpected contingencies.

For a nation to utilize force against terrorists, certain conditions must be present. An imminent danger to nationals must exist, both in the situation at hand and in the immediate future. The imminency requirement should be liberally construed to allow nations to utilize force to apprehend terrorists otherwise likely to go unpunished. Unenforced prohibitions against violent acts present a danger to the world community by encouraging future terrorism. To justify the use of force, the states where hostages are located or where terrorists are apprehended must be unable to take prosecutorial action or assert jurisdiction over the offenders. A state must utilize only that force which is necessary, proportionate, and limited to the danger at hand. Once actions are completed, as a matter of custom, nations should report the incident to the Security Council. Nations that utilize force must be subject to review by the world community as a whole.

Since veto provisions may prevent the Security Council from acting, an international tribunal should be designed to evaluate not only uses of force against terrorism, but also the terroristic acts themselves. Should such a tribunal be formed, nations such as Egypt may be more willing to deliver offenders for trial where a political problem is presented in exercising jurisdiction over the terrorists. If the terrorists and nations know that a neutral tribunal and a fair trial are available, the extradition process may be encouraged.

As commentators have argued, deterring terrorism is largely dependent upon the extradition process.265 Professor Murphy has in fact suggested that the "political offense exception," which exculpates

265 Comment, supra note 189, at 250.
criminal acts from liability if politically motivated, be eliminated subject to certain requirements.266 Other commentators have suggested that in order to clarify the right to use force in anticipation of future attacks, the Article 51 "armed attack threshold" should include internal subversion.267 Unquestionably, nations should have the right to respond in anticipation of situations where mass destruction is threatened. The question remains as to which uses of force are permissible and which would be merely disguised acts of aggression. This can be determined only by review of the international community as a whole, preferrably in an international tribunal independent of the Security Council.

By encouraging nations to take enforcement actions against international terrorism, the United States has contributed to the reaffirmation of principles and purposes of international treaties and of the rule of law. If even one terrorist is deterred from causing destruction, the action of the United States should be considered valuable to the world community. By utilizing force to bring terrorists to justice, the United States has contributed to re-establishing world order and has set a valuable precedent for the future.

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266 J. Murphy, Punishing International Terrorists 45-56 (1985). Professor Murphy would insure that in extraditing offenders, the accused would not be subject to persecution for political, racial, or religious beliefs. See also Murphy, The Release of Abbas: Political Realities Outweigh International Treaties, Baltimore Sun, Nov. 20, 1985, at D1, where Professor Murphy notes the political realities of Abbas' release and its contravention of extradition treaties.
