

the future of the Egyptian-Israeli treaty grows increasingly uncertain.

Instead of inducing the administration to abandon its courtship of the PLO, however, these setbacks have merely confirmed its initial reservations toward the Sadat initiative and have reinforced its determination to involve the PLO in the current negotiations. Only by "broadening" the Camp David accords to include the PLO, it is argued, can a "comprehensive settlement" of the Arab-Israeli conflict be achieved.

Just how the Arab states regard this intense American activity on behalf of the PLO is far from obvious. Publicly, they applaud it as a further step toward the creation of a Palestinian state. Privately, though, no Arab state actually favors the creation of a new Palestinian state. As Raymond Tanter, Ronald Reagan's perceptive Middle East affairs adviser, accurately put it: "The Syrians don't want a Palestinian state—they think the West Bank, like

Lebanon, ought to be part of 'Greater Syria.' The Egyptians don't want it—they're sure it would be anti-Egyptian. The Saudis don't want it—they fear it would become a Middle Eastern Cuba. And King Hussein of Jordan is scared stiff of a Palestinian state on the West Bank—he thinks it would threaten his throne." In fact, the only ones who seem genuinely to want a Palestinian state are the PLO and the Russians—and some of President Carter's advisers.

From the point of view of these advisers—Brzezinski foremost among them—the recent European initiative on behalf of the PLO could not have been more nicely timed. Though the Carter administration has been forced to ease off on the Israelis for the duration of the election season, the Europeans, like the good allies they are,

**The PLO regards Hussein's kingdom as no more than eastern Palestine and is pledged to destroy both Israel and Jordan.

have obligingly taken up the slack. Once the election is over and President Carter is safely ensconced in office, administration officials can be relied upon to cite the Venice declaration in favor of more accommodating American policy toward the PLO.

And so the circle will at last have been completed: Prodded by the strenuous American courtship of the PLO into a more "realistic" posture themselves, the Europeans' flirtation with the PLO will serve as the pretext for a still more "realistic" American position. Thus, the terrorist PLO, concealing neither its pro-Soviet sympathies nor its ultimate aims, goes from strength to strength, borne on a swelling tidal wave of Western delusion, avarice, and stupidity. "If the aim of American policymakers is to reward our enemies and to betray our friends," observes Mrs. Kirkpatrick, "then American Middle East policy undoubtedly ranks as a brilliant success, for that is precisely what it has accomplished." □

Eugene V. Rostow

RESCUING MISSIONS

Whatever the obstacles to rescuing our diplomats in Iran,
international law isn't one of them.

Whatever else may be said of the Iranian revolution, it has certainly tested the faith of classical American Puritans, for whom everything bad that happens in the world is the fault of the United States and all "revolutions" are at least presumptively good. Even the best among them, whose sense of guilt has been honed in a thousand demos, have found it difficult to fit Khomeini's revolution into the pattern of their convictions.

At first, their task was easy. They dismissed the evidence of Soviet involvement as rabid anti-Communism, pointed to the Shah's reforms as evidence of the way modernity was riding roughshod over Iran's traditional way of life, made the usual inferences from the United States' support of the Shah, and concluded the obvious: that the Iranian revolution was an idealistic revolt against imperialism, materialism, and capitalism and a return to the Golden Age of Persian cul-

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ture. In short, it was a Good Thing.

Over time, however, they had trouble sustaining their first opinions. Among other things, they found it difficult to swallow Khomeini's attack on the equality of women; his restoration of barbarous punishments; his secret police and recourse to assassination; and the general state of anarchy in which Iran was floundering. Above all else, though, they gaged on our diplomats being held hostage in Iran. True, people like Ramsey Clark and Richard Falk—battle-hardened defenders of Hanoi during the Vietnam war—have tried to muster an "explanation," if not a defense, for the imprisonment of our diplomats. But even for them this has not been easy.

Professor Falk, for instance, begins his "explanation" by concluding, regretfully, that it is impossible to find a legal justification for holding diplomats hostage. Here, of course, he is right. The immunity of diplomats is indispensable to the functioning of the international state system and has been the first rule of international relations for millennia. Julius Caesar, wisely mild in handling Gallic tribal leaders who

resisted Rome, made an exception for the Breton chiefs who dared to arrest his envoys. After crushing their rebellion, he executed their leaders and sent the rest into slavery. The principle of diplomatic immunity, he felt, had to be respected absolutely; therefore, he concluded, the lesson had to be made very plain indeed.

Professor Falk acknowledges that the law today is quite as clear as it was in Caesar's time. He argues only that it is out of date and should be changed. But it has not been changed yet, and cannot be changed while international relations are conducted by states. All Falk can bring himself to say, and here Ramsey Clark joins him, is that the Muslim fundamentalists led by Khomeini have been so deeply outraged by the Shah's programs of modernization that they should not be blamed "too much" for taking "extreme" measures in order to win justice or at least avenge those who in their view have betrayed tradition in Iran.

For the people who think this way, of course, the failure of the American military attempt to rescue the hostages was a cause for celebration. With this issue, they felt,

they could resume their normal posture of denouncing the government of the United States for illegality, intervention, and barbarism. Several of them tried. But here too they failed. They discovered to their chagrin that the American effort was entirely proper under both customary international law and the law of the United Nations Charter which codifies—and modifies—customary international law.

Even if two states are at peace with each other, international law has always authorized one to use force against the other under certain circumstances in the exercise of its "sovereign" and "inherent" right of self-defense: when the offending state has violated basic legal obligations to the other; when peaceful means for obtaining relief have failed, or would be unavailing; when the necessity for action is urgent, and irreparable injury might be caused by further delay; and when the force used to remedy the injury is limited, proportional to the offense, and not excessively dangerous.

The most frequently cited instance where such circumstances came into play is the celebrated *Caroline* episode. In 1837, there was an insurrection, possibly portending a civil war, in Canada. Some enthusiastic friends of the rebels gathered in northern New York to form armed bands and join the fray. The United States owed Great Britain the fundamental and absolute international legal obligation not to allow its territory to be used for armed attacks against Canada. A United States marshal went to the encampment of potential soldiers and reasoned with its leaders. He was met with derision. The United States cavalry did not gallop up promptly to arrest the adventurers, so the British dispatched a couple of companies across the Niagara River into New York. The redcoats chased the would-be soldiers away and sent their good ship *Caroline*, which had been used to ferry them into Canada, over Niagara Falls.

In the spirited diplomatic correspondence which ensued, Secretary of State Daniel Webster vigorously protested the British raid, but he did not dispute Britain's right to use force in defending it-

self against armed attack from New York under certain conditions. He simply argued that Britain should have given the government in Washington more time to clear up the guerrilla camps itself.

The history books are full of such episodes. President Monroe sent General Andrew Jackson into Spanish Florida to disperse armed bands which had been conducting raids in Georgia, on the ground that the Spanish government was incapable of doing so itself. President Wilson mounted a major expedition against Mexico to stop the activities of Pancho Villa, whose campaigns extended into Texas. And one of our naval commanders became a national hero by threatening to fire on an Austrian vessel in the harbor of Smyrna, because the Austrian consul there was seeking to arrest and repatriate an Austrian citizen who had taken out American first papers.

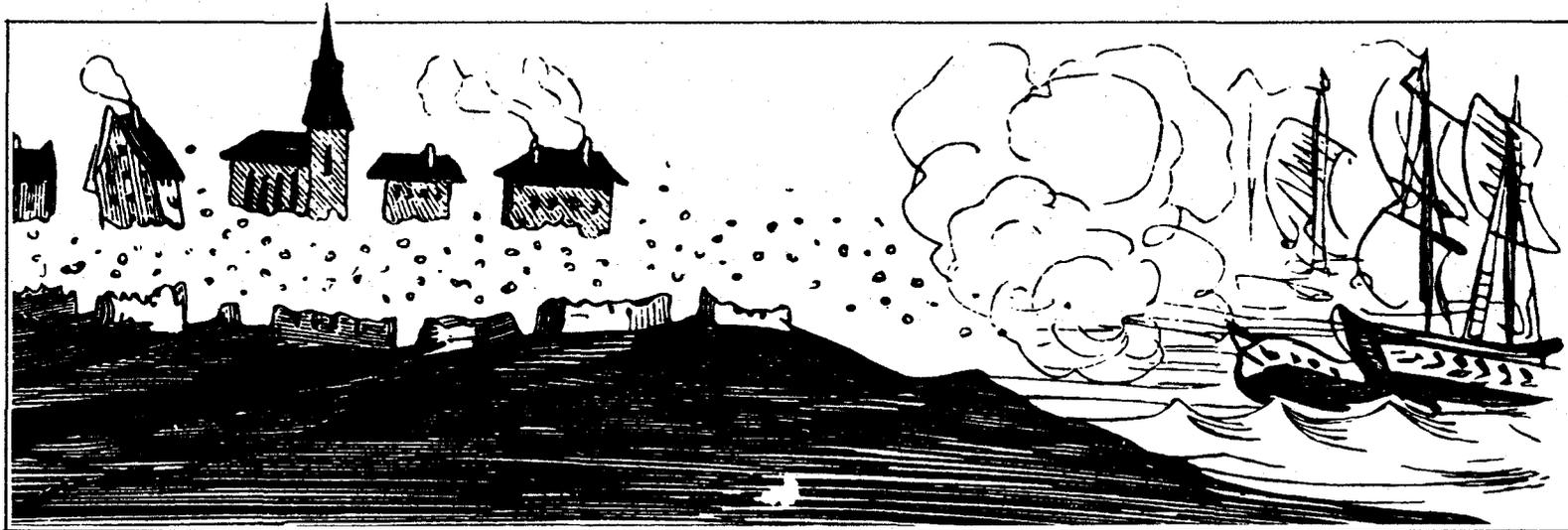
It is probably more common today than it was in the nineteenth century to use force internationally in time of peace to remedy breaches of international law for which no lesser remedy is available. It is no longer fashionable, to be sure, to take over the local customs house in order to guarantee the payment of interest on outstanding loans. And nowadays the major powers lack the self-confidence to enforce what used to be considered self-evident rules of passage on the high seas.

Nevertheless, states are no less willing than before to use force in order to resist guerrilla attacks launched from the territory of other states and to protect citizens exposed to attacks of many kinds while abroad. On the contrary, as the world political system is exposed more and more to the expansionist pressures of the Soviet Union, which often organizes and encourages guerrilla warfare as a means for achieving its ends, the number of such episodes involving guerrilla warfare is on the rise. Similarly, as many parts of the world sink into anarchy, the need for states to protect their citizens abroad, particularly their diplomats on station, is becoming more, not less, acute. While it is often difficult to prevent or to remedy such breaches of international law militarily, no

one has effectively challenged the idea that the obligation of a state to defend its territory, its officers, and its citizens is central to the notion of sovereignty, and that an aggrieved state may defend itself in the most practicable possible way, i.e., as the British did in New York in 1837.

When a foreign government has violated the rights of diplomats and citizens abroad or failed to protect them against a violation of their rights by private groups, the strictures of international law are equally clear-cut. The Entebbe rescue in 1976 and the German raid in Somalia in 1977 are valid applications of the rule. In both instances terrorists held the passengers and crew of civilian transport aircraft hostage, demanding, among other things, the release of prisoners in foreign prisons. In the Entebbe affair, the position of the Ugandan government was ambiguous, at the very least; the Somali government, on the other hand, recognizing its inability to capture the terrorists without killing the hostages, invited the Germans in. Although much has been made of this difference, it certainly does not affect the legality of what either the Israelis or the Germans did. Uganda and Somalia were under the same legal obligation to protect an aircraft and its passengers from being hijacked by terrorists in their territories. That obligation was quite as serious as the obligation of the United States in 1837 to prevent its territory from being used as a base for guerrilla attacks in Canada. In both Uganda and Somalia the obligation was not met. For that reason, and that reason alone, the Israelis and the Germans had the same right under international law to use a reasonable amount of force to cure the breach by rescuing their aircraft and their citizens.

When the United Nations Charter was drafted in 1945, many experts argued that it was unnecessary and indeed undesirable to include an article on the right of self-defense. The right of self-defense was so important, they said, so close to the bone of sovereignty, so pervasive, and so difficult to define that it would be better to leave it out of the Charter altogether. Then no one could contend that the Charter in



any way qualified the right of sovereign states to defend themselves against major breaches of international law that could not be remedied by diplomacy, arbitration, or litigation. In the event, the draftsmen of the Charter compromised with Article 51. It declares that nothing in the Charter qualifies "the inherent right" of individual or collective self-defense—but it seems to limit that right to situations of "armed attack."

Article 51 has been one of the most controversial provisions of the Charter, but the controversies which swirl about the words

and ideas of Article 51 do not affect the legal right of the United States to use whatever force is necessary to obtain the release of its diplomats from their captivity in Iran. Whether the captors of our diplomats are considered officers of the Iranian state or members of a private army the Iranian state cannot control is immaterial. Iran is responsible under either hypothesis. Armed force is being used to keep our diplomats prisoner. That is an "armed attack" on the sovereignty of the United States under any definition of the term. Every peaceful remedy has been

tried and has failed. Both the doctrines of international law and the pattern of state practice fully support the legality of our attempt to rescue our diplomats.

To dismiss the legal arguments against our attempt to release our diplomats in Iran by force is not of course the same as arguing that we should land the Marines and proceed. Our strategic interests in the Persian Gulf are great and our strategic position at the moment is delicate. But whatever the advisability of our using force in Iran at this time, our decision should not be affected by doubts about its legality. □

Carl Gershman

CAMBODIA AND THE PRINCE

Sihanouk remembers what anti-war apologists choose to forget.

Somewhere toward the end of *War & Hope: The Case for Cambodia*,* Prince Norodom Sihanouk comments that during the period between his overthrow by Lon Nol in 1970 and Hanoi's victory over the Pol Pot regime nine years later he had ample time to reflect upon his own past mistakes and the "indescribable horror" that has befallen the Khmer people. If he offers something less than the full benefit of those reflections in *War & Hope*, it is because the book is in part a self-serving political manifesto explaining Sihanouk's obviously sincere belief that he holds out the only remaining hope for his country. Nevertheless, the book is a good deal more than that, for, whatever his intentions, Sihanouk adds to the evidence discrediting the anti-war position.

It is difficult to quarrel with Sihanouk's main contention, that his return to power is in Cambodia's best interests. Surely no one else could conceivably restore peace and independence to the country. The current ruler, Heng Samrin, is just a puppet of Hanoi who won't even allow international food and medical relief to reach the starving Khmer people. His chief opponent, the ousted Pol Pot, is the most notorious butcher since Hitler and Stalin, having managed in the course of 45 months to liquidate over a quarter of the country's population. Both are tied to opposing Com-

munist camps, the former to Moscow and the latter to Peking, which means that the venomous Sino-Soviet rivalry is now superimposed on the ancient enmity between Vietnam and Cambodia. A solution on either Heng Samrin's or Pol Pot's terms is thus impossible, even if the hands of both were not dripping with blood.

Sihanouk, on the other hand, is a genuine nationalist and a conciliator by nature. At one time or another over the years he has been able to cooperate with virtually every party to the Indochinese conflict, including not just the regional and global Communist powers but the Americans as well. His loyalty to Cambodia is beyond

dispute. It is, in fact, his *only* loyalty, which accounts for his ideological opportunism and his promiscuous taste in political allies. When he promises that his Cambodia would be completely neutral (which he distinguishes from being "non-aligned"), giving no power cause for intervention, he can be taken at his word.

Nonetheless, the odds against his return to power are prohibitive. His three-point plan for a solution to the conflict calls for the abolition of both the Heng Samrin government and the Pol Pot resistance, a new international conference on Indochina, and free elections in which the Khmer people themselves can freely choose their leaders from among competing political parties. He is confident he would win such an open contest, and he undoubtedly would. But no one seriously entertains the thought that such elections will ever be held.

True, the United States supports Sihanouk's position. But the time is long past when the United States was in a position to exercise any significant influence over events in Southeast Asia. Sihanouk thinks that Hanoi might be induced to withdraw from Cambodia in exchange for massive American economic aid. But even he seems to know that this is wishful thinking, for he speaks elsewhere of Hanoi's "land-hungry and hegemonic intentions toward Cambodia."

The other reasons he gives for believing his plan is feasible are no more convincing.



*Pantheon, \$10.95.

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