

GRENADA:

In [1984] Australian I.L. News 6 we published Professor D.H.N. Johnson's challenging article on the US intervention in Grenada. In this issue we publish the official position of the US, from the testimony of US Deputy Secretary of State Kenneth Dam before the US Senate Foreign Relations Committee, as well as a USIA interview with Professor John Moore, Director of the Centre of Law and National Security at the University of Virginia. From a legal point of view, the need to protect nationals and above all, the request from the Head of State, seem to be powerful arguments justifying US intervention. An article in the Economist of 10 March 1984 is of interest in this regard. Noting the failure of Washington to pass on the plea by the Queen's representative to London, and various US explanations for this, the journal comes to the conclusion that the request "... was almost certainly a fabrication concocted between the OECS and Washington to calm the post invasion storm. As concoctions go it was flimsy. Together with the stream of deception directed at Britain that weekend, it exacerbated Downing Street's sense of grievance at America's conduct of the affair". The conclusion that the Governor-General did not in fact make a request for "help from outside", as Sir Paul Scoon put it in a subsequent interview, a serious allegation and is of course essentially a question of fact. This commentator does not of course have the facilities to examine the veracity of the claim. One apparent assumption by the Economist might be questioned. Whether the Queen should have been told is one question, but why should any other Commonwealth Prime Minister, such as the British Prime Minister or for that matter the Australian Prime Minister, be also informed? As regards the first question we know that Sir John Kerr did not advise the Queen in advance of his decision, nor apparently was Her Majesty immediately informed, in 1975.

In relation to the danger to US nationals, the journal noted that two hundred British nationals were also on Grenada and that HMS Antrim was nearby. Britain's concern for its own nationals was no different from America's. In relation to the OECS request, the journal cites the letter from Mrs. Eugenia Charles requesting assistance under Article 8 of the OECS treaty but points out the letter does not mention any external threat which is a prerequisite for action, nor indeed any request for help from Sir Paul Scoon.

Professor Johnson in his article notes the reality of hegemonial politics, that the superpowers may sometimes agree to consult their allies, but will in the last resort demand the decisive voice. The Economist says there is in fact nothing new in the failure of the US to consult the UK over Grenada. As Dr. Kissinger said in 1973: "Emergencies are sure to arise again and it would not be in anyone's interest if the chief protector of free world security is hamstrung by bureaucratic procedures in the face of imminent Soviet intervention." The Economist sums up: "To cynics ... superpowers do not need allies, only cheerleaders ... America's foreign policy-makers are increasingly gazing south and east, away from Europe. When they can no longer be bothered to consult

their friends, it is the friends who need to worry "

One implication of the failure to consult relates to the opposition in Europe to the cruise missiles, opposition at least partly based on the belief that no consultation with the European allies might occur before a war, even a nuclear war, being fought in Western Europe, and that the administration seemed to countenance the possibility of a winnable nuclear war. The action in Grenada may well lend support to these views. If the UK was not consulted then, the smaller members of the alliance, even those less involved legally under ANZUS rather than NATO, can hardly expect any important role in decisions which will vitally affect them. Even neutrality can offer little protection in the event of a nuclear holocaust. The pre-1914 situation was one of the dangers of minor allies dragging their major patrons into war. While this is still possible, the reverse now also seems distinctly possible.

International law, with its attachment to the concepts of sovereignty and equality, must, if it is to remain more relevant than Dr Kissinger believes or wishes it to be, face these issues.

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THE BASES FOR U.S. ACTION IN GRENADA.

Extract from the testimony of Deputy Secretary of State Kenneth Dam before the U.S. Senate Foreign Relations Committee, 27 October, 1983:

"The participation of the United States in the collective effort to protect civilians and to restore peace in Grenada is based on political, humanitarian, strategic and legal considerations of no mean import.

I will take each in turn.

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POLITICAL COLLAPSE IN GRENADA

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Let me start by reviewing the extraordinary events that led to brutality and instability without precedent in the English-speaking Caribbean.

The collapse of governmental institutions in Grenada began the evening of October 12 with an attempt by Deputy Prime Minister Bernard Coard to force out Prime Minister Maurice Bishop. Bishop, who had seized power in 1979, had established close relations with Cuba and the Soviet Union, but was reportedly considered excessively "moderate" by the Coard faction.

In the absence of elections to determine changes of government, force became the inevitable alternative. Bishop was taken into custody in the early hours of October 14.

On October 19, the power struggle became openly violent. Troops opened fire on Bishop supporters who had freed him from house arrest and accompanied him to Ft. Rupert, the Army Headquarters. Bishop, several cabinet ministers and union leaders were taken away, then brutally executed. Education Minister Jacqueline Creft was reportedly beaten to death. At least 18 deaths were confirmed. Many more were reported, including women and children.

In the wake of these murders, the People's Revolutionary Army announced the dissolution of the government and the formation of a 16 member revolutionary military council (RMC) of which Army Commander General Hudson Austin was the nominal head.

I say nominal head because it was never clear that Austin or any coherent group was in fact in charge. The RMC indicated no intention to function as a new government. RMC members indicated only that a new government would be announced in 10 days or two weeks.

It cannot be said whether or when some governmental authority would have been instituted. Former Deputy Prime Minister Coard, who had resigned on October 12, was reported under army protection, whether for his own safety or as a kind of detention was not clear.

The climate of fear and violence was sharpened by imposition of a 24-hour curfew -- the RMC announced that anyone found outside his or her home would be shot on sight. The Grenadan people

complied, but the few persons able to leave the island described public attitudes as subdued, sullen and angry.

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CARIBBEAN REACTION

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The murders and breakdown of governmental order shocked, repelled and alarmed leaders throughout the Caribbean.

Prime Minister Tom Adams of Barbados said Bishop and his fellow ministers had been killed by "disgusting murderers" who had committed the "most vicious act to disfigure the West Indies since the days of slavery."

Prime Minister Edward Seaga of Jamaica expressed the Caribbeans generalized revulsion at the "intensity of the barbarity "

The Jamaican Opposition Party (People's National Party, PNP), headed by former Prime Minister Michael Manley, on October 20 severed all relations with Grenada's new jewel movement and recommended its expulsion from the Socialist International. The RMC, it said, had no right to speak for the Grenadan people.

The Caribbean Conference of Churches, which is affiliated with the World Council of Churches, suspended "all relations with the authorities now ruling Grenada including support for . development projects."

In what now stands revealed as a desperate effort to preserve its military position, Cuba officially criticized "grave errors committed by the Grenadan revolutionaries."

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THE CARIBBEAN DECISION TO ACT

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The disintegration of political authority, the violence and the creation of a dynamic that held out the distinct prospect of further violence together created a quality of menacing uncertainty that deeply alarmed the Caribbean leaders.

Jamaica and Trinidad and Tobago broke diplomatic relations with Grenada.

On October 23, the Heads of State of Caricom (the Caribbean Community), meeting in emergency session, suspended Grenada's membership in the organization. The OECS (the Organization of Eastern Caribbean States) simultaneously restricted trade benefits to Grenada.

Behind the scenes, the OECS, which is a community made up of Antigua, Dominica, Grenada, Montserrat, St. Kitts/Nevis, Saint Lucia and Saint Vincent and the Grenadines, decided to assist the people of Grenada and to request U.S. help in doing so.

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THE U.S. DECISION TO ACT

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We had of course been following events with growing concern. U S citizens, mainly students, elderly retirees and missionaries, make up the largest community of foreigners on Grenada. Our concern for their welfare was heightened by the murders, the curfew, and difficulty in getting accurate information on their well-being and future prospects. The RMC failure to reopen the airport to allow free departures suggested that anything was possible.

After carefully considering these developments, and reviewing all aspects of the OECS request, President Reagan concluded that to wait passively would probably entail even greater risks. Before acting on the OECS request, however, the President sent a special emissary, Ambassador Frank McNeil, to consult with the OECS and other regional leaders. Ambassador McNeil met with OECS Chairperson Eugenia Charles, Prime Minister Adams of Barbados and Prime Minister Seaga of Jamaica in Barbados on October 23.

Ambassador McNeil found these Caribbean leaders unanimous in their conviction that the deteriorating conditions on Grenada were a threat to the entire region that required immediate and forceful action. They strongly reiterated their appeal for U S assistance.

The reason is apparent, particularly in light of the many armed Cubans in Grenada, the six democratic OECS states, Barbados and Jamaica had the political will to act but lacked the military means to do so alone, and they insisted that the situation did not bear watchful waiting.

Sometimes action is necessary to keep a bad situation from getting worse. This was such a time. Had we waited, those who last week murdered most of the government of Grenada, and who had since been unable even to pretend to assemble a new one, would have either driven the island into further chaos or turned it into an armed fortress.

In either event, U.S. citizens and the peace of the Eastern Caribbean would have been threatened. Inaction would have increased these dangers, including the possibility of a hostage situation, and made any subsequent efforts even more costly

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LEGAL AUTHORITY FOR ACTION

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Against this background, the urgent appeal from the organization of Eastern Caribbean States (OECS) took on decisive weight. The OECS is a sub-regional body created in 1981 by the treaty establishing the Organization of Eastern Caribbean States. Among the purposes of the treaty are the promotion of regional cooperation and collective security.

The Governor General of Grenada made a confidential direct appeal to the OECS to take action to restore order on the island. As the sole remaining authoritative representative of government on Grenada, his appeal for action carried exceptional moral and legal weight.

The OECS members decided to take necessary measures in response to this threat, in accordance with Article 8 of the OECS Treaty. They sought the assistance of friendly foreign states to participate in a collective security force.

Barbados and Jamaica agreed with the OECS assessment of the gravity of the situation, offered to contribute forces to a collective action and joined in urging the United States to participate in support of this regional measure.

The deteriorating events in Grenada since October 12, taken together, demonstrated the brutality of the Revolutionary Military Council and the ominous lack of cohesion within the Grenadan Military. The Revolutionary Military Council had imposed a 24-hour curfew, warning that violators would be shot on sight, and closed the airport. U.S. citizens were not free to leave.

Although the Military Council gave assurances that the airport would be opened on October 24 and foreigners allowed to depart, they then failed to fulfill that assurance. It became clear that delay would intensify both the rise of violence against Americans and a vacuum of authority that would imperil Grenada's neighbours.

Collective action in response to the dangerous situation was consistent with the U.N. and OAS Charters. Both Charters expressly recognise the competence of regional security bodies in ensuring peace and stability. The OECS States are not parties to the Rio Treaty, and the OECS Treaty, which concerns itself in part with matters of collective security, is their regional security arrangement.

Article 22 of the OAS Charter states that measures taken pursuant to collective security agreements do not violate the OAS Charter provisions prohibiting intervention and the use of force. Similarly, Article 52 of the UN Charter expressly permits regional arrangements for the maintenance of peace and security consistent with the purposes and principles of the United Nations.

The actions and objectives of the collective security force, in the circumstances described by the President and the Secretary of State, are consistent with those purposes and principles

The OECS States, in taking lawful collective action, were free to call upon other concerned states, including the United States, for assistance in their effort to maintain the peace and security of the Caribbean. Assistance given in response to their request is itself lawful. Moreover, U.S. cooperation with the collective security force permitted the safe evacuation of endangered U.S. citizens. Such humanitarian action is justified by well-established principles of international law.

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U S. OBJECTIVES

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The President's orders to the U.S. Military Forces are to cooperate with the OECS in entering Grenada, to facilitate the departure of all U.S. and foreign nationals who wish to leave and to help Grenada's neighbours work with the people of Grenada to restore order. U.S. support of the OECS military action will be for these purposes only.

As of eight o'clock this morning, six plane loads of Americans and some foreigners -- a total of 378 -- had been safely evacuated to the United States. Their accounts of conditions in Grenada and praise for their rescuers speak for themselves.

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U S. ACTIONS HAVE BEEN BASED ON THREE LEGAL GROUNDS

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First, as these events were taking place, we were informed, on October 24, by Prime Minister Adams of Barbados that Governor-General Sir Paul Scoon had used a confidential channel to transmit an appeal for action by the OECS and other regional states to restore order on the island. The Governor-General has confirmed this invitation to take action since the arrival of the joint security force. This invitation, which we were unable to refer to publicly until the Governor-General's safety could be assured, was an important element -- legally as well as politically -- in the decision of the U.S. and the other countries participating in the joint force.

The legal authorities of the Governor-General remained the sole source of governmental legitimacy on the island in the wake of the tragic events I have described. We and the OECS countries accorded his appeal exceptional moral and legal weight. The invitation of lawful governmental authority constitutes a recognised basis under international law for foreign states to provide requested assistance.

Second, the OECS determined to take action under the 1981 Treaty establishing that organization. It contains a number of provisions. In Articles 3, 4 and 8, which deal with local as well as external threats to peace and security. The appeal of the Governor-General of Grenada for OECS assistance provided a legitimate basis for collective action under the framework of this regional treaty.

Both the OAS Charter, in Articles 22 and 28, and the UN Charter, in Article 52, recognize the competence of regional security bodies in ensuring regional peace and stability. Article 22 of the OAS Charter in particular makes clear that action pursuant to a special security treaty in force does not constitute intervention or use of force otherwise prohibited by Articles 18 or 20 of that Charter. The OECS Treaty functions as the regional security arrangement of the OECS countries, none of which is party to the RIO Treaty.

In the circumstances I have described, the actions of the OECS were consistent with the purpose and principles of both the UN

and OAS Charters. In taking lawful collective action, the OECS countries were entitled to call upon friendly states for appropriate assistance, and it was lawful for the United States, Jamaica and Barbados to respond to this request.

Third, US action to secure and evacuate endangered US citizens on the island was undertaken in accordance with well established principles of international law regarding the protection of one's nationals. That the circumstances warranted this action has been amply documented by the returning students themselves. There is absolutely no requirement of international law that compelled the United States to await further deterioration of the situation that would have jeopardized a successful operation. Nor was the United States required to await actual violence against US citizens before rescuing them from the anarchic and threatening conditions the students have described.

Many are asking how this US action can be distinguished from acts of intervention by our Soviet adversaries. Let me say that the distinctions are clear. The United States participated in a genuine collective effort -- the record makes clear the initiative of the Caribbean countries in proposing and defending this action.

This action was justified by an existing treaty and by the express invitation of the Governor-General. Our concern for the safety of our citizens was genuine. The factual circumstances on Grenada were exceptional, and unprecedented in the Caribbean region -- a collapse of law, order and governmental institutions.

Our objectives are precise and limited -- to evacuate foreign nationals and to cooperate in the restoration of order, they do not encompass the imposition on the Grenadans of any particular form of government. They will determine their institutions freely for themselves. Finally, we have made it clear that we will withdraw as soon as circumstances permit, and in any event immediately upon the request of the Grenadan authorities.

Those who do not see -- or do not choose to see -- these signal distinctions have failed to analyze the facts. We have not made, and do not seek to make, any broad new precedent for international action; we think the justification for our actions is narrow, and well within accepted concepts of international law.

The results of the collective peace-keeping operation have been significant.

First, as of last night, 17 flights had safely evacuated at their request 599 Americans and 121 foreigners. Their accounts of conditions in Grenada and praise for their rescuers speak for themselves. The respected Grenadian journalist Alister Hughes evidently spoke for the vast majority of people in Grenada, Grenadians and foreigners alike, when he said of the Caribbean Peace Force: "Thank God they came. If someone had not come in and done something, I hesitate to say what the situation in Grenada would be now."

Second, the Governor-General has thanked us for our assistance as a "positive and decisive step forward in the restoration not only of peace and order but also of full sovereignty."

The OECS is working with the Governor-General and prominent Grenadians to establish a provisional government capable of restoring functioning institutions and permitting early elections.

We do not at this point know just what steps the provisional government will take. This is for the Grenadians themselves to determine. However, all governments participating in this collective action will withdraw their forces just as soon as circumstances permit.

This brings me to a third result. As I mentioned earlier, the United States had been concerned -- well before the series of unique events which brought about the Caribbean Peace Force collective action -- that Grenada could be used as a staging area for subversion of nearby countries, for interdiction of shipping lanes, and for transit of troops and supplies from Cuba to Africa and from Eastern Europe and Libya to Central America.

We now know that the Soviets, Cubans and North Koreans had a military relationship with Grenada which led to signed agreements to donate 37.8 million dollars in military equipment, artillery, anti-aircraft weapons, armored personnel carriers, small arms and abundant ammunition were to be furnished to an island touted by its suppliers as a tourist haven. The signed secret agreements also called for 40 Cuban military advisory -- 27 on a permanent basis, the others for short periods.

An October 1980 treaty with the USSR called for the provision gratis of, among other things, 1,500 7.62 mm carbines, 1,000 7.62 mm submachine guns, and 18 anti-aircraft mounts. The agreement called for Grenadian military personnel to be trained in the USSR at Soviet expense.

Moscow tried to keep the arrangements secret by obliging the Grenadians to treat it as secret, routing their supplies through Cuba and delaying the establishment of diplomatic relations with Grenada until 18 months after entering into the military supply relationship.

General Crist has just returned from Grenada with first-hand details of the military supplies actually found there. I should like him to present you some of his findings. Before doing so, however, I should like to note that the fact that Moscow was willing to provide military equipment and training free-of-charge is unusual for most of its Third World arms deals. It is one indication of the importance the USSR attached to the toehold Grenada afforded in the Eastern Caribbean.

What has been found in Grenada -- secret military fortifications, extensive arms caches, and communications facilities all controlled by non-Grenadians -- dramatizes just how important it is that Grenada have governing institutions responsible to its own people.

That is precisely what Grenada's neighbors -- and the United States -- had in mind in launching our joint rescue operation."

LEGAL BASIS FOR U.S. ACTION IN GRENADA.

Transcript of USIA interview of 28 October, 1983 with Professor John Moore, Director of the Centre of Law and National Security at the University of Virginia, former Counsellor on International Law, Department of State and former Ambassador to UNCLOS.

QUESTION: You have been quoted in the press as saying that the intervention in Grenada is justifiable under the United Nations Charter. Which Charter provisions were you referring to specifically?

ANSWER: The actions of the United States and the Eastern Caribbean group are lawful under both Article 51 and Chapter eight of the Charter, that is, as lawful defensive actions, humanitarian intervention and regional peacekeeping action.

QUESTION: What does Article 51 say, specifically?

ANSWER: Article 51 provides for the right of individual and collective defense.

QUESTION: And Chapter eight?

ANSWER: Chapter eight basically indicates the permissibility of lawful regional action under the Charter of the United Nations, that is, permitting regional organizations to take peacekeeping actions and keep the peace in local regional areas. There have been many precedents for that under the RIO Treaty, which is the comparable peacekeeping treaty for the Inter-American system, and in this case, the comparable treaty and the applicable treaty is that of the Eastern Caribbean States.

QUESTION: How important was the fact that there was a large number of American students down there who might have been taken hostage or otherwise mistreated?

ANSWER: I think that alone was a very substantial legal basis and justification for the action; that is there is a right of defense, of protection of one's citizens against widespread loss of life in setting of breakdown of governmental authority such as this, under Article 51 of the Charter.

But the important thing about this case, I think, is twofold.

The first major point is that it is not any single

element. It is not simply the fact that there was a breakdown in law and order, or a threat to the civilians on the island. It was a combination of at least four elements together.

The first of these four elements was the general breakdown in order on the island, the takeover by a group of rather extremist thugs who were shooting people on both sides -- both the opposition and the last governmental head, Maurice Bishop, were shot as soon as they took over.

Second, it was a significant threat -- as we have certainly seen confirmed by the reactions of the students who were there -- a threat to civilian populations in the area -- and I do not believe that the assurances given by that government are the kinds of things that any responsible government would want to accept.

The third element is one of a threat to the territorial integrity and political independence of a group of small, very much unmilitarized democratic States in the area that have only tiny military forces and that will never be able to afford massive military forces. They faced a major military buildup assisted by the Soviet Union and Cuba with respect to Grenada.

And I think when one places this in a setting of that Caribbean area with very small governments that cannot afford any kind of significant defensive effort, and looks at the military buildup that was taking place on Grenada and the professed intentions of the leaders of Grenada, that that is the kind of threat that in effect justifies an action taken under Article 51 of the Charter to protect territorial integrity and political independence, and that is exact "what the request was that was made by the members of the Caribbean organization.

And finally, the fourth element is that there was a massive denial of self-determination on the island. If there was ever a setting of neo-colonialism or, perhaps even something that really looks like classic colonialism, we have it here -- the Soviet Union and Cuba were taking advantage of a small island with a very small population with limited resources. Apparently there was some effort by Bishop to perhaps move a little bit away from the orbit that he had fallen into, and that seems to have precipitated this rather extreme, harsh, ultra-left attack on his government.

One gets the sense from the number of Cubans that were on the island, who seemed to be the ones primarily engaged in the fighting, that really what we had here is a setting of neo-colonialism.

Again, you have to take all four of these factors together. There really is not any one single factor, it's a cumulative effect of a number of things.

Now the second major point is that if you analyze the action in terms of the basic purposes of the United Nations Charter and that of the Inter-American system, you find three major purposes:

The first of those is to protect self-determination, the second is to protect human rights, and the third is to end the use of force as a means of foreign policy in the world and to use force only in defense.

Now if we applied that in this setting, I think they apply very strongly to support the United States action.

That is, we have a setting in which there has clearly been a loss of self-determination and a major case of neo-colonialism at the least with respect to Grenada. There will be an opportunity for free elections, the Secretary of Defense has made it absolutely clear that even were a Marxist Government to win, they would have the opportunity to select their own government in those free elections.

The second point is in terms of human rights. I don't believe that anybody can identify with the thugs, who had taken over, and were shooting virtually everyone in sight if they showed any signs of opposition, and there was a significant threat to a lot of innocent people, and they were all rescued.

The third point refers to the use of force, what was going on in Grenada was a major massive, military buildup. It was a military buildup that was a threat to the nations in the region, and I think could be taken under the circumstances of that region to be a very acute military and political threat, which they perceived as well ... what we had here in Grenada was a setting in which an island was being taken over, the people were being used, self determination was being trampled on, and human rights were being trampled on. To claim now that it's impermissible to go in because going in will interfere with self determination is to turn it absolutely on its head in terms of the facts of the setting.

QUESTION: So, actually, there are several theories where law and order have broken down, that would justify this kind of action?

ANSWER: Well, I think that there are basically two legal theories that are applicable here, and I find that the reality is the taking of those theories together, because it's a mixed setting that involves elements of both of them.

The first part is Article 51, that is, the right of defense, and that does include the right of intervention for humanitarian purposes, and for the protection of nationals in a setting in which large numbers of nationals are threatened when there is a breakdown of law and order.

And secondly, under Article 51, there is a right to defense. ... both individual and collective, and the States of the region said that one of their principal motives in this case is that they felt very, very threatened militarily by the neo-colonialism and by the buildup that was taking place on Grenada.

And under those circumstances, they felt that they would take an extraordinary action -- truly extraordinary, for a Latin American or Caribbean State -- of requesting intervention by the United States and by Jamaica and Barbados.

And I think it should be taken as something terribly serious when that number of Caribbean States, acting unanimously, including a number that joined the intervention, believe that their security is directly threatened and that, it seems to me, is also an Article 51 setting.

The second part of it, is that under the Charter -- under Chapter eight of the Charter -- there is a right of regional peacekeeping, that is a right that also exists under the organization of American States Charter. And all of those strong non-intervention provisions that are there would certainly reflect the strong sense of the latins that we can all agree with, that there ought not to be interventions that deny self-determination.

Those clauses are all qualified by another clause in the OAS Charter that makes it clear that action under regional arrangements are not violations of those principles and by Article 135 in the OAS Charter, that makes it clear that one's rights under the OAS Charter are not lost under the United Nations system.

So even if you didn't have the clause saying that regional actions, or actions taken under regional arrangements, were not violations of those provisions on non-intervention, whatever your actions were that were left under Article 51 of the Charter, for example, could not be altered by the Inter-American system. So here we have two bases really of the action; we have the request by the Governor-General of the island to the other members of the relevant regional framework of which Grenada was a member, that they intervene for the purpose of the protection of life, and that they intervene for the purpose of stopping future aggression against the other islands in the region.

QUESTION: How serious was the presence of Cuban troops and Soviet advisors in the background of this Grenadan military buildup?

ANSWER: I think it was a very substantial factor in it. I don't believe that Grenada on its own, an island of 100,000 people, would have had any interest in having a major military buildup.

Why would Grenada, with a population of 100,000, need an army that was larger than that of the entire Caribbean Basin together, which has a population of about four million? It just doesn't make sense. And that doesn't count the 600 plus Cubans that were there.

QUESTION: Where those Cubans construction workers or were they out-and-out troops or were they something in between?

ANSWER: I'm not an expert on what they were, but it seems to be reasonably clear that their role went far beyond that of construction workers, and that's the usual cover for a combined paramilitary or out-and-out military and police state trying to carry out intelligence and other functions.