Part 1 The Cold War Era (1945–89), 19 The Entebbe Raid—1976
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(p. 220) 19 The Entebbe Raid—1976

I. Facts and Context

flight AF 139, Summer 1976, 27 June, 11:55 am: a drama unfolds, which shall have heavy impact on international relations and international law and which demonstrates a (political) gulf between the international community. The Airbus A300-B operated by Air France is on route from Tel Aviv to Paris. Some 256 passengers and a crew of twelve are aboard. Shortly after departing from a scheduled stop in Athens, four hijackers, two Germans, and two Iraqis, who identify themselves as members of the ‘Popular Front of Liberation of Palestine’, take control of the aircraft. After a stopover in Benghazi, Libya, for refuelling, they divert the plane to the Ugandan airport of Entebbe. The passengers and crew members are transferred to a seldom-used airport terminal, where they are taken hostage. Another six men join the hijackers.

Shortly afterwards, the hijackers promulgate their demands: Israel, West Germany, Kenya, France, and Switzerland have until 1 July 1976 to release fifty-three ‘freedom fighters’, who are imprisoned for capital crimes under the respective penal law of the countries concerned. If their demands are not carried out by 1 July 1976, 200 pm, the hijackers, equipped with firearms and explosives, threaten to kill all captives. Shortly before the deadline expires, Israel reverses its policy against negotiating with hijackers. Consequently, the hijackers release first forty-seven, then another 100 prisoners, keeping 112 hostages. However, they release only non-Jewish and non-Israeli passengers. Apart from the French crew, the remaining hostages are exclusively Israeli nationals or Israeli dual nationals. The ultimatum is extended to 4 July 1976 at noon—an important success in Israeli negotiation, as this renders possible the military operation which Israel has been preparing and rehearsing in secret alongside the negotiations.

On 3 July 1976, 4:00 pm, three C-130 jets and a Boeing 707 leave Israel; 150 well-prepared Israeli soldiers, equipped with Jeeps and MGs as well as physicians, are aboard (p. 221). With the unanimous vote of the eighteenth ministers participating in the Israeli crisis management team, Israel has opted for a military operation, dubbed ‘Operation Thunderbolt’, to be carried out without any prior referral of the matter to the Security Council. At the time of the decision, the memory of the 1973 Yom Kippur War is still fresh in Israel and Israel’s decision-makers feel that a failure to rescue its citizens could be perceived as a total weakness. Shortly after midnight on 4 July 1976, as ‘the sand in the hourglass [is] about to run out’ the Israeli machines land ‘by surprise and without any authority from the Ugandan Government’ at seven-minute intervals at Entebbe International Airport. Only fifty-three minutes later, they depart with the freed hostages. The Israel Defence Forces had stormed the airport terminal, killing seven hijackers and liberating the prisoners. Yet, the rescue operation also results in four casualties, three Israeli prisoners and one Israeli officer, and a number of serious injuries. About twenty Ugandan soldiers are fatally wounded and the airport building is heavily damaged. Furthermore, allegedly in order to ensure their safe return flight, Israeli soldiers destroy a number of Ugandan aircrafts, which are parked nearby, and other military equipment. After a refuelling stop in Nairobi in Kenya, which is allowed ‘purely on humanitarian grounds’, Israel’s rescue mission safely returns to Israel.

Besides these basic facts, some important factual uncertainty remains. In particular, in the wake of the incident, states advanced conflicting versions as to the role of Uganda in the course of the hijacking. The truth is (still) not fully established. Uganda, then under the rule of President Idi Amin, claimed that it neither knew about the planned hijacking, nor supported or collaborated with the terrorists. To the contrary, it stated that it permitted the hijacked ‘aircraft to land at Entebbe on humanitarian considerations’ and subsequently attempted with best effort to free the hostages through negotiation. Amin also drew attention to the fact that his success in negotiating led to an improvement of the treatment of the prisoners, the gradual release of hostages and the extension of the deadline, all of which illustrate that this was the most promising path to securing the release of the hostages.

Israel, however, alleged that ‘the President of Uganda had co-operated with the terrorists under the cloak of deception and false pretences’. Israel believed that Uganda had not only approved the hijacking, but also actively assisted the hijackers and even guarded the (p. 222) hostages. While some intelligence reports and statements by released hostages indicated that Israel operated in collusion with the...
terrorists, this allegation could not be verified in the course of the ensuing discussion.

II. The Positions of the Main Protagonists and the Reaction of Third States and International Organizations

The Prime Minister of Mauritius, being the chairman of the Organization of African Unity at the time, opened the legal debate by denouncing Israel’s raid on Entebbe as an ‘act of aggression’ against Uganda. This condemnation was followed by an intense, and in part emotional, debate in the UN Security Council (UNSC). While the participants in the discussion unanimously denounced the terrorist act of hijacking, they were divided in their appraisal of Israel’s rescue operation.

Israel made its case through an extraordinarily detailed and transparent legal argument, which it underpinned with references to state practice and legal writing. It relied on its right to self-defence, which, it claimed, encompassed the right of a State to take military action to protect its nationals in mortal danger; whom the local government is unable or unwilling to protect. Israel elaborated as follows:

The right to self-defence is enshrined in international law and the Charter of the United Nations and can be applied on the basis of the classic formulation, as was done in the well-known Caroline Case, permitting such action where the ‘necessity of self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation’. That was exactly the situation which faced the Government of Israel.

What mattered... was the lives of the hostages, in danger of their very lives. No consideration other than this humanitarian consideration motivated the government of Israel. Israel’s rescue operation was not directed against Uganda... They were rescuing nationals from a band of terrorists and kidnappers who were being aided and abetted by the Ugandan authorities. The means used were the minimum necessary to fulfill that purpose, as is laid down in international law.

The United States was the only state that explicitly concluded that Israel’s rescue operation was in compliance with international law.

Israel’s action in rescuing the hostages necessarily involved a temporary breach of the territorial integrity of Uganda. Normally, such a breach would be impermissible under the Charter (p. 222) of the United Nations. However, there is a well established right to use limited force for the protection of one’s own nationals from an imminent threat of injury or death in a situation where the state in whose territory they are located is either unwilling or unable to protect them. This right, flowing from the right of self-defence, is limited to such use of force as is necessary and appropriate to protect threatened nationals from injury. The requirements of this right to protect nationals were clearly met in the Entebbe case.

The United States made sure to add that ‘we do not see it as a precedent which would justify any future unauthorized entry into another State’s territory that is not similarly justified by exceptional circumstances’.

Other western states, such as France, the United Kingdom, Germany, Italy and Japan, were more reluctant and enigmatic in their assessment. In carefully drafted statements, they emphasized the unique and complex circumstances of the incident and, while not commending Israel’s course of action, did not condemn it either. Sweden, in a particularly careful worded statement, observed the following:

The Charter does not authorize any exception to this rule [Article 2(4) of the UN Charter] except for the right to self-defence and enforcement measures undertaken by the Council under Chapter VII. This is no coincidence or oversight. Any formal exceptions permitting the use of force or of military intervention in order to achieve certain aims, however laudable, would be bound to be abused, especially by the big and strong, and to pose a threat, especially to the small and weak. In our view, the Israeli action which we are now considering involved an infringement of the national sovereignty and territorial integrity of Uganda. We understand the strong reaction against this action, which cost the lives of many Ugandan citizens and led to heavy material damage. At the same time, we are aware of the terrible pressures to which the Israeli government and people were subjected, faced with this unprecedented act of international piracy and viewing the increasing threat to the lives of so many of their compatriots. Furthermore, when the decision to act was taken, the Israeli Government was in possession of evidence which, it felt, strongly suggested that the Government which had the responsibility for the protection of the hostages did not do everything in its power to fulfill this duty. The problem with which we are faced is thus multi-faceted. My government, while unable to reconcile the Israeli action with the strict rules of the Charter, does not find it possible to join in a condemnation.

A clear majority of the states that spoke out condemned ‘Operation Thunderbolt’ as ‘unlawful’. Yet, these states differed considerably in their line of reasoning. Guyana, Tanzania, the Soviet Union, Panama, Romania, India, Cuba, and Mexico explicitly rejected any right to forcibly protect nationals abroad irrespective of the factual circumstances. Such a right was ‘nothing but a modern-day version of gunboat diplomacy’.  

References

(p. 224) which constitute[d] a dangerous precedent in the conduct of international relations, opening the way to all kinds of adventures.  

Perhaps most clearly, Tanzania rejected Israel’s legal claim as follows:

I have just referred to the failure of the Israeli case on the facts. Yet Israel has no case even in international law as it exists now. Whatever might have been the law in the past, and whatever writers and jurists of the past might have seen as law with regard to the right of a State to protect its nationals abroad, such is no longer the case now.

Uganda, while having been somewhat less clear, probably agreed with that legal view. It condemned the Israeli raid as an ‘act of naked aggression’. In the course of its argument, it not only emphatically rejected the Israeli allegation to have collaborated with the hijackers, but also seemed to oppose the legal principle underpinning Israel’s claim.

The statements of China, Mauritius, Somalia, Libya, Guinea, Benin, Pakistan, Kenya, and Yugoslavia, while clear in their condemnation of Israel, remained vague as regards their line of reasoning. The same was true for Mauretanias, which spoke on behalf of the Group of the (at the time forty-nine) African States in the United Nations.

Other criticisms seemed to be primarily premised on the factual circumstances of the case, namely the assumption that Uganda did in no way collaborate with the hijackers, but rather had done its best to contribute to the release of the hostages. Hence, while rejecting the...
application of self-defence as formulated by Israel on a factual account, Qatar, Algeria, and Cameroon did not explicitly oppose the admissibility of Israel’s claim as such.

Kenya’s conduct with respect to the Entebbe incident deserves special mention. While condemning Israel’s rescue mission as aggression, Kenya reportedly rendered Israeli assistance in conducting the mission. On 12 July 1976, after abuses of Kenyan nationals in Uganda, Kenya wrote to the Security Council: ‘Kenya reserves its right to take the most appropriate steps, in accordance with international law, to protect the lives of its citizens.’

Despite the fact that states agreed that Israel’s rescue operation constituted a ‘precedent’ which ‘affects all’, and despite the fact that thirteen states, which at the time were not represented in the Security Council, exercised their right under Article 31 of the UN Charter.
thereby builds on the more general and controversial idea that Article 51 of the UN Charter has left unaffected a broader and pre-existing customary right of self-defence. According to the second variant of the self-defence argument, an attack against nationals abroad can constitute an ‘armed attack’ against a member of the United Nations within the meaning of Article 51 of the UN Charter. While it would seem that such a view continues to be in the minority.

(p. 228) one cannot fail to recognize the fact that the more permissive interpretation of the term ‘armed attack’ has recently gained some ground. Pays cautiously questions the majority scholarly opinion that an attack upon nationals abroad does not constitute an armed attack upon the state of nationality, and opines ’Still, if one consider it wholly artificial to expand the concept of ‘armed attack’ of Article 51 to cover attacks against nationals abroad, the present author does not believe that this interpretation can be ruled out per se. Green seems to be ever more in favour of a broader construction of the term ‘armed attack’.

As such the concept of an attack against a state could plausibly be seen as including the nationals of that state, as constituting a part of that state or an extension of that state. In the view of the present author, this is not an unreasonable stretch of the language of Article 51: ‘People being a necessary condition for the existence of a state, the protection of nationals can be assimilated without great strain to the right to self-defence explicitly conceded in the text of the Charter.”

Dinstein concurs with respect to those cases in which the attack on the individuals was clearly meant as an attack on their government, and refers to the hostage taking in Entebbe as a textbook example of such an armed attack. It finally bears mentioning that a number of scholars end their legal analysis in stressing the existence of a legal grey area. The following statement by Franck may serve as an illustration:

These instances of UN-based state practice may be thought to be random, leaving the law indeterminate. However, the practice may also be read to yield either a narrow, or a broad, clarification of applicable law. Narrowly, recourse to armed force in order to protect nationals abroad may be said to have been condoned as legitimate in specific mitigating circumstances, even though that recourse is still recognized as technically illegal. Or, in a broader interpretation of practice, the system may be said to have adapted the concept of self-defence, under Article 51, to include a right to use of force in response to an attack against nationals, providing there is clear evidence of extreme necessity and the means chosen are proportionate.

It follows that, in order to determine that Israel’s use of force in the Entebbe incident was lawful, several legal hurdles have to be overcome. First, a wider and not uncontroversial construction of the right of self-defence recognized in Article 51 must be adopted. Second, it must be demonstrated that Uganda had either been colluding with the hostage-takers, or had failed itself to take the necessary and appropriate steps to (p. 229) and the attack on Israel’s nationals. There would have been no such failure, as it may be inferred from the reactions by states in this very incident, if Uganda, at the time of Israel’s use of force, had been in the process of undertaking promising negotiations. At this point of the application of the law to the facts, the more general question arises what ought to be the perspective of the analysis: a de jure or ad hoc?

While Israel and the United States hinted that it suffices that the rescuing state had good reason to believe its nationals were in imminent danger, the widespread condemnation of Israel’s operation, by those not putting themselves in Israel’s position before its raid, but instead arguing on a more objective level, might be taken to reject this proposition. However, a good measure of caution is due as states did not expressly advance any clearly articulated legal view in this specific respect. Third, the requirement of proportionality gives rise to interesting legal questions in light of the fact that twenty Ugandan soldiers were fatality wounded in the course of the rescue operation. Here again, it matters whether the Ugandan soldiers had, in one way or the other, participated in the attack on Israel’s nationals. If they had not and could have been considered innocent bystanders, the legal question would have arisen which proportionality test to apply. The proportionality test governing the right of self-defence in case of an armed attack by a state is unclear in its details, but it is certainly less stringent with respect to the loss of innocent life than the proportionality test governing a law enforcement operation. A good argument could be made that the proportionality test applicable in case of a non-state actors’ hostage-taking of foreign nationals with the host state unable to properly respond should be that governing law enforcement. But this specific legal issue was not taken up during the debate. The final legal question is whether the loss of life among the Israeli hostages as well as the risk posed to them as a result of the rescue operation were only a matter of Israel’s international human rights obligations, or whether these elements should meet the requirement of proportionality governing action taken in the exercise of the right of self-defence. After all, at the material time of the rescue operation, those individuals were on Ugandan soil. Again, this specific legal question was not addressed in the course of the debate. Interestingly, however, Pakistan alluded to the issue at stake by stating as follows:

Further, in the euphoria over this ‘brilliant rescue operation’, it should not be forgotten that the 103 hostages could have lost their lives and this so-called legend could have resulted in yet another bloody massacre.

Definitive findings on all of the above issues are beyond the scope of this chapter because they would require full factual knowledge. Yet, it can safely be concluded that even on the basis of a more permissive view of the right of self-defence as recognized in Article 51, the legal requirements for a lawful rescue operation are stringent.

(p. 230) IV. Conclusion: Precedential Value

The debate on the Entebbe raid is evidence of a fairly robust consensus among states that the prohibition of the use of force is comprehensive in scope. It is true that Israel adhered to a narrow reading of the prohibition of the use of force by citing O’Connell and by arguing that the attack was not ‘directed against Uganda’. France’s statement that Israel’s operation was not in order to infringe the territorial integrity or independence of Uganda, but to save endangered human lives may be taken as so to point in the same direction. Yet, even Israel itself based its legal claim primarily on the right of self-defence. Furthermore, the majority of states disapproved the idea of a narrow reading of Article 2(4) of the UN Charter with remarkable clarity. Not only states that condemned the operation but also states that took a more positive view on Israel’s conduct expressly rejected such a proposition. The general thrust of the debate clearly was that a rescue operation of the Entebbe type, despite its limitation in time and scope, constitutes a use of force within the meaning of Article 2(4) of the UN Charter. Again, this is without prejudice of a different assessment of a non-combatant evacuation operation.

States also seemed to agree in the debate that the right of self-defence constitutes the only conceivable legal basis for a forcible rescue operation of the Entebbe type. Importantly, not even Israel relied on an autonomous standalone customaty right to rescue nationals abroad or invoked a state of necessity.
Furthermore, it clearly emerges from the debate that there is no right to forcibly rescue one's nationals abroad in case the local state deals in good faith with a non-state attack against foreign nationals on its soil. This point was made by a great number of states and even Israel as well as the United States conceded to it. Unsurprisingly, no effort was made to explain the precise legal basis for this limitation of a possible right of self-defence. Nevertheless, the idea that any right by a foreign state to use force against non-state attackers can only be subsidiary to the authority of the local state is implicit in much of the debate. By the same token, the debate would clearly seem to support the idea that forcible self-defence action by the state of nationality is not necessary if the local state acts in accordance with its duty to protect foreign nationals on its soil against non-state attacks, thus tying this qualification (at least in part) to the necessity requirement for action taken in self-defence.

Regarding Israel's self-defence claim, it bears mentioning at the outset that it follows the more traditional 'Walidcock-line of reasoning'. Neither Israel nor any other state argued that Israel had become the object of an armed attack within the meaning of Article 51 of the UN Charter. The practice of states in the Entebbe incident can therefore not be taken to support a broader reading of the latter concept. When it comes to assessing the reaction by the other states to Israel's claim, it can be said with certainty that a not insignificant group of states categorically rejected the existence of a right to forcibly liberate nationals taken hostage abroad. The Entebbe incident can therefore not be relied upon as evidence of subsequent state practice pertaining to this claim and its importance and whether the circumstances were such that a reaction to the claim as put forward was called for.
Situation falls within a grey area of the prohibition of the use of force. In such a situation, the only thing that can be said with certainty is that the use of force in an Entebbe-type situation falls within a grey area of the prohibition of the use of force.

To sum up, until today, the Entebbe case remains the most important incident of post-1945 state practice on the matter. The debates surrounding the incident suggest that only the right of self-defence can conceivably justify such a use of force, and only in a case where the local state does not itself deal with the threat in good faith, and under strict conditions of proportionality. While a significant group of states rejects even such a limited self-defence claim, a majority of states is willing, if not explicitly to support, then at least to tolerate the claim. This ambiguous practice of states must be balanced against the ambiguity that the textual interpretation of Articles 2(4) and 51 of the UN Charter cannot entirely dispel. In such a situation, the only thing that can be said with certainty is that the use of force in an Entebbe-type situation falls within a grey area of the prohibition of the use of force.

References

Footnotes:

1. This chapter was finished on 1 October 2016. All website references were last accessed on the date of its completion.


3. UN Doc S/12124 (n 2) Annex, 2.

4. UN Doc S/PV.1909 (n 2) [187]–[189].


6. ibid 43–44.


8. UN Doc S/12124 (n 2) Annex, 1.

9. UNSC Verbatim Records (13 July 1976) UN Doc S/PV.1942 [121].

10. UN Doc S/12123 (n 7) Annex, 1.

11. UN Doc S/12124 (n 2) Annex, 1; UN Doc S/PV.1909 (n 2) [31].

12. Letter dated 7 July 1976 from the Chargé d’affaires a.i. of the Permanent Mission of Kenya to the United Nations Addressed to the Secretary-General (7 July 1976) UN Doc S/12131; UN Doc S/PV.1939 (n 2) [153]; 257–261. Kenya thereby replied to the charges made by Uganda that Kenya (as well as other western powers) collaborated in the Israeli aggression, see UN Doc S/12154 (n 2) Annex, 3.

13. UN Doc S/PV.1939 (n 2) [34]; UN Doc S/PV.1942 (n 9) [161]; UNSC Verbatim Records (14 July 1976) UN Doc S/PV.1942 [104], [113]–[118].

14. UN Doc S/12124 (n 2) Annex, 2; UN Doc S/PV.1909 (n 2) [21]–[26]; 253–256.

15. This view was shared by UN Doc S/PV.1909 (n 2) [44] (Mauritania), [170] (Qatar), [185] (France); [215] (Cameroon); UNSC Verbatim Records (12 July 1976) UN Doc S/PV.1940 [33]–[35] (Guinea), [57] (Mauritius); UNSC Verbatim Records (12 July 1976) UN Doc S/PV.1941 [9]–[26] (Benin), [127] (Pakistan); UN Doc S/PV.1940 (n 13) 85 (Cuba).

16. UN Doc S/PV.1939 (n 2) [80]. See for more details and indicators Israel advanced in the course of the Security Council debate: ibid [81], [83]–[86], [90]–[103]; UN Doc S/PV.1942 (n 9) [77]–[96].


18. Letter dated 6 July 1976 from the Assistant Executive Secretary of the Organization of African Unity to the United Nations Addressed to the President of the Security Council (6 July 1976) UN Doc S/12120; UN Doc S/PV.1939 (n 2) [5].

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Kenya denied its cooperation with Israel in UN Doc S/PV.1939 (n 2) [158]; but see Werner Ader, Gewaltlose Rettungsmaßnahmen zum Schutz eigener Staatsangehöriger im Ausland (VVF 1988) 165, 185.
attack" given by the International Court of Justice in the case concerning Russian Federation, Opinion No 572/2010, 21.12.2010, CDL-AD(2010)052 [40]: '[I]n the light of the interpretation of the notion of "armed attack" given by the International Court of Justice in the case concerning Military and Paramilitary Activities in and against Nicaragua an attack against a number of persons could hardly be regarded as an "armed attack" within the meaning of article 51 of the UN Charter.'
This climate is the best explanation for the fact that the debate in the Security Council evoked quite a bit of emotion. See also Ruys (n 82) 39.


UN Doc S/PV.1939 (n 2) [138].

UN Doc S/PV.1941 (n 14) [105].

On the technical guidelines adopted by several States to regulate ‘Non Combatant Evacuation Operations’, see Ruys (n 82) 245–48.

Adler (n 64) 201 (on Larnaca), 99, 219–25 (on Tehran).

The point is made and documented by Adler (n 64) 202 fn 4.


On the text of the convention, see 1316 UNTS, 205 on the in conclusiveness of Article 14, see Lambert (n 108) 322–23.


This means that such a use of force does not, at present, qualify, ‘by its character’ as a ‘manifest violation of the Charter of the United Nations’ within the meaning of Article 8 bis (1) of the ICC Statute. A use of force of the Entebbe-type situation also does not, by its gravity and