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# Introduction

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## INTRODUCTION\*

*Malvina Halberstam\*\**

Good evening and welcome to the panel on *The Use of Force Against Terrorist Bases*, sponsored by American Professors For Peace in the Middle East and by the Benjamin N. Cardozo School of Law. The question we will be addressing tonight is: "May a state use force in or against another state that is unwilling or unable to prevent terrorists from operating in its territory or from using its territory as a base for planning and organizing terrorist activity elsewhere?" Several examples of such use of force involving the Middle East readily come to mind: The Israeli rescue in Entebbe, the Egyptian action in Malta, the U.S. bombing of Libya, and the Israeli invasion of Lebanon. Although these actions differed substantially both in duration, ranging from several hours to a conflict lasting several years, and in the nature of the force used, ranging from the minimum force necessary to effect a rescue to full scale fighting, in each instance one state used force in the territory of another state that was unwilling or unable to prevent the use of its territory by terrorists.

Was the action a legitimate use of force by the state to protect its citizens or a violation of international law? Article 2(4) of the U.N. Charter prohibits the use of force by one state against the territorial integrity or political independence of another state. The only exception to this prohibition expressly stated in the U.N. Charter is a state's inherent right to self-defense. It has been argued that even actions such as the Entebbe rescue, which clearly would have been lawful under customary international law as humanitarian intervention, violate the U.N. Charter. Others have taken the position that even though there is no explicit exception for humanitarian intervention, it does not violate the U.N. Charter because it does not involve the use of force against the territorial integrity or political independence "of a state."

While today it appears to be generally accepted that the Entebbe rescue was lawful, the invasion of Lebanon and the bombing of Libya are far more controversial. Article 51 of the U.N. Charter affirms a state's inherent right of individual or collective self-defense if "an armed attack occurs." Must the armed attack be against the territory of another state

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for the use of force by that state to be permissible under Article 51? Or may a state use force in response to an attack against its nationals regardless of whether the attack is inside or outside its territory? Does the inherent right of self-defense exist only where the state is directly engaged in the armed attack, or does it apply with respect to a state that serves as the willing or unwilling base of operation for the terrorists responsible for the attack? Going beyond the specific language of the Charter, what are the purposes of the Charter and are these purposes better served by permitting or prohibiting the use of force in or against states that have willingly or unwillingly become bases for terrorist operations? Going beyond international law, is such use of force permissible under Jewish law, a question of great import to at least part of the Israeli citizenry. Finally, is such use of force, which may result in the death of innocent persons, morally justified? Professor Oscar Schachter and Professor Michael Reisman, world-renowned scholars of international law who have written extensively on the subject, will address these questions from an international law perspective. Professor David Bleich, an eminent scholar of Jewish law and jurisprudence, will address these questions from the perspective of Jewish law and morality.