Incident*

South Africa’s May 1986 Military Incursions Into Neighboring African States

Edward Kwakwa†

I. Problem

In recent years, force has increasingly been used as a means of settling disputes in the Southern African region.¹ The unfinished struggle for decolonization, rising demands for self-determination, and the system of apartheid have figured prominently among the factors contributing to this increase. This incident focuses on South Africa’s military incursion into three neighboring African states—Botswana, Zambia, and Zimbabwe—in May 1986.² Relying extensively on the reactions of the

---


‡ LL.M. Candidate, Yale University. I would like to thank Professor W. Michael Reisman for his excellent supervision and guidance in earlier drafts of this study.

¹ The “Southern African” region is comprised of the following states: Angola, Botswana, Lesotho, Mozambique, Namibia, Zaire, Zambia, Zimbabwe, and South Africa. The phrase “Southern African states” refers to all of these states with the exception of South Africa.

² Although the attacks were conducted in three separate areas, they all took place within a twelve-hour period. For purposes of this study, the attacks are treated as one incident. This was the first time that South Africa had conducted raids into more than one country simultaneously. It was also the first time that Zimbabwe had been a target. However, the May incident was only one example, albeit “the most comprehensive yet conducted by [Botha’s] beleaguered government,” in a long history of intrusions into, and raids on, select targets in neighboring countries. The Times (London), May 20, 1986, at 17, col. 1. For example, in June 1985, South African Defence Force (S.A.D.F.) troops crossed the South African border into Botswana and raided several homes in the city of Gaborone that were occupied by supporters of the ANC. U.N. Security Council, Provisional Verbatim Record of the 2598th Meeting, U.N. Doc. S/PV.2598, at 4-5 (June 21, 1985) [hereinafter Security Council, 2598th Meeting]. In May 1985, S.A.D.F. special commandos were caught while in the process of launching an attack against one of Angola’s oil installations in the Cabinda Gulf Oil compound. See *generally* U.N. Security Council, Provisional Verbatim Record of the 2596th Meeting, U.N. Doc. S/PV.2596, at 7-40 (June 20, 1985). In December 1982, the S.A.D.F. attacked targets in Maseru, the capital of Lesotho, and destroyed a number of houses and apartment buildings alleged to be African National Congress (ANC) bases which had sent guerrillas into South Africa. See *Letter Dated 9 December 1982 from the Representative of Lesotho to the President of the Security Council*, 37 U.N. SCOR Supp. (Oct.-Dec. 1982) at 61, U.N. Doc. S/15515 (1982). Similar incidents have occurred in Mozambique and Swaziland. Although the facts have been disputed in a few of these raids, all have at least one thing in common: in each, South Africa argued that its use of
international community, particularly state elites, it analyzes the extent to which international legal norms concerning self-defense and national liberation movements were clarified or modified and assesses their present status in contemporary international law.\(^3\)

Several resolutions of the United Nations General Assembly and of the Organization of African Unity (OAU) have recognized the legitimacy of resort to armed force by national liberation movements and called upon member states to contribute moral and material assistance to such movements.\(^4\) Pursuant to these resolutions, a number of Southern African states support, through a variety of means, liberation movements like the African National Congress (ANC).\(^5\) In retaliation, South Africa has violated the territorial sovereignty of these states.\(^6\) It has repeatedly attacked and occupied Angolan territory, raided Zambia, Botswana, and Lesotho, and trained and armed soldiers fighting the Mozambican government.\(^7\)

force was in self-defense because the attacked targets were ANC bases used for housing guerrillas, storing weapons, or planning attacks into South Africa. See generally U.N. Security Council, Provisional Verbatim Record of the 2597th Meeting, U.N. Doc. S/PV.2597, at 22-27 (June 20, 1985) [hereinafter Security Council, 2597th Meeting].

3. It must be stressed that an incident study relies "not so much [on] what happened as [on] what effective elites think happened and how they react[ed]." Reisman, supra note \(\ast\), at 17. In this context, "effective elites" are those persons or groups whose participation in, or reaction to, an incident critically affects the outcome. See Willard, supra note \(\ast\), at 25.

4. A quintessential example is the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970) [hereinafter Declaration on Friendly Relations]. It specifically provides that "[i]n their actions against, and resistance to . . . forcible action in pursuit of the exercise of their right to self-determination . . . peoples [under colonial and racist regimes or other alien forms of domination] are entitled to seek and to receive support in accordance with the purposes and principles of the Charter." Id. at 124; see also Definition of Aggression, G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631 (1974) (containing similar language). The OAU has indicated that it "[c]ommends the national liberation movements, particularly the ANC, as well as the oppressed people of South Africa for intensifying armed and sabotage actions against the racist regime," and has called upon the international community to increase its material, financial, and military assistance to the national liberation movements of South Africa "in order to enhance their capability to intensify the struggle for freedom and justice, particularly the armed struggle." Nairobi Resolution of the 37th Ordinary Session of the O.A.U. Council of Ministers, O.A.U. CM/Res. 854 (XXXVII), reprinted in 14 AFR. CONTEMP. REC. c-6, c-7 (1981-82) [hereinafter Nairobi Resolution]; see also O.A.U. CM/Res. 720 (XXXIII), reprinted in 12 AFR. CONTEMP. REC. c-5 (1979-80).

5. Some of this support has been coordinated by the Liberation Committee of the OAU, which was established specifically to coordinate support for liberation movements. See Payne, Sub-Saharan Africa: The Right of Intervention in the Name of Humanity, 2 GA. J. INT'L & COMP. L. 89, 90-91 (Supp. 1 1972).


7. Id. at 43-54.
South Africa’s Incursions

The situation in the Southern African region poses a grave threat to regional peace and security and, consequently, to the maintenance of “minimum order.” Various contemporary international legal issues are implicated by the presence of the ANC in Southern African states and by South Africa’s attacks on those states. These issues include: whether a distinction can be drawn between national liberation movements and terrorist organizations; if so, under what circumstances, using what criteria, and by whom is the distinction to be drawn; into which category does the ANC fall; is it legal for the Southern African states to grant groups like the ANC the use of their territories as transit routes or for launching raids into South Africa; whether such a grant is a form of “aggression” or “armed attack” that triggers South Africa’s right to legitimate self-defense; and whether contemporary international law recognizes the right of a government to prevent a people from fighting for its claim to self-determination.

The term “national liberation movement” must be clarified at the outset. This is particularly true in light of the fact that the problem of auto-interpretation in international law makes it possible for states to describe any organization as a “national liberation group” or “freedom fighters,” or as a “terrorist organization,” to fit their political purposes. The conflicting claims in the South African incident testify to this dilemma. The gravity of the problem is further highlighted by events in areas like Central America and Angola.

8. “Minimum order” refers to an international system “which establishes as authoritative, and seeks to make effective, the principle that force, or highly intense coercion, is reserved in community monopoly for support of processes of persuasion and agreement and is not to be used as an instrument of unauthorized change.” M. McDougal & Associates, Studies in World Public Order xi-xii (1987).

9. Professor McDougal has written that “[t]he special prerogative claimed by states to interpret their own obligation, and in a sense to act as judges of their own cause, has long been regarded as a conspicuous Achilles heel in international law.” McDougal, The Impact of International Law upon National Law: A Policy-Oriented Perspective, in International Law Essays: A Supplement to International Law in Contemporary Perspective 437, 459 (M. McDougal & W. Reisman eds. 1981) [hereinafter International Law Essays].

10. The contra forces in Nicaragua, for example, are categorized by the Reagan Administration as “freedom fighters,” and extolled as “the moral equivalent of our Founding Fathers and the brave men and women of the French Resistance.” Russell, The Propaganda War, TIME, Mar. 11, 1985, at 34, 35. In contrast, the Sandinista government regards them as “no more than bands of mercenaries which have been recruited, organized, paid and commanded by the Government of the United States.” Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Merits, 1986 I.C.J. 1, 64, para. 114 (Judgment of June 27) [hereinafter Nicaragua, Merits].

11. The U.S. government is actively supporting the National Union for Total Independence of Angola (UNITA) movement of Jonas Savimbi, which is seeking to overthrow the Angolan government. UNITA is perceived by the United States as a liberation group fighting to restore democracy to Angola. It is thus considered to be “a legitimate political force in Angola,” Legum, The Southern African Crisis, 14 Afr. Contemp. Rec. a-37 (1981-82), and as
If the rights accorded to freedom fighters and national liberation groups are to have any meaningful content, a set of criteria must be developed for ascertaining which groups should be characterized as liberation movements and which as terrorist movements. Prior recognition of an armed resistance group by the international community is strong evidence that the group should be considered a "liberation movement" and not a "terrorist movement." "International community," in this context, is defined as a preponderant number of states, regional organizations, and other international bodies like the United Nations (U.N.) and its agencies. The standard for a liberation group should be as circumscribed as possible, so as to make it difficult for small, non-representative groups with self-serving interests to carry out armed attacks against legitimate governments under the guise of promoting self-determination and human dignity.

In deciding whether to recognize a group as a liberation movement, states must weigh the implications of recognition for the community or region in which the recognized group operates, whether the group serves an important societal interest, and, finally, the precedential value of granting recognition to the group. Applying these criteria to the ANC, one is led to the conclusion that it is a legitimate national liberation movement. It has been accorded this status by the OAU and the U.N.; it is broad-based and represents a substantial portion of South Africans; its activities are geared towards the eradication of apartheid; and its expressed goal is a democratic, non-racist, and united South Africa, with positive implications for the peace and security of the whole Southern African region.

"an important indigenous nationalist movement" waging "a determined armed struggle against the MPLA . . . government's monopoly of power," Southern Africa: Toward an American Consensus (address by Secretary of State Shultz before the National Press Club on Apr. 16, 1985), 85 DEP'T ST. BULL. 22, 25 (June 1985). This view conflicts with the perception of the OAU Council of Ministers that UNITA is a dissident group of "racist-trained bandits," Nairobi Resolution, supra note 4, at c-7, and "Angolan traitors in the pay of the racist Pretoria regime," id. at c-28.

12. The notion of "national liberation," according to Reisman, "must be tested in present and projected contexts: considering all features of the context, what will the success of one side or another mean to members of the community involved, to their region, to the world? Will the success of either side lead to a greater approximation of human dignity?" Reisman, Private Armies in a Global War System: Prologue to Decision, in INTERNATIONAL LAW ESAYS, supra note 9, at 145.

13. See infra text accompanying notes 99-106.

South Africa's Incursions.

II. Facts

Shortly after midnight on May 19, 1986, South African commandos bombed an ANC office in downtown Harare, Zimbabwe.\(^{15}\) The commandos, wielding automatic weapons, also attacked an alleged ANC house in Ashdown Park, approximately five miles from Harare.\(^{16}\) After a ten-minute spate of explosions and gunfire, the troops escaped in rented cars.\(^{17}\)

At 6:30 a.m. the same day, South African Defence Force helicopters fired at the Botswana Defense Force barracks in Mogaditshane, near the capital, Gabarone.\(^{18}\) Simultaneously, forces supported by helicopters attacked a civilian housing complex in the same city. As a result of these attacks, one Botswanan was killed, two others were critically injured, and property was extensively damaged.\(^{19}\) South African helicopters also dropped leaflets accusing the Botswanan government of supporting the ANC.\(^{20}\)

In Zambia, two S.A.D.F. aircraft attacked a housing settlement and refugee center in Makeni, near Lusaka, at 8:50 a.m. The airplanes dropped bombs and fired rockets, killing one person and wounding ten others, including two Angolan refugee children.\(^{21}\)

The South African government's version of the incident differed significantly from the versions put forward by the Botswanan, Zambian, and Zimbabwean governments, as did South Africa's conception of the lawfulness of its attacks. For example, South Africa insisted that the building it destroyed in Zambia was an operational center of the ANC.\(^{22}\) Zambia, however, denied this, claiming that the building was a U.N. transit center which operated under a tripartite agreement among the U.N. High Commissioner for Refugees, the government of Zambia, and the Christian Council of Zambia.\(^{23}\)

South Africa also argued that the housing complex that it had attacked in Botswana contained some rooms rented by the ANC to house


\(^{17}\) Id.


\(^{19}\) Id.; see also Smith, *supra* note 16.

\(^{20}\) Id.


\(^{22}\) Security Council, 2684th Meeting, *supra* note 18, at 22.

\(^{23}\) Id. at 13.
guerrillas before they infiltrated back into South Africa. The government of Botswana, however, said that the housing complex "did not even have refugees as tenants, let alone ANC gangsters, which in the first place we have never had in Botswana." Only with respect to Zimbabwe was there agreement that the target was indeed an ANC office.

The diverging conceptions of lawfulness put forward by South Africa and the Southern African states concerning this incident form the subject of this essay.

III. A Conflict of Perspective—The Claims and Counterclaims of Participants

Elites in South Africa and other Southern African states held divergent expectations of the normative content of the international legal rules governing the use of force. South Africa viewed its actions as appropriate for the defense and security of its people, and for the elimination of "terrorist" elements operating from neighboring countries. The Southern African states, on the other hand, considered the attacks by South Africa to be part of a pattern of persistent aggression against, and destabilization of, neighboring independent states. The legal arguments of each centered around two main issues: first, situations in which a state can legitimately invoke a right to self-defense, and second, the status of national liberation movements under international law.

A. The Right of Self-Defense

The South African government viewed the raids as an exercise of legitimate self-defense. It contended that its security interests were threatened by the actions of the ANC, which it perceived as a terrorist organization based in neighboring African states:

South Africa will not tolerate activities endangering our security. We will not hesitate to take whatever action may be appropriate for the defense and security of our people and for the elimination of terrorist elements who are intent on sowing death and destruction in our country and in our region.

26. See infra text accompanying notes 28-32.
27. See Security Council, 2686th Meeting, supra note 25, at 51-61 (statement by Botswanan representative); id. at 81-96 (statement by Zimbabwean representative); Security Council, 2684th Meeting, supra note 18, at 12-21 (statement by Zambian representative).
South Africa's Incursions

We will not allow ourselves to be attacked with impunity. We shall take whatever steps are appropriate to defend ourselves.\(^\text{28}\)

South Africa claimed that its neighbors, by allowing the ANC to set up bases in their territories from which transboundary raids were launched into South Africa, were guilty of actively assisting armed attack against South Africa. South Africa was therefore entitled to exercise its right of self-defense, using whatever methods it deemed appropriate.\(^\text{29}\) The South African claim was also based on the customary international law principle that “a State may not permit or encourage on its territory activities for the purpose of carrying out acts of violence” in other states.\(^\text{30}\)

Finally, South Africa justified its actions by reference to the position taken by Western countries against international terrorism. Citing in particular the U.S. attack on Libya,\(^\text{31}\) it argued that it was entitled to “fight international terrorism in precisely the same way as other Western countries, despite the sanctimonious protests of the guardian of international terrorist movements, the United Nations.”\(^\text{32}\)

In contrast, Botswana, Zambia, and Zimbabwe denied the applicability of the self-defense doctrine to the raids. They argued that South Africa's self-defense justification possessed neither moral nor legal validity,\(^\text{33}\) but instead was a “flagrant violation of all international norms of conduct and a blatant violation of the sovereignty and territorial integrity” of the


30. Id. at 26. This principle is enshrined in the Declaration on Friendly Relations, supra note 4. The Declaration provides in relevant part:

   Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

   Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

Id. at 123.


32. Smith, supra note 16, at 39 (statement by South African President Botha). The South African foreign minister stated: “[W]e simply do not understand how it is possible for the U.S. to attack bases and terrorists in Libya, to proclaim that the U.S. will protect U.S. interests and citizens against any form of terrorism wherever it occurs, and then urge all governments in the world to do the same, but when we do it and, with all respect, do it more professionally than they do, the U.S. blames us.” TIME, June 9, 1986, at 38.

three countries.\textsuperscript{34} These countries maintained that South Africa's self-defense argument was inapplicable because “defense of territory takes place within borders and not by means of adventurist expeditions.”\textsuperscript{35} They further insisted that, although South Africa had used the self-defense justification for similar raids into neighboring African states in the past, the international community had never accepted it.\textsuperscript{36} Finally, the Southern African states claimed that the U.S. attack on Libya could not be cited as precedent, because that incident had not been afforded the approval of the international community.\textsuperscript{37}

B. National Liberation Movements

Despite widespread recognition of the ANC by the international community, the South African government regards the ANC as a terrorist organization.\textsuperscript{38} Furthermore, South Africa maintains that even if the ANC is considered a liberation movement, it does not follow that other African states can legally grant it the use of their territories for launching raids into South Africa.\textsuperscript{39}

The Southern African states, on the other hand, argue that the ANC is a national liberation movement recognized by the U.N. as well as by the OAU. They maintain that, as members of the OAU, the U.N., and the Non-Aligned Movement, they have an international obligation to allow ANC offices in their territories.\textsuperscript{40} Such support, according to this view, is in conformity with international law, and is an exception to the principle of non-intervention.\textsuperscript{41}

35. \textit{Id.} at 11.
36. For the Zimbabwean view, see Security Council, 2686th Meeting, \textit{supra} note 25, at 87-88.
37. \textit{See, e.g.,} \textit{id.} (statement by the Zimbabwean representative).
38. \textit{See, e.g.,} \textit{supra} note 28 and accompanying text.
39. \textit{Id.}
40. Security Council, 2686th Meeting, \textit{supra} note 25, at 86-87. According to the Zimbabwean representative, the obligation to provide offices to liberation movements like the ANC has been accepted even by Western countries such as the United Kingdom and France, and by the international community as a whole. It must be noted here that Botswana has insistently maintained that it does not allow the ANC to use its territory as a base for guerrilla operations against South Africa. See Security Council, 2598th Meeting, \textit{supra} note 2, at 6 (address by Botswanan representative).
41. The African states have consistently held the view that assistance rendered to liberation groups in colonial territories consistent with U.N. and OAU resolutions should not be considered an act of provocation, and should not, therefore, expose the countries granting it to reprisals. \textit{See, e.g.,} 1 \textit{REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS} 56, 58 (Supp. No. 4, Sept. 1966-Dec. 1969) (discussing the dispute that arose after Portugal's bombing of Zambia, in alleged retaliation for Zambia's grant of assistance to liberation movements in the then-Portuguese colonies of Angola and Mozambique).

428
South Africa’s Incursions

These conflicting conceptions of lawfulness have emerged each time South Africa has launched an incursion into its neighboring states. The only new element in the debate surrounding the May 1986 incident was South Africa’s emphasis on combatting terrorism as a justification for its action.42

IV. International Appraisal

The international community responded quickly and unequivocally to the South African raids. From the standpoint of norm creation, some of the most significant appraisals were those of Western countries, particularly the United States and the United Kingdom.43 The United States denounced the South African attacks as outrageous and inexplicable, distinguishing South Africa’s raids on its neighbors from its own raid on Libya. The United States stressed that Libya had become the primary exporter of terrorism in the world.44 But “[i]n this case, South Africa and its neighbors... were engaged in what appeared to be a constructive solution to the problems they’re experiencing with some dissident groups”45 at the time of the South African attacks. As evidence of its “outrage over the violation by the South African military of the sover-

42. For a discussion of the reasonableness of this claim, see infra text accompanying notes 82-87.
43. Elite expectations in the United States are likely to exert a decisive influence over the outcome of future South African raids. In this instance, one of the principal arguments relied on by South Africa was that Western countries also used force to counter terrorism, as in the case of the U.S. action in Libya. The United States is also an important actor because of its relationship with the government of South Africa. The position taken by the United Kingdom, because of its influential position in the West and its colonial ties to South Africa and many of the other Southern African states, is also noteworthy. This is not to say, however, that the reactions of the African states and of bodies like the United Nations and the Eastern bloc are not important. It is only to acknowledge the fact that South Africa has shown little respect for the views of these bodies in the past.
44. Matchet’s Diary, W. Afr., June 2, 1986, at 1148. The U.S. representative at the Security Council stated:

Libya is the world’s principal proponent of State-sponsored terrorism. . . .

On the other hand, the Governments of Botswana, Zambia and Zimbabwe have made serious efforts to end the vicious cycle of cross-border violence directed at South Africa. It should therefore be obvious to all that there is no similarity whatsoever between the terrorist-dominated foreign policy of Libya and the efforts to promote dialogue and cooperation made by the three front-line States.

45. See Matchet’s Diary, supra note 44 (emphasis added). The U.S. government’s allusion to the timing of the raids as being “particularly inexplicable” raises a question as to whether it would have found the raids acceptable if they had been carried out at a more appropriate time. The U.S. government’s position on the status of the ANC has vacillated. Its latest allusion to the ANC as a “dissident group” suggests that it does not now regard the ANC as “terrorists.”
eighty of Botswana, Zambia and Zimbabwe," the U.S. government expelled the South African military attaché in Washington, and recalled its own military attaché in Pretoria.\(^{47}\)

The rest of the international community reacted in a similar fashion. The British government "totally and utterly" condemned the raids.\(^{48}\) The European Economic Community expressed its outrage at South African efforts to destabilize the Southern African region.\(^{49}\) The Commonwealth Secretary-General, Shridath Ramphal, asserted that Pretoria had "declared war against peace in Southern Africa."\(^{50}\) Canada recalled its ambassador from Pretoria.\(^{51}\) Argentina broke off diplomatic relations with South Africa.\(^{52}\) The Soviet Union denounced the raids as an act of state terrorism, for which the U.S. attack on Libya had served as a model.\(^{53}\) And in Africa, the OAU Chairman described the raids as tantamount to "state terrorism,"\(^{54}\) and the foreign ministers of the six Southern African front-line states\(^{55}\) condemned the raids as the "latest act of brutal aggression" by South Africa.\(^{56}\)

The incident was formally appraised by the U.N. Security Council.\(^{57}\) A draft resolution submitted by the Congo, Ghana, Madagascar, Trinidad and Tobago, and the United Arab Emirates sought both to condemn South Africa for the raids and to impose on it limited and selective

---

\(^{46}\) Security Council, 2686th Meeting, \textit{supra} note 25, at 111.

\(^{47}\) The U.S. government had condemned earlier South African raids in a similar fashion. After the May 1985 raid on Angolan territory, for example, the United States was instrumental in effecting the unanimous adoption by the Security Council of Resolution 567, which condemned South Africa for its raids into a neighboring country. See Security Council, 2597th Meeting, \textit{supra} note 2, at 71.

\(^{48}\) Webster, \textit{Angry Thatcher Still Rules Out Sanctions}, The Times (London), May 21, 1986, at 1, col. 6.


\(^{50}\) \textit{Id.}

\(^{51}\) Smith, \textit{supra} note 16, at 38; \textit{see also} Community Leads Sweeping Condemnation of Attacks, The Times (London), May 21, 1986, at 7, col. 2.

\(^{52}\) Argentina based its decision on the conviction that the South African raids violated the U.N. Charter and international law. Argentina also stated that its termination of diplomatic relations with South Africa constituted "an expression of solidarity with the States of southern Africa which have been the target of repeated and unjustifiable armed attacks by South Africa." U.N. Security Council, Provisional Verbatim Record of the 2685th Meeting, U.N. Doc. S/PV.2685, at 32 (May 23, 1986) [hereinafter Security Council, 2685th Meeting].


\(^{54}\) The Times (London), \textit{supra} note 51, at 7, col. 3.

\(^{55}\) Angola, Botswana, Mozambique, Tanzania, Zambia, and Zimbabwe.

\(^{56}\) The Times (London), \textit{supra} note 51, at 7, col. 1. Similar condemnation came from China. \textit{Id.} at 7, col. 4.

mandatory sanctions. The resolution was vetoed by the United Kingdom and the United States. The failure of the Security Council to convey a potent and convincing signal to South Africa should not, however, be construed as an acceptance of the lawfulness of South Africa's raids. On the contrary, the vetoing nations explicitly stated that their only objection to the draft resolution condemning the raids was its call for mandatory economic sanctions. Their vetoes did not detract from the unanimity of the condemnation of the raids. Debates at the Security Council thus reinforced the normative expectations concerning the prohibition of transboundary military force against the territorial integrity or political independence of states.

While condemning the South African raids, the international community remained conspicuously silent on the issue of the ANC and the lawfulness of its activities. The failure of international elites to condemn the ANC for its alleged terrorist actions could suggest a tacit acceptance of the legality of the ANC's activities. The silence of the international community on this issue could also plausibly be explained by the fact that the South African government had produced no hard evidence incriminating the ANC in terrorist activities. It remains clear that although Zimbabwe, for example, admitted having granted the ANC the use of its territory, it was not criticized for following this policy. It might be inferred through their silence on this issue that other states wished to preserve for themselves the competence to grant liberation groups such as the ANC the use of their territories in the future.

In its failure to condemn ANC activities in South Africa, the international community manifested a high degree of tolerance for the activities of national liberation movements in general, particularly in their fight for freedom and self-determination. In addition, the strong and unani-
mous criticism of the South African raids reinforced a cherished norm of the international community: the obligation to settle international disputes peacefully. After the raids, even the South African government admitted that the problems of the Southern African region could not be resolved by resort to violence, and stated that it was committed to resolving differences with its neighbors by peaceful means.

The raids were particularly objectionable to the international community because of their timing. The Commonwealth Eminent Persons Group (E.P.G.) was attempting to mediate between Pretoria and the ANC at the time of the incursions. The governments of Botswana, Zambia, and Zimbabwe were also engaged in discussions with South Africa to end cross-border violence in the region. In the case of Botswana, for example, the raids took place four days ahead of a scheduled meeting between it and South Africa to discuss border problems. Thus, the reaction of the international community indicates that raids of the kind perpetrated by South Africa are particularly objectionable when peaceful means for resolving international disputes are available and under use.

prescriptions, international judicial decisions, and scholarly opinion. It is expressly recognized by the U.N. Charter in articles 1(2) and 55, and has been progressively developed and codified in numerous U.N. resolutions and declarations. It has also been recognized by the International Court of Justice (I.C.J.) as "a right of peoples." See, e.g., Advisory Opinion on Western Sahara, 1975 I.C.J. 31. Self-determination has been described as "the fundamental principle of legitimacy in contemporary international politics," and some scholars even advocate the use of unilateral coercion for the "enhancement of the ongoing right of peoples to determine their own political destinies." Reisman, Coercion and Self-Determination: Construing Charter Article 2(4), 78 Am. J. Int'l L. 642, 643 (1984). Self-determination has, in fact, been characterized as jus cogens, a peremptory norm of international law from which no derogation is permitted. See Chen, Self-Determination as a Human Right, in Toward World Order and Human Dignity 198 (1976).

64. This norm, a natural and indispensable corollary to the prohibition on the threat or use of force, is enshrined in articles 2(3) and 33 of the U.N. Charter. The I.C.J., in its most recent decision on this issue, emphatically declared that this principle "has also the status of customary law." Nicaragua, Merits, 1986 I.C.J. at 145, paras. 290-91.

65. See Security Council, 2684th Meeting, supra note 18, at 27-30 (statement by the South African representative). However, South Africa in fact conducted an attack on Angola soon after making this statement. See infra note 81 and accompanying text.

66. The E.P.G. was set up at the Commonwealth's Heads of State and Government Summit Meeting in Nassau, Bahamas, in October 1985. The group was given a mandate to promote a dialogue on democracy in South Africa and to negotiate with Pretoria for a rapid end to apartheid. Harding, Apartheid's Willing Bedfellow, Africa, Nov. 1985, at 42, 47.

67. Security Council, 2685th Meeting, supra note 52, at 7 (statement by U.S. representative, arguing that the raids were particularly inexplicable in light of ongoing efforts among Southern African states to maintain good working relations and communication on security problems).

68. This was confirmed by both the British and the Botswanan representatives. Security Council, 2686th Meeting, supra note 25, at 16, 56.
South Africa’s Incursions

V. Outcome

The international community characterized South Africa’s action as part of an ongoing dispute in need of resolution. Elites saw the incident as one ramification of the weakening of normative restraints on the use of force, particularly in the Southern African region. Three dimensions of the situation in the region were identified: first, the existence of apartheid; second, the illegal occupation of Namibia by South Africa; and third, South Africa’s aggression against, and destabilization of, neighboring independent states. The primary issue to be addressed was apartheid, since it was generally felt that its elimination would return peace to the region.

The raids also appear to have done little to further South Africa’s stated objectives. The President of the ANC openly asserted that the South African raids would inspire his movement to escalate its attacks on the Pretoria regime. So far, South Africa’s attempts to force the ANC to renounce the use of violence have backfired. In addition, the raids appear to have improved the ANC’s standing in the eyes of the international community.

Another significant result of the raids was the rejection by international elites of South Africa’s attempts to place the raids within the broader framework of the fight against international terrorism. The response of international elites to this effort suggests that there is a definable boundary between legitimate resistance and international terrorism.

69. Id. at 7, 23; see also Security Council, 2685th Meeting, supra note 52, at 7.
70. See, e.g., Security Council, 2684th Meeting, supra note 18, at 30-34 (remarks by the Chairman of the Special Committee Against Apartheid); see also Security Council, 2685th Meeting, supra note 52, at 5 (statement by the Australian representative).
71. See Security Council, 2684th Meeting, supra note 18, at 18.
72. Id. The Special Committee Against Apartheid stated that the primary past and present cause of conflict in Southern Africa was the policy of apartheid pursued by the South African regime. Report of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa, 25 U.N. GAOR Supp. (No. 22) at 4, U.N. Doc. A/8022/Rev.1 (1970). Apartheid was also deemed “the root cause of the conflict and instability in Southern Africa” in the New Delhi Declaration of the Co-ordinating Bureau of the Non-Aligned Movement. See Security Council, 2684th Meeting, supra note 18, at 41; see also statements by the French representative, Security Council, 2686th Meeting, supra note 25, at 7 (arguing that the policy of apartheid was the cause of the troubles afflicting the Southern African region).
73. See de St. Jorre, supra note 31, at 545; see also Spence, Botha’s Slap in the Face for the West, The Times (London), May 20, 1986, at 16, col. 2 (stating that the raids’ significance was political rather than military).
74. McGregor, Bloodbath Warning to Pretoria, The Times (London), May 21, 1986, at 7, col 1. Other heads of state, such as Zimbabwe’s President Robert Mugabe, called for more support for the ANC in its war against the South African government. See Ashford, supra note 49.
State elites established the fact that the ANC had not been engaged in “international terrorist” activity. The emergent norm is that the activities of recognized liberation movements like the ANC cannot be equated with terrorism. Therefore, states that grant liberation movements or “dissident groups” the use of their territories are not guilty of condoning international terrorism. Moreover, their granting of this privilege does not amount to an armed attack justifying legitimate self-defense.

Not only did the attacks fail to achieve South Africa’s objectives, they also resulted in increased appeal at the international level for mandatory and comprehensive economic sanctions against South Africa. In addition, the raids served to slow the diplomatic progress being made by international elites in their efforts to restore peace to the region. The work of the E.P.G., for example, was short-circuited.

Nonetheless, the worldwide criticism of the raids does not seem to have had a discernible impact on the actions of the South African government. After the May incident, South Africa threatened that it would “continue to strike against ANC base facilities in neighboring countries in accordance with [its] legal right.” It made good on this threat with an attack on Angola, eight days after the raids on Botswana, Zambia, and Zimbabwe.

76. See Security Council, 2686th Meeting, supra note 25, at 11.
77. These issues are more extensively discussed below. See infra text accompanying notes 107-18.
78. This idea was neatly summed up by the President of the Security Council, speaking in his capacity as the representative of Ghana. Security Council, 2686th Meeting, supra note 25, at 102-08.
79. This resulted from the fact that the raids occurred while the E.P.G. was involved in negotiations with South Africa and the ANC for a peaceful settlement of the dispute. Id. In the words of the Botswanan representative, “If the eminent persons’ initiative is not dead—killed by South Africa—it must be presumed to be so wounded, so deformed [that] it is as good as dead alive [sic].” Id. at 59-60. Mr. Malcolm Fraser and General Obasanjo, co-chairmen of the E.P.G., “acknowledged that South Africa’s raids had struck the mission a serious blow.” E.P.G. Tries To Keep Its Hopes Alive, The Times (London), May 21, 1986, at 7, col. 4; see also de St. Jorre, supra note 31, at 546 (arguing that this was in part a result of the fact that South Africa had chosen to attack three of the Commonwealth countries that the E.P.G. represented).
80. Anderson, supra note 75, at 80.
VI. Writer’s Appraisal

An informed appraisal of the South African raids must be made in the context of the broader international legal norms that seek to maintain minimum world order and human dignity. The outcome of this incident may well have a positive effect on world order. The incident highlighted the need to draw a definable boundary between legitimate resistance and international terrorism. An anti-terrorism policy should be distinguished from a policy of bare aggression against a liberation movement. This is particularly true in light of the fact that international terrorism is an extralegal activity, and therefore does not lend itself easily to legal analysis. The lack of a precise definition does not detract from the fact that genuine terrorism can be identified when it is seen.

The attempt made by South Africa to characterize certain acts of ANC aggression as international terrorism was not accepted by state elites. The legitimacy of the state elites’ position arises from the increased pressure which terrorism has placed on the conduct of international relations. It would serve no policy goal, for example, to treat Abu Nidal-type activities and ANC-type activities in South Africa in a mechanically like fashion. International terrorism is not conducive to maintaining public order; but the already weakened normative restraints on the use of force would be further vitiated if states were allowed arbitrarily to launch armed attacks against other states’ territories on the pretext of curbing international terrorism. A desirable conclusion to be drawn from this incident would therefore be that a state must furnish the international community with evidence of alleged terrorist activities in order to legitimate an attack on terrorists. The establishment of such a norm would discourage unwarranted deployments of transboundary force.

82. See Laqueur, Reflections on Terrorism, 65 FOREIGN AFF. 86, 97 (1986).
83. Most experts on the subject agree that terrorism involves “the use or threat of violence, a method of combat or a strategy to achieve certain goals, that its aim is to induce a state of fear in the victim, that it is ruthless and does not conform to humanitarian norms, and that publicity is an essential factor in terrorist strategy.” Id. at 88.
84. The U.S. government uses the term “international terrorism” to describe the premeditated use of violence against non-combatant targets for political purposes, involving citizens or territory of more than one country. See Oakley, supra note 31, at 611 n.1.
85. The increased incidence of terrorism, particularly state-sponsored terrorism, has become a central world-order concern which has led to a burgeoning literature on the subject. See generally N.Y. Times, Nov. 14, 1986, at A10, col. 3 (discussion on the Draft Report prepared for lawmakers from the sixteen-member Atlantic Alliance); Laqueur, supra note 82; Green, Double Standards in the United Nations: The Legalization of Terrorism, 18 ARCHIV DES VÖLKERRECHTS 129, 129-34 passim (1979), reprinted in part in INTERNATIONAL LAW AND WORLD ORDER 495 (1980).
It is significant that one of South Africa's primary justifications for the raids was that the U.S. government had set a precedent for such attacks in Libya earlier in the year. 86 This interpretation indicates an imperative need for the superpowers to adhere scrupulously to international norms, since their activities may be used by other states to legitimize arguably similar actions. It must be emphasized, however, that the U.S. action in Libya was not accepted as legitimate by the international community. 87 Its precedential value was thus limited from the outset.

The South African raids also highlight the need to establish appropriate criteria to define normative expectations regarding liberation movements in international law. 88 The central question posed for the purposes of this incident is the legality of support given by individual states to such movements. It has been argued that there is a right of self-defense against racist and colonial domination and that, if force is used to deprive subjected peoples of their right to self-determination, they have a right to resort to force and to receive support from other states. 89 This argument, however, is not justified by the concept of self-defense as it is traditionally understood in article 51 of the U.N. Charter.

86. See supra text accompanying notes 31-32, 43-44.

87. Although Libya was generally condemned for its terrorist acts, even the United States' traditional allies dissociated themselves from the U.S. military action against Libya. Security Council debates indicated that the use of force by the United States could not be excused, since other peaceful options were available to respond to the Libyan menace. See generally U.N. Security Council, Provisional Verbatim Record of the 2674th-2683rd Meetings, U.N. Docs. S/PV.2674-S/PV.2683 (Apr. 15, 1986-Apr. 24, 1986). The Draft Report, discussed supra note 85, was also highly critical of the U.S. raid on Libya, as was the Eighth Summit of the Non-Aligned Movement in Harare, Zimbabwe, in September 1986. That summit unanimously concluded that the air attack on Libya was "a grave precedent in international relations, and a crime that is devoid of any political and moral value." Commitment to Struggle, AFRICA, Oct. 1986, at 20-21.

88. The status of national liberation movements is an issue about which much has been written. For a general discussion on the subject, see generally Reisman, supra note 12; Sagay, The Legal Status of Freedom Fighters in Africa, 6 E. AFR. L. REV. 15 (1973).

89. For example, African states, in conformity with the OAU Charter, claim that the use of force to regulate violation of the norms of decolonization and anti-racism is legal, and that the use of armed force is justified to end colonialism and to implement self-determination, provided that this result cannot be achieved by peaceful means. Such arguments are frequently used to justify state practice. For example, in 1961, India used force to end Portuguese colonial domination of Goa. India argued at the Security Council that the U.N. Charter did not completely eschew force, since force could be used to achieve freedom where no other means were available. The inability of the Security Council to censure India (due, in part, to the use of the veto power) seems to have fortified certain state elite expectations that the use of force for the express purpose of national liberation is legitimate. See 1 REPERTORY OF PRACTICE OF THE UNITED NATIONS 148 (Supp. No. 3, 1972). For related arguments in state practice, see generally Dugard, The Organization of African Unity and Colonialism: An Inquiry into the Plea of Self-Defense as a Justification for the Use of Force in the Eradication of Colonialism, 16 INT'L & COMP. L.Q. 157 (1967).
Colonialism and racist domination do not, per se, involve an "armed attack" on subjected peoples, nor does the related argument of "colonialism as permanent aggression" justify a right of self defense against racial and colonial domination. This concept disregards the doctrine of intertemporal law,\(^{90}\) according to which a title acquired by force, when forceful acquisition of such title was lawful, does not become invalid when that method of acquisition is subsequently outlawed. Contemporary international legal norms are not retroactive. Thus, it cannot plausibly be maintained that the right of self-defense, which was not exercised at a time when an attack occurred, can be exercised now, in the absence of an armed attack. The initial use of force in support of national liberation movements against racist domination (as in South Africa) cannot be justified with a self-defense argument.

The fact remains, however, that U.N. prescriptions overwhelmingly support aid to national liberation movements. The 1974 Definition of Aggression, for example, stipulates:

> Nothing in this Definition, and in particular article 3, could in any way prejudice the right . . . of peoples[,] . . . particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.\(^ {91}\)

This document, together with the 1970 Declaration on Friendly Relations,\(^ {92}\) suggests that supporting armed liberation movements does not constitute aggression. The provision of such support does not violate article 2(4) of the U.N. Charter, but rather is an action in furtherance of the purposes and principles of the Charter. These declarations are authoritative because they were adopted with the full participation and consent of all nations, including those in the West.\(^ {93}\) Although it may be argued that such declarations have no real significance, because General Assembly resolutions and declarations do not have any legally binding

---


91. Supra note 4, art. 7.

92. Supra note 4, at 121.

93. Both resolutions were adopted without a vote. See L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, BASIC DOCUMENTS SUPPLEMENT TO INTERNATIONAL LAW 45, 411 (1980). There was, therefore, consensus regarding their adoption in conformity with "a discernible trend from consent to consensus as the basis of international legal obligations." Falk, On the Quasi-Legislative Competence of the General Assembly, 60 AM. J. INT'L L. 782, 785 (1966).
force, they have historically exercised a formative influence on the development of international law.

Resolutions on national liberation movements in particular have been passed in substantially the same form over a considerable period of time. They have been endorsed by overwhelming majorities of an ever more inclusive U.N. membership. Even the Western states' traditional hostility to the idea of legitimating the provision of support to liberation movements has evaporated. President Reagan, for example, has openly declared that "[s]upport for freedom fighters is . . . totally consistent with the OAS and UN Charters." Thus there seems to be an emerging consensus that the use of armed force in support of liberation movements is legal.

This norm furthers the goal of world public order. Recent trends in the "world social process" indicate an increased emphasis on the need to uphold human dignity. The activities of organizations like the ANC are aimed at eradicating practices as opprobrious as apartheid, colonialism, racism, and genocide, all of which have been denounced by the international community. The ANC's expressed goal is a democratic, non-racist, and undivided South Africa. It is fighting for the overthrow of the system of apartheid, which is a comprehensive and systematic pattern of racial discrimination . . . comprising a complex set of practices

94. See, e.g., Onuf, Professor Falk on the Quasi-Legislative Competence of the General Assembly, 64 AM. J. INT'L L. 349 (1970). It is undeniable that such resolutions are not a formal source of law within the formulation of article 38(1) of the statute of the I.C.J. It is also true that under the U.N. Charter, the Assembly does not have the legal competence to legislate or to adopt legally-binding decisions, except those regarding certain organizational matters, like procedural rules. U.N. CHARTER ch. IV.

95. O. SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 111 (1985). As Schachter explains, General Assembly resolutions are now regarded as expressions of common interests and the "general will" of the international community. There is abundant literature to refute the notion that General Assembly resolutions cannot even be regarded as evidence of emerging international legal norms. See generally Falk, supra note 93, at 782; O. ASAMOAH, THE LEGAL SIGNIFICANCE OF THE DECLARATIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS (1966). See also Advisory Opinion on Namibia, 1971 I.C.J. 16.


97. Id.

98. 31 KEESING'S CONTEMPORARY ARCHIVES 33,454 (1985).

99. "World social process" is a compendious term used to indicate that the expanding circles of interaction among people extend to the remotest inhabitants of the globe ("world"), and that the active participants of the interaction ("process") are living beings ("social"). See M. McDougall & ASSOCIATES, supra note 8, at 10.

of domination and subjection, intensely hierarchized and sustained by the whole apparatus of the state, which affects the distribution of all values.\textsuperscript{101} Apartheid has variously been described as "a threat to international peace and security,"\textsuperscript{102} "a crime against humanity,"\textsuperscript{103} a violation of the Charter of the U.N.,\textsuperscript{104} and "a crime against the conscience and dignity of mankind."\textsuperscript{105} Apartheid arguably also falls within the definition of genocide incorporated in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.\textsuperscript{106} The world community has an important and continuing interest in eradicating apartheid. In the light of the opprobrium attached to such a system, it would be mere legal sophistry to argue that international legal norms preclude the ANC from seeking (with the active support of outside forces) to supplant the system of apartheid.

The South African government's self-defense arguments also merit consideration.\textsuperscript{107} The circumstances under which the raids comprising this incident were carried out suggest that they did not constitute a legitimate act of self-defense. First, the raids were retaliatory and not preven-


\textsuperscript{104} Advisory Opinion on Namibia, 1971 I.C.J. at 57.


\textsuperscript{106} 78 U.N.T.S. 277. The question of whether or not South Africa is a signatory to the Convention is moot, because the relevant provisions of the Convention have become customary international law. That the prohibition on genocide is regarded as \textit{jus cogens} was clearly indicated by the I.C.J. in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951 I.C.J. 1, 23-24; \textit{see also} Jimenez de Arechaga, \textit{International Law in the Past Third of a Century}, 159 HAGUE RECUEIL 1, 64-67 (1978). The killing of anti-apartheid demonstrators in recent months violates article II(a) and (b) of the Genocide Convention for "killing members of [a] group" or "causing serious bodily or mental harm to members of [a] group." For a categorization of the various laws and activities of the South African government that could establish its acts as genocide, see \textit{Report of The Special Committee Against Apartheid}, 39 U.N. GAOR Supp. (No. 22) at 55, U.N. Doc. A/39/22 (1984); \textit{see also} Kiapi, \textit{The Status of Apartheid in International Law}, 17 INDIAN J. INT'L L. 57, 57-58 (1977).

\textsuperscript{107} The instances in which self-defense can be invoked in international law have been exhaustively examined in the literature. \textit{See}, e.g., Brownlie, \textit{The Use of Force in Self-Defence}, 37 BRIT. Y.B. INT'L L. 183 (1961); D. Bowett, \textit{Self-Defense in International Law} (1958); McDougal, \textit{The Soviet-Cuban Quarantine and Self-Defense}, 57 AM. J. INT'L L. 597 (1963); Dugard, \textit{supra} note 89.
tive. The difference between self-defense and reprisal lies essentially in the aim of the action. Self-defense is aimed at protecting the security of a state and its essential rights of territorial integrity and political independence. A reprisal, on the other hand, is punitive in nature. Significantly, none of South Africa's raids into neighboring African states in the past have been launched in order to prevent an impending or imminent guerrilla attack. South Africa has always implied that the raids have been conducted as a result of, rather than in anticipation of, an attack on it. The raids were directed against public buildings and private houses, and, in the case of Zimbabwe, against ANC political offices. It is difficult to believe that ANC offices and refugee camps were ANC "operational centres" and "transit facilities" threatening the security of South Africa.

Second, self-defense, as traditionally understood, is confined to cases in which "the necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation." The contention that these conditions were present in Southern Africa at the time of the raids is difficult to support. Although the very definition of self-defense indicates that it contains a temporal element, the conflict between the ANC and the South African government has been continuous and long-lasting, not a sudden occurrence calling for an "instant" South African reaction. Furthermore, the raids reflected a failure to exhaust other remedies. Negotiations aimed at a peaceful settlement had reached an advanced stage at the very time of the attacks.

109. According to the Zimbabwean representative, all states seemed to agree that the choice of targets was militarily dubious. See Security Council, 2686th Meeting, supra note 25, at 83-85. The fact that the raids killed only three people and were aimed mostly at empty buildings suggests that "the real purpose of the exercise was less strategic than political or psychological." Smith, supra note 16, at 40.
110. It has been asserted that South Africa's use of force was not meant to destroy the ANC, but rather to punish the Southern African states for the support which they had provided to South African refugees as well as to the ANC. Security Council Resolution 527 observed that South Africa's attack on Lesotho in 1982 was not aimed at destroying insurgents, but rather at "weakening the humanitarian support given by Lesotho to South African refugees." S.C. Res. 527, 37 U.N. SCOR Res. & Dec. at 20, U.N. Doc. S/INF/38 (1982). Sanctioning such raids would therefore set a dangerous precedent; it would diminish the protection afforded to refugees under international law and result in a situation where one state could use force against another under the pretext that the latter was providing sanctuary to refugees from the former.
111. The Caroline, 2 J. MOORE, A DIGEST OF INTERNATIONAL LAW 412 (1906).
112. See supra notes 66-68 and accompanying text.
South Africa's Incursions

Third, an argument of self-defense immediately invokes the full force of article 51 of the U.N. Charter. Article 51 requires that measures taken in self-defense "shall be immediately reported to the Security Council." South Africa completely ignored this procedural requirement.

The Southern African states claim that they do not give military support to the ANC, nor do they allow ANC military activities to take place on their territories. Assuming for the sake of argument that these states do grant the ANC military support, such support in itself does not necessarily amount to an armed attack on South Africa justifying its resort to self-defense. The reaction of the international community to the South African raids indicates that the raids were not in conformity with existing or emerging expectations regarding the right to resort to unilateral use of force. State elites have been reluctant to widen the concept of armed attack. Conversely, they have been unwilling to broaden the scope of the self-defense exception enshrined in article 51 of the U.N. Charter. Such a broadening would disrupt the international order, allowing unilateral recourse to force even when peaceful means are available to solve disputes.

The I.C.J. also addressed the issue of armed attack in the Nicaragua case. In its words, "the Court does not believe that the concept of 'armed attack' includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support." It went on to hold:

While the concept of an armed attack includes the despatch by one State of armed bands into the territory of another State, the supply of arms and

113. On the operation of article 51 of the U.N. Charter, see generally Waldock, The Regulation of the Use of Force by Individual States in International Law, 81 HAGUE RECUEIL 455 (1952).


115. It is beyond the scope of this incident study to assess the truth or falsity of these claims and counterclaims. For purposes of clarity in analysis, however, it will be assumed that the military arm of the ANC actively operates in South Africa, with the collaboration of the Southern African states.

other support to such bands cannot be equated with armed attack. Nevertheless, such activities may well constitute... an intervention in the internal affairs of a State, that is, a form of conduct which is certainly wrongful, but is of lesser gravity than an armed attack.\textsuperscript{117}

This holding of the Court is not only consistent with, but also dictated by, the requirements for the maintenance of minimum world order. Granting logistical support to opposition groups is an everyday part of interstate relations. To hold that this kind of support amounts to an armed attack would open up a hornets' nest, allowing states to launch raids upon the flimsiest of excuses, all in the name of self-defense.\textsuperscript{118}

This development would exacerbate the use of the military instrument as a means of solving disputes.

The desirable conclusion, therefore, is that granting support to opposition groups (not to mention legitimate liberation movements) does not constitute an armed attack. This does not, however, rule out the fact that such support could, in certain instances, constitute a violation of the principle of non-intervention in the internal affairs of states. In such a situation, other international legal remedies, such as the use of the diplomatic or the economic instrument, would be available to the wronged state.

\footnotesize{117. Id. at 126, para. 247; cf. dissenting opinion of Judge Schwebel, id. at 331-48, paras. 154-73 (arguing that support for insurgents violates article 2(4) and, accordingly, permits a violent response in self-defense). The I.C.J. decision has not been accepted by the United States. After participating fully in the proceedings on provisional measures, the jurisdiction of the Court, and the admissibility of the Nicaraguan Application, the U.S. government withdrew from all further proceedings in the case, denounced the Court's jurisdictional judgment of November 26, 1984, and purported to reserve its rights as to any future decision by the Court. U.S. Withdrawal from the Proceeding Initiated by Nicaragua in the ICI, 85 DEP'T ST. BULL. 64 (Mar. 1985). For comments on the Nicaragua case, see Moore, The Secret War in Central America and the Future of World Order, 80 AM. J. INT'L L. 43 (1986) (advancing legal arguments that could be used by the Reagan Administration in an attempt to justify defying an adverse judgment on the merits by the I.C.J.). Cf. Rowles, "Secret Wars," Self-Defense and the Charter—A Reply to Professor Moore, id. at 568, 582 (arguing that neither Professor Moore nor the United States can defy the I.C.J.'s judgment and then view the resultant undercutting of the principle of international adjudication and the authority of the I.C.J. to be in the United States' interest). For further commentaries on the Nicaragua case, see generally Appraisals of the ICI's Decision: Nicaragua v. United States (Merits), 81 AM. J. INT'L L. 77 (1987); Kahn, From Nuremberg to the Hague: The United States Position in Nicaragua v. United States and the Development of International Law, 12 YALE J. INT'L L. 1 (1987).

118. See, e.g., Kahn, supra note 117, at 21 ("To find an armed attack is to find authorization for a military response... Packed into a determination that an 'armed attack' has occurred are many of the most important functions of an international legal order. It is not a determination that should be made lightly.")}
South Africa's Incursions

Conclusion

The South African incident has highlighted the need for an end to the system of apartheid. It has drawn into sharp focus the distinction between national liberation movements and terrorist movements. It has reinforced the normative perceptions of state elites regarding the legitimacy of granting moral and material support to national liberation movements, and the illegitimacy of using self-defense arguments as an excuse to crush such movements. It has enhanced the status of the ANC and given it greater legitimacy in the international community. Finally, it has strengthened the principle of an overriding obligation to seek peaceful settlement of disputes before resorting to force. For these reasons, it is hoped that signals sent to the South African government by the international community will contribute to an atmosphere of greater stability in the Southern African region.

119. As established previously, the frequent South African raids are largely attributable to the practice of apartheid. See supra text accompanying notes 71-72. Institutions in the international arena and strategies available to put continued pressure on the South African government include: (a) the Security Council (on this institution's primary responsibility for international peace and security, see generally L. Goodrich & A. Simons, The United Nations and the Maintenance of International Peace and Security (1955)); (b) the General Assembly and the OAU (see U.N. Charter ch. VIII, on regional organizations; O.A.U. Charter, reprinted in 58 Am. J. Int'l L. 873 (1964); F. Okoye, International Law and the New African States (1972)); and (c) unilateral humanitarian intervention effectively carried out and immediately submitted to inclusive authoritative appraisal (on claims for and against a right of humanitarian intervention, see the dispute between Brownlie, Humanitarian Intervention, in Law and Civil War in the Modern World 217 (J. Moore ed. 1974), and Lillich, Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives, id. at 229). See also Reisman, Humanitarian Intervention to Protect the Ibos, in Humanitarian Intervention and the United Nations 177 (R. Lillich ed. 1973); Moore, The Control of Foreign Intervention in Internal Conflict, 9 Va. J. Int'l L. 205 (1969).