USE OF MILITARY FORCE IN PROTECTION OF NATIONALS ABROAD?

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Abstract

When nationals of State A face an imminent threat of injury in State B and State B fails to provide security to them, will State A get a 'right' to intervene in the territory of State B under the pretext of protecting its nationals? Will it not violate the territorial integrity and political independence of State B? Does International Law allow States to use military force to protect their nationals abroad? What does the State Practice suggest? Protection of Nationals Abroad is a very delicate matter in international law and has been a subject of intense debate for a long time. This article tries to shed some light to the issues raised above with the help of three important incidents which history has witnessed which deal with protection of national abroad; first one being the United States intervention in the Dominican Republic, second is that of Israel on Entebbe and the last being the American intervention in Grenada.

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In 1976, Israeli troops landed in Entebbe, Uganda, without seeking the authorisation of the Ugandan Government.[1]In the middle of an armed conflict between Israel and Hizbollah in 2006, the Canadian Government commenced evacuation of approximately 14,000 citizens of Canada. In yet another occasion, Russian tanks, aircrafts and troops crossed the border into the Republic of Georgia in the Caucasus in 2008.[2] These incidents share a common characteristic; these were the military actions taken by the States to provide assistance to their citizens staying in a foreign State. In the present world, protection of nationals abroad is seen as a very complex issue involving various facets. Before the adoption of the United Nations Charter, States had an undisputed right to rescue their nationals and property by resorting to military force in territories of other States. Over time, especially during the Cold War,

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[1] Natalino Ronzitti, Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity 37 (1st edn, Martinus Nijhoff Publishers 1985).

[2] Andrew W. R. Thomson, Doctrine of The Protection of Nationals Abroad: Rise of the Non Combatant Evacuation Operation (2012) 11 (3) Washington University Global Studies Law p. 628.

powerful States used this as a pretext for hegemonic interventions, which were directed to pursue completely different objectives and these were met with significant opposition.[3]

The "doctrine of protection of nationals abroad" deals with the legal justification for military assistance to the citizens of a State outside its border. This involves an intervention by one State, often represented by its armed forces into the territory of another State for the purpose of protection of lives of its own citizens. [4] British jurist Sir Humphrey Waldock pointed out three conditions which need to be fulfilled in order to the right of protection of nationals abroad to be valid, "(i) an imminent threat of injury to nationals must exist; (ii) there must be a failure or inability on the part of the territorial sovereign to protect the nationals and (iii) the measures of protection must strictly be confined to the object of protecting them against injury."[5] The act by a State of sending in armed forces in order to protect its nationals abroad however involved a very complex issue of infringing territorial integrity and political independence of another State.

It is often noted that before 1945, interventions of this kind were permitted.[6] After the adoption of the United Nations Charter, whenever the territorial State consents, rescue operations and evacuations can be lawfully carried out. However the problem arises where there is no consent from the territorial State. In such circumstances whether "protection of nationals" in foreign territory is compatible with the UN Charter or not is subjected to much debate. Its legality and legal basis both are strongly contested.[7] Some scholars argue that there is a right to protect nationals by the use of force under the customary international law but this is uncertain.[8]

[3] Tarcisio Gazzini, The Changing Rules on the Use of Force in International Law 170 (1st edn, Manchester University Press 2005).
[4] *Supra* note 2 at 628.
[5] ibid 628, 629.
[6] Tom Ruys, The 'Protection of Nationals' Doctrine Revisited (2008) 13 (2) Journal of Conflict & Security Law, p. 235; *also see* Ian Brownlie, International Law and the Use of Force by States 289 (Clarendon Press 1963).
[7] ibid 235.
[8] James Crawford, Brownlie's Principles of Public International Law 754, 755 (8th edn, Oxford University Press 2012).

Scholars who support the "doctrine of protection of nationals" invoke a variety of arguments in their favour, important being that these interventions do not infringe the prohibition on the use of force under Article 2(4) of the UN Charter, since it does not harm the 'territorial integrity or political independence' of the State. The idea is to merely protect the nationals from a danger, which the territorial State fails to do. The second important argument in their favour is that the intervention constitutes an act of self-defence.[9] Two arguments have been advanced under self-defence, that the inherent right of self-defence, which is enshrined in the UN Charter, has the customary right of self-defence in it, which among other things extends to the protection of nationals; and since nationals form a part of essential attributes of a State, an attack against nationals abroad is an attack against the State itself thereby triggering Article 51 of the UN Charter.[10]

It is generally accepted that Article 2(4) is customary law and forms a part of *jus cogens* norms.[11] The scope of prohibition under this Article has been subjected to intense debate. People who support the argument that the intervention does not infringe Article 2(4) adopt a literal interpretation of the Charter. They argue that when armed forces are used to protect nationals, it is not inconsistent with the Article 2(4), in those cases where it does not involve a separation of part of the State which is subjected to intervention or there is a prolonged presence of the troops of the intervening State in the territory of the State where intervention has taken place.[12] They further argue that Article 2(4) does not protect the inviolability of the State but only its territorial integrity and political independence. The prohibition on use of force under Article 2(4) is not absolute. It is also argued that the use of force for the protection of nationals when confined to the limits prescribed by the customary international law do not violate the purposes of the United Nations.[13] Furthermore, Article 2(4) does not just prohibit use of force but also 'threat' of use of force.[14]

[9] *Supra* note 6 at 235.
[10] ibid 236.
[11] Christine Gray, International Law and the Use of Force 29 (3rd edn, Oxford University Press 2008); *also see Supra* note 2 at 627.
[12] *Supra* note 1 at 1.
[13] ibid 1, 2.
[14] *Supra* note 2 at 635.

But developments in recent years reinforce the prohibition on the use of force. Intervention in other States has been prohibited by the Declaration Concerning Friendly Relations.[15] The principle of non-intervention forms a part of customary international law, which is based on the concept of respect to territorial sovereignty of States[16] and the International Court of Justice has accepted the same.[17] Scholars who criticize justification under Article 2(4) argue on the basis of textual interpretation of the UN Charter, that with the passage of time the terms 'territorial integrity' and 'political independence' merely stand for territorial inviolability. An intervention by use of armed forces in another State's soil violates the first part of Article 2(4).[18]

Intervention on another State's territory to protect nationals relies largely on the argument of self-defence under Article 51 of the UN Charter. Unlike Article 2(4), this provides viable justification for the intervention. Two important issues have to be noted here. Firstly, since Article 51 allows the right of self-defence only when there is an armed attack against one of the members of the United Nations, much is dependent on the fact whether or not an attack on nationals abroad is considered as attack on State itself.[19] If this is answered positive, then it implies that an offence against a citizen is an offence against the State. Scholars have also argued a state of necessity as a reason for protection of nationals on the foreign soil by use of force, according to which *"loss of life and certain kinds of grave physical injury are irremediable."*[20] Once its lost, its lost forever, it cannot be brought back. So the only way to safeguard is by prevention.

Secondly, it is important to see whether or not the inherent right of self-defence includes the protection of nationals. The customary antecedent of self-defence was noted at the time of drafting of the UN Charter.[21] The ICJ in the *Nicaragua*[22] case noted that "*Article 51 of the Charter is only meaningful on the basis that there is a "natural" or "inherent" right of self-defense, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and*

[15] ibid 635.
[16] Malcolm N. Shaw, International Law 1039 (5th edn, Cambridge University Press 2003).
[17] *Nicaragua V. United States of America,* ICJ Reports 1986; *also see Supra* note 2 at 635.
[18] *Supra* note 1 at 8.
[19] ibid 4.
[20] ibid 4.
[21] *Supra* note 2 at 639.
[22] *Nicaragua V. United States of America,* ICJ Reports 1986.

influenced by the Charter. Moreover the Charter, having recognized the existence of this right, does not go on to regulate directly all aspects of its content."[23] The right of self-defence belongs to the States not by grant under the UN Charter but by it being a pre-existing right. Article 51 only declares the existing right and does not constitute a new one.[24]

It is also argued that when a foreign State breaches its duty to safeguard the lives of people within its territory, the right of the State to protect its nationals get crystalized.[25] However, not all infringements can trigger the use of force by other States. As per Waldock, it is important for there being an "immediate threat of irreparable injury to the life" of the nationals.[26] According to customary international law, a State that acts in self-defence must do so within the boundaries of necessity and proportionality.[27] These principles have been derived from the famous *Caroline Incident*. A State must show *"necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation."*[28] According to the principle of necessity, a State can use force only when it is left with no other non-forcible alternative and that use of force is a last resort and the principle of proportionality requires the level of use of force to be proportionate to the severity of the attack.[29]

Scholars who are against the right of self-defence argument mainly argue that the language of Article 51 cannot be stretched too far to include the concept of an attack against nationals; the State practice which support this concept is very minimal and limited and if intervention by use of armed force is allowed, there are high chances of abusing this doctrine.[30]

According to Bowett, the right to protect nationals abroad under limits set forth by international law is not inconsistent with Article 2(4). In case if one proves a convincing case that it is inconsistent with Article 2(4), it would still be permissible

[23] *Supra* note 2 at 639.
[24] D.W. Bowett, The Use of Force in Protection of Nationals (1957) Vol. 43 Transactions of the Grotius Society, p.115.
[25] *Supra* note 2 at 643.
[26] ibid 643.
[27] Franscis Grimal and Graham Melling, The Protection of Nationals Abroad: Lawfulness or Toleration? A Commentary (2011) 16 (3) Journal of Conflict and Security Law, p. 548.
[28] Judith Gardam, Necessity, Proportionality and the Use of Force by States 149 (3rd edn, Cambridge University Press 2010).
[29] *Supra* note 27 at 548, 549.
[30] ibid 550.

under the right of self-defence, which is considered as an exception to Article 2(4).[31] Hence it can be said that Article 51 does not prohibit rather it is permissive. Article 2(4) is the only Article, which is prohibitive in nature, which leaves the right of self-defence unaffected.[32] It is also argued that neither the U.N Charter nor the customary international law makes a separate exception for the use of force to protect nationals abroad. When a State unilaterally resorts to use of force to achieve this end, it does not constitute collective self-defence. Hence, only when the use of force for protection of nationals falls within the parameters of the right to self-defence, it can be considered lawful.[33]

Following are some of the incidents, which have taken place where States have intervened by the use of armed force to rescue their nationals on foreign soil.

I. United States Intervention in the Dominican Republic, 1965

There was a civil strife going on in the Dominican Republic, when United States marines task force landed in San Domingo on 28th April 1965. The President Bed Cabral was forced to resign by the 'Constitutional Party', which put one of its own men to the post. Cabral's supporters formed the 'National Reconstruction Government' and were fighting to return to power. The rebels of the 'National Reconstruction Government' requested the American intervention. When the United States marines landed, the island of Dominic Republic was in a state of anarchy.[34]

In the beginning, the United States of America justified the intervention by sending some 1700 troops, as a measure taken to protect its nationals and nationals of other countries. A statement was submitted to the Security Council according to which, "the American government was officially notified by the police and the military authority of Dominic Republic that they were no longer in a position to guarantee the lives of the American citizens"[35] only then United States sent its troops to give protection to hundreds of American nationals and escort them safely back to the United States. As the debate progressed, the United States added another justification that there was a

[31] *Supra* note 24 at 114.
[32] ibid116.
[33] James A. Green and Christopher P. M. Waters (ed), Conflict in the Caucasus: Implications for International Legal Order 59 (1st edn, Basingstoke: Palgrave Macmillan 2010).
[34] *Supra* note 1 at 32, 33; *also see* Theodore Draper, The Dominican Intervention Reconsidered, (1971) 86 (1), Political Science Quarterly, p. 5.
[35] ibid 33.

need 'to give the Inter-American system (the OAS) a chance to deal with the situation.'[36] The Organization of American States passed a resolution creating an inter-American force and the United States expanded its military presence in the island of Dominic Republic to around 22,000 troops, justifying it on the ground of OAS.[37]

But soon it became clear that the reason was something else when United States declared that the intervention was aimed primarily at 'preventing another Cuba'.[38] Ever since the 19th century, Central America and Caribbean have been of concern to the leaders of the United States. In 1959, when Fidel Castro emerged victorious in Cuba, it heightened the worries. At the same time, there were anti-American riots in the Panama Canal Zone.[39] The United States feared that with growing unrest in the Dominican Republic and increasing spread of communist ideology, another country might end up joining the Soviet bloc.

The United Kingdom and Netherlands thanked the United States for saving their nationals, while the French representative cautiously remarked that the United States had a right to intervene and protect its own citizens but these operations must be shot-ranged in time, objective and scope.[40] Heavy criticism came from the communist countries like the Soviet Union which asserted that the United States was using the protection of nationals as a pretext to intervene and restore a government which had been overthrown and hence violated Article 2(4) of the United Nations Charter. Cuba tried to challenge the very argument of armed intervention for protection of nationals on foreign soil. Several Latin American countries also reciprocated the same.[41] When put for vote, the Soviet Union draft resolution, which condemned the United States, armed intervention as violation of United Nations Charter, was rejected.[42]

[36] *Supra* note 6 at 242.
[37] ibid.
[38] *Supra* note 1 at 33.
[39] H. W. Brands, Jr., Decisions on American Armed Intervention: Lebanon, Dominican Republic, and Grenada (1987-1988) 102 (4) Political Science Quarterly, p. 609.
[40] *Supra* note 6 at 242.
[41] ibid 242, 243.
[42] *Supra* note 1 at 35.

II. The Israeli Raid on Entebbe, 1976

Terrorists hijacked an Air France airplane, which left Israel for France, on June 27th 1976. The Palestinian hijackers first landed the aircraft in Libya and then at Entebbe, Uganda. The hijackers demanded the release of some terrorists jailed in Israel, West Germany and other States. A couple of days later, the terrorists freed all the non-Israeli passengers but continued to hold the Israeli passengers as hostages. On 3rd July, the Israeli airborne commandos landed in Entebbe without the authorization of the Government of Uganda. The hostages were freed and were flown back to Israel after a brief but an intense exchange of fire. In the process some Ugandan soldiers were killed and some were wounded, some of the Ugandan aircrafts were also destroyed.[43]

Soon after this, the UN Security Council called on a Meeting to discuss Israel's actions in freeing their nationals by intervening in Ugandan territory.[44] Uganda claimed that Israel by its 'act of aggression' has violated its sovereignty and territorial integrity. This was countered by Israel, which alleged that Ugandan government failed in its duty under international law of protecting and safeguarding the lives of foreign nationals and was a complicit with the terrorists and therefore its intervention was a legitimate act of self-defence.[45] Israel also argued that it had confined itself to the necessity and proportionality principles as articulated in the *Caroline* case and that the intervention was not directed against Republic of Uganda and only that amount of armed forces were employed as much as it was necessary to rescue its own nationals.[46] This was followed by introduction of two draft resolutions, one by Benin, Libya and Tanzania and the other by the USA and the UK. "The first one condemning Israel's blatant violation of Uganda's sovereignty and territorial integrity, coupled with a demand that Israel must meet the just claims of Uganda and grant compensation for the destruction inflicted. The second one condemning the hijack and such other acts which threaten the lives of passengers and crews and safety of

[43] Eleanor C. McDowell, United Nations: Security Council Debate and Draft Resolutions Concerning the Operation to Rescue Hijacked Hostages at the Entebbe Airport (1976) 15 (5) International Legal Materials, p. 1224; *also see Supra* note 1 at 37.
[44] Roderick D. Margo, Legality of the Entebbe Raid in International Law (1977) Vol. 94 South African Law Journal, p. 309.
[45] Mitchell Knisbacher, The Entebbe Operation: A Legal Analysis of Israel's Rescue Action (1977) 12 (1) The Journal of International Law and Economics p. 57.
[46] *Supra* note 1 at 37.

international civil aviation and a call to all States to take up necessary actions to prevent the occurrence of such incidents and punish the terrorists."[47] The first one was withdrawn before putting it to vote gathering that it would not get strong support and the second did not pass through the vote.[48]

The United States of America was of the opinion that Israel's actions constituted 'a temporary breach of the territorial integrity of Uganda'. It noted that "even though the UN Charter does not allow such violations, in those cases where there is an imminent threat of injury or death of the nationals in the territory of that State which is either unwilling or unable to protect, then the right to use limited force to protect the nationals flows from the right of self-defense."[49] Due to these factors coupled with the use of force proportionate to the goal, the US found that Israel's actions were justified and lawful. The UK's position was ambiguous. It only sought a clarification on "how, the duty that the State had of protecting its nationals could be reconciled with respect for sovereignty and territorial integrity of another State."[50] France was of the opinion that even though Israel had violated international law, such an infringement of the sovereignty and territorial integrity of Uganda was not intended. The goal was only to save its nationals.[51] Japan on the other hand, held that Israel's actions amounted to *prima facie* violation of Ugandan territorial sovereignty and political independence.[52]

States like Uganda, Kenya, Libya, Yugoslavia, India, Pakistan, China, Soviet Union and many others demanded a condemnation of Israel's actions. Most of them argued that Israel's actions constituted 'aggression' and hence a blatant violation of Article 2(4) of the UN Charter. The argument of self-defence under Article 51 was countered by saying that the pre-requisite for the application of Article 51 is there being an 'armed attack', and in this case Israel was not subjected to any armed attack.[53]At the end of the debate, as mentioned above, no resolution was adopted as there was no consensus among the States.

[47] Francis A. Boyle, The Entebbe Hostage Crisis (1982) 29 (1) Netherlands International Law Review 49.
[48] *Supra* note 45 at 58.
[49] *Supra* note 1 at 38.
[50] ibid 38.
[51] ibid 38.
[52] ibid 39.
[53] ibid 39, 40.

III. American Intervention in Grenada, 1983

In 1979, there was a communist coup led by Maurice Bishop and the New Jewel movement, which overthrew the government in Grenada. Bishop was named the Prime Minster of Grenada and he became very popular among the general public. This had attracted the attention of the United States of America. Bishop's inclination towards left-wing policies and his friendship with Fidel Castro of Cuba created serious concerns on the American government and it subjected Grenada to economic and diplomatic pressures.[54] On 19th October 1983, there was a second coup, which was more violent and left Maurice Bishop and many others dead. A twenty-four hour curfew was announced and was warned that the violators would be shot on sight.[55] The United States President Reagan described the "shoot-to-kill" curfew as "barbaric" and realized that the time has arrived to intervene. On 20th October he ordered a group of marines, which were supposed to go to Lebanon to be diverted to eastern Caribbean.[56]

Meanwhile, Sir Paul Scoon, the Governor-General of Grenada secretly asked the assistance of the Organization of Eastern Caribbean States (OECS) to restore peace and order in the region. The OECS in turn requested the United States of America for help on October 22.[57] This was followed by diplomatic and military consultations by the President of the United States who then issued order to proceed with the landing on 24th October. The American Government justified its intervention on the grounds that "(a) on the appeal of Sir Scoon, the United States went on to assist to restore order in Grenada; (b) OECS came to a conclusion that there was a threat to peace in the region due to unrest in Grenada and under their collective defense treaty, action was to be taken and United States assistance was requested and (c) there were around 1,000 American nationals (mainly medical students) in Grenada whose security was thought to be in a jeopardy and that required immediate action."[58] The use of force by

[54] L. Doswald-Beck, Legality of the United States Intervention in Grenada (1984) 31 (03) Netherlands International Law Review, p. 356; *also see* Peter M.Dunn & Bruce W. Watson (ed), American Intervention in Grenada: The Implications of Operation "Urgent Fury" 30 (1st edn, Westview Press 1985).
[55] ibid 357,358.
[56] *Supra* note 39 at 613.
[57] *Supra* note 54 at 357,358; *also see Supra* note 39 at 613.
[58] Major Ronald M. Riggs, The Grenada Intervention: A Legal Analysis (1985) 109, Military Law Review p. 2.

the United States was condemned by the United Nations General Assembly. The United States in the Security Council however vetoed the resolution that condemned the intervention.[59]

It must be noted that Grenada was becoming highly influenced by the Communist ideology due to Bishop's personal friendship with Castro. Another State in the Caribbean becoming a member of the Communist bloc was unacceptable to the United States and this was the driving force behind the intervention. The local unrest in Grenada provided a motive as well as an opportunity for the United States to intervene.[60] It is also argued that there was no threat to the lives of the American nationals during the entire time.[61] Even after the invasion, there have been no reports of any American resident of Grenada being harmed, inspite of the popular feeling against the United States. [62] Apart from this, the American intervention was questioned particularly since Grenada continued to be occupied for months, long after the evacuation of the American citizens had been wound up. According to the principle of proportionality, invasion of this kind needs to be terminated as soon as possible, with minimal encroachment on the sovereignty of the foreign State.[63]

Conclusion:

The paper has examined various facets of the use of force by one State to protect its nationals in another State. According to customary international law, a State acting in self-defence must do so within the parameters of necessity and proportionality. On the other hand, it can be seen that even though an argument under Article 51 of the Charter of United Nations seems to be extremely convincing to use force to protect nationals abroad, certain key questions like there being an 'armed attack' against one of the member States of the United Nations to trigger Article 51 and 'whether an attack on nationals is an attack on the State itself' remain unanswered.

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[59] Malcolm D Evans (ed), International Law 630 (4th edn, Oxford University Press 2014).
[60] *Supra* note 39 at 621.
[61] M.J, Invasion of Grenada (1984) 12 (1) 74, 76 Social Scientist, <http://www.jstor.org/stable/3516844> accessed on 15/01/2015.
[62] Invasion of Grenada (1983) 18 (44) 1857, 1857 Economic and Political Weekly <http://www.jstor.org/stable/4372634 > accessed on 15/01/2015.
[63] Yoram Dinstein, War, Aggression and Self-defence 256, 257 (5th edn, Cambridge University Press 2012).

The paper examined three interventions from the past, which deal with three different yet significant issues. In the American intervention of Dominican Republic, the United States of America did not invoke the argument of self-defence. But instead, it said that the island was in a state of anarchy. One of the rebel factions informed the American government that the foreign residents were in danger and that it was impossible to maintain peace and order. It was only due to this, the United States went ahead with the intervention.[64] On the other hand, the so-called government, which was representing the island, was one of the factions that contributed to the civil strife. The Security Council allowed the representative of the 'Constitution Party' to take part in the debate as an individual and not a representative of the government. He stated that no foreign national was in mortal danger. In this case more than the validity in principle of right to protect nationals abroad, the lawfulness of having recourse to it was being contested.[65] It has also been noted that the United States had other political interests with regard to the island of Dominic Republic as it did not want 'another communist State' in the western hemisphere. Hence the American intervention was met with heavy criticism especially from the Communist bloc and Latin American countries, that the protection of nationals was a mere pretext to achieve the political aim, with Cuba stating categorically that the intervention, even on principle was forbidden by the United Nations Charter.[66]

In the Israeli intervention of Entebbe, powerful arguments were advanced on both the sides. Israel argued that its action had been brought about by the 'necessity of self-defence', as under the *Caroline* case, that its actions were both necessary and proportionate and there was no other option but to resort to use of armed force to protect its citizens.[67] On the other hand, States condemning the intervention claimed that "(a) Israel was not under any 'armed attack'; (b) the hijackings and kidnappings by the terrorists had to be tackled through negotiations rather than using armed forces; (c) the raid irresponsibly risked the lives of innocent passengers and (d) the 'protection of nationals' is a mere excuse of powerful States in engaging in fulfilling

[64] *Supra* note 1 at 54.
[65] ibid 59.
[66] ibid 59, 60.
[67] ibid 55.

their political ends."[68] This intervention saw many States declaring themselves, on principle, against protection of nationals abroad by using armed force.

In the American intervention of Grenada, facts emerged clear that the American nationals' lives were not at risk. Just as in the case of Dominican Republic, another country joining the Soviet bloc was something, which the United States did not want and that was the main driving force behind the intervention. This intervention is a classic case where the necessity and proportionality principles were violated, as the United States troops continued to occupy Grenada months after its nationals were rescued.

Among the three, Israel's intervention is seen as something, which complied with Wadlock's three conditions and the principles of necessity and proportionality. Yet, it is not free from criticism as mentioned above. The other two are generally seen as mere pretexts to achieve a political aim.

By a look into the present law in force, it can be concluded that there is no 'right' to protect nationals abroad using armed forces, neither are there sufficient State practices to show the same. At the same time, where States intervene in the territory of foreign States, it cannot be purely considered as an infringement of the United Nations Charter. There are certain genuine cases where States have to intervene and there is a need to create an exception for the same. These actions must be seen as a move towards an enlargement of number of exceptions to the prohibition of the use of force, due to the growing new needs of the international community and due to the partial implementation of the system, which the United Nations Charter foresaw.[69] The apprehension, especially among the third world countries, in accepting the principle of protection of nationals abroad can be understood, as there have been instances in the past, where it had been abused by powerful States to achieve their political ends and the less powerful States can do nothing but be mute spectators. Hence, if an exception in specific terms is carved out to include the use of force for protection of nationals abroad, its boundaries have to be clearly specified, leaving no scope for abuse. Once there is sufficient number of States consenting for the same, birth of new rule of international law can be seen.

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[68] *Supra* note 6 at 250.
[69] *Supra* note 1 at 63.