

INTERVENTION IN INTERNATIONAL LAW  
GRENADA AND AFGHANISTAN COMPARED  
AND CONTRASTED\*

by

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"What's the difference between Afghanistan and Grenada?" a concerned American Democratic Congressman asked one of his party's leaders. "Afghanistan is larger" the leader quipped cynically, "and Grenada is in our sphere of influence"

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1. INTRODUCTION

In December 1979, Soviet troops crossed the Soviet-Afghan border and invaded Afghanistan, marking the beginning of active Soviet military intervention in the territory.<sup>1</sup> Roughly, three years later, United States marines also landed in Grenada, and after a swift military operation invaded the territory.<sup>2</sup> The actions of both super powers have attracted considerable international condemnation.<sup>3</sup> In the twentieth century, intervention is not a new phenomenon. In fact, super-power intervention has become common place since the post WWII period.<sup>4</sup> As a rule, the intervenors have usually engaged in their acts with impunity as a result of the passiveness of the international community. In a large measure, the absence of any serious international retributions against the intervenors must have contributed to the decisions to invade Afghanistan and Grenada. But ironically it is the general passiveness in respect of pre-Afghanistan and Grenada cases that makes the general international outcry against the interventions in the two territories significant. Given the intense negative international reactions, both intervening super-powers have been quick to attempt political and legal justifications of their actions and to point out the illegality in each others conduct within the framework of existing international law.

The general posture of each super-power finds support among academics. There is a consensus among Western authorities that the Soviet action in Afghanistan was an outright aggression and an illegitimate act of intervention.<sup>5</sup> On the other hand opinions differ on the question of Grenada with some willing to extend it a fair measure of legitimacy.<sup>6</sup> The question is, when stripped of all ideological undercurrents, how do the facts of Afghanistan and Grenada compare in relation to the rules of non-intervention and the prohibition of the use of force in international law? Is there indeed a basis for comparison between the two cases or must one agree with President Reagan's statement that the United States' action in Grenada was only a "rescue mission"?<sup>7</sup> In this paper, it is intended to examine the legal dimensions of the Soviet action in Afghanistan and the United States in Grenada to determine whether there is any contrast between the two cases in legal terms or Grenada is simply a repetition of Afghanistan, American style.

## 2. AFGHANISTAN: THE FACTUAL CONTEXT

Afghanistan is a country of rugged and mountainous terrain wedged between the Soviet Union on the north, Pakistan on the south, Iran on the west and China on the east. Given its rather unique location, the territory's political history has been characterized by domination and resistance.<sup>8</sup> In the nineteenth century, the territory was a source of interest for Russian expansion into Central Asia.<sup>9</sup> On the other hand the British also sought to gain control over Afghanistan in order to contain what they saw as the Russian threat to India.<sup>10</sup> In the Anglo-Russian rivalry that ensued; the British dislodged Russian influence in the territory only to meet fierce Afghan resistance in what came to be called the Afghan wars. After the last of such wars in 1919,<sup>11</sup> Afghanistan emerged as a full sovereign state under the Emir Amanullah Khan.<sup>12</sup>

### Early Soviet influence

In his quest for allies, Amanullah turned to Britain's old rival - Russia. He immediately recognized the new Bolshevik regime in Moscow. This was to pave the way for closer Afghan-Soviet relations. In 1921, the two states concluded the first treaty of friendship.<sup>13</sup> In view of the atheist basis of Soviet socialism and the nature of Islamic fundamentalism in Afghanistan, Soviet-Afghan relations seemed rather incongruous at the time. It was nevertheless held in place as a matter of strategic pragmatism and the Bolshevik's view that Amanullah was a "revolutionary" engaged in an anti-imperialist struggle.<sup>14</sup>

Inside Afghanistan however Amanullah lost popular support and was subsequently removed from office in 1929.<sup>15</sup> Afghan monarchy was nevertheless retained; Soviet Afghan relations remained cordial and was enhanced with several treaty arrangements most on economic aid to Afghanistan after WWII. Soviet approaches to Afghanistan in the years after WWII were greatly facilitated by the then Afghan strongman Mohammed Daoud, cousin of the monarch and Prime Minister. However in 1963 Soviet-Afghan relations suffered a set-back when Daoud was removed from office. A decade later, with the help of Soviet trained leftists, Daoud was returned to office in a military coup d'état that abolished the monarchy and proclaimed Afghanistan a republic with Daoud president.<sup>16</sup> Soviet influence in Afghanistan then entered a new and more sophisticated stage. Two leftist political parties, the Khalq (ie. the masses) and Parcham (the banner) were formed. The rhetoric of the Kabul politicians also took on a socialist flavour. These developments were accompanied by massive Soviet economic aid evidenced by over seventy separate Soviet projects in Afghanistan by 1975.<sup>17</sup> Daoud's Soviet connections however alienated his grass-roots support.

### The 1978 Coup

Concerned over Afghan dependence on Soviet aid, Daoud began to shake off Soviet control. In 1975 he organized a purge of the radical leftists in the Khalq and Parcham. He then turned to the oil-rich Arab states for aid.<sup>18</sup> These moves won him great support among conservatives, moderates and the influential clergy. However, in the face of a leftist backlash Daoud could not win the support of the military despite a 20% pay increase for the army. In 1978, he prepared to institute a final purge of the remaining leftist radicals. Before he could make any move, he was overthrown in a military coup d'état and replaced by Nur Muhammed Taraki.

The coup of 1978 is significant in analysing contemporary events in Afghanistan because it marked a higher stage of leftist resurgence in the territory and the crystalization of Soviet control. In line with socialist ideology, Taraki embarked on land and other reforms.<sup>20</sup> His land reforms were welcomed in Kabul and other provincial capitals. But in the rural areas where 90% of the Afghan population resided under feudal conditions, the reforms were fiercely opposed by the pirs (rural landlords) and the mullars (clergymen) who immediately associated the Kabul elite with the communist atheists of Moscow.<sup>21</sup>

Taraki's attempts to enforce his reforms in the rural areas only reinforced armed resistance which had been nurturing in the Afghan hills since the days of Daoud in 1973. By the summer of 1978, rural resistance had taken on insurgency proportions in Nuristan Province where poorly armed tribesmen successfully resisted government troops. The Nuristan success provided a demonstration effect and encouraged other disenchanting tribesmen to engage in active resistance. The situation assumed civil war dimensions when the tribesmen formed a coalition and declared a jihād against the Kabul regime and their communist allies in Moscow.<sup>22</sup> Meanwhile, to contain the threat of insurgency, Taraki consolidated his relationship with the Soviet Union and concluded a mutual defence agreement with Soviets in December 1978.<sup>23</sup>

#### Soviet concern about developments in Afghanistan

The civil war situation in Afghanistan worried the Soviets for at least two reasons: firstly, it was in Afghanistan that large populations of Soviet Muslim nationalities looked into the Muslim world outside the Soviet Union. Thus it was though a successful fundamentalist Islamic resistance against the Socialist regime in Kabul could have a possible contagious effect on the Muslims of the Soviet Union. Secondly, given the rise of Ayatola Khomeini in Iran on the one hand and the fundamentalist nature of the mullas and the pirs of Afghanistan, on the other hand, the instability of Afghanistan had the beginnings of a broadly anti-Soviet pan-Islamic movement that threatened the balance of power in Central Asia and indeed imperiled the Asian frontiers of the Soviet Union. The Soviet leadership became yet more alarmed when a power struggle broke out among the Kabul leftists leading to the removal of Taraki from office. He was replaced by Hafizullah Amin.

Amin's rule was confined to urban Afghanistan with no control over the rebellious Afghan tribesmen who had been alienated during Taraki's term of office. His instability to crush the resistance prompted the Soviets to dispatch General Ivan Pavlovsky - a Deputy Defence Minister to Afghanistan to assess the situation. He went back to Moscow with a grim report and subsequently recommended active Soviet military intervention to restore order.<sup>24</sup>

#### The Soviet Invasion

Reports indicate that Amin objected to the initial Soviet plans to intervene.<sup>25</sup> In a protracted series of negotiations that followed on the issue, there was no compromise between Amin and the Soviets. Meanwhile, under Soviet pressure, Amin moved from his Kabul presidential palace to Darulaman Palace in the outskirts of the capital on the 19th December 1979 and apparently dug in against any Soviet military incursions.<sup>26</sup> On the 27th December, a Soviet airborne unit which had been stationed in Kabul stormed the Darulaman Palace killing Amin and his aids. This was to be the beginning of the Soviet invasion.

Six Soviet divisions and an airborne unit immediately crossed into Afghanistan and secured strategic locations. There was hardly any significant resistance from Afghan troops. Following Amin's death, Babrak Karmal was installed. As one expert on Afghanistan points out:

it is likely...that the Soviet aim was limited to removing Amin and installing Babrak Karmal with the expectation that the Afghan army could deal with the insurgency. Yet the act of intervention itself virtually assured that the new regime could not cope with the internal resistance now inflamed by the regime's total reliance upon the Russians. Hence once their forces were in the country, only the Russians themselves were capable of suppressing the resistance.<sup>27</sup>

To date, the Soviet Union has committed over 100,000 troops and reportedly employed chemical weapons against the Afghan rebels.<sup>28</sup> With no end of the war in sight, the combined Soviet and Afghan effort to subdue the rebels in the mountains has now taken the form of a war of attrition reminiscent of the American experience in Vietnam.

### 3. GRENADA: THE FACTUAL CONTEXT

The small island state of Grenada with a population of only 11,000 is located in the Caribbean Sea about 1600 miles from the United States. Colonized by the British, the territory became independent in 1974.<sup>29</sup> After independence, Grenada remained a British Dominion with a Westminster (parliamentary) system of government. In 1967 constitution of Grenada,<sup>30</sup> which the state adopted in full on independence, executive authority was vested in Her Majesty (i.e. the Queen of Great Britain). This authority was to be exercised on her behalf by a resident Governor-General either directly or through officers subordinate to him.<sup>31</sup> The Governor-General was to exercise his powers in accordance with the advice of the Prime Minister. However, the constitution also empowered the Governor-General, "acting in his deliberate judgment" to exercise the power of the Prime Minister if he considers that "it is impractical to obtain the advice of the Prime Minister owing to his absence or illness".<sup>32</sup>

#### The 1979 Coup

In March 1979, following a military coup d'etat, the Constitution was suspended and replaced with a series of decrees called "People's Laws". A pro-marxist People's Revolutionary Government led by Maurice Bishop took over the administration of the state.<sup>33</sup> People's Law No.2 vested all executive and legislative power in the People's Revolutionary Government.<sup>34</sup> The Governor-General was nevertheless retained as the Queen's representative with power to perform "such functions as the People's Revolutionary Government may from time to time advise."<sup>35</sup> People's Law No.18 reinstated "the full legal force and effect" of Sections 83(6), 86(7) and 90(5) of the 1967 Constitution which related to the Governor-General's powers to appoint a certain category of senior public servants.<sup>36</sup>

In so far as the internal legal situation was concerned, the 1979 coup introduced a new legal order and redefined the powers of the Governor-General, relegating him to a mere ceremonial head and adviser. Externally, the coup had complex implications on the relationship between Grenada and (1) the United States and (2) the Caribbean States.

### Grenada-United States Relations

Given the proximity of Grenada to the United States, the emergence of the pro-Marxist People's Revolutionary Government was considered strategically undesirable from an American point of view. For one thing, the United States could not afford another Cuba in its backyard. Secondly, there was the possibility that the Grenada leftist revolution could have a "domino effect" on the economically and politically vulnerable Caribbean island-states.<sup>37</sup> But in order not to alienate the new regime and push it further into the communist realm, the Carter administration recognised the Bishop government within weeks of the coup. However, the Grenada-United States reproachment never consolidated due to Bishop's persistent refusal to call elections for return to civilian rule and his continued close links with Cuba and the Soviet Union.<sup>38</sup>

With the election of President Reagan, Grenadian-American relations suffered yet more given the new president's hard line on communism. The United States took special steps to isolate Grenada: American grants to rehabilitate the banana industry in West Indian States were made on the condition that none of the funds could be made available to Grenada. Similarly, American funds given to the Caribbean Development Bank were not to be extended to Grenada and neither could the state benefit from any other American grants to multilateral institutions. Grenada's refusal to condemn the Soviet Union's invasion of Afghanistan in 1979 and a later agreement with Cuba to construct a major airport,<sup>39</sup> reportedly for military purposes<sup>40</sup> reinforced American fears of communist influence in the country and further provided a justifiable basis for the Reagan government's hard line against it. Later events in October 1983 were to provide an excellent excuse for the United States to intervene to abort the burgeoning communist influence in the territory.

### Grenada's Relations with other Caribbean States

Grenada's relationship with the Caribbean states also suffered as a result of the 1979 coup. There was the fear in most of the states that the flamboyant Grenadian revolution could provide a demonstration effect leading to leftist activism in the Caribbean generally.<sup>41</sup> These ideological differences and their apprehensions notwithstanding, the other Caribbean States, together with Grenada, formed the Organization of East Caribbean States (OECS) in 1981 to foster regional integration.<sup>42</sup>

Despite the efforts at regional integration, the apprehensions of the other OECS members were heightened by Grenada's persistent communist rhetoric and the fast developing close relationship with Cuba. The growing concern of the other OECS members was quite understandable: they all look to the United States for economic support and political leadership. Thus quite apart from their own immediate interests, they also remain sensitive to United States reservations on the spread of communism in the region and show a general willingness to condemn it wherever it has appeared. Events in Grenada in October 1983 were to provide the basis for an alliance between the Caribbean States and the United States to launch a final assault on Grenadian communism.

### The October crisis

On the eve of the OECS summit in Ochos Rios in 1982, there were talks of an ideological show-down between Grenada and other right wing OECS members.<sup>43</sup> However, at the summit itself, the organization admitted the reality of ideological pluralism in the region and affirmed its members' right to self-determination. Despite their apparent willingness to accommodate the leftist upsurge in Grenada, the OECS members remained apprehensive about developments in the territory. Faced with the pressure of possible political isolation by the rest of the OECS and the definite disaffection of its most powerful neighbour - the United States - the leadership of Grenada became divided if not on basic ideological strategy then at least on tactics. Maurice Bishop advocated for a policy of appeasement towards the United States through his persistent appeals for dialogue between the two States.<sup>44</sup> The more radical members of his government on the other hand sought to maintain the communist ties irrespective of any regional repercussions.<sup>45</sup>

By October 1983, the disagreements had degenerated into an intense power struggle. On the 12th October Maurice Bishop was toppled in a coup led by the deputy Prime Minister Bernard Coard.<sup>46</sup> Bishop was executed seven days later, a 16-man Revolutionary Military Council was formed to govern the country. Meanwhile law and order appeared to have broken down in Grenada. Police opened fire on masses of people who had earlier taken to the streets to demonstrate in support of Bishop. As a result of the civil unrest, the new regime imposed a 24 hour shoot-on-sight curfew against all civilians. The security situation in the country further deteriorated given grounds for concern for the safety of the expatriate population.<sup>47</sup>

### The American Invasion

Alarmed that the state of instability could spread elsewhere in the Caribbean region, other OECS members met in Barbados on the 21st October and voted to ask the United States to intervene in Grenada to restore order. They based their request on:

the current anarchic conditions, the serious violations of human rights and bloodshed that have occurred and the subsequent unprecedented threat to the peace and security of the region created by the vacuum of authority in Grenada.<sup>48</sup>

Barbados and Jamaica later joined them in their appeal. The request found the United States ready and willing. On the 25th October, a "multinational" force of 1,900 American Marines and Air-borne Rangers and a token force of 300 troops from the Caribbean states invaded Grenada.

After an initial resistance by combined units of Cuban and Grenadian troops, the invading force secured the island by the 30th October.<sup>49</sup> All Soviet and Cuban personnel were immediately expelled. The surviving members of the Revolutionary Council were detained<sup>50</sup> and the Governor-General reinstated with his pre-1979 constitutional powers to take care of the state pending a return to normality and popular elections.

In the words of Foreign Secretary Shultz, the invasion helped to rescue some 1,100 American nationals from the "atmosphere of violent uncertainty" prevalent in Grenada at the time.<sup>51</sup> But more significantly it enabled the United States to destroy the basis for Soviet-Cuban influence in Grenada; and from the American point of view, returned the country to true "democratic institutions."

#### 4. THE LEGAL ASPECTS OF GRENADA AND AFGHANISTAN COMPARED AND CONTRASTED

Ideologically, there appear to have been cogent reasons for the interventions in Afghanistan and Grenada from each super-power intervenor's point of view. But ideology is no substitute for legality. Modern international law prohibits the use of force in international relations<sup>52</sup> and intervention in the internal affairs of sovereign states.<sup>53</sup> Exceptions are however made for the use of force in self-defense.<sup>54</sup> Intervention is also permissible: (1) at the invitation of a lawful governmental authority,<sup>55</sup> (2) to protect a state's own nationals in another country,<sup>56</sup> (3) for humanitarian reasons, (e.g. to prevent widespread gross human rights violations)<sup>57</sup> and (4) in accordance with existing treaty obligations.<sup>58</sup> It is within the framework of these exceptions that both super-powers have sought to justify their interventions.

The United States argues that it intervened in Grenada at the request of the OECS members who had in turn been invited by the Governor-General of Grenada. Secondly it maintains that the provisions of the OECS treaty provided ample legal justification for its operation and that the intervention was in any case consistent with the Charter of the Organization of American States (OAS) and the Regional Arrangements under the United Nations Charter. Finally it also advances the view that the intervention was necessary to rescue some 1,100 American citizens whose lives were imperilled by the October Crisis in Grenada.<sup>59</sup> Similarly, the Soviet Union argues that it intervened in Afghanistan at the invitation of the country's government and that the military operation of December 1979 was further validated by the 1978 Treaty of Mutual Defense signed with the Taraki regime. The other argument of the Soviets is that the intervention was in essence an act of self-defense.<sup>60</sup> Each of these arguments will be examined critically.

##### (i) Invitation

Invitation by a lawful governmental authority in a state constitutes a valid basis in international law for foreign states to intervene to provide the assistance requested.<sup>61</sup> The central point in such cases then is that invitation must emanate from a "lawful governmental authority". What is meant by lawful authority is whether such authority, so constituted is constitutionally empowered to issue the invitation. In the case of Grenada, the United States' position is that during the October Crisis, "the legal authorities of the Governor-General remained the sole source of governmental legitimacy."<sup>62</sup> Consequently he was the lawful governmental authority who could validly issue the invitation to the OECS and the United States to intervene.

As indicated earlier, the 1979 Grenada coup and the subsequent decrees promulgated by the People's Revolutionary Government stripped the Governor-General of his executive powers. Any source of substantive authority he retained was to be at the directives of the new regime. In effect, the legitimacy of the Bishop administration diminished the executive status of the Governor-General.<sup>63</sup> This was implicitly acknowledged by the United States when it recognized the People's Revolutionary Government. Since the government obviously did not direct the Governor-General to invite the invasion, he could not claim the decrees of the Bishop regime as his source of authority.

It is arguable that even though his executive powers had been reduced, after the arrest and execution of Bishop, and with the legitimacy of the Military Revolutionary Council still in doubt, the Governor-General may well have been the only source of legitimate authority in Grenada.<sup>64</sup> Be that as it may, the fact still remains that the scope of his legitimate authority was determined and limited by the decrees of the People's Revolutionary Government. It is therefore within these decrees that one must assess the powers of the Governor-General and the validity of the invitation he issued. By virtue of People's Law No.3, the directives of the People's Revolutionary Government issued from time to time, became the only sources of mandate for the Governor-General. In the absence of such directives, and indeed in the absence of the People's Revolutionary Government and the inability of the Revolutionary Council to assume control, there was a power vacuum in Grenada which the Governor-General himself openly admitted.<sup>65</sup> To suggest that the Governor-General on his own could fill up the vacuum and issue a private invitation for armed intervention is to bestow in him an authority he did not have at the material time.

It has been argued that the "Declaration of the Grenada Revolution" "merely suspended - and did not terminate" the 1967 Constitution which vested the Governor-General with substantial authority. Consequently, the constitution "revives in a setting of breakdown of authority or the dissolution of the government that suspended it."<sup>66</sup> This view is hardly tenable. It can only be sustained at the risk of distorting the jurisprudential implications of revolutions on the continuity of law. A military coup d'etat (such as that of Grenada in 1979) constitutes an illegal change in the constitutional or legal order. It is in essence a revolution which then introduces a new legal order to replace the old.<sup>67</sup> This effect remains the same whether the architects of the revolution announce that they have terminated or suspended the old constitution or wish to continue it in force. The difference between suspension and termination is that the former allows the revolutionaries to take and continue in force aspects of the old legal order. It must however, be emphasized that in such cases, the source of validity of the rules continued in force is the decree that permitted their continuation. From a jurisprudential point of view then, there is little practical difference between termination and suspension of legal orders. A fortiori, a suspended legal order does not revive merely because the new legal order is abruptly terminated at a later date. It requires a positive legal act of the suspending authority to reactivate a suspended legal order. Such a positive act was definitely absent in Grenada. The Governor-General could therefore not have issued the invitation on the basis of the 1967 Constitution. The American reliance on the invitation as a basis for the intervention in Grenada is thus questionable.



Equally faulty is the contention of the Soviet Union that it intervened in Afghanistan at the invitation of the Afghan government. Admittedly, there were over 10,000 Soviet personnel and troops in Afghanistan by 1978 and immediately prior to the invasion serving as technical advisers at the invitation of the Afghans.<sup>68</sup> But the issue of invitation relates to the Soviet military operations in December 1979 and not the period before. Soviet assertions of invitations for the December operations have been collaborated by statements from the Kabul government broadcast a day after the invasion began. The material part of the statement read:

The Government of the Democratic Republic of Afghanistan taking into account the continuing and broadening interference and provocations of external enemies of Afghanistan, and with a view to defending the gains of the April revolution of 1978 which brought to power the left-wing Government of Mr. Nur Mohammed Taraki, territorial integrity and national independence and maintaining peace and security, proceeding from the treaty of friendship, good-neighbourliness and co-operation of Dec.5, 1978, has approached the USSR with the insistent request to give urgent political, moral and economic aid, including military aid, which the Government of the Democratic Republic of Afghanistan repeatedly requested from the Government of the Soviet Union previously. The Government of the Soviet Union has met the request of the Afghan side. <sup>69</sup> (Emphasis added)

The statement indicates that Kabul had insistently and repeatedly requested Soviet aid through intervention. However, the initial disagreements between the Amin government and the Soviets on the propriety of the military intervention<sup>70</sup> coupled with the clashes between Afghan soldiers and Soviet troops during the invasion,<sup>71</sup> cast grave doubts on the genuineness of any statement alleging invitation. The circumstances leave one with the conclusion that the Amin government did not issue an invitation for the invasion. It is also certain that the present Karmal regime could not have issued any invitation to the Soviets prior to the invasion because Karmal himself was in exile;<sup>72</sup> his Parcham party had not taken control of government and was therefore not a lawful governmental authority. The authoritative source of the invitation thus remains unclear and throws the Soviet justification for the intervention on the basis of invitation into considerable doubt.

The United States intervened in Grenada jointly albeit with a token force from the Caribbean states. The Soviet Union on the other hand undertook its Afghan operations on its own. While the American mission attracted apparent local support,<sup>73</sup> the Soviets were met with fierce local resistance which continues today.<sup>74</sup> Such elements represent fundamental differences between Afghanistan and Grenada, but this notwithstanding, the illegal consequences of both interventions remain the same. The simple fact of a joint intervention does not furnish any evidence of legitimate invitation any more than a solitary action would. The action in concern does not in itself make an otherwise illegal intervention legal.<sup>75</sup> The joint effort in an illegal conduct would only provide an evidence of a conspiracy to violate international law rather than serve a basis for vindication.

Evidence of local support (as in the case of Grenada) may indicate the wishes of the population and even constitute an implicit form of invitation. However, by its very nature such local support can only be used (and has in fact been used in the case of Grenada) as an ex post facto justification or invitation for intervention. In dealing with the issue of invitation as the basis for intervention, one is concerned with an objective set of circumstances prior to the intervention and which in themselves provide a legal foundation for the course of action. Where such circumstances e.g. the invitation are not existent, the action may be illegal ab initio. The initial illegality is not necessarily made legal as a result of a subsequent implicit invitation.<sup>76</sup>

Local hostility as in Afghanistan against an intervening power is not in itself a conclusive evidence of the illegality of the intervention even though it may indicate a possible absence of invitation. On the other hand it needs to be noted that it could well be a government's lack of control over hostile local forces that may necessitate a valid governmental invitation of a foreign power. (A good example of such a case is the American intervention in Lebanon). In such situations the hostility of a local population cannot necessarily be interpreted as a lack of a valid invitation. In the case of Afghanistan, we have indicated that there was possibly no legitimate invitation, but this conclusion is not based on the hostility of the local population.

#### ii Treaty Arrangements

A central feature of the Soviet argument for intervening in Afghanistan is the reliance on the 1978 Treaty of Friendship signed between the two states.<sup>77</sup> Article 4 which is material provides:

The High Contracting Parties acting in the spirit of the tradition of friendship and good neighbourliness, as well as the United Nations Charter shall consult each other and take by agreement appropriate measures to ensure the security and territorial integrity of the two countries.....

Article 4 as it stands does not allow for unilateral intervention. Thus any valid operation in pursuance of the treaty had to be by agreement. As indicated earlier, there was apparently no such agreement between the Amin regime and the Soviet Union. Since the Karmal administration was not in existence before the invasion, it could not have provided the agreement either. On the other hand if any part of the treaty is interpreted to permit unilateral intervention by the Soviet Union, it would conflict with Article 1 of the treaty under which the parties solemnly declare to strengthen their relations "on the basis of equality, respect for national sovereignty, territorial integrity and non-interference in each others internal affairs". More significantly, the interpretation would make the treaty void to the extent that it conflicts with a pre-emptory norm<sup>78</sup> of international law and the United Nations Charter norms relating to the inviolability of territorial sovereignty. In sum, the Soviet attempt to rely on the 1978 treaty is vitiated by the absence of any prior agreement.

The United States similarly bases its intervention on the treaty of the OECS.<sup>79</sup> This is rather curious because the United States is not a party to the OECS treaty. But on the other hand it may perhaps be argued that its reference to the treaty is by virtue of the invitation from the OECS members. In other words, it relies on the treaty indirectly as opposed to the direct position of the signatory states. Even if this explanation is accepted, it would not vindicate the American position. The treaty establishes a Defence and Security Committee as one of its organs. Under Article 8(4), the Committee is responsible for

co-ordinating the efforts of Member States for collective defence and the preservation of peace and security against external aggression and for the development of close ties among the Member States of the Organisation in matters of external defence and security including measures to combat the activities of mercenaries, operating with or without the support of internal or national elements, in the exercise of the inherent right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations.<sup>80</sup>

The material section of the treaty only relates to collective defense measures against external aggression. It cannot be interpreted to include internal disturbances such as occurred in Grenada to warrant a collective action by the OECS. Article 8(5) also provides that any decisions taken in pursuance of Article 8(4) "shall be unanimous". The OECS decision to invite the United States to intervene in Grenada was far from unanimous. Apart from the obvious fact that Grenada did not vote to be invaded, it is reported that St. Kitts-Nevis and Montserrat declined to vote.<sup>81</sup>

On its proper interpretation the OECS treaty fails to provide a legitimate basis for the American intervention in Grenada. Arguments to the contrary are based on misconceptions of the exact legal scope of the treaty.

#### Consistency with the OAS Charter

A fundamental difference between the Soviet and American reliance on treaty provisions is that the United States has the benefit of the membership of a regional organization within whose institutional structures it has sought to justify its use of the OECS treaty. As a basic point, the view is advanced that the Grenada mission is consistent with the OAS Charter.<sup>82</sup> This is hardly tenable. Article 18 of the (revised) OAS Charter stipulates 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 state". This is further reinforced by Article 20: "the territory of a state is inviolable; it may not be the object, even temporarily, of military occupation or of other means of force taken by another state". When read together Articles 18 and 20 explicitly prohibit intervention by the signatory states. Article 22 of the OAS Charter however makes allowances for measures adopted for the maintenance of peace and security in accordance with "existing treaties". The "existing treaties" referred to may be such agreements as the Rio Treaty<sup>83</sup> and the Caracas Resolution,<sup>84</sup> which permit intervention under certain circumstances.<sup>85</sup> However, Grenada is not a party to any of these treaties. The only treaty the United States could rely on for the purposes of Article 22 would be the OECS agreement. But even if the United States as a non-signatory to that treaty could rely on its provisions, one only needs to point out that the provisions of the OECS

treaty have no relevance when dealing with the internal disorders of a member state.

There is a fundamental distinction between the external oriented nature of the defense arrangement under the OECS treaty and the internal oriented features of the Rio Treaty and the Caracas Resolution. To equate the terms of the OECS agreement with those of the latter would only be possible through a conscious act of misinterpretation.

Article 28 of the OAS Charter allows collective self-defense by the American States but this is subject to there being an act of aggression against any of the States or to the occurrence of "a conflict between 2 or more American States...or any other act or situation that might endanger the peace of America". The United States and the states that provided the token force for the Grenada mission can obviously not plead collective self-defense under Article 28 because the Grenada situation does not fit into any of the circumstances envisaged in its provisions.

#### Consistency with the regional arrangements under the United Nations Charter.

Article 52 of the United Nations Charter permits the existence of regional arrangements or "agencies for dealing with...matters relating to the maintenance of international peace and security as are appropriate for regional action" provided such actions taken are consistent with the Purposes and Principles of the United Nations. The United States consequently argues that its intervention in Grenada through the OECS is consistent with Article 52 of the Charter. This argument is hardly correct. Admittedly the OECS can be classified as a regional agency<sup>86</sup> however the internal disorder in Grenada did not amount to a threat to international peace and security which required maintenance by a regional agency. Article 2(4) of the United Nations Charter expressly prohibits the use of force in international relations. The failure of the United States and other Caribbean countries to use non-military means to resolve the Grenada problem was a violation of Article 2(4) and of Article 33 of the Charter which calls for the pacific settlement of disputes. Assertions that Article 2(4) was not violated because of the express invitation by the Governor-General of Grenada are vitiated by his lack of authority at the material time. The military invasion was therefore inconsistent with the Purposes and Principles of the United Nations and not justifiable under Article 52 of the Charter.

Unlike the United States, the Soviet Union is not able to point to the existence of any regional structures to justify its action in Afghanistan. This contrast between the two interventions is however immaterial. The canopy of a regional agency does not necessarily validate the actions of its members. In other words, when the interventions in Afghanistan and Grenada are compared and contrasted, the presence of the inter-American regional agency does not make the United States action any less illegal than the Soviet conduct in Afghanistan.

### iii Self-defense

In a statement released after the invasion of Afghanistan the Late Soviet leader Breshnev attempted to justify the Soviet action by noting that:

The unceasing armed intervention, (and) the well advanced plot by external forces of reaction created a real threat that Afghanistan would lose its independence and be turned into a imperialist military bridgehead on our country's southern border. In other words the time came when we could not but respond to the request of the Government of Friendly Afghanistan. To have acted otherwise would have meant leaving Afghanistan a prey to imperialism; allowing aggressive forces to repeat in that country what they had succeeded in doing for instance in Chile... To have acted otherwise would have meant to watch passively the origination on our southern border of a centre of serious danger to the security of the Soviet Union.<sup>87</sup>

It follows from his statement that apart from the request of the Afghan government, the Soviet Union also took the view that the invasion was necessary to safeguard its southern frontier. Implicit in this argument is a plea of self-defense.

Article 51 of the United Nations Charter recognizes the collective and individual right of self-defense "if an armed attack occurs against a Member of the United Nations". The issue is whether the Soviet Union can rely on this provision to justify her intervention as intimated by Breshnev. In modern international law there is disagreement as to the circumstances in which a right of self-defense accrues to a state. Literally interpreted, the phrase "if an armed attack occurs" implies that a state can only resort to self-defense where an armed attack has already occurred against it. Within this interpretation the Soviet Union cannot rely on Article 51 because at no point in time was there an armed attack against it. Of course for the purposes of collective self-defense, there need not be an armed attack against the Soviet Union itself. It is enough if the attack was against a state with whom the Soviet Union had a mutual defense agreement for the purposes of collective self-defense (e.g. the Warsaw Pact). There was no such agreement between the Soviets and Afghanistan.

On the other hand, there is the view that Article 51 encompasses anticipatory self-defense. In other words, in circumstances where a state reasonably anticipates an attack on itself, it need not wait till the attack occurs. It can take a pre-emptive action to abort such an attack.<sup>88</sup> Even though this view has attracted several criticisms<sup>89</sup> it was advanced as the basis for Germany's invasion of Norway on the eve of WWII,<sup>90</sup> the Israeli military strike in the Six Day War of 1967 and the 1981 Israeli raid on the Iraqi nuclear reactor.<sup>91</sup> Whatever the merits of anticipatory self-defense may be, the question remains whether the facts of Afghanistan leave room for such a defense.

For the purposes of anticipatory self-defense, the armed attack, not having occurred, must nevertheless be eminent, "instant, leaving no choice of means and no moment for deliberations."<sup>92</sup> Even though there was a clear evidence of a power struggle and a general state of instability in Afghanistan prior to the invasion, there was no indication of any eminent attack on the Soviet Union. The Afghan insurgents were reportedly being supplied with material aid by Pakistan and the United States. While this could have constituted aggression against Afghanistan, it was at best only remotely related to the security of the Soviet southern frontier. It therefore fails to provide the adequate basis for anticipatory self-defense to justify the invasion.

Unlike the Soviet Union, the United States has not specifically invoked Article 51 as a basis for its Grenada mission. This is understandable because there was no attack against it and neither was there an attack against any American state. Given the 1,600 mile distance between the two states, the United States could hardly use the development of the airstrip in Grenada or the alleged Soviet-Cuban arms build-up as a good basis for anticipatory self-defense. In contrast, it is the geographical proximity and functional contiguity between Afghanistan and the Soviet Union which make the feeble argument of self-defense attractive to the Soviet Union. The geographical determinants in themselves are however relative significance in assessing the legal validity of both interventions.

#### iv The Protection of Nationals

Even though there was reportedly over 10,000 Soviet nationals in Afghanistan who could arguably have been threatened by the general anti-communist sentiments prior to the invasion, the Soviet Union did not use the protection of its nationals as a basis for the invasion. The United States on the other hand had about 1,100 nationals in Grenada. Their protection was used as one of the principal reasons for the "rescue operation" in Grenada.

It is generally accepted in international law that a state can take steps to protect its nationals resident in a foreign state where the safety of their lives and property are threatened and the foreign state has demonstrated an unwillingness or incapacity to ensure their safety. The Belgium government used this as a basis for its operation in Stanleyville during the Congo crisis;<sup>93</sup> the United States also applied it during the Dominican crisis in 1965.<sup>94</sup> In the case of Grenada, it is debatable whether the United States nationals were in fact in any eminent danger.<sup>95</sup> However, given the general state of instability in the territory in the October crisis one would be justified in giving the United States the benefit of any doubts about the threatened safety of its nationals. This in itself would not vindicate the armed invasion. The prohibition of the use of force and the requirement for pacific settlements of disputes in modern international law dictate that the use of force for whatever purposes must be a last resort i.e. where peaceful diplomatic attempts have failed. With respect to Grenada, even though United States representatives consistently emphasized that "every effort was made to secure the evacuation of American nationals by diplomatic means,"<sup>96</sup> this only related their negotiations with the new Military Revolutionary Council in Grenada. The United States does not appear to have discussed the prospects of a peaceful and non-military solution with either the OECS or the OAS or the United Nations pursuant to Article 33 of the United Nations Charter.

The speed and eagerness with which the United States resorted to armed intervention as opposed to a peaceful settlement were reminiscent of its action in the Dominican Republic in 1965. They also provide a valid basis for the contention that in its Grenada operation, the safety of its nationals as such was arguably not a priority. The United States appeared to have been more interested in a swift military operation to destroy the basis for a communist resurgence in Grenada. The presence of its 1,100 nationals whose safe evacuation could have been arranged through international channels afforded a convenient and ostensible basis for this ideological necessity. If this is correct then the United States action is far from irrefragable in international law. As the British Prime Minister, Margaret Thatcher, noted in an interview after the invasion, if one is to pronounce a new law that wherever communism rears its head the United States has a self-imposed mandate to intervene, then we are headed for international anarchy.<sup>97</sup>

### CONCLUSION

Despite their ideological differences and varied strategies, the Soviet Union and the United States demonstrate a remarkable degree of similarity in the substance of their policies in relation to order and stability in the Third World. This is particularly so with regard to states in their "backyards". To understand the conduct of the super-powers in cases such as Afghanistan and Grenada one must therefore take note of the commitments of the super-powers to the regional status quo and any changes and the extent to which such situations benefit or adversely affect them. More often than not, the legal principles advanced by both super-powers in support of their conducts in international relations are only superstructural niceties designed to make their ideological decisions palatable for international consumption.

Whatever the ideological imperatives must have been for the operations in Afghanistan and Grenada, they fail to lend themselves to proper legal justifications. Grenada certainly differs from Afghanistan in style and certain factual terms but the legal consequences for both actions are the same - a flagrant violation of the norms of non-intervention and the prohibition of the use of force, contrary to the Purposes and Principles of the United Nations and international law generally. Any attempts to ascribe a cloak of legality to one and illegality to the other would amount to an objectionable international double standard.

NOTES

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1. Richard S. Newell, "Soviet Intervention in Afghanistan" 36, *The World Today*, 250 (1980); *id.*, Vol. 35, 433 (1979); "International Responses to the Afghan Crisis" *id.*, Vol. 37, 172 (1981); David Chaffetz, "Afghanistan in 1982, Still no Solution" 23 *Asian Survey*, 133 (1983) Jaqat S. Mehta "Afghanistan: A Natural Solution" 47 *Foreign Affairs*, 139 (1982); Anthony Hyman "Afghanistan's Unpopular Revolution" 69 *The Round Table*, 222 (1979); Ian Cummins "Afghanistan: The Great Game of the Domino Theory?" 34 *Australian Outlook*, 141 (1980). See also Eden Narby "The Ethnic Factor in Soviet Afghan Relations" *Asian Survey* 239 (1980). For a legal analysis of the Soviet intervention see A.G. Noorani, "Afghanistan and the Rule of Law" 24 *The Review of the International Commission of Jurists* 37, 43-51 (1980); Marian L. Nash "Contemporary Practice of the United States Relating to International Law" (a reproduction of a Dept. of State release on the Afghanistan case) 74 *A.J.I.L.* 418 (1980).
  2. Hoagland "U.S. Invades Grenada, Fights Cubans: Reagan Cites Protection of Americans" *Washington Post*, Oct. 26 1983, 1, Peter D. Frazer, "Revolution and Suicide and Commonwealth Disarray: Grenada October 1983" 74 *The Round Table*, 24 (1984) See also C.H. Grant, "Ideological Pluralism in the Caribbean" *id.*, 174; for an analysis of the relationship between the U.S. and Grenada prior to the invasion. On the legal aspects of the U.S. action see Christopher C. Joyner, "Reflections on the Lawfulness of Invasion" 78 *A.J.I.L.* 131 (1984); John Norton Moore, "Grenada and International Double Standard" *id.*, 145; and also Francis A. Boyle *et al.*, "International Lawfulness in Grenada", *id.*, 172; Detlev F. Vagts, "International Law Under Time Pressure: Grading the Grenada Take-Home Examination", *id.*, 169.
  3. With regards to Afghanistan, the U.N. General Assembly "...strongly deplore the "armed intervention" and called for the "immediate and unconditional total withdrawal of the foreign troops" G.A. Res. ES-6/2 (14 Jan. 1980) adopted by 104 in favour, 18 against and 18 abstentions and 12 absent or not voting. A Security Council draft resolution condemning the intervention was vetoed by the Soviet Union. The General Assembly also deplored the American action in Grenada as "a violation of international law" in Resolution 38/7 (2 Nov. 1983) adopted by 108 votes to 9 with 27 abstentions. A draft resolution condemning the invasion in the Security Council was also vetoed by the United States. For a survey of international responses to the Afghanistan and Grenada operations see 26 *Keesings Contemporary Archives* 30233-4 (1980) and *Time Magazine*, Nov.7 1983 respectively



4. A non-exhaustive list of super power interventions since WWII includes the Soviet actions in Hungary (1956), Czechoslovakia (1968) and Ethiopia (1976). The United States has similarly intervened in Guatemala (1954), Vietnam, Cuba (1960 and 1964) the Dominican Republic (1965) and Lebanon (1983). The practice has not been restricted to these two super-powers. The French intervened in the Chad, the Cubans in Angola (continuing) and the Tanzanians in Uganda, and the Vietnamese in Kampuchea (continuing).
5. See works cited in note 1.
6. Compare the views vigorously advanced by John Norton Moore, *op.cit.*, note 2 with those expressed by Bagts, *op.cit.*, note 2. See also Harsch "The Case for Invading Grenada" *Christian Science Monitor*, 22 (Nov.1 1983).
7. *Time Magazine* 14 Nov. 1984
8. Cummins, *op.cit* note 1, 143. For an overview of the history of Afghanistan see generally John C. Griffiths, *Afghanistan* (London 1967) D.N. Wilber, *Afghanistan* (New Haven 1962); W. Fraser Tytler, *Afghanistan - A Study of Political Developments in Central Asia*. (O.U.P. 1950)
9. A.E. Senn, *Readings in Russian Political and Diplomatic History* Vol.1, 138-139 (Ill. 1966).
10. Cummings, *op.cit.*, note 1. 143
11. In all, there were three Afghan wars in 1839-42, 1879 and 1919 respectively. See generally Sir J.W. Kaye, *History of the War in Afghanistan* (3 Vols.) (London 1874), Sir Vincent Eyre, *The Afghan Wars*, (London 1843); Iqbal Ali Shah, *Modern Afghanistan*, Chap. 4 (London 1939).
12. G.F. McMunn, *Afghanistan From Darius to Amanullah*, 282 (London 1929).
13. Note 10
14. J.V. Stalin, *Problems of Leninism* 75 (Moscow 1953).
15. Cummins, *op.cit.*, note 1, 144.
16. Newell, 1979 *op.cit* note 1, 432. Among Amin's enthusiastic supporters were the junior army officers who had been trained in the Soviet Union at the rate of about 1,000 per year under a 1953 agreement signed between the Daoud government at the time and the Soviets (Chaffetz, *op.cit.*, note 1,17)
17. Chaffetz, *id.*, 18.
18. *Id.*, 19.
19. *Id.*, 20
20. For an overview of Taraki's attempts at reforms, see Newell 1979, *op.cit.*, 437-438, Fred Halliday "Revolution in Afghanistan" *New Leftist Review* 27 (Nov. - Dec. 1978).

21. Chaffetz op.cit., note 1, 22.
22. Id., 26.
23. 22 I.L.M. 1 (1980)
24. New York Times 14 Jan. 1980
25. Newell, 1980, op.cit., 251.
26. Ibid.
27. Id., 254
28. Id., 256. See however, Dupree op.cit., note 1, for the view that the figure could be about 120,000 men and that the Russians have been engaged in "rubblization of villages" and "migratory genocide" (135).
29. G.A. Res 3204 (XXIX). On the Constitutional and political history of the territory, see generally A. Sparkman, Constitutional Developments in the West Indies 1922-1968 (Barbados 1975); George C. Abbott, "Grenada: Maverick or Peace-Maker in the West Indies?" 36 The World Today, 154 (1980); Tony Thorndike "Grenada: Maxi-crisis for Mini-state", 30 The World Today, (1974). See generally also Anthony Payne, The Politics of the Caribbean Community 1961-79: Regional Integration Among New States (Manchester 1980).
30. The constitution is reproduced in A. Blaustein and G. Flanz (eds.) Constitutions of the Countries of the World (1974).
31. Sect. 57 of the Granada Constitution (The Grenada Constitution Order, 1973 No. 2155).
32. Sect. 61
33. See generally D. Sinclair Dabreo, The Grenada Revolution (Casteries, St.Lucia 1979)
34. P.L. No.2 is reproduced in A. Blaustein and G. Flanz (eds.) Constitutions of the Countries of the World (1983)
35. P.L. No.3., ibid.
36. This included members of the Grenada Public Service Commission, the Director of Public Prosecutions and members of the Public Service Board of Appeal.

37. Grant, op.cit., note 2. The American uncompromising attitude towards the possible spread of communism in the Caribbean is of course not new. It was well exhibited in the 1950s against Guatemala and against Cuba in the 1960s. See generally J. Dreir The Organization of American States (New York 1962) particularly his comments on the Caracas Resolution of 1954, at 54. See also H. Dinerstein, Intervention Against Communism (1967)
38. Grant, id., 179.
39. Anthony Maingot "Cuba and the Commonwealth Caribbean" 9 Caribbean Review, 7-10 (1980).
40. The airport, with a runway of over 9000 feet was ostensibly to be used as the basis for Grenada's tourist industry. However, American intelligence organizations assessed that the length of the runway far exceeded the commercial planes available to Grenada. It was thus believed that the airport was most probably to be used as a refuelling point for Soviet transport planes enroute to deliver arms and military logistics to Nicaragua and other prospective Soviet allies in the region. It was also believed by the Americans that it could be used as a strategic powerhouse for subversive operations throughout the Caribbean region. (Cannon, Strategic Airport, Hostage Fears Led to Move" Washington Post, Oct. 23 1983, A.1, A.8.
41. Grant, op.cit., note 37, 179-180
42. 20 I.L.M., 1166 (1981). The membership of the O.E.C.S. include Antigua, Dominica, Grenada, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines.
43. Grant, op.cit., note 37
44. Bishop first made the appeal in a letter to President Reagan in 1981. He subsequently repeated it in his visit to Washington in 1983 (30 May - 7 June) id., note 6.
45. Minutes of the Central Committee of the New Jewel Movement (i.e., the party that took over power after the 1979 coup) indicates that the radicals in the government considered Bishop a reactionary and a "bourgeois deviationist" who was too slow to consolidate a "Leninist restructuring of Grenadian society" and was consequently not suitable for the leadership of the revolutionary movement (Statement by K.W. Dam, Deputy Secretary of State, U.S. Dept. of State File No. P83044-1525, partly reproduced in 78 A.J.I.L, 200 (1984).
46. Ibid.
47. Ibid.
48. Ibid., 202.
49. Smith, "2 Americans Killed: Cubans Clash with Force, - 30 Advisors are Reported Safe". New York Times 26 October 1983 A1, Col. 6: U.S. Dept. of State and Defense Grenada: A Preliminary Report 1 (Washington 1983).
50. Jenkins, "U.S. Forces Seize Fugitive Leader of Grenadian Coup" Washington Post 31 October 1983, A.I. Col. 6.

51. Time Magazine, 14 Nov. 1984.
52. Article 24 of the United Nations Charter.
53. United Nations Declaration on Principles of International Law concerning Friendly Relations (G.A. Res. 2625 (XXV)); Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States (G.A. Res. 2131 (XX)).
54. Article 51 of the United Nations Charter.
55. D.W. Bowett, "The Inter-relation of Theories of Intervention and Self-Defense" in John Norton Moore (ed.), Law and Civil War in the Modern World 38, 42 (Baltimore 1974); John W. Burton "The Relevance of Behavioural Theories of the International System", in id., 92, 99-100.
56. D.W. Bowett, Self-Defense in International Law, (London 1958); R. Lillich, "Forcible Self-help by States to Protect Human Rights" 53, Iowa L. Rev. 325, (1967); "Intervention to Protect Human Rights" 15, McGill L.J. 205, (1969). Moore "The Control of Foreign Intervention in Internal Conflicts" 9, Va.J. Int'l L., 209, 261 (1969) See also J.P. Fonteyne "Forcible Self-help by States to Protect Human Rights: Recent Views from the United Nations" in R. Lillich (ed.) Humanitarian Intervention and the United Nations 197 (1973) and the authorities cited therein.
57. McDougal and Reisman "Humanitarian Intervention to Protect the Ibo's" in Lillich (ed.) id., 167; J.P. Fonteyne, "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the United Nations Charter", 4 Can. W. Int'l L. Journ; 203, (1973-74); R. Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives" in Moore, (ed.) op.cit., note 55, 220; Moore, "Toward and Applied Theory for the Regulation of Intervention" in id., 324. But see Ian Brownlie, "Humanitarian Intervention" in id., 217.
58. Other exceptions include intervention in aid of colonial self-determination struggles and collective action in pursuance of a United Nations directive, see Moore, (1969), op.cit., note 56, 246; James Crawford, The Creation of States in International Law 114-115, (1979). For other exceptions to the norm of non-intervention see Oppenheim, International Law, Vol.1 (Lauterpacht ed.) 305-315 (London, 1955), J.G. Starke, An Introduction to International Law, (London 1972). Despite these exceptions the exact limits of permissible intervention remain debatable. See generally, Thomas and Thomas, Non-Intervention, 67 (Dallas 1956).
59. See statement by Dam, op.cit., note 45.
60. 26 Keesing's Contemporary Archives, 30229, 30236, (1980) See also B.L. Breshnev The Truth about Afghanistan, Documents, Facts, Eyewitness Reports, 9-10 (Moscow 1980).
61. Note 55.
62. Dam, op.cit., note 45, 203

63. See text to notes 33-35.
64. The argument has been advanced by Moore, *op.cit.*, note 1, 160.
65. In a letter addressed to Prime Minister John Adams of Barbados, the Governor-General stated; "You are aware that there is a vacuum of authority in Grenada following the killing of the Prime Minister...." (*ib.* 148).
66. Note 64.
67. Hans Kelsen, *General Theory of Law and State*, 220 (London 1946); *The Pure Theory of Law* 209 (London 1967). See also the decision in *Madzimbamuto v. Lardner-Burke* 3 W.L.R. (1968) 1229, 2 S.A. (1968) 284, 328-9. Useful comments in this regard are also made by Tsatsu and Fui Tsikata in *University of Ghana L.J.* 192 (1970); O'Connell, *State Succession in Municipal Law and International Law Vol.1*, 101 (Cambridge 1967) 101; and T.O. Elias, in 5 *Nigerian L.J.*, 129, (1971). But see also the critical comments by J.M. Finnis, "revolutions and Continuity of Law" in A.W.B. Simpson, *Oxford Essays in Jurisprudence (Second Series)* Chapter III, (Oxford 1973).
68. Newell, (1980) *op.cit.*, note 1, 250.
69. 26, Keesing's Contemporary Archives, 30229 (1980).
70. Note 25.
71. Reportedly, 3000 Afghan soldiers died while resisting the invasion in the 48 hours of fighting. (Note 69).
72. *Ibid.*, Newell, (1980) *op.cit.*, note 1, 256.
73. See for instance "Grenadians Welcome Invasion, a Poll Finds" *New York Times*. According to this report 91% of Grenadians interviewed supported the invasion.
74. The Kabul regime on the other hand, boasts of 98% support. The Soviet Union, however, concedes the fact of the resistance but explains that it is the work of a reactionary minority who are agents of imperialists operating from Pakistan. (Newell (1981) *op.cit.*, note 1.)
75. In this regard see the critical comments by Casteneda on American practice in "Pan-Americanism and Regionalism: A Mexican View" 10, *Int'l Organization*, 382 (1965).
76. The validity of this proposition draws strength from the international law maxim *ex injuria non oritur jus*. See generally Ian Brownlie, *Principles of Public International Law* 511 (Oxford 1979).
77. Note 23.
78. Vienna Convention on the Law of Treaties (Article 53).

79. Dam, op.cit., note 45, 203.
80. Emphasis added.
81. Taylor, "Experts Question Legality of the Invasion of Grenada" New York Times, Oct. 26 1983 8.
82. Note 79. The Charter is reprinted in 48, U.N.T.S. (1952). See a revised version in O.A.S. Treaty Services No. 1-A OASOR OEA/Ser. A/2 Add 2 (1967).
83. Reprinted in 42, A.J.I.L. Supp. 53 (1949).
84. 10th Inter-American Conference, March 1028, 1954, Washington D.C., reprinted in 30 Dept. of State, Bull. 420 (1954).
85. The Rio treaty allows for (collective) inter-American action in the event of "aggression". Aggression in the treaty is defined as "any action against the inviolability or the integrity of the territory or the security or political independence of any American State...or any other situation or fact which may endanger the peace of the America's" (emphasis added). Given this rather broad definition of aggression, the OAS as an organization appears to have an unrestricted right of intervention. See Miller, "Non-Intervention and Collective Responsibility in the Americas" U.S. Dept. of State Bull. Vol.22 (1950) 768; J. Cabranes, "Human Rights and Non-Intervention in the Inter American System", Michigan Law Rev. Vol.65, (167), 1147; Thomas and Thomas, The Organization of American States, Chapt. 14 (Dallas, 1963).
- The Caracas Resolution is more specific and allows for intervention by the OAS in the event of 'domination' or control of the institutions of a member state by communists. On the implications of the resolution see John Dreir, The Organization of American States 43 (New York, 1962) Neale Ronning "Intervention, International Law and the Inter-American System" III Journ. of American Studies, 249 (1963); Dihigo "Legality of Intervention Under the Charter of the Organization of American States", Proceedings of American Society of Int'l L., 91 (1957).
86. On the definitional criteria for a regional organization, see generally L.B. Miller, "Regional Organization and the Regulation of Internal Conflicts", 19 World Politics, 584, (1967); L. Miller, Prospects for Order through Regional Security in Falk and Black (eds.) The Future of the International Legal Order 556, 572 (New Jersey, 1969); Thomas Franck, "Who Killed Article 24" 64, A.J.I.L. 809, 832 (170), Frey-Wouters, Prospects for Regionalism in World Affairs" in Falk and Black, (eds.) id., 463,466.
87. Note 60.
88. Bowett, 1958 op.cit., note 56, Chapts. 5 and 6

89. Ian Brownlie, International Law and the Use of Force by States, 250-257 (Manchester 1963); M. Akehurst, A Modern Introduction to International Law 222-223 (London 1982).
90. Nuremberg Trials, 41 A.J.I.L. 205 (1947).
91. Mallison and Mallison, "The Israeli Attack of June 7, 1981, report Iraqi Nuclear Reactor: Aggression or Self-Defense?" 15 Vand. J. Transnat'l L. 417 (1982); Anthony D'Amato, 77 A.J.I.L. 584 (1983).
92. Note 56.
93. Falk, Legal Order in a Violent World 324-35 (New Jersey 1968).
94. Nanda, "The United States' Action in the 1965 Dominican Crisis" Impact on World Order, 43 Denver L.J. 439 (1966); Thomas and Thomas, The Dominican Republican Crisis in 1965, 1-83 (9th Hammarskjöld Forum, 1967).
95. Despite repeated reports that the United States nationals were not safe, there were occasional allegations to the contrary. See for instance Omang, "Americans in Grenada Calling Home, Say They Were Safe Before Invasion", Washington Post, (Oct. 26, 1983) 11.
96. See authorities cited in Moore 1984 op.cit., note 2, 149-150. But see Time Magazine Nov. 7, 1983. Col. 1, 24 for the report that the Revolutionary Council sent a note assuring the United States government that the nationals were in no danger and that they could be evacuated at any time.
97. Time Magazine id., 41.