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INTRODUCTION

On 25 October 1983, the United States invaded the tiny island of Grenada in order to, according to President Reagan, rescue U.S. citizens, forestall further chaos and restore law and order and governmental institutions to the island: "Grenada, we were told, was a friendly island paradise for tourism. Well, it wasn't. It was a Soviet-Cuban colony, being readied as a major military bastion to export terror and undermine democracy. We got there just in time."[1]

The intervention followed a split within Grenada's radical socialist regime that had resulted in the murder of Prime Minister Maurice Bishop, several of his colleagues and over 100 Grenadians. Within a week of the American intervention, 79 governments had condemned or expressed in some way disapproval of the intervention, and the United Nations (UN) General Assembly had voted 108 to 9 to condemn the American action as a clear violation of international law.[2] Prime Minister Margaret Thatcher, a strong Reagan ally, was unequivocal in criticizing the intervention: "[i]f you are going to pronounce a new law that wherever there is communism imposed against the will of the people then the U.S. shall enter, then we are going to have really terrible wars in the world." [3]

The question of the invasion's permissibility under the concept of *jus ad bellum*, the international law relating to a state's recourse to armed force, has been the subject of much

[1] President Reagan on the morning of 25 October 1983, quoted in Robert J. Beck, The Grenada Invasion – Policy, Law and Foreign Policy Decisionmaking (Westview Press, 1993): 1
[2] John Norton Moore, "Grenada and the International Double Standard," American Journal of International Law 78 (January 1984): 153. The General Assembly majority was larger against the Grenada invasion than for the condemnation of the Soviet invasion of Afghanistan.
[3] Quoted in Beck: 1

discussion among international jurists and scholars over the years. This discussion is even more important considering the tendency of contemporary international law, including the United Nations Charter, to doubt the permissibility of all but self-defensive wars. The American decision to use force on the island of Grenada presents a unique and interesting case and, accordingly, the Grenada invasion will be used for this *jus ad bellum* examination. Although the United States had domestic and international interests for invading Grenada, this essay will show that the intervention was not justified under accepted international rules governing the decision of a nation to resort to arms against another nation and that it did not meet the principles of *jus ad bellum*.

The role of international law in the Grenada intervention will be examined in four parts. The first part will consist of a review of the events leading to the invasion of Grenada, an essential element to understanding the motives behind the United States invasion. The second part will describe the historical and legal foundations of the international rules on the use of force, outline the classical *jus ad bellum* and its relationship to the UN Charter. The third section will examine the validity of the justifications provided by the United States and the Organisation of the Eastern Caribbean States (OECS) for the invasion against the *jus ad bellum* criteria. Finally, in the fourth section, the paper will analyse the political considerations and unique factors that led to President Reagan's decision to invade Grenada. It will discuss the limits of international law and the future implications for the international community in relation to interventions of this nature.

HISTORICAL BACKGROUND

Grenada's Political Evolution [4]

Grenada, discovered by Columbus in 1498, is a tiny Caribbean island of 334 square km with a population of approximately 100,000 inhabitants.[5] In the 18th century, as a British colony, the rulers imported large numbers of slaves from Africa to work the sugar plantations. In March 1967, the island became a self-governing state in association with the United Kingdom and, later that year, Eric Gairy and his party were elected to power. Grenada eventually became an independent nation in 1974. Through the 1970s, opposition to Gairy's erratic and repressive rule mounted, as economic conditions deteriorated. A coalition called the Grenada New Jewel Movement (NJM), along with other opposition parties, succeeded in reducing Gairy's majority in Parliament in the 1976 election.

While Gairy was out of the country in 1979, the NJM staged a bloodless coup, proclaimed a People's Revolutionary Government (PRG), and named their leader, Maurice Bishop, as Prime Minister. The PRG suspended the Westminster style constitution, but retained the Governor General in a ceremonial post.[6] From the start, the new government faced opposition and isolation from Western nations because of its socialist principles.[7] The PRG immediately embarked on an aggressive Soviet-style program to rebuild the economy, left in

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[4] The historical discussion that follows is largely based on Scott Davidson, Grenada; and Anthony Payne et al., Grenada – Revolution and Invasion (New York: St-Martin's Press, 1984).

[5] Population is as estimated at the time of the invasion. Scott Davidson, Grenada (Aldershot UK: Avebury, 1987): preface x. There is divergence in the literature with regard to the population at the time of the invasion, varying from 90,000 to 110,000. For sake of size comparison, P.E.I (2185 sq. km) is about 7 times the size of Grenada and has a population of approximately 135,000.

[6] The following detail is important for the discussion later in the paper on the legality of the authority of the Governor General. People's Law No. 3 of 25 March 1979 provided: "The Head of State shall remain Her Majesty the Queen and her representative in this country shall continue to be the Governor-General who shall perform such functions as the People's Revolutionary Government may from time to time advise." Davidson: 19.

[7] For those readers who want more details on this assertion, see Nicholas Dujmovic, The Grenada Documents: Window on Totalitarianism (London: Permagon-Brassey's, 1988), an analysis of the NJM documents seized on the island following the invasion.

disarray by Gairy.[8] Progressively isolated from the West, Bishop established ties with Cuba,[9] eventually receiving weapons and some financial support to build a modern airport to facilitate the economic development of Grenada. As could be expected, Grenada's ties with Cuba were not viewed favourably by the United States.

Grenada, Cuba and the United States

Throughout the twentieth century, the policy of the United States in the Caribbean Basin[10] has been distinguished by its readiness, willingness and ability to intervene, both overtly and covertly, in support of its interests.[11] The U.S. troops occupied or intervened openly in Cuba (1899 and 1961), Honduras (1912), Haiti (1915), Guatemala (1954), the Dominican Republic (1916 and 1965), Nicaragua (1927 and 1980s), and Panama (1989) as well as confirming the acquisition of Puerto Rico (1952). The United States has always been "acutely sensitive to the possible threats to their vital interests of any hostile threat in the Caribbean Basin,"[12] starting in the early 19th century with the enunciation of the Monroe Doctrine.[13] Following the PRG coup, it did not take long for anxieties to rise among Caribbean governments because of the anticipated close link between Cuba and the PRG, and because of suggestions of revolutionary contagion in

[8] The economic development of Grenada was one of the marked successes of the new PRG government. Unemployment and dependency on food imports were reduced, per capita income rose from US$450 in 1978 to $US 870 in 1983 and the standard of living of the average Grenadian rose by 3 per cent in real terms. See Davidson: 21-26.

[9] Diplomatic relations between Grenada and Cuba were established within a month after the coup. Stanley Arthur, Grenada and East Caribbean Security (London: The Institute for the Study of Conflict, 1985): 9.

[10] The term Caribbean Basin will be used frequently in this paper. It consists of the islands of the Greater and Lesser Antilles and Central American countries. See map in Payne: introduction.

[11] Payne: 43.

[12] Arthur: 6

[13] Doctrine enunciated in 1823 by President Monroe as a foreign policy statement asserting unilateral U.S. protection over the entire Western Hemisphere. As the U.S. emerged as a world power, the Monroe Doctrine came to be defined as a recognised sphere of influence, although it is not international law. The 1904 Roosevelt Corollary to the Doctrine stated that, in cases of flagrant and chronic wrongdoing by a Latin American nation, the U.S. could intervene in the internal affairs of that nation. See Donald Marquand Dozer, ed., The Monroe Doctrine: Its Modern Significance (New York: Alfred A. Knopf, 1965): 51-66.

the Eastern Caribbean.[14] In the eyes of many, especially the United States, Cuba was the main exporter of trouble in the area, promoting its revolution and national liberation abroad.[15]

The most disturbing action of the Bishop government was, from the U.S. standpoint, Grenada's decision to build a new international airport with a 10,000-foot runway suitable for transcontinental jets.[16] While the popular Grenadian Prime Minister spoke of increased tourism, Americans feared the future airport could eventually be used by Soviet and Cuban long-range military aircraft.[17] Robert Beck is of the opinion that the coup de grace confirming that Grenada was shifting toward the Soviet's sphere of influence was delivered when Grenada refused to condemn the Soviet invasion of Afghanistan at the UN.[18]

Following President Reagan's ascension in power in January 1981, the American attitude toward Grenada hardened considerably, and did not soften despite some attempts by Grenada to improve relations with the U.S.[19] Formal diplomatic relations between the U.S. and Grenada had ended in 1981 when Grenada was excluded from the list of states to which the U.S. ambassador to Barbados was accredited, and relations between the two countries worsened during the early

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[14] Documents discovered after the invasion proved the existence of this Cuba-Grenada link. See David A. Simmonds, "Militarization of the Caribbean: Concerns for National and Regional Security," International Journal (Spring 1985): 363. This element will be discussed later in the paper.

[15] See Payne et al, Grenada: Revolution and Invasion for a more complete discussion on the Cuban policy in the Caribbean: 71-88; and Anthony T. Bryan, "Cuba's impact in the Caribbean," International Journal (Spring 1985): 331-347.

[16] The airport was partially constructed at the time of the U.S. invasion with Cuban workers helping in the construction. Following the invasion, the airport was eventually completed with U.S. financial assistance. The Cuban construction workers, with training as army reserves, assisted in the Grenadian military resistance to the U.S. troops.

[17] Following the invasion and the capture of documents from the JNM Central Committee, it was confirmed in a statement of 22 March 1980 that the future airport was to be used by Cuban and Soviet military; see Arthur: 13. As Payne et al. state, U.S. accusations of Soviet bloc military support were correct, but it is hard to see from where else the PRG could have got the weapons and equipment to defend itself, given the fact that any requests for support (financial, military, economical or otherwise) from Western countries were denied. See Payne: 85.

[18] Beck: 25.

[19] President Reagan unleashed, in a speech in April 1982, a tirade of anti-communism before a meeting of Caribbean leaders, suggesting that Grenada would sooner or later try to spread the virus of communism among its neighbours. See Payne: 96 and Davidson: 45.

years of the Reagan administration.[20] To make matter worse, Grenada was excluded in 1982 from the Caribbean Basin Initiative, an American economic aid initiative stimulated largely by anti-communism.[21]

The Coup and the Invasion

The events that led to the death of Maurice Bishop and some of his supporters in October 1983, and to the subsequent demise of the revolution begun by Bishop four years earlier, are the result of a multitude of factors. In the end, however, it is the schism between two factions of the New Jewel Movement committee members that led to the tragic events of 19 October. One group - led by Bernard Coard - blamed the failures of the revolution upon the inability of the NJM to follow a fully Marxist-Leninist path, while the second group of supporters – loyal to Bishop – took a more pragmatic approach to the revolution.[22] This infighting culminated on 13 October when Bishop was placed under house arrest, after which events moved swiftly to a bloody climax. Following the arrest, the population staged daily demonstrations to support the charismatic Bishop, since the split between some elements of the NJM Central Committee and Bishop was now well known to the population.

On the morning of Wednesday 19 October, a crowd of more than 10,000 people gathered in St-George's market.[23] The situation started to deteriorate and a group of approximately 3,000 people released Bishop. By lunch, the NJM Central Committee had taken control of the troops

[20] Nardin and Pritchard: 5. The authors mentioned in their paper that in July 1981, the CIA had approached the Senate Intelligence Committee with a plan for economic destabilisation aimed at undermining the PRG.
[21] Davidson: 31-32. See Kari Polanyi-Levitt, "The origins and implications of the Caribbean Basin Initiative," International Journal (Spring 1985): 229-281 for a detailed explanation of the Initiative.
[22] Despite his softer approach to the revolution, Bishop still remained committed to the Socialist political system. See O'Shaughnessy: 116.
[23] St-George's is the capital of Grenada. There is disagreement regarding the number of people present with Davidson reporting of 15,000 and Beck of at least 10,000. In any event, what is significant is the fact that the gathering represented at least a tenth of the country's population of 100,000 people. Davidson: 71 and Beck: 15.

and proceeded again to arrest Bishop, who was by then attempting to address the nation via the state radio.[24] By 1300 hours, Bishop and his supporters had been executed by a faction of the PRG supported by the army.

That afternoon, General Austin, the man in charge of the army, announced that the PRG was dissolved and that Grenada would now be governed by a Revolutionary Military Council (RMC) which was to exercise full legislative and executive powers. The Declaration of the Grenadian Revolution of 1979, which had retained the Governor General, however was not suspended or revoked. A strict curfew was imposed, law and order was restored, and it was announced that the airport would re-open on Monday 24 October. General Austin was also careful to ensure that the American students at the St-George's University Medical School were reassured and that no harm would come to them.[25] In the meantime, the U.S. and Caribbean States were not sitting idle. While U.S. Marines were being re-routed from the Middle East to the Caribbean on 21 October, the OECS met in an emergency conference in Barbados to discuss the Grenada situation. In the early hours of Monday 25 October, the U.S.- Caribbean invasion of Grenada began.

JUS AD BELLUM: THE RULES ON RESORTING TO FORCE

Hugo Grotius and *Jus ad Bellum*

In any thorough assessment of present day international law relating to the use of force by a state, it is important to understand the historical foundation of international law relating to

[24] Davidson indicates that there was several reports confirming that the Central Committee had ordered Bishop's execution by then. Davidson: 72.
[25] Davidson: 75 and O'Shaughnessy, Grenada: Revolution, Invasion and Aftermath (London UK: Hamish Hamilton Ltd, 1984): 150

the use of force.[26] The best place to start is with Hugo Grotius, regarded by many as the father of international law.

Grotius has made extensive contributions to the science of jurisprudence and has had extensive influence on the just-war theory and the rules for the conduct of war.[27] His most important contribution, written *circa* 1625,[28] was The Law of War and Peace whose central theme is "that relations between states should always be governed by laws and moral principles just as are relations between individuals."[29] Grotius showed that the moral principles at play in interpersonal relationships are at the foundation of civil laws, and that nations do observe implicit laws as a matter of custom, just as individuals in a society do. This element of Grotius's theory is important for the development of a system of international law. Grotius describes the law between nations as follows: "The law which is broader in scope than municipal [civil] law is the law of nations; that is the law which has received its obligatory force from the will of all nations, or of many nations."[30] Christopher deduces from Grotius's work that "the law of nations is based almost entirely on consent rather than natural law. Just as reason dictates that individuals must follow certain principles if they are to maintain a domestic society, so reason dictates that certain principles must regulate a society of independent states."[31]

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[26] International law is, by definition, the law that is concerned with conduct in the international society of nations.
[27] Just-war theory is commonly referred to as *bellum justum* and comprises *jus ad bellum* (the justice of war) and *jus in bello* (the justice in war). This paper focuses strictly on *jus ad bellum*.
[28] Paul Christopher, The Ethics of War and Peace (Englewood Cliffs NJ: Prentice-Hall, 1994): 70. Grotius also wrote his book during the Thirty Years' War which greatly influenced his thinking. The Thirty Years' War (1618-48) was a series of European wars fought by several nations for various reasons including religious, dynastic, territorial and economic rivalries. Its destructive campaigns and battles occurred over most of Europe. Source "Thirty Years' War", Britannica Online [http://www.eb.com:180].
[29] Christopher: 72. Christopher also asserts that Grotius's objective "was to supplant the impotent and corrupt ecclesiastical authority with an external, objective, secular authority that the competing political interests (i.e. nation-states) would accept – a corpus of international laws."
[30] Quoted in Christopher: 82.
[31] Christopher: 83.

Grotius did not adhere to political realism, but rather relied of the belief that strict observance of legal and moral prohibition against state aggression was necessary to prevent wars.[32] Rather, he focused his effort on establishing a *corpus* of international law for the conduct of war, representing the culmination of a thousand years of gradually reducing moral principles to objective criteria.[33] These criteria constitute the concept of *jus ad bellum*, the traditional expression referring to the justifications for resorting to force as a means of achieving political objectives. The traditional doctrine of *jus ad bellum,* progressively accepted by most just-war theorists, encompasses six requirements that must be met for a war to be formally just. [34] These are:

- There must be a just cause, in that a just conflict may not be initiated void of just cause. This tenet disallows justifying war for the purpose of economic gain, land acquisition, or strategic position.
- The war must be a last resort, in that every diplomatic effort should be made before resorting to force. Only after all options have been exhausted should war be committed to.
- The war must be declared by a lawful and competent authority, in that revolutionaries and radicals who seek to initiate war are disqualified. Initiating war is to be decided by head of states.
- The political objectives must be proportionate to the costs of fighting, in that proportionality must exist between the cause and the decision to go to war.

[32] Christopher : 3. For a complete discussion on realism versus morality in war, see David R. Mapel, "Realism and the Ethics of War and Peace," in Terry Nardin ed., The Ethics of War and Peace (Princeton: Princeton University Press, 1996): 54-77.
[33] Christopher: 86.
[34] The reader is referred to Christopher, chapter 6, for the complete exposé on *jus ad bellum*.

- There must be a reasonable chance of success, in that it would be unjust to lead people in a war they have no chance of winning. This criterion also rejects futile or suicidal resistance.
- The war must be prosecuted for rightful intentions, in that just cause must be followed by the right intention.[35]

Professor Leslie Green, a lawyer renowned internationally for his knowledge on the subject of the Law of Armed Conflict, argues that "[t]he views expressed by Grotius owed much to natural law concepts, but as such ideas became less philosophically significant, and states paid more attention to the machiavellian precept 'that war is just that is necessary,' so the idea of measuring the legality of war by its justness disappeared."[36] Indeed, realists will reject the moralist view that "there are any inherent limits on the means that states may threaten or use to preserve themselves."[37] In spite of the doctrine taken by the realists over the years on the use of force by state, attempts were nevertheless made as early as 1814, after the defeat of Napoleon, to criminalise war. But it was not until the Nuremberg Tribunal in 1945 that wars of aggression formally became illegal and criminal. The International Tribunal at Nuremberg held that "a war of aggression…. is the supreme international crime…. in that it contains within itself the accumulated evil of the whole."[38] This underlying principle was strongly reflected in the

[35] Compiled from Jeff McMahan, "Realism, Morality and War," in Terry Nardin ed., The Ethics of War and Peace and Christopher: 87. Christopher discusses a seventh *jus ad bellum* factor that has now generally been dismissed by scholars such as McMahan and others, namely that a war must be publicly declared. This criterion existed to provide an opportunity for the offending party to offer redress in lieu of violence and to ensure that a public debate could take place before the war in undertaken. Most scholars now dismiss this criterion arguing correctly that the requirement for public debate is no longer reasonable because of the short time it takes to initiate an attack, and hence, that it would be foolish for a nation to declare its intentions. See Christopher: 90.
[36] Leslie C. Green: The Contemporary Law of Armed Conflict (New York: St-Martin's Press, 1993): 2.
[37] Mapel: 65.
[38] Quoted in Green: 1. See Green: chapter 1 for a more complete discussion on the evolution of the legality of war.

development of the United Nations Charter, which is now widely accepted as the authoritative statement of the law on the use of force and the principal norm of international law this century.

The United Nations Charter and *Jus ad Bellum*

The United Nations came into being in 1945 "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."[39] Article 1.1 of the Charter states that the purpose of the United Nations is "to maintain international peace and security, and to that end take collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression and other breaches of peace."[40] The founders of the UN Charter perceived the greatest threat to the achievement of their goals to be war. Therefore, to preserve peace, they constructed an international security system on the use of force centered on Articles 2(4) and 51.[41]

Article 2(4) of the Charter obliges all members "to refrain in their international relations from the threat of or use of force against the territorial integrity or political independence of any state."[42] The strength given to Article 2(4) by the creators of the Charter is a reflection of the mood prevalent at the end of World War II when it was considered imperative to eradicate state

[39] Preamble to UN Charter. For all UN sources, see UN Charter at [http://www.un.org/aboutun/charter].
[40] UN Charter, Article 1.
[41] See chapter 2 in Hilaire McCoubrey and Nigel D. White, International Law and Armed Conflict (Aldershot UK: Darmouth Publishing 1992) for an interesting discussion on the development of Article 2(4) from the concept of *jus ad bellum.*
[42] UN Charter, Article 2.

aggression once and for all.[43] In Michael Walzer's mind, the intent of the UN Charter is clear in that any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act, and that nothing but aggression can justify war.[44] Should aggression take place, only two kinds of response are justified in customary international law: a war of self-defence by the victim and a war of law enforcement by the victim and any other member of the international society.[45] Therefore, these axioms are reflected in Article 51 of the Charter, which preserves the "inherent right of individual or collective self-defence if *an armed attack occurs* against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security."[46]

The Charter does not specifically elaborate on what constitutes *jus ad bellum*, and accordingly, the interpretation of the acceptable conditions for nations to resort to arms has been the subject of continued debate by legal advisors and scholars.[47] However, most agree that the international community has attempted to codify the principles of *jus ad bellum* in both Articles 2(4) and 51.[48] McMahan notes that "given the pervasiveness of wars of aggression throughout

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[43] Michael Walzer, who supports the ideals of the UN Charter, best summarises the difficulty in dealing with aggression between states when he writes that: "aggression is the name we give to the crime of war…. Aggression is remarkable because it is the only crime that states can commit against other states: everything else is, as it were, a misdemeanor. There is a strange poverty in the language of international law. The equivalent of domestic assault, armed robbery, extortion, assault with intent to kill, murder in all its degrees, have but one name. Every violation of the territorial integrity or political sovereignty of an independent state is called aggression. Michael Walzer, Just and Unjust Wars, 2nd ed. 1992 (HarperCollins, 1977): 51-52.

[44] Walzer: 62. In 1974, the UN General Assembly adopted a resolution entitled "The Definition of Aggression" which concentrated on actions rather than declarations, which includes an enumeration of acts that constitute aggression. For a complete discussion, see McCoubrey and Nigel: 39-54.

[45] Wars of enforcement, such as the 1991 Persian Gulf War, will not be discussed further in this essay since the topic is not relevant to the discussion of Grenada.

[46] UN Charter, Article 51. Emphasis added.

[47] For a complete discussion on the UN Charter and the use of force, see John F. Murphy, "Force and Arms," in O. Schachter and C.C. Joyner, eds., United Nations Legal Order Vol. 1 (New York: Cambridge University Press, 1995): 247-318.

[48] Christopher: 99. The UN Charter limits its references to *jus ad bellum* to those aspects that are identified as pertaining primarily between states rather than between a government and its people.

history, it is unsurprising that documents such as the UN Charter seek to achieve a dramatic change by announcing sweeping prohibitions of non-defensive wars."[49] While the UN Charter is more restrictive than the classical *jus ad bellum* concerning the right of states to resort to force (even for self-defence), it should not be surprising that in the past fifty years states have used different criteria to justify the political decision to use force or wage a war. Still, in 1986, the International Court of Justice (ICJ) declared that Articles 2(4) and 51 represented customary international law, and as such, these principles can be considered binding on all states.[50]

The just-war theory provides a suitable framework for assessing the legality of the issues surrounding the use of force in Grenada. Accordingly, the U.S. legal claims for justifying the Grenada invasion will now be reviewed to determine if they satisfied both the principles of the *jus ad bellum* and the international law as embodied in the UN Charter.

THE GRENADA SITUATION AND *JUS AD BELLUM*

The Elaboration of the American Legal Claims

On the morning of the invasion, President Reagan, accompanied by Eugenia Charles, Prime Minister of Dominica and President of the OECS, said the use of force was undertaken:

> First, and of overriding importance, to protect innocent lives, including up to 1,000 Americans whose personal safety is, of course, my paramount concern; second, to forestall further chaos; and third, to assist in the restoration of conditions of law and order and of governmental institutions to the island of Grenada, where a brutal group

[49] McMahan: 84

[50] Louis Henkin, "Use of Force: Law and U.S. Policy," in Louis Henkin et al., Right v. Might (New York: Council on Foreign Relations Press, 1991): 48. In effect, the ICJ, by its judgement in a case between the U.S. and Nicaragua, rejected the Monroe Doctrine, the Reagan Doctrine and the Brezhnev Doctrine.

> of leftists thugs violently seized power, killing the Prime Minister, three cabinet members, two labour leaders and other civilians including children. [51]

In his speech, President Reagan made no reference to any variety of self-defence, no mention of the Governor General, nor did he talk of American hostages.[52] He also made no mention of Soviet or Cuban influence or of the strategic airport that Cuba was helping to build, nor did he make any reference to the United Nations or "international law".[53] From that first public address on the morning of 25 October, the U.S. justifications of the invasion continued to evolve. On 27 October, two days after the invasion, the administration began to mention anticipatory self-defence in that the RMC would constitute an aggressive or threatening state in the future, and thus the invading parties were entitled to act in anticipation of that future policy.[54] That same evening, in her address to the UNSC, Ambassador Kirkpatrick mentioned, *inter alia*, that "the Governor General of Grenada, the sole remaining authority on the island, [had] invited OECS action."[55] The President, in his 27 October speech to the nation, indicated that "Grenada [had been] without a government", that his administration had feared U.S. citizens would "be harmed or held as hostages", and that the OECS, "joined by Jamaica and Barbados, had sent an urgent request that we join them."[56]

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[51] Quoted in Davidson: 86.
[52] The details of every American statement justifying the invasion, from the time of President Reagan's first speech, are reproduced in Beck: 55-73, and are worth reading for those who want to understand all the nuances of the American explanations provided. Davidson: 159-176 provides the same information but in a more critical, anti-American, tone.
[53] Beck: 56.
[54] David P. Forsythe, The Politics of International Law (Boulder: Lynne Rienner, 1990): 70.
[55] Beck: 59. The reason for delaying this announcement, as was explained by the U.S., was that any announcement before 27 October could have jeopardised the life of the Governor General, who was not rescued by the U.S. Marines before 26 October.
[56] Beck: 60.

It took until 2 November for Deputy Secretary of State Kenneth Dam to deliver to Congress a carefully drafted legal justification. Scott Davidson, in his analysis of the American legal claims, correctly notes that the ten-day delay in justifying the invasion along precise legal formulations is significant, and seriously undermines the American justifications for the intervention.[57] The final American legal position was not provided until February 1984 by the State Department legal advisor, David R. Robinson, to the Chair of the "Grenada Committee" of the American Bar Association. In brief, four elements of the American legal justification appeared consistently in the speeches and letters. These are: the request for assistance by the Governor General; anticipatory self-defence and collective action under a treaty (OECS); the protection of nationals; and humanitarian intervention and restoration of law and order.[58] These legal claims will now be assessed against the *jus ad bellum*.

Just Cause – Self-Defence

Just cause is undoubtedly the most encompassing of the *jus ad bellum* criteria, and in justifying their actions to use force, nations will include in it self-defence, collective defence, anticipatory self-defence, and interventions such as those justified on humanitarian grounds and protection of nationals.[59] These sub-criteria represent the arguments most likely to be accepted by the international community, but it is important to note that there is never agreement among scholars and nations on their validity.[60] Each situation when a state uses force is analyzed on its own merit.

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[57] Davidson: 166-167.
[58] See complete text of Robinson letter in John Norton Moore, Law and the Grenada Mission (Georgetown University: Centre for Strategic and International Studies, 1984): 125-128.
[59] For an excellent discussion on this topic, see Oscar Schachter, "Self-Defense and the Rule of Law," The American Journal of International Law (April 1989): 259-277.
[60] Except for enforcement action, the UN General Assembly will seldom approve the use of force by states. The extent of the General Assembly condemnation of the action following the use of force by a state is often a better indicator of the mood of the international community. However, using the General Assembly's vote as a means to

To prove self-defence once aggression has taken place or an injury has been received is usually relatively straightforward and accepted internationally as a reason to use force.[61] Article 51 of the UN Charter provides the international legality to do so. The Reagan administration, however, justified their action for the Grenada intervention under the OECS Treaty, which provided for collective regional action for the purposes of maintaining peace and security. Both Davidson and Joyner argue in their dissertation that there are several anomalies with the use of this argument. First, there is no authority under the OECS Treaty for forceful intervention into internal affairs of another country, even in exceptional situations.[62] Second, assuming there was such a clause, Article 53(1) of the Charter states that, "no enforcement action shall be taken under a regional arrangement or by regional agencies without the authorisation of the Security Council." In the case of Grenada, the Security Council was not informed before the invasion. Lastly, Article 52 of the UN Charter makes it clear that the primary obligation of any regional arrangement is to secure peaceful settlement of any regional dispute. Forsythe indicates that Cuba and the PRG overtures between 19 and 24 October to avert a military invasion were not responded to by the U.S.[63] Based on the above discussion, the military intervention can not be defended on the basis of collective defence and hence must be regarded as unlawful enforcement, contravening the UN Charter.[64]

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assess the world's temperament on the use of force is often incorrect, since the voting in is often skewed by bloc-voting of nations.

[61] Self-defence also includes participation by a nation in collective self-defence after having been asked to assist the offended nation.

[62] Davidson: 110 and Christopher C. Joyner, "The United States Action in Grenada," The American Journal of International Law (January 1984): 144. See also Forsythe: 74 who echoes the same statement. In fact, the OAS Charter, of which most Caribbean countries are signatory, states that "no State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal affairs of any other State." Forsythe: 74.

[63] Forsythe: 76.

[64] Forsythe: 75 writes that: "U.S. reference to the OECS Charter became so lame that Secretary Dam could only argue that it was up to the OECS members to interpret their own charter, and the United States would defer to that interpretation.

The use of force for anticipatory self-defence is another issue altogether.[65] The UN Charter forbids wars of anticipation or security: Article 51 is clear on this matter by specifically including the clause "if an attack occurs." Nevertheless, the use of anticipatory force for self-defence by a state appears to have been customarily accepted by the international community, but it is severely restricted.[66] As Walzer writes: [p]reventive wars presuppose some standard against which danger is to be measured. That standard does not exist…. It exists in the mind's eye, in the idea of a balance of power, probably the dominant idea in international politics from the seventeenth century to the present day."[67] Walzer contends that "states may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence."[68] Because of its restrictive nature on the use of force, the legitimacy of Article 51 of the UN Charter is certainly not a settled question in international law and, accordingly, there is a traditional rule of customary law that is generally accepted as providing guidance on anticipatory self-defence. This is the *Caroline* rule stating that "it will be for a Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation."[69]

The claim of anticipatory self-defence to justify the request for U.S. assistance was raised by the OECS, especially Jamaica and Barbados.[70] It was shown after the invasion that the PRG had accumulated more weapons than it needed for internal security and this fact could

[65] See McCoubrey and White: 91-105 for a complete discussion on anticipatory self-defence.
[66] Walzer: 74.
[67] Walzer: 76.
[68] Walzer: 85. The only acceptable situation that Walzer can come up with is the pre-emptive Israeli air strikes at the start of the Arab-Israeli War of 1967.
[69] This rule emanates from a U.S.-Canadian (British) interaction in 1837 whereby a force of British soldiers entered U.S. territory, captured the ship *Caroline*, set her ablaze, and sent her over Niagara Falls. This event is now part of customary international law. Davidson: 103.
[70] In the end, the United States, via the Robinson letter of February 1984, stated that "we did not contend that the action in Grenada was an exercise of *inherent right of self defense* recognized in Article 51 of the U.N. Charter. Beck: 70. Emphasis by Robinson.

certainly raise concerns about the militarisation of Grenada and the future threat to the region.[71] The reality, however, is that the PRG was in no immediate position to threaten any Caribbean state, and the Grenadian revolutionary authorities never gave any indication they intended to carry out such attacks. Even if one discounts the small size of the Grenadian military forces in this argument, clearly there was no threat that was "instant and overwhelming." If the threat was the Soviet Union or Cuba itself, the "military" airport was not even completed; therefore, it is difficult to see how the *Caroline* test could even be remotely met.[72] In summary, based on the above discussion, it is fairly evident that the U.S. did not meet the *jus ad bellum* just cause for self-defence.

Just Cause - The Request by the Governor General

The legality of an "external intervention occasioned by an explicit invitation that has been genuinely proffered by the legitimate government of a state.... is well grounded in international law."[73] Unfortunately, the request for U.S. assistance by Sir Paul Scoon, Governor General of Grenada, remains shrouded in secrecy, inconsistencies and technical legalities, making it difficult to assess its legitimacy. The specific legality of a request for assistance by a lawful authority is certainly not what is in question. As Davidson notes, "the legitimate government of a state may invite assistance from friendly states in case of temporary internal difficulties or as isolated occurrences of lawlessness."[74] Rather, it is the number of significant peculiarities about the

[71] This fact was not known until the round-up that took place during the invasion. For a complete list of the arsenal, see Arthur: 20.
[72] In fact, the Cubans had denounced the coup and did not support Bernard Coard. See Forsythe: 76, and O'Shaughnessy for the complete post-coup speech by Fidel Castro.
[73] Joyner: 138.
[74] Davidson: 101. For the complete discussion, see Davidson: 91-95.

Governor General's request for the Grenada invasion that call into question the legality of this major U.S. legal base.[75]

The first one deals with the legitimacy of the authority of the Governor General. Because of the success of the PRG coup of 1979, Grenada's recognition by other nations and the legitimate success of the PRG as a government between 1979 and 1983, the PRG could be considered the legitimate government of Grenada. Since the PRG had deprived the Governor General of his constitutional authority and hence his legitimacy to take independent action in exceptional situations - as would have been the case before 1979 - the Governor General did not represent the lawful authority of Grenada.[76] Accordingly, most scholars agree that the request by the Governor General could be considered constitutionally invalid. Moreover, under the British Commonwealth of which Grenada was part, the assistance request would technically have had to go through Britain to be valid, and not directly to the U.S.[77]

The second questionable element of the request has to do with the need for the restoration of law and order on the island of Grenada. Davidson deduced that, from the viewpoint of international law, the RMC - a creation of the PRG - was entitled to represent the state in its external dealings even after the coup since it was in effective control of Grenada. A number of facts seem to clearly indicate that the RMC had indeed restored law and order and was in control of the state. If that had not been the case, it is fair to assume that the curfew would not have been

[75] Besides the legalities discussed in this paper is the fact that the U.S. Government was willing to invade a Commonwealth country which shared the same monarch as Britain without informing the British Government. See O'Shaughnessy: 171.
[76] See discussion footnote 6 and Joyner: 139. Joyner writes that "the office of the Governor General was in October 1983 constitutionally regarded as mainly ceremonial and advisory."
[77] See Forsythe: 73-74 who indicates that a bipartisan House of Commons committee reported inconclusively on this issue, in that the request could have been considered legal because of the close alliance between the U.S. and Britain.

lifted by the RMC, as it was on 24 October.[78] Accordingly, the Governor General did not have sufficient compelling reasons to request assistance.[79] In his February 1984 letter, Robinson submitted that Sir Paul's request " was clearly an important factor in the decision reached by the U.S. President on October 24 to respond favorably to the request of the OECS for U.S. assistance."[80] In spite of the American claim, Davidson argues that because the invitation was tainted by so many contradictions, even if Sir Paul Scoon had been legally entitled to make the request, "suspicions must be raised as to whether it was properly effected."[81] Most scholars, inside and outside the United States, have rejected this *jus ad bellum* just cause claim.[82]

Just Cause – Protection of Nationals

The third element of the just cause discussion deals with interventions to protect nationals, considered another self-defence claim. Scholars have recognised that the state's right to intervene to protect nationals was part of the *corpus* of customary international law before 1945.[83] Many critics question whether such a right now exists, in light of the increased international respect for non-intervention. Still, it is argued that since such a limited action does not breach the territorial integrity or political independence of the victim state within the meaning of article 2(4), interventions to protect nationals can be justified on the basis of a liberal

[78] Davidson: 101.
[79] In addition, the request by the Governor General was a verbal demand, at least until the time of his rescue on 26 October, the second day of the invasion. Forsythe writes that: "Governor-General Scoon said after the invasion that he did not have an invasion in mind when he made his oral request, and that the first he knew of U.S. military action was when U.S. forces appeared on his front lawn. There are a number of contradictions relating to the date of the demand. The original American statements indicated 24 October, while the letter by the State Department Legal Advisor of February 1984 talks of 23 October. Forsythe: 73.
[80] Beck: 71. The Legal Advisor also argued that "under the Constitution of Grenada as well as the laws and practice of the British Commonwealth, the Governor-General [had] possessed a necessary residuum of power to restore order" when "confronted by a breakdown of government in his nation."
[81] Davidson: 101. Forsythe: 74 is more blunt and writes: "[t]he entire affair smacks of crude face-saving, and in any event the actions of the Governor General on October 23 and 24, whatever they were, had nothing to do with early U.S. decisions to invade, made between October 19-22."
[82] See Joyner: 138 and Beck: 213 for American scholars' viewpoints on this claim.
[83] Beck: 54.

interpretation of the right of self-defence stipulated in Article 51 of the UN Charter.[84] There is no specific mention of this right in the UN Charter, but events and precedents of the last thirty years seem to have given credence to these kinds of interventions.[85] Waldock, however, is explicit in defining the narrow conditions that permit rescue missions and argues that "only cases of extreme urgency to prevent irreparable injury would justify the introduction of troops into foreign territory."[86]

Of all the American arguments following the invasion, the protection of nationals was the only consistent rationale for the intervention in Grenada, and was by far the strongest. With over 1000 U.S. nationals on the island of Grenada, it is quite understandable that the safety of the U.S. citizens was to become the major preoccupation of the Reagan administration following the events of 19 October.[87] Despite the high sensitivity surrounding potential U.S. hostages, the legality of the American invasion must nevertheless be assessed strictly on the basis of the facts in Grenada.

In his February 1984 letter, Robinson indicated that "the protection of nationals had clearly justified the landing of U.S. military forces." The letter further observed, in a statement that considerably weakens the complete U.S. claim for the invasion, that "[t]he United States has not asserted that protection of nationals standing alone would constitute a sufficient basis for all the actions taken by the collective force."[88] Since the Reagan administration was sincerely

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[84] Davidson: 113.
[85] The Israeli raid at Entebbe, Uganda in 1976 after an Air France airliner had been hijacked; the German intervention in Somalia in 1977 to rescue passengers on a Lufthansa airliner; and the failed American rescue to free hostages in Iran in 1980 are typical examples of hostage rescue intervention, which have now given some form of legitimacy to these acts.
[86] Quoted in Davidson: 114.
[87] It will be remembered that many commentators will attribute the reasons for the end of President Carter's presidency to the fiasco of the Iran hostage crisis of 1979-80. Beck: 199.
[88] Beck: 215.

concerned for the safety of U.S. citizens on Grenada, Beck argues that "it would seem reasonable to conclude that an American action *solely* to evacuate nationals would have been legally permissible," assuming the nationals were in immediate danger. [89] Payne, however, outlined a number of facts that seem to clearly indicate that this was not the case. For one, by the time of the invasion on 25 October, the students and other U.S. citizens had not been taken hostage, threatened nor harmed. Second, the U.S. had not even recommended to their citizens to evacuate the island. Indeed, the airport re-opened on 24 October once the curfew was lifted and a number of charter aircraft did evacuate other foreign citizens. Thirdly, as was indicated before, the RMC was in control of the island, and the Grenadian spokesman at the UN, who had continued to represent the State, had given assurances about the safety of the Americans. Moreover, General Austin, the visible leader of the RMC, indicated to the University Chancellor that the students would not be harmed and even visited the University to give these assurances. Finally, the RMC sent a highly conciliatory message to the U.S. embassy in Barbados to prevent an invasion.[90] In summary, it is difficult to accept the American claim that the U.S. citizens were in imminent danger.

Assuming that the protection of nationals is accepted as the valid just cause for the Grenada military intervention, i.e. that President Reagan genuinely perceived the U.S. nationals to be in danger,[91] the final element necessary to justify this criterion is a test of proportionality in the use of force, that is determining if the U.S. response was proportionate to the perceived threat to ensure the success of the rescue mission. Since the U.S. intervention included the capturing of all opposing military personnel, replacing the authority structure of the internal government and

[89] Beck: 215. Emphasis by Beck.
[90] Payne: 142.
[91] As both Payne and Davidson argue, the citizens were probably not in danger before the start of the invasion; the case can probably be made that they became at risk immediately before or after the Marines landed.

the complete occupation of Grenada, it is clear that the response was disproportionate to the threat. Hence, it should not be a surprise that much skepticism arose at the UN and in the world press about the legality of intervening to protect U.S. citizens. This skepticism was based exclusively on the unwillingness to accept the U.S. argument that a true threat existed, and not on the legality of the concept of rescuing nationals.

Just Cause - Humanitarian Intervention and Restoration of Law and Order

The final *jus ad bellum* just cause criterion deals with the protection of human rights on Grenada. In his initial speech on 25 October, President Reagan indicated that military action was necessary to "assist in the restoration of conditions of law and order and of governmental institutions to the island of Grenada."[92] Forsythe argues that this is perhaps the most controversial of all the shifting U.S. claims. Ambassador Kirkpatrick, in her statement to the UN on 27 October, had indicated that there had been a "vacuum of responsible government authority" on Grenada; that there had been a "unique combination of circumstances prevailing" there; and that the "collective action" had been aimed at restoring "democratic government."[93]

Military interventions always do threaten the invaded nation's sovereignty and should never take place. But at times, military intervention is understood differently in customary international law, and the international situations of the last ten years seems to have given humanitarian interventions added legitimacy. [94] It has been argued that humanitarian intervention can be justified as an exception to the ban on force in that they are designed to

[92] Davidson: 86.
[93] Beck: 58.
[94] Interventions for self-determination (including civil wars) are certainly forbidden, but Walzer, in an eloquent dissertation, argues that counter-intervention might be allowed (since the norms of neutrality and non-intervention have already been infringed by another state), provided the intervention serves only to balance, and no more than balance, the prior intervention of another power. Readers are referred to Walzer: 86-101 for the complete discussion on this issue.

protect human rights.[95] This maxim has never been codified in any treaty form, since "the lesser powers fear that it is a concept subject to misuse by relatively powerful powers."[96] Nevertheless, the prevalent international view appears to be that "humanitarian intervention is justified when it is a response (with reasonable chance of success) to acts that 'shock the moral conscience of mankind'."[97] The facts of the situation in Grenada between 19 and 24 October clearly do not support the statements that there was no law and order, or that atrocity and flagrant human rights abuses were taking place. The RMC did impose an effective curfew and there was little or no violence in Grenada, and certainly no violations of human rights.[98]

The second questionable aspect of Kirkpatrick's claim was the mention of "restoring democratic institutions", an long-standing aspect of American doctrine that is clearly contrary to the UN Charter.[99] Although the American intervention was received positively by the Grenada population,[100] as Forsythe writes, "there is nothing in these documents [the UN and OAS

[95] Although only a legitimate government can fight its own internal wars, if the same government turns savagely upon its own people, then the legitimacy of the government must be questioned, and the intervention by another state is often justified on that premise. The issue is less controversial when the governmental institutions have totally collapsed, but again this condition in a country is difficult to define most of the times.
[96] Forsythe: 70. Evidence in point of this abuse is the Indian intervention in Pakistan in 1971. India claimed humanitarian intervention when it used military force to stop the Pakistani army from slaughtering Bengalis in East Pakistan. AlthoughWalzer argues that the intervention was fully justified since the Pakistanis were massacring Bengalis, Forsythe counter-argues that, in the end, "India took the opportunity to dismember Pakistan by turning the region into the new state of Bangladesh, the precise reason states are reluctant to concede the right for other states to intervene. For contrasting views, see Walzer: 102-107 and Forsythe: 72.
[97] Walzer: 107. For a fascinating discussion written in 1977, before the human atrocities of the 1990s came about, see Walzer: 101-108. Some legal theorists believe that the UN Charter, with its prohibition on the use of force except for self-defence, has specifically outlawed forceful humanitarian interventions. Other critics argue that human rights are now more important than in 1945 when the UN Charter was conceived and, if this is not enough, the Preamble to the Charter gives primacy to the human rights provisions of the UN Charter. Davidson: 119-121 provides an interesting discussion on the validity of this deduction.
[98] Forsythe: 77.
[99] Ambassador Kirkpatrick had prepared another speech to be delivered to the UN General Assembly on 2 November. A closure motion carried 60 to 54 prevented her from delivering that speech. See Jeane J. Kirkpatrick, "The U.N. and Grenada: A Speech Never Delivered," Strategic Review (Winter 1984): 11-18.
[100] As Joyner: 142 writes: "what is good and right and just is not necessarily brought about by lawful means."

Charters], or any other part of international law, that gives an outside party the right to impose a particular version of rights or justice on national authorities."[101]

The claim to use force to impose an ideology has never received any international support, and thus it should not be surprising then that by the time the U.S. released its final justification letter of February 1984, there was no reference to "restoring democratic institutions" (but rather restoring internal order). The U.S. stated via Robinson's letter that "[w]e did not assert a broad new doctrine of 'humanitarian intervention.' We relied instead on the narrower, well-established ground of protection of nationals."[102] The United States' legal advisors decided to abandon any claim of justification for the Grenada invasion on the ground of humanitarian intervention. It also seems clear, as Davidson states, that "the initial justifications of Reagan and Kirkpatrick produced certain difficulties, if not embarrassment, for the administration's legal officials."[103] By the 1990s, most legal scholars, in their analysis of the legality of the intervention, typically dismissed this fourth just cause justification and focused strictly on the preceding three claims.[104]

Last Resort

As Grotius indicated, war must always be a last resort undertaken when there are no reasonable means to achieve satisfactory resolution.[105] Article 51 of the UN Charter concerning the right of self-defence, together with Articles 33 through 40, which deal with means for settling

[101] Forsythe: 76.
[102] Quoted in Forsythe: 71.
[103] Davidson: 124.
[104] For instance see: Max Hilaire, International Law and the United States Military Intervention in the Western Hemisphere (Boston: Kluwer Law International, 1997): 81 and Mark A. Weisburd, Use of Force – The Practice of States Since World War II (University Park: Penn State University Press, 1997): 238.
[105] From Walzer: preface xiv. This tenet sounds reasonable but, taken literally, last resort would make war morally impossible. As Walzer indicates, there is always something more to do: another diplomatic note, another UN resolution, another deadline, or another meeting.

disputes short of resort to arms, reflect those aspects of the last resort *jus ad bellum* that are now appropriately articulated in international law through the UN Charter.

In Grenada, diplomacy was never given an opportunity to resolve the situation and prevent a military intervention. The Charter of the Organisation of American States (OAS) articulates in Article 20 the obligation of pacific dispute settlement: "All international disputes that may arise between American states shall be submitted to the peaceful procedures set forth in the Charter, before being referred to the Security Council of the United Nations."[106] The U.S. and the OECS were thus obligated to pursue serious diplomatic measures aimed at peacefully resolving the Grenada situation after the coup. The RMC attempted to initiate discussions with the U.S. and OECS to prevent the invasion but the Reagan administration never accepted to negotiate with the RMC.[107] The U.S did simply not trust the diplomatic assurances received from the RMC. As Joyner notes: [t]hough obviously no guarantee of success existed, some attempt at reaching a satisfactory diplomatic solution to the crisis should have been exerted by the United States before resorting to military force."[108] In essence, as Joyner indicates, "[the] use of force was exercised with precipitancy and premeditation, without due restraint and much evident respect for international norms associated with the peaceful settlement of disputes."[109] Hence, it is fair to state that the last resort *jus ad bellum* criterion was definitely not met in this case.

[106] Joyner: 142.
[107] Davidson: 84. By 23 October, the RMC had sent a diplomatic note to the U.S. Embassy in Barbados restating its commitment to guaranteeing the safety of U.S. nationals and reaffirming its intentions not to use force against any other state. See also O'Shaughnessy: 220.
[108] Joyner: 143.
[109] Joyner: 142.

Lawful and Competent Authority

This *jus ad bellum* criterion is based on the requirement that only a legitimate authority may declare war and that only the duly constituted ruler can speak for the populace. Although this criterion seems fairly straightforward, the emotions surrounding the authority to wage wars can be more complex in democracies. For instance, the use of military force by past U.S. presidents and Canadian prime ministers has often been questioned by their respective populations. However, since the authority is democratically elected and thus legitimate, this criterion is always considered met, as far as the international community is concerned.

With regard to the Grenada intervention, Moore argues that "the use of United States armed forces in the OECS combined peacekeeping and humanitarian was in full accord with the United States national law, both constitutional and statutory."[110] Since the international community never challenged this assertion in the months following the invasion, it is can be reasonably assumed that this *jus ad bellum* criterion was met.

Chance of Success

This condition requires that there be a reasonable chance of success in any war and that the expectations of victory for the just aims be reasonable. Grotius rejects the 'give me liberty or give me death' aphorism on the grounds that life is of greater value than liberty.[111] This criterion also exists to reject suicidal military actions and futile resistance and, as Christopher indicates, "this condition has important consequences for timing a nation's surrender."[112] The United

[110] Moore, Law and the Grenada Mission: 75.
[111] Christopher: 91.
[112] Christopher: 91.

States was confident that its force ultimately would prevail over the small Grenadian and Cuban military force.[113] The number of casualties suffered by the U.S. was small and the duration of the fighting was very short.[114] Accordingly, the U.S. military campaign bore out the expectations of victory, and therefore this *jus ad bellum* criterion was satisfied.

Right Intention

The only plausible just cause criteria that may be considered justifiable for the Grenada invasion is the rescue of U.S. citizens. Interventions by a state to safeguard the well-being of its citizens in another state has been deemed legal in international law. However, this interpretation of self-defence has been subjected to harsh legal reviews, stemming primarily from the obvious temptation of the intervening state to take opportunity of the situation to achieve other aims. This is precisely what took place in Grenada.

The U.S. clearly had broader strategic aims in using force in Grenada. The fact that the lives of American citizens were actually endangered by deteriorating conditions on Grenada may be debatable. Even then, a threat to the U.S. nationals could have justified only a limited military operation along the lines of the Israeli raid at Entebbe for the sole purpose of evacuating the major concentration of U.S. nationals at the St-George's University Medical School. Instead, the military operation was conducted as an attack on the authority of the Grenada government. Hence, by neutralizing all opposing military forces and imposing a new democratic form of government, the Reagan administration clearly had other motives beyond the rescue of its

[113] The opposing force was estimated at between 3500 and 7000.
[114] Eighteen U.S. military were killed during the 2-day campaign. Davidson: 85.

nationals in invading Grenada.[115] It can be concluded unequivocally that the invasion fails to meet this *jus ad bellum* criterion.

Proportionality

The proportionality criterion is intended to ensure that the good toward which the war aims is proportionate to the evil that the war will cause, to prevent excessive harm. In short, this criterion demands a utilitarian calculation of the consequences that will result from resorting to arms, and requires that a specific political end be determined in advance of the use of force.[116] Realists do believe that to be rational a war must satisfy a proportionality constraint and must advance the national interest. They also argue, however, that a state may be justified in initiating a war that promises more harm than good, provided the larger proportion of the harm is suffered by the adversary.[117]

In the final analysis, this proportionality criterion may be the most difficult one to assess, mostly because of the greater good which was brought about by the intervention in Grenada. First, press reports did indicate that the mission was broadly supported by the people of Grenada; this was confirmed through interviews and polls in the weeks following the invasion.[118] Second, the U.S. military intervention did not do any significant damage to the infrastructure of Grenada, and the Grenadians did not have to suffer from the ravages of the intervention. Third, the American nationals were "rescued" without any U.S. citizens being injured or harmed, and no

[115] Boyle et al., "International Law Under Time Pressure: Grading the Grenada Take-Home Examination," The American Journal of International Law (January 1984): 172-173.
[116] Christopher: 89-90.
[117] McMahan: 86.
[118] Moore: 151.

civilians were killed. Fourth, barely a year after the invasion, elections were held and a new democratic government was elected. Financial assistance was also provided to the new government to complete the international airport. And finally, by having the pro-Cuban RMC removed from power in Grenada, fears of future military instability in the Eastern Caribbean region were eliminated.[119]

The United States achieved the political objective sought after with this invasion, and it is reasonable to say that the war costs were relatively low.[120] Accordingly, it can be concluded that the *jus ad bellum* proportionality criterion was met, although such a conclusion on the use of force could certainly be the subject of heated debates between just-war theorists and realists. Indeed, Walzer is of the opinion that the proportionality maxim can "never be legitimate under modern conditions because the costs will always be greater than the benefits." As he questions: "[h]ow do we measure the value of a country's independence against the value of the lives that might be lost defending it? How do we figure in the value of defeating an aggressive regime… or the value of deterring other, similar regimes?"[121] In the end, this discussion demonstrates that the proportionality maxim of the just-war theory plays only a marginal and uncertain role in the contemporary *jus ad bellum*.

IMPLICATIONS - THE LIMITS OF INTERNATIONAL LAW

[119] Another good for the U.S. was the fact that this was the first successful military intervention by the U.S. since the Vietnam War, which greatly boosted the confidence of the U.S. military.
[120] Forty Grenadians and Cubans killed versus eighteen U.S. soldiers killed.
[121] Walzer: preface xv-xvi.

To be just, a war must meet all of the *jus ad bellum* criteria. Since the invasion of Grenada did not meet most important criteria of just cause and last resort, it can be concluded that the U.S.-led military intervention did not satisfy the classical *jus ad bellum*. The request by the Governor General was clouded by contradictions and technical legalities making it very doubtful that he was the lawful authority to request assistance. The claim of self-defence is not credible in that the RMC did not present an "instant, overwhelming" threat to the region. The U.S. assertions that the citizens were in danger are not supported by the facts, and even if they were, the military invasion certainly failed the test of proportionality. None of the U.S. legal justifications met even the most liberal interpretation of the *jus ad bellum* just cause criterion. Without even attempting any diplomacy before the invasion, the OECS and the U.S. certainly did not meet the last resort criterion. Hence, the invasion was a violation of international law and of the UN Charter, and really a U.S.-led multinational intervention in the internal affairs of a state to replace a hostile regime.

The classic *jus ad bellum* criteria for a just war are instructive in assessing the Grenada invasion, but they do not account very well for the existing collective security system embodied in the UN Charter, current international law and state practices of the 20th century. Rather, the assessment of the just war claims pertaining to the Grenada invasion demonstrates the weaknesses of the just war theory and international legal influences on policy-makers, especially when countries such as the United States, with many vital interests to protect, are involved. Several states continue to believe that they are the ultimate judge in matters of self-defence. War theory realists often remind moralists that self-defence of nations can not be governed by international law. When it comes to the use of force and protecting vital interests in their backyard, Dean Acheson, a former Secretary of State, remarks that law "simply does not deal

with such questions of ultimate power…. The survival of states is not a matter of law."[122] John Norton Moore, editor of The American Journal of International Law, has perhaps been the most vocal jurist in arguing this position.[123]

Moore, who was one noted exception to all the critics of the Grenada intervention, interpreted the pre-invasion facts differently and argued eloquently that the intervention was legal. Moreover, Moore also squarely blames the UN General Assembly for the application of an "international double standard" in its attitude and reaction in judging the U.S. justifications. Moore asserts that being a democratic country with free press, the U.S. is always subjected to more criticism than totalitarian regimes, and he cites several examples to prove his point.[124] Moore is convinced that unfamiliarity with the "seriousness of events in Grenada" contributed to this misunderstanding and "whatever the causes, the trend toward an international standard is eroding the foundations of the international legal order."[125] Although there is some validity to the claim of a "double standard" treatment of the United States, Moore's arguments must be taken with a grain of salt because of his previous employment with the U.S. State Department.

The almost universal condemnation of the U.S. intervention, with the General Assembly's adoption of a resolution deploring it as a violation of international law, made it clear that the invasion was illegal.[126] Most scholars, in the years following the invasion, strongly

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[122] Quoted in Schachter, "Self-Defense and the Rule of Law,": 260.
[123] John Norton Moore, "The United States in Grenada – Reflections on the Lawfulness of Invasion," American Journal of International Law (January 1984): 131-168. See also Moore, "The Secret War in Central America and the Future of the World Order," The American Journal of International Law (January 1986): 43-127. Of note is the fact that Moore had served as Counselor on International Law to the Department of State and as a U.S. Ambassador. He also served as a Special Counsel for the U.S. in the Nicaragua v. U.S. case before the ICJ.
[124] He goes on at length to demonstrate this by reviewing the General Assembly's record for denouncing other invasions, mostly by Soviet bloc countries. Moore: 167.
[125] Moore: 168.
[126] The resolution was adopted 108-9 with 27 abstentions. Canada and the U.K. abstained. Of note is the fact that a UN Security Council resolution calling for the immediate withdrawal of all foreign troops in Grenada was defeated only by a veto of the United States on 28 October.

denounced the U.S. intervention in Grenada.[127] Despite Moore's dissertation, the verdict of the international community, including its largest council, the UN General Assembly, must be given more credibility and weight in the final analysis. Further, as Schachter indicates, "no state is actually the *sole* judge of its own cause when it claims to have use force in self-defence."[128] From the very inception of the present UN Charter system, there has been general agreement that the rule against unilateral recourse to force is a fundamental tenet of international law. So one must question the reasons why the United States would seriously damage its image as a moral and law-abiding state in international relations, and present itself as one that prefers force rather than diplomacy to solve state problems.

In the end, state interventions are related to geo-politics. It is very clear that President Reagan's decision was a policy decision, which was based on impulsive political objectives, with little consideration for international law. The Reagan administration's decision-making process was largely influenced by several unrelated events: the death on 23 October of over 250 Marines in Beirut; the continued frustration of a country continually pushed around; the persistent Cuban policy of promoting national liberation movements in the Caribbean Basin; the potential for hostage-taking on Grenada only four years after the disastrous hostage-taking incident in Iran; and, perhaps the most important element, President Reagan's mandate to stand up to the Soviet Union. The fact that the U.S. took the decision to invade the sovereign state of Grenada, risking

[127] Of note however is the fact that U.S. public opinion polls strongly endorsed President Reagan's decision.
[128] Schachter: 264. Emphasis by Schachter.

with it world condemnation, is certainly testimony of the increasing concern at the time over political instability in Central America in general, and over the communist destabilisation in the region. Hence, it is the combination of this context in October 1983, and the nature of the personality of the individuals involved, that made this decision probably one of the easiest ones for President Reagan to take. As Mapel points out, "even internally just states sometimes face genuine moral and practical dilemmas in international relations."[129] The decision to invade Grenada was one of those dilemmas.

The UN has the mandate to promote the progressive development of international law, but it is evident that tradition-based just war as codified in the UN Charter is not sufficient to prevent the use of force by states. The inability of the UN to enforce the maintenance of international peace and security has been a major weakness of the current framework and has certainly clouded the reputation of the UN over the years. Indeed, many jurists will argue that "international law could be more appropriately called international morality; where there is no common authority, they argue, and hence no power to enforce violations, there is no positive law."[130] A system of laws grounded only in consent and recognising no common constituting authority or force of sanction is likely to have little effect, especially if the sole force of international law is derived from the obligation to keep promises and uphold moral principles.[131]

The international reaction to Grenada invasion is a case in point. In spite of the almost unanimous statements of disapproval of the intervention, no sanctions were imposed on any of the intervening states and the new Grenada government was recognised within a year of the

[129] Mapel: 73.
[130] Christopher: 69.
[131] Christopher: 84.

intervention. The international community, it can be said, forgets rather quickly. No sanctions were imposed following the U.S. invasion of Panama of 1989 or the Syrian invasion of Lebanon in 1979. The international community seems to be prepared to "tolerate" interventions by dominant states into the internal affairs of smaller states located within their sphere of influence, provided the intervention does not alter the formal international status quo. The events on the world scene of the last 15 years would seem to support this trend.[132] Whereas the United States might consider that they were justified in intervening in Grenada - with several precedents of similar unilateral actions in the region this century - they are certainly not justified under the UN Charter or under customary international law. However, a reasonable argument could probably be made that by allowing the dominant power in a region to intervene to prevent military or political developments perceived as threatening its vital interests, the action may contribute in the long term to international stability and peace by maintaining the stable regional status quo. Peace and stability in the world order is, after all, the main objective sought by the founders of the UN Charter.

The evident difficulty with this proposition is in defining which action or intervention by a dominant power contributes to increased peace and security in the world. Would a Chinese invasion of Taiwan be accepted by the West? How about an American invasion of Cuba after Fidel Castro's death? Probably not. Accordingly, it is for that precise reason that the UN members have always condemned the use of force, even for the most liberal interpretations of the rule of self-defence. A just and lasting world order can not be built on post-invasion legal justifications that smell of unilateral military intervention designed for purely political purposes.

[132] Examples of this include the Soviet invasion of Afghanistan in 1979 and the U.S. invasion of Panama in 1989.

CONCLUSION

As indicated before, the Grenada invasion failed to meet the *jus ad bellum* and was harshly criticised by the international community. From the first post-invasion public statements by the Reagan administration, the U.S. State Department lawyers had to work methodically in advancing *post facto* justifications to try to convince the UN and the world jurists that the U.S. never did claim to be acting above the law or in disregard of the law. The U.S. always stated that they were bound by legal obligations, and it is perhaps true that it is more the validity of the facts advanced by the U.S. - and deductions thereof - that were highly questionable for each justification provided.[133] For all their military interventions of the past 30 years, the U.S. has consistently maintained that the use of force was justified, and in accordance with international law on the use of force.[134]

Despite the inherent weaknesses of the current international framework on the use of force, the nations of the world have clearly shown an increased respect and need for the international law to continue to contribute to resolve international problems and bring peace and security to the world. The world condemnations of state aggressions such as the one by Iraq in the Persian Gulf and the recent creation of the International Criminal Court represent only two of the more recent examples of this resolve to "enforce" customary international law. Accordingly, when interventions such as the 1983 Grenada and 1989 Panama invasions take place, they seriously damage the fragile state of international law, more so when a powerful country is

[133] It is worth noting that the U.S. never made mention once of the Monroe Doctrine. C. Joyner, "The U.S. Action in Grenada: reflections on the Lawfulness of Invasion," American Journal of International Law (January 1984): 143.
[134] For instance, the U.S. lost the ICJ court case versus Nicaragua in 1986. For years the U.S. rejected the court's judgement and indicated they would not pay the damages prescribed by the ICJ. In 1990, when the Sandinistas were defeated in a general election, the U.S. offered an aid package to the new government. In providing the financial package, the U.S. indicated that the package would constitute payment as requested by the ICJ and that this would close the case, tacitly admitting in doing so of the importance of international law and the jurisdiction of the ICJ.

involved and when the world community has little recourse for sanctions. If powerful nations continue to advance their political interests without respect for international order, unfortunately there can be little hope for other nations.

Unilateral military actions send a strong message to the entire international community that the traditional rules restricting the use of force do not apply in settling contemporary international disputes. Accordingly, powerful nations such as the United States would do well to fully weigh the negative implications of military interventions toward achieving the goal of an ordered international society in which international law prevails. States who compromise the law for near-term gains can eventually come to regret the more far-reaching political and legal implications of their actions. In the end, without strong enforcement mechanisms, it is imperative that international law concerning the use of force serve as a restraint on national policy, rather than as a *post facto* rationale to explain it. This is precisely what Hugo Grotius had in mind almost 400 years ago, and what the world hopes for today.

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