

International Lawlessness in the Caribbean Basin\*

by

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The Reagan administration's arguments purporting to justify the invasion of Grenada under international law must not be allowed to manipulate the American people into supporting this violent intervention into the domestic affairs of another independent state. Throughout the twentieth century, the U.S. government has routinely concocted evanescent threats to the lives and property of U.S. nationals as pretexts to justify armed interventions into sister American states. The transparency of these pretexts was just as obvious then as it is today. The Reagan administration never established by means of clear and convincing evidence that there did in fact exist an immediate threat to the safety of U.S. citizens in Grenada. Even then, such a threat could have justified only a limited military operation along the lines of the Israeli raid at Entebbe for the sole purpose of evacuating the major concentration of U.S. nationals studying at the St. George's School of Medicine, not a full-scale military invasion and occupation of the country.

Nor could the Reagan administration's alternative rationale of terminating the "chaotic conditions" allegedly then present in Grenada be properly invoked to justify the military invasion. Even when it actually exists, chronic disorder in a country does not permit neighboring states to intervene for the purpose of re-establishing minimum public security, let alone imposing a democratic form of government. Neighboring states do possess a right of individual or collective self-defense under article 51 of the United Nations Charter to preserve the integrity of their own borders from external attack originating from some unstable neighbor. But any other type of violent response on their part requires explicit authorization by the U.N. Security Council, or at the very least, by the appropriate regional organization.

In this case the Organization of American States (OAS) was the only collective agency mandated by the regional community of states to maintain international peace and security in the Western hemisphere. Article 18 of the OAS Charter specifically provides that no state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Article 20 declares that the territory of a member state is inviolable and therefore may not be the object, even temporarily, of military occupation or of other measures of force taken by another state, directly or indirectly, on any grounds whatever. Finally, article 21 reiterates the solemn obligation of article 2(4) of the United Nations Charter that American states will not have recourse to force except in cases of self-defense pursuant to existing treaties. In direct violation of these international obligations, the Reagan administration quite forthrightly admitted that it invaded Grenada for the illegitimate purpose of deposing the leftist military junta that had seized power after the coup against Prime Minister Maurice Bishop, and then installing a government more favorably disposed to the United States.

The members of the Organization of Eastern Caribbean States (OECS) could not have lawfully authorized the U.S. invasion of Grenada. Article 8 of its Charter restricted OECS competence in security matters to situations amounting to an "external aggression" and then only in accordance with the right of individual or collective self-defense recognized by U.N. Charter article 51 and in accordance with the terms of the OAS Charter. Furthermore, OECS article 8 required unanimous agreement among member states before such action could be taken, and that condition was never fulfilled. There was absolutely no evidence that Grenada was either about to attack, or engaged in the infiltration of guerillas or "terrorists" into, another Caribbean state. If such evidence had existed, the U.S. could have responded immediately under U.N. Charter article 51 with measures necessary and proportionate to protect the victim.

As for the so-called request for assistance by the deposed Governor-General of Grenada, Sir Paul Scoon, there is no point in fruitlessly debating whether or not he might have possessed any residuum of constitutional powers to request foreign military intervention under these particular circumstances. The fact of the matter was that President Reagan gave the "green light" for the invasion to the Pentagon on Saturday, October 22. According to Sir Paul's own account of his role, it was not until "late Sunday evening" that he even considered external assistance to be necessary, and then "what I did ask for was not an invasion but help from outside." Since Sir Paul's request for assistance came well after Reagan's decision to invade, the former becomes completely immaterial to analyzing the legality or illegality of the U.S. invasion. Indeed, as the distinguished and generally pro-American Economist concluded in a special report of March 10, 1984, at 34: "The Scoon request was almost certainly a fabrication concocted between the OECS and Washington to calm the post-invasion diplomatic storm. As concoctions go, it was flimsy."

If the OECS truly believed the new regime in Grenada created a serious threat to the future peace and stability of the Caribbean, the appropriate remedy would have been to bring the matter to the attention of the OAS. Because it is a regional organization established under Chapter 8 of the U.N. Charter, the OAS possesses sufficient competence to act in response to a threat to the peace of the region under circumstances not yet tantamount to an "armed attack" or "external aggression" upon a member state. By contrast, the OECS does not possess such extensive authority because like the Rio Pact it is simply a collective self-defense agreement concluded under article 51 of the U.N. Charter. Thus its provisions can be triggered only in the event of an armed attack or armed aggression. So despite the disingenuous arguments of the Reagan administration to the contrary, the OAS was the only regional arrangement in the Western hemisphere organized under Chapter 8 of the U.N. Charter that possessed the necessary legal authority to deal with the situation in Grenada created by the anti-Bishop coup.

For example, during the 1962 Cuban missile crisis the U.S. government successfully resorted to the OAS when the Kennedy administration realized it was not able to justify its "quarantine" of Cuba under U.N. Charter article 51 because there existed no immediate threat of armed attack or aggression by Cuba. Unanimous OAS approval for the quarantine exercised a

profound impact upon Khrushchev's decision to remove the missiles and terminate the crisis, thus avoiding World War III. By comparison, following Teddy Roosevelt's antiquated "big stick" policy, the Reagan administration prefers the imposition of unilateral military solutions as a panacea for curing the endemic instability throughout the Caribbean basin and Central America. Historically any U.S. foreign policy founded upon blatant violations of international law has proven to be counterproductive and ultimately self-defeating over the long haul, especially in the Western hemisphere.

Both the OAS and U.N. Charters unequivocally condemned the U.S. invasion of Grenada as a gross violation of the most fundamental principles of international law. In its immediate aftermath, 11 members of the U.N. Security Council and 108 members of the U.N. General Assembly, among them several staunch U.S. allies, deplored this invasion for precisely these reasons. The U.S. government suffered the most serious setback to its traditional role in upholding the integrity of the international legal order since President Johnson's strikingly similar invasion of the Dominican Republic in 1965. Even though Johnson subsequently obtained OAS approval for a military occupation, though not for the invasion itself, the latter was followed in relatively short order by Leonid Brezhnev's promulgation of a reincarnated version of the Johnson Doctrine as justification for the Soviet invasions of Czechoslovakia in 1968 and of Afghanistan in 1979. In stark contrast to the Johnson administration, President Reagan did not even bother to request the OAS to intervene in this matter for the limited purpose of organizing and supervising elections leading to the installation of a democratic government in Grenada. The total lack of such an OAS imprimatur will raise serious doubts concerning the international legitimacy of any successor government.

U.S. military action in egregious violation of international law sends a strong message to the entire international community that in the opinion of the U.S. government the traditional rules restricting the use of force no longer apply in settling the myriad of contemporary international disputes. When even the U.S. flouts international law, the only consequence can be an increasing degree of international violence, chaos and anarchy. U.S. military forces are certainly not up to the task of policing the entire globe. And as the War Powers Act proves, the American people would not permit them to do so anyway despite the bellicose inclinations of the Reagan administration.

International lawlessness in Grenada will return to haunt the future of American foreign policy around the world. Yet right now the Reagan administration seems to be planning an identical fate for the Sandinista government in Nicaragua under the subterfuge of reviving the moribund Central American Defense Council Pact, which is functionally analogous to the OECS Charter. In order to forestall this immediate present danger, Congress must enact a Central American equivalent to the Clark Amendment for Angola, which would expressly prohibit the expenditure of any U.S. governmental funds in support of overt or covert military or paramilitary

operations in the Western hemisphere without explicit congressional authorization. Otherwise the Reagan administration will continue to provoke a broader war throughout Central America that could serve as a pretext for another round of illegal U.S. military intervention in the region.

The Reagan administration seems more determined to obtain an outright military victory in El Salvador and Nicaragua at any cost, than it is to restore some semblance of peace and stability to Central America. The Reagan administration's long-standing policy of organizing and supporting military operations launched from bases in Honduras and Costa Rica by Nicaraguan exile groups against the Sandinista government is illegal, irresponsible, and counterproductive for maintaining the security of all states in the area. In order to head-off a U.S. instigated border war between Honduras and Nicaragua as well as to prevent the militarization and destabilization of Costa Rica, an independent peacekeeping force organized by the OAS or, if Nicaragua objects, by the U.N. Security Council should be stationed both on the border between Honduras and Nicaragua and on the border between Costa Rica and Nicaragua. Its mission would be to interdict any alleged flow of arms from Nicaragua into El Salvador as well as to prevent the infiltration of all paramilitary forces into Nicaragua from its immediate neighbors.

Contemporaneously, another OAS peacekeeping force should be introduced into El Salvador, consisting of troops drawn from American states acceptable to all the internal parties to the conflict. Its mission would be to restore conditions of domestic security to a degree sufficient to permit the convocation of full-scale negotiations among representatives of all the internal factions over the terms necessary to ensure free, fair and safe democratic elections for everyone in the country. These elections would be conducted under the supervision of the OAS, and eventually the OAS peacekeeping force could be gradually phased out of the country sometime after the installation of a democratically elected government. The historical record clearly establishes that with the active support of the Johnson administration, such OAS facilitation of the transition from civil war to a democratic government in an American state succeeded once before in the Dominican Republic, which has remained a democracy until today. Now, however, the primary obstacle to implementing a similar OAS approach to terminating the crises in Central America has proven to be the Reagan administration's obstinate refusal to abandon its pursuit of some phantasmagorical unilateral military victory in favor of a multilateral OAS sponsored peacekeeping settlement for the region.

In regard to the future of American foreign policy towards Cuba, the best way to "neutralize" Castro as a supposed anti-U.S. actor in the Western hemisphere excludes the means hitherto used: military invasion, naval blockade, covert operations, or economic and political destabilization measures, all of which clearly violate international law. Rather, the Reagan administration should seek to reestablish normal diplomatic relations with the Castro government as soon as feasible; to remove all U.S. economic sanctions imposed against Cuba; to prosecute

Cuban refugee groups located in the United States that prepare armed expeditions against the Castro government in violation of U.S. Neutrality Laws, and to employ U.S. military forces to thwart such expeditions whenever detected as required by U.S. law; to reverse the 1962 Punta del Este resolution by the Eighth Meeting of Consultation of the Ministers of Foreign Affairs of the American Republics that excluded the Castro government from participation in the inter-American system; and, finally, to include Cuba within President Reagan's proposal for an economic development program for the Caribbean basin. Such measures would free Castro from Cuba's burdensome, and, at times, counterproductive and unwanted reliance on the Soviet Union for military defense and financial subsistence. The adoption of such a new Cuban policy by the United States government could promptly facilitate the search for a peaceful settlement to the conflicts now raging in Central America.

Finally, U.S. initiation of a rapprochement with Castro could bring about such other tangible benefits as the gradual withdrawal of Cuban troops from Angola. This result depends upon a renewed and strengthened U.S. commitment to the independence of Namibia along the lines of the plan approved by the U.N. Security Council in Resolution 435 (1978). Meanwhile, the Reagan administration should establish normal diplomatic relations with the M.P.L.A. government in Luanda, obey the terms of the Clark Amendment prohibiting assistance of any kind for military or paramilitary operations in Angola without explicit congressional authorization, and participate in the resolute condemnation by the U.N. Security Council of all South African military raids mounted from Namibia into Angola. The Reagan administration's myopic concentration on the Cuban presence in Angola will only lead the United States farther into the deadly embrace of the apartheid regime in South Africa.

The Reagan administration's failure to actively support the independence of Namibia has undermined the good political and economic relationships with Black African states that were successfully promoted by the Carter administration. Reagan's policies contravene the principles of international law and the pertinent resolutions of international organizations concerning both Namibia and South Africa. The right of the Namibian people to self-determination had been firmly established under international law long before the American, South African, and Cuban governments decided to intervene into the Angolan civil war. Consequently, the Reagan administration must not obstruct the achievement of Namibian independence by conditioning it upon or "linking" it to the withdrawal of Cuban troops from Angola in any way.