

1970

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Recommended Citation

Miller, William O. (1970) "Collective Intervention and the Law of the Character," *Naval War College Review*: Vol. 23 : No. 4 , Article 11.
Available at: <https://digital-commons.usnwc.edu/nwc-review/vol23/iss4/11>

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COLLECTIVE INTERVENTION AND THE LAW OF THE CHARACTER

The United Nations Charter was originally intended to legalize only those interventions which were undertaken by a collectivity of states under the authorization of the United Nations. In a number of recent cases, the collective action promised by the charter has failed to materialize, and the powerful member states have sought in regional organizations a justification for intervention to replace the former right of unilateral self-help. This triumph of regionalism has been abetted by the failure of the Security Council to challenge such interventions. The legitimacy of collective interventions in the future will be decided by politics rather than law until the member states are willing in reality to submit their national interests to international adjudication.

A research paper prepared

by

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I—INTRODUCTION

The subjects of "intervention" and its corollary of "nonintervention" are, without doubt, two of the most controversial in the literature of international law.¹ It is even difficult to find any substantial agreement among international law publicists as to the meaning of the terms. The definition of "intervention" which seems to command the most agreement, however, has been phrased as follows: "... any act of interference by one state in the affairs of another; but in a more special sense it means dictatorial interference in the domestic or foreign affairs of another state which impairs that state's independence."² The doctrine of "nonintervention," being inextricably intertwined with what at best must be described as the ambiguous concept of "intervention," nevertheless has been accepted almost universally as a proper guideline for the conduct of states. It found its

most inclusive definition and its most comprehensive endorsement in General Assembly Resolution Number 2131 (XX), as follows:

No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned.³

It is the purpose of the discussion which follows to develop the proposition that these broad pronouncements, while appearing to proscribe the "dictatorial interference in the affairs of a state," do not do so at all, but rather serve only to transfer competence to exercise this "dictatorial interference"

from individual states to collectivities of states acting either through or under the auspices of the United Nations. This proposition has as its basic conception that intervention, as defined above and subject to the concepts of necessity and proportionality, has always been recognized as a lawful exercise of the indisputable international right of sanction, usable to enforce an international legal right, and that intervention, as a sanction, has neither been restricted nor proscribed; that only the competence to apply it has changed. It will be further demonstrated that this very process of multilateralizing the right of sanction has resulted in the development and use by the Great Powers of regional collectivities through which they seek to exercise the right of sanction for political rather than legal purposes.

In developing this thesis, the concept of intervention as a "dictatorial interference in the affairs of a state" will be accepted, specifically, however, with the limitation that intervention is taken only for the purpose of compelling a state to satisfy its international obligations.⁴ Thus, intervention will be discussed as the process through which the international community seeks to prevent an international delict from developing into an international dispute or through which it otherwise seeks to redress an international wrong. Divorced from this discussion will be those acts of interference by a state in the affairs of another state which do not have either an actual or a claimed antecedent international delict. Such acts have universally been considered as unlawful and prohibited by customary international law⁵ unless they were based on an existing treaty right permitting such interference.⁶

II—DEVELOPMENT OF THE SANCTION: A HISTORICAL SKETCH

There is certainly no doubt that the traditional international law failed to

provide any workable system through which a state, utilizing centralized procedures, could seek redress for a wrong done to it by another state. This was a horizontal system in which all subjects were theoretically equal and in which there were no established procedures to seek redress through community sanctions. The only genuine restrictions on the acts of a state depended on considerations of reciprocity¹ or on the power relationships between an offending and an offended state. Because of the primitive nature of this system and because there was a necessity to provide some procedure beyond that of ineffective reciprocal and self-imposed restraints for the enforcement of international obligations, there developed the practice of self-help. Much like the situation which exists in any primitive society, it was necessary for each individual—i.e., each state—to rely on its own ability, its own strength, to seek redress for wrongs done to it. Self-help has thus "... been universally recognized as a means of enforcement... [of international law, i.e.,]... as a sanction."² There were basically two types of forcible self-help available. The first was war and the second was the doctrine of reprisals.³ Intervention, as defined above, arose as a form of reprisal. It was nothing more nor less than a manifestation of "the dependence of law in a primitive community upon various techniques of self-help."⁴ Forceful interventions in the form of reprisals therefore were recognized as lawful, circumscribed only by the requirements of necessity and proportionality. The legitimacy of this type of forcible self-help was made clear in Hague Convention Number II of 1907 when, for the first time, it was agreed "... not to have recourse to force for the recovery of contract debts due from one State to the nationals of another, but in that case alone."⁵ Thus, it has been said that, "... with only one small caveat, the great powers immediately before

World War I reaffirmed the right of forcible self-help."⁶

The Covenant of the League of Nations was the first break in this traditional philosophy. The adherents to the covenant agreed to "respect the territorial integrity and existing political independence" of other members⁷ and to submit to arbitration or to inquiry by the Council of the League of Nations those disputes of an international nature which could not be settled by diplomacy.⁸ Following shortly on the heels of the covenant came the Pact of Paris, or the Kellogg-Briand Pact, in which the parties agreed that "settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them shall never be sought except by pacific means."⁹ At about this same time the Latin American Republics began to voice, in concert, strenuous opposition to the intervention policy which the United States had followed extensively in the Western Hemisphere since the mid-1800's. In Rio de Janeiro in 1927 the Inter-American Commission of Jurists recommended to the forthcoming Conference of Havana that it consider adopting the principle that "No nation has a right to interfere in the internal or foreign affairs of an American Republic against the will of that Republic."¹⁰ While U.S. objections prevented adoption of this principle in 1928,¹¹ it was adopted in 1933 with U.S. reservations¹² and finally in Buenos Aires in 1936 without U.S. reservations. In article I of the Additional Protocol Relative to Non-Intervention,¹³ adopted by the American states at Buenos Aires, the parties declared as "inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties." This principle was repeated and broadened in the Declaration of Principles of Inter-American

Solidarity and Cooperation in this language:

(a) Intervention by one State in the internal or external affairs of another State is condemned;

(b) Forcible collection of pecuniary debts is illegal; and

(c) Any difference or dispute between the American nations, whatever its nature or origin, shall be settled by the methods of conciliation, or full arbitration, or through the operation of international justice.¹⁴

By the time of the Mexico City Conference of 1945, this principle had become ingrained in inter-American law, and the Act of Chapultepec simply reiterated its "condemnation of intervention in the internal or external affairs of another."¹⁵ Thus, when the members of the United Nations met in San Francisco in 1945 to draft the Charter of the United Nations, the unilateral resort to force, even as a means of self-help, had received substantial international condemnation.

The results of the San Francisco Conference reflect the same revulsion to the unilateral use of force as had the various treaties referred to above. Expressing a determination to "save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind,"¹⁶ and a determination to "ensure . . . that armed force shall not be used, save in the common interest,"¹⁷ the writers of the charter stated that it was part of their purpose:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace . . . and to

bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.¹⁸

In support of this and other stated purposes, the members of the United Nations pledged themselves to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,"¹⁹ and to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."²⁰

The significant point here is that while the charter in article 2 (4) contains a general prohibition of the unilateral use of force in international relations, it promises an "effective collective" substitute. Thus, in those situations where an international dispute cannot be settled by peaceful means between the parties, the charter promises the collective efforts of the organized international community to take such measures as are necessary to prevent or remove any threat to the peace which may or does result. The charter would therefore no longer permit a state to take the law in its own hands and to seek redress by force. Given the law of the charter, the primitive international law of the jungle would be replaced by a civilized determination of right and wrong, of delict and redress, and of rights and responsibilities. Whether or not the charter has constructed collective machinery adequate to this purpose, however, is quite another question and, it would seem, a most crucial one. For if the promised substitute for unilateral action is not forthcoming, states could hardly be expected to refrain from developing

other procedures and perhaps from even falling back to their prior practice of unilateral forcible self-help. "Clearly, a law which prohibits resort to force," or stated otherwise, which prohibits the resort to unilateral self-help, "without providing a legitimate claimant with adequate means of obtaining redress, contains the seeds of trouble."²¹ It has even been argued that "[i]f the collective organization, through a fault in its organizing instrument, leaves a gap where the use of force is necessary but the collective organization is impotent to act, then the legal right to use force must, in such instance, revert back to the members."²² It is abundantly clear from current international practice that this process has long since begun. States have sought, and are seeking, substitutes for the promised universal actions which seldom materialize. The impotence of the international community as a whole has led to the development of smaller collectivities which, while demonstrating a capacity to act, have at the same time shown that the compatibility of their actions with the more comprehensive provisions of the charter is sometimes open to serious question.

III—CHARTER REGULATION OF THE USE OF FORCE

General Provisions. As noted above, article 2 (4) of the charter contains a general prohibition of the threat or use of force "against the territorial integrity or political independence of any state . . ." Only two exceptions to this general prohibition are provided: (1) Preventive or enforcement actions taken by or under the auspices of the United Nations, provided for in article 42 of the charter; and (2) individual or collective self-defense, provided for in article 51. All other resorts to the use of force in international relations "fall into the category of international delicts" and are themselves violations of international law.¹ This reflects the charter's

purpose to "eliminate the threat or use of force whether it be lawful or unlawful under general international law" except in legitimate self-defense or as a part of the collective sanctioning process.² There should be little doubt, therefore, that unilateral, forcible self-help as an acceptable sanction in international law has been prohibited.³

There are, then, only two permissible uses of armed force under the charter. The first of these--the collective processes by or under the auspices of the United Nations--are provided essentially through powers granted to the Security Council in chapter VII of the charter. Article 39 invests the Security Council with the authority and responsibility to "determine the existence of any threat to the peace, breach of the peace, or act of aggression and . . . [to] . . . make recommendations, or . . . [to] . . . decide what measures shall be taken to maintain or restore international peace and security." Article 42 provides for the use of armed force to accomplish this purpose if the peaceful, nonforceful measures of article 41 are considered inadequate; and article 48 provides that such action is to be carried out, subject to the determination of the Security Council, by "Members of the United Nations directly and through their actions in the appropriate international agencies of which they are members." Article 50 makes it clear that this "preventive or enforcement action" is to be taken against *states*. While this may seem an unnecessary observation, it is nevertheless a crucial one. By endorsing these principles, states are seen to have relinquished a portion of their sovereignty and to have consented, in a proper case, to subject themselves to forcible but lawful pressures from without. This is but a necessary corollary to Professor Jessup's argument⁴ that the prohibition of the use of force in article 2(4) is a limitation on the traditional concept of sovereignty which permitted a state to resort to force to redress a

wrong done to it. If this aspect of sovereignty is now limited by international law to an *offended* state, it would necessarily follow, if any sort of effective system is to be maintained, that any previous right of an *offending* state to be immune from the application of force must likewise be limited.⁵ The importance of these limitations lies in the fact that they effect a significant modification of the nonintervention principle as previously expressed. Intervention is now specifically legitimized when taken by or under the auspices of the international community as a whole. Intervention, then, at least in the terms in which it was defined above, is specifically sanctioned by the charter.

It must be said, therefore, that the charter seeks to make significant inroads on the traditional concept of sovereignty as an "absolute, uncontrolled state will, ultimately free to resort to the final arbitrament of war,"⁶ and as a tradition under which states "do not readily yield to concepts of international supervision."⁷ The charter seeks to remove the "quicksand on which the foundations of traditional law are built"⁸ and to substitute in its stead the firmer base of collective supervision and collective action.

Provisions Relating to Regional Organizations. As was noted above, chapter VII of the charter assigns to the Security Council the primary responsibility for the maintenance of international peace and security and the primary authority to take such action and to provide such sanctions as may be necessary to that end.

An important part of the machinery through which these actions may be accomplished are the regional arrangements recognized in chapter VIII. The part that such organizations could and should play in the collective structure was debated at length both at Dumbarton Oaks and at the San Francisco Conference.⁹ The result was twofold--

the recognition in article 51 of the right of collective self-defense and the inclusion of articles 52, 53, and 54 to provide a legal framework for reconciling the actions of regional organizations with those of the United Nations.

These latter provisions have been criticized as a compromise of the concept of universalism and as resulting in an ambiguous legal rationale concerning the relative jurisdictional competences of the United Nations on the one hand and a regional organization on the other and concerning just what measures or actions are within the authority of a regional grouping.¹⁰

It is true that the recognition of the "inherent right of individual or collective self-defense" in article 51 did represent a concession to those states—particularly the Latin American States—which desired to see a measure of regional autonomy in their respective groupings. This was considered necessary, particularly insofar as self-defensive actions were concerned, in order to prevent a possible Great Power veto in the Security Council from precluding essential, defensive actions.¹¹ Article 51, then, was specifically intended to permit a regional grouping or an individual state to take necessary measures in self-defense and to continue such actions until "the Security Council has taken measures necessary to maintain international peace and security."¹²

The ambiguity arises when this right of a regional organization to use force in self-defense is compared with the charter provisions relating to disputes which it may attempt to settle and "measures" or "actions" which it may take. Article 52, while recognizing the primary responsibility of the Security Council,¹³ charges members of the United Nations who are also members of a regional organization with making "every effort to achieve pacific settlement of local disputes through such regional agencies . . . before referring them to the Security Council." And article 53

authorizes the Security Council to utilize such arrangements for "enforcement actions under its authority." With one exception not here pertinent,¹⁴ however, prohibition is made of any enforcement action "without the authorization of the Security Council."

These provisions have given rise to repeated controversy between those states seeking a measure of regional competency in settling regional disputes and those seeking to maintain the primacy of the central organization. The controversy has been twofold and may be expressed as follows: (1) Is there a jurisdictional conflict between the Security Council and a given regional organization; and (2) What actions, if any, may a regional organization take without prior Security Council authorization?

The jurisdictional problem. This portion of the controversy concerns itself with which body, the Security Council or a regional organization, has the competence to deal with a particular dispute. Does either body possess an exclusive right to hear and determine the dispute? Or, is there a shared competence; and, if so, does either body have a primary right to proceed?¹⁵

The language of the charter would appear to resolve clearly this issue in favor of a shared competence but with a recognized primacy in the Security Council. Article 52(2) does counsel members of regional organizations to make every effort to settle their disputes within that regional framework "before referring them to the Security Council." Article 52(4), however, makes it clear that this "in no way impairs" the right of the Security Council to act in the ease or the right of any member to request Security Council action.

The Guatemala Case. This issue was first debated before the Security Council in June 1954, when Guatemala requested that the Security Council

convene to consider its allegations of aggression against Nicaragua and Honduras, so that it could take the necessary measures "to prevent the disruption of peace and international security in this part of Central America."¹⁶ The Governments of both Nicaragua and Honduras expressed surprise that this matter should have been brought before the Security Council when there were available the processes of the Organization of American States which, they said, were established to hear inter-American differences.¹⁷ Brazil submitted a draft resolution by which the Security Council would have referred the matter to the OAS for its urgent consideration. The debates which followed saw a wide divergence of opinion as to the course which the Security Council was obliged to follow. The most restrictive view was presented by the delegate from Colombia, as follows:

I should like to make it quite clear that the provisions of Article 52, paragraph 2, of the United Nations Charter impose on all Members the duty to apply first to the regional organization, which is of necessity the court of first appeal. This is not a right which can be renounced because the States which signed the Charter undertook this obligation.¹⁸

On the other hand, the representative of the Soviet Union argued that it was "the Council's duty to take responsibility and to take urgent steps to end the aggression,"¹⁹ and he announced that he would exercise the Soviet Union's right of veto on any resolution which referred the matter to the OAS for action.

Most of the remaining members of the Security Council clearly favored reference of the matter to the OAS, although it is obvious that this was not considered as relinquishing Security Council jurisdiction in the matter. The

resolution which was finally put to a vote called for immediate termination of acts likely to cause further bloodshed and would have referred the complaint to the OAS for consideration. True to his threat, however, the representative of the Soviet Union cast a negative vote and prevented the resolution from carrying. A substitute resolution was quickly passed. It read as follows:

The Security Council.

Having considered on an urgent basis the communication of the Government of Guatemala to the President of the Security Council,

Calls for the immediate termination of any action likely to cause further bloodshed and requests all Members of the United Nations to abstain, in the spirit of the Charter, from rendering any assistance to any such action.²⁰

The matter was again raised on 25 June 1954 at the 676th meeting of the Security Council, when a debate took place concerning whether or not the Council should again place the Guatemalan complaint on its agenda. These debates saw the representative of Brazil, once again, contending that the OAS was the proper organization to settle this dispute. Since the Inter-American Peace Committee was already acting in the matter, he was able to cite its activities in support of his arguments.²¹ Colombia, citing pertinent provisions of the OAS Charter,²² reiterated its argument that the regional machinery of the OAS must be utilized before Security Council competence is invoked, since to do otherwise, he said, would "imply a disauthorization of the American agency" to which Colombia could not agree.²³ The Soviet Union was adamant in its insistence that the matter must be placed on the agenda of the Security Council. It pointed out that the

Security Council had already acted in the case by its resolution adopted in the 675th meeting, and argued that now it was time that the Security Council "adopted measures to ensure the fulfillment of" its decision.²⁴ Ambassador Lodge of the United States asserted that the Security Council was faced for the first time with the problem of translating into reality the charter formula providing for a balance between the principle of "universality, the effect of which was qualified by the veto power, and regional arrangements."²⁵ The substance of his arguments was as follows:

The United States does not deny the propriety of this danger to the peace in Guatemala being brought to the attention of the Security Council in accordance with Article 35 of the Charter. That has been done . . . The United States is, however, both legally and as a matter of honour, bound by its undertakings contained in Article 52, paragraph 2 of the Charter of the United Nations and in Article 20 of the Charter of the Organization of American States, to oppose consideration by the Security Council of this Guatemalan dispute until the matter has first been dealt with by the Organization of American States which through its regularly constituted agencies, is dealing actively with the problem now . . . We are convinced that failure of the Security Council to observe the restraints which were spelled out in the Charter will be a grave blow to the entire system of international peace and security which the United Nations was designed to achieve.²⁶

The vote of the Security Council not to place the Guatemalan complaint in its agenda²⁷ has been interpreted as a victory for the United States, since it

was thus enabled to handle the matter in the councils of the OAS where it was the dominant power unrestricted by the Soviet veto.²⁸ While there may be some considerable justification for this argument, it still remains a basic fact, notwithstanding the positions advanced during the debates, that the failure of the Security Council to take direct action in the case cannot be properly construed as a determination that its competence does not exist at least concurrently with that of a regional organization. To the contrary, the Security Council *did act* in the case by passing the resolution at its 675th meeting. The refusal to take further action only reflected a preference for settlement of this particular dispute at the regional level, where it appeared that the regional agency was capable of taking the necessary action.

The handling of this dispute gives rise to certain initial observations concerning the relative competences of the Security Council and a regional arrangement. These are:

The provisions of article 52(4) to the effect that the competence of a regional organization to make every effort to settle local disputes within the machinery of their regional grouping "in no way impairs the authority of the Security Council" to be seized of the same matter remain valid;

Regional organizations will be permitted to act in accordance with the authority granted to them where they demonstrate a practical ability to take effective action; and that therefore,

It must be said that when first faced with the jurisdictional issue, the Security Council acted so as to endorse the principle that both they and a regional organization share competence—or possess concurrent jurisdiction—and that the primary opportunity to act would probably be accorded the regional grouping in those cases where it

demonstrated an ability to act effectively.

The Cuban Case. This entire controversy was again raised before the Security Council in July 1960, when the Government of Cuba requested urgent consideration of "the grave situation which now exists . . . as a consequence of repeated threats, harassments, intrigues, reprisals and aggressive acts to which . . . [Cuba] . . . has been subjected" by the United States.²⁹ The Cuban representative began his presentation to the Council with this statement:

The right of any State which is a Member of the United Nations to have recourse to the Security Council cannot be questioned. The regional agencies do not take precedence over the obligations of the Charter It is obvious that regional arrangements made under the terms of Article 52 of the Charter entail rights which are of an optional rather than an exclusive character, and that Member States may exercise whichever of those rights they choose.³⁰

The representative of the United States replied that this matter was currently under consideration by the Council of the Organization of American States and that the "Security Council should take no action . . . [until] . . . discussions have taken place . . ." in that Organization.³¹ He disclaimed any insistence, however, that this reflected in any way on the competence of the Security Council to hear the Cuban complaint. He stated:

Let me say that it is not a question of which is greater or which is less—the Organization of American States or the United Nations. The point is that it makes sense and the Charter so indicates—to go to the regional

organization first and to the United Nations as a place of last resort. There is no question, of course, of replacing the United Nations.³²

This same rationale clearly motivated Argentina and Ecuador to submit a draft resolution,³³ later adopted, under which the Security Council took note of the situation existing between Cuba and the United States and adjourned its consideration of the matter pending an invitation to the OAS to assist in resolving the dispute and to report its activities. The positions of the various members of the Security Council on this draft resolution reflected a three-way split in opinions on the jurisdictional issue. One extreme was represented by the United Kingdom³⁴ and France³⁵ who contended that Cuba had a legal obligation under the charter and under the Charter of the Organization of American States to seek resolution of the matter in the regional agency prior to requesting action by the Security Council. On the other extreme were the Soviet Union and Poland who argued that the Security Council had primary jurisdiction in the matter and that it would be illegal to refer the matter to the OAS.³⁶ The great majority of the views expressed, however, were in accord with those of the sponsors of the resolution—that the resolution found "a formula, which while taking account of the fact that proceedings are under way in a regional agency, does not bar the parties concerned from access to the United Nations . . ."³⁷ The language of the operative portions of the resolution compel this understanding of the Security Council's action, and it clearly supports the initial observations drawn above from the Guatemalan case. The Security Council, in handling the Cuban complaint, was asserting its ultimate competence but was deferring to the practical and, it was hoped, effective machinery of the regional grouping.

In late October 1960, Cuba renewed its complaint, this time in the General Assembly.³⁸ In spite of the fact that by January 1961 Cuba was contending that its invasion was imminent, the General Assembly had taken no action on the case. Cuba, thns, on 4 January 1961, moved again to seek Security Council consideration of the matter.³⁹ Although the Cuban complaints were debated at length,⁴⁰ the Security Council did not take any official action on them. Thus, despite the fact that by late April 1961 the abortive Bay of Pigs invasion had actually occurred, the Cuban complaints still were left to the Organization of American States. This was recognized in a resolution later adopted by the General Assembly's First Committee on 21 April 1961.⁴¹ Although the Plenary Session of the General Assembly, in later acting on this First Committee Resolution, refused by a substantial majority to specifically refer to the OAS, this may not be said to diminish the significance of the prior actions of the Security Council in referring the matter to that organization.

Conclusion. No case, subsequent to the two above discussed, has arisen in which the jurisdictional relationships of the Security Council versus a regional organization have become a significant issue. Although there were undertones of this controversy in the 1963 dispute between the Dominican Republic and Haiti and in the 1964 complaint by Panama against the United States, both controversies found the parties mutually willing to utilize the procedures of the OAS.⁴²

Notwithstanding the contrary contentions made by some during the above-noted debates, it is concluded that the actions of the Security Council do not substantiate the argument that a genuine issue concerning the respective jurisdictions of the Security Council and a regional organization was ever joined. While some states did argue to that

effect, the great majority of states clearly conceded concurrent jurisdiction in both bodies, but with primary *right* to proceed in the Security Council. The issue was a political and a practical one—essentially, should the Security Council give practical substance, in a proper case, to the charter provisions relating to its use of regional organizations for the settlement of disputes which were of purely regional character? This question was answered with a simple “yes.” The answer did not mean, nor was it ever intended to mean, that a party to a dispute could be foreclosed from seeking Security Council assistance without first exhausting its remedies in the subordinate organization. Notwithstanding this conclusion, however, it must be conceded that the great majority of members of the Security Council did, in fact, make considerable concessions to the proposition that a regional organization is a better forum for settling disputes than is the Security Council. The search for alternate means of settlement—i.e., means other than the veto-afflicted Security Council—was thus well on its way.

The “enforcement action” issue. The second major controversy between the “regionalists” and the “universalists” is concerned with the nature of the action which can be taken by a regional organization with respect to a dispute of which it is properly seized. This arises from the interaction of the provisions of article 52(2) and article 53(1). The first of these charges the regional organization with making “every effort to achieve pacific settlement of local disputes,” while the latter specifically admonishes that “. . . no enforcement action may be taken under regional arrangements . . . without the authorization of the Security Council.”

The question thus arises as to what are these “enforcement actions” which are prohibited to a regional organization without prior Security Council

approval, and what other actions are left to its initial competence?

Neither reference to the records of the San Francisco Conference nor to other background papers to the charter⁴³ provide any real assistance in discovering the meaning of the term "enforcement action." Reference to the charter itself also fails to provide any direct assistance. The term appears only four times in the charter: alone in article 45, twice, and in the phrase "preventive and enforcement action" in article 5. The term "enforcement *measures*," however, appears twice in the charter: alone in article 2(7), and in the phrase "preventive and enforcement *measures*" in article 50.

No key is readily apparent to the reasons behind this different phrasing. There is no specific indication in either the charter itself or in the background debates as to why the drafters used "enforcement action" in one article alone, in conjunction with "preventive action" in another, and why two other articles speak in terms of preventive or enforcement *measures*. One would certainly assume, however, that if the drafters of the charter meant the same thing in each of these articles that they would have used the same terminology. It would seem clear, therefore, that the term "enforcement action" as used in article 53 means something different than the "preventive . . . action" or the "preventive and enforcement measures" used elsewhere.

The answer to a part of this confusion very probably lies in the differentiation set forth in articles 41 and 42 of the types of processes which can be undertaken by the Security Council. Article 41 provides for "measures not involving the use of armed force" to be utilized to effect Security Council decisions. Article 42, on the other hand, permits "action by air, sea and land forces" if the measures of article 41 are not considered adequate. Hence, it would logically follow that the term

"action" should be interpreted as accompanied by the use of armed force while the term "measures" would not.

While this does give a key to the differentiation between "preventive and enforcement measures" and "preventive and enforcement actions," viz, the presence of the use of armed force in the latter, there still remains the problem that article 53 only prohibits a regional organization from taking "enforcement" and not "preventive" action without the authorization of the Security Council. No clue has been uncovered which would give any assistance to a resolution of this problem. Nevertheless, it is a fact that the charter speaks of four different types of processes which may be taken by the Security Council, and it denies only one of these enforcement *action* to a regional organization without its first securing Security Council approval. Thus it is concluded that nothing in the charter prohibits a regional organization from taking, without Security Council authorization either:

- (1) preventive measures;
- (2) preventive action; or
- (3) enforcement measures.

This naturally raises the question of the differentiation between the adjectives "preventive" and "enforcement." A logical explanation appears in the provisions of articles 41 and 42 to the effect that the measures or actions which they contemplate are to be employed to give effect to the "decisions of the Security Council"—decisions which have been taken under article 39 to "maintain or restore international peace and security." Enforcement measures or action, therefore, are preceded by a determination either that a "threat to the peace" or a "breach of the peace" exists and that it must be dealt with in a certain manner. Hence, any measure or action taken under article 41 or 42 is either an *enforcement* measure or an *enforcement* action, since it is

taken to place in effect, or to enforce, a decision of the Security Council concerning how the threat or actual breach should be settled.

A totally different situation exists where there is neither a "threat to the peace" nor a "breach of the peace" but where, nevertheless, there is a situation which could mature into such if outside assistance is not brought to bear. This is the "prevention . . . of threats to the peace" spoken of in article 1(1), giving rise to the obviously contemplated need for "preventive" actions or "preventive" measures. Since these types of processes are not prohibited to a regional organization, it must be concluded that they are properly matters for regional competence under article 52. The above analysis, therefore, would support the following types of actions by a regional organization without Security Council authorization:

Preventive measures—not involving the use of armed force;

Preventive action—involving the use of armed force; and

Enforcement measures—not involving the use of armed force.

It is recognized that the above reasoning may seem to be an unduly technical and tortuous attempt to interpret into the charter an unintended competence in regional organizations. However this may be, it seems obvious that a start down this tortuous path is already well under way. This has been occasioned by the unwillingness of the powers to entrust disputes in which they are interested to the veto-bound Security Council and by the resultant inability of the Security Council to furnish the "effective collective" substitute for unilateral self-help which it promised.

The Palestine Case (1948). This was first seen in the Syrian attempt to justify the Arab actions in the hostilities

which broke out almost immediately after the State of Israel was established in 1948. It was argued that the intervention of the Arab States in Palestine was taken under the authority of article 52 of the charter. Since the Arab League was a recognized regional organization, it was within its competence to seek a pacific settlement of the local situation in its area. This argument was met with the adamant rebuttal by the United States that the Arab League's actions were in the nature of "enforcement actions" and that such were prohibited without first securing the authorization of the Security Council.⁴⁴

The Dominican Republic Case (1960-61). This issue was again debated in the Security Council in connection with the sanctions imposed on the Dominican Republic by the members of the OAS in late 1960. At the Sixth Meeting of Consultation of Ministers of Foreign Affairs, the members of the OAS, acting collectively, condemned the Dominican Republic for acts of intervention and aggression against Venezuela. It was resolved that the members of the OAS should apply both diplomatic and economic sanctions against the Dominican Republic.⁴⁵ These actions were reported to the Security Council.⁴⁶ The Soviet Union promptly submitted a draft resolution under which the Security Council would have specifically approved the action of the OAS.⁴⁷ In support of his draft resolution, the Soviet representative expressed complete agreement with the actions taken by the OAS but insisted that the actions taken were "enforcement actions" within the meaning of article 53, and that, as such, they required the authorization of the Security Council.⁴⁸ This has been astutely termed a "shrewd tactical move" on the part of the Soviet Union, since it sought "to establish the competence of the Security Council to control the application of enforcement measures by the

OAS, by advocating the *approval*, not the rejection, of OAS action in the initial case.⁴⁹

The members of the OAS who were sitting on the Security Council were quick to recognize the purpose behind this Soviet move. The representative of Argentina observed:

The Soviet view is that, under Article 53 of the Charter, the Security Council is competent to approve the steps recently taken by the Organization of American States with regard to one of its members. At the same time it is clear that, *a contrario sensu*, the Soviet view also implies that the Security Council is entitled to annul or revise these measures if it sees fit.⁵⁰

Argentina did not feel that it was necessary for the Security Council to take a position on this Soviet view and, in conjunction with Ecuador and the United States, submitted a substitute draft resolution under which the Security Council would simply take note of the actions of the OAS.⁵¹

The United States, arguing in support of the substitute draft resolution, stated simply that the measures taken by the OAS were entirely within the authority of a regional organization, since any of the actions being taken collectively "could be taken individually by any sovereign state on its own initiative."⁵² Strong support for this position was given by Venezuela,⁵³ China,⁵⁴ and the United Kingdom. The latter's representative gave this analysis of the situation:

... it is the view of my delegation that when Article 53 refers to "enforcement action," it must be contemplating the exercise of force in a manner which would not normally be legitimate for any State or group of States except under the authority of the

Security Council. Other pacifying actions under regional arrangements as envisaged under Chapter VIII of the Charter which do not come into this category have simply to be brought to the attention of the Security Council under Article 54.⁵⁵

Other members of the Security Council were not ready to go quite so far. Several expressed the view that the term "enforcement action" was ambiguous and required further study so that its meaning could be determined. It was their feeling, however, that this particular case could be disposed of without making this determination.

Only Poland lent its support fully to the Soviet position. The remainder of the Security Council either felt that there was no need to determine if the actions of the OAS were, in fact, "enforcement actions" or that they did not constitute such actions.

The three-power substitute draft was put to a vote and carried by a vote of 9 to 0, with Poland and the Soviet Union abstaining.

Two conflicting opinions of the effect of this vote have been put forward. The first, that of John C. Dreier, is that:

By adopting the American alternative rather than the Soviet proposal, and thus avoiding any formal approval or disapproval of the OAS action, the Security Council in effect endorsed the view held by the Sixth Meeting of Foreign Ministers: that authorization of the Security Council was not necessary. *An important precedent was thereby established.*⁵⁶

On the other hand, Professor Luis L. Claude, Jr., contends that, because of the uncertainty expressed by many members concerning the validity of the legal position advanced by the United

States, the Council's action "hardly represented a decisive endorsement of the proposition that the authorization of the Security Council is not required for OAS sanctions falling short of military force."⁵⁷

It is this author's view that the opinions expressed by Mr. John C. Dreier represent the more reasonable analysis. While it may be true, as Professor Claude asserts, that some members of the Security Council were unwilling to directly support the U.S. legal position on the meaning of the term "enforcement action," it remains a fact that in their vote for the substitute resolution they lent their effective support to this proposition. The effect of the adoption of this resolution—particularly in the context within which it was debated—is that Security Council approval of the type of action taken by the OAS is not required. All members had an opportunity to vote for the Soviet-sponsored approval, and their decision to vote instead on the substitute draft must be interpreted as a decision that it was preferable to the Soviet draft, that vote on the Soviet draft was not desirable, and, hence, that approval of the OAS action was not necessary.

There is no question but that the handling of this case by the Security Council has set a significant precedent leading toward the emancipation of regional organizations from a restrictive interpretation of article 53. And this is as it should be. Collective sanctions by a regional organization should be permissible if such sanctions are not in conflict with some provision of the charter. Certainly collective sanctions, which would be lawful if taken unilaterally, should fall within the authorized category of regional actions. In this regard the following observation of the Thomases is pertinent: "... there is nothing in the Charter that would prohibit a state from applying sanctions unilaterally against another state so long

as under Article 2, Paragraph 4, such sanctions do not involve a threat or use of force."⁵⁸

The significance of the Security Council's resolution of this case lies in the fact that its determination was, in effect, a determination that the non-forceful measures taken by the OAS were similar to those nonforceful measures outlined in article 41 of the charter and that they were not "enforcement actions," but rather were "enforcement measures." As such, they lie within the competence of a regional organization, in accordance with the analysis set forth above.

The Cuban Case (January-February 1962). The decisions taken in the Dominican Republic case were still fresh in the minds of the members of the Security Council when, in early 1962, the question of the legitimacy of actions of the OAS again came into prominence. In January 1962 the Eighth Meeting of Consultation of Ministers of Foreign Affairs, in a meeting held at Punte del Este, passed a series of resolutions suspending Cuba from the OAS and imposing partial economic sanctions on her.⁵⁹ Cuba once again sought United Nations assistance. She first pursued her complaints, directed essentially against the United States, in the General Assembly. After more than 2 weeks of debates, however, the General Assembly overwhelmingly refused to take any action.⁶⁰ Cuba then appealed to the Security Council to hear its case, but the Security Council refused to place the Cuban complaints on its agenda, essentially because the matter had been fully debated in the General Assembly.⁶¹ In the debates preceding this determination, it was obvious that many members of the Security Council considered the Cuban complaints as nothing more than a recast of the 1960 Dominican Republic issue, and at least the United States, the United Kingdom, Chile, and Venezuela

considered that the precedent set in that case rendered a rediscussion of the issue unnecessary.

On 8 March 1962, Cuba took a new tack. Now she requested the Security Council to seek an advisory opinion from the International Court of Justice concerning whether or not the measures taken against her by the OAS were "enforcement actions" which were within the competence of that organization without its first obtaining Security Council approval.⁶² The debates on this Cuban request consumed seven full meetings of the Council, extending from 14 to 22 March.⁶³ Essentially the same positions were asserted in these debates as had been in the two prior debates on this issue. This time, however, the United States found far greater support for its position that the actions undertaken by the OAS were not "enforcement actions" within the meaning of article 53 than it had in the Dominican Republic case. France,⁶⁴ China,⁶⁵ the United Kingdom,⁶⁶ Ireland,⁶⁷ Chile,⁶⁸ and Venezuela⁶⁹ all expressed essential concurrence with the U.S. interpretation. The Soviet Union found support only from Cuba, a nonmember of the Security Council, the United Arab Republic, and Rumania. The delegate from Ghana expressed a willingness to have the matter heard by the International Court since he did not feel that the debates in the Dominican Republic case demonstrated a clear drawing and determination of the issue.⁷⁰ After exhaustive debates, the Security Council rejected the Cuban proposal by a vote of 7 to 4.⁷¹

Professor Claude describes the result of this case as follows: "Far more genuinely than the Dominican case, the Cuban case in its March 1962 phase constituted a substantial victory for the United States demand that the Security Council be debarred from exercising control over the enforcement activities of the OAS."⁷² It is true that these two cases, taken together, constitute a rather

compelling interpretation of the term "enforcement action" as not including those measures set forth in article 41 of the charter. It would seem, however, that Professor Claude's insistence that this interpretation was taken because of the U.S. "demand" is unfair. It may just be, contrary to the critical thesis adopted by Professor Claude, that this interpretation was adopted by large majorities of the Security Council because it was the correct one. Certainly, it was forcefully argued by many states other than the United States, and essentially by those states which were interested in preserving what they considered to be the reasonable authorities of a regional organization to handle local disputes in a pacific manner, free from a possible big power veto. Universalists may dislike what they see emerging from the Dominican Republic and Cuban cases, but, once again, it reflects nothing more than the desire of states to seek some workable collective system for resolving disputes. If the veto-bound Security Council cannot provide this system, states must be expected to look elsewhere.

The dangers inherent in this departure from universalism, however, were dramatically outlined by the representative of the Soviet Union in the discussions of the Cuban question. In clearly prophetic terms, he stated:

If today the Security Council fails to nullify the unlawful decisions thus taken against Cuba, then tomorrow similar action may be taken against any other country of Latin America, Africa, Asia or any other continent whose neighbors, upon some pretext or another, having assembled at a regional meeting, arbitrarily decide to apply it to the machinery of coercion in the form of enforcement action, thus usurping the prerogatives of the Security Council.⁷³

The Cuban Quarantine (October 1962). On 22 October 1962, President John F. Kennedy announced to the world⁷⁴ that the United States had imposed a "strict quarantine" on all offensive weapons to Cuba, including nuclear missiles which were being installed in that country by the Soviet Union. Almost immediately thereafter the Council of the Organization of American States met in its capacity as the Provisional Consultative Organ under the Rio Treaty, at the request of the United States, and unanimously recommended to all members of the OAS that they take "all measures . . . including the use of armed force . . ." to prevent Cuba from continuing to receive military supplies from the Sino-Soviet powers which may threaten the peace and security of the Americas and "to prevent the missiles in Cuba with offensive capability from ever becoming an active threat to the peace and security of the Continent."⁷⁵ The quarantine became effective at 1000, Wednesday, 24 October, and was enforced by hundreds of U.S. planes and ships and several from other members of the OAS.⁷⁶ For the first time since the 1947 Palestine case, a regional organization had resorted to the use of force.

It is not the intention of this paper to debate the legality of the actions taken by the United States and by the OAS. This has been argued at length by many.⁷⁷ It is important to note, however, that the official U.S. and OAS justifications for their actions were based, not on the self-defensive provisions of article 51 which most publicists seem to prefer, but rather on the authority of a regional organization to deal with matters relating to the maintenance of international peace and security under articles 52 and 53.

At the urgent requests of the United States, the Soviet Union, and Cuba, the Security Council convened on 23 October 1962 to consider the situation. The gravity and urgency of the situation

prevented any genuine debate over the legalities involved. It was contended, of course, that the actions of the United States in effecting a "blockade" of Cuba were flagrant violations of international law and should be condemned as such.⁷⁸ Ambassador Stevenson of the United States, although terming the OAS actions as "defensive measures taken by the American Republics to protect the Western Hemisphere against long-range Soviet nuclear missiles," did not find it necessary to debate the legality of this issue in view of the initiatives of the U.N. Secretary General to mediate the dispute.⁷⁹ Neither the United States nor other OAS members had any difficulty, however, in finding ample authority in both the Charter of the United Nations and in the Charter of the Organization of American States for their actions.⁸⁰ Only one member of the Security Council contended that the OAS actions were "enforcement actions" which were improper without Security Council authorization. In arguing on this point, the representative of Ghana stated:

... if it is recalled that the United States delegation, in previous debates, had expressed the view that enforcement action consists of coercive measures involving the use of air, sea or land forces, of the type falling within the scope of Article 42, then it is clear that the action contemplated by the United States must be regarded as enforcement action, which is inadmissible in terms of Article 53, without the authorization of the Security Council.⁸¹

As noted above, however, the machinery of the Security Council proved inadequate to a solution of this conflict between the two superpowers. Consequently, no action was taken which could be interpreted as making a resolution of this Ghanaian argument. Instead,

the Secretary General undertook mediation of the dispute directly between the powers involved, and, as history recounts, the dispute was resolved by removal of the Soviet missiles from Cuba and by the Soviet agreement to discontinue any further shipments. The naval quarantine was lifted on 20 November 1962.⁸²

In an address made on 3 November 1962, Mr. Abram Chayes, the Legal Advisor to the Department of State, outlined the official U.S. legal rationale for the Cuban quarantine.⁸³ Mr. Chayes' essential position was that the fundamental authority for the OAS action was contained in articles 6 and 8 of the Rio Treaty, which provide for collective action, including the use of armed force, in the case of an armed attack and in the situation where any American state is threatened by an "aggression which is not an armed attack . . . or by any other fact or situation that might endanger the peace of America." Regarding the use of force in implementation of the quarantine, Mr. Chayes likened the collective procedures of the OAS to those of the United Nations and argued that the "assent" of the parties, including Cuba, to the provisions of the OAS Charter and the Rio Pact, together with the established collective procedures, legitimizes "the use of force in accordance with the OAS resolution dealing with a threat to the peace in the hemisphere."⁸⁴ Although this argument may appear questionable, the political rationale which underlies it does not. Mr. Chayes said:

... the drafters of the Charter demonstrated their wisdom by making Security Council responsibility for dealing with threats to the peace "primary" and not "exclusive." For events since 1945 have demonstrated that the Security Council, like our own electoral college, was not a viable institution. The veto has made it

substantially useless in keeping the peace.

The withering away of the Security Council has led to a search for alternative peacekeeping institutions. In the United Nations itself the General Assembly and the Secretary-General have filled the void. Regional organizations are another obvious candidate.⁸⁵

Not until April 1963 did Mr. Chayes undertake to provide an answer to the Ghanaian argument that the OAS actions were "enforcement actions" impermissible under article 53 of the charter.⁸⁶ In so doing, Mr. Chayes commented on the gradual narrowing by the Security Council of those provisions of article 53(1), dealing with enforcement action. He interpreted the actions of the Security Council in the 1960 Dominican Republic case and in the January-February 1962 Cuban case as indicating a retroactive approval by the Security Council of "enforcement actions" taken by the OAS against those states. This, he explained, resulted from the refusal of the Security Council to condemn those actions. Thus, he asserted, it is not necessary to obtain *prior* approval of the Security Council to legitimize an enforcement action. It is enough that the Security Council fails to disapprove them.

This is an unfortunate argument, indeed, since it plainly overlooks the position advocated by the United States throughout both of these prior cases that the OAS actions were *not enforcement actions*.⁸⁷

There is no question that the OAS implementation of the Cuban quarantine involved action by sea and air forces so as to bring it within the meaning of the term "action" as used in the "enforcement action" of article 53, and there is no question but that the argument advanced by Mr. Chayes that

prior approval for a regional enforcement action need not be obtained must be rejected. This does not mean, however, that the charter prohibits the action taken. Reference to the two documents establishing the quarantine will show clearly that it was taken not as an "enforcement action" as that term is used in article 53(2), but rather as a "preventive" action coming within the competence of a regional organization.⁸⁸ In the Presidential proclamation announcing the quarantine, President Kennedy stated that the Congress of the United States had declared that the United States "is determined to *prevent* . . . Cuba from extending by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere, and to *prevent* in Cuba the creation or use of an externally supported military capability endangering the security of the United States."⁸⁹ Similarly, the OAS resolution calling for the quarantine sought to ensure that Cuba "cannot continue to receive . . . [military materiel] . . . which may threaten the peace and security of the Continent and to *prevent* the missiles in Cuba with offensive capability from ever becoming an active threat to the peace and security of the continent."⁹⁰

It seems obvious that both the President and the Council of the OAS were saying that the actions to be taken were "preventive" actions spoken of in article 1(1), of the charter—actions which are not prohibited to a regional organization by the provisions of article 53(2).

The Dominican Republic Case (1965). The next, and the last, in this series of OAS actions was the crisis in the Dominican Republic which commenced in April 1965.

It will be remembered that during the course of a rebellion in the Dominican Republic in late April, the American Ambassador in the Dominican Republic reported that the Dominican authorities

had stated that they "could no longer control the situation, that American and foreign lives were in desperate danger and that outside forces were required."⁹¹ On the evening of 28 April 1965, in response to an urgent appeal from the U.S. Ambassador, President Johnson announced the landing of 400 U.S. Marines in these words:

I have ordered the Secretary of Defense to put the necessary American troops ashore in order to give protection to hundreds of Americans who are still in the Dominican Republic and to escort them safely back to this country. The same assistance will be available to the nationals of other countries, some of whom have already asked for our help.⁹²

In a television address to the nation on 2 May 1965, President Johnson reiterated the necessity for the landing of American troops for the protection of American nationals. He went further, however, and explained that the resources of the Organization of American States were now active in seeking a solution to the Dominican problem. He explained that the "revolutionary movement had taken a tragic turn" and that Communist leaders had taken increased control. He thereafter effectively modified the U.S. purpose in retaining its forces in the Dominican Republic in the following words: "The American nations cannot, must not, and will not permit the establishment of another communist government in the Western Hemisphere."⁹³

The Dominican situation first came to the official attention of the OAS on 27 April 1965, when the United States requested a meeting of the Inter-American Peace Committee to consider the problem.⁹⁴ On 28 April the OAS was informed of the American decision to land troops, and a special meeting of the OAS Council was convened on the

afternoon of that same day. On 30 April the first significant OAS action was taken—a resolution calling for a cease-fire and for a neutral zone of refuge in Santo Domingo.⁹⁵ On 1 May the OAS established a special five-member committee to go to the Dominican Republic and to offer its good offices in mediation of the dispute and to assist in the reestablishment of peace and order. On 6 May the OAS acted to create an Inter-American Peace Force, composed of contingents from those OAS member states capable of providing them and to operate in the Dominican Republic, under the following guidance.

This Force will have as its sole purpose, in a spirit of democratic impartiality, that of cooperating in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human rights, and in the establishment of an atmosphere of peace and conciliation that will permit the functioning of democratic institutions.⁹⁶

This force, consisting ultimately of approximately 20,000 troops, came into being on 23 May 1965. It was comprised of forces from five OAS member states⁹⁷ and was commanded by a Brazilian general.⁹⁸

During the course of these events, the Security Council held lengthy and acrimonious debates over what was termed the "armed intervention by the United States in the internal affairs of the Dominican Republic"⁹⁹ . . . in violation of the fundamental principles of the United Nations Charter and the universally recognized rules of international law."¹⁰⁰ Ambassador Stevenson, on 3 May 1965, stressed that the Organization of American States "has for several days been dealing with the situation and has made substantial progress."¹⁰¹ Although he pointedly

argued, as had President Johnson in his 2 May address, that the American states were unwilling to "permit the establishment of another Communist Government in the western hemisphere,"¹⁰² he stressed that the initial U.S. motivation was to provide needed protection to its nationals. He then outlined the ultimate U.S. purpose as the: "re-establishment of constitutional government and, to that end, to assist in maintaining the stability essential to the expression of the free choice of the Dominican people."¹⁰³ The argument was stridently advanced that the actions of the United States could receive no color of legality by clothing them with the authority of the OAS. It was argued again, as it had been during the 1962 Cuban crisis, that the OAS had no authority to resort to the use of force in the settlement of a regional dispute without first obtaining the approval of the Security Council, and condemnation of the action of both the United States and the OAS was sought.¹⁰⁴ Notwithstanding these arguments, the Security Council ultimately took no action to condemn the activities of either the United States or the OAS. It did, however, enact two resolutions calling for cease-fires¹⁰⁵ and inviting the Secretary General to send a representative to the Dominican Republic to report to the Security Council on the situation. Mr. Jose A. Mayobre almost immediately was dispatched by the Secretary General, and through the medium of his periodic reports the Security Council was kept advised of the Dominican developments.¹⁰⁶ Both the United Nations and the OAS thereafter maintained a presence in the Dominican Republic, although not without some conflict,¹⁰⁷ until the crisis was ultimately brought under control.

The Dominican Republic case must be broken down into its two separate aspects—first, the initial, unilateral landing of troops by the United States for the protection of its nationals; and

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secondly, the retention of those troops in the country, augmented by troops from other OAS member states, under OAS auspices.

The first of these, although condemned by many,¹⁰⁸ has been justified by others¹⁰⁹ as a legitimate exercise of unilateral self-defense or unilateral forcible self-help for humanitarian purposes. Whatever may be one's position in this controversy, it must be conceded that it is much less difficult to find a legal rationale for what was certainly a necessary but limited action to save human lives than it is to justify the subsequent substantial and prolonged presence of American and OAS troops.¹¹⁰

There is little doubt that this latter action stemmed primarily, if not totally, from the fear of the United States, conveyed with conviction to at least two-thirds of the states in the OAS, that Communist forces had taken over leadership of the Dominican rebellion and that there was a definite danger that they would succeed in capitalizing on the turmoil and in establishing a Communist government in that country. This fear, voiced by both Ambassador Stevenson and President Johnson,¹¹¹ has led some prominent Americans to conclude that it was the motivating force behind the initial U.S. actions.¹¹² Whether or not this criticism is justified is difficult to say, but it is perfectly clear that only a few short days after the crisis erupted this did become the principal, if not the sole, U.S. and OAS motivation. The purpose for which the OAS Inter-American Peace Force was created—"cooperating in the restoration of normal conditions in the Dominican Republic . . . and in the establishment of an atmosphere of peace and conciliation that will permit the functioning of democratic institutions"—makes this conclusion inescapable.

The Dominican crisis represented the epitome of what has been called the effort of the United States to seek

"from the Inter-American system 'the legitimacy of multilateralism,' or to put it more simply, an OAS label for her hemispheric policies."¹¹³ This process was well on its way when, in 1954, the OAS adopted the Caracas Resolution condemning the intervention of international communism in inter-American affairs and declaring that:

... the domination of control of the political institutions of any American State by the international communist movement, extending to this Hemisphere the political system of an extra-continental power, would constitute a threat to the sovereignty and political independence of the American States, endangering the peace of America, and would call for a Meeting of Consultation to consider the adoption of appropriate action in accordance with existing treaties.¹¹⁴

This resolution, adopted at the insistence of the United States, was widely regarded as a "revivification of the Monroe Doctrine, shifted from a unilateral to a multilateral axis, and directed against Communism rather than Colonialism."¹¹⁵ It is a fair comment that the provisions of this resolution have been the principal basis for U.S. hemispheric policy since 1954. Indeed, it has been said that the switch of the United States to a policy of regionalism was designed to ensure its ability to fight communism in the Western Hemisphere unimpaired by the Soviet veto.¹¹⁶ This was certainly borne out in the Cuban cases discussed above and in the Dominican crisis of 1965. Whether or not, however, the Caracas Resolution provides any legal basis for this latter action, and specifically for the military intervention by the OAS, is quite another matter. It could be argued, of course, as does Professor Falk, that:

The appropriate institution for partisan supranational action is to

be found in the regional level. Here the stabilizing value of political homogeneity for a group of closely related states favors a political use of regional organization even though this may involve on occasions a betrayal of the ideals of national self-determination . . . It is unfortunate in many respects to compel dissenting national communities to conform to regional political preferences, but it may be indispensable for the maintenance of minimum conditions of international stability.¹¹⁷

This argument, however, does not provide any legal basis, under current international law, for the actions taken by the OAS in the Dominican case. At most, it provides a tenuous political rationale.

Professor Fenwick offers what is perhaps the best legal rationale, as follows:

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 . . .¹¹⁸

It is true that "You cannot have a civil war today without disturbing the peace, certainly not in America," and, cer-

tainly not if that civil war appears to be Communist inspired. If such a situation creates a breach of international peace and security or threatens to create such a breach, it would be appropriate for the cognizant regional organization to seek its settlement. But it would seem, if the purposes of the charter are not to be tortured to undue lengths, that the modes of regional settlement should be short of the use of armed force. Nevertheless, the OAS did resort to the use of armed force, and there was a steadfast refusal of the Security Council to take any action other than to itself seek resolution of the dispute. One can only conclude that this refusal of the Security Council to condemn the action of the OAS must be considered to have at least added the color of legality to it. In terms of actions lawful for a regional organization to take, in accordance with the discussion set forth previously, therefore, it can only be described as a "preventive action" involving the use of armed force.

The Czechoslovakia Case (August 1968). This chronicle of events could not be concluded without at least a brief discussion of the Soviet and Warsaw Pact military intervention in Czechoslovakia in late August 1968. It was precisely this event which has driven home, with startling drama, the dangers inherent in the positions taken by the United States and most other OAS member states in the series of inter-American actions discussed above.

During the late evening of 20 August 1968, massive movements of Warsaw Pact troops into Czechoslovakia commenced. Participating were units from the Soviet Union, Bulgaria, East Germany, Hungary, and Poland.¹¹⁹ Before these movements were concluded, over 400,000 Warsaw Pact troops were deployed in Czechoslovakia, occupying strategic positions and maintaining effective foreign military control throughout the country.

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On 21 August, six members of the Security Council—Canada, France, Paraguay, the United Kingdom, and the United States—requested an urgent meeting of the Council to consider this situation, which was described as an armed intervention contrary to the provisions of the charter.¹²⁰ The debates on this issue in the Security Council compare favorably with any ever held in invective and acrimony, accusation and counteraccusation, and in political, rather than legal, overtones. Nevertheless, there were claims of illegality by almost all members of the Security Council, claims which branded the Soviet and Warsaw Pact action as an unlawful intervention in the internal affairs of a sovereign state¹²¹ and as a plain violation of the basic tenets of the charter, particularly article 2(1).¹²²

The delegate from the Soviet Union answered these allegations with what must be considered his legal rationale for his country's actions, and as any astute student of international law could have predicted, his arguments did not appear too different from those advanced by the United States in the series of OAS actions discussed above.

His first position was based on the jurisdictional issue. He asserted that no state affected by the Warsaw Pact action had requested the Security Council to discuss this matter and that, in any case, the "events in Czechoslovakia were a matter for the Czechoslovak people and the States of the Socialist community, linked together as they were by common responsibilities, and for them alone."¹²³

When this position was overruled and the Council proceeded to a debate of the substance of the matter, the Soviet representative then argued that "the decision of the Socialist countries to help the Czechoslovak people was fully consonant with the right of peoples to individual and collective self-defense as provided for in the Charter and . . . in the Warsaw Pact."¹²⁴ He initially con-

tended that the intervention was at the request of the Czechoslovak Government,¹²⁵ but when this was branded as untrue by the Czechoslovak Government itself,¹²⁶ the argument was changed to state, in essence, that members of the Warsaw Pact ". . . bore full responsibility" for the unity of the Socialist States and that the ". . . fraternal countries firmly and resolutely opposed their unbreakable solidarity to any outside threat; nobody would ever be allowed to wrest a single link from the community of socialist states."¹²⁷ He thus contended that the "socialist community" had a right to prevent, by force, any infringement on that "community" and to prevent, by force, any defection from that "community" by any member state.

These arguments were strikingly unconvincing. An eight-power draft resolution condemning the intervention and calling for the withdrawal of all intervening forces was brought to a vote on 23 August. It received a favorable vote of 10 members for to 2 against but was not adopted because of the negative vote of the Soviet Union which cast its 105th veto to defeat the resolution. Although further debate was held, the Security Council took no action in the case and discontinued its consideration of the matter at the request of the Government of Czechoslovakia on 27 August, when it appeared that bilateral negotiations between the Soviet Union and Czechoslovakia were progressing toward a solution of the crisis.¹²⁸

The Soviet legal rationale, which was really only hinted at in the Security Council debates, was expanded upon and further delineated in a *Pravda* article which appeared on 25 September 1968.¹²⁹ Later, in an address to the General Assembly of the United Nations on 3 October, the Soviet Foreign Minister, Andrei A. Gromyko, defined this rationale in unmistakably clear terms. He said:

The Soviet Union deems it necessary to proclaim from this rostrum, too, that the socialist states cannot and will not allow a situation where the vital interests of socialism are infringed upon and encroachments are made on the inviolability of the boundaries of the socialist commonwealth and, therefore, on the foundations of international peace.¹³⁰

The Soviet Union thus announced its own Monroe Doctrine and the Warsaw Pact its own Caracas Resolution. The Brezhnev Doctrine, which this has come to be called,¹³¹ reasserts the familiar concept of a "socialist Commonwealth of Nations" but firmly rejects the traditional thesis that the "socialist Commonwealth" is constructed "on the basis of complete equality, respect for territorial integrity, national independence and sovereignty and noninterference in each other's affairs."¹³² The Brezhnev Doctrine clearly envisions not only the right, but the responsibility, of the Warsaw Pact nations to intervene in the affairs of any member state when the "integrity" of the socialist community as a whole is felt to be threatened.

As starkly unlawful as this may seem, it does not differ in principle from President Johnson's statement made during the Dominican Republic crisis of 1965, that "the American nations cannot, must not, and will not permit the establishment of another communist government in the Western Hemisphere."¹³³ This position, taken at the highest level in the U.S. Government in both the Dominican Republic and in other cases, deliberately rejected the Soviet warning given during the 1960-61 Cuban crisis, which for sake of emphasis will be quoted here again:

If today the Security Council fails to nullify the unlawful decisions thus taken against Cuba, then

tomorrow similar action may be taken against any other country of Latin America, Africa, Asia or any other continent whose neighbors, upon some pretext or another, having assembled at a regional meeting, arbitrarily decide to apply it to the machinery of coercion in the form of enforcement action, thus usurping the prerogatives of the Security Council.¹³⁴

With this background, it must be said that the United States, for essentially its own political purposes, has been principally responsible for creating a series of precedents which lend some color of reason to the Soviet efforts to legitimize its Czechoslovakia intervention. At the very least, it must be said that the precedents set by prior OAS actions make it difficult to deny the efficacy of admonitions such as that of Harlan Cleveland, when he said in 1963: "Watch carefully the precedents you set. You will have to live with the institutions you create. The law you make may be your own."¹³⁵

IV—CONCLUSIONS

At the outset of this paper, the thesis was proposed that intervention as a sanction for an international delict was legitimized by contemporary international law, provided such intervention was taken by a collectivity of states acting either through or under the auspices of the United Nations. It has also been noted throughout this paper that if the "effective collective" procedures promised by the charter do not materialize, that states must be expected to look elsewhere for the previously held right of unilateral self-help which has been denied to them. That this latter course of action has been fully subscribed to by the world's major powers should be obvious from the case histories digested above, as should be,

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also, the basic thesis that collective intervention by regional groupings, at least where a major power is a partner in the intervening collectivity, has been sanctioned consistently by the inaction of the Security Council. Thus, where the direct interests of the major powers are involved, the regional collectivity has become the principal and preferred instrument for the settlement of disputes within those areas of Great Power political dominance. The long and tortuous path which has led to this triumph of regionalism over the universalism of the charter is cluttered with the debris of article 2(4) and article 53(1), both of which have been emasculated by politically motivated reinterpretations of the charter, reinterpretations which have been necessary so that regional groupings could take action, with some semblance of legitimacy, which was considered politically essential. Although the arguments accompanying each of the incidents involved were cast frequently in legal terms, their real import was not legal, but political, in nature. This has brought about a situation where, not without difficulty, but with precedent, one can interpret the charter so as to give some color of legitimacy to the flagrant violation of Czechoslovakian sovereignty by the Soviet Union, a situation which it can be said with complete fairness was never intended by the writers of the charter.

Regional organizations, it is true, offer a practical and useful mechanism for the resolution of intraregional disputes and for the imposition of sanctions for a verified international delict. And it is true, also, that this sort of collective sanction is far preferable to the unilateral sanctions which characterized the traditional law. But it becomes less true, indeed not true, when these organizations are converted into "groups of states called to ratify the decisions of a Great Power,"¹ or where they become merely the "... chosen instruments of the great antagonists

locked in political conflict."² It is this latter point which has been the great source of difficulty. The Brezhnev Doctrine, the Caracas Resolution, and the statement by President Johnson during the 1965 Dominican Republic crisis have operated to transmute what were essentially political matters—i.e., the operation of an antagonistic political doctrine—into an international legal wrong. With this transmutation, and with the claim that such a delict has been committed, the regional grouping is provided with the legal basis for regional preventive or enforcement measures or for regional preventive action. Thus sanctions are imposed with some color of legality, and the international community is powerless to object. Regional groupings, therefore, have become instruments of a universal order in which law is subordinated to politics and instruments of power politics³ through which the United States and the Soviet Union justify their actions as consistent with the charter.

This resurgent emphasis on politics rather than law—albeit clothed at times

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in legal terminology—is not condemned. It is simply noted as a fact of international life. The legitimacy of collective intervention as a sanction for an international delict has been confirmed, as has been its perversion into an instrument for political action. This demands the observation that the effectiveness of a system of international law does not depend upon the design or clarity of its charter, which clever minds can always interpret to their favor, but rather on the willingness of its subjects, particularly its powerful ones, to be judged by it. There can be no effective international system for the resolution of conflict, for the identification and sanc-

tioning of wrongs, until the parties to that system are prepared to have it operate sometimes against what they consider to be their national advantage.⁴

It has been rightly observed that "... what counts most in resolving disputes is not so much the choice of a forum as a genuine desire to settle, which always carries with it a willingness to lose."⁵ There is no evidence, as yet, that the Great Powers are in any sense developing this "willingness to lose." Politics, not law, will determine the legitimacy of collective interventions in the future as it undoubtedly has in the past.

FOOTNOTES

I—INTRODUCTION

1. For example, Professor Fenwick states: "Of all the terms in general use in international law none is more challenging than that of 'intervention.' Scarcely any two writers are to be found who define this term in the same way or who classify the same situations under it." Charles G. Fenwick, "Intervention: Individual and Collective," *American Journal of International Law*, October 1945, p. 645. Also, Mr. Julio Cueto-Rua has stated: "... the subject of non-intervention is without doubt one of the most controversial in international law. It can be said, for instance, that for fifty years inter-American relations have hinged upon the legality or illegality of intervention." Ann V. Thomas and Aaron J. Thomas, Jr., *Non-Intervention* (Dallas: Southern Methodist University Press, 1956), p. viii, 67-74.

2. See James L. Brierly, *The Law of Nations*, 6th ed. (New York: Oxford University Press, 1963), p. 402. See also Richard B. Lillich, "Forceful Self-Help by States to Protect Human Rights," *Iowa Law Review*, October 1967, p. 330, and authorities cited, and Richard A. Falk, *Legal Order in a Violent World* (Princeton: Princeton University Press, 1968), p. 156.

3. United Nations, General Assembly, *Official Records: Resolution no. 2131*, 20th sess., Supp. 14, A16014 (New York: 1966). Hereafter cited as GAOR. This resolution was adopted by a vote of 109-0, with but one abstention, that of the United Kingdom. See also, "The Charter of the Organization of American States," U.S. Treaties, etc., *United States Treaties and Other International Agreements, 1951* (Washington: U.S. Dept. of State, 1952), v. II, pt. 2, p. 2419-2420, for an equally inclusive definition of this concept.

4. For a similar narrowing of the purpose for which an intervention is taken, see Falk, p. 340.

5. Thomas and Thomas, *Non-Intervention*, p. 326.

6. Brierly, p. 402-408.

II—DEVELOPMENT OF THE SANCTION: A HISTORICAL SKETCH

1. Falk, p. 190.

2. Thomas and Thomas, *Non-Intervention*, p. 85. See also Lillich, p. 327-329, and authorities cited, for a discussion of the traditional use of self-help in the enforcement of international standards relating to the treatment of a state's nationals abroad.

3. *Ibid*; Fenwick, p. 647; Lillich, p. 327.

4. Falk, p. 340.

5. Claud H.M. Waldock, "The Regulation of the Use of Force by Individual States in International Law," The Hague, Academy of International Law, *Recueil des Cours*, 1952 (Paris:

Librairie du Recueil Sirey, 1953), v. LXXXI, p. 467-468. See also Thomas and Thomas, *Non-Intervention*, p. 130.

6. Lillich, p. 330.

7. "The Covenant of the League of Nations: Article 10," Armin Rappaport, ed., *Sources in American Diplomacy* (New York: Macmillan, 1966), p. 218.

8. *Ibid.*, p. 218-219.

9. *Ibid.*, p. 238.

10. Fenwick, p. 654.

11. *Ibid.*, Ann V. Thomas and Aaron J. Thomas, Jr., *The Organization of American States* (Dallas: Southern Methodist University Press, 1963), p. 21.

12. "Seventh International Conference of American States, Montevideo, December 3-26, 1933," Carnegie Endowment for International Peace, Division of International Law, *International Conferences of American States, 1933-1940* (Washington: 1940), p. 123-124.

13. *Ibid.*, p. 191; see also U.S. Laws, Statutes, etc., *United States Statutes at Large, 1937* (Washington: U.S. Govt. Print. Off., 1938), v. 11, p. 41.

14. Rappaport, p. 248.

15. "Inter-American Conference on War and Peace," 1945 supp., *American Journal of International Law*, p. 108.

16. "Charter of the United Nations: Preamble," United Nations, *Yearbook of the United Nations, 1946-7* (Lake Success, N.Y.: 1947), p. 831.

17. *Ibid.*

18. *Ibid.*

19. *Ibid.*

20. *Ibid.*

21. Waldo, p. 490.

22. Thomas and Thomas, *Non-Intervention*, p. 209. [Emphasis supplied.]

III—CHARTER REGULATION OF THE USE OF FORCE

1. Georgetown University, Institute of World Polity, *The Law of Limited International Conflict* (Washington: 1965), p. v. Quincy Wright, "The Legality of Intervention under the United Nations Charter," American Society of International Law, *Proceedings, 51st Annual Meeting, 1957* (Washington: 1958), p. 79. See also Oliver Lisitzyn, *International Law Today and Tomorrow* (Dobbs Ferry, N.Y.: Oceana, 1965), p. 30.

2. Thomas and Thomas, *Non-Intervention*, p. 130.

3. Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (London: Oxford University Press, 1963), p. 216. *Contra*: See Lillich, where it is argued that a limited right of forcible self-help for the protection of human rights remains, notwithstanding the provisions of the charter.

4. Philip C. Jessup, *A Modern Law of Nations* (New York: Macmillan, 1948), p. 158-159.

5. Whether any such right existed under the traditional law is, of course, arguable. It has been said that the "price for inviolability of any territory is the maintenance of justice therein . . ." and that when this price is not paid that the application of force from without could be expected. Charles C. Hyde, *International Law*, 2d rev. ed. (Boston: Little, Brown, 1945), v. 1, p. 649.

6. Jessup, p. 41.

7. Moses Moskowitz, *Human Rights and World Order* (New York: Oceana, 1958), p. 34.

8. Jessup, p. 41.

9. Ruth B. Russell, *A History of the United Nations Charter* (Washington: Brookings Institution, 1958), p. 472-473, 688-712. For an excellent and concise discussion of the various pressures giving rise to these debates, see Iris L. Claude, Jr., "The OAS, the UN, and the United States," *International Conciliation*, March 1964, p. 3-15.

10. Claude, p. 14. See also Linda B. Miller, "Regional Organizations and the Regulation of Internal Conflict," *World Politics*, July 1967, p. 594.

11. Russell, p. 694-696; see also John C. Dreier, *The Organization of American States and the Hemisphere Crisis* (New York: Harper & Row, 1962), p. 26.

12. The meaning of the term "self-defense" as utilized in the context of article 51 has given rise to considerable controversy. Some writers argue that the traditional right of self-defense has been substantially restricted by the article 51 requirement that it may be exercised only in response to an "armed attack." Others contend that article 51 merely recognizes the "inherent right" of self-defense, and that the extent of that right is determined by the traditional law. For an excellent discussion of this controversy, and one which expresses this writer's view, see

William T. Mallison, Jr., "Limited Naval Blockade or Quarantine-Interdiction: National and Collective Defense Claims Valid under International Law," *George Washington Law Review*, December 1962, p. 335-398.

13. Rappaport, p. 312.
14. That relating to action against former enemy states set forth in article 53(1). *Ibid.*
15. This issue is examined in detail in Claude, p. 21-46.
16. "Speech of Mr. Castillo Arriola of Guatemala at the 675th Meeting of the Security Council on 20 June 1954," United Nations, Security Council, *Official Records* (hereafter cited as SCOR), 9th Year 675th Mtg., Supp., April, May, June 1954, p. 11-12.
17. *Ibid.*, p. 13-14.
18. *Ibid.*, p. 15-16.
19. *Ibid.*, p. 22.
20. *Ibid.*, p. 38.
21. SCOR, 9th Year, 676th Mtg., p. 1-6.
22. Article 2 of the Inter-American Treaty of Reciprocal Assistance (Rio Pact), which reads as follows: "The High Contracting Parties recognize the obligation to solve international controversies by regional pacific procedures before referring them to the Security Council of the United Nations." Thomas and Thomas, *The Organization of American States*, p. 428.
23. See text accompanying footnote 20.
24. SCOR, 9th Year, 676th Mtg., p. 23.
25. *Ibid.*, p. 28.
26. *Ibid.*, p. 30-31.
27. *Ibid.*, p. 34.
28. Claude, p. 30-34.
29. SCOR, 15th Year, Supp., July, August, September 1960, S/4378.
30. SCOR, 15th Year, 874th Mtg., 18 July 1960, p. 1-2.
31. *Ibid.*, p. 28.
32. *Ibid.*
33. SCOR, 15th Year, Supp., July, August, September 1960, S/4395. See also SCOR, 15th Year, 874th Mtg., p. 34-35 and p. 38-39.
34. SCOR, 15th Year, 875th Mtg., p. 13-14.
35. SCOR, 15th Year, 876th Mtg., p. 4.
36. *Ibid.*, p. 17 and SCOR, 875th Mtg., p. 12-13.
37. *Ibid.*, 876th Mtg., p. 23.
38. GAOR, 15th Sess., 872d Plenary Mtg., 26 September 1960, p. 125.
39. SCOR, 16th Year, 921st Mtg., p. 10.
40. SCOR, 921st, 922d and 923d Mtgs.
41. GAOR, 15th Sess., Annexes, v. II, Agenda Item 90.
42. For a brief discussion of these cases, see Claude, p. 43-46.
43. For instance, a direct treatment of the term "enforcement action" is not found in the detailed study of the background to the charter appearing in Russell or in Leland M. Goodrich and Edward Hambro, *Charter of the United Nations* (Boston: World Peace Foundation, 1949). See, however, the analysis of Mr. Alberto Fleras Camargo, quoted in SCOR, 17th Year, 996th Mtg., 21 March 1962, p. 15.
44. SCOR, 2d Year, 299th Mtg.; 302d Mtg. See also discussion in Higgins, p. 169.
45. Dreier, p. 27; see also Higgins, p. 169; and Claude, p. 48-52.
46. SCOR, 15th Year, Supp., July, August, September 1960, S/4476, 1 September 1960.
47. *Ibid.*, S/4481, S/4481, Rev. 1.
48. SCOR, 15th Year, 893d, 894th and 895th Mtgs.
49. Claude, p. 48.
50. SCOR, 15th Year, 893d Mtg., p. 6.
51. U.N. Doc. S/4484.
52. SCOR, 15th Year, 893d Mtg., p. 9.
53. *Ibid.*, p. 12, 13.
54. *Ibid.*, p. 17.
55. *Ibid.*, p. 16.
56. Dreier, p. 27. [Emphasis supplied.]
57. Claude, p. 53.
58. Thomas and Thomas, *Non-Intervention*, p. 131.
59. For the text of these resolutions, see SCOR, 17th Year, Supp., January, February, March 1962, S/5075, 3 February 1962.

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60. GAOR, 16th Sess., 1105th Plenary Sess. The vote against the Cuban position was 50-11 in the General Assembly's First Committee.
61. SCOR, 17th Year, 991st Mtg.
62. SCOR, 17th Year, Supp. January, February, March, S/5068, p. 88.
63. SCOR, 17th Year, 992-998th Mtgs.
64. *Ibid.*, 995th Mtg., p. 10-14.
65. *Ibid.*, p. 6-8.
66. *Ibid.*, 991st Mtg., p. 2-3.
67. *Ibid.*, 996th Mtg., p. 12.
68. *Ibid.*, 994th Mtg., p. 10-14.
69. *Ibid.*, 995th Mtg., p. 4-5.
70. *Ibid.*, 996th Mtg., p. 13-19.
71. *Ibid.*, 998th Mtg., p. 21, 27.
72. Claude, p. 59.
73. SCOR, 17th Year, 991st Mtg., p. 10.
74. John F. Kennedy, "The Soviet Threat to the Americas," *The Department of State Bulletin*, 12 November 1962, p. 716.
75. For text of resolution, see *ibid.*, p. 722-723.
76. Joseph B. McDevitt, "The UN Charter and the Cuban Quarantine," *The JAC Journal*, April-May 1963, p. 71.
77. See, e.g. *ibid.*; Mallison; Carl Q. Christol and Charles R. Davis, "Maritime Quarantine: the Naval Interdiction of Offensive Weapons and Associated Materiel to Cuba, 1962," *The American Journal of International Law*, July 1963, p. 525; and the various views presented in "The Cuban Quarantine: Implications for the Future," *American Society of International Law, Proceedings, 1963* (Washington: 1963), p. 1-49. For the latest treatment of this problem, see William P. Gerberding, "International Law and the Cuban Missile Crisis," Lawrence Scheinman and David Wilkinson, eds., *International Law and Political Crisis* (Boston: Little, Brown, 1968), p. 175.
78. SCOR, 17th Year, 1022d Mtg., p. 21 *et seq.*, per the representative of Cuba, and p. 26 *et seq.*, per the representative of the Soviet Union.
79. SCOR, 17th Year, 1025th Mtg., p. 5.
80. As noted in the text, above, the OAS resolution was adopted unanimously by the 20 active members of the OAS. Additionally, both Venezuela (1023rd Mtg., p. 3) and Chile (1024th Mtg., p. 5) argued eloquently in support of the necessity and legitimacy of the OAS action.
81. SCOR, 17th Year, 1024th Mtg., p. 19.
82. For a brief survey of this series of events, see Mallison, p. 342-343, and authorities cited.
83. Abram Chayes, "The Legal Case for U.S. Action in Cuba," *The Department of State Bulletin*, 19 November 1962, p. 763.
84. *Ibid.*, p. 765.
85. *Ibid.*
86. Ahran Chayes, "Law and the Quarantine of Cuba," *Foreign Affairs*, April 1963, p. 558.
87. See notes 52, 64-69, *supra*, and accompanying text.
88. See previous discussion under "The 'enforcement action' issue."
89. Kennedy, p. 717, [Emphasis supplied].
90. "Text of Resolution," *The Department of State Bulletin*, 12 November 1962, 722-723. [Emphasis supplied.]
91. Statement of Secretary Rusk as quoted in Jay Mallin, *Caribbean Crisis* (Garden City, N.Y.: Doubleday, 1965), p. 58.
92. "White House Press Release, April 28, 1965," *Documents on American Foreign Relations, 1965* (New York: Harper, 1966), (hereafter cited as *For. Rel., 1965*), p. 234.
93. *Ibid.*, p. 245.
94. Mallin, p. 73.
95. *For. Rel., 1965*, p. 236.
96. "Resolution of the Tenth Meeting of Consultation of the Ministers of Foreign Affairs, Adopted May 6, 1965," *For. Rel., 1965*, p. 251.
97. Jallin, p. 99. See also "Act Establishing the Inter-American Armed Force," SCOR, 20th Year, Supp., April, May, June, S/6381, p. 177.
98. *Ibid.*
99. SCOR, 20th Year, 1195th Mtg., p. 2.
100. *Ibid.*, 1196th Mtg., p. 3.
101. *Ibid.*, p. 12.

102. *Ibid.*, p. 16.
103. *Ibid.*, p. 18.
104. *Ibid.*, 1203d Mtg., p. 15, 16, and 25. See also letter to the President of the Security Council from the Representative of the U.S.S.R., Doc. 6411, Supp., April, May, June 1965, p. 225.
105. U.N. Doc. S/Res/203, and U.N. Doc. S/Res/205, *For. Rel.*, 1965, p. 254 and 258, respectively.
106. See generally, SCOR, 20th Year, Supp., April, May, June, Docs. S/6265, S/6369, S/6267, S/6378, S/6380, S/6386, S/6408, S/6420, S/6432, et cetera.
107. See, for example, A.P. Schreiber and S.E. Schreiber, "The Inter-American Commission on Human Rights and the Dominican Crisis," *International Organization*, June 1968, p. 599.
108. See, for example, John P.S. McLaren, "The Dominican Crisis: an Inter-American Dilemma," *Canadian Yearbook of International Law*, 1966 (Vancouver: University of British Columbia, Publications Centre, 1966), p. 178-193; R.T. Bohan, "The Dominican Case: Unilateral Intervention," *American Journal of International Law*, October 1966, p. 809-812.
109. For the legal rationale advanced by the U.S. Dept. of State, see Leonard C. Meeker, "The Dominican Situation in the Perspective of International Law," *The Department of State Bulletin*, 12 July 1965, p. 60. See also, Lillich, p. 341-344 and authorities cited. It is not this author's purpose, nor does the need present itself here, to enter into this controversy. It is enough to reiterate the general thesis that if the collective procedures provided through the U.N. or through regional organizations are inadequate to meet such a critical, humanitarian need as was present in this case, states *must be expected* to resort to forcible self-help if their power position permits.
110. *Ibid.*, p. 344.
111. See text accompanying notes 95 and 102, *supra*.
112. J. William Fulbright, "The Situation in the Dominican Republic," *Congressional Record*, 15 September 1965, p. 23855-23861.
113. Gordon Connell-Smith, "The OAS and the Dominican Crisis," *The World Today*, June 1965, p. 229-230.
114. Resolution 93 of the Tenth Inter-American Conference entitled "The Declaration of Solidarity for the Preservation of the Political Integrity of the American States against the Intervention of International Communism." See Dreier, p. 50-53.
115. Falk, p. 176.
116. *Ibid.*, p. 57.
117. *Ibid.*, p. 350.
118. Charles G. Fenwick, "International Law, the OAS, and the Dominican Republic," *Naval War College Review*, December 1966, p. 28.
119. "Situation in Czechoslovakia," *UN Monthly Chronicle*, August-September 1968, p. 41.
120. *Ibid.*, p. 34.
121. *Ibid.*, p. 37, 38; per the United States, p. 36; Canada, p. 37, 43; United Kingdom, p. 38; Denmark, p. 38; France, p. 43; China, p. 40; Senegal, p. 53; Algeria, p. 62; Yugoslavia, p. 67; and Czechoslovakia, p. 53.
122. Per the delegate of Paraguay, *ibid.*, p. 41.
123. *Ibid.*, p. 40.
124. *Ibid.*, p. 49.
125. *Ibid.*, p. 35.
126. *Ibid.*, p. 41, 42.
127. *Ibid.*, p. 41, 46.
128. *Ibid.*, p. 34-35.
129. "Text of Pravda Article Justifying Invasion of Czechoslovakia," *The New York Times*, 27 September 1968, p. 3:1.
130. "Excerpts from Gromyko's Address before the United Nations General Assembly," *The New York Times*, 4 October 1968, p. 14:2.
131. "The Brezhnev Doctrine," *The New York Times*, 28 September, 1968, p. 32:1.
132. Cyrus L. Sulzberger, "Foreign Affairs: the Commonwealth," *The New York Times*, 27 November 1968, p. 46:7.
133. See note 93, *supra*.
134. See note 73, *supra*.
135. Harlan Cleveland, "Crisis Diplomacy," *Foreign Affairs*, July 1963, p. 638, 647.

IV--CONCLUSIONS

1. Richard J. Barnet, "United States Involvement in Foreign Civil Strife since World War II," *American Society of International Law, Proceedings, 1967* (Washington: 1967), p. 80.
2. Claude, p. 63.
3. Ronald J. Yalem, *Regionalism and World Order* (Washington: Public Affairs Press, 1965), p. 127.
4. Jessup, p. 36.
5. Ernest A. Gross, *The United Nations: Structure for Peace* (New York: Harper, 1962), p. 50.



Covenants without swords are but words.

Thomas Hobbes: Leviathan, 1651