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Noriega's Abduction from Panama: Is Military Invasion an Appropriate Substitute for International Extradition?

I. INTRODUCTION

The United States indicted General Manuel Antonio Noriega, Commander-in-Chief of the Panama Defense Forces ("PDF") and de facto leader of Panama, on February 4, 1988.¹ The twelve-count indictment accused Noriega of accepting a \$4.6 million bribe from the Medellín cartel to protect shipments of cocaine, launder money, supply drug labs, and shield drug traffickers from the law. It also accused Noriega of allowing smugglers to use Panama as a way station for United States-bound cocaine, using his official position to provide protection for international drug traffickers, and arranging for the shipment of cocaine-processing chemicals.²

The United States did not attempt to use formal extradition procedures to apprehend Noriega. Instead, President George Bush authorized a full-scale military invasion of the Republic of Panama to, among other things, abduct Noriega. On December 20, 1989, the United States launched Operation Just Cause.³ As part of the operation, President Bush issued a memorandum to the Secretary of De-

1. On February 4, 1988, grand juries in Miami and Tampa, Florida indicted Noriega on Racketeer Influenced and Corrupt Organized Activities ("RICO") violations. RICO violations occur when a defendant uses a pattern of racketeering activities, or the proceeds of those activities, to affect an interstate enterprise. J. RAKOFF & H. GOLDSTEIN, *RICO: CIVIL AND CRIMINAL LAW AND STRATEGY* § 1.06 (1990). RICO violations are codified at 18 U.S.C. § 1962(a), (b) and (c). For a discussion of Noriega's status as Commander-in-Chief of the PDF and as de facto leader of Panama, see *infra* text accompanying notes 7-47.

2. Indictment, *United States v. Noriega*, No. 88-0079 (S.D. Fla. filed Feb. 4, 1988); see also *Indictments Depict Noriega as Drug-Trafficking Kingpin: U.S. Had Long Backed Panamanian Leader*, *Wash. Post*, Feb. 6, 1988, at A1. See *infra* text accompanying notes 48-65 for an in-depth discussion of the Florida indictments.

3. Address to the Nation Announcing United States Military Action in Panama, 25 WEEKLY COMP. PRES. DOC. 1974 (Dec. 20, 1989) [hereinafter *Address to the Nation*]; see also Saul, *Dispute Over Legality*, *Newsday*, Dec. 21, 1989, at 4 (city ed.); *Fighting in Panama: The State Dept.—Excerpts from Statement by Baker on U.S. Policy*, *N.Y. Times*, Dec. 21, 1989, § A, at 19, col. 3; see also Nanda, *The Validity of United States Intervention in Panama Under International Law*, 84 AM. J. INT'L L. 494-97 (1990). In the invasion of Panama, the United States deployed over 26,000 troops, roughly half of whom joined United States forces permanently stationed in Panama. Twenty-three United States servicemen and two United States

fense authorizing the use of United States armed forces to apprehend General Noriega.⁴

President Bush justified the invasion of the Republic of Panama on three additional bases, including: protecting American lives in Panama; responding to Noriega's declaration of war against the United States; and assisting the return to power of the lawful and democratically-elected government in Panama.⁵ The United States coerced Noriega into surrendering ten days after the invasion began and transported him to the United States to face drug trafficking charges.⁶

This Comment analyzes whether the United States' justifications for the military action in Panama are consistent with international law. It focuses specifically on the abduction of General Noriega to face trial in the United States. Was the abduction a permissible circumvention of the formal extradition procedure or was it, because of its extreme nature, a lawless act violating United States and international laws?

In answering the above questions, this Comment first examines the factual background and political nature of the Noriega case. Second, it analyzes the Miami and Tampa, Florida indictments and the events leading up to the invasion of Panama and Noriega's apprehension. Third, this Comment scrutinizes the United States' official justifications for the military actions in Panama. It questions whether the United States' rationale and purported legal basis for Noriega's apprehension outside the extradition procedure are valid in light of governing treaties and customary international norms. In general, this Comment examines the Bush administration's political concerns and whether they justify the extraordinary actions taken. In conclusion, this Comment analyzes the ramifications of the United States' invasion of Panama and their effect on the credibility and usefulness of international law.

civilians were killed in the invasion. Panamanian casualties included scores of civilians and at least 240 members of the PDF. United Press Int'l, Jan. 4, 1990.

4. Memorandum Directing the Apprehension of General Manuel Noriega and Others in Panama Indicted in the United States for Drug Related Offenses, 25 WEEKLY COMP. PRES. DOC. 1976 (Dec. 20, 1989) [hereinafter Memorandum Directing Apprehension].

5. See generally Address to the Nation, *supra* note 3; Nanda, *supra* note 3, at 494-501.

6. Tweedale, *Noriega Surrenders to United States*, United Press Int'l, Jan. 4, 1990.

II. FACTUAL BACKGROUND

A. *Noriega's Rise and Fall—A Brief Background of the Noriega Case*

Noriega became the head of the Panama National Guard's intelligence branch ("G-2"), under the regime of General Omar Torrijos, in 1972.⁷ This gave Noriega access and control over the exchange and transmission of military intelligence, criminal investigations, customs, and immigration.⁸ As the head of G-2, Noriega became useful to the United States' political-military interests in Latin America.⁹ Noriega was allegedly on the payrolls of the United States Central Intelligence Agency ("CIA") and the Defense Intelligence Agency ("DIA") of the United States Department of Defense.¹⁰

In 1981, General Omar Torrijos died in a plane crash.¹¹ In the ensuing power struggle, the now politically powerful Noriega¹² carefully maneuvered his way past other National Guard commanders to take full control of the military.¹³ By 1983, Noriega emerged as the

7. Comment, *An Inquiry Regarding the International and Domestic Legal Problems Presented in United States v. Noriega*, 20 U. MIAMI INTER-AM. L. REV. 393, 397 (1989).

8. Cooper, Lane, Norland, Gonzales, Parker & Sandza, *Drugs, Money & Death*, NEWSWEEK, Feb. 15, 1988, at 32. Reports alleged that Noriega provided valuable assistance to the CIA by using Panama as a base of intelligence operations in Central America. Noriega also allegedly supplied the United States with intelligence information on Cuba. *A Skilled Dealer With U.S.*, N.Y. TIMES, Feb. 7, 1988, at 18, col. 1; see also *The Noriega Case: Intelligence Operations; U.S. Worry: What Damage Can Noriega Do*, N.Y. TIMES, Feb. 7, 1988, at 1, col. 3.

9. For example, Noriega aided the United States government in training Nicaraguan rebels to fight the Sandinistas. Robinson, *Dwindling Options in Panama*, FOREIGN AFF. 187, 189 (1989).

10. Ciolli, Saul, Royce & Esposito, *CIA Connection Seen As Key Issue in Battling U.S. Drug Charges*, NEWSDAY, Jan. 5, 1990, at 3 (city ed.). Reportedly, Noriega was on the CIA's payroll during President Bush's term as CIA director from 1975 to 1976. *Id.* Indeed, testimony before Congress has indicated that Noriega was trafficking drugs while simultaneously assisting various United States administrations in curbing the drug trade. *Id.*

Bush had two meetings with Noriega, one during his tenure as CIA director and another in 1983. *Id.* The late CIA Director, William Casey, former National Security Advisor, John Poindexter, and other officials in the Reagan administration also met with Noriega. *Id.* In 1988, Panamanian diplomat Jose Blandon testified before Congress about Noriega's longstanding relationship with various United States intelligence agencies. *Id.*; see generally Bruck, *How Noriega Got Caught and Got Away*, AM. LAW., at 35 (July/Aug. 1988).

11. *Frontline: The Noriega Connection* (KCET television broadcast, Jan. 30, 1990) (transcript on file with the Loyola of Los Angeles International and Comparative Law Journal) [hereinafter *The Noriega Connection*]. Some of Noriega's opponents were convinced that Noriega engineered the crash. *Id.*

12. *Id.*; see also Arias Calderon, *Panama: Disaster or Democracy*, 66 FOREIGN AFF. 328, 333 (Winter 1987/88).

13. Bruck, *supra* note 10, at 35. Noriega became commandant after striking a deal with Ruben Paredes and Roberto Diaz Herrera in August 1983. *Id.*

chief of the PDF and the leader of Panama.¹⁴

Politically, Noriega aligned himself with then President Reagan's anti-communist agenda to gain the United States' favor.¹⁵ Noriega ingratiated himself with the Reagan administration by allegedly assisting Nicaraguan Contra rebels with financial and military aid.¹⁶ While Noriega helped the United States fight communism in Central America, he secretly furthered his financial interests by allegedly striking deals with the Medellín drug cartel in Colombia.¹⁷

Throughout the early 1980s, Noriega steadily consolidated his political power within Panama. Noriega backed Nicolas Ardito Barletta, former World Bank vice president, in the 1984 Panamanian presidential election. Noriega created a coalition of pro-government political parties, known as the National Democratic Union ("UNADE"), to support Barletta.¹⁸ Consequently, Barletta defeated Dr. Arnulfo Arias, a long-time active politician.¹⁹ However, this victory was marred by charges of blatant electoral fraud²⁰ and Barletta's presidency was short-lived.²¹

In August 1985, Dr. Hugo Spadafora allegedly spoke with United States Drug Enforcement Agency ("DEA") agents in Costa Rica regarding Noriega's narcotics ties.²² Dr. Spadafora, a revolutionary, was an outspoken critic and bitter enemy of Noriega.²³ Days

14. Robinson, *supra* note 9, at 187.

15. *The Noriega Connection*, *supra* note 11.

16. *See id.* In 1983, Bush, then CIA Director, met Noriega in Panama. A source present at the meeting revealed that they discussed the Contra war. Noriega allegedly gave weapons and money to Nicaraguan Contra leaders and allowed Contras to train in remote areas outside United States bases. *Id.*; *see also* Bruck, *supra* note 10, at 35.

17. *See* Indictment, United States v. Noriega, No. 88-0079 (S.D. Fla. filed Feb. 4, 1988). The indictments alleged that Noriega provided sanctuary for members of the Medellín cartel after the Colombian government's crackdown on drug traffickers, following the murder of Colombian Minister of Justice, Rodriguez Lara-Bonilla. *Id.* For a thorough discussion of the Medellín cartel's drug trafficking activities, *see* Comment, *International Extradition and the Medellín Cocaine Cartels: Surgical Removal of Colombian Cocaine Traffickers for Trial in the United States*, 13 LOY. L.A. INT'L & COMP. L.J. 955 (1991).

18. Comment, *supra* note 7, at 400; *see also* Robinson, *supra* note 9, at 188.

19. Robinson, *supra* note 9, at 188. Arias had been involved in Panamanian politics since 1941. *Id.*; *see also* Bruck, *supra* note 10, at 38.

20. In October 1984, Ardito Barletta was sworn in as Panama's President after a paper-thin victory in elections allegedly rigged by the opposition. L.A. Times, Oct. 8, 1984, at 4, col. 1.

21. On September 28, 1985, Ardito Barletta resigned after less than one year in office. *Panama's Military Chooses A New Softer-Line President*, Financial Times, Oct. 1, 1985, at 4.

22. *Politics: Spadafora Scandal Seen as Trigger—Was Ardito Barletta's Removal a Bid to Deflect Attention*, Latin Am. Weekly Rep., October 4, 1985.

23. *Id.*

after contacting the DEA, Spadafora was found grotesquely tortured and beheaded.²⁴ Rumors spread that the PDF murdered Spadafora on Noriega's order.²⁵ Weeks later, Barletta ordered an investigation into Spadafora's death. Shortly thereafter, Barletta resigned his presidency, allegedly succumbing to pressure exerted by Noriega.²⁶

By 1985, Noriega was becoming an embarrassment to Washington, despite his value as an intelligence asset.²⁷ The Reagan administration attempted to distance itself from Noriega²⁸ when it became clear that he was involved in narcotics transportation through Panama.²⁹ Noriega's power began to crumble in 1987. Colonel Roberto Diaz Herrera, the retiring second-in-command of the PDF, publicly accused Noriega of drug-related activities, rigging the 1984 election, and murdering Hugo Spadafora.³⁰ Finally, evidence of Noriega's drug trafficking activities resulted in grand jury indictments in Miami and Tampa, on February 4, 1988.³¹

Panama's political turmoil escalated in 1988 when President Eric Delvalle announced that he had fired Noriega as chief of the PDF.³² However, Delvalle's choice to replace Noriega refused to take office, and efforts to topple Noriega quickly disintegrated.³³ The National

24. *Id.*

25. *Id.*

26. *Id.*

27. See generally *Situation in Panama: Hearings Before the Subcomm. on Western Hemisphere Affairs of the Comm. on Foreign Relations, 99th Cong., 2d Sess. 38-43 (1986)* (statement by the Assistant Secretary of State for Inter-American Affairs, Elliot Abrams). Before the investigations that led to the indictments in Miami and Tampa, the Reagan administration and Congress had become concerned about the deteriorating political and human rights conditions in Panama. This concern was directed not only toward the dominant role of the PDF in Panamanian government operations, but also toward their use of excessive measures in quelling demonstrations, widespread corruption, and their intimidation of political opponents, including their alleged complicity in the unsolved murder of Dr. Hugo Spadafora. *Id.*

28. See *supra* note 27 and accompanying text.

29. Some argue that the United States government suspected General Noriega's ties to drug trafficking as far back as 1972, but that the United States believed Noriega's position and knowledge outweighed the harm caused by his involvement in illegal narcotics trade. See, e.g., *U.S. Aides in '72 Weighed Killing Officer Who Now Leads Panama*, N.Y. Times, June 13, 1986, at A1, col. 5 (city ed.). "Law enforcement officials in the Nixon Administration once proposed the assassination of Gen. Manuel Antonio Noriega, who was then chief of intelligence of the Panama Defense Force, as partial solution to that nation's heavy drug trafficking . . ." *Id.*

30. See Arias Calderon, *supra* note 12, at 329.

31. See *supra* note 1 and accompanying text.

32. Milloy, *Noriega to be Slippery Legally Too: Former Leader Claims He is a Political Prisoner*, Newsday, Jan. 5, 1990, at 2 (city ed.). Noriega had originally chosen Delvalle to be President. *Id.*

33. *Id.*

Assembly then ousted Delvalle and named Panama's Education Minister, Manuel Solio Palma, as the minister in charge of the presidency.³⁴ Noriega's opposition retaliated by calling a general strike, in February 1988.³⁵ In March, thousands marched in Panama City demanding free elections and an end to the alleged human rights abuses of the Noriega regime.³⁶ On March 16, a few PDF officers tried to oust Noriega in an attempted coup d'etat.³⁷

In March and April 1988, the Reagan administration expanded economic sanctions against Panama and blocked the withdrawal of Panamanian funds from United States banks, in an effort to force Noriega to relinquish his power.³⁸ Further, the United States even tried to negotiate a deal with Noriega, whereby the indictments would be dropped if Noriega would leave Panama.³⁹

On May 7, 1989, Panama's presidential election pitted Noriega's candidate, Carlos Duque, against opposition candidate, Guillermo Endara. When the polls closed, both sides claimed victory.⁴⁰ On May 10, 1989, the Panamanian government nullified the elections.⁴¹ Because of the increasing civil unrest and bloodshed following the election, President Bush ordered 2,000 additional United States military troops to Panama.⁴² On September 1, 1989, provisional President Francisco Rodriguez took office,⁴³ however, Noriega retained de facto control of the government.⁴⁴

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. See Liech, *Recognition of Governments*, 82 AM. J. INT'L L. 566, 571-74 (1988). On April 8, 1988, President Reagan imposed economic sanctions, including the taking of assets, against the Noriega regime in Panama. *Id.*; see generally Note, *The Survival of Noriega: Lessons From the U.S. Sanctions Against Panama*, 26 STAN. J. INT'L L. 269-323 (1989).

39. *U.S. Makes Offer to Noriega: Tells Panama Leader that, if He Leaves, Charges will be Dropped*, *Newsday*, Feb. 18, 1988, at 7 (city ed.) ("the Reagan administration has offered to seek a dismissal of indictments against Panama's military leader, Gen. Manuel Noriega, if he and several top aides leave that country"); *U.S. Official's Secret Visit to Panama Told: State Department Offers Noriega Deal to Accept Asylum in Spain Without Worry of Extradition*, L.A. Times, Mar. 19, 1988, § 1, at 1, col. 2 ("two senior State Department officials made a secret visit to Panama on Friday to offer military strongman Manuel A. Noriega a deal under which he would step down and accept political asylum in Spain in exchange for assurances that he would not be extradited to the United States").

40. Milloy, *supra* note 32, at 2.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

On October 3, 1989, in a final internal power struggle, Major Moises Giroldi, chief of Noriega's security company, seized the headquarters of the PDF.⁴⁵ Noriega negotiated with his captors until his loyalist units attacked and forced the rebels to surrender.⁴⁶ Noriega executed ten rebels, including Major Giroldi, after they surrendered.⁴⁷ Ironically, the unsuccessful military coup foreshadowed Noriega's demise and marked a fateful chapter in his quest to retain power.

B. The Indictments

On February 4, 1988, federal grand juries in Miami and Tampa indicted Noriega.⁴⁸ The twelve-count Miami indictment charged Noriega, as a "principal,"⁴⁹ with violating the Travel Act,⁵⁰ racketeering,⁵¹ and conspiring to import, distribute, and manufacture cocaine for sale in the United States.⁵² Noriega allegedly exploited his official position as the head of the intelligence branch of the Panamanian National Guard, and then as commander-in-chief of the PDF. He received payoffs for assisting and protecting international drug traffickers and money laundering operations in Panama.⁵³

Specifically, the indictments alleged that Noriega protected cocaine shipments travelling through Panama, from Colombia to the United States.⁵⁴ Further, he allegedly arranged for the transshipment and sale of ether and acetone to the Medellín cartel. The indictment

45. *Rebels Held Noriega for Hours: General's Fate was Discussed with U.S. Officer During Coup Attempt*, Wash. Post, Oct. 5, 1989, at 1A; *Three Top Officers, Thirty-Five Others Arrested in Panama Plot*, L.A. Times, Oct. 5, 1989, at 1, col. 5.

46. Boudreaux & Freed, *Noriega Will Face Charges in Ten Deaths*, L.A. Times, Jan. 1, 1990, at A1, col. 6.

47. *Id.*

48. Indictment, United States v. Noriega, No. 88-0079 (S.D. Fla. filed Feb. 4, 1988).

49. 18 U.S.C. § 2(a) reads: "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commissions is punishable as a principle." 18 U.S.C. § 2(a) (1988).

50. 18 U.S.C. § 1951(a). This section prohibits the interference of any commerce by robbery, extortion, or threats of physical violence. A violation of this section is punishable by fines up to \$10,000, twenty years imprisonment, or both. *Id.*

51. *Id.* § 1962(c), (d). This section proscribes participation in, or conspiracy with regard to, an enterprise engaged in a pattern of racketeering. *Id.*

52. 21 U.S.C. § 963. This section proscribes conspiracy to manufacture cocaine, intending that it be imported into the United States for sale. *Id.* Noriega was further charged with distributing, aiding, and abetting the distribution of cocaine, intending that it be imported into the United States, in violation of 21 U.S.C. § 959 and 18 U.S.C. § 2. Indictment, United States v. Noriega, No. 88-0079 (S.D. Fla. filed Feb. 4, 1988).

53. See Indictment, United States v. Noriega, No. 88-0079 (S.D. Fla. filed Feb. 4, 1988).

54. *Id.*

also alleged that Noriega provided a refuge for the continued operations of the Medellín cartel after the Colombian government's crackdown on drug traffickers, following the murder of the Colombian Minister of Justice, Rodriguez Lara-Bonilla.⁵⁵ The indictment further charged Noriega with protecting a cocaine laboratory in Darien Province, Panama, and facilitating the transfer of millions of dollars in narcotics proceeds from the United States to Panamanian banks.⁵⁶

According to the Miami indictments, Noriega also allegedly traveled to Havana, Cuba and met with President Fidel Castro.⁵⁷ Castro mediated a dispute between Noriega and the Medellín cartel over Panama's seizure of a cocaine laboratory in the Darien Province that Noriega had been paid to protect.⁵⁸ All of these activities were allegedly undertaken for Noriega's personal profit.⁵⁹ The three-count Tampa indictment⁶⁰ charged Noriega with conspiring to import or distribute one million pounds of marijuana for sale in the United States, between 1982 and 1984.⁶¹

On March 28, 1988, Noriega's counsel filed a motion in the United States District Court in Miami, requesting a special appearance to contest the jurisdiction of the court and to attack the legal sufficiency of the indictments.⁶² The court granted the motion, notwithstanding the fact that Noriega was a fugitive and not before the court at the time.⁶³ In so ruling, the court specifically rejected the

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. See *U.S. Depicts Noriega as Drug Cartel Partner*, Chic. Trib., Feb. 6, 1988, at 6.

60. Indictment, *United States v. Noriega*, No. 88-28 (M.D. Fla. filed Feb. 4, 1988).

61. *Id.* The Miami indictment also alleged that General Noriega participated in an unlawful racketeering enterprise, utilizing his official position to "facilitate the manufacture and transportation of large quantities of cocaine destined for the United States and to launder narcotics proceeds." *Id.*; see generally *Noriega Indicted by U.S. for Links to Illegal Drugs*, N.Y. Times, Feb. 6, 1988, at 1, col. 2 (city ed.).

62. See Motion to Allow Special Appearance of Counsel, *United States v. Noriega*, 88-0079 (S.D. Fla. filed Mar. 28, 1988). Noriega contested the court's jurisdiction to decide his motion to allow special appearance of counsel, despite the fact that he was a fugitive. For case law supporting this argument see *United States v. Shapiro*, 391 F. Supp. 689 (S.D.N.Y. 1975).

63. The court reasoned that, because this was the first indictment of the head of a foreign state for using his position to commit the alleged crimes, its importance warranted a determination of the validity of the proceedings. *United States v. Noriega*, 683 F. Supp. 1373, 1374-75 (S.D. Fla. 1988). Judge Hoeveler stated:

The present indictment is surrounded with special circumstances which militate in favor of allowing the defendant to attack its validity. Specifically, this appears to be a case of first impression. Arguments of counsel will be helpful in resolving the delicate issues presented. The case is fraught with political overtones. I do not propose

likelihood that the Justice Department would seek extradition of Noriega.⁶⁴ Further, the court did not expect that Noriega would ever be brought to the United States to answer the charges against him.⁶⁵ Ironically, subsequent events proved the court wrong.

C. *Apprehension of General Noriega*

In the time between Noriega's indictment and his subsequent capture, relations between the United States and Panama deteriorated considerably. On December 15, 1989, Noriega's military dictatorship announced it was in a state of war with the United States⁶⁶ and publicly threatened the lives of United States citizens in Panama.⁶⁷

On December 20, 1989, President Bush announced to the nation that he had ordered 26,000 military troops to Panama.⁶⁸ President Bush outlined four principle objectives justifying the commitment of armed forces in Panama: 1) to protect American lives; 2) to assist the lawful and democratically-elected government in Panama in fulfilling its international obligations; 3) to defend the integrity of United States rights under the Panama Canal treaties; and 4) to seize and arrest General Noriega to face federal drug trafficking charges.⁶⁹

On the same day, the President issued two key memoranda, the first ending economic sanctions against Panama,⁷⁰ the second directing the military to apprehend Noriega and other fugitives indicted for drug-related offenses in the United States.⁷¹ Before United States troops were engaged, however, the Panamanian government swore in

to engage in any political inquiries beyond those properly raised by legal argument. However, the best way to avoid the appearance that this indictment has assumed the charter of a political proceeding, rather than a legal one, is to determine its legal validity upon the arguments of counsel. In that way, the integrity of our legal system will best be served.

Id.

64. *Id.* at 1373 n.1.

65. *Id.* at 1373.

66. Nanda, *supra* note 3, at 496. On December 15, 1989, the Panamanian legislature adopted a resolution formally declaring the country to be in a state of war with the United States. *Id.*

67. The most serious and repeatedly cited incident, allegedly precipitating the invasion, occurred on December 15, 1989 when members of the PDF killed one United States Marine officer, wounded another, beat a third, and threatened his wife at a roadblock. *Protection of Nationals—Deployment of U.S. Forces to Panama*, 84 AM. J. INT'L L. 545 (1990) [hereinafter *Protection of Nationals*].

68. Address to the Nation, *supra* note 3.

69. *Id.*; see Nanda, *supra* note 3, at 494.

70. Memorandum Directing the Lifting of Economic Sanctions on Panama, 25 WEEKLY COMP. PRES. DOC. 1977 (Dec. 20, 1989); see *Protection of Nationals*, *supra* note 67, at 549.

71. Memorandum Directing Apprehension, *supra* note 4.

Guillermo Endara as president, and he, in turn, welcomed the assistance of United States armed forces.⁷² President Endara reportedly won the Panamanian presidential election, which Noriega had nullified several months earlier.⁷³

Noriega eluded capture during the initial military assault.⁷⁴ He requested asylum in the Papal Nunciature at Panama City on Christmas Eve, 1989.⁷⁵ Panamanian Archbishop Jose Sebastian Laboa, the Vatican nuncio in Panama since 1982, agreed to provide temporary refuge to Noriega while the Vatican determined whether he should be prosecuted for criminal or political activity.⁷⁶ In the next ten days, the Vatican, the newly installed Panamanian government of President Guillermo Endara, and the Bush administration held intensive negotiations for Noriega's surrender.⁷⁷

On January 3, 1990, Noriega voluntarily left the Vatican embassy and submitted to the custody of General Maxwell Thurman, Chief of the United States Army's Southern Command.⁷⁸ Noriega was flown by helicopter to Howard Air Force Base in Panama where DEA agents arrested him.⁷⁹ The United States then transported Noriega to Homestead Air Force Base, Florida.⁸⁰ Finally, on January 4, 1990, Noriega was arraigned in the United States District Court in Miami, on charges stemming from his indictment for drug trafficking. On February 8, 1990, the court ruled that it had jurisdiction over Noriega.⁸¹

72. *Protection of Nationals*, *supra* note 67, at 549.

73. *See supra* text accompanying notes 40-41.

74. Fearful that Noriega might escape to Mexico or another country, the Bush administration offered a \$1 million bounty for his capture. DeStefano, *Noriega Bounty Backed by U.S. Drug Charges*, *Newsday*, Dec. 22, 1989, at 5 (city ed.). "It's legal for the United States to offer a \$1 million bounty for Panamanian Gen. Manuel Antonio Noriega because he is a suspected narcotics trafficker . . ." *Id.*

75. *Vatican Refuses to Turn Noriega over to U.S.*, *L.A. Times*, Dec. 28, 1989, at A1, col. 6.

76. *Noriega Seeks Asylum with Pope's Envoy in Panama*, *Reuters*, Dec. 24, 1989; *Noriega's Fate Uncertain Now that He Seeks Vatican Asylum*, *Reuters*, Dec. 25, 1989; *Noriega's Case Hands Vatican Delicate Diplomatic Dilemma*, *Reuters*, Dec. 25, 1989.

77. Boudreaux & Freed, *supra* note 46, at A1. Panama's top legal officer, Attorney General Rogelio Cruz, and President Guillermo Endara disagreed as to whether Noriega should be extradited to the United States or stand trial in Panama. Harris, *Panama Gives Conflicting Signals on Noriega's Fate*, *Reuters*, Jan. 1, 1990.

78. Tweedale, *supra* note 6.

79. *Id.*

80. *Noriega Surrenders to U.S.: He Leaves Embassy and is Flown to Florida for Trial*, *L.A. Times*, Jan. 4, 1990, at A1, col. 5; *The Surrender of Noriega: Text of President's Statement on Noriega*, *L.A. Times*, Jan. 4, 1990, at A14, col. 1.

81. *Judge Won't Yield to Jurisdiction*, *L.A. Times*, Feb. 8, 1990, at P2, col. 3.

III. THE UNITED STATES GOVERNMENT'S JUSTIFICATIONS FOR THE INVASION OF PANAMA.

Many people criticized the United States' activities in Panama. On December 29, 1989, nine days after Operation Just Cause began, the United Nations General Assembly condemned the invasion as a violation of international law.⁸² Article 2(4) of the United Nations Charter unequivocally prohibits "the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the Purposes of the United Nations."⁸³ Similar proscriptions against the use of force are found in multilateral regional conventions. For example, article 1 of the Inter-American Treaty of Reciprocal Assistance ("Rio Treaty") strongly condemns war and the threat or use of force "in any manner inconsistent with the provisions of the Charter of the United Nations or the treaty."⁸⁴

Furthermore, article 17 of the Charter of the Organization of the American States ("O.A.S.") prohibits any military occupation, even temporary, or "other measures of force taken by another State, directly or indirectly, on any grounds whatever."⁸⁵ It further provides that "[n]o territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized."⁸⁶

Despite the United Nations' condemnation, the Bush administration justified the invasion as an exercise of the right of self-defense under international law.⁸⁷ The following analysis addresses whether the stated purposes of the United States intervention in Panama fall

82. *Effects of the Military Intervention by the United States of America in Panama on the Situation in Central America*, G.A. Res. 240, 44 U.N. GAOR Supp. (No. 49), U.N. Doc. A/Res/44/240 (1989). By a vote of 75 to 20, with 40 abstentions, the United Nations General Assembly adopted a resolution strongly condemning the United States military intervention in Panama as a flagrant violation of international law. The resolution also demanded the immediate withdrawal of United States forces, as mandated by the principles of neutrality, set forth in the Panama Canal treaties. *Id.*; *U.N. General Assembly Deplores U.S. Action in Panama*, Reuters, Dec. 29, 1989; *U.N. Condemns U.S. Military Action in Panama*, United Press Int'l, Dec. 29, 1989.

83. U.N. CHARTER art. 2, para. 4.

84. Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, art. I, 62 Stat. 1681, T.I.A.S. No. 1838, 21 U.N.T.S. 77. Both the United States and Panama are signatories to the treaty. *Id.*

85. O.A.S. CHARTER art. 17.

86. *Id.* art. 21.

87. Address to the Nation, *supra* note 3, at 1974; *Fighting in Panama: The State Dept.—Excerpts from Statement by Baker on U.S. Policy*, N.Y. Times, Dec. 21, 1989, § A, at 19, col. 3.

within any of the exceptions to article 51 of the United Nations Charter, article 21 of the O.A.S. Charter, or principles of customary international law.⁸⁸

A. *Safeguarding the Lives of United States Citizens*

Safeguarding the lives of United States citizens was the first of the four United States justifications for invading Panama.⁸⁹ The United States claimed to have exercised its inherent right of self-defense, as recognized in the United Nations and O.A.S. Charters.⁹⁰ Article 51 of the United Nations Charter provides that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”⁹¹ Article 18 of the O.A.S. Charter provides: “The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.”⁹² Under these articles, the United States claimed the right to take measures necessary to defend United States citizens, military personnel, and both military and civilian installations in Panama. According to the United States government, the operation sought to protect United States lives, given “General Noriega’s reckless threats and attacks upon Americans in Panama”⁹³

Regardless of what the United States government stated publicly, the incidents triggering the United States invasion of Panama do not

88. Customary international law refers to the general practice of governments which is widely accepted as law. F. NEWMAN & D. WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 594-96 (1990); 1 *RESTATEMENT (THIRD) OF FOREIGN RELATIONS* § 102 comment b (1987) (“there is no precise formula to indicate how widespread a practice must be, but it should reflect wide acceptance among the states particularly involved in the relevant activity”). A customary norm binds all governments, including those that have not recognized it, so long as they have not expressly and persistently objected to its development. *Id.* comment d.

In *Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14, the International Court of Justice held that, in spite of the United States’ invocation of the United Nations Charter as a basis for resolving disputes, “customary international law continues to exist and to apply, separately from international treaty law, even where the two categories of law have an identical content.” *Id.*

89. See Address to Nation, *supra* note 3, at 1974.

90. U.N. CHARTER art. 51; O.A.S. CHARTER art. 18.

91. U.N. CHARTER art. 51.

92. O.A.S. CHARTER art. 18.

93. Address to the Nation, *supra* note 3, at 1974.

rise to the level of an "armed attack," as contemplated by the O.A.S. Charter. Three incidents on December 15, 1989 supposedly precipitated the invasion. Members of the PDF killed one United States Marine officer at a roadblock, wounded another, and beat a third while threatening his wife with sexual abuse.⁹⁴ While these incidents were serious, they did not constitute a systematic or continuous pattern of aggression that would evidence the preparation of an "armed attack" against the United States.

In the week preceding the armed invasion, the Panamanian Assembly adopted a formal resolution declaring a state of war with the United States.⁹⁵ While the outbreak of war may accompany a declaration of war,⁹⁶ no evidence exists to demonstrate that Panama was indeed poised for war against the United States. In addition, Panama did not instigate an "armed attack" against the United States. Deputy Secretary of State Eagleburger called Panama's declaration of war a "charade and nonsense."⁹⁷ Indeed, the Bush administration did not seem to take these measures seriously, describing the Assembly's action as "another hollow step in an attempt to force [Noriega's] rule on the Panamanian people."⁹⁸

Even assuming that the Bush administration ordered the invasion in anticipation of an armed attack by Noriega's forces, such "anticipatory self-defense" can only be justified in extreme cases.⁹⁹ Historically, the United Nations has not authorized "anticipatory

94. Nanda, *supra* note 3, at 496.

95. *Id.*

96. Article I of the Hague Convention of 1906 provides that "[t]he Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war." Hague Convention No. III, 36 Stat. 2259, T.I.A.S. No. 538, 205 Parry's T.S. 263.

97. *Noriega Gets New Powers, Title in Panama*, Chi. Trib., Dec. 16, 1989, at 8C.

98. *Opposition Leader in Panama Rejects a Peace Offer from Noriega*, N.Y. Times, Dec. 17, 1989, at A5, col. 1.

99. "'Anticipatory self-defense' [is] the right to act in self-defense in anticipation of attack." Henkin, *Force Intervention and Neutrality in Contemporary International Law*, AM. SOC. INT'L L. 147, 150 (1963). Traditional international law permits the use of armed force in anticipation of an attack whenever there exists a "necessity of self-defense" which is imminent, overwhelming, and leaves no time for deliberation. Zebalis, *Preliminary Thoughts on Some Unresolved Questions Involving the Law of Anticipatory Self-Defense*, 19 CASE W. RES. J. INT'L L. 129 (1987). For specific applications of the doctrine, see Polebaum, *National Self-Defense in International Law: An Emerging Standard for a Nuclear Age*, 59 N.Y.U. L. REV. 187, 190, 195, 200, 212, 223, 225, 226 (1984) (examination of the June 7, 1981 Israeli aerial attack against the Tamuz I nuclear reactor in Baghdad, Iraq); Joyner, *The United States Action in Grenada: Reflections on the Lawfulness of Invasion*, 78 AM. J. INT'L L. 131, 133, 134, 140 (1984).

self-defense."¹⁰⁰ In this case, there existed no evidence that the United States was threatened with an imminent Panamanian armed attack. Thus, the invasion cannot be justified as preventive war.

Moreover, the Preamble to the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations ("Declaration") imposes a duty on states to refrain from acts of reprisal involving the use of force.¹⁰¹ However, the Declaration, in its General Part, also states that nothing therein "shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter . . ."¹⁰² Debate continues over the proper application of article 2(4),¹⁰³ whether states may resort to reprisals¹⁰⁴ under the rubric of article 51, and the inherent right of self-defense.¹⁰⁵

Nevertheless, the use of force under the "self-defense" exception of article 51 can be justified only where: 1) the intervention is temporary and limited in scope;¹⁰⁶ 2) it is a last resort;¹⁰⁷ 3) it is neces-

100. The United Nations rejected attempts to read the United Nations Charter as permitting anticipatory self-defense, in relation to Suez and Sinai. Henkin, *supra* note 99, at 151.

101. G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 18) at 337, U.N. Doc. A/8082 (1970). This appears to clarify article 2(4) of the United Nations Charter. See *supra* text accompanying note 83.

102. G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 18) at 340, U.N. Doc. A/8082 (1970).

103. See generally Comment, *Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 AM. J. INT'L L. 642 (1984) [hereinafter Comment, *Coercion and Self-Determination*]; Comment, *The Legality of Pro-Democratic Invasion*, 78 AM. J. INT'L L. 645 (1984) [hereinafter Comment, *Legality of Pro-Democratic Invasion*].

104. Reprisals are retaliatory acts which would otherwise be unlawful, but are permitted in warfare to force an adversary to comply with the laws of war. DEPARTMENT OF THE ARMY, FIELD MANUAL NO. 27-10, THE LAW OF LAND WARFARE ¶ 497 (1956).

105. It has been argued that Article 51 was not intended to be a comprehensive statement (or restatement) of the law of self-defense, that it was hastily drafted . . . at the San Francisco conference as part of the compromise that brought the Latin American States into the organization by preserving, in part, their preference for regional arrangements.

J. SWEENEY, C. OLIVER & N. LEECH, THE INTERNATIONAL LEGAL SYSTEM CASES AND MATERIALS 1462 (3d ed. 1987).

106. Humanitarian intervention involves one government using physical force to stop another government from engaging in human rights violations. F. NEWMAN & D. WEISSBRODT, *supra* note 88, at 545. There are generally six criteria for judging the legality of humanitarian intervention:

- (1) There must be an immediate and extensive threat to fundamental human rights.
- (2) All other remedies for the protection of those rights have been exhausted to the extent possible within the time constraints posed by the threat.
- (3) An attempt has been made to secure the approval of appropriate authorities in the target state.

sary;¹⁰⁸ and 4) it is proportional to the threat to the lives of United States citizens.¹⁰⁹ These requirements are subject to United Nations review.

Arguably, the invasion and occupation of Panama was temporary. Further, given the United States' frustrated efforts to topple Noriega, the extralegal methods employed could be considered a last resort. The use of a large scale military operation, however, was unnecessary to protect the lives of United States citizens. It also was clearly not in proportion to the threat of Panamanian aggression against United States citizens. The United States carried out the invasion with over 25,000 troops armed with the world's most sophisticated and powerful weapons.¹¹⁰ The United States employed tanks, bazookas, mortar artillery, M-60 machine guns, M-113 armored personnel carriers, AC-130 Spectre gunships, and even Stealth F-117 fighter bombers in this attack.¹¹¹ According to the Independent Commission of Inquiry on the United States invasion of Panama, the invasion resulted in 3,000 to 4,000 deaths—mostly civilians.¹¹² In addition, the invasion caused severe, widespread devastation and de-

(4) There is a minimal effect on the extant structure of authority (e.g., that the intervention not be used to impose or preserve a preferred regime).

(5) The intervention must be of limited duration.

(6) A report of the intervention must be filed immediately with the Security Council and, where relevant, regional organizations.

Lillich, *A United States Policy of Humanitarian Intervention and Intercession*, in *HUMAN RIGHTS AND AMERICAN FOREIGN POLICY* 278, 287-90 (D. Kommers & G. Loescher ed. 1979) [hereinafter Lillich, *U.S. Policy of Humanitarian Intervention and Intercession*]; Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 *IOWA L. REV.* 325, 347-51 (1967); Moore, *The Control of Foreign Intervention in Internal Conflict*, 9 *VA. J. INT'L L.* 205, 261-64 (1969); Nanda, *The United States' Action in the 1965 Dominican Crisis: Impact on World Order, Part I*, 43 *DEN. L.J.* 439, 474-79 (Fall 1966).

107. See sources cited *supra* note 106.

108. The requirement of "necessity" applies when a nation engages in military action to defend its interests. Schachter, *The Right of States to Use Armed Force*, 82 *MICH. L. REV.* 1620, 1635-37 (1984) [hereinafter Schachter, *The Right of States to Use Armed Force*]; see also Schachter, *Self-Help in International Law: U.S. Action in the Iranian Hostage Crisis*, 37 *J. INT'L AFF.* 231 (Winter 1984) (discussing the 1980 attack on the United States Embassy in Tehran and whether the seizure of hostages constituted an armed attack).

109. "Proportionality is closely linked to necessity as a requirement of self-defense." Schachter, *The Right of States to Use Armed Force*, *supra* note 108, at 1637-38. The idea is that the amount of force used must be in proportion to the aggression. *Id.*; see also Robblee, *The Legitimacy of Modern Conventional Weaponry*, 71 *MIL. L. REV.* 95, 111 (1976) (humanitarian considerations require that belligerents shall not inflict on their adversaries harm out of proportion to the object of warfare, to destroy or weaken the military strength of the enemy).

110. Motion to Dismiss Indictment at 1, *United States v. Noriega*, 88-0079 (S.D. Fla. 1988) [hereinafter Motion to Dismiss].

111. *Id.*

112. The Independent Commission of Inquiry on the United States Invasion of Panama

struction to both humans and property. One official estimate states that at least 18,000 civilian homes were destroyed during the invasion.¹¹³ Human rights groups estimated that the number of displaced civilians exceeded 50,000.¹¹⁴

Humanitarian considerations and principles of the law of war require that belligerents not inflict harm on their adversaries out of proportion to the object of warfare.¹¹⁵ Even assuming that one can justify some level of intervention to protect United States nationals, the scale of the operation casts serious doubt on whether the United States' actions satisfied the minimum required standards of necessity and proportionality under customary international law. It is equally doubtful that this qualifies as an exception to the limitation on the use of force under article 51 of the O.A.S. Charter.

B. Restoration of Democracy

The second objective of Operation Just Cause was the return to power of Panama's lawful and democratically-elected government and the fulfillment of Panama's obligations under international law.¹¹⁶ Panama's obligations include a duty, under the Single Convention on Narcotics Drugs, to prevent the use of its territory as a base for smuggling drugs into the United States.¹¹⁷ General Noriega assumed power through coercion and scare tactics, against the will of the Panamanian people. Noriega's nullification of the May 1989 presidential election is a prime example of his tactics.¹¹⁸ Thus, the United States argued that Noriega was preventing the lawful government of Panama from keeping its international obligations.

Even though Noriega gained power through intimidation and coercion, there is no legal basis for forcibly invading a sovereign country to replace dictatorial rule with democracy. The strong language in article 15 of the O.A.S. Charter prohibits the use of force in another state's territory. Specifically, it states that no state shall "intervene, directly or indirectly, for any reason whatever, in the internal or ex-

prepared a report ("IC Report") on the invasion of Panama, on February 8, 1990. Motion to Dismiss, *supra* note 110, at 2 n.1.

113. The Physicians for Human Rights prepared a report ("PHR Report") on March 15, 1990. Motion to Dismiss, *supra* note 110, at 3.

114. *Id.*

115. Robblee, *supra* note 109, at 111.

116. Address to the Nation, *supra* note 3; Nanda, *supra* note 3, at 498.

117. Panama is a signatory to the Single Convention on Narcotics Drugs, Mar. 30, 1961, 18 U.S.T. 1407, T.I.A.S. No. 6298, 500 U.N.T.S. 1407.

118. See *supra* text accompanying notes 40-41.

ternal affairs of any other State."¹¹⁹ This prohibition covers not only the use of armed force, but also "any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements."¹²⁰

In addition, the United Nations General Assembly has recognized the principle of nonintervention, in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States.¹²¹ The International Court of Justice also recognizes nonintervention as an operative principle of customary international law.¹²² The court recently reiterated its rejection of military intervention in foreign nations, based on international law and public policy.¹²³

The Panamanians' rights to self-determination, freedom, and independence from Noriega's dictatorial rule is universally recognized.¹²⁴ However, the right of Panamanians to foreign assistance or support constituting intervention is not universally recognized.¹²⁵

119. O.A.S. CHARTER art. 15.

120. *Id.*

121. G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 18) at 337, U.N. Doc. A/8018 (1970).

122. Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4, 35 (Judgment of Apr. 9, 1949).

The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. . . . [F]rom the nature of things, [intervention] would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.

Id.

123. Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, paras. 205, 258, 263 (Judgment of June 27). For discussion of *Nicar. v. U.S.*, see generally Gordon, *The Nicaraguan Judgment and the Future of the Law of Force and Self-Defense*, 81 AM. J. INT'L L. 135 (1987).

124. The General Assembly's Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations provides:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

25 U.N. GAOR Supp. (No. 18) at 339, U.N. Doc. A/8018 (1970).

125. Article 2(4) of the United Nations Charter does not allow powerful states to overthrow governments allegedly unresponsive to the popular will. "That invasions may at times serve democratic values must be weighed against the dangerous consequences of legitimizing armed attacks against peaceful governments." Comment, *The Legality of Pro-Democratic Invasion*, 78 AM. J. INT'L L. 645, 649 (1984). There is little agreement as to the legality of humanitarian intervention. See F. BOYLE, *THE FUTURE OF INTERNATIONAL LAW AND AMERICAN FOREIGN POLICY* (1989); Lillich, *U.S. Policy of Humanitarian Intervention and*

Nor is there any international legal instrument which permits a foreign intervenor to maintain or impose a democratic form of government in another state.¹²⁶ Though it is lawful for a foreign state to offer moral, political, and humanitarian assistance to politically oppressed peoples, it is unlawful for a foreign state to intervene in that struggle, provide arms and supplies, or provide other logistical support.¹²⁷ Moreover, humanitarians certainly do not advocate a unilateral military invasion that results in severe and widespread human devastation, dislocation, and property damage.¹²⁸

Panama and the United States coexist in an international framework where legal and moral principles are developed based on reciprocity¹²⁹ and comity.¹³⁰ Disagreements are resolved through dialogue, negotiations, and the application of consensual customary norms and principles.¹³¹ When consensus is not obtained, equal participants are obliged to comply with principles of international law.¹³²

Removing Noriega from power and restoring to the Panamanian people the right to democratic control over their country may be

Intercession, supra note 106, at 287-90; F. TESON, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY (1988).

126. All nations have recognized that "intervention" is unlawful. Henkin, *supra* note 99, at 154-59. Article 1(7) of the United Nations Charter enjoins the United Nations itself from intervening "in matters which are essentially within the domestic jurisdiction of any state." U.N. CHARTER art. 1, para. 7. Article 2(4), which applies to member states, prohibits "the threat or use of force against the territorial integrity of political independence of any state." *Id.* art. 2, para. 4.

127. There is on-going debate as to the scope of humanitarian aid and whether nations may give military and political support to assist the liberation movements. Henkin, *supra* note 99, at 154-59; Comment, *Coercion and Self-Determination, supra* note 103, at 643; Comment, *Legality of Pro-Democratic Invasion, supra* note 103, at 649.

128. The purpose of humanitarian intervention is to safeguard fundamental human rights. F. NEWMAN & D. WEISSBRODT, *supra* note 88, at 545. One of the major criteria in determining the validity of humanitarian intervention is whether the intervenor employs the minimal requisite force and whether the intervention is not likely to cause greater injury to innocent persons and their property than would result if the threatened violation actually occurred. *See supra* text accompanying notes 106-109. The invasion of Panama clearly exceeded the parameters justifying a legitimate humanitarian intervention.

129. Reciprocity is fundamental to international law. The doctrine of reciprocity defines "the relations existing between two states when each of them gives the subjects of the other certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the latter state." BLACK'S LAW DICTIONARY 1142 (5th ed. 1979).

130. Comity of nations refers to "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws." *Id.* at 242.

131. *See generally* Schachter, *The Right of States to Use Armed Force, supra* note 108.

132. *Id.*

laudable. However, removing a tyrant from power cannot justify the violent means employed by the United States. The United States violated the well-established international legal principle of nonintervention in the internal affairs of other countries. Some authors argue that article 2(4) should be interpreted to allow external interference to establish democracy.¹³³ However, using an expansive interpretation of article 2(4) to topple a repressive regime violates the plain language of the United Nations, O.A.S., and other regional charters.

By advocating the violent overthrow of another government and forcibly removing its leader, the United States risks serious repercussions. The United States' actions validate similar actions by other governments for political and ideological purposes. This ad hoc policy threatens to destroy international comity.¹³⁴ Furthermore, the United States has lost its credibility by failing to adhere to the principles of reciprocity and international law.

The long-term economic and political effects on Panama as a result of the invasion are far-reaching. The United States invasion seriously damaged Panama's economy.¹³⁵ Many homes and businesses were looted in its aftermath.¹³⁶ The United States will have to provide substantial financial and humanitarian aid to rebuild Panama's economy.¹³⁷ Additionally, political instability in Panama will likely continue for some time, while the new Endara government rebuilds Panama's political system.

C. Integrity of the Panama Canal Treaties

In response to Noriega's aggression and declaration of war against the United States, President Bush claimed to be exercising the

133. See D'Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AM. J. INT'L L. 516 (1990); Farer, *Panama: Beyond the Charter Paradigm*, 84 AM. J. INT'L L. 503, 505 (1990).

Jeane Kirkpatrick, former United States Ambassador to the United Nations, advocated an expansive interpretation of article 2(4), regarding the United States' invasion of Grenada. She stated that the language in article 2(4) provides "ample justification for the use of force . . . in pursuit of the other values also inscribed in the charter—freedom, democracy, peace." 83 DEP'T ST. BULL. (No. 2081), at 74 (1983).

134. See *supra* note 130 and accompanying text.

135. Ross, *U.S. Lawmakers See Big Challenge in Rebuilding*, L.A. Times, Jan. 5, 1990, at 5A, col. 2.

136. See Motion to Dismiss, *supra* note 110, at 3.

137. *Id.*; Ross, *supra* note 135, at 5A, col. 2; Giacomo, *Panama Can Count on U.S. Support for Economy—Eagleburger*, Reuters, Jan. 2, 1990.

United States' right and obligation under the Panama Canal Treaty¹³⁸ and the Neutrality Treaty¹³⁹ to protect and defend the canal and its availability to all countries.¹⁴⁰

The Neutrality Treaty declares that the canal shall be permanently neutral.¹⁴¹ Upon ratifying the treaty, the United States Senate concluded that the Canal must remain neutral except to defend against "any threat to the regime of neutrality," or the "peaceful transit of vessels through the Canal."¹⁴² The right to defend the Canal, however, does not extend to interference with the "territorial integrity or political independence of Panama."¹⁴³

This justification for the United States invasion fails to meet the stringent exceptions in the Canal and Neutrality Treaties. Noriega's declaration of war did not affect the Canal's operation. Nothing restricted Canal access nor curtailed regular commerce in the weeks preceding the invasion. In sum, the Canal was not threatened with destruction such that it required force to defend it.

D. *Apprehending Noriega*

The United States' final justification for the invasion was the arrest of Noriega and others in Panama subject to United States indictment for drug-related offenses.¹⁴⁴ President Bush issued a Memo-

138. Panama Canal Treaty, Sept. 7, 1977, United States-Panama, 33 U.S.T. 39, T.I.A.S. No. 10030.

139. Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Sept. 7, 1977, United States-Panama, 33 U.S.T. 1, T.I.A.S. No. 10029 [hereinafter *Neutrality Treaty*].

140. See generally The Panama Canal Act of 1979, Pub. L. No. 96-70, 93 Stat. 452 (codified as amended in scattered sections of 22 U.S.C.). The allocation of the authority and responsibility to defend the canal, an aspect not clearly provided for in either of the two treaties, continues to be debated. See, e.g., Maier, *The Right to Defend the Panama Canal*, 13 GA. J. INT'L & COMP. L. 217, 218 (1983); Maier, *United States Defense Rights in the Panama Canal Treaties: The Need for Clarification of a Studied Ambiguity*, 24 VA. J. INT'L L. 287 (1984).

141. Neutrality Treaty, *supra* note 139, art. I, 33 U.S.T. at 11.

142. *Id.* at 3 (proclamation by President Carter).

143. This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

Id. at 4 (proclamation by President Carter).

144. The United States arrested five co-defendants named along with General Noriega in the indictments. One arrestee was Lieutenant Colonel Del Cid, a commander in the Panamanian Defense Forces in Chiriqui Province. He was transported to Miami to face charges for being a liaison and courier between drug traffickers and Noriega. *United States v. Noriega*, 88-0079 (S.D. Fla. filed Feb. 4, 1988). Del Cid pleaded not guilty and challenged the court's

random to the Secretary of Defense authorizing the use of the United States armed forces to apprehend and, if necessary, arrest the fugitives.¹⁴⁵ Any persons apprehended were to be turned over to United States law enforcement officials as soon as possible.¹⁴⁶

The Miami and Tampa grand juries inaccurately based the indictments on the "protective principle." This principle allows the United States to prosecute illegal acts committed by aliens outside its territorial borders if, and only if, those acts are threats to the security of the United States or interfere with governmental operations.¹⁴⁷ Courts have recently applied this principle in drug cases.¹⁴⁸ Before

jurisdiction. Milloy, *supra* note 32, at 3. Another co-defendant, Daniel Miranda, accused of flying \$800,000 in drug profits from Florida to Panama in 1983, was arrested in Panama. Miranda challenged the legitimacy of his indictment by refusing to answer charges against him. A not guilty plea was entered for him. *Id.* Eduardo Pardo, a pilot, arrested in Panama and flown to Florida, was arraigned with Noriega. According to the indictment, Pardo flew the plane with Miranda. *Id.* William Saldarriaga and Brian Davidow, reputed Columbian drug traffickers, are being held without bail. *Id.*

145. See *supra* text accompanying note 4.

146. Memorandum Directing Apprehension, *supra* note 4.

In the course of carrying out the military operation in Panama which I have directed, I hereby direct and authorize the units and members of the Armed Forces of the United States to apprehend General Manuel Noriega and any other persons in Panama currently under indictment in the United States for drug-related offenses. I further direct that any persons apprehended pursuant to this directive are to be turned over to civil law enforcement officials of the United States as soon as practicable. I also authorize and direct members of the Armed Forces of the United States to detain and arrest any persons apprehended pursuant to this directive if, in their judgment, such action is necessary.

Id.

147. The "protective principle" provides that a sovereign has jurisdiction to prosecute those who commit acts outside of its territory which have potentially adverse effects on its security or governmental functions, even though no criminal effects actually occur within the state. Note, *Drug Smuggling and the Protective Principle: A Journey into Unchartered Waters*, 39 LA. L. REV. 1189, 1190 (1979); RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 402(1)(c).

148. *United States v. Marino-Garcia*, 679 F.2d 1373, 1381 (11th Cir. 1982) ("the protective principle allows nations to assert jurisdiction over foreign vessels on the high seas that threaten their [national] security or governmental functions"); *United States v. Newball*, 524 F. Supp. 715, 720 (E.D.N.Y. 1981) ("drug smuggling threatens the security and sovereignty to the United States by affecting its armed forces, contributing to widespread crime, and circumventing federal customs laws"); *United States v. Egan*, 501 F. Supp. 1252, 1258 (S.D.N.Y. 1980) ("the unlawful import of drugs bypasses the federal customs laws, and thus directly challenges a governmental function . . . [a]ccordingly, the protective principle supports assertion of jurisdiction in this case"); *United States v. Keller*, 451 F. Supp. 631, 635 (D.P.R. 1978) (holding that a planned invasion of United States territory by marijuana smugglers had a potentially adverse effect on security and government functions in the enforcement of laws prohibiting the importation of controlled substances); Chelburg, *The Contours of Extraterritorial Jurisdiction in Drug Smuggling Cases*, MICH. Y.B. INT'L LEGAL STUD. 43 (1983); Note, *supra* note 147.

the United States' invasion of Panama, the Bush administration approved the Justice Department's new policy for abducting illegal drug traffickers abroad, pursuant to this "protective principle." This policy allows enforcement agents to seize fugitives overseas without the permission of the government of the country from which the individual is to be captured.¹⁴⁹

The United States asserts that, under the protective principle, it has the authority to proscribe extraterritorial acts threatening United States national security.¹⁵⁰ However, a full-scale military invasion of another country, for the express purpose of arresting a single person, is unprecedented. The United States' authority to punish criminal activities by foreign nationals does not validate an invasion to abduct an individual to face criminal charges in the United States.¹⁵¹ The United States must work within the international framework of cooperation and mutual respect, and is subject to the principles of international treaties and customary norms. Illegal means should not be countenanced to accomplish even laudable goals.

1. Extradition Law and the Noriega Case

Extradition is the process whereby one sovereign surrenders a person, sought as an accused criminal or fugitive, to another sovereign.¹⁵² This is done most often pursuant to a bilateral pact or treaty.¹⁵³ The United States usually relies on bilateral treaties for extradition, but a multilateral treaty is equally valid.¹⁵⁴ The United States binds itself to only those extradition treaties or agreements it chooses.¹⁵⁵ Further, it considers the process and practice of extradition subject to federal legislation.¹⁵⁶ As a result, the United States

149. In June 1989, Assistant Attorney General William Barr drafted a 28-page opinion supporting the United States' actions, stating that the FBI has authority to seize fugitives overseas without permission from foreign governments. Carlson, *Legal Question About U.S. Plan to Nab Noriega*, S.F. Chron., Dec. 21, 1989, at A21.

150. See sources cited *supra* note 147.

151. The "protective principle" only confers the right to *proscribe* criminal acts. Note, *supra* note 147, at 1190. Sovereigns must comply with the formal extradition process, or its exceptions, to *enforce* or bring a fugitive to justice.

152. M.C. BASSIOUNI, *INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE* 5-9 (1987).

153. *Id.* at 39-40.

154. *International Procedures for the Apprehension and Rendition of Fugitive Offenders*, 74 AM. SOC'Y INT'L L. PROC. 274, 277 (1980).

155. M.C. BASSIOUNI, *supra* note 152, at 56.

156. For example, the Supreme Court's decision in *United States v. Rauscher*, 119 U.S. 407, 411 (1886), set forth the principle of exclusive reliance on bilateral extradition treaties by

does not apply customary international law to extradition, except insofar as it may apply to treaty interpretation.

Extraditable offenses are listed in the treaty and usually must be crimes under the laws of both countries, punishable by a minimum number of years.¹⁵⁷ Article II of the bilateral extradition treaty between Panama and the United States lists thirteen extraditable offenses.¹⁵⁸ Although drug trafficking is not listed as an extraditable offense, a subsequent multilateral treaty to which Panama and the United States are parties, the Single Convention on Narcotics Drugs, prohibits the parties from using their territories to smuggle drugs.¹⁵⁹

Despite the Single Convention, extradition of Noriega was simply not feasible. As the head of state and de facto ruler of Panama, he could immunize himself from extradition. Although active discussions and plans to oust Noriega began in 1986, the Bush administration initiated no formal extradition procedures. President Bush used extralegal means in lieu of formal extradition, authorizing the military invasion of Panama to abduct Noriega and other indicted individuals.¹⁶⁰

The United States is abducting aliens, with increasing frequency, to bring them to justice in the United States. In fact, it is estimated that the United States abducts two individuals from Mexico alone every day.¹⁶¹ In addition, the judiciary, as well as the executive branch, has authorized such abductions.¹⁶² The well-established *Ker-Frisbie* doctrine states that courts will not inquire into the methods by which defendants are brought to trial.¹⁶³ Thus, the United States

the United States. Further, *Rauscher* firmly established that the various states have no power to negotiate extradition treaties; international extradition is regarded as an exclusive national power, and there can be no extradition under present practice without a treaty. *Id.* at 414.

157. M.C. BASSIOUNI, *supra* note 152, at 615.

158. Treaty Between the United States and the Republic of Panama Providing for the Extradition of Criminals, May 25, 1904, United States-Panama, art. 5, 34 Stat. 2851, T.I.A.S. No. 445. The offenses enumerated in the treaty include murder, arson, robbery, forgery, counterfeiting, embezzlement by public officers, fraud, perjury, rape, willful destruction of railroads, crimes committed at sea, piracy, revolt on the high sea, assault on board a ship on the high sea, slavery and/or slave trading, and bribery. The extradition treaty does not include any offenses relating to drug trafficking. *Id.*

159. Single Convention on Narcotics Drugs, Mar. 30, 1961, 18 U.S.T. 1407, T.I.A.S. No. 6298, 500 U.N.T.S. 1407.

160. Memorandum Directing Apprehension, *supra* note 4.

161. Moss, *Official Kidnapping*, 77 A.B.A. J. 24 (Jan. 1991).

162. *Id.*

163. The doctrine is a product of two landmark cases, *Ker v. Illinois*, 119 U.S. 436 (1886) and *Frisbie v. Collins*, 342 U.S. 519 (1952), which held that a court will not lose jurisdiction over the defendant merely because he was apprehended illegally.

courts assumed jurisdiction over Noriega, despite the fact he was abducted by military action.

2. Legal Limits to Unauthorized Abductions

Although United States courts routinely validate unlawful abductions, courts have recognized some limits to this activity.¹⁶⁴ In *United States v. Toscanino*,¹⁶⁵ an Italian citizen alleged that he had been kidnapped from his home in Montevideo, Uruguay, taken to Brazil, and then to the United States to stand trial. According to Toscanino, he and his pregnant wife were lured to a deserted area in Montevideo by Uruguayan police officers, who were actually paid agents of the United States.¹⁶⁶ In full view of his wife, the agents knocked Toscanino unconscious with a gun, bound and blindfolded him, and threw him into the back seat of a car.¹⁶⁷ At one point, Toscanino's abductors placed a gun to his head to force him to lie quietly as a Uruguayan military convoy passed by.¹⁶⁸

Toscanino's abductors took him to Brasilia. Once there, Brazilians, allegedly acting on behalf of United States agents, subjected Toscanino to brutal torture and interrogation for seventeen days.¹⁶⁹ Toscanino claimed that his captors denied him sleep and all forms of nourishment for days at a time.¹⁷⁰ He was fed intravenously in amounts barely sufficient to keep him alive.¹⁷¹ Toscanino's captors forced him to walk up and down a hallway for seven or eight hours at a time; when he fell, he was kicked and beaten.¹⁷² To induce him to respond to interrogation, the agents pinched Toscanino's fingers with metal pliers, flushed alcohol into his eyes and nose, and forced fluids into his anal passage.¹⁷³ Toscanino's captors also attached electrodes to his earlobes, toes, and genitals, and then shot electricity throughout

164. Some courts have authorized government agents to be involved in illegal activities to facilitate the capture of criminals, but they have also recognized limits to this activity. In *United States v. Archer*, 486 F.2d 670 (2d Cir. 1973), the court stated that there should be a limit to government involvement in crime. "Government 'investigation' involving participation in activities that result in injury to the rights of its citizens is a course that courts should be extremely reluctant to sanction." *Id.* at 677.

165. 500 F.2d 267 (2d Cir. 1974).

166. *Id.* at 269.

167. *Id.*

168. *Id.*

169. *Id.* at 270.

170. *Toscanino*, 500 F.2d at 270.

171. *Id.*

172. *Id.*

173. *Id.*

his body, leaving him unconscious for lengthy periods of time.¹⁷⁴

The Second Circuit held that, if proved, such egregious conduct would violate the defendant's due process rights.¹⁷⁵ In reaching its conclusion, the Second Circuit considered the general *Ker-Frisbie* rule that a court's jurisdiction over an accused is not impaired by the illegal method the government uses to acquire control over him.¹⁷⁶ The court emphasized, however, that the *Ker* and *Frisbie* decisions were rendered at a time when due process was limited to the fairness of the procedures at trial.¹⁷⁷ Since then, the Supreme Court has expanded due process "to bar the government from realizing directly the fruits of its own deliberate and unnecessary lawlessness in bringing the accused to trial."¹⁷⁸

Applying the *Toscanino* standard to the Noriega case, the crucial inquiry is whether the United States military invasion of Panama, carried out to bring Noriega to trial in the United States, "offend[s] those canons of decency and fairness which express the notions of justice of . . . peoples even toward those charged with the most heinous offenses."¹⁷⁹ The United States' conduct in invading Panama far exceeds anything previously considered by United States courts. The invasion of Panama involved over 25,000 heavily armed United States troops.¹⁸⁰ Further, it caused excessive damage to the Panamanian nation physically, economically, and politically.¹⁸¹ Such massive destruction of humanity and property by the United States to arrest one person shocks the conscience and violates the due process clause of the fifth amendment.

However, Noriega does not have standing to assert the rights of

174. *Id.*

175. *Toscanino*, 500 F.2d at 281. In *Rochin v. California*, 342 U.S. 165 (1952), the United States Supreme Court discussed conduct giving rise to due process concerns. In that case, a suspect swallowed two tablets as state police officers were placing him under arrest. The officers took him to a hospital where a doctor forced "an emetic solution through a tube into [the defendant's] stomach against his will." *Id.* at 166. When the defendant vomited, the officers recovered the capsules and subsequently introduced them into evidence against the defendant. Holding such evidence inadmissible, Justice Frankfurter wrote that the inquiry is whether "the whole course of proceedings [resulting in a conviction] . . . offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses." *Id.* at 169.

176. *Toscanino*, 500 F.2d at 271.

177. *Id.* at 275.

178. *Id.* at 272.

179. *Rochin*, 342 U.S. at 169.

180. Motion to Dismiss, *supra* note 110, at 3.

181. *Id.*

the Panamanian people. Only injured individuals can raise due process claims.¹⁸² Moreover, if the judiciary divested itself of jurisdiction over Noriega, under the outrageous conduct exception in *Toscanino*, a serious separation of powers problem could develop.¹⁸³ The judiciary would be, in effect, condemning the actions of the executive, and encroaching into the realm of foreign policy. Thus, although the invasion is probably conduct that shocks the conscience, it is likely to be declared a non-justiciable political question.¹⁸⁴

Assuming Noriega cannot successfully raise these constitutional claims in United States courts, the United States is still bound by various humanitarian conventions and treaties which accord protection to individuals. For example, the Universal Declaration of Human Rights, adopted by the United Nations on December 10, 1948, guarantees to "all human beings" the right to a fair hearing, to be presumed innocent, to freedom of movement, and to asylum.¹⁸⁵ In particular, article 9 prohibits the "arbitrary arrest, detention or exile" of an individual.¹⁸⁶

Another example is the Council of Europe, created in 1949, which sought "a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage."¹⁸⁷ One major aim was to protect the fundamental

182. The doctrine of third-party standing is a Court-made exception to the general rule that a defendant may not bring a legal claim if his own constitutional rights have not been violated. *United States v. Payner*, 447 U.S. 727, 737 n.9 (1980).

183. Since the Supreme Court first claimed the power of judicial review in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 165-66 (1803), courts have declared certain actions, properly within the purview of the executive and legislative branches, to be beyond the scope of judicial inquiry. The nonjusticiability of political questions is based on the recognition of the separation of powers and the system of checks and balances provided for in the Constitution. *Baker v. Carr*, 369 U.S. 186, 210 n.41 (1962). In *Johnson v. Eisentrager*, 339 U.S. 763, 789 (1950), the Supreme Court refused to adjudicate a challenge to United States military activities in China, stating, "It is not the function of the judiciary to entertain private litigation . . . which challenges the legality, wisdom, or propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region."

184. In the context of war or military hostilities, the question of possible executive usurpation of Congress' authority to declare war is clearly a matter for judicial review. *Atlee v. Laird*, 347 F. Supp. 689, 702 (E.D. Pa. 1972); *Crockett v. Reagan*, 558 F. Supp. 893, 898 (D.D.C. 1982). The distinction between justiciable questions of constitutional authority and nonjusticiable broad challenges to the conduct of foreign policy is whether there exists "judicially manageable standards." *DeCosta v. Laird*, 471 F.2d 1146 (2d Cir. 1973); *Crockett*, 558 F. Supp. at 898.

185. G.A. Res. 217, U.N. Doc. A/810, arts. 10, 11, 13 & 14 (1948).

186. *Id.* art. 9.

187. Statute of the Council of Europe, May 5, 1949, art. 1, 87 U.N.T.S. 103.

rights and freedom of humans.¹⁸⁸ Pursuant to that aim, and in conjunction with the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms was enacted in 1950.¹⁸⁹ The convention is useful, in that it provides a working system for the international protection of human rights.¹⁹⁰

Although the United States is morally bound by such international humanitarian conventions and treaties, traditionally, the violation of an alien's human rights could be vindicated at the international level only through diplomatic protest or international arbitration by the individual's state.¹⁹¹ Moreover, United States courts have held that individuals, in the absence of a protest from the offended government, lack standing to assert violations of international treaties.¹⁹² This is because treaties are "designed to protect the sovereign interests of nations, and it is up to the offended nations to determine whether a violation of sovereign interests occurred and requires redress."¹⁹³ Consistent with that principle, treaties are construed as creating enforceable private rights only if they expressly or impliedly provide a private right of action.¹⁹⁴

Arguably, Noriega lacked standing to challenge violations of these treaties, in the absence of a protest by the Panamanian government. However, Noriega, as the head of state and de facto ruler of Panama at the time of the invasion, was the appropriate person to

188. *Id.*

189. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

190. *Id.*

191. See *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 374 (7th Cir. 1985) (treaty phrased in "broad generalities" constitutes "declarations of principles, not a code of legal rights"); *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 809 (D.C. Cir. 1984) (Bork, J., concurring) (articles 1 and 2 of the United Nations Charter "contain general 'purpose and principles,' some of which state mere aspirations and none of which can be sensibly thought to have been intended to be judicially enforceable at the behest of the individuals"); *Handel v. Artukovic*, 601 F. Supp. 1421, 1425 (C.D. Cal. 1985) (Hague Convention confers no private right of action on individuals).

192. *United States v. Hensel*, 699 F.2d 18, 30 (1st Cir.), *cert. denied*, 461 U.S. 958 (1983); *United States v. Williams*, 617 F.2d 1063, 1090 (5th Cir. 1980) ("rights under international common law must belong to the sovereigns and not to individuals . . ."); *United States v. Rosenthal*, 793 F.2d 1214, 1232 (11th Cir. 1986) ("under international law, it is the contracting foreign government that has the right to complain about a violation").

193. *United States v. Zabaneh*, 837 F.2d 1249, 1261 (5th Cir. 1988); see also *United States v. Davis*, 767 F.2d 1025, 1030 (2d Cir. 1985); *United States v. Cordero*, 668 F.2d 32, 37-38 (1st Cir. 1981); *United States v. Valot*, 625 F.2d 308, 310 (9th Cir. 1980); *United States v. Cadena*, 585 F.2d 1252, 1261 (5th Cir. 1979).

194. *Head Money Cases*, 112 U.S. 580, 598-99 (1884).

protest the treaty violations.¹⁹⁵ Removing Noriega from power and installing the new Endara government deprived Noriega of the power to challenge the treaty violations.

Nevertheless, human rights treaties are designed to protect the individual. Recent developments in human rights law emphasize that individuals can claim their substantive rights even against their own states.¹⁹⁶ Even assuming Panama failed or refused to protect Noriega's rights, Noriega may nonetheless assert his personal right to be free from arbitrary arrest, detention, and abduction in an international tribunal.¹⁹⁷ By failing to abide by these international agreements and customary international law, the United States abandoned the pursuit of a principled approach to world order.

IV. CONCLUSION

The United States is a leader in the international community. Its actions are closely monitored and often mimicked by other nations. The invasion of Panama sets a bad precedent for other nations. It advocates using violent intervention, rather than international diplomacy, to solve disputes. The United States' ad hoc approach threatens the integrity of the existing world order. The practical result of such a policy is the destruction of international legal and political cooperation, reciprocity, and comity of nations. When a nation with military and economic superiority dictates the rules of the game, fairness and reciprocity become secondary. In this type of world order, every nation's survival depends on gaining the favor of superior powers. Moreover, validating the military invasion of another country encourages other nations to strengthen their military, rather than develop their role in international jurisprudence.

Absent a principled approach, the invasion of Panama opens the door to the use of excessive force, through full-scale military invasions of other sovereigns, to abduct fugitive offenders. The United States judiciary should refuse to countenance such action. Moreover, the

195. For discussion of the head of state doctrine, see generally Note, *The Dictator, Drugs and Diplomacy By Indictment: Head of State Immunity in United States v. Noriega*, 4 CONN. J. INT'L L. 729 (1989); Comment, *The Power of United States Courts to Deny Former Heads of States Immunity From Jurisdiction*, 18 CAL. W. INT'L L.J. 355, 356, 358 (1988); Note, *Resolving the Confusion Over Heads of State Immunity: The Defined Rights of Kings*, 86 COLUM. L. REV. 169, 170, 179 (1986).

196. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U.L. REV. 1 (1982).

197. *Id.*

executive branch should realize that the long-term effects of such an ad hoc policy are dangerous and far-reaching.

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