Fighting Terrorism in the 1980's: The Interception of the *Achille Lauro* Hijackers

Gregory V. Goodingt

I. Problem

On October 10, 1985, United States military aircraft intercepted an Egyptian airliner over the Mediterranean Sea and forced it to land at a NATO base in Sicily. Among those on board were four Palestinians who had recently surrendered after hijacking the Italian cruise ship *Achille Lauro* and holding more than 400 persons hostage for three days. The United States stated that it acted to prevent the hijackers from "fl[yi]ng . . . to their freedom."¹ This incident brings into dramatic relief the norms governing the actions that a state may permissibly take under international law to apprehend suspected criminals who are not physically within its jurisdiction. More directly, it forces a reexamination of the previously established norm against the interception of civilian aircraft by military forces.

A. The Crime and Jurisdiction

There are several preliminary matters which must be discussed before these primary issues can be analyzed. The first is the hijackers’ crime. Although there is no international criminal law in the same sense in which each country has its own municipal criminal code, international law proscribes certain conduct and allows national courts and international tribunals to punish such conduct when it occurs.² The actions of which the hijackers were accused clearly fall within that class of conduct.

² J.D. Candidate, Yale University.
¹ Hijacking of the *Achille Lauro*, Statement by the Principal Deputy Press Secretary, October 10, 1985, 21 Weekly Comp. Pres. Doc. 1233 (1985) [hereinafter Statement by Press Secretary].
Achille Lauro Incident

First, those actions can be characterized as piracy. The 1958 Geneva Convention on the High Seas defines piracy as:

Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.3

While it may be contended that the taking of the Achille Lauro is not included within this definition because there was no second vessel involved or because the hijackers did not act for "private ends," customary international law and the history of the enforcement of the norm against piracy indicate that such a position is unfounded.4

Second, the hijacking of the Achille Lauro falls within the United Nations International Convention against the Taking of Hostages. The Convention defines a hostage taker as:

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage . . . .5

Since the hijackers demanded the release of certain Palestinians jailed in Israel,6 their actions violated the Convention. Both Egypt and the United States are parties to the Convention and thus are obligated to punish or extradite those who violate it.7

A more difficult question is that of jurisdiction over the hijackers. Clearly, Italy had territorial jurisdiction based on the fact that the Achille Lauro flew the Italian flag.8 The United States' jurisdictional claims are more tenuous. The U.S. ultimately issued an arrest warrant for the hi-

4. See McGinley, The Achille Lauro Affair—Implications for International Law, 52 TENN. L. REV. 691, 694-700 (1985); see also L. OPPENHEIM, INTERNATIONAL LAW 609 (H. Lauterpacht ed. 1955) ("If a definition is desired which really covers all such acts as are in practice treated as piratical, piracy must be defined as every unauthorized act of violence against persons or goods committed on the open sea either by a private vessel against another vessel or by the mutinous crew or passengers against their own vessel." (italics omitted)).
6. See infra text accompanying note 38.
7. Hostages Convention, supra note 5, at art. 8(1).
8. See 1982 Law of the Sea Convention, U.N. Doc. A/Conf.62/122, art. 92 (1982) ("Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for
jackers charging them with piracy and hostage taking. The universality principle of jurisdiction was apparently relied on for the piracy charge. The strongest statement of support for this position in this context is found in Judge Moore’s dissenting opinion in the Lotus case:

[In the case of what is known as piracy by law of nations, there has been conceded a universal jurisdiction, under which the person charged with the offence may be tried and punished by any nation into whose jurisdiction he may come. . . . Piracy by law of nations, in its jurisdictional aspects, is sui generis.]

As for the second charge, the U.S. statute concerning hostage taking was enacted in conjunction with the U.S. ratification of the Hostages Convention. That Convention allows a party state to take jurisdiction when the hostage “is a national of that State.” However, no jurisdiction is conferred over hostage takers who are nationals of states not party to the Convention. Since the hijackers were citizens of Lebanon, which is not a signatory, the Convention did not confer jurisdiction on the United States. In addition to the piracy and hostage taking charges, President Reagan on at least two occasions implied that the hijackers would be charged with the murder of an American citizen. However, a jurisdictional claim such as this based solely on the victim’s nationality would be contrary to the traditional U.S. position on this point and was not in fact made.

Ultimately, though, the principal issue raised by this incident is not jurisdictional. In announcing the interception, the United States Presidential Press Secretary stated that the goal of the operation was to “es-
Achille Lauro Incident
cort [the Egyptian aircraft] to a location where the terrorists could be apprehended by those with appropriate jurisdiction.18 Thus, the U.S. claim to the right to intercept the plane in order to capture the hijackers is independent of its jurisdictional claims. In order to analyze how the U.S. claim regarding the legitimacy of its interception affected international law, it is necessary first to define the applicable legal norms that prevailed before the United States acted.

B. The Pre-Incident Norms

There are several precedents to the U.S. interception; the Achille Lauro incident was not the first example of a state using force to bring a criminal suspect from a sanctuary outside its borders to a jurisdiction willing to try and punish that suspect.19 The most renowned case is that of Adolf Eichmann.20 Eichmann was accused of having had primary authority over the perpetration of Nazi war crimes against the Jews.21 He avoided prosecution at Nuremberg, and in 1960 was living in appar-

18. Statement by Press Secretary, supra note 1, at 1233. But see infra text accompanying note 52 (report that original U.S. intention was to transport the hijackers to the U.S. immediately).

19. In addition to the cases discussed in the text, other incidents include: Ker v. Illinois, 119 U.S. 436 (1886) (Ker, accused of larceny and embezzlement in Illinois, was abducted in Peru by an American private detective. The detective had proper extradition papers but did not use them because Peru was under occupation by Chile. The Supreme Court upheld Ker's conviction by an Illinois court. There was no Peruvian protest.); Ex parte Soblen, [1963] 2 Q.B. 243 (Accused of espionage by the U.S., Soblen fled to Israel. Israel turned him over to U.S. agents. While on a plane to the U.S., Soblen stabbed himself, forcing the plane to land in Britain. Although his offense was not extraditable there, British officials nonetheless deported him to the U.S. See O'Higgins, Disguised Extradition: The Soblen Case, 27 Modern L. Rev. 521, 530-38 (1964)); the Argoud case (Argoud led a military revolt against the DeGaulle government during the Algerian crisis. He was kidnapped by French agents in Munich in February 1963 and taken to France, where he was sentenced to life imprisonment. West Germany protested, but to no avail. See French Surrender of Argoud Unlikely, N.Y. Times, Jan. 1, 1964, at 3, col. 5.); the case of Faik Bulut (Bulut, a Turkish citizen, was abducted during an Israeli army raid 100 miles into Lebanon. He was tried as a civilian for the crime of belonging to the Palestinian organization Al-Fatah, convicted, and sentenced to seven years imprisonment. See Israel: Self-Appointed Supercop, Time, Aug. 20, 1973, at 31; see also Note, Extraterritorial Jurisdiction and Jurisdiction Following Forcible Abduction: A New Israeli Precedent in International Law, 72 Mich. L. Rev. 1087 (1974.)); the Vincenti case (In 1920, U.S. agents kidnapped a U.S. citizen in the British West Indies and returned him to the U.S. When Britain protested, the U.S. released Vincenti and apologized. See 1 G. Hackworth, Digest of International Law 624 (1940).). See generally M. Bassiony, International Extradition: United States Law and Practice ch. V, § 2 (1983); M. Bassiony, International Extradition and World Public Order 121-43 (1974); O'Higgins, Unlawful Seizure and Irregular Extradition, 36 Brit. Y.B. Int'l L. 279 (1960) [hereinafter Unlawful Seizure].


ent safety in Argentina. But on May 11, 1960, members of the Israeli Security Service apprehended Eichmann in Buenos Aires. After being interrogated for a week, Eichmann was flown to Israel where he was tried, convicted, and executed for crimes against the Jewish people, crimes against humanity, and war crimes.

Argentina protested the abduction and demanded that Israel return Eichmann and extradite those who kidnapped him. Israel sent to Argentina a diplomatic note that admitted that Argentina's sovereignty had been violated but maintained that the "special significance" of the Eichmann case justified Israel's action. Unsatisfied by the Israeli response, Argentina brought the matter to the U.N. Security Council. The Council passed a resolution that neither condemned nor criticized Israel, but requested that "appropriate reparation" be made to Argentina. The U.S. representative, supported by France and Great Britain, stated in the debate preceding the vote that he considered that "appropriate reparation will have been made by . . . the pending resolution taken together with the statement of the Foreign Minister of Israel making apology on behalf of the Government of Israel" and thus that upon the adoption of the resolution "the incident will then be closed."

Israel made another apology, but no "reparation." The governments of Israel and Argentina soon issued a joint statement announcing that they regarded the matter as closed. On the whole, the resolution of the Eichmann incident indicates that the international community, given the

22. Id. at 5-6. The Argentine government had an "impressive record for not extraditing Nazi criminals." H. ARENDT, supra note 20, at 264.

23. Lippman, supra note 20, at 6, 15-17.


25. Resolution adopted by the Security Council at its 868th meeting on 23 June 1960 concerning the case of Adolf Eichmann, 15 U.N. SCOR Supp. (Apr.-June) at 35, U.N. Doc. S/4349 (1960). The resolution also expressed "the concern of people in all countries that Eichmann should be brought to appropriate justice for the crimes of which he is accused." Id. The Soviet Union and Poland abstained from the resolution, fearing that "adequate reparation" might be interpreted to require Eichmann's return to Argentina. Lippman, supra note 20, at 11.


27. Had Israel's action indeed constituted a violation of international law, the reparation owed to Argentina would have included the return of Eichmann. See O'Higgins, Unlawful Seizure, supra note 19, at 295-96.

28. Lippman, supra note 20, at 11.
"special significance" of the parties involved, acquiesced in and largely approved of the Israeli action.29

The facts of the second primary precedent for the Achille Lauro response are even more similar to the U.S. action. On August 10, 1973, Israeli fighter jets intercepted a Lebanese airplane over Beirut and forced it to land at an Israeli military base. The Israelis believed that the Lebanese plane was carrying a Palestinian terrorist30 responsible for a massacre at the Athens airport the week before.31 It turned out, however, that the individual sought by the Israelis was not on board, and the plane was released.32

Like Argentina before it, Lebanon took the matter of the Israeli action to the Security Council. The Council's response this time was unambiguous. A resolution condemning the interception was adopted unanimously.33 The resolution stated that the Israeli action was a violation of "the Charter of the United Nations, the international conventions on civil aviation and the principles of international law and morality."34

Thus, in the fall of 1985 it seems clear that an international norm existed against the diversion of civilian aircraft for the purpose of apprehending suspected criminals. Based on the Eichmann case, as well as several others,35 however, it cannot be said that a strong norm had developed against the abduction of suspected criminals in cases not involving a civilian plane.36 The Achille Lauro incident forced a reappraisal of these
norms. In order to evaluate the present effective international law in this area, it is necessary to consider how international elites responded to the U.S. interception.

II. Facts

On October 7, 1985, four armed Palestinians seized the Italian cruise ship *Achille Lauro* off the coast of Egypt. The gunmen held over 400 passengers and crew hostage, demanding that Israel free 50 jailed Palestinians. After sailing to Syria and then Cyprus, both of which refused it port rights, the ship anchored off Port Said, Egypt. There the hijackers negotiated with ambassadors from Italy and West Germany as well as with two Palestinians: Hani el-Hassan, an advisor to Palestinian Liberation Organization (PLO) chairman Yassir Arafat, and Mohamed Abul Abbas, the leader of the pro-Arafat faction of the Palestine Liberation Front (PLF). On October 9, the gunmen surrendered to Egyptian authorities, who promised them safe passage out of the country.

Once the hijackers surrendered and their hostages were released, it was discovered that an American passenger, Leon Klinghoffer, had been murdered and his body thrown overboard. Although there had been
reports on October 8 that one or two Americans had been killed,\textsuperscript{43} the Egyptians claimed to have been unaware of the killing at the time they negotiated the surrender, having relied on the ship captain's report that everybody on board was safe.\textsuperscript{44} The hijackers and their supporters denied that the murder had taken place,\textsuperscript{45} a PLO official calling it "a big lie fabricated by the intelligence service of the United States."\textsuperscript{46} However, Klinghoffer's body, with two gunshot wounds, was later recovered on the Syrian coast and turned over to the United States.\textsuperscript{47}

After the hijackers were in Egyptian custody and the killing was discovered, Egypt expressed its intention to stick to its deal rather than to try the hijackers or turn them over to Italy or the United States,\textsuperscript{48} as the U.S. urged.\textsuperscript{49} Egyptian President Hosni Mubarak reportedly asked Arafat to find a country willing to accept the hijackers.\textsuperscript{50} On Thursday
evening, October 10, an Egyptian airliner carrying the four hijackers, two Palestinian officials (Abbas and an unidentified PLO representative), and several Egyptians took off from Cairo headed for Tunisia.

The Egyptian plane was denied permission to land first in Tunisia and then in Athens. Instead, it was intercepted over the Mediterranean by four American F-14 fighter planes, based on the aircraft carrier *U.S.S. Saratoga*, and directed to the North Atlantic Treaty Organization base at Sigonella, Sicily. After landing, the Egyptian aircraft was surrounded by NATO troops.\(^5\) The original American plan was reportedly to transport the hijackers to the United States almost immediately, but Italy insisted that it was the proper country to try them and thus it retained custody.\(^6\) Although Egypt accused Tunisia of colluding with the United States in carrying out the interception,\(^7\) and Egypt itself was initially widely suspected of being involved,\(^8\) the United States repeatedly denied that any other country had knowledge of or assisted with the operation.\(^9\)

### III. Outcome

After the Egyptian plane and its American escorts landed in Sicily, a conflict arose over the disposition of Abbas and the other Palestinian official accompanying the hijackers. While Egyptian officials aboard the intercepted plane agreed to turn over the four hijackers, they refused to surrender the other two Palestinians. Egypt insisted that the two were its guests and thus immune from investigation or arrest.\(^10\) Eventually, the two officials were flown aboard the Egyptian airliner\(^11\) to Rome, where

---


\(^6\) Gwertzman, supra note 52.

they stayed in the Egyptian Cultural Center. Meanwhile the four hijackers were taken into civilian judicial custody. Egypt continued to pressure Italy to release the two Palestinian officials, but did not demand the return of the hijackers. On October 12, Abbas and the other official flew on an Egyptian airliner to Yugoslavia, leaving Italy despite the fact that the United States had previously issued an arrest warrant and extradition request for Abbas.

The United States declared its intention to request extradition of the hijackers from Italy at the same time it initially announced the interception. An arrest warrant was issued by the U.S. District Court for the District of Columbia on October 11 for Abbas and the four hijackers. Each was charged with hostage taking, piracy, and conspiracy to commit both offenses. Italy's decision to let Abbas go despite the warrants and extradition request was harshly criticized by the United States. The ensuing dispute within Italy over the decision led to the collapse of Prime Minister Bettino Craxi's government. However, President Reagan quickly moved to repair any damage to U.S.-Italian relations, and Craxi was able to re-form a government from the same coalition that had previously dissolved.

59. Kamm, supra note 57.
60. Weinraub, supra note 58.
63. Statement by Press Secretary, supra note 1, at 1234.
64. The warrant and criminal complaint are reproduced in 24 INT'L LEGAL MATERIALS, at 1554, 1555 (1985). The warrant identified the hijackers as Abdel Atif Ibrahim Fatayer, Hallah Abdallah Al-Asan, Maged Yussef Al Malaki, and Hammad Al Abdulla.
68. Hijacking of the Achille Lauro, Statement by the Principal Deputy Press Secretary to the President on the Italian Government's Release of Abu el Abbas, October 13, 1985, 21 WEEKLY COMP. FRES. DOC. 1248 (1985) ("The U.S. Government finds it incomprehensible that Italian authorities permitted Abu el Abbas to leave Italy . . . ."); see also Weinraub, supra note 58; Boyd, supra note 62.
70. Dionne, President Sends Conciliatory Note to Italian Leader, N.Y. Times, Oct. 20, 1985, § 1, at 1, col 6.
71. 45 FACTS ON FILE, at 836 (1985).
Italy charged the four arrested hijackers with murder, kidnapping, hijacking, and possession of arms and explosives.72 Thirteen individuals were eventually indicted in connection with the hijacking—including Abbas, who was accused of ordering the operation, and Ozzudin Badrak Kan, who was identified as the other Palestinian official accompanying the hijackers and the head of the PLF’s military branch.73 Three of the hijackers74 have been tried and convicted in Italy, receiving sentences of 15, 24, and 30 years. Abbas and two others tried in absentia were given life sentences.75

IV. Conflicting Conceptions of Lawfulness

Although Egypt claimed that the U.S. action injured it,76 the primary participants in the dispute over the legality of the interception were the United States and the PLO. The PLO was the most directly affected by the incident and potentially had the most to lose should the U.S. action be accepted as lawful.

PLO spokesmen immediately asserted that the interception was illegitimate. Arafat termed the action “piracy”77 and “terrorism.”78 Ibrahim al-Sus, a PLO representative, stated that it was “in flagrant violation of international law.”79 A statement by the PLO Executive Committee accused the United States of a “flagrant aggression against Egypt and Arab sovereignty.”80 The PLO’s position seems to stem from its view that it was the “only authority qualified to try” the hijackers.81

While the PLO attempted to rest its claim on a traditional conception of a state’s limited jurisdiction, the United States asserted a broad right

74. The fourth is awaiting trial as a juvenile.
77. Arafat Message to Craxi Warns of Reactions, FBIS (Mid. East), Oct. 12, 1985, at A4 (text from AFP (Paris)).
79. PLO Reacts to Interception, FBIS (Mid. East), Oct. 11, 1985, at A1 (text from AFP (Paris)).
81. PLO Reacts to Interception, supra note 79. Such a trial by the PLO would of course be difficult since there is no Palestinian state and no Palestinian nationals. However, the General Assembly and a number of states have recognized the PLO as the representative of the Palestinian people. In 1975 the PLO announced the adoption of a criminal code to punish Palestinians. See McGinley, supra note 4, at 716.
to apprehend “terrorists” wherever possible. In a speech to the North Atlantic Assembly, Secretary of State George Shultz announced that the United States would not be inhibited by definitions of legality in its efforts to track down and capture terrorists:

We [the nations of the North Atlantic Assembly] are law-abiding countries. However, we don’t want to . . . allow our tendencies, our desire to be law-abiding, to stand by our principles, to be used by terrorists, and to allow them to use fear as a key to the jailhouse door. . . .

So we have to be willing to take action and not be afraid to do so. It has to be a proper action, and I think that we saw an illustration a few days ago when President Reagan ordered our planes to bring that plane in to the Sigonella Airport. That was action.82

Similarly, President Reagan stated that the key consideration in this incident was that “here was a clear-cut case in which we could lay our hands on the terrorists” without danger to “many innocent people.”83 The President stated that his aim was to “sen[d] a message to terrorists everywhere, . . . You can run but you can’t hide.”84 Thus, the United States’ position appears to be that where suspected terrorists can be identified and apprehended without great danger to others, it has the right to take such action regardless of “legal” considerations.85

V. International Appraisal

Because of the highly dramatic character of the United States’ interception, itself the climax to a hostage crisis watched by a large part of the world, this incident received a great deal of international attention and comment. As might be expected, the most sustained reaction occurred in Egypt. The initial governmental response was markedly restrained. A Foreign Ministry statement released immediately after the interception said that Egypt “greatly regrets” the U.S. act and noted that “such actions do not serve the peace process.”86 Although President Mubarak

82. Remarks and Question and Answer Session by the Honorable George P. Shultz, Secretary of State, Before the North Atlantic Assembly, St. Francis Hotel, San Francisco, California, October 14, 1985, U.S. Dept. of State, Press Release No. 246, at 20.
84. Id. at 1235.
85. Accounts of the decision-making process behind the interception, see, e.g., Greenburger & Seib, Euphoria After the Capture of Hijackers by U.S. Isn’t Expected to Survive New Wave of Terror, Wall St. J., Oct. 14, 1985, at 2, col. 2, while revealing that questions of the mission’s military risks were raised, do not report any discussion of the action’s legitimacy under international law. Moreover, in the weeks following this incident, the U.S. made no attempt explicitly to justify the interception as being legitimate under international law. McGinley, supra note 4, at 721.
86. Egypt: Reportage on Conclusion of Cruise Ship Hijacking: Foreign Ministry Statement, FBIS (Mid. East), Oct. 11, 1985, at D2 (text from MENA). The statement further character-
later termed the action "piracy" and "impermissible under any international law or norm," his reaction was primarily one of surprise and hurt that the United States would treat "a friend" in such a way. The Egyptian press was more blatantly critical, but echoed the President's theme that the Egyptian people took the U.S. action as a personal insult. Indeed, Mubarak did not demand that the United States return the hijackers, as one might expect if the perceived injury was a trespass on his nation's sovereignty, but instead insisted on an "apology . . . addressed to all Egyptians and not only to him personally."

The rest of the Arab world was also critical of the U.S. mission. However, while the Middle East press was unanimous and explicit in its condemnation, only Iran, Iraq, the Sudan, and Kuwait issued direct governmental comments, and the latter two were markedly low-keyed.

ized the incident by noting: "terrorism leads to more terrorism, . . . violence generates more violence." Id. 

87. Egypt: Mubarak Reacts to U.S. Interception of Airliner, FBIS (Mid. East), Oct. 15, 1985, at D1 (text from MENA). Mubarak stated that the interception was "unexpected" and that he was "deeply wounded and deeply pained." Id. See also Mubarak Denounces Interception of Airliner by the U.S. as 'Piracy', N.Y. Times, Oct. 13, 1985, § 1, at 1, col. 5. Mubarak's subsequent pronouncements were widely seen as primarily a reaction to domestic political considerations. See Miller, Mubarak Reaction Reflects Egypt's Political Climate, N.Y. Times, Oct. 14, 1985, at A11, col. 1; Rogg, Police Rout Demonstrators on Egyptian Campus, N.Y. Times, Oct. 20, 1985, § 1, at 17, col. 1.

88. See Egypt: Media Denounce U.S. Interception of Plane, FBIS (Mid. East), Oct. 15, 1985, at D8-D10 (texts from Cairo Domestic Service, Al-Jumhuriyah, Voice of the Arabs, Cairo Radio); see also Gwertzman, The U.S. May Pay a High Price for Its Triumph, N.Y. Times, Oct. 20, 1985, § 4, at 1, col. 1 ("Egypt, which is as sensitive as any country to a perceived slight, viewed the interception less as a victory over terrorists than as an attack on their own national dignity.").

90. While Egypt asked Italy to let the two PLO representatives depart freely, it made no such request concerning the four hijackers. See supra text accompanying notes 60-61.

Achille Lauro Incident

and restrained. Notably, King Hussein of Jordan, when offered the opportunity to criticize the U.S. action, expressly declined to do so.

In contrast to this Arab condemnation, the United States' allies generally supported the interception. But despite the allies' overall approval, some tempered their praise of the result with questions about whether the action was in fact legal. Not surprisingly, the most immediate and pronounced support came from Israel. The U.S. move was interpreted to mean that Israel was "no longer alone in the war against terrorism." America's European allies were also supportive. British Foreign Secretary Geoffrey Howe "applauded" the interception and stated that there was "no reason" to question its legality. Similarly, Italian Prime Minister Craxi "rejected . . . the idea that the military action . . . was an act of


96. For example, the Sudan's spokesperson termed the interception "not productive" and likely to "lead to stalemate in peace efforts" and stated that it "conflicts with international norms and charters." *Sudan, supra* note 94; *see also Kuwait, supra* note 95.


98. *Israel: Peres Praises Reagan, Schultz*, FBIS (Mid. East), Oct. 11, 1985, at 11 (text from Domestic Service) ("a landmark in the struggle against terrorism").


100. *UK: Howe Praises U.S. Action Against Hijackers*, FBIS (W. Eur.), Oct. 11, 1985, at Q1 (text from Press Association). Howe explained his reasoning concerning the action's legality in the following terms:

If you think of the object of the conventions against terrorism, they place an obligation on states concerned to see that people are either prosecuted or extradited and that is clearly the object of what happened here. The important thing is, the effect of what has happened is that the terrorists will face trial in a court of law. That would never have happened, it seems, if this action had not been taken.

*Id. But see McFadden, Many U.S. Allies Applaud Move, But Some Question Its Legality*, N.Y. Times, Oct. 12, 1985, at 7, col. 1 (statement of Social Democratic leader and former Labor Party Foreign Secretary David Owen) ("International terrorism, abhorrent as it is, cannot justify states violating international law, whatever the provocation, whatever the frustration.").
While neither the West German nor the French governments issued official statements, the reactions of the press in both countries were generally favorable. Outside of Europe, the Prime Ministers of Canada and Australia expressed approval of the interception, while Japan withheld official comment.

Interestingly, several commentators in Western countries expressed the view that the interception violated international law but at the same time praised the action. For example, an Israeli editorial commented: "Technically, Washington did violate international law. However, it abided by its spirit to make sure justice was done." On the same note, Le Monde asked: "Was Ronald Reagan right or wrong to violate international law by using his air force to intercept the Egyptian plane...? The question can be asked. The answer is obvious: We are bound to approve the U.S. President's action. [Otherwise the terrorists would have escaped.]" The Economist stated that "[t]he Americans almost certainly flouted international law," but concluded that because "this high-handed action was the only way of bringing the men to justice... the Americans were morally right..." The effect of an incident on legal norms is ultimately a function of what relevant elites are willing to accept as legitimate. Thus, in analyzing this view of the U.S. action—"it violated international law but it's O.K."—the conclusion that the result

101. Italy: Craxi Press Conference, FBIS (W. Eur.), Oct. 15, 1985, at L1 (text from Domestic Service). Elsewhere, while stating that he considered the U.S. mission "a great success," Craxi admitted that Italy had "assisted in an action or a sequence of unorthodox events." Tagliabue, supra note 61.

102. See McFadden, supra note 100. Officials from several European governments noted that they were withholding comment partially because they were unsure of the action's legality. Id.


104. McFadden, supra note 100.


106. McFadden, supra note 100.


108. France, supra note 103.

109. It's a Jungle Out There, THE ECONOMIST, Oct. 19, 1985, at 13; see also Truck with Terrorists (editorial), The Times (London), Oct. 14, 1985, at 13, col. 1 (the interception was "a technical illegality").
Achille Lauro Incident

was praiseworthy is much more important than the caveat that the law was technically broken.110

Finally, the reaction of the Soviet Union and its allies was critical, but surprisingly mild. Newspapers in Poland,111 Czechoslovakia,112 Bulgaria,113 and Cuba114 all condemned the interception, but they did so in muted tones. Like many Middle East commentators, several drew the comparison between the U.S. action and Israel's raid on Tunisia.115 The Soviet response was more restrained still. Tass's initial report called American anger over the hijacking and murder "understandable and just."116 It went on to comment: "The crimes of terrorists, no matter where they are committed, must be punished most severely, and such severity must be shown unfailingly to all perpetrators of such crimes."117 The Soviets chided the United States for hypocrisy, however, pointing out that the U.S. had granted asylum to two Lithuanians who hijacked an Aeroflot plane and killed a flight attendant in 1970.118 Some speculated that this Soviet sympathy was a product of the fact that the Russians were in the midst of their own Middle East hostage crisis.119

110. This seeming contradiction highlights the fact that in international law, practice is often more determinative of legality than authoritative text. See Reisman, International Incidents: Introduction to a New Genre in the Study of International Law, 10 YALE J. INT'L L. 1, 2 (1984) ("[T]he normative expectations of those who are politically effective in the world community... are not derived from international judgments or from constitutional documents, statutes, or treaties. They are almost entirely derived from the responses of key actors to a critical event.").


112. Czechoslovakia: U.S. Commits 'Act of Piracy' on Egyptian Plane, FBIS (E. Eur.), Oct. 15, 1985, at D1 (text from International Service); Czechoslovakia: Mideast Crisis, Arms Race Worsened by U.S., FBIS (E. Eur.), Oct. 16, 1985, at D2 (text from Domestic Service) ("The annoyance and the exasperation of the Americans are understandable, but to respond to crime by carrying out another crime is certainly not in compliance with international law.").


115. Poland: "Kidnappers" Methods, supra note 111; Czechoslovakia: Mideast Crisis, supra note 112; Bulgaria, supra note 113.


117. From Soviet, Sympathy and a Barb for the U.S., supra note 116.

118. Id. For further Soviet commentaries along the same lines, see 37 THE CURRENT DIGEST of THE SOVIET PRESS, at 16-18 (1985).

119. Perspectives on the Achille Lauro Affair, N.Y. Times, Oct. 13, 1985, § 4 at 1, col. 3. Three Soviet embassy employees were then being held in Beirut by fundamentalist Moslems. A fourth Russian hostage had been killed the week before. Taubman, Moscow Identifies Body in Lebanon as a Russian Aide, N.Y. Times, Oct. 3, 1985, at A1, col. 6. Whatever the motives behind the Soviets' reaction, their lack of criticism was itself harshly criticized. See Iran:
In addition to these direct expressions of support or criticism, several events which occurred in the days following the interception may shed light on how the international community evaluated the incident. The PLO, and Arafat in particular, was handed a number of setbacks soon after the American action. On October 14, Britain cancelled, at the last minute, a planned high-level meeting with a Palestinian and Jordanian delegation that included two PLO representatives.\(^\text{120}\) States in the Middle East also backed away from the PLO: Jordan publicly supported London’s version of its reason for cancelling the aforementioned meeting;\(^\text{121}\) and Syria announced its discovery of, and then turned over to the United States, the body of Klinghoffer, which had washed up on its shore.\(^\text{122}\) Both actions were seen as calculated rebuffs to Arafat.\(^\text{123}\) In Tunisia, government officials hinted that the PLO headquarters might not be welcome there much longer\(^\text{124}\) and that Abbas would not be allowed back into the country, where the PLF, like the PLO, was based.\(^\text{125}\) And, on the same day that Britain cancelled its Palestinian meeting, United Nations members who intended to sponsor a General Assembly resolution inviting Arafat to the upcoming fortieth anniversary commemoration agreed to drop their efforts.\(^\text{126}\) Of course, the U.S. interception was not the immediate impetus for any of these events.\(^\text{127}\) Nonetheless, each occurred in the context of the American action; it is difficult to believe that Arafat would have suffered this striking string of setbacks had these states strongly supported the PLO position on the interception. Finally, the fact that most international elites at least tacitly supported the U.S. action is indicated by the fact that no attempt was

\(^{120}\) USSR Support of U.S. Hijacking Noted, Criticized, FBIS (S. Asia), Oct. 16, 1985, at 11 (text from Domestic Service).

\(^{121}\) Thomas, Britain Calls Off a Meeting With Jordan-Palestine Unit, N.Y. Times, Oct. 15, 1985, at A12, col. 5.

\(^{122}\) Friedman, supra note 47.

\(^{123}\) See supra note 47 and accompanying text.

\(^{124}\) Friedman, supra note 47.


\(^{127}\) For example, Syria and Jordan each, for opposite reasons, had been growing increasingly “fed up” with Arafat’s policies and actions vis-à-vis Israel. Friedman, supra note 47. Great Britain reneged on its invitation because one of the PLO representatives refused to sign an agreed-upon statement recognizing Israel’s right to exist. Arafat’s Ship of Fools, The Economist, Oct. 19, 1985, at 57.
made to bring the issue before the U.N. Security Council, nor was the subject ever directly raised in the General Assembly.

VI. Writer's Appraisal

On the whole, the United States was acquitted in the court of international opinion. The final verdict seems to be that the scourge of international terrorism requires extraordinary action, and, at least where successful, countries that take action to capture those who have unambiguously committed acts of terrorism will not be condemned. Although many were unwilling to grant its "legality," nearly all Western countries ultimately supported the U.S. action. Except in the Arab world, where the concern was not so much with legality as with honor, the United States suffered no adverse consequences as a result of the interception. Even in the Middle East, the long-term effects appear to be minimal. Thus, as a result of the U.S. action, the previous norm against the interception of civilian aircraft has been modified. The interception of the Achille Lauro hijackers ultimately must be considered a legal act. It is also necessary, however, to consider a subsequent event to discover the precise contours of this new norm.

So successful was the U.S. action that its example was soon followed. On February 4, 1986, Israeli military planes intercepted a small Libyan jet flying over the Mediterranean towards Damascus and forced it to land in Israel. The Israelis were looking for Palestinian terrorists whom they believed had boarded the plane after having attended a Palestinian conference in Tripoli, Libya. After discovering that the only passengers on board were seven Syrian politicians and two pro-Syrian Lebanese

128. The generally favorable reaction of international elites to the U.S. interception was undoubtedly influenced by the unusual degree to which the hijackers were isolated from any support within the international community. Even the PLO disavowed and criticized the hijacking. Hijazi, Arabs Renouncing Seizure of Vessel, N.Y. Times, Oct. 10, 1985, at A12, col. 1; Italy: Hijackers Threaten to Kill Americans, FBIS (W. Eur.), Oct. 8, 1985, at L1 (text from Paris AFP).

129. It may be asserted that this perhaps curious combination of support for the interception and hesitancy to endorse its legality exhibited by a number of Western elites indicates a desire to reinforce the preexisting norm even where the immediate outcome—the apprehension of four terrorists—was agreeable. In other words: the end justified the means this time, but don't do it again. However, the reaction to Israel's subsequent similar action, see infra text accompanying notes 130-37, leads me to conclude that these elites accepted the weakening of the norm against the interception of civilian aircraft despite their rhetorical reservations concerning legality, see supra note 110 and accompanying text.


131. Interestingly, one of the Palestinians suspected of being on board was George Habbash, whom the Israelis unsuccessfully sought to apprehend by the same method in 1973. See supra note 30 and accompanying text.
militia officials, the Israelis let the plane fly on to Damascus.132 Although the precedent for the Israeli action was as much its previous similar attempt of August 1973133 as the Achille Lauro response, it may be surmised that had the reaction to the latter been more negative, the Israeli interception would not have taken place.134

The extent to which the Achille Lauro incident modified the norm against the interception of civilian aircraft can be seen by comparing the Security Council's actions following Israel's 1973 interception with the aftermath of this latest attempt. While the Security Council unanimously condemned the former attempt, the United States vetoed a similar resolution in February 1986.135 The U.S. representative, Vernon Walters, criticized the Israeli action on the grounds that there was insufficient evidence that terrorists were on the plane, but was unwilling to allow the proposed resolution to be adopted. Walters stated the U.S. position as follows:

As a general principle the United States opposes the interception of civil aircraft. . . . At the same time, we believe that there may arise exceptional circumstances in which an interception may be justified.

. . . .

We believe a State should intercept a civilian aircraft only on the basis of the strongest and clearest evidence that terrorists are aboard. . . . [B]ecause we believe that the ability to take such action in carefully defined and limited circumstances is an aspect of the inherent right of self-defence recognized in the United Nations Charter, my Government cannot accept a draft resolution which implies that interception of an aircraft is wrongful per se.136

Likewise, none of the U.S. allies in the Security Council voted to condemn Israel this time. Australia, Denmark, France, and Britain all abstained. While none supported the Israeli action, each criticized the

132. Friedman, supra note 130. An Israeli official implied that the only difference between this action and the U.S. interception was that the latter was successful: "What can I say? . . . We went fishing and we didn't catch the fish. The people we thought would be on board were not there. It is a pity because we were going after some biggies, and if we would have caught them the world would have applauded." Id.

133. See supra notes 30-32 and accompanying text.

134. Analysts implied that this opinion was held by many Middle East elites. See Muir, Arabs Rally in Face of Perceived U.S. Role in Israel's Seizure of Jet, Christian Sci. Mon., Feb. 6, 1986, at 11, col. 4.


136. Id. at 112-13; see also statement of U.S. Secretary of State Shultz before a conference in January 1986: "A nation attacked by terrorists is permitted to use force to prevent or preempt future attacks, to seize terrorists, or to rescue its citizens when no other means is available." Saikowski, International Law, Christian Sci. Mon., Apr. 4, 1986, at 16, col. 3.
resolution for not recognizing the special problem of terrorism to which Israel was responding.\textsuperscript{137}

Thus, it appears that, at least as far as Western elites are concerned, a civilian aircraft in flight will no longer be considered a sanctuary when there is strong evidence that suspected terrorists are aboard.\textsuperscript{138} The norm against interception has not been modified because of any change in the objectives which undergirded it; the concern for the protection of civilian aviation has not diminished. Instead, the problem of terrorism, particularly in Western Europe and the Middle East, has created a consensus that extraordinary measures are necessary and that the luxury of holding aircraft inviolable can no longer be afforded.

While the international response to the U.S. interception was primarily a function of this view that terrorism is a special problem, and within this context the act must be considered to have been legal, the claim put forward by the United States ultimately goes beyond the legitimacy of this particular act and concerns more than the question of how to deal with terrorism. More than being merely an effort to change the rules regarding the apprehension of criminals outside a state's territory, the \textit{Achille Lauro} incident manifests a position developing within the United States which denies the proscriptive competence of international law over a broader range than had heretofore been asserted. Not only is the United States unwilling to be handcuffed by rigid claims of legality;\textsuperscript{139} where it sees its security interests implicated, the United States asserts the right to act unilaterally, subject to no external legal constraints.

The connection between the \textit{Achille Lauro} response and other recent uses of force by the United States was made explicit soon after the interception. In explaining the Reagan administration's decision to withdraw...
from the World Court’s compulsory jurisdiction,140 Abraham Sofaer, the Legal Adviser to the State Department, testified:

[W]ould the Court be the proper forum for resolving disputes that gave rise to such actions as the Berlin airlift, the Cuban missile crisis, and most recently our diversion of the Achille Lauro terrorists? Each event involved questions of international law. At the same time, however, at stake on each occasion were interests of a fundamentally political nature, going to our nation’s security. Such matters cannot be left for resolution by judicial means, let alone by a court such as the ICJ; rather they are the ultimate responsibilities assigned by our constitution to the President and Congress.141

Clearly, the claim is that in cases involving the “nation’s security” the United States may act subject only to domestic law. Although international law may be implicated, it is controlling only where security concerns—as defined by the U.S.—are not present.142

Thus, the Achille Lauro incident cannot be understood fully if considered to be simply a response to terrorism; it is more fundamentally part of a general claim by the United States regarding the limits of international law. While the U.S. was primarily responsible for the creation of the post-World War II international legal regime, it has now determined that the constraints imposed by this regime on the unilateral use of force are largely unacceptable. The U.S. claim is not a rejection of international law in general, but a limitation of it to areas not affecting “our nation’s security.” Indeed, an expansive interpretation of Article 51 of

140. It is a notable coincidence that the Achille Lauro interception occurred the same week that the U.S. announced that it would no longer accept the I.C.J.'s compulsory jurisdiction. See Weinraub, U.S. Limits Its Role At Court In Hague, N.Y. Times, Oct. 8, 1985, at A5, col. 1. 141. Hearing before the Subcommittee on Human Rights and International Organizations of the House Committee on Foreign Affairs, 99th Cong., 1st Sess. 13 (1985) (emphasis added). Compare this with the statement of the United States representative to the U.N. explaining the U.S. vote for the Security Council resolution condemning Israel after its August 1973 interception:

Today we have taken an important step towards the reaffirmation of the rule of law in international civil aviation. Let me repeat what I said in this chamber on Tuesday: “National and international efforts to control terrorism must go forward. They must, however, go forward within and not outside of law.”

28 U.N. SCOR (1740th mtg.) at ¶ 49, U.N. Doc. S/PV.1740 (1973). 142. The U.S. priorities were made clear in an interview with President Reagan shortly after the interception:

Q. Mr. President, would you do it [interdict terrorists] again, even if it meant, say, violating international law?

The President. [Y]ou'd have to judge each case on its own as to the need to bring terrorists to justice . . . . So, you would have to judge that against how much you would be violating international law to achieve your goal.

Q. But, if it was necessary, I take it you would.

The President. Yes.

Achille Lauro Incident

the U.N. Charter is often invoked to justify this position. Nonetheless, this denial of international law’s relevance over so great an area is necessarily destructive of the legal regime itself.

The Achille Lauro incident—whether seen as limited to the modification of the norm against the interception of civilian aircraft, or more broadly as indicative of a claim regarding the limits of international law—will ultimately have undesirable consequences for world public order. One cost of per se rules is that they are often overinclusive: they proscribe certain conduct even when its occurrence, looked at ex post, would be desirable. However, such rules are more easily defined and communicated and therefore more likely to be observed. This advantage is particularly important in the international legal system because of that system’s inherent obstacles to rule-making, communication, and enforcement. Thus, while a set of norms that allow for exceptions, such as that which legitimated the U.S. interception, may constitute “better” law, it is not to be preferred if it results in a less stable legal regime. Given this fact, I do not believe that the United States’ Achille Lauro “victory” furthers its long-term interests. Although the constraints imposed by supranational law may sometimes chafe, it is precisely a superpower, with varied global interests and a need for international stability, which has the most to gain from that law’s existence. In this context, it is noteworthy that immediately after the U.S. interception, a number of “radical Palestinian spokesmen and unidentified callers telephoned Western news agencies in Beirut and elsewhere, vowing to retaliate for the American retaliation, which was for the Palestinian retaliation on the Achille Lauro, which was for the Israeli retaliation in Tunis, which was for the Palestinian retaliation in Cyprus.” In an international order governed merely by the law of the jungle, the survival guaranteed by strength may be precarious indeed.
