EDITORIAL COMMENT

LEGAL ASPECTS OF THE BEIRUT LANDING

If Americans pause to consider and discuss the legal aspects of the action of the United States in landing Marines at Beirut on July 15, 1958, it is primarily for their own information and intelligence and that of their friends in other countries, and possibly that of people in so-called neutralist countries who may still be open to understanding in this matter. Assuredly it is not with any idea of impressing the governing groups in Iron Curtain countries or even, perhaps, great masses of people or any independent individual thinkers therein. The historic Russian negative attitude on the treatment of social and political problems by juridical methods,[1] recent actual professions and performances on this score by the Soviet bloc, and the resulting quite tenuous possibility of accomplishing anything along this line, preclude any such illusion.

The problem of intervention was once a very acute and very important issue under international law.[2] For generations or centuries the right of one state to intervene in the affairs of another state, especially to take military action in the territory of another state, short of war, on various grounds, was debated vigorously and at length—more or less out of proportion to the number of instances wherein such action was undertaken—as a result of the growth in national spirit and national independence in the eighteenth and nineteenth centuries. In more recent times this historic debate has declined somewhat, and also the practice of intervention, without the historic issues of principle ever having been settled. This may be traced in part to the success of proponents of national independence in repelling the right of intervention and, paradoxically, to the striking development of collective intervention, as it was formerly called, or police action by international organizations, particularly, of course, though not exclusively, by the League of Nations and the United Nations, a development already foreseen by students of the problem.[3]

The most plausible ground for the recent landing of military forces of the United States near Beirut is to be found in the invitation of the duly elected Government of Lebanon, an invitation extended on July 14, more or less simultaneously with a revolt which overthrew the legitimate government in Iraq, but some time in contemplation and based upon alleged indirect aggression against the Government of Lebanon by

[1] See A. Nussbaum, A Concise History of the Law of Nations 248 and 285 (New York, Macmillan, rev. ed., 1954).

[2] See lectures by present writer at the Académie de Droit International at The Hague, 1930, 32 Recueil des Cours 607–690, esp. 640–657 (Paris, Recueil Sirey, 1931).

[3] Potter, *loc. cit.* 661, 678; and H. Wehberg, lectures on "La Police Internationale," 48 Hague Academy Recueil des Cours 7–131 (1934).

outside forces or governments, and a resulting insurrection (to employ a classic but somewhat outmoded term) against itself.[4]

Such invitations had not been unknown in the past and had always been regarded as adequate bases for intervention, if such it could be called in these circumstances. On the other hand, two or three closely related problems remain to be considered in this connection. Was the invitation prompted by pressure, for political reasons, from the government to which it was extended? Was the allegation of aggression from outside justified by the facts? And how assess the relative merits (ethical and legal) of the concepts of orderly government and the "right" of revolution—at one time hotly avowed by the United States?

To the first of these questions, the answer seems to be simply that there is no evidence of United States pressure in the situation, although clearly the attitude of this country (the "Eisenhower Doctrine") was well known in Beirut and, that, moreover, such hypothetical collusion, if such it might be called, would not legally invalidate the invitation. Secondly, it clearly appears that there did exist a certain amount of external aggression or subversive action from certain quarters, in spite of Russian and Egyptian complete denials, although not so "massive" as alleged by President Chamoun, if the reports of the United Nations observatory commission are accurate.[5] And thirdly, it has to be admitted, to the distress of the shades of Jefferson, Paine, and many other patriots in many lands, that legally there is no right of revolution, at least in the absence of illegal action on the part of the established government. It might be added that if this first ground for "intervention" (invitation) could be established, it would not be necessary to go on to establish other grounds.

A second plausible basis for "intervention" in the instant situation, as in so many such cases, is to be found in the right to use force for the protection of nationals, and their property, of the intervening state, in absence of ability or willingness of the local state to perform this function.[6] While well established in principle, however, such a right obviously depends upon proof of the need for such action under the conditions cited. In the present case there seems to have been actual and serious danger to United States citizens and their interests, and some inability, though not unwillingness, on the part of the Lebanese Government to protect them. President Eisenhower did not fail to invoke this basis for United States action at Beirut.

[4] No text of the Chamoun appeal has been published, according to consultation with the White House, the Department of State, the Embassy of Lebanon and the New York Times. President Chamoun appealed to President Eisenhower through the U. S. Ambassador in Beirut, who cabled the President. See 39 Dept. of State Bulletin 181–183, 235 (1958).

[5] Reports of the United Nations Observation Group (UNOGIL) are to be found in U.N. Docs. S/4040 (July 3), S/4051 (July 16), S/4052 (July 17), S/4069 (July 30), 1958.

[6] For recent discussion of protection of nationals abroad, see Proceedings of the Vth International Conference of Comparative Law, Brussels, Aug. 4–9, 1958, especially the remarks of Mr. William Roy Vallance.

Finally, we have to note Article 51 of the Charter of the United Nations or the alleged right of co-operative self-defense by Member States prior to, or apart from, any action for their defense by that Organization. This ground also was cited by President Eisenhower, and indeed appeared, in the context, to loom larger or higher than the preceding contention as a justification for the action. But the difficulty with this argument is that the text of Article 51 refers to "armed attack," and such could not be, and was not, alleged by Lebanon. When the Charter was drafted, unarmed aggression was either not foreseen or not deemed suitable for inclusion among the forms of action to be forbidden and prevented.

This about completes the case for the defense, so to speak. Obviously, no larger or more general considerations such as peace and progress in the Middle East, the rivalry of Communist imperialism and democratic influence, and so on, have any legal standing in the premises. International law has not yet succeeded in regulating with complete effectiveness such concrete matters as protection of aliens and national self-defense, let alone higher political and social issues of the character just mentioned. From a strictly legal point of view the justification for the Beirut landing must be sought in the three arguments reviewed above, particularly the first and second, although the subsequent evolution of the incident has tended to give to the aspects of the situation relating to the United Nations more significance than those governable by the older and simpler international law, an evolution probably more important than the original incident in itself.

Two further questions must be raised in conclusion. One relates to the termination of such cases or such actions, and the second to the relative importance of a strictly legalistic appraisal of such actions of intervention. These two supplementary problems more or less contradict or clash, one with the other, but neither can be ignored, especially for the future, both immediate and prolonged.

Ordinarily, such an intervention would or should terminate both *de jure* and *de facto,* with much interplay between the two standards or controls, when its object had been achieved in the judgments of the intervening Power and/or the inviting Power, assuming that there had in fact been an invitation. Obviously, such line of reasoning leaves open the door for disagreement between the parties upon the merits or the needs of the situation. This potential disagreement has not failed to make itself felt—again potentially—in the present case. Such a deadlock could easily produce serious trouble, especially in view of the vagueness of the law on the matter or its willingness to leave the outcome largely to the discretion of the parties. On the other hand, the liquidation of the situation through or into United Nations consideration, discussion, and action may remove the problem of the termination of the incident onto a higher and more manageable plane.

Finally, it appears to be necessary to take account of the Russian attitude, if such it can be called, that the legalistic aspects of international relations and their legalistic regulation are not their most important aspects, al-

though the Russians have actually tried to a large extent to argue their condemnation of the instant United States action in orthodox legal terms. With the non-legalistic attitude there must be a large degree of sympathy or comprehension both from a sociological viewpoint and especially in view of the present (sic) state of international law. Such an attitude cannot, however, in view of all considerations, both logical and practical, be pushed to the point of repudiating legalistic technique entirely or abandoning any attempt to treat such cases, including the present case, according to accepted legal standards. According to such standards the Beirut landing can clearly be justified, although the two broader aspects of the situation already mentioned cannot be forgotten.

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THE GENEVA CONFERENCE ON THE LAW OF THE SEA; A STUDY IN INTERNATIONAL LAW-MAKING

Elsewhere in this issue the Geneva Conference on the Law of the Sea is fully described, and it is unnecessary here to repeat the facts which have been stated by Mr. Arthur H. Dean and Miss Marjorie M. Whiteman.[1] This comment concerns itself with the methods and procedures which were utilized in what was distinctly an exercise in international law-making.

The law of the sea is one of the oldest branches of international law. Seafaring peoples have from the earliest days known the utility of rules or common practices, just as much as they have spawned marauders and pirates. Much of the law of the sea which is applied commonly in the courts of many countries today is not "international law" in the sense in which that term is employed by those concerned with public international law. But the Supreme Court of the United States has found in maritime law a focus for a continued assertion of the existence of a customary law which has developed outside of any one national jurisdiction. In this field it is content to find that there is law and it does not feel compelled to assert that the matter is "political" in the sense that, under the separation-of-powers doctrine, the matter lies within the functions of the executive or legislative branches of the Government. On the other hand, there is much maritime law which is distinctively "public international law" whether one considers the type of jurisdictional problem raised in the *Lotus* case, or whether one refers to the right of innocent passage, the immunities flowing from entry in distress, or the more modern doctrines concerning the exploitation of the continental shelf.

There have been many attempts to make the law of the sea more precise. Leaving aside that abundant source of law which for centuries determined the respective rights of belligerents and neutrals and which was regularly and generally impartially applied by national prize courts, one recalls that international jurisprudence has played a distinctive part: *The Costa Rica Packet, The Bering Sea* and *North Atlantic Coast Fisheries Arbitrations, The I'm Alone,* the *Norwegian Fisheries Case,* for example. Treaties on

[1] See above, pp. 607, 629.