

Global Security and International Law:
To what extent can a state legally enact Protection of Nationals Abroad?

2401049
Joshua.A.J.McManus
The University of Buckingham
BA (Hons) Security, Intelligence, and Cyber.

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SECTION 1:
MAIN BODY

Introduction

From the outset of the Peace of Westphalia (Signed in 1648)¹, the international system has been built on a singular premise: the sovereignty of the state is paramount. However, in the modern globalised era, this principle has collided with the desire of a state to command its citizens no matter where they reside. The idea of Protection of Nationals Abroad (referred to outwith as PONA) sits at this intersection of geopolitics and international law. While the United Nations Charter was designed to cement borders and prevent the unilateral use of force, the persistent reality of hostage crises, arbitrary detentions, and state failure has forced a re-evaluation of where one state's sovereignty ends and another's duty of care begins.

This essay aims to explore the crisis for international jurisprudence, arguing that while the protection of nationals is often framed as a legitimate extension of self-defence under Article 51 of the UN Charter², its legal standing remains precariously subordinate to the absolute prohibition of force found in Article 2(4). By examining the competing claims of host-state sovereignty and home-state intervention, this essay hypothesises that the 'right' to protect nationals is less of a fixed legal doctrine and more a product of ambiguity. Ultimately, the extent of a state's legal reach is determined by the semantic elasticity of the law, a synthesis that suggests international legal frameworks often serve as a post-hoc justification for the exercise of power by dominant states rather than a consistent constraint upon them.

¹ Treaty of Peace between the Holy Roman Emperor and the King of France and their respective Allies (signed 24 October 1648) (Treaty of Münster).

² Charter of the United Nations (1945) 1 UNTS XVI, art 51. Online: <https://www.un.org/en/about-us/un-charter/full-text>

Primacy of the Host State

As stated previously, the primary concept in international law throughout the last 4 centuries has been the absolute sovereignty of a state over its territory and the administration of the people within. From a strictly literalist perspective, the powers of a host nation supersede any external claims of protection or administration by a home state. This is paramount to maintaining the rights of the states as mandated by the doctrine of the United Nations. Under this framework, a state's right to govern its territory is exclusive. To allow a foreign power to unilaterally intervene, even for the rescue of its own nationals, is to dissolve the very concept of sovereignty.

The primary legal pillar supporting this position is Article 2(4) of the UN Charter, which serves as a peremptory norm prohibiting the "threat or use of force against the territorial integrity or political independence of any state"³. Any military (and for that matter, non-kinetic) intervention conducted without the express consent of the host nation is, by definition, an act of force. The International Court of Justice (referred to outwith as the ICJ) has reinforced this strict interpretation in several key examples, most notably the Corfu Channel case. The Court famously rejected the British argument that its intervention against the Republic of Albania to clear mines was a justified policy of force, implying that between independent States, respect for territorial sovereignty is an essential foundation of international relations⁴. This ruling established that sovereignty cannot be bypassed for the security of a state's military, assets, or civilians. Furthermore, the principle of sovereign equality, enshrined in Article 2(1) of the Charter, implies that no state has a superior legal right to project its domestic laws into the territory of another. If a state were permitted to 'follow' its citizens across borders with military force, the political independence of a weaker 'host' state would be entirely at the mercy of the more powerful 'home' state. As scholars like Ian Brownlie have noted, the Charter was specifically designed to end 19th-century "gunboat diplomacy"⁵ where empires used the protection of their merchants or citizens as a pretext for annexation or regime change.

However, a significant counter-argument suggests that Article 2(4) was never intended to be completely insurmountable in the most severe of circumstances. Proponents of intervention argue that if a rescue operation is temporary, surgical, and lacks territorial ambition, it does not truly violate the integrity or independence of the host state in a lasting way. From this teleological viewpoint, the intent of the Charter is to prevent wars of conquest, not to forbid the saving of lives from a host state that is either unwilling or unable

³ Charter of the United Nations (1945) 1 UNTS XVI, art 2(4). Online: <https://www.un.org/en/about-us/un-charter/full-text>

⁴ Corfu Channel Case - United Kingdom vs Republic of Albania (1949) ICJ 001-19490409-JUD-01-00. Online: <https://www.icj-cij.org/node/103099>

⁵ Brownlie, I (2008) Principles of Public International Law, 7th Edition.

to protect them. This can be seen in the British intervention in Libya, where the United Kingdom began evacuations on the 26th February 2011, during the beginning of the Libyan civil war⁶. This action was carried out by members of the Special Forces (SAS), in order to secure safety during a time of perceived danger. This action was widely considered to be highly surgical and served no other purpose than PONA, and so was both necessary and proportional to perceived threats. This surgical necessity is increasingly codified in the modern 'Unwilling or Unable'⁷ doctrine. This framework implies that a host state's transition from a sovereign shield to a legal vacuum occurs the moment it lacks either the capacity or the political will to neutralise a threat to foreign nationals. By invoking this, intervening states argue that they are not violating the host's sovereignty, but rather stepping into a void where that sovereignty has already effectively lapsed.

In analysis, this debate reveals a fundamental clash between Literalism (A stance on what the law states) and Purposivism (A stance on what the law means). While the ICJ's stance in the Corfu Channel case supports a literal, 'closed-border' view, the reality of state practice frequently tests these boundaries. The strict sovereignty argument provides a clear, principled bar to intervention, yet it struggles to account for the moral and political pressure placed on a home state when its citizens are held hostage or targeted. While the sovereignty argument offers a robust legal shield for the host nation, it is frequently challenged by an equally potent counter-principle: the inherent right of a state to protect its own existence through its people. This is why the United Nations Security Council exists, to provide a legal and internationally recognised route to extend the protections of those nationals abroad. This tension between that of the host state and the desires of the home state forms the basis of the following section, 'In Defence of the Home State'.

⁶ Helm, T (2011) Libya: Daring SAS mission rescues Britons and others from desert. Online: <https://www.theguardian.com/world/2011/feb/26/britons-rescued-libya-desert-raf>

⁷ Jordan, L (2023). 'Unwilling or Unable'. U.S. Naval War College. Online: <https://digital-commons.usnwc.edu/ils/vol103/iss1/6>

In Defence of the Home State

The opposing legal position is that of a state possesses an inherent, extra-territorial right to protect its nationals, which (in exceptional circumstances) justifies a temporary suspension of a host state's sovereign exclusivity. This argument effectively extends the legal reach of the home state into foreign territory, showcasing the notion that a state is composed of its people, not just its soil. Under this view, if a host state is unable or unwilling to guarantee the safety of foreign nationals, the home state's duty to protect its citizens becomes the primary legal obligation, superseding the requirement of territorial consent. The core legal justification for this is found in a broad interpretation of Article 51⁸ of the UN Charter. Proponents, such as Sir Humphrey Waldock⁹, argue that an attack on a state's citizens is functionally equivalent to an 'armed attack' against the state itself, thereby triggering the inherent right of self-defence. This is bolstered by the Caroline Test of 1837, which remains the 'gold standard' for customary international law regarding the use of force. Under the application of the test in reference to direct action in PONA, the home state must prove that the necessity for intervention was "instant, overwhelming, leaving no choice of means, and no moment for deliberation"¹⁰. If these criteria are met, the intervention may be framed not as a violation of sovereignty, but rather a lawful and proportionate response to an emergency.

State practice provides the most compelling evidence for this doctrine, most notably in the 1976 Israeli operations in Entebbe. Following the hijacking of Air France Flight 139 by German militants alongside the Popular Front for the Liberation of Palestine (PFLP), the aircraft was diverted to Entebbe, Uganda, with the apparent complicity of the Amin regime. On 4 July 1976, Israeli commandos executed a long-range tactical extraction, "Operation Thunderbolt"¹¹. The mission resulted in the rescue of 102 hostages, the deaths of all hijackers and several Ugandan soldiers, and the loss of the Israeli ground commander, Lt. Col. Yonatan Netanyahu, alongside three hostages. Israel argued before the UN Security Council that its mission was a legitimate exercise of the right to self-defence, as Uganda had failed in its international duty to protect the hijacked passengers¹². On the 13th of July 1976, the Republic of Panama (before the United Nations) argued that the use of force by the State of Israel against the Republic of Uganda "constituted a use of force not authorised by the United

⁸ Charter of the United Nations (1945) 1 UNTS XVI, art 51. Online: <https://www.un.org/en/about-us/un-charter/full-text>

⁹ Waldock, H (1952) The Regulation of the Use of Force by Individual States in International Law. Online: https://doi.org/10.1163/9789004386242_092

¹⁰ Wood, M (2018) The Caroline Incident - 1837. Online: <https://doi.org/10.1093/law/9780198784357.003.0002>

¹¹ National Library of Israel (n.d.) מבצע אנטבה [Operation Entebbe]. Online: <https://www.nli.org.il/he/discover/israel/israeli-history/events-israeli-history/operation-entebbe>

¹² Gordon, D J (1977) Use of Force for the Protection of Nationals Abroad: The Entebbe Incident, 9 Case W. Res. J. Int'l L. 117. Online: <https://scholarlycommons.law.case.edu/jil/vol9/iss1/7/>

HUFGSIL26T1 - PONA

Nations Charter,”¹³ officially condemning all actions taken. Some states, such as the French Republic and the Republic of Kenya, offered assistance to Israeli forces during the operation, showcasing the political polarisation of the events that took place.

Similarly, the 1983 US intervention in Grenada was partially justified by the need to protect medical students from a perceived collapse of law and order. Following the coup by the People’s Revolutionary Army (PRA), the United States launched ‘Operation Urgent Fury’¹⁴ on 25th October 1983, aiming to secure the safety of nearly 1,000 Americans. While the US successfully evacuated its citizens and neutralised the regime, the intervention faced intense scrutiny. The United States argued before the UN Security Council that the mission was a necessary humanitarian intervention supported by a request from the Organisation of Eastern Caribbean States (OECS)¹⁵. Much like the Entebbe incident, the event highlighted a deep political divide, as the United Kingdom notably abstained¹⁶ from supporting its ‘closest ally’, while several Caribbean neighbours provided small paramilitary contingents to assist US forces. The question remains to this day, did the use of force go beyond what was both necessary and proportional to the proposed threat?

These examples suggest that for many powerful states, the legal threshold for enacting PONA principles is effectively equal to their capacity for kinetic action. Realist ideology equates power to its own legitimacy such as, the more influence a state possesses, the more it views the ‘right’ to protect nationals as inherent prerogative, fearing that a failure to act would signal a decline in its own sovereignty. However, from a strict literalist perspective, this is a dangerous distortion of the UN Charter. Critics, such as Christine Gray and Ian Brownlie, argue that the drafters of Article 51 intended “armed attack”¹⁷ to refer specifically to kinetic military strikes against a state’s physical territory, not threats against its individuals abroad. Furthermore, state practice is far from uniform as stated earlier, many nations in the UN General Assembly condemned the Entebbe and Grenada operations as acts of aggression. If PONA was a settled rule of customary law, it would require *opinio juris* (a belief that the action is legally obligatory) and consistent practice, both of which are heavily contested in

¹³ United Nations Security Council (1981) Maintenance of Peace and Security, Chapter VIII, 286-290. Online: https://main.un.org/securitycouncil/sites/default/files/en/sc/repertoire/75-80/Chapter%208/75-80_08-15-Complaint%20by%20the%20Prime%20Minister%20of%20Mauritius.pdf

¹⁴ Cpt Boulger, D P (1986) Operation Urgent Fury and Its Critics. Online: <https://www.armyupress.army.mil/Journals/Military-Review/Directors-Select-Articles/Operation-Urgent-Fury>

¹⁵ Nanda, V (1984). The United States Armed Intervention in Grenada. Online: <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1670&context=cwilj>

¹⁶ Curtis, M (2023) The only US Military intervention Britain (somewhat) opposed. Online: <https://www.declassifieduk.org/the-only-us-military-intervention-britain-somewhat-opposed/#:~:text=Margaret%20Thatcher's%20government%20sought%20to,100%2C000%20-%20on%2025%20October%201983.>

¹⁷ Charter of the United Nations (1945) 1 UNTS XVI, art 51. Online: <https://www.un.org/en/about-us/un-charter/full-text>

the international community, allowing for further exploration of the semantics of International Law.

This fundamental disagreement on the exact extent to which a state can legally enact PONA principles is rooted in the ambiguity of the language in the Charter of the United Nations. Legal commentary often states that the so-called ‘grey zone’ of the law is not an accidental gap, but a deliberate feature that allows political power to operate under the name of legality. By examining the undefined nature of key terms, it becomes clear that the charter provides the letters of the law, but often lacks the clarity for just application.

As implied to earlier, the war of semantics begins with Article 2(4) and the term “Territorial Integrity”. As noted by Oscar Schachter¹⁸, the text does not specify a threshold for violation. The question of ‘Does a surgical rescue mission truly impair a state’s “integrity” if the intervening force departs within hours?’ still remains. Schachter argues that while Article 2(4) is a cornerstone of the legal order, the stretching of this term in state practice has created a ‘gap’ between the formal rule and actual behaviour, rendering the rules weaker than its absolute phrasing suggests. Similarly, Article 51 fails to define what constitutes an ‘Armed Attack’. Furthermore, the law is silent on whether a state is merely a sovereign territorial claimant, or if it includes its citizens (regardless of their location) under the idea of “political sovereignty”. This lack of determinacy means that states do not necessarily act with malicious intent to break the law, rather, they act because the law fails to provide a clear, applicable rule for modern crises. For some realists (with a purposivism based approach to international law), the law’s inability to define its terms clearly leads to a coherence crisis, where the most powerful states are free to interpret ideas such as self-defence in whatever way suits their immediate security needs.

The International Court of Justice has arguably amplified this ambiguity. Christine Gray¹⁹, from the University of Cambridge, says that the ICJ has consistently avoided clarifying the specific legality of protecting nationals. Gray argues this is a deliberate judicial strategy. By refusing to rule strictly, the Court avoids either condemning the necessary security practices of powerful states or conversely opening a ‘Pandora’s Box’ that would permit an exploitation of the law. In this grey zone, the Caroline Test remains a ghost in the machine. PONA is therefore widely accepted as ‘customary law’ yet it has never been codified, allowing it to be invoked or ignored based on the political capital of the intervening state. Ultimately, this analysis of semantic debate proves that the ‘extent’ of a state’s right to protect its nationals is not a fixed legal doctrine. Instead, it is a fluid boundary determined by the persuasive power of a state’s legal narrative. International law does not function as a rigid barrier but as a framework flexible at the will of the state with the most sophisticated legal department, rather than the clearest legal right.

¹⁸ Schachter, O (1984) The Right of States to Use Armed Force, 82 MICH. L. REV. 1620. Online: <https://repository.law.umich.edu/mlr/vol82/iss5/32>

¹⁹ Gray, C (2018) International Law and the Use of Force, 4th edition.

Conclusion

The legal extent of a state's right to protect its nationals abroad remains one of the most contended paradoxes in international jurisprudence. There is no clean winner between the 'shield' of host-state sovereignty under Article 2(4) and the 'sword' of home-state protection under Article 51. While this essay's null hypothesis of territorial integrity provides the formal foundation of global order, the alternative of humanitarian necessity ensures that this foundation is frequently bypassed. The resulting synthesis is a legal 'grey zone' characterised by undefined semantics, where terms like "armed attack" and "integrity" are stretched to accommodate the geopolitical will of the moment.

Ultimately, through the common actions of states, the hypothesis is confirmed: the legal threshold for the Protection of Nationals Abroad is simply equal to the power of the belligerents. The law implies the primacy of the host state, but state practice often differs. This disparity suggests that international law does not function as a rigid constraint on the use of force, but rather as a framework for its justification. Law, much like history, is often written by the victors and interpreted by the powerful, meaning that state practice (which can differ from written law) is not as black and white as it first seems. The most influential nations, such as the United States or Israel, possess the political and military capital to exploit the semantic gaps in the UN Charter and doctrines of war, without meaningful recompense. Thus, the 'extent' of a state's right is not a fixed legal reality, but the extent of its power. International Law does not exist to eliminate the use of force, but to organise the rhetoric of those who control the pen, ensuring that even when the law is broken, the order of the powerful remains intact.

THE END.

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Accreditation.

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