

THE INVASION OF GRENADA Law or Politics?

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Grenada
files.

ON TUESDAY OCTOBER 25, 1983 the sovereign state of Grenada was invaded by the United States of America with support from the member states of the Organisation of Eastern Caribbean States (OECS), and the Caribbean States of Jamaica and Barbados.

This article attempts to analyse in a legal context the relevant facts in what has become an internationally controversial issue, and then, to place the issue in its wider political context. It is the writer's hope that it will serve to place all the issues—the legal, the moral and the political—in a clearer perspective.

The reasons given for the invasion by the participating governments are in summary:

1. to protect innocent lives including the lives of some 1000 American students;
2. to assist in restoring normality with a minimum loss of lives;
3. to forestall chaos;
4. to free the people of Grenada from terrorism and brutality; and
5. to eliminate the perceived threat of hostility and aggression by Grenada against neighbouring Caribbean states.¹

The legal basis relied upon comprised:

- (a) the authority of Article 8 of the Treaty Establishing the Organisation of Eastern Caribbean States (OECS);
- (b) letters of request from the OECS for assistance in restoring order and democracy in the Island of Grenada as there was a "vacuum of authority" there; and
- (c) a letter of request from the Governor-General of Grenada requesting friendly countries to enter Grenada and restore order.²

It is submitted that these authorities must be examined in the context of international law with particular reference to the Charter of the United Nations.

THE U.N. CHARTER

Article 1 of this Charter sets out the purpose and principles of the organisation as being:

"To maintain international peace and security, and to that end, to take effective collective measures for the preservation and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace"

Article 24 provides that:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations."

Article 24 of the Charter charges the Security Council, an arm of the United Nations, with the "primary responsibility for the maintenance of International peace and security", and by

virtue of Article 39, only the Security Council has the legal competence to "determine the existence of any threat to the peace, breach of the peace or an act of aggression".

It is conceded that Article 51 allows "individual or collective self-defence if an armed attack occurs against a member state of the United Nations", but such measures taken are to be immediately reported to the Security Council. It is also conceded that Article 54 provides for regional arrangements for the maintenance of peace and security but with the proviso that:

"The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements . . ."

If we accept that the Charter of the United Nations embodies those guidelines by which member states should conduct themselves in their international relations, then we must recognise the importance of adhering to the principles and procedures set out therein. It follows therefore that the invasion of Grenada cannot have been legal if it was carried out in breach of the United Nations Charter. Any meaningful enquiry in relation to the invasion must therefore focus primarily on the legality of this exercise.

THE LETTERS OF REQUEST

The member states of the O.E.C.S. met in Bridgetown, Barbados on Friday October 21, 1983 to consider the situation that had developed in Grenada. The Heads of Government of the English speaking Caribbean, with the exception of the Head of the Barbados Government and including those from the O.E.C.S. thereafter proceeded to an emergency meeting of the Caribbean Community (Caricom) on Saturday October 22 in Trinidad to discuss measures to be taken against the regime in control in Grenada. No firm decision was taken at this meeting to invade Grenada. Further discussions took place in Barbados between the Prime Ministers of Jamaica and Barbados on Sunday October 23, 1983.

It was on this day that the letter of request was issued to the Head of the Jamaican Government to participate in the operation and according to the President of the United States, he also received a request for assistance on that day. But on the available evidence it seems clear that the United States government was invited to participate before the Caribbean leaders met on October 23, 1983.³ In any event if an invasion was agreed upon for October 25 and letters inviting participation were delivered to parties

not legally entitled to be informed as early as October 23, then it is submitted that there was adequate time in which to inform the Security Council which was legally entitled to be informed in pursuance of Article 54. The parties therefore acted collusively in avoiding this legal obligation.

It must now be considered whether the requests by the O.E.C.S. had any legal basis.

THE LEGALITY OF THE OECS REQUEST

Article 8 of the O.E.C.S. Treaty is the relevant provision and reads:

"(1) The Defence and Security Committee shall consist of the members responsible for defence and security . . . of the member states.

(2) Only member states possessing the necessary competence in respect of members under consideration from time to time shall take part in the deliberation of the Defence and Security Committee. . .

(3) The Defence and Security Committee shall have responsibility for co-ordinating the efforts of member states for collective defence and the preservation of peace and security against external aggression and for the development of close ties among member states. . . in matters of external defence and security, including measures to combat the activities of mercenaries, operating with, or without the support of internal or national elements in the exercise of the inherent right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations.

(4) The decisions and directives of the Defence and Security Committee shall be unanimous and shall be binding on all. . ."

But Article 51 of the United Nations Charter sets out certain pre-conditions which must be operating before a state or group of states can invoke the right to individual or collective self-defence. These are:

- (i) the existence of "an armed attack" against a member state of the United Nations;
- (ii) such self-defence measures adopted before "the Security Council has taken measures necessary to maintain international peace and security."

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Apart from the procedural irregularities due to the colonial status of one participating O.E.C.S. member state, Montserrat, the non-membership of the participating state of Barbados and the absence of unanimity on account of the absence of a representative from Grenada which made the decisions defective in law and therefore void and illegal, it is clear on the facts that the conditions for the operation of Article 8 of the Treaty were not fulfilled.

PRE-EMPTIVE STRIKE

The argument resting of the theory of pre-emptive strike is easily disposed of by virtue of the fact that with adequate time to inform the Security Council, this body was ignored and bypassed. On the authorities a preventive strike involves the violation of territorial integrity and must therefore be an invasion.⁴ A preventive strike which is not to be deemed an invasion must be based on the prior approval of the Security Council. This channelling through the Security Council is a clear precaution against arbitrary aggression which can lead to international anarchy and chaos.

VACUUM OF AUTHORITY

Much reliance was placed on the theory of "the vacuum of authority" claimed to have been created after the death of the Grenada Prime Minister, Mr. Maurice Bishop. But, on the facts, the country had been taken over by the Revolutionary Military Council which was in full control and had "full legislative and executive powers".⁵ The most that can be said is that this government was not democratically elected and was not yet recognised. The argument resting on the "vacuum of authority" theory must therefore still find its validity in a principle of international law creating the right to invade on this ground.

PROTECTION OF CITIZENS

The right to invade to protect the lives of citizens of the invader is an extension of the principle of the right to self-defence. But it only arises where the invaded state had been requested to extend protection and it had either refused or had been incapable so to do then the invading state must act instantly and overwhelmingly. The view had been expressed that far from being in danger, the U.S.A. teachers and students were endangered more by the invasion than they had been by the island's Revolutionary Government".⁶

This view is in keeping with the attempt by the Grenadian Revolutionary Military Council to contact the U.S. Embassy in Barbados in what appears to have been an effort to give an assurance of the safety of the U.S. citizens in Grenada. It is also consistent with the permission given to the team of foreign diplomats specially to visit Grenada at that critical point in time.⁷ And according to the British view the invasion had no merit.⁸ And furthermore, in keeping with the declared ostracism of the regime, no preliminary requests were made for protection of citizens of the invading states, if indeed any of them was in danger.

HUMANITARIAN BASIS

The claim of a right to invade on humanitarian grounds can be dismissed outright as having no basis in international law. This falls clearly within the province of municipal law, and constitutional law in particular. And in the case of *gross atrocities* it must be the United Nations and not individual states which may take action. This seems to be the burden of the decision of the International Court of Justice in well known *South West African Case*⁹ which was based on the "sacred trust of civilisation" doctrine where in order for the interest of the international community to "take on a specifically legal character", the sacred trust itself "must be or become something more than a moral of humanitarian ideal. . ."

RESCUE MISSION

A "rescue mission" more honourable than that alleged in the Grenadian issue and mounted by a combined military force from Britain, United States and Belgium in cooperation with the Government of the Congo, to secure the release of rebel-held missionaries in 1964, excited strong international condemnation. Presently, the principle of a "rescue mission" is not recognised by International Law.

ROLE OF THE GOVERNOR-GENERAL

And finally there was the claim the the intervention was invited by the Governor-General of Grenada, Sir Paul Scoon. But the legality of such an act on his part is clearly in doubt. The Constitution under which Sir Paul was appointed as Her Majesty's representative was suspended after the coup of 1979 by the People's Revolutionary Government which was recognised by all the invading States except the U.S.A. Sir Paul therefore retained his position by virtue of and consistent with the 1979 revolutionary process which both Sir Paul and the invaders who recognised the P.R.G. are estopped from repudiating.

Only the implausible claim that the dissolving of the People's Revolutionary Government and the establishment of the Revolutionary Military Council automatically restored the original independent Constitution of Grenada can validate the argument that the Governor-General had the authority to invite an intervention. The most reasonable interpretation is that he was serving as Governor-General under the government of the Revolutionary Military Council and his authority cannot therefore have extended to inviting foreign forces to bring down his own government, a process to be secured either by the electoral process, a military coup or an invasion, *and not a rescue mission*.

An invasion without legitimate cause is an illegal act.

The evidence discloses clearly that Sir Paul did not invite the intervention but merely *did not object* to it when his views about the settled intention to launch it were sought.¹⁰ He clearly had no legal right and apparently had little say or choice in the decision to invade.

ILLEGAL INVASION

On a careful examination of the facts and the relevant legal principles it is submitted with confidence that the sovereign state of Grenada was invaded and that there was no legal basis for this act.

It was therefore a flagrant violation of international law.

THE WIDER POLITICAL CONTEXT

The political implications of the act are not however in dispute. The allegations by the late Prime Minister Mr. Maurice Bishop a few months prior to the actual invasion that the United States had planned to attack Grenada were never expressly denied by the White House.¹¹ The Prime Minister of Jamaica is on record as having said that:

"we did not accept the mode of revolution as a means of changing governments nor did we have any sympathy for the ideology which Mr. Bishop espoused. But notwithstanding that, there are deep principles involved in the events which transpired in Grenada. . . At the root of these principles is the inescapable fact that revolution breeds revolution and if we ignore the occurrence of brutal military takeovers or political overthrows of governments we would immediately give heart to every subversive group within the region to engineer disorders and instability as a means of overthrow. No democratic system of government could have a chance of carrying out the programme of development which it was elected to implement . . . for the sake of the democratic system of government which we all agree to be the one which allows maximum freedom . . . we cannot ignore the events which defeat these purposes wherever they occur. . ."¹²

The United States Ambassador to France is on record as having said:

"it was an action which had begun two weeks ago before the Beirut attack. . . importing the assertion that the invasion was planned even before the overthrow of the late Prime Minister of Grenada, Mr. Maurice Bishop. Admittedly the ambassador claimed subsequently that he "mis-spoke".¹³

But there cannot be any doubt that there was a clear manipulation of political power to forestall the rise or spread of communism in the area, and this runs counter to the principles of sovereignty and the right to self-determination and shows that the old Munroe Doctrine is still a dynamic element of the United States policy and is now extended to the English Speaking Caribbean region. This brings the United States policy in line with that of the Soviet Union in relation to their "sphere of interest" doctrine, as can be evidenced historically by the United States "Bay of Pigs" invasion of Cuba in 1962, the invasion of Guatemala in 1954, and the invasion of the Dominican Republic in 1965.

The invasion of Grenada is the latest of such policy actions and furthermore the United States is presently engaged in a serious offensive against the leftist regime of Nicaragua involving the illegal mining of that country's ports, for which condemnation by the International Court of Justice the United States had declared that it will not countenance.

President Reagan has made it clear that one of the reasons for accepting the invitation to invade Grenada was "to restore democracy on the island where a brutal group of leftist thugs have seized power".¹⁴ The political intentions are tolerably clear. But as a purely political issue two burning questions still remain: (1) by what criteria is democracy to be determined; and (2) who will be the judge as to when these criteria have been satisfactorily met or when an unqualified "sovereign" state *shall* be invaded and set on the "proper" course.

The real question is: What territory will be invaded next?

FOOTNOTES

1. The Jamaica "Daily Gleaner", October 26, 1983, (other issues hereinafter referred to as "The Gleaner").
2. See paper presented by R. Carl Rattray, Q.C., LL.B. to Annual General Meeting of of the American Association of Jurists (AAJ) November 26, 1983. See also "The Gleaner" October 30, 1983.
3. The text of the Joint Press Conference between US President Reagan and Dominican Prime Minister Eugenia Charles held on October 25, 1983 shows that the request for possible military assistance from the U.S. was made about 2.00 a.m. on Sunday October 23, 1983. But in his statement to Parliament on October 25, 1983 the Jamaican Prime Minister alluded to a meeting on October 23, 1983 presumably, after 2.00 a.m. when the request was made to him.
4. Levontin, A.V., *The Myth of International Security*, The Magnes Press, Jerusalem, (1957), p. 200.
5. "The Gleaner", October 21 and 23, 1983.
6. From statement of the Vice Chancellor of the St. George's Medical College published in "The New York Daily News", October 26, 1983.
7. "The Gleaner", October 21 and 23rd, 1983, USIS News Highlights, November 4, 1983; and R. Carl Rattray (supra).
8. See "The Gleaner", October 27, 1983 for the views of the governments of France, Soviet Union Nicaragua and India.
9. I.C.J. Reports (1966), p. 6.
10. "The Gleaner", October 30, 1983, p. 10a, suggestions from U.S. to rescue Prime Minister Bishop from arrest. "The Sunday Gleaner", December 4, 1983. See also paper by Rattray, R. Carl (supra).
11. "Race Today", Vol, 15, No. 1, May/June, 1983.
12. "The Gleaner", October 26, 1983: Report of P.M.s Speech in Parliament, October 25, 1983. See also Prime Minister's Interview "The Gleaner" November 20, 1983.
13. Rattray, R. Carl (supra).
14. "The Gleaner", October 26, 1983.



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