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INTERNATIONAL LAW, THE OAS AND THE DOMINICAN CRISIS

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The year is 1904. We had a president then with some fight in him—Theodore Roosevelt. He looked around the Caribbean, saw disorder, and said, "This has to stop." At that time we didn't have any ideas of international cooperation. He just took up a big stick and, ouch! the Dominican Republic was hit on the head. He said to Venezuela, "What did you borrow all that money for and bring European powers over here? Didn't you know any better? They lend money and expect you to pay it back and will come for it if you don't." He chastized Venezuela, the Dominican Republic, Nicaragua—in the name of an international police power; there wasn't much of an international element in it. It was Theodore Roosevelt with a big stick, maintaining law and order—not maintaining it in the interest of a world of law or order, no, not immediately, but rather maintaining it in the interest of the United States.

Now the year is 1907. We are having a peace conference at The Hague—the second Hague Peace Conference. What in the world was the matter with the delegates from the United States, not to mention those from Great Britain and other countries? They went to a conference which was called a *peace* conference and signed 13 conventions, 11 of which related to the conduct of the next war.

As a young law clerk at the Carnegie Endowment nearly 60 years ago I was assigned to edit a book by our chief delegate to the Conference. Nobody had a constructive idea of stopping another war; the whole thing was how to fight it humanely, as if you can blow up a man humanely. Dum-dum bullets were forbidden. An ordinary Spanish bullet in 1898 went right through you, and you still could keep going, but a dum-dum bullet would tear your arm open, and that was forbidden. In other words, you could blow a man to pieces and it was all right, but you must not cause him unnecessary suffering while he is still alive and maybe can go back to fight again.

The year 1914 came and war was smoldering in Europe. I was then in Germany, and I heard the Kaiser say from the palace that war had come and all should go forth to die in defense of the country. That same night, in France, the French Foreign Minister was saying the same thing. And what did Woodrow Wilson do? He said there was nothing we could do. It was too bad, but we were not in a position to uphold international law and order. We had the Atlantic and Pacific Oceans as barriers to protect us. We were neutral, and as neutrals we didn't know the difference between right and wrong. But we didn't just sit there; we began to lend money;

we began to sell arms and ammunition and made profits out of the war until the time came when we were practically in the war ourselves. Woodrow Wilson then had an idea. We can't go on with this business of neutrality and get in a war in spite of our desire to stay out of it. Let's abolish neutrality and start a system of collective responsibility of all countries for the maintenance of peace.

In 1920 came the League of Nations—an attack upon one is an attack upon all. That's the principle of the State of Rhode Island—an attack upon one is technically and theoretically an attack upon all. But when Woodrow Wilson came back from Paris with a treaty to that effect and presented it to the Senate, they said, "Oh no, what is this man doing? Dragging us into a world of wars; wasn't one war enough?" One objection after another was raised: "Are we going to involve the United States in a system of world law and order, with the possibility of another war?"

Gentlemen, in the Constitution of the United States, article 4, section 4 (I am giving the reference to you so that it won't embarrass you, because few seem to know the article or the section), it is said that the United States guarantees to each state in the United States a republican form of government. It says that, but please remember that in that day "republican" meant "democratic." The United States guarantees to each state a democratic form of government and will protect each of them against invasion. That Constitution came down to the state of Virginia for ratification.

When I was a boy I was put up on a table and had to recite Patrick Henry's "Give me liberty, or give me death." When Patrick Henry saw that clause in the Constitution he said to the Virginia Legislature, "Call off the ratification of the Constitution; Virginia will never send her boys to die in the marshes of Rhode Island to protect that state against Massachusetts." You have something in your own early history that

suggests that Massachusetts had not behaved very courteously toward Rhode Island. Of course, Patrick Henry didn't know Newport then. If he had, he certainly would have let Virginian boys save Newport. Well, in 1920 that was the attitude that Senators Johnson of California, Lodge of Massachusetts, Borah of Idaho, and others, took toward Woodrow Wilson's proposal of a system of collective responsibility—an attack upon one is an attack upon all. But we were not interested then in world law and order. We were only interested in our own safety—our national security, which obviously comes first, but we did not see that our own security was involved in a world of law and order. I lectured all over the United States in those days. I lost every debate. I was trying to persuade the American people that the only hope of staying out of another war was to prevent it. Professor Borchard of Yale called me an evangelist, and a senator called me by an uglier name—he said I was in the pay of Great Britain, and all that sort of stuff.

The year 1927 came and the Republicans—(forgive me if some in the audience are offended by my attitude, but down in Virginia I was brought up to think that all Republicans were bad, some worse than others, but all were bad) well, what were the Republicans going to do? They had to do something, so they proposed to take a New Year's resolution, and we adopted the Kellogg-Briand Pact outlawing war. Instead of a League of Nations that might provoke war, let's outlaw war; let's adopt a resolution declaring war unlawful.

Once upon a time there was a man named John Brown, let's call him. He was a hard drinker. January 1st came and his wife, Maria, thought he should do something—should take a resolution. So John Brown did take a resolution. He said, "Maria, I solemnly swear that for the coming year I will not touch a drop unless I am exceptionally thirsty."

Now the Kellogg-Briand Pact said,

"We won't go to war; we will outlaw all wars except wars of self-defense." Look over your American history and see if you can find one war that was not a war of self-defense. In other words, it was fraud of the first order; but somehow or other we were taken in by it, outlawing war. Japan wasn't troubled; she went right ahead against China. Stimson was a grand man, but all he could do was to say, "The United States will not recognize any conquest." That's all. That didn't trouble Japan. She didn't care whether we recognized her conquest or not. She would have it just the same.

In 1936 a war in Europe was on the horizon, and we thought we ought to do something to protect America. So we met down in Buenos Aires, and I had the honor of being a delegate of the United States to that conference. Franklin Roosevelt went down, and we met, and we said to the Latin Americans, "You don't like the big stick, do you?" They said, "No; we don't like the big stick." We said, "All right, we'll throw the big stick into the river if you will all collectively agree that in the event of an attack from Europe you will all support the United States on the principle of the Monroe Doctrine." The Foreign Minister of Argentina was opposed; he did not like the underlying danger of what he called "Monroeism." But with the aid of our friends, notably the Brazilian Aranha, a magnificent speaker, we succeeded, although it was the weakest treaty in all of our history. In the event of a threat to the peace we would consult individually; to decide whether to consult collectively, to decide whether to do anything. That was the treaty of 1936. But it was a beginning, an opening wedge. We call it consultation—a consultative treaty—and that was the cornerstone of our inter-American system: consultation in the event of a threat to the peace.

Two years later we met at Lima, Peru; it was the same thing over. We tried to get something stronger because

the clouds of war were on the horizon in Europe, and with a war on the horizon we wanted to strengthen the inter-American system so that we could stand together as neutrals. Stand together as neutrals? What had we done in 1935, 1936, and 1937, but practically give the green light to the dictator Hitler? We said that in time of war (we didn't say it to Hitler, of course, we said it to our own people) you mustn't get involved. If you are a banker, don't you lend 10 cents to a belligerent. If you are a munitions maker, don't you sell one gun. That was exactly what Hitler wanted because the British are never ready. They could not believe that a war was coming. I was over in England in 1939. I had gone all the way to Stockholm, Sweden, to make a peace talk, as if Sweden could have any influence over Hitler. I came back to London and went to Parliament with a friend on 2 August. All this, and the 4th was the start of World War I. What was Parliament doing? They were discussing an old-age pension bill. Can you believe it? I said to my friend, "What in the world do they mean by losing their time in this crisis? Don't they know that August 4th is an anniversary, and Hitler is the kind of man to begin his war on the date that would have a psychological reaction in Germany?" But you couldn't keep Britons from their weekend. Saturday came and Parliament adjourned, too honorable to believe that others could be dishonorable. A month later the war was on, and when it came we soon found that the attitude of neutrality that we had taken was completely against our own best interests. The Germans didn't trouble this time about violating merely the neutrality of Belgium; that was nothing. They invaded Denmark, Holland, Belgium, and Norway, and the United States suddenly woke up as if with an electric shock. If this man is going to take over all of Europe, Britain will go under of a certainty, and where would we be? How

much value would the Atlantic Ocean be to us? So we woke up and met with Churchill on the high seas and decided that neutrality was past. We undid the neutrality laws, and we prepared to help Britain, principally through the trade of naval bases and destroyers. Then, finally, the Japanese hit us, and we were in the war.

It was a war we could have prevented 20 years before had we seen the light. We were now in it, and with it we completely changed our policy and saw that the United States had a vital interest in the maintenance of international law and order, a fundamental national interest. Then we formulated the Charter of the United Nations, which was simply a repetition of the principles of the old League of Nations that an attack upon one is an attack upon all, except that we gave a veto power to a select few who constituted membership of the Security Council. I was in Latin America at that time, and they said, "We are very doubtful about this new League of Nations. If you are going to give Russia a veto we are not for it." How was it possible that we were ready to give a veto to the "Big Brown Bear"? Oh, the "Big Brown Bear" had affectionate arms in those days. We trusted Stalin. We couldn't take in how fundamentally untruthful he was. So we gave the Soviet Union a right of veto. Latin America met in Mexico City and said, "The only condition on which we will go into this proposed United Nations is if you allow us the reservation of self-defense in case of a veto by the Soviet Union." So we gave them article 51 of the Charter. You have a copy of the Charter; read article 51. It reserves the right of self-defense, individual or collective, *until* such time as the Security Council has kept the peace, so that if Russia vetoes measures to keep the peace, you have the right of individual or collective self-defense.

With that principle recognized the United States said to Latin America,

"Let's meet, modify, and strengthen our own regional collective security system in the light of the Charter of the United Nations, taking advantage of the right of individual or collective self-defense." So we met in Rio de Janeiro and formulated the Treaty of Reciprocal Assistance. That is the cornerstone of inter-American collective security—the Treaty of Reciprocal Assistance of 2 September 1947.

That treaty has two elements to it: it says that in the event of an armed attack against any one of the American states within the hemisphere or without, we are all obligated to come immediately to the defense of the state attacked. The second part says that in event of a threat to the peace through an act of aggression short of an armed attack we are all obligated to consult together to decide what measures must be taken to meet the threat to the peace. That is the cornerstone today of inter-American collective security.

A year later we met at Bogota in Colombia (a lovely spot, a little bit high) and we signed the Charter of the Organization of American States. The Charter, in this respect—collective security—merely repeats the terms of the Treaty of Reciprocal Assistance of 1947, the Rio Treaty. That again, I repeat, is the cornerstone of our collective security system.

Now let us see how it works. In 1951 a conference meets in Washington, an inter-American conference. What is it all about? Well, unhappily, since 1945 the whole collective system of the United Nations has gone to pieces. The whole collective system, that an attack upon one is an attack upon all, has broken up. Why? Because some clever chemist or physicist, or whatever he was, has invented an atomic bomb; and one single country, the Soviet Union, with an atomic bomb in its pocket can defy the whole world. Who is going to risk challenging it? Collective security means that the whole community, acting

collectively, is strong enough to prevent an attack, to warn a nation against committing an act of aggression; but if one single country has an atomic bomb in its pocket and is evil-minded enough to use it, who is going to challenge that country? Who is going to dare risk complete annihilation? There were Hiroshima and Nagasaki; were they not examples of what could happen with that bomb? How far would you expect any country to challenge the big states that had the atomic bomb? And so for the moment the Soviet Union was, in a sense, supreme. We had the atomic bomb; we had used it first, but the Soviets could trust us because anyone who knows our history, our long tradition, knows that we do not break our word; but anyone who knows the more recent tradition of Russia knows that they *do* break their word and *will* break their word and in 1947 and 1948 were breaking it all over eastern Europe. That was the situation. We met in Washington in 1951 and extended the idea of a threat to the peace to include an act of aggression by the Soviet Union—not very specific and definite. Not, of course, an open attack, but the subversive activities of the Soviet Union. That was the first act of the OAS to meet a threat to the peace under the Rio Treaty.

Let's look at another phase. The year 1954 comes and the Russian infiltration in Latin America has gone forward. We meet down in Venezuela, and at Caracas we take a resolution in which we said that the control by international communism of the government of any American state will be regarded as a grave threat to the peace, and we would meet in common consultation to take action together to confront it. Inter-American collective security, in the face of a threat to the peace, was specifically directed to international communism.

Other applications of the Rio Treaty may be mentioned. In 1961 a dictator in the Dominican Republic, Trujillo,

actually went so far as to conspire with Communists in Venezuela to assassinate the President of Venezuela, something unheard of in our history. Betancourt was a liberal president of Venezuela trying to protect that country from Communist infiltration, and Trujillo sought to help assassinate him. Fortunately, the bomb exploded just after Betancourt's car had passed the designated spot. But there was no question whatsoever of Trujillo's responsibility, and so we met and put sanctions against Trujillo. They were mild sanctions at first, but they could be followed by stronger ones, such as a sanction against the shipment of oil, which will bring any government to a stop today. That's just a sample of how the OAS acts. Then there was a boundary dispute between Honduras and Nicaragua. Nicaragua contested the boundary that had been fixed in the year 1906 by the King of Spain. "Oh," says the Nicaraguan delegate, "the King of Spain didn't even read the documents. We don't have to accept an award of 50 years ago." So a war was coming close. We called them both to Washington, sat them down around the table at the Pan-American Union, and we said to them in strong terms, "Shame on yourselves, you signed the Rio Treaty, and the Charter of the OAS calls for the submission of this problem to a settlement by arbitration." I offered to settle it as Head of the Department of Law. I offered to settle it for 30 cents. I was paid by the Pan-American Union, so I said I would settle it for them. But critics said, "What, a worm like you, a little small 2-by-4 lawyer?" If you ever have a real case and want to prevent your home parliament from criticizing you too sharply, you submit the case to the International Court of Justice, and instead of 30 cents you pay ten thousand times that much for French lawyers and other clever ones. You lose your case before the Court and go back to your home parliament, and it can

make no criticism. What a grand ambassador we have in Washington; the Nicaraguan Ambassador, like the gentlemen he is, accepted the decision of the International Court of Justice, and a quarrel of half a century came to an end.

In 1959 a revolutionary government takes over in Cuba, and Castro, seeing that he can't possibly win by normal procedures, tears up the Rio Treaty—tears up the Charter of the OAS—and proceeds to come to terms with whom? With our friends in Russia. "Put missile bases here and you will be right under the nose of Washington, and you can get anything you want from them." The Russians accepted his invitation to come over and build missile bases. We inspected (the Navy and the Air Force are to be credited here) and found that the missile bases were under construction. The Russian Ambassador had misled President Kennedy, pretending, "We are not doing anything in Cuba except to assist them in defending their country." But the missile bases were not a mere basis of defense but were a basis of a possible Russian attack. President Kennedy intervened on 22 October and said to Khrushchev, "Destroy your missile bases or else." For about three days we were a bit nervous. I certainly was. But Khrushchev took the warning and destroyed the missile bases, although we did not succeed in getting the right to send in inspectors. We are today, in self-defense, engaged in photographic reconnaissance over Cuba to be sure that no new missile bases are being built.

The most serious problem of the atomic bomb is that you don't know who attacked you. In the good old days you knew who hit you, and you hit back. We knew who struck us at Pearl Harbor, and we hit back at him and his friends. But if an atomic bomb were to blow up Washington or New York tonight, we wouldn't know who hit us. And so President Kennedy said to

Khrushchev, "If an atomic attack comes from Cuba we shall regard it as coming from Russia." Now that meant something. For three days I confess I was nervous. No doubt you were too. Khrushchev gave way and the bases were broken up. We haven't found yet a solution to the Cuban situation. I don't know why we didn't invade Cuba the day that Castro tore up the Rio Treaty and the Charter of the OAS. I would have. Maybe you think I am wrong, that is your privilege. And one of the arguments in the Dominican Republic case, which we now turn to, was that one Cuba was enough. We can't risk having the Dominican Republic turn into another Cuba.

In April 1965 we found in that unhappy country that the infiltration of Communist agents was creating unrest bordering on civil war. When our ambassador reported that there was shooting in the streets and people couldn't leave their hotels to buy food without the risk of being shot by some Tom, Dick, or Harry who happened to have a gun, we sent our troops in to protect them. I consider that the initial act of protecting our citizens in Santo Domingo, capital of the Dominican Republic, was an ordinary act of self-defense without any reference to the Rio Treaty or the Charter. The next day we called in consultation the Council of the Organization of American States, and at first the reaction was hesitant. But then as things got worse, and it was clear that a civil war would break out, the OAS created an armed peace force, the first time in American history—an inter-American armed force. While that armed force was largely from the United States, it had with it the backing in principle of Latin America, and we very wisely arranged to have a Brazilian general put in command.

Brazil is a magnificent country. I spent years there representing the United States during the war. Brazilian generals are the finest type of men you

could meet anywhere, and the present Brazilian Foreign Minister, Juracy Magalhaes, who was Ambassador in Washington, couldn't be more typical—a man whose integrity is absolute, whose word is his bond, and who is our friend. I say that also for the present Ambassador in Washington, Vasco Leitao da Cunha. He is a gentleman and a man of character and intelligence. We appointed a Brazilian general to give an international character to the peace force. But the forces in the Dominican Republic were largely American forces, as in my judgment they should be.

Now, a lot of my old friends and friendly enemies say, "You have no right to go into the Dominican Republic; that's intervention. That is a violation of the fundamental principle of nonintervention." Intervention has created a psychological, I would say almost a psychopathic, reaction in some parts of Latin America from memories of the days of the big stick. We are not intervening in the Dominican Republic any more than the Rio Treaty justifies us.

Was there a threat to the peace in the Dominican Republic? Obviously there are threats to the peace of different degrees. I think there was a serious threat to the peace, and President Johnson expressed it very clearly when he said, "One Cuba is enough." If the Communists infiltrate and take over the Government of the Dominican Republic, we shall have a problem on our hands like that of Cuba and a possible danger from an atomic bomb getting into the hands of some fanatics who would throw it, and we won't know where it came from. So I am not troubled about the accusation of intervention.

In the law of the State of Rhode Island, as in the law of every other state,

we respect the home life of the citizen. We respect the family life of the citizen, but when disorder breaks out in the family, if husband beats wife and wife screams, we don't say, "Oh, no, you can't go in that house, a man's home is his castle." We go in, and we stop the violence. In my judgment the world is growing today to the point where what would not have been a threat to the peace 50 years ago and would not have troubled us can be today a threat to the peace. We have grown together; we are working new agencies. The Alliance for Progress that we started five years ago is unable to function where there is riot and disorder. In the past riot and disorder have as a rule not been considered sufficiently important to constitute a threat justifying intervention. But I would say today that if a revolution should break out in one country or another the Organization of American States would be justified in doing what it could to prevent a civil war. The days of civil war are over. You cannot have a civil war today without disturbing the peace, certainly not in America. Consequently I interpret the Rio Treaty, article 6, where it speaks of a threat to the peace, in a broader sense than it would have been interpreted 50 years ago. The United States has a vital national interest today in the maintenance of international law and order. That's the fundamental principle on which we stand. That principle was not even heard about in 1914; it was rejected by the United States in 1920. But today, in the changing world in which we are living, I maintain that we have a vital national interest in the maintenance of international law and order. On that basis I defend the intervention, if you want to use the word, of the United States in the Dominican Republic.