Part 1 The Cold War Era (1945–89), 19 The Entebbe Raid—1976

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I. Facts and Context

Flight AF 139, Summer 1976, 27 June, 11:55 am: a drama unfolds, which shall have heavy impact on international relations and international law and which demonstrates a (political) gorge between the international community.[2] The Airbus A300-B operated by Air France is en route from Tel Aviv to Paris. Some 256 passengers and a crew of twelve are aboard. Shortly after departing from a scheduled stop in Athens, four hijackers, two Germans, and two Iraqis, who identify themselves as members of the 'Popular Front of Liberation of Palestine', take control of the aeroplane. After a stopover in Benghazi, Libya, for refuelling, they divert the plane to the Ugandan airport of Entebbe. The passengers and crew members are transferred to a seldom-used airport terminal, where they are taken hostage. Another six men join the hijackers.

Shortly afterwards, the hijackers promulgate their demands: Israel, West Germany, Kenya, France, and Switzerland have until 1 July 1976 to release fifty-three 'freedom fighters', who are imprisoned for capital crimes under the respective penal law of the countries concerned.[3] If their demands are not carried out by 1 July 1976, 2:00 pm, the hijackers, equipped with firearms and explosives, threaten to kill all captives. Shortly before the deadline expires, Israel reverses its policy against negotiating with hijackers. Consequently, the hijackers release first forty-seven, then another 100 prisoners, keeping 112 hostages. However, they release only non-Jewish and non-Israeli passengers. Apart from the French crew, the remaining hostages are exclusively Israeli nationals or Israeli dual nationals.[4] The ultimatum is extended to 4 July 1976 at noon—an important success in Israeli negotiation, as this renders possible the military operation which Israel has been preparing and rehearsing in secret alongside the negotiations.[5]

On 3 July 1976, 4:00 pm, three C-130 jets and a Boeing 707 leave Israel; 150 well-prepared Israeli soldiers, equipped with Jeeps and MGs as well as physicians, are aboard. (p. 221) With the unanimous vote of the eighteen ministers participating in the Israeli crisis management team, Israel has opted for a military operation, dubbed 'Operation Thunderbolt', to be carried out without any prior referral of the matter to the Security Council. At the time of the decision, the memory of the 1973 Yom Kippur War is still fresh in Israel and Israel's decision-makers feel that a failure to rescue its citizens could be perceived as a fatal weakness.[6]

Shortly after midnight on 4 July 1976, as 'the sand in the hourglass [is] about to run out'[7] the Israeli machines land 'by surprise and without any authority from the Ugandan Government'[8] at seven-minute intervals at Entebbe International Airport. Only fifty-three minutes later,[9] they depart with the freed hostages. The Israel Defence Forces had stormed the airport terminal, killing seven hijackers and liberating the prisoners. Yet, the rescue operation also results in four casualties, three Israeli passengers and one Israeli officer,[10] and a number of serious injuries. About twenty Ugandan soldiers are fatally wounded and the airport building is heavily damaged. Furthermore, allegedly in order to ensure their safe return flight, Israeli soldiers destroy a number of Ugandan aircrafts, which are parked nearby, and other military equipment.[11] After a refuelling stop in Nairobi in Kenya, which is allowed 'purely on humanitarian grounds',[12] Israel's rescue mission safely returns to Israel.

Besides these basic facts, some important factual uncertainty remains. In particular, in the wake of the incident, states advanced conflicting versions as to the role of Uganda in the course of the hijacking. The truth is (still) not fully established. Uganda, then under the rule of President Idi Amin, claimed that it neither knew about the planned hijacking, nor supported or collaborated with the terrorists.[13] To the contrary, it stated that it permitted the hijacked 'aircraft to land at Entebbe on humanitarian considerations' and subsequently attempted with best effort to free the hostages through negotiation. Amin also drew attention to the fact that his success in negotiating led to an improvement of the treatment of the prisoners, the gradual release of hostages and the extension of the deadline, all of which illustrate that this was the most promising path to securing the release of the hostages.[14]

Israel, however, alleged that 'the President of Uganda had co-operated with the terrorists under the cloak of deception and false pretences'.[15] Israel believed that Uganda had not only approved the hijacking, but also actively assisted the hijackers and even guarded the (p. 222) hostages.[16] While some intelligence reports and statements by released hostages indicated that Uganda operated in collusion with the

terrorists, this allegation could not be verified in the course of the ensuing discussion.[17]

II. The Positions of the Main Protagonists and the Reaction of Third States and International Organizations

The Prime Minister of Mauritius, being the chairman of the Organization of African Unity at the time, opened the legal debate by denouncing Israel's raid on Entebbe as an 'act of aggression' against Uganda.[18] This condemnation was followed by an intense, and in part emotional, debate in the UN Security Council (UNSC). While the participants in the discussion unanimously denounced the terroristic act of hijacking,[19] they were divided in their appraisal of Israel's rescue operation.[20]

Israel made its case through an extraordinarily detailed and transparent legal argument, which it underpinned with references to state practice[21] and legal writing.[22] It relied on its right to self-defence, which, it claimed, encompassed 'the right of a State to take military action to protect its nationals in mortal danger',[23] 'whom the local government is unable or unwilling to protect'.[24] Israel elaborated as follows:

> The right to self-defence is enshrined in international law and the Charter of the United Nations and can be applied on the basis of the classic formulation, as was done in the well-known Caroline Case, permitting such action where the 'necessity of self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation'. That was exactly the situation which faced the Government of Israel.[25]
>
> What mattered … was the lives of the hostages, in danger of their very lives. No consideration other than this humanitarian consideration motivated the government of Israel. Israel's rescue operation was not directed against Uganda … They were rescuing nationals from a band of terrorists and kidnappers who were being aided and abetted by the Ugandan authorities. The means used were the minimum necessary to fulfil that purpose, as is laid down in international law.[26]

The United States was the only state that explicitly concluded that Israel's rescue operation was in compliance with international law:

> Israel's action in rescuing the hostages necessarily involved a temporary breach of the territorial integrity of Uganda. Normally, such a breach would be impermissible under the Charter (p. 223) of the United Nations. However, there is a well established right to use limited force for the protection of one's own nationals from an imminent threat of injury or death in a situation where the state in whose territory they are located is either unwilling or unable to protect them. This right, flowing from the right of self-defence, is limited to such use of force as is necessary and appropriate to protect threatened nationals from injury. The requirements of this right to protect nationals were clearly met in the Entebbe case.[27]

The United States made sure to add that 'we do not see it as a precedent which would justify any future unauthorized entry into another State's territory that is not similarly justified by exceptional circumstances'.[28]

Other western states, such as France,[29] the United Kingdom,[30] Germany,[31] Italy,[32] and Japan,[33] were more reluctant and enigmatic in their assessment. In carefully drafted statements, they emphasized the unique and complex circumstances of the incident and, while not commending Israel's course of action, did not condemn it either.[34] Sweden, in a particularly carefully worded statement, observed the following:

> The Charter does not authorize any exception to this rule [Article 2(4) of the UN Charter] except for the right to self-defence and enforcement measures undertaken by the Council under Chapter VII. This is no coincidence or oversight. Any formal exceptions permitting the use of force or of military intervention in order to achieve certain aims, however laudable, would be bound to be abused, especially by the big and strong, and to pose a threat, especially to the small and weak. In our view, the Israeli action which we are now considering involved an infringement of the national sovereignty and territorial integrity of Uganda. We understand the strong reaction against this action, which cost the lives of many Ugandan citizens and led to heavy material damage. At the same time, we are aware of the terrible pressures to which the Israeli government and people were subjected, faced with this unprecedented act of international piracy and viewing the increasing threat to the lives of so many of their compatriots. Furthermore, when the decision to act was taken, the Israeli Government was in possession of evidence which, it felt, strongly suggested that the Government which had the responsibility for the protection of the hostages did not do everything in its power to fulfil this duty. The problem with which we are faced is thus multi-faceted. My government, while unable to reconcile the Israeli action with the strict rules of the Charter, does not find it possible to join in a condemnation.[35]

A clear majority of the states that spoke out condemned 'Operation Thunderbolt' as 'unlawful'. Yet, these states differed considerably in their line of reasoning. Guyana,[36] Tanzania,[37] the Soviet Union,[38] Panama,[39] Romania,[40] India,[41] Cuba,[42] and Mexico[43] explicitly rejected any right to forcibly protect nationals abroad irrespective of the factual circumstances. Such a right was 'nothing but a modern-day version of gunboat diplomacy',[44]

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(p. 224) which 'constitute[d] a dangerous precedent in the conduct of international relations, opening the way to all kinds of adventures'.[45] Perhaps most clearly, Tanzania rejected Israel's legal claim as follows:

> I have just referred to the failure of the Israel case on the facts. Yet Israel has no case even in international law as it exists now. Whatever might have been the law in the past, and whatever writers and jurists of the past might have seen as law with regard to the right of a State to protect its nationals abroad, such is no longer the case now.[46]

Uganda, while having been somewhat less clear, probably agreed with that legal view. It condemned the Israeli raid as an 'act of naked aggression'.[47] In the course of its argument, it not only empathically rejected the Israeli allegation to have collaborated with the hijackers,[48] but also seemed to oppose the legal principle underpinning Israel's claim.[49]

The statements of China,[50] Mauritius,[51] Somalia,[52] Libya,[53] Guinea,[54] Benin,[55] Pakistan,[56] Kenya,[57] and Yugoslavia,[58] while clear in their condemnation of Israel, remained vague as regards their line of reasoning. The same was true for Mauretania, which spoke on behalf of the Group of the (at the time forty-nine) African States in the United Nations.[59]

Other criticisms seemed to be primarily premised on the factual circumstances of the case, namely the assumption that Uganda did in no way collaborate with the hijackers, but rather had done its best to contribute to the release of the hostages. Hence, while rejecting the

application of self-defence as formulated by Israel on a factual account, Qatar,[60] Algeria,[61] and Cameroon[62] did not explicitly oppose the admissibility of Israel's claim *as such*.

Kenya's conduct with respect to the Entebbe incident deserves special mention. While condemning Israel's rescue mission as aggression,[63] Kenya reportedly rendered Israel's assistance in conducting the mission.[64] On 12 July 1976, after abuses of Kenyan nationals in Uganda, Kenya wrote to the Security Council: 'Kenya reserves its right to take the most appropriate steps, in accordance with international law, to protect the lives of its citizens.'[65]

Despite the fact that states agreed that Israel's rescue operation constituted a 'precedent' which 'affects all', and despite the fact that thirteen states, which at the time were not represented in the Security Council, exercised their right under Article 31 of the UN Charter

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(p. 225) and participated in the debate,[66] the majority of UN member states remained silent and did not respond to Israel's claim.

In the end, the Security Council did not adopt any resolution. A draft resolution sponsored by the United Kingdom and the United States, which was drafted in legally neutral terms and did not mention Operation Thunderbolt, failed to obtain sufficient affirmative votes.[67] Benin, Libya, and Tanzania presented a draft resolution, which would have condemned 'Israel's flagrant violation of Uganda's sovereignty and territorial integrity', but did not insist that their resolution be voted on.[68]

III. Questions of Legality

From an international legal perspective,[69] the Entebbe incident revolves around the existence of a 'right of a State to take military action to protect its nationals [abroad] in mortal danger'.[70] As the representative of the United Kingdom explained, the analysis of this legal claim requires two principles of international law to be reconciled: the 'principle of territorial integrity' and the 'valid consideration that States exist for the protection of their peoples'. Hence, the practice in the Entebbe case supports the analytical distinction between the two scenarios of 'forcible protection of nationals abroad' and 'humanitarian intervention'.[71]

Israel's legal claim to use force was confined to an attack by non-state actors deliberately threatening the lives and limbs of its nationals. The protection of property interests was not at stake and no element of the Entebbe debate suggests that states could be prepared to articulate a claim extending to such interests. While Israel alleged that Uganda had aided and abetted the non-state attackers (without, however, arguing that the attack was therefore attributable to Uganda), Israel did not make its case dependent on such an involvement by Uganda. Instead, Israel's claim extended to situations of unwillingness or inability of the local government to prevent the non-state attack, and it was in that broader sense that the United States explicitly endorsed Israel's legal view.

(p. 226) In the context of the protection of nationals abroad, it is possible to distinguish three factual scenarios, which may give rise to different legal considerations.[72] In the first one, nationals abroad are generally threatened by internal unrest or by an actual armed conflict and the protecting state decides to evacuate its nationals in a '*Blitz*'-type operation with minimal territorial intrusion. The nationals concerned are not under (an imminent) attack, but the rescuing state is determined to forcefully overcome any possible obstruction of its evacuation effort. In this scenario, the evacuation operation does not meet with obstruction so that no actual combat occurs. This type of rescue operation has increasingly been referred to as a 'non-combatant evacuation operation'.[73] In the second scenario, obstruction by the host state or by non-state actors materializes and is forcibly overcome by the rescuing state. In the third scenario, the nationals concerned are already under attack by the host state or non-state actors in the host state, for example, in the form of hostage-taking. In this scenario, the rescue operation consists of forcibly defending the nationals against the attack. The first of these scenarios stands out because it is open to question whether the rescue operation constitutes a use of force within the meaning of Article 2(4) of the UN Charter at all.[74] It is important to note that the Entebbe case constitutes an example of the third scenario only. In that respect, but in that respect only, the debate within the Security Council revealed a consensus among states that such an operation, albeit limited in scope, passes any potential minimum intensity threshold for a use of force within the meaning of Article 2(4) of the UN Charter.

While it is established that a hostage rescue operation such as the Israeli operation at Entebbe qualifies as a 'use of force', scholarly opinions are divided as to whether such a use of force may be lawful under international law. Opinions on the matter indeed differ so widely that the following statement is probably fairly close to the truth: 'Various scholars have on occasion claimed to belong to the majority group, but it appears difficult to determine which side constitutes the majority and minority'.[75]

A considerable group of scholars holds the view that it is unlawful for a state under the UN Charter to forcibly protect its nationals abroad.[76] This is based on the view that any such use of force comes within the scope of Article 2(4) of the UN Charter and that the right to self-defence, as defined in Article 51 of the UN Charter, provides for the only exception to that prohibition. This right, it is further held, is confined to the defence against an armed attack against a state; consequently, attacks against nationals abroad, so the argument concludes, do not constitute armed attacks against the respective state of nationality.

Others believe that rescue operations conducted by force without the territorial state's approval are permissible under international law if certain narrow circumstances are met.

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(p. 227) The reasons given for that conclusion differ widely. A first line of reasoning[77] starts from the assumption that the words 'against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations' in Article 2(4) must have some independent meaning. On this basis, it is argued that a limited use of force with the sole goal to protect nationals under threat of attack abroad does not run counter to the 'territorial integrity or political independence of any State' and is also not 'in any other manner inconsistent with the purposes of the United Nations'.

The majority within this group, however, has developed grounds for precluding the wrongfulness of the prima facie violation of the prohibition of the use of force. While some authors invoke 'an autonomous right that has survived the entry into force of the UN Charter' under customary international law,[78] a 'state of necessity',[79] or a conflict with human rights obligations,[80] most authors rely on the right to self-defence. The argument based on the right of self-defence appears in two variants.

The first goes back to Sir Humphrey Waldock's 1952 Hague Course, in which he argued that there was, in 1945, a customary right to adopt necessary measures of self-defence to avert an imminent threat of injury to nationals in case of a failure or inability on the part of the territorial sovereign to protect these nationals, and that Articles 2(4) and 51 of the UN Charter have not eliminated this right.[81] Waldock

thereby builds on the more general and controversial idea that Article 51 of the UN Charter has left unaffected a broader and pre-existing customary right of self-defence.[82] According to the second variant of the self-defence argument, an attack against nationals abroad can constitute an 'armed attack' 'against a member of the United Nations' within the meaning of Article 51 of the UN Charter.[83] While it would seem that such a view continues to be in the minority,[84]

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(p. 228) one cannot fail to recognize the fact that the more permissive interpretation of the term 'armed attack' has recently gained some ground. Ruys cautiously questions the majority scholarly opinion that an attack upon nationals abroad does not constitute an armed attack upon the state of nationality, and opines: 'Still, if some consider it wholly artificial to expand the concept of "armed attack" of Article 51 to cover attacks against nationals abroad, the present author does not believe that this interpretation can be ruled out *per se*.'[85] Green seems to be even more in favour of a broader construction of the term 'armed attack':

> As such the concept of an attack against a state could plausibly be seen as including the nationals of that state, as constituting a part of that state or an extension of that state. In the view of the present author, this is not an unreasonable stretch of the language of Article 51: 'People being a necessary condition for the existence of a state, the protection of nationals can be assimilated without great strain to the right to self-defence explicitly conceded in the text of the Charter.'[86]

Dinstein concurs with respect to those cases in which the attack on the individuals 'was clearly meant as an attack on their government', and refers to the hostage taking in Entebbe as a textbook example of such an armed attack.[87]

It finally bears mentioning that a number of scholars end their legal analysis in stressing the existence of a legal grey area. The following statement by Franck may serve as an illustration:

> These instances of UN-based state practice may be thought to be random, leaving the law indeterminate. However, the practice may also be read to yield either a narrow, or a broad, clarification of applicable law. Narrowly, recourse to armed force in order to protect nationals abroad may be said to have been condoned as legitimate in specific mitigating circumstances, even though that recourse is still recognized as technically illegal. Or, in a broader interpretation of practice, the system may be said to have adapted the concept of self-defense, under Article 51, to include a right to use of force in response to an attack against nationals, providing there is clear evidence of extreme necessity and the means chosen are proportionate.[88]

It follows that, in order to determine that Israel's use of force in the Entebbe incident was lawful, several legal hurdles have to be overcome. First, a wider and not uncontroversial construction of the right of self-defence recognized in Article 51 must be adopted. Second, it must be demonstrated that Uganda had either been colluding with the hostage-takers, or had failed itself to take the necessary and appropriate steps to (p. 229) end the attack on Israel's nationals. There would have been no such failure, as it may be inferred from the reactions by states in this very incident,[89] if Uganda, at the time of Israel's use of force, had been in the process of undertaking promising negotiations. At this point of the application of the law to the facts, the more general question arises what ought to be the perspective of the analysis: *ex ante* or *ex post*? While Israel and the United States hinted that it suffices that the rescuing state 'had good reason to believe'[90] that its nationals were in imminent danger, the widespread condemnation of Israel's operation, by those not putting themselves in Israel's position before its raid, but instead arguing on a more objective level, might be taken to reject this proposition. However, a good measure of caution is due as states did not expressly advance any clearly articulated legal view in this specific respect. Third, the requirement of proportionality gives rise to interesting legal questions in light of the fact that twenty Ugandan soldiers were fatally wounded in the course of the rescue operation. Here again, it matters whether the Ugandan soldiers had, in one way or the other, participated in the attack on Israel's nationals. If they had not and could have been considered innocent bystanders, the legal question would have arisen which proportionality test to apply. The proportionality test governing the right of self-defence in case of an armed attack by a state is unclear in its details,[91] but it is certainly less stringent with respect to the loss of innocent life than the proportionality test governing a law enforcement operation.[92] A good argument could be made that the proportionality test applicable in case of a non-state actors' hostage-taking of foreign nationals with the host state unable to properly respond should be that governing law enforcement. But this specific legal issue was not taken up during the debate. The final legal question is whether the loss of life among the Israeli hostages as well as the risk posed to them as a result of the rescue operation were only a matter of Israel's international human rights obligations, or whether these elements should also enter the analysis of whether Israel's use of force met the requirement of proportionality governing action taken in the exercise of the right of self-defence. After all, at the material time of the rescue operation, those individuals were on Ugandan soil. Again, this specific legal question was not addressed in the course of the debate. Interestingly, however, Pakistan alluded to the issue at stake by stating as follows:

> Further, in the euphoria over this 'brilliant rescue operation', it should not be forgotten that the 103 hostages could have lost their lives and this so-called legend could have resulted in yet another bloody massacre.[93]

Definitive findings on all of the above issues are beyond the scope of this chapter because they would require full factual knowledge. Yet, it can safely be concluded that even on the basis of a more permissive view of the right of self-defence as recognized in Article 51, the legal requirements for a lawful rescue operation are stringent.

(p. 230) IV. Conclusion: Precedential Value

The debate on the Entebbe raid is evidence of a fairly robust consensus among states that the prohibition of the use of force is comprehensive in scope. It is true that Israel alluded to a narrow reading of the prohibition of the use of force by citing O'Connell[94] and by arguing that the attack was not 'directed against Uganda'. France's statement that Israel's operation 'was not in order to infringe the territorial integrity or independence of [Uganda], but to save endangered human lives' may be taken so as to point in the same direction. Yet, even Israel itself based its legal claim primarily on the right of self-defence. Furthermore, the majority of states disapproved the idea of a narrow reading of Article 2(4) of the UN Charter with remarkable clarity. Not only states that condemned the operation but also states that took a more positive view on Israel's conduct expressly rejected such a proposition. The general thrust of the debate clearly was that a rescue operation of the Entebbe type, despite its limitation in time and scope, constitutes a use of force within the meaning of Article 2(4) of the UN Charter. Again, this is without prejudice of a different assessment of a non-combatant evacuation operation.[95]

States also seemed to agree in the debate that the right of self-defence constitutes the only conceivable legal basis for a forcible rescue operation of the Entebbe type. Importantly, not even Israel relied on an autonomous standalone customary right to rescue nationals abroad or invoked a state of necessity.[96]

Furthermore, it clearly emerges from the debate that there is no right to forcibly rescue one's nationals abroad in case the local state deals in good faith with a non-state attack against foreign nationals on its soil. This point was made by a great number of states and even Israel as well as the United States conceded to it. Unsurprisingly, no effort was made to explain the precise legal basis for this limitation of a possible right of self-defence. Nevertheless, the idea that any right by a foreign state to use force against non-state attackers can only be subsidiary to the authority of the local state is implicit in much of the debate. By the same token, the debate would clearly seem to support the idea that forcible self-defence action by the state of nationality is not *necessary* if the local state acts in accordance with its duty to protect foreign nationals on its soil against non-state attacks, thus tying this qualification (at least in part) to the necessity requirement for action taken in self-defence.

Regarding Israel's self-defence claim, it bears mentioning at the outset that it follows the more traditional 'Waldock-line of reasoning'. Neither Israel nor any other state argued that Israel had become the object of an armed attack within the meaning of Article 51 of the UN Charter. The practice of states in the Entebbe incident can therefore not be taken to support a broader reading of the latter concept.

When it comes to assessing the reaction by the other states to Israel's claim, it can be said with certainty that a not insignificant group of states categorically rejected the existence of a right to forcibly liberate nationals taken hostage abroad. The Entebbe incident can therefore not be relied upon as evidence of subsequent state practice pertaining to the

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(p. 231) UN Charter and displaying an interpretative agreement to that effect. By the same token, this state practice, in and of itself, does not support the emergence of an 'autonomous customary right of self-defence' covering the Entebbe type of scenario.

These findings lead to the more difficult question to what extent Israel's self-defence claim was accepted. In that respect, the picture looks rather bleak at first sight because Israel's course of action was met with only sparse explicit support and was widely condemned. Yet, the analysis does not end here, and this is so for two reasons. First, bearing in mind the political climate regarding Israel in 1976, by far not all states condemning Israel's rescue operation did this on the basis of an unequivocal rejection of Israel's legal claim.[97] Second, and crucially, the majority of states did not express an opinion on this claim at all. This prompts the question how to evaluate this silence. Being confronted with the question of how to interpret states' silence, the ICJ stated in the *Pedra Branca Case* that 'the absence of reaction may well amount to acquiescence that is to say, silence may also speak, but only if the conduct of the other States calls for a response'.[98] In the *Temple of Preah Vihear Case*, the Court moreover held that, where 'it is clear that the circumstances were such as called for some reaction, within a reasonable period', the state confronted with a certain subsequent conduct by another party 'must be held to have acquiesced'.[99] The circumstances in which the silence is observed are hence decisive.[100] It is thus important to consider whether, in the situation at hand, states were aware of the claim and its importance and whether the circumstances were such that a reaction to the claim as put forward was called for. The International Law Commission in its work on 'subsequent State practice'[101] as well as on the 'identification of customary international law'[102] similarly established these criteria to determine 'qualified silence'.

In the Entebbe case, a five-round debate took place in the Security Council, the organ endowed with the primary responsibility for the maintenance of international peace and security and the most important forum for states to debate the *jus contra bellum* outside judicial proceedings. The topic placed on the Council's agenda was the 'complaint by the Prime Minister of Mauritius … of the "act of aggression" by Israel against the Republic of Uganda'. It hence squarely focused on the assessment of Israel's conduct in light of the prohibition of the use of force, which is a cornerstone of the international legal order. Within the discussion, Israel advanced its legal claim in full transparency and in remarkable detail. It added that '(t)his debate is an opportunity for the world to take action on this issue, which can effect the lives of every man and woman and child in the world'.[103] Many other states explicitly acknowledged that the Entebbe incident had precedential potential and hence required international response. For instance, Tanzania stated that

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(p. 232) '(i)t is a dangerous precedent which, if allowed to go uncontested, would usher in a new era in international relations'.[104] The fact that states were aware of the possibility of a 'law-crystallizing' moment is also apparent from the fact that many UN members that did not sit on the UN Security Council exercised their right under Article 31 of the UN Charter to participate in the debate without a vote. In light of the foregoing, the Entebbe incident became one in which a response to a legal claim was called for. If, in these circumstances, the majority of states either remained entirely silent or denounced Israel's action only on a factual basis, it is hard to escape the conclusion that this majority in fact tolerated Israel's basic legal argument.

Until today, the Entebbe incident remains the most important post-1945 incident concerning the question of a right of a state to use force to rescue nationals under attack abroad. While cases of non-combatant evacuation operations have been fairly numerous in recent times,[105] only the Egyptian rescue mission at the Cypriot airport of Larnaca in 1978 and the (aborted) rescue mission by the United States at the time of the Tehran hostage crisis in 1980 have displayed similarities to the Entebbe operation. Yet, none of the latter cases has given rise to a similarly intense and transparent legal debate[106] (perhaps the most interesting aspect of the Larnaca incident concerns the change of position by Egypt, which had earlier on criticized other states for forcibly protecting their nationals abroad[107]).

The verbal practice of states subsequent to the Entebbe incident has not revealed a major evolution either. The issue was taken up within the course of the negotiations on the International Convention against the Taking of Hostages when Algeria and Tanzania submitted a draft amendment according to which 'states shall not resort to the threat or use of force against the sovereignty, territorial integrity or independence of other states as a means of rescuing hostages'.[108] As this initiative proved controversial, it was diluted to the neutral formulation of what became Article 14 of the Convention: 'Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a state in contravention of the Charter of the United Nations.'[109] More recently, the ILC Special Rapporteur John Dugard proposed to insert the following Draft Article 2 in the Draft Articles on Diplomatic Protection:

> The threat or use of force is prohibited as a means of diplomatic protection, except in the case of rescue of nationals where:
>
> (a) the protecting state has failed to secure the safety of its nationals by peaceful means;
>
> (b) the injuring state is unwilling or unable to secure the safety of the nationals of the protecting state;
>
> (c) the nationals of the protecting state are exposed to immediate danger to their persons;
>
> (d) the use of force is proportionate in the circumstances of the situation;
>
> (e) the use of force is terminated, and the protecting state withdraws its forces, as soon as the nationals are rescued. [110]

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(p. 233) This proposal proved highly controversial and was eventually withdrawn. Against this background, the more recent embracement by the Russian Federation of a right of self-defence in support of nationals abroad, as expressed in the 2009 amendment to the 1996 Russian Federal Law on Defence,[111] constitutes the only notable new development in the practice of states subsequent to the Entebbe incident.

The continuing importance of the Entebbe incident is further due to the fact that the International Court of Justice (ICJ) has not had the occasion to elucidate the legal issue. The Court only touched upon the matter in passing in its 1980 *Tehran* judgment[112] and it would be unwarranted to construe this brief and somewhat oracular passage as a judicial finding to the effect that the use of force to protect nationals abroad is illegal under any circumstances.[113]

In light of all this, it is unsurprising that the Independent International Fact Finding Commission on the Conflict in Georgia referred to the Entebbe conflict when assessing the Russian justification of its intervention in Georgia in 2008,[114] and that the Venice Commission attached special importance to it in its Opinion on the Russian law introducing the protection of 'Russian citizens beyond the territorial boundaries of the Russian Federation from armed attack'.[115]

To sum up, until today, the Entebbe case remains the most important incident of post-1945 state practice on the matter. The debates surrounding the incident suggest that only the right of self-defence can conceivably justify such a use of force, and only in a case where the local state does not itself deal with the threat in good faith, and under strict conditions of proportionality. While a significant group of states rejects even such a limited self-defence claim, a majority of states is willing, if not explicitly to support, then at least to tolerate the claim. This ambiguous practice of states must be balanced against the ambiguity that the textual interpretation of Articles 2(4) and 51 of the UN Charter cannot entirely dispel. In such a situation, the only thing that can be said with certainty is that the use of force in an Entebbe-type situation falls within a grey area of the prohibition of the use of force.[116]

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Footnotes:

1 This chapter was finished on 1 October 2016. All website references were last accessed on the date of its completion.

2 For a detailed account on the facts see: William Stevenson, *90 Minutes at Entebbe: The First Full Inside Story of Operation Thunderbolt, the Spectacular Israeli Strike against Terrorism* (Bantam Books 1976); Saul David, *Operation Thunderbolt: Flight 139 and the Raid on Entebbe Airport. The Most Audacious Hostage Rescue Mission in History* (Hodder & Stoughton 2015). See also Letter dated 5 July 1976 from the Chargé d'affaires a.i. of the Permanent Mission of Uganda to the United Nations Addressed to the President of the Security Council (5 July 1976) UN Doc S/12124, Annex; UNSC Verbatim Records (9 July 1976) UN Doc S/PV.1939 [21]–[35] (Uganda), [70]–[103] (Israel), [180]–[99] (France); 'Hijacking of Air France Airbus by Followers of Popular Front for the Liberation of Palestine—Israeli Action to Liberate Hostages held at Entebbe Airport—Inconclusive Debate at UN Security Council—Uganda Recriminations against Britain and Kenya—Severance of Diplomatic Relations with Uganda by Britain' (1976) 22 Keesing's Record of World Events 27888. See also Jonathan Freedland, ' "We Thought This Would be the End of Us": The End Raid on Entebbe, 40 Years On' *The Guardian* (London, 25 June 2016) <https://www.theguardian.com/world/2016/jun/25/entebbe-raid-40-years-on-israel-palestine-binyamin-netanyahu-jonathan-freedland>.

3 UN Doc S/12124 (n 2) Annex, 2.

4 UN Doc S/PV.1939 (n 2) [187]–[189].

5 See on the decision process, analysing Israeli's options Francis A Boyle, 'International Law in Time of Crisis: From the Entebbe Raid to the Hostages Convention' (1980) 75 Northwestern University Law Review 40–45.

6 ibid 43–44.

7 Letter dated 4 July 1976 from the Permanent Representative of Israel to the United Nations Addressed to the Secretary-General (4 July 1976) UN Doc S/12123, Annex, 2.

8 UN Doc S/12124 (n 2) Annex, 1.

9 UNSC Verbatim Records (13 July 1976) UN Doc S/PV.1942 [121].

10 UN Doc S/12123 (n 7) Annex, 1.

11 UN Doc S/12124 (n 2) Annex, 1; UN Doc S/PV.1939 (n 2) [31].

12 Letter dated 7 July 1976 from the Chargé d'affaires a.i. of the Permanent Mission of Kenya to the United Nations Addressed to the Secretary-General (7 July 1976) UN Doc S/12131; UN Doc S/PV.1939 (n 2) [153], [257]–[261]. Kenya thereby replied to the charges made by Uganda that Kenya (as well as other western powers) collaborated in the Israeli aggression, see UN Doc S/12124 (n 2) Annex, 3.

13 UN Doc S/PV.1939 (n 2) [34]; UN Doc S/PV.1942 (n 9) [161]; UNSC Verbatim Records (14 July 1976) UN Doc S/PV.1943 [104], [113]–[118].

14 UN Doc S/12124 (n 2) Annex, 2; UN Doc S/PV.1939 (n 2) [21]–[30], [253]–[256].

This view was shared by UN Doc S/PV.1939 (n 2) [44] (Mauritania), [170] (Qatar), [185] (France), [215] (Cameroon); UNSC Verbatim Records (12 July 1976) UN Doc S/PV.1940 [33]–[35] (Guinea), [57] (Mauritius); UNSC Verbatim Records (12 July 1976) UN Doc S/PV.1941 [9]–[26] (Benin), [127] (Pakistan); UN Doc S/PV.1943 (n 13) [85] (Cuba).

15 UN Doc S/PV.1939 (n 2) [80]. See for more details and indicators Israel advanced in the course of the Security Council debate: ibid [81], [83]–[85], [90]–[103]; UN Doc S/PV.1942 (n 9) [77]–[99].

16 UN Doc S/PV.1939 (n 2) [78].

17 Mitchell Knisbacher, 'The Entebbe Operation: A Legal Analysis of Israel's Rescue Action' (1977) 12 Journal of International Law and Economics 57, 72–73; Thomas R Krift, 'Self-defense and Self-help: The Israeli Raid on Entebbe' (1977) 4 Brooklyn Journal of International Law 43, 44–45.

18 Letter dated 6 July 1976 from the Assistant Executive Secretary of the Organization of African Unity to the United Nations Addressed to the President of the Security Council (6 July 1976) UN Doc S/12126; UN Doc S/PV.1939 (n 2) [6].

[19] Boyle (n 5) 52–54.

[20] See for a helpful chronological overview of states' official statements in the international forum: 'Report of the Security Council 16 June 1976–15 June 1977' UN Doc A/RES/32/149 Supplement No 2 A/32/2.

[21] UN Doc S/PV.1939 (n 2) [116]–[120]. Israel referred to a French rescue operation conducted in 1976 as well as the *Mayaguez* incident.

[22] UN Doc S/PV.1939 (n 2) [106]–[108]; UN Doc S/PV.1942 (n 9) [103]. Israel referred to Derek W Bowett, *Self-Defence in International Law* (Praeger 1958) 87–88; Justin L Brierly, *The Law of Nations* (6th edn, Clarendon Press 1963) 427–28; David P O'Connell, *International Law* (2nd edn, Stevens and Sons 1970) 303–04.

[23] UN Doc S/PV.1939 (n 2) [106].

[24] UN Doc S/PV.1939 (n 2) [107]; UN Doc S/PV.1942 (n 9) [104].

[25] UN Doc S/PV.1939 (n 2) [115].

[26] UN Doc S/PV.1939 (n 2) [121].

[27] UN Doc S/PV.1943 (n 13) [121]–[123].

[28] UN Doc S/PV.1943 (n 13) [183].

[29] UN Doc S/PV.1943 (n 13) [43]–[45].

[30] UN Doc S/PV.1940 (n 14) [107]–[108].

[31] UN Doc S/PV.1941 (n 14) [51].

[32] UN Doc S/PV.1943 (n 13) [61].

[33] UN Doc S/PV.1942 (n 9) [57]–[58].

[34] UN Doc S/PV.1940 (n 14) [107] (United Kingdom); [121]–[123] (Sweden); UN Doc S/PV.1941 (n 14), [50] (Germany); UN Doc S/PV.1942 (n 9), [57]–[58] (Japan); UN Doc S/PV.1943 (n 13) [43]–[45] (France).

[35] UN Doc S/PV.1940 (n 14) [122]–[123].

[36] UN Doc S/PV.1940 (n 14) [80]–[84].

[37] UN Doc S/PV.1941 (n 14) [100]–[109], [115].

[38] UN Doc S/PV.1941 (n 14) [152], [157]–[162]; UN Doc S/PV.1942 (n 9) [195].

[39] UN Doc S/PV.1942 (n 9) [27], [30]–[31].

[40] UN Doc S/PV.1942 (n 9) [39]–[40], [45].

[41] UN Doc S/PV.1942 (n 9) [145]–[146].

[42] UN Doc S/PV.1943 (n 13) [81], [87].

[43] Letter dated 9 July 1976 from the Permanent Representative of Mexico to the United Nations Addressed to the President of the Security Council (9 July 1976) UN Doc S/12135.

[44] UN Doc S/PV.1940 (n 14) [84] (Guyana).

[45] Note Verbale dated 8 July 1976 from the Permanent Mission of Algeria to the United Nations Addressed to the Secretary-General (8 July 1976) UN Doc S/12132 (Algeria).

[46] UN Doc S/PV.1941 (n 14) [104].

[47] UN Doc S/PV.1939 (n 2) [35].

[48] UN Doc S/PV.1939 (n 2) [21]–[37].

[49] UN Doc S/PV.1943 (n 13) [112].

[50] UN Doc S/PV.1939 (n 2) [224]–[226]; Tom Ruys, 'The "Protection of Nationals" Doctrine Revisited' (2008) 13 Journal of Conflict and Security Law 233, 250 fn 106 reads China's statement as a rejection of the right.

[51] UN Doc S/PV.1940 (n 14) [52]–[60], [65]–[66], [71].

[52] UN Doc S/12136; UN Doc S/PV.1941 (n 14) [30], [34], [39].

[53] UN Doc S/PV.1939 (n 2) [244]; UN Doc S/PV.1943 (n 13) [22]; UN Doc S/PV.1941 (n 14) [180], [185].

[54] UN Doc S/PV.1940 (n 14) [32]–[36], [40], [45]–[46].

[55] UN Doc S/PV.1941 (n 14) [12]–[26].

[56] UN Doc S/PV.1941 (n 14) [127]–[131].

[57] UN Doc S/PV.1939 (n 2) [148].

[58] UN Doc S/PV.1941 (n 14) [65]–[68]; Ruys (n 50) 250 fn 106 classifies this statement as a rejection of the principle.

[59] UN Doc S/PV.1939 (n 2) [41], [44]–[47], [50], [52].

[60] UN Doc S/PV.1939 (n 2) [168]–[171].

[61] UN Doc S/PV.1939 (n 2) [168]–[171]. It was speaking for the non-aligned movement: UN Doc S/12132 (n 45) Annex. See for the non-aligned movement's position also: Letter dated 1 September 1976 from the Permanent Representative of Sri Lanka to the United Nations Addressed to the Secretary General (8 September 1976) UN Doc A/31/197 Annex I, in which the Fifth Conference of State or Government of Non-Aligned Countries (21 August 1976) NAC/CONF.5/S.2 [148] is attached.

[62] UN Doc S/PV.1939 (n 2) [212], [214]–[215].

[63] UN Doc S/PV.1939 (n 2) [148], [152], [158].

[64] Kenya denied its cooperation with Israel in UN Doc S/PV.1939 (n 2) [158]; but see Werner Ader, *Gewaltsame Rettungsmaßnahmen zum Schutz eigener Staatsangehöriger im Ausland* (VVF 1988) 165, 185.

[65] Letter dated 12 July 1976 from the Minister for Foreign Affairs of Kenya Addressed to the President of the Security Council (12 July 1976) UN Doc S/12140.

[66] Federal Republic of Germany, Guinea, Israel, Kenya, Mauritania, Mauritius, Qatar, Uganda, Cameroon, Somalia, Yugoslavia, India, and Cuba.

[67] UN Doc S/12138; UN Doc S/PV.1943 (n 13) [162].

[68] UN Doc S/PV.1943 (n 13) [148].

[69] See for analysis in literature specifically focusing on the Entebbe incident: Ulrich Beyerlin, 'Die israelische Befreiungsaktion in Entebbe in völkerrechtlicher Sicht' (1977) 37 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 213, 213–43; Francis A Boyle, 'The Entebbe Hostages Crisis' (1982) 29 Netherlands International Law Review 32, 32–71; David J Gordon, 'Use of Force for the Protection of Nationals Abroad: The Entebbe Incident' (1977) 9 Case Western Reserve Journal of International Law 117, 117–34; Knisbacher (n 17) 57–83; Krift (n 17) 34–62; Roderick D Margo, 'The Legality of the Entebbe Raid in International Law' (1977) 94 South African Law Journal 306, 306–26; Farin Mirvahabi, 'Entebbe: Validatity of Claims in International Law' (1977) 6 Philippine Yearbook of International Law 58, 58–91; Jordan J Paust, 'Entebbe and Self-Help: The Israeli Response to Terrorism' (1978) 2 The Fletcher Forum 86, 86–91; Leonard M Salter, 'Commando Coup at Entebbe: Humanitarian Intervention or Barbaric Aggression' (1977) 11 International Lawyer 331, 331–38; Meinhard Schröder, 'Die Geiselbefreiung in Entebbe—ein völkerrechtswidriger Akt Israels?' (1977) 37 JuristenZeitung 420, 420–26; Jeffery A Sheehan, 'The Entebbe Raid: The Principle of Self-Help in International Law as Justification for State Use of Force' (1976–1977) 1 Fletcher Forum 134, 134–53; Helmut Strebel, 'Nochmal zur Geiselbefreiung in Entebbe' (1977) 37 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 691, 691–710.

[70] UN Doc S/PV.1939 (n 2) [106].

[71] See also on general observations: Mathias Forteau, 'Rescuing Nationals Abroad' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 947; See also Kristen Eichensehr, 'Defending Nationals Abroad: Assessing the Lawfulness of Forcible Hostage Rescues' (2008) 48 Virginia Journal of International Law 451, 461–63.

[72] Ruys (n 50) 264–70, has introduced the distinction between the first and third scenario, as described in the following text, into the scholarly debate.

[73] For an early use of this term, see Steven F Day, 'Legal Considerations in Noncombatant Evacuation Operations' (1992) 40 Naval Law Review 45, 45–64.

[74] See for the debate: Ruys (n 50); Andrew WR Thomson, 'Doctrine of the Protection of Nationals Abroad: Rise of the Non-Combatant Evacuation Operation' (2012) 11 Washington University Global Studies Law Review 627.

[75] Ruys (n 50) 236.

[76] Those scholars include Beyerlin (n 69) 213–43; Ian Brownlie, 'The Principle of Non-Use of Force in Contemporary International Law' in William E Butler (ed), *The Non-Use of Force in International Law* (Brill-Nijhoff 1989) 23; Josef Mrazek, 'Prohibition of the Use and Threat of Force: Self-Defence and Self-Help in International Law' (1989) 27 Canadian Yearbook of International Law 81, 97; John Quigley, 'The Legality of the United States Invasion of Panama' (1990) 15 Yale Journal of International Law 276, 292–94; for a very sceptical view, see also Rex J Zedalis, 'Protection of Nationals Abroad: Is Consent the Basis for Legal Obligation?' (1990) 25 Texas Journal of International Law 209, 248.

[77] Authors following this line of reasoning include Richard B Lillich, 'Forcible Self-Help to Protect Human Rights' (1967) 53 Iowa Law Review 325, 336–37; Paust (n 69) 90.

[78] Natalino Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity* (Martinus Nijhoff 1985); Natalino Ronzitti, 'The Expanding Law of Self-Defence' (2006) 11 Journal of Conflict and Security Law 343, 354; Ader (n 64) 254–64, 287–89.

[79] Jean Raby, 'The State of Necessity and the Use of Force to Protect Nationals' (1988) 26 Canadian Yearbook of International Law 253, 253–72.

[80] Theodor Schweisfurth, 'Operations to Rescue Nationals in Third States Involving the Use of Force in Relation to the Protection of Human Rights' (1980) 23 German Yearbook of International Law 159, 179–80; Gordon (n 69) 132–34.

[81] Humphrey M Waldock, 'The Regulation of the Use of Force by Individual States in International Law' (1952) 81 *Collected Courses of the Hague Academy of International Law* 451, 467 in conjunction with 496–97; Bowett (n 22) 87–105, 187–93, has subsequently endorsed and further developed this position, but he has confined the 'self-defence' argument to cases where the host state bears state responsibility for the situation, at least for a failure to exercise due diligence. A legal explanation, which is ultimately complementary to Waldock's line of reasoning, is to deny that a use of force to protect nationals abroad is directed 'against the territorial integrity or political independence of any State', or is 'in any other manner inconsistent with the purposes of the United Nations'; for this emphasis, see Lillich (n 77) 336–37; Paust (n 69) 89–90.

[82] The idea, which is based on an alleged textual ambiguity of Articles 2(4) and 51 and on the drafting history of those two provisions, was subsequently taken up primarily by Bowett (n 22) 187 et seq; for the most detailed exposition of the contrary view, see Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (CUP 2010) 53–68; for an intermediary position that recognizes the superior strength of the arguments in support of the armed attack-requirement, while not denying a (small) measure of ambiguity, see Claus Kreß, 'Review "Armed Attack" and Article 51 of the UN Charter. Evolutions in Customary Law and Practice. By Tom Ruys.' (2012) 83 British Yearbook of International Law 160, 162.

[83] Forteau (n 71) 955 fn 36, 37. The Report of the Independent International Fact Finding Commission on the Conflict in Georgia (30 September 2009), <http://www.ceiig.ch/Report.html>, vol II, 287.

[84] See, eg, 'Venice Commission', Council of Europe, Opinion on the Federal Law on the amendments to the Federal Law on Defence of the Russian Federation, Opinion No 572/2010, 21.12.2010, CDL-AD(2010)052 [40]: '[I]n the light of the interpretation of the notion of "armed attack" given by the International Court of Justice in the case concerning *Military and Paramilitary Activities in and against Nicaragua* an attack against a number of persons could hardly be regarded as an "armed attack" within the meaning of article 51 of the UN Charter.'

[85] Ruys (n 82) 215.

[86] James A Green, 'Passportisation, Peacekeepers and Proportionality: The Russian Claim of the Protection of Nationals Abroad in Self-Defence' in James A Green and Christopher PM Waters (eds), *Conflict in the Caucasus: Implications for International Legal Order* (Palgrave Macmillan 2010) 54, 60, citing Tom J Farer, 'Panama: Beyond the Charter Paradigm' (1990) 84 American Journal of International Law 503,

505.

87 Yoram Dinstein, *War, Aggression and Self-Defence* (5th edn, CUP 2012) 258 [682]; for a very similar view, see Eichensehr (n 71) 468–70.

88 Thomas M Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (CUP 2002) 96; see also Forteau (n 71) 961: 'The issue of the legality of the use of force to rescue nationals abroad actually remains largely undecided'; Robert Kolb, *Ius contra bellum: Le droit international relative au maintien de la paix* (2nd edn, Helbing Lichtenhahn Verlag 2009) 319; Anthony Clark Arend and Robert J Beck, *International Law and the Use of Force* (Routledge 1993) 111: '[T]here exists a substantial gap between, on the one hand, the "restrictionist" views of most states and legal scholars, and, on the other, the consistent practice of "those states whose interests [have been] specially affected". Such a significant discrepancy would seem to call into question the existence of any authoritative and controlling rule prohibiting state intervention to protect nationals.'

89 See nn 26–27, 60–62 and accompanying text. See also inter alia on the factual circumstances and the application Michael Akehurst, 'The Use of Force to Protect Nationals Abroad' (1977) 5 International Relations 3, 20–23; Beyerlin (n 69) 240, 243; Boyle (n 69) 54; Gordon (n 69) 133; Knisbacher (n 17) 73; Krift (n 17) 51–56; Margo (n 69) 324; Sheehan (n 69) 151.

90 UN Doc S/PV.1941 (n 14) [78].

91 Claus Kreß, 'The International Court of Justice and the "Principle of Non-Use of Force" ' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 561, 590.

92 On that test, see, eg, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2 September 2016) UN Doc A/71/372 [50]–[56].

93 UN Doc S/PV.1941 (n 14) (132).

94 O'Connell (n 22) 303–04.

95 See Ruys (n 50) 264–69. However, it must not be ignored that such operations still prima facie infringes upon the sovereignty of the territorial state. In this regard, the state of necessity under Article 25 of the ILC's Draft Articles on State Responsibility may qualify as adequate justification, see 'Responsibility of States for Internationally Wrongful Acts' (28 January 2002) UN Doc A/RES/56/83, Annex.

96 Only the United Kingdom's statement may be interpreted in this direction as it only refers to two general principles. See further: Beyerlin (n 69) 221–24.

97 This climate is the best explanation for the fact that the debate in the Security Council evoked quite a bit of emotion. See also Ruys (n 82) 39.

98 *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (*Malaysia/Singapore*) (Judgment) [2008] ICJ Rep 2008 12, 50–51 [21] (in the context of establishing sovereignty).

99 *Temple of Preah Vihear (Cambodia v Thailand)* (Merits) [1962] ICJ Rep 1962 6, 23. See also International Law Commission (ILC), 'Second report on subsequent agreements and subsequent practice in relation to the interpretation of treaties by Georg Nolte, Special Rapporteur' (26 March 2014) UN Doc A/CN.4/671 [61].

100 Ian C MacGibbon, 'The Scope of Acquiescence in International Law' (1954) 31 British Yearbook of International Law 143, 170.

101 ILC, 'Second report on subsequent agreements and subsequent practice in relation to the interpretation of treaties by Georg Nolte, Special Rapporteur' (26 March 2014) UN Doc A/CN.4/671 [58]–[70].

102 ILC, 'Third report on identification of customary international law by Michael Wood, Special Rapporteur' (27 March 2015) UN Doc A/CN.4/682 [19]–[26]; see also Draft Conclusion 10 (3) in ILC, 'Identification of customary international law, text of the draft conclusions provisionally adopted by the Drafting Committee' (30 May 2016) UN Doc A/CN.4/L.872 3.

103 UN Doc S/PV.1939 (n 2) [138].

104 UN Doc S/PV.1941 (n 14) [109].

105 On the technical guidelines adopted by several States to regulate 'Non Combatant Evacuation Operations', see Ruys (n 82) 245–48.

106 Ader (n 64) 201 (on Larnaca), 99, 219–25 (on Tehran).

107 The point is made and documented by Ader (n 64) 202 fn 4.

108 Joseph L Lambert, *Terrorism and Hostages in International Law—A Commentary on the Hostages Convention* (CUP 1979) 313; Jospeh J Eldred, 'The Use of Force in Hostage Rescue Missions' (2008) 56 Naval Law Review 251, 260.

109 On the text of the convention, see 1316 UNTS, 205; on the inconclusiveness of Article 14, see Lambert (n 108) 322–23.

110 ILC, 'First Report on diplomatic protection, by Mr. John Dugard, Special Rapporteur' (7 March 2000) UN Doc A/CN.4/506 [46].

111 Federal Law No 252-FZ of 9 November 2009 Amending the Federal Law on Defence of the Russian Federation, see for an English translation European Commission for Democracy Through law (Venice Commission), Opinion No 572/2010 (Strasbourg, 22 November 2010) CDL(2010)056rev.

112 *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* (Judgment) [1980] ICJ Rep 1980 3, 43–44 [93]–[94].

113 Concurring Kolb (n 88) 318; Ruys (n 50) 248; see also Anthea Jeffery, 'The American Hostages in Tehran: The I.C.J. and the Legality of Rescue Missions' (1981) 30 International and Comparative Law Quarterly 722–23.

114 The Report of the Independent International Fact Finding Commission on the Conflict in Georgia (30 September 2009) <http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf> vol II, 285–88. See Chapter 54, 'The Conflict in Georgia—2008' by Christine Gray in this volume.

115 European Commission for Democracy through Law (Venice Commission), 'Opinion on the Federal Law on the Amendments to the Federal Law on Defence of the Russia Federation adopted by the Venice Commission at its 85th Plenary Session (Venice, 17–18 December 2010)' (21 December 2010), Opinion no 572/2010, CDL-AD(2010)052 [44].

116 This means that such a use of force does not, at present, qualify, 'by its character' as a 'manifest violation of the Charter of the United Nations' within the meaning of Article 8 *bis* (1) of the ICC Statute. A use of force of the Entebbe-type situation does also not, by its gravity and

scale, qualify as a 'manifest violation' of the ICC Statute; for a detailed analysis, see Claus Kreß, 'The State Conduct Element' in Claus Kreß and Stefan Barriga (eds), *The Crime of Aggression: A Commentary* vol 1 (CUP 2017) 412, 479–88.