The Organization of American States and the Monroe Doctrine - Legal Implications

Ann Van Wynen Thomas

A. J. Thomas Jr.
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BACKGROUND

A discussion of the Monroe Doctrine today is approached with some trepidation by the wary, for the revered dogma ("I believe in the Monroe Doctrine, in our Constitution and in the laws of God")¹ often described as "the first and most fundamental" of the foreign policies of the United States and a protector of the Western Hemisphere from extracontinental aggression has,² in recent years, been subjected to bitter attack. It has been called moribund, obsolete, verbiage,³ a name so hateful to Latin American ears that the United States fears to mention it much less invoke it because of its abrasive effect on continental relations.⁴ Possibly the most devastating assault emanated from Mr. Khru- shchev of the Soviet Union when he proclaimed:

"We consider that the Monroe Doctrine has outlived its time... has died, so to say, a natural death. Now the remains of this doctrine should best be buried as every dead body is so that it should not poison the air by its decay."⁵

To this statement the Department of State of the United States retorted that the "principles of the Monroe Doctrine are as valid today as they were in 1823 when the Doctrine was proclaimed."⁶ President Eisenhower declared that the doctrine "has by no means been supplanted."⁷

Attitudes of disrespect and denunciation of this serviceable old gray mare, at least from friends of America, seem ungrateful

* Assistant Professor of Political Science, Southern Methodist University.
** Professor of Law, Southern Methodist University.
1. These are words uttered by Mary Baker Eddy as quoted in D. Perkins, A HISTORY OF THE MONROE DOCTRINE 1x (rev. ed. 1955); and J. Mecham, A SURVEY OF UNITED STATES LATIN AMERICAN RELATIONS 54 n.1 (1965).
when history's judgment is reviewed. It has to a degree deterred extracontinental interventions in the Western Hemisphere, assuring the nations of America of self-determination by protecting them from progressions of European imperialisms with some exceptions such as certain European territorial expansion in the earlier days of the doctrine's existence when the United States lacked power to enforce it, or the temporary European reconquest in Mexico and in the Dominican Republic during the War between the States when the United States was too preoccupied internally to enforce the doctrine.

The jaundiced view of Latin America arises from the fact that the United States did not regard the doctrine as applicable to its own activities during the later days of the nineteenth century and the first decades of this century when the United States embarked on a hemispheric interventionary policy which was called dollar diplomacy, imperialism, and hegemony. But these United States interventions were not carried out in classic imperialistic fashion for, with the exception of leased areas in Panama and Cuba, the United States acquired no territory and disclaimed intention of taking permanent possession of the states intervened; a disclaimer borne out by later events.  

The Monroe Doctrine, as proclaimed by President Monroe to the Congress of the United States in 1823, set forth three principles. Concerning the first, which is called the non-colonization principle, the message stated: "The American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European power." The announcement of this principle had as its purpose the forestalling of threatened Russian territorial advances in the northwestern portion of the American continent. The second principle announced by President Monroe was that of non-intervention. It was divided into two parts, a statement of a policy of non-intervention by the United States into European affairs, and a warning against


9. The Doctrine is contained in 6 Moore, A Digest of International Law 401 (1906).
European intervention in the Americas. As to the first the message stated:

"In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense."

It is rather apparent that the self-limiting injunction of non-involvement in European affairs is no longer part of United States policy. The contention that the remaining principles of the Monroe Doctrine are therefore no longer valid, however, would appear to have little merit, for the Monroe Doctrine was never a signed and sealed contract with Europe based on certain conditions. It was a unilateral pronouncement of the United States for the security of the United States and the Western Hemisphere, which later became a multilateral hemispheric principle. That involvement in European affairs did not terminate other portions of the doctrine is amply demonstrated in modern times, for the United States following World War I (in which it was somewhat involved in European affairs) continued to insist upon the doctrine with such vehemence that it was specifically recognized in the Covenant of the League of Nations.

The Monroe Doctrine in inhibiting European intervention in the Americas went on to declare:

"With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America.... We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any parts of this hemisphere as dangerous to our peace and safety.... [W]e could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light as the manifestation of an unfriendly disposition toward the United States.... It is impossible that the allied Powers should extend their political system to any portion
of either continent without endangering our peace and happiness; nor can one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference."

It should be recalled that the Monroe Doctrine was proclaimed in an attempt to block the plans of the Holy Alliance. This alliance, formed by the emperors of Russia and Austria, and the king of Prussia and certain other European monarchs, feared as terrible plague, the spreading of the republican form of government. The members of the Holy Alliance insisted that uniformity of internal governmental order was necessary for the peace of Europe and consequently sought to impose both in Europe and in the Americas their absolutist form of legitimate divine right governments, which can be considered as the totalitarianism of that day.10

The Monroe Doctrine, as a unilateral policy of the United States came to be or not to be enforced on such terms as the United States saw fit. Eventually in the 1930s a pledge of non-intervention was extracted by Latin America from the United States, and a hesitant multilateralization by continentalization of the doctrine occurred.11 This process reached its culmination by the terms of the Inter-American Treaty of Reciprocal Assistance (The Rio Treaty).12 By the provisions of this instrument the American community became collectively responsible for the maintenance of the peace and security of the Americas not only against external aggressions and dangers, but also against intra-continental breaches of and threats to the peace. With the reorganization of the inter-American system in 1948 and its metamorphosis into the Organization of American States, the con-

10. See D. Perkins, The Monroe Doctrine 1823-1826 (1932). For brief summary see A. Thomas & A. Thomas, Non-Intervention, The Law and Its Import in the Americas 8-14 (1956). The Monroe Doctrine would seem to condemn political as well as military aggression coming from outside the continent, for it recognized a basic difference between European authoritarianism and American democracy and incorporated the idea that attempt to extend such authoritarianism to this hemisphere would endanger the security of the United States. For accord with this point of view see J. Dreier, The Organization of American States and the Hemisphere Crisis 14 (1962).


tinentalized Monroe Doctrine was incorporated in Article 25 of the Charter of the Organization of American States, the Charter of Bogotá.18

**Collective Action**

Although the Americas were concerned with the subversive intervention of nazism-fascism during World War II and took measures to combat it, international communism had been thought to be of limited importance in the Western Hemisphere.14 This outlook tended to prevail until 1954 when the Guatemalan Government became communist infected.15 The Americas were confronted once again with a violation of the Monroe Doctrine in the form of a non-American subversive intervention in the hemisphere with an object of imposing a totalitarian system from abroad. To such an intrusion and imposition, Monroe's doctrine would appear to be applicable and opposed.16 The Holy Alliance gained its objective by armed intervention to put down revolution against autocratic hereditary monarchy. This twentieth century form of totalitarianism has relied mainly on subversion to impose its political system and control.

Earlier in 1948 at the Ninth International Conference of American States and again in 1951 at the Fourth Meeting of Ministers of Foreign Affairs, the aggressive totalitarian character of communism was declared incompatible with American principles, and the intervention of communism in the life of the American nations was condemned. Recommendations were made to the republics to take measures to meet its threat.17 With the deteriorating situation in Guatemala additional measures were

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thought to be needed. The Tenth Inter-American Conference meeting in 1954 in Caracas adopted the Declaration of Solidarity for the Preservation of the Political Integrity of the American States against the Intervention of International Communism in an attempt to cope with the situation at hand. Again recommendation was made that the American governments take steps for the purpose of counteracting communism's subversive activities, but it was further provided:

"That the domination or 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."

The legality of this declaration was questioned. It was said to be an amendment to the Charter of Bogotá which prohibits intervention of either an individual or collective nature. A mere conference resolution cannot amend a treaty. If the resolution attempted to amend the Charter, sanctions against communist domination would be void. This reasoning would be correct only if the declaration were an amendment. But it can be rationally argued that the declaration was interpretive not amendatory. It interpreted, in advance, the broad phrase of Article 25 of the Charter of Bogotá and Article 6 of the Rio Treaty, "fact or situation" which affects the territorial integrity, sovereignty or political independence of any American state and endangers the peace of America as including the domination or control of the political institutions of an American state by the international communist movement. When this fact or situation endangering the peace occurs and when the consultative organ so determines, the organ is directed to order the necessary measures to remove this threat to hemispheric peace. The col-

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19. Id.
lective measures authorized by the terms of the Rio Treaty constitute conventional exceptions to the non-intervention principle.

Secretary of State Dulles affirmed that this declaration amounted to a confirmation of the Monroe Doctrine in its continentalized status. He was of the opinion that the threat of international communism constituted a danger similar to that against which the Monroe Doctrine had been directed when first expressed, and that, since the doctrine was no longer a unilateral but a multilateral declaration, it became appropriate for all of the American states to recognize the common danger presented by the seizure of control of the political institutions of any one of them by international communism.\textsuperscript{22}

In its classical sense the Monroe Doctrine signified that the United States would act against European interventions in order to prevent aggressions as well as acquisitions of additional territory by such states in the Western Hemisphere. The doctrine was later extended to interventionary action by any non-American nation.\textsuperscript{23} The Rio Treaty created a system of collective security for the common defense of the hemisphere in the face of non-American armed or unarmed aggression, or in the face of any other conflict, fact, or situation that might endanger the peace of America; provided that the sovereignty, political independence, or territorial sovereignty of an American state is at the same time affected.\textsuperscript{24} Thus the Organization of American States is authorized to take certain collective measures against a non-American state which extends or attempts to extend its system for control or domination of an American state by aggression against that state or by otherwise endangering hemispheric peace. These measures are taken to assist the victim state in case of aggression, or in any event, to provide for the defense and the maintenance of the peace and security of the hemisphere.

The Rio Treaty is not confined to extra-continental aggression, but extends to intra-American peace and provides collective security against an American state guilty of aggressions against a fellow American state or of other acts which endanger American peace. Thus the Caracas Declaration interprets the

\textsuperscript{22} Note 16 supra.
\textsuperscript{23} As applied to Japan on the occasion of the Magdalena Bay Incident, see Bailey, \textit{The Lodge Corollary to the Monroe Doctrine}, 48 Pol. Sci. Q. 235 (1933); D. Perkins, \textit{A History of the Monroe Doctrine} 272 (Rev. ed. 1955).
\textsuperscript{24} On the interpretation of the terms of the Rio Treaty, see A. Thomas & A. Thomas, \textit{The Organization of the American States} 249 (1963).
Rio Treaty and permits an authorization of collective action by the Organization of American States against a state of the Americas subjected to the control or domination of the international communist movement on the ground that this would constitute a threat to the sovereignty and political independence of the American states endangering the peace of the Americas. Account should be taken of the fact that although an extension of an extra-continental system to the hemisphere is involved here so as to remind one of the Monroe Doctrine, still the corrective action is not necessarily to be directed against the non-American state to force it to desist in its interference or domination. Rather the corrective action is taken against the American state which is controlled or dominated by the non-hemispheric regime. This was a new corollary to the Monroe Doctrine—a collective American counter-intervention to remove a non-American political system imposed by a non-American intervention from its domination of an American state in the interests of continental defense, peace, and security. This recalls a former corollary—the Theodore Roosevelt corollary to the Monroe Doctrine—under which the United States would intervene in the affairs of an American state to prevent, in the interests of continental peace and security, a non-American intervention.

Corollaries to the Monroe Doctrine which permit it to be turned inward against an American state cause Latin America to become restive. Images are brought to mind of former United States interventions in the area which were often bitterly resented. Mexico, for example, at the Caracas Conference condemned the subversive intervention of extra-continental communist power in the Americas, but still believed that the Caracas Declaration would permit collective intervention in the domestic internal affairs of an American state to remove a government under the pretense that it was communist dominated and a threat to the peace. Neither her fears nor those of Argentina were allayed by an addendum to the declaration which emphasized that its terms were not applicable to an assumption of power in an American state by a local political party dedicated to a national type of communism. Pure national brands of com-

26. Argentina and Mexico abstained from the vote on the Caracas decla-
munism are uncommon and those which may exist, with the exception of Yugoslavia and possibly Rumania, seem to be bent on exporting their own versions of communism through subversive intervention to control and dominate other states.

The declaration if properly applied would protect the internal and external self-determination of the American people from the imposition of a foreign totalitarian political system and control. The Organization of American States would be authorized to remove the system from the state which had been so subjected in the interests of the maintenance of continental peace and security. By so doing the continued self-determination or sovereignty of other American states would be assured. At the same time self-determination would be restored to the state and its people where it had been lost through the subversive intervention and by betrayal by certain leaders of the state, for, in the words of the Monroe Doctrine, "it is inconceivable that our southern brethren would adopt such a foreign system of their own accord."

Even though the Declaration of Caracas would permit collective measures against an extra-continental political domination, in actuality it has not been made a basis of OAS action in any of the subsequent cases arising before the organ of consultation. In the case of the communist infiltration in Guatemala in relation to which the declaration was drafted, the communist issue was resolved without effective OAS action, for that situation was taken care of by the overthrow of the communist penetrated government by a group of Guatemalan rebels (aided by the United States) proceeding from neighboring Central American nations. At one point the Council of the OAS did call a Meeting of Consultation of Foreign Ministers to consider dangers to continental peace and security "resulting from the penetration of the political institutions of Guatemala by the international communist movement" and the necessary measures to be taken. The declaration was not mentioned in the resolution convoking the Meeting, which was never held because of the
Indeed the declaration would appear to have a tendency to obstruct collective action in that it introduces necessity of some proof of the domination or control of the country by the international communist movement, a difficult question at best to resolve and not required for the taking of measures by the OAS under the Rio Treaty. Indeed, measures can under certain circumstances be taken under that treaty before control or domination of the political system of the country has come about in order to prevent the control or domination. For example, article 3 of the Rio Treaty demands individual and collective measures to be taken by the American states against any state guilty of an armed attack against an American state. Such measures are authorized by article 51 of the United Nations Charter in the individual or collective right of self-defense. Article 6 of the Rio Treaty requires and permits the American States to take collective measures in cases of aggressions which are not armed attacks as well as in any other situations which might endanger the peace of America and which affect the territorial integrity, the sovereignty or political independence of an American state. The collective measures specified in article 8 for action under either article 3 or 6 are the same: rupture of diplomatic and/or consular relations, partial or complete interruptions of economic relations or of communications, and use of armed force. The issue naturally arises as to the legality of measures which may be taken by a regional organization like the Organization of American States which, in its action, must conform to the United Nations Charter. Under that Charter the right of collective security measures without United Nations’ authorization would seem to exist only in the exercise of the right of individual or collective self-defense. Article 51 of that document proclaims:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.”

But for this single exception, it might be thought that the

Organization of American States could not resort to measures in other cases because article 53 of the United Nations Charter declares that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council." And the Charter obligates the members to refrain from the threat or use of force without United Nations sanction with the exception of an exercise of individual or collective self-defense. Nevertheless the Organization of American States has always taken the position that it is legally empowered to take measures not involving physical violence (force) without United Nations' authority and without violating article 53 because such lesser measures are not regarded as "enforcement action or measures." Measures of physical violence are thought to be the only measures of enforcement. Measures not involving force are not so considered, for it is contended that it is within the power of a state without violating the purposes of the United Nations Charter to break diplomatic, consular, and economic relations or to interrupt its communications with another state.

Collective measures not involving the use of force may not be sufficient to prevent an intervention direct or subversive by international communism in the Americas or to remove a regime dominated or controlled by this villain. Thus, if requisite could the OAS agree upon the use of the ultimate collective measure, the use of armed force? Insofar as the Rio Treaty is concerned no distinction is made as to the nature of measures to be taken other than that the Organ of Consultation can bind no state to the use of armed force without its consent, although lesser measures may be made obligatory. But the action taken must not be inconsistent with the United Nations Charter, and according to a restrictive and literal view of article 51, this article

29. Art. 2(4) of the Charter commands:
"All Members shall 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 purpose of the United Nations."

limits the right of individual or collective self-defense, and consequently the right to use armed force, to an instance when an armed attack has actually occurred. If this view is correct, armed force may only be used against an actual and direct armed attack launched by regular military units of a communist state against the Americas or an indirect armed attack whereby the communist state operates through irregular groups or terrorists who may be citizens but political dissidents of the victim state and who use armed force in rebellious activities against that state. Such an attack would be attributable to the state fomenting it and would give rise to the protective right of self-defense.

But what if the communist state's action or aggression does not take the form of armed attack, but consists of an imminent threat of armed force, or of delictual and interventionary conduct of a more subtle type to bring about a government’s overthrow through ideological aggression, including hostile propaganda, which can be just as dangerous and menacing to a state's security and its political independence as an illegal use of force? If the very restrictive position is taken that the right of individual and collective self-defense extends only to an illegal armed attack, then of course the OAS would be precluded from a use of armed force in these types of aggression.

But there is a broader view of self-defense, which contends that the United Nations Charter does not change the right of self-defense as it existed at international law, and that at international law the right of self-defense is not restricted to repelling an illegal use of force only, but extends to other delinquencies where it is exercised in a preventive, protective, and non-retributive manner. It is claimed that a state may legitimately resort to the right of self-defense for its protection when its essential rights are endangered by delictual conduct of another state. The danger to these rights must be unlawful, it must be serious, and it must be actual or so imminent that the necessity to resort to self-defense is instant and overwhelming. In addition the right is conditioned upon the absence of other lawful means of protection, and the measures used must be reasonable, limited to averting an illegal danger and proportionate to that danger.

32. See, e.g., D. Bowett, Self-Defense in International Law, ch. I (1958)
It is further reasoned that article 51 is only a declaratory article designed to preserve the right of self-defense, not to limit it, and containing no additional obligations. It is then maintained that article 2(4) of the United Nations Charter (which prohibits the threat or use of force against the territorial integrity or political independence of a state in a manner inconsistent with the purposes of the United Nations Charter) is not inconsistent with the traditional right of self-defense, for interim measures taken by a state to protect its vital legal rights—even when involving a threat or use of force—are not taken against the territorial integrity or political independence of the state committing the delict or are not inconsistent with the purposes of the United Nations.\textsuperscript{83}

From a more practical point of view it can be pointed out that the political necessities of modern international life force a recognition by general international law, as well as the international law of the United Nations Charter, of a broad right of self-defense, for to limit such right to instances of armed attack in the absence of a truly effective collective security system could well circumscribe the legal rights of a state or group of states. A state can hardly be expected to wait for the actual attack in the face of imminent threat thereof, for, if it did so in this nuclear age, the state might be so paralyzed by the attack that it could no longer render resistance. Nor can it be expected to sit idly by in the face of other types of aggression and illegal acts which jeopardize its security.\textsuperscript{84} Following this view, and

\textsuperscript{83} B. \textit{Cheng, General Principles of International Law as Applied by International Courts and Tribunals} 94 (1953); \textit{Hyde} § 70; I. \textit{Schwarzenberger, A Manual of International Law} 172 (4th ed. 1960). The violation of the essential rights of a state which would justify self-defense are, according to Bowett, the following: the right of territorial integrity, the right of political independence, the right of protection over nationals, and certain economic rights. \textit{Bowett} Part I and as summed up at 270.

\textsuperscript{84} Bowett 188. \textit{See also J. Stone, Aggression and World Order}, ch. 5 (1958).

\textsuperscript{84} A primary question would be whether or not the use of armed force against such subversion would be proportionate. Thus it can be reasoned that in today's world the use of force against a subversive intervention (not involving the use of armed force) of the communist movement is proportionate? Pompe would say:

"Through indirect action, via secret agents or internal groups supported by outside propaganda (the 'ideological' aggression), money, arms, and at the critical moment of the disturbances, by direct intimidation and political pressure, a state can put an end to the independent existence of another as effectively as with the classical, external military aggression."

\textit{N. Pompe, Aggressive War} 53 (1953).
since self-defense, collective or individual, may involve the use of armed force if proportionate to the danger, collective action may be taken by the American states to protect their security against the violations of their rights by the direct or indirect aggressions of communist imperialism. Such violation, as it endangers the political independence of American states through the extensions to this hemisphere of the aggressive and totalitarian policies of a non-American ideology, brings into play the multilateralized Monroe Doctrine of self-defense directed against an immediate danger of illegal non-American intervention, a danger to the real and legitimate interests of all of the American states bound together by a proximate relationship.

Following the Guatemalan affair the inter-American scene was quiescent for some five years; the intervention of the international communist movement not being ostensibly overt. Dramatic change came with the rise to power in 1959 of Fidel Castro in Cuba. Within a short period an increasing orientation of Castro's revolution toward the Moscow-Peiping axis became marked, and attempts to export Castroism and the Cuban revolution to other American nations occurred. These activities were alarming not only because they breached American international agreements forbidding intervention, but also because they were abetted and encouraged by foreign non-hemispheric powers. In the face of what would appear to be a flagrant violation of the Monroe Doctrine and the Caracas Declaration as well and violations of the American principle of non-intervention by the subversive and aggressive activities by Cuba against certain of its neighbors and despite the legal right of the OAS to take certain measures against the intervention of the international communist movement in the Americas, little was done. When in 1959 the governments of Panama and Nicaragua complained of invasions by exiles and others attempting to overthrow their governments, invasions in which Cuba was implicated, the Council of the OAS, acting as provisional organ under the Rio Treaty, sent out investigating committees and attempted to settle the problems. In a similar instance involving the Dominican Republic the pressures were such that the Council could not act because the Venezuelan and Cuban governments were opposed to the application of the Rio Treaty in that instance and other Latin American governments were hesitant to come to the aid
of the dictatorial regime of the Dominican Republic existing at that time.\textsuperscript{35}

By August 1960 after Castro's nationalization of property of United States citizens in Cuba, after the United States had cut the Cuban sugar quota, after the Soviet Union's threatened attack on the United States if Cuba were faced with armed United States action, and after a declaration from President Eisenhower that the United States would not stand idly by and permit the establishment in the Western Hemisphere of a regime dedicated to international communism,\textsuperscript{36} the OAS at the Seventh Meeting of Ministers of Foreign Affairs denounced communist intervention in the Americas without specifically naming Cuba and condemned the attempts of Russia and Communist China to make use of the political or social situation of any American state for their own purposes.\textsuperscript{37} It should be noted that no recommendations for collective action against the non-American intruders were forthcoming, nor was there action directed inward against the American state which had come to be dominated by the international communist movement.

This condemnation failed to better the Cuban situation or prevent the continuation of the non-American and Cuban interventionary activities in the Americas. In December 1961 Castro removed all doubt concerning his political commitment by proclaiming openly that he was and had always been a dedicated Marxist-Leninist. He announced that he was determined to make Cuba a communist state in every sense of the word. With such evidence and with the ever-increasing efforts by the Castro regime to export the communist creed by revolution or subversion to other parts of the hemisphere, the United States and some Latin American nations, particularly the small Central American states and certain states of northern South America who had come to realize the Castroist activities as a danger to their security, favored calling a Meeting of American Foreign Ministers to bring about the imposition of diplomatic and economic measures against Cuba. Finally, after heated debate, the Council of the OAS voted with five abstentions and two nays to

\begin{itemize}
  \item \textsuperscript{35} For discussion of this period in inter-American relations and the maintenance of hemispheric peace see A. THOMAS & A. THOMAS, THE ORGANIZATION OF AMERICAN STATES 316 (1963).
  \item \textsuperscript{36} Id. at 318.
  \item \textsuperscript{37} PAU, Final Act, Seventh Meeting of Consultation of Ministers of Foreign Affairs, OEA/Ser.C/II 7 (1960).
\end{itemize}
convene a Meeting of Ministers of Foreign Affairs in accordance with article 6 of the Rio Treaty. In explaining the Mexican "nay" the Mexican representative said that the proposal to call the meeting lacked proper juridical basis because it dealt only with possible threats to the peace and not with present threats. Therefore it was stated that the council had no legal right under the Rio Treaty to call a meeting.38

This position seems to be erroneous. Although the wording of the Council in calling the meeting was directed to the potential threats to the peace that might arise from the intervention of an extra-continental power, article 6 of the Rio Treaty can still be considered applicable. This article speaks not only in terms of aggression or actual threats to the peace but also speaks of "any fact or situation that might endanger the peace." Therefore it would cover present and actual threats to hemispheric peace as well as possible and potential situations that might threaten the peace.

Disunity continued to prevail at the Meeting of Consultation of Foreign Ministers which was convened at Punta del Este, Uruguay on January 22, 1962.39 Strong opposition manifested itself to any collective severance of diplomatic and trade relations with Cuba—measures permitted by the terms of article 8 of the Rio Treaty, although the meeting had before it a report of the Inter-American Peace Committee which pointed out that the subversive activities of the Sino-Soviet bloc and the Cuban Government in the Americas constituted "acts of 'political aggression' or 'aggression of a non-military character'." The report went on to say:

"Such acts represent attacks upon inter-American peace and security as well as on the sovereignty and political independence of the American states and therefore a serious violation of fundamental principles of the inter-American system. . . ."40

The meeting was able to adopt a declaration which stated

39. For the resolutions of the Eighth Meeting see id. at 69-80.
that the goals of international communism were incompatible with the principles of the inter-American political system, such as democracy, respect for and preservation of human rights, non-intervention, and rejection of alliances and agreements that may lead to non-American intervention. All of the members of the OAS except Cuba voted for this declaration of incompatibility, but when collective action to counteract this incompatibility was discussed, foot dragging became evident.

A second resolution which called Cuba’s Marxism-Leninism incompatible with the principles and objectives of Pan-Americanism, which declared that this incompetence excluded Cuba from the OAS, and which called upon the Council of the OAS and its commissions to adopt without delay the necessary measures to carry out the resolution, was carried by a bare two-thirds majority.\(^4\) The abstaining parties questioned the legality of the exclusion on the ground that inter-American instruments make no provision for the exclusion of a member. The stand of the majority that incompatibility results in a member’s automatic exclusion or self-exclusion can be said to accord with a traditional concept of international law which recognizes that such law is conditioned upon a community of nations in agreement with certain principles of behavior and fortified by agreement upon some fundamental values and beliefs. Nations such as Cuba, unwilling to accept the underlying ethical concepts on which the law of the community is based, cannot be considered members of the community and are dealt with on a political as distinguished from a legal basis. Consequently, Cuba cannot claim the rights and privileges pertaining to the inter-American system, for the Castro regime is no longer willing to govern its international conduct according to the community’s basic rules and principles.\(^4\)

The only collective measure taken under the Rio Treaty at Punta del Este was the resolution to suspend immediately trade in arms and implements of war with Cuba.

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\(^{41}\) Argentina, Bolivia, Brazil, Chile, Ecuador, and Mexico abstained. Cuba voted in the negative.

\(^{42}\) For discussion of the majority and minority views see A. Thomas & A. Thomas, The Organization of American States 59 (1963). See also Fenwick, The Issues at Punta del Este: Non-Intervention v. Collective Security, 56 AM. J. INT’L L. 469 (1962). Dr. Fenwick would justify the exclusion on the basis of the international law rule that violation of a treaty by one party justifies the release from treaty obligations by the other party.
In the months following the Punta del Este meeting events in Cuba became even more ominous and Soviet domination of the island even more clearly apparent as the Soviet Union moved to bolster the military power on the island by an accelerated build-up of Soviet military and technical personnel as well as of arms and military equipment. United States spokesmen seemed to be engaged in a little game of off-again-on-again as to the offensive or defensive nature of the weapons. After much soul-searching a decision was made that they were defensive and not of a sufficient offensive power to constitute a threat to the other parts of the hemisphere. President Kennedy did declare that if Cuba sought to export its aggressive purposes by force or the threat of force against any nation of the hemisphere and if Cuba became an offensive military base of significant capacity for the Soviet Union, then the United States would do whatever must be done to protect its own security and that of its allies. These words seem to be some confirmation of the Monroe Doctrine but they are one step removed. The Monroe Doctrine and the Caracas Declaration would consider the domination or control of the destiny of any American state by a non-American state or the extension thereto of a non-American absolutist political system in and of themselves as dangerous to the hemisphere and to the peace and security of the United States. Such domination and extension had already occurred in Cuba.

On October 22, 1962, the President of the United States made public the evidence that the Soviet Union was converting Cuba into a potentially offensive nuclear base against the United States and the Western Hemisphere by the installation there of ballistic missiles and jet bombers capable of carrying nuclear warheads. This urgent and secret military build-up in Cuba was viewed as an explicit threat to the peace and security of the Americas in violation of the Rio Treaty, the traditions of the United States and the Western Hemisphere, and the Charter of the United Nations. The President directed a strict naval quarantine of Cuba to halt the offensive build-up, called for a meeting of the Organ of Consultation of the OAS to consider this threat to the hemisphere in accordance with articles 6 and 8 of the Rio Treaty, and requested a meeting of the United Nations Security Council to take action against the threat to world peace.

43. 47 DEP'T STATE BULL. 450, 481 (1962).
44. See an address of President Kennedy contained in 47 DEP'T STATE BULL. 715 (1962).
On the following day, in response to this initiative, the Council of the OAS, acting as provisional Organ of Consultation in accordance with article 12 of the Rio Treaty, found that Cuba, despite repeated warning, had secretly endangered the peace of the continent by permitting the Sino-Soviet powers to establish intermediate and middle size missiles on its territory capable of carrying nuclear warheads. The Provisional Organ resolved in part:

"1. To call for the immediate dismantling of such offensive weapons.

"2. To recommend that the member states in accordance with Articles 6 and 8 of the Rio Treaty take all measures individually and collectively, including the use of armed force, which they deemed necessary to ensure that the Government of Cuba did not continue to receive from the Sino-Soviet powers military material and related supplies which could 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." (Emphasis added.)

The vote on this resolution was 19 to 0 (Uruguay abstained at the time for lack of instructions from its government, but approval later came, hence the vote was unanimous). This crisis produced the clearest show of unity since World War II, although it was reported that Brazil, Mexico, and Bolivia had certain reservations and abstained on the portion of the resolution which authorized measures including the use of armed forces to prevent the missiles from becoming a threat to continental peace and security. They believed that such wording might be construed to endorse an invasion of Cuba if the need arose to eliminate such a threat. Again here is a manifestation of hesitancy at an inward turning of the Monroe Doctrine. The rest of the story—the quarantine, the confrontation of the Soviet bloc ships, the Russian backdown, and agreement to remove the offensive weapons, and the refusal of Castro to permit international inspection—is well known. Questions centering upon the legality of the OAS actions are however noteworthy.


Although not explicitly stated and although the OAS acted under article 6 of the Rio Treaty rather than article 3, it can be contended that the OAS felt that it was confronted with a situation of self-defense, and that its reactions to the situation were defensive. The theory that measures of self-defense, including use of armed force, are not limited to actual armed attack only and that they may be resorted to under article 3 of the Rio Treaty against armed attack as well as under article 6 against aggressions which are not armed attack is exemplified. The collective action was not taken in the Cuban case against an actual use of armed force but against the imminent and overwhelming threat of armed attack. Secretary of State Rusk was of the opinion that these offensive weapons located in Cuba had a significance which was "immediate, and perhaps fateful to the maintenance of the independence of the American nations." Therefore, the broader interpretation of article 51 of the United Nations Charter would be said to have been accepted by the OAS at least to the extent that measures of self-defense which can partake of armed force are not limited to a reaction against illegal armed attack only, but are also permitted against an imminent threat of illegal attack when the danger is clear and present. Thus, if the quarantine action by naval forces was considered an act of force in itself or as a threat of the use of force if a vessel refused to obey, it can be considered legitimate as an exercise of the right of collective self-defense. In any event it would not seem to have been treated as an enforcement action which under article 53 of the United Nations Charter would have required Security Council authorization. No Security Council authorization was requested or intended by the OAS.

A State Department spokesman, although admitting that the quarantine was defensive in character, denied that the action was based on the inherent right of individual or collective self-defense. Rather it was called an action destined to maintain hemispheric peace taken under the regional agency's co-jurisdiction with the Security Council over efforts to preserve peace. That the United Nations Charter recognizes a role appropriate for regional agencies in matters relating to international peace is beyond cavil. The rub comes, however, when consideration is given to the fact that article 53 of the United Nations Charter would have required Security Council authorization. No Security Council authorization was requested or intended by the OAS.

47. 47 Dep't State Bull. 720 (1962).
Charter precludes the taking of enforcement measures by a regional agency without Security Council authorization.

A case for the legality of this action as one of enforcement or reprisal might have been made out at traditional international law. But as a reprisal involving the use of force (if resort to naval quarantine in and of itself can be considered force) or the threat of the use of force (which was present if a ship refused to honor the blockade), it would appear to be illegal as individual or collective enforcement action without prior Security Council authorization. Such use or threat of armed force would then seem to be legitimate only if taken as a protective measure in an exercise of the right of individual or collective self-defense or if the OAS quarantine can be removed from the stigma of enforcement action. It has been seen that the OAS has always construed the meaning of enforcement action narrowly and has not considered non-forceful measures not involving a use of armed force as enforcement measures. But the naval quarantine did involve a use of armed force.

In any event, the American Republics when confronted with an extra-continental intervention of excessive proportion endangering their sovereignty sought refuge in solidarity and were able to invoke the necessary collective measures to remove this threat to their security. Although the doctrine was not mentioned, the American action can be considered an enforcement of the Monroe Doctrine, and an enforcement along the lines of the doctrine's original intention, i.e., against a non-American intervention threatening the peace and security of the continent. Also of note is the fact that this was collective action authorized by the OAS rather than unilateral action to enforce the Monroe Doctrine and the Rio Treaty. The doctrine in this instance had become multilateral and continental.

Despite this solidarity against the non-American state by an outward enforcement, the Monroe Doctrine continued to be violated, for the Castro regime dominates Cuba and consequently there remains in the hemisphere an extension of a non-American political system, international communism, with its acts of subversion against neighboring American states. This was reemphasized on November 28, 1963, when the government of Venezuela addressed a note to the Chairman of the Council of the OAS requesting that the Organ of Consultation be convoked immedi-
ately in accordance with article 6 of the Rio Treaty, "to consider the measures that should be taken to deal with the acts of intervention and aggression on the part of the Government of Cuba that affect the territorial integrity and the sovereignty of Venezuela as well as the operation of its democratic institutions." The Council resolved to convoke the Organ of Consultation and then acting as a Provisional Organ of Consultation authorized the chairman to appoint a committee to investigate and report on the acts complained of by Venezuela. The Committee when formed visited Venezuela and in its report accused the government of Cuba of acts of intervention and aggression in Venezuela. These were said to fall within the following categories:

"a. A hostile and systematic campaign of propaganda against the Government of Venezuela, as well as incitement to and support of the Communist subversion that is being carried out in that country;

"b. Training in all kinds of subversive activities, of numerous Venezuelan citizens who traveled to Cuba for that purpose;

"c. Remittance of funds through these travelers and other channels, for the purpose of maintaining and increasing subversive activities, and

"d. The provision of arms to guerrilla and terrorist groups operating in Venezuela."

The committee concluded that Venezuela had been a target of actions which were sponsored and directed by the government of Cuba which were intended to subvert Venezuelan institutions and overthrow that nation's democratic government through terror, sabotage, assault and guerrilla warfare. This Cuban support of subversion was called political aggression.

Upon receiving the report of the investigating committee, the Ninth Meeting of Consultation declared that the acts verified


by the Committee constituted an aggression and intervention on the part of the Government of Cuba in the internal affairs of Venezuela, an aggression which affected all of the member states. It emphatically condemned the Government of Cuba and, in accordance with the provisions of articles 6 and 8 of the Rio Treaty, called upon all members to sever diplomatic and consular relations with Cuba, suspend all trade except in food-stuffs, medicines, and medical equipment, and suspend all sea transportation between them and Cuba with the exception of that necessary for humanitarian reasons.

Cuba was also warned that if it should persist in carrying out aggressive and subversive acts, the member states intended to "preserve their essential rights as sovereign states by the use of self-defense in either individual or collective form which could go as far as resort to armed force, until such times as the Organ of Consultation takes measures to guarantee the peace and security of the hemisphere."^{50}

The resolutions of this Meeting were not adopted by unanimous consent. Two nations doubted the legality of the actions taken. The Government of Chile declared that the legality of the use of the term "aggression" with reference to the actions of Cuba against Venezuela was questionable, and it also refused to agree to take the recommended action against Cuba because the measures were not appropriate to the particular case. The Government of Mexico declared that it was convinced that the suggested measures were without foundation because the Rio Treaty did not envisage the application of such measures in situations of the kind and nature dealt with by the Meeting of Consultation in this case. Mexico and Chile also disagreed with the Meeting of Consultation's stand as to the right of self-defense finding an exercise of the right in this type of aggression and intervention to be incompatible with the right of self-defense as recognized by article 3 of the Rio Treaty. These stands were indicative of an acceptance of the narrow view of self-defense. Although eventually the Government of Chile decided to follow the lead of the majority of the members of the OAS and break off relations with Cuba, Mexico has never done so.

It is difficult to understand the Chilean-Mexican stand which would deny or question the actions of Cuba in this situation.

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50. Id. at 186.
as being aggressions when stock is taken of the fact that both countries agreed in the former Venezuelan-Dominican case that certain acts of the Government of the Dominican Republic to overthrow the Government of Venezuela could be classified as aggression and intervention permitting collective measures of the OAS.

In this earlier case the Dominican Republic’s Trujillo regime was indicted for complicity in an attempt on the life of the President of Venezuela intended to bring about overthrow of that nation’s government. Persons implicated in the plot had received moral and material support from officials of the Trujillo regime, including the furnishing of travel facilities, arms and instruction in their use to the conspirators, such arms to be used in the coup against Venezuela’s government. If these actions can be equated with aggression under the Rio Treaty necessitating collective measures consisting of rupture of diplomatic relations and a partial interruption of economic measures, measures to which Mexico and Chile approved, it would seem that these countries could also have considered the more serious and extended acts of subversion and terrorism carried on by Cuba to be aggression also necessitating collective measures.

The OAS did not see fit to call for a collective use of armed force in the Venezuelan-Cuban case, but instead called for resort to lesser measures of a coercive nature to combat the imposition of extra-continental totalitarianism in the hemisphere and the subversive intervention emanating therefrom. Thus, in the actual case the broad right of self-defense was not in issue, for the OAS has always insisted upon its right to use measures not involving an employment of armed force without committing violation of the United Nations Charter.

In April 1965 the OAS did see fit to call upon its members for military action, for almost immediately following the landing of United States forces in the Dominican Republic, the Council of the OAS met to consider the serious situation in that nation and the unilateral action of the United States with reference thereto. After calling upon the contending parties in the prevailing situation of civil strife occurring in the Dominican Republic to agree to a cease fire, the Council, at the request of Chile, convened the Tenth Meeting of Foreign Ministers.

51. Id. at 3.
Various measures by the Meeting were taken to reestablish peace in the strife-torn Dominican Republic. The most controversial was the request to members who were willing to do so to make available to the OAS contingents of land, naval, air, or police forces to form an Inter-American Peace Force to operate under the authority of the Tenth Meeting. Following this request, certain United States contingents were withdrawn and the remainder were incorporated into the force under a unified inter-American command. Some seven Latin American nations participated, the largest contingent being that of Brazil. Here then was a resort to collective armed force. Although a subject of dispute, United States authorities viewed the threat of a communist domination of the Dominican Republic as real and imminent because of the increasing control of the rebel forces in the Dominican Republic by a hard core of disciplined communists trained in Cuba. Such a communist intervention and infiltration of a rebellion would be considered as armed attack against the territorial inviolability, the sovereignty and the political independence of an American state, an intervention in and an attempt to impose an extra-continental political system in an American state, a situation involving a violation of the Monroe Doctrine. Following the language of the Meeting of Consultation in the Venezuelan-Cuban case, it would appear clear that if the facts were such as to constitute acts of aggression and subversive intervention by Cuba against the Dominican Republic, acts which resulted in armed rebellion in the latter state, that the OAS could, under the Rio Treaty meet the armed attack aided and fomented from abroad in an exercise of the right of collective self-defense, even if necessary, by calling for a collective resort to armed force through the formation of an Inter-American Peace Force. This would be an exercise of the right of self-defense against the armed attack through prevention of control of the Dominican Republic by communism emanating from Cuba. The Tenth Meeting of Consultation did not see fit to proceed under the Rio Treaty. Instead it proceeded under articles 39 and 40 of the Charter of Bogotá to consider matters of an urgent nature and common interest to the American states, such matters being to consider the serious situation created by armed strife in the Dominican Republic.

52. The official documents of the Tenth Meeting of Consultation of Ministers of Foreign Affairs are contained in I OAS Chronicle 19-41 (Aug. 1965). See also id. at 1-9.
No mention was made of armed attack, aggression, intra-continental conflicts, or of threats to the peace of America. These are the magic words which would have permitted invocation of the Rio Treaty and the imposition of its collective measures. Collective action by the Meeting of Consultation in the form of armed force in a situation of civil strife in a member state in which there was no aggression or subversive intervention by another state could well be labelled illegal intervention in the domestic jurisdiction of the state.

The resolution requesting governments to contribute armed contingents for the peace force avoided any implication of collective self-defense, or collective action against aggression or a threat to hemispheric peace. Instead it concentrated on the reestablishment of peace and democracy in the Dominican Republic. It was said that since the OAS was charged with interpreting the democratic will of its members and was obligated to safeguard the principles of the Charter of the OAS, that the organization was competent to assist its members in the preservation of peace and the reestablishment of normal democratic conditions by means of the Inter-American Peace Force which had as its purpose cooperation in the restoration of normal conditions in the Dominican Republic, the maintenance of the security of that country's inhabitants and the inviolability of their human rights, and the establishment of an atmosphere of peace and conciliation so that democratic institutions could function. Although much lip service is paid to democracy in the Charter of the OAS, it is doubtful that an international norm binding each state to the democratic principle has come into being. A legal duty on the part of each state to protect and guarantee fundamental human rights might be spelled out from the terms of the Charter, but still no power is provided to the OAS to take any collective measures against a state departing from democracy or violating human rights. Since the only coercive measures recognized as exceptions to the principle of non-intervention are those taken in the right of self-defense it can be maintained that an illegal collective intervention had occurred. Arguments have been advanced that the action was not interventionary in nature, but action taken to render assistance to the people of a sister nation. Thus the

Inter-American Peace Force was called conciliatory in its function, its establishment being to foster peace and tranquility in the Dominican Republic so its people could establish their own domestic government to heal the wounds and bitterness of civil strife and commence the nation's reconstruction.

The Costa Rican delegate expressed a view that would recognize that the principle of non-intervention although of import must give way in some instances to greater considerations, i.e., the whole concept of inter-America and its principles. He stated:

"Within the anarchy and the disorder which reign in the Dominican Republic, no government can by itself maintain order and guarantee the difficult democratic process. Without the collective juridical action of the OAS there will be no more than two alternatives: either the permanency of the United States troops, or the triumph of the extremists and the establishment of a new communist dictatorship, incompatible with the Inter-American System, and fountain of subversive aggression against other governments of America, especially of the Caribbean region."

A final problem of legality of the collective employment of armed force has to do with the United Nations Charter. If resort to armed force by member states and regional organizations can only be taken without Security Council authorization in an exercise of the right of self-defense, then the establishment and operations of the Peace Force would appear to be beyond the powers of the OAS as it was not acting in self-defense and as it had not obtained prior Security Council permission. It will be remembered that the action of the OAS in the Cuban missile crisis which involved armed force was interpreted by the State Department as not an enforcement action but action for the maintenance of hemispheric peace under co-jurisdiction in this sphere of the OAS with the Security Council. Moreover the International Court of Justice has limited the meaning of enforcement action by holding that the United Nations operations in the Congo did not constitute enforcement action for although an armed force was employed it was not a use of armed force against a state, which had committed aggression or breach of the peace; therefore no military action

against a state was authorized, and the operation did not involve a preventive enforcement action against a state under Chapter VII of the Charter which authorizes action as to threats and breaches of the peace and acts of aggression. Employment of this reasoning can be made to back up the legality of the OAS action in the Dominican case for the Tenth Meeting was not acting under the powers conferred upon it by the Rio Treaty. It was therefore not taking preventive enforcement action against a state guilty of aggression, a breach of the peace, or threatening breach of the peace. It was acting in the case of a civil disorder. As the United Nations Malaysian representative stated, the Peace Force exercised a conciliatory function. As such it was not an enforcement operation but a pacific settlement operation requiring a minimum use of force to prepare the conditions necessary to permit the free will of the Dominican people to prevail.55

Although the attempted control of the Dominican Republic by an extra-continental totalitarian system was a failure, the threat of such extension to other hemispheric states did not disappear. On June 5, 1967, at the behest of the Government of Venezuela, a Meeting of Consultation, the Twelfth, was once again convoked to consider a problem of an urgent nature and of common interest to the Americas. The problem, according to Venezuela, was the fostering and organizing by Cuba of subversive and terrorist activities in the territory of various states. These interventionary activities, which were violative of the sovereignty and integrity of the American states, were said to be taken by Cuba with the deliberate aim of destruction of inter-American principles. The conclusions of the Twelfth Meeting agreed that Cuba was giving moral and material sup-

port to the Venezuelan guerrilla and terrorist movement and
pointed to evidence received from Bolivia of Cuban interven-
tion in that country's territory through the preparing, financing,
and organizing of guerrilla activities there. It was also noted
that the First Afro-Asia-Latin American People's Solidarity
Conference which had taken place in Havana in 1966, was
conducive of further efforts of communism and other forces to
aid and abet guerrilla terrorist and other subversive activities
under Cuban control and direction against American govern-
ments. The Meeting then adopted a weak resolution which,
among other things, condemned Cuba for its acts of aggression
and intervention against Venezuela, Bolivia, and other states,
requested members of the OAS to restrict their trade and finan-
cial relations with Cuba until the aggressive and interventionary
policy of Cuba ceased, requested governments supporting the
Afro-Asia-Latin America People's Solidarity program to with-
draw their support from this organization, and finally called
upon members of the OAS to bring to the United Nations' atten-
tion the acts of Cuba which were violative of the United Nations' non-intervention principle.5

Despite the condemnation and denunciation of Cuba's acts
of aggression and intervention and despite the earlier OAS
collective measures of a diplomatic and economic nature directed
against Cuba, the interventionary actions of international com-
munism have continued although apparently in somewhat modi-
fied form. In 1967 the Special Consultative Committee on Security
of the OAS in a report on the Cuban communist regime's newly
formed Latin American Solidarity Organization (LASO), whose
purpose was to direct, support, and encourage hemispheric sub-
version from Havana by guerrilla warfare in rural and urban
areas, pinpointed occurrences of LASO-encouraged and directed
guerrilla actions in Guatemala, Venezuela, Nicaragua, Brazil, and
Bolivia. Agitation among Uruguayan workers and development
of activities to promote subversion in Ecuador and Peru were
also noted as emanating from organizations supported and
encouraged by Cuba. Attention was directed to the fact that
international communism, and particularly Castroism, had infil-
trated both the racial and the peace demonstration movements
in the United States.6

56. The documents of the Twelfth Meeting are contained in III OAS
CHRONICLE 14 (Oct. 1967); see also on the Meeting id. at 1-2 (Aug. 1967).
57. See PAU, Special Consultative Committee on Security Against the
Undoubtedly the death of Ché Guevara and his band of Cuban guerrilla leaders at the hands of the Bolivian Army was a serious blow to Castroism. Latin American radicals who think in terms of violent revolution no longer look to the Cuban experience as a perfect guide. They have replaced Castroism with a more violent communist revolutionary ideology derived from merging the cult of Ché Guevara with the cult of Mao Tse-Tung. This is being translated into violent hit-and-run revolutionary activities conducted by militarily autonomous guerrilla groups. Nevertheless these groups still look to Cuba and Red China for financial assistance, and Cuba remains the headquarters for the indoctrination of American revolutionaries in subversive techniques and in the use of advanced and sophisticated weapons of war.58

UNILATERAL ACTION

Not only has there been collective action through the OAS to combat the intervention and extension of extra-continental international communism to the hemisphere, but there has also been unilateral action by the United States, and to a lesser extent by certain Latin American states,59 against such intrusion. This would appear to be continued unilateral enforcement of the Monroe Doctrine in the face of the modern notion or contention to the effect that the doctrine has become through the Rio Treaty a multilateral or continental doctrine to be enforced only through collective action of the American states. Nevertheless there are enunciations expressive of a contrary view to the effect that the Monroe Doctrine has not been committed exclusively to


59. For example, Nicaragua and Honduras gave certain aid in the Guatemalan case, and Nicaraguan and Guatemalan territory was reportedly used for training and as a springboard for the Bay of Pigs invasion.
group decision and action. President Eisenhower declared that the "Monroe Doctrine has by no means been supplanted." Secretary of State Dulles called the Soviet intervention in the hemisphere a "challenge to our Monroe Doctrine" and a fundament of "our foreign policy." President Kennedy began his term of office stressing the multilateral aspects by informing that the United States would join with its fellow American states to oppose aggression or subversion in the Americas. But after the ill-starred Cuban invasion, while disclaiming unilateral intervention in Cuba unless the United States were subjected to attack, he went on to say that United States restraint was not inexhaustible and

"[s]hould it ever appear that the inter-American doctrine of non-interference merely conceals or excuses a policy of non-action, if the nations of the Hemisphere should fail to meet their commitment against outside Communist penetration, then I want it clearly understood that this Government will not hesitate in meeting its pressing obligations, which are the security of our nation." President Johnson seemed to bear out the language of President Kennedy when he intervened unilaterally in the Dominican Republic and stated that "we don't propose to sit here in our rocking chair with our hands folded and let the communists set up any government in the Western Hemisphere."

The language of these officials would tend to indicate that the Monroe Doctrine is still unilateral policy of the United States applicable to prevent the imposition of a non-American totalitarianism in the Americas, at least in instances when the American nations cannot or will not act collectively to meet their commitments. From a legal point of view, however, the question arises as to whether such a unilateral policy can under the obligations assumed by the United States be exercised unilaterally, for unilateral action would seem to be more extensively curtailed than regional or collective action of the OAS under

63. Id. at 659.
64. As quoted by J. Martin, Overtaken by Events 738 (1966).
the Charter of Bogotá or the Rio Treaty. Unilateral action of a coercive nature even if taken as reprisals against delictual conduct to vindicate the law or to obtain redress or reparation or a return to legality are outlawed by the non-intervention principle, for no exception to such intervention has been made under the Charter of Bogotá which prohibits direct or indirect intervention in the internal or external affairs of a state for any reason whatever. The right of individual and collective self-defense is however specifically excepted from the operation of the non-intervention mandate. Therefore under the Charter, the unilateral action taken by an American state against another American state to prevent or remove a non-American totalitarianism, whether such action involved a use of armed force or otherwise, would appear to be illegal unless the action can be brought within the meaning of individual or collective self-defense as permitted by the Charter of the United Nations and the Rio Treaty.

The United States termination of the Cuban sugar quota and her severance of diplomatic relations with Cuba appear to be acts not strictly interventionary in nature, i.e., were not acts taken to impose the United States will on Cuba or to coerce Cuba. The stated reason for the sugar quota cut was to assure ample sugar supply for the United States in the light of the increasing amounts of sugar which Cuba was committing to the communist bloc. Moreover, Cuban officials had complained of that quota and had said that its termination would be more beneficial to Cuba for it enslaved the Cuban people.

The embargo placed on Cuba by the United States could well be considered as a reprisal and therefore illegal as economic intervention. However, the language used by the Government of the United States speaks in terms of defense of the legitimate

66. Charter of the OAS art. 18.
economic interests of the people of the United States against Castro's discriminatory, aggressive, and injurious economic policies.  

This would indicate an exercise of the right of individual self-defense against illegal Cuban actions directed against the United States, and if self-defense is permitted under the United Nations Charter in a proportionate manner against delicts which seriously and imminently endanger the essential interests of a state, and if there is absence of other lawful means of protection, then the embargo could be characterized as an act of self-defense or protection.

The armed invasion in 1954 of Guatemala by Guatemalan rebels bent on overthrow of the Arbenz Government and the armed invasion of Cuba in 1961 by Cuban rebels bent on overthrow of the Castro Government present more serious problems. In aiding and abetting these rebel groups by supplying them with arms, and, in the case of the Cuban rebels by supplying them with transport and training, the United States was guilty of acts which in previous cases before the OAS had been held violative of the Civil Strife Convention, the non-intervention principle, and had been equated to aggression.  

In the case of Cuba the United States action which would be otherwise considered an illegal aggression by proxy or indirect aggression might be justified as an exercise of the right of self-defense against a whole series of illegal acts endangering the essential interests of the United States in a situation where there was no other recourse. These illegal acts consisted of the waging of a campaign of hostile propaganda against the United States, attacks on United States naval vessels, a discriminatory economic policy against United States citizens, and confiscation and intervention of properties of such citizens.

The United States aid to the Guatemalan rebels in the

69. For reasons for the embargo see Press Release, United States Institutes Control on Exports to Cuba, 43 DEP'T STATE BULL. 715 (1960).

70. See statements by the Council of the OAS and the Secretary General of the OAS as set forth respectively in Applications of the Inter-American Treaty of Reciprocal Assistance 1948-1956, at 126 (1957); 3 ANNALS OF OAS, 10-11 (1951). It has been noted, e.g., that the Guatemalan and Bay of Pigs invasions were violations of inter-American norms by the United States and that the OAS failed to protect these countries from these aggressions. J. SLATER, THE OAS AND UNITED STATES FOREIGN POLICY 109 (1967).

71. For these actions of the Cuban government, see A. THOMAS & A. THOMAS, THE ORGANIZATION OF AMERICAN STATES 313 (1963).
overthrow of the communist-infiltrated government of that country is more difficult to vindicate. The only breach of international law which appeared to have existed was the takeover of certain properties of United States citizens without, according to United States authority, prompt, adequate, and just compensation. Arming a rebel band to overthrow the expropriating or confiscating government would hardly seem proportionate to the offense. In other international cases of disputes over expropriations, the United States had refrained from such action. However, if one applies the Caracas declaration and concludes that Guatemala was in violation of an inter-American norm by permitting the imposition of an extra-continental totalitarianism and that such violation would endanger the security of each and all of the American Republic so as to permit unilateral as well as collective action in self-defense, then the action of the United States could be considered as legal.

The case of the unilateral intervention in the Dominican Republic presents a little different picture. Here the action was turned against an American state not to remove a communist dominated or infiltrated government, but to prevent the imposition of such a government. The United States military presence was said among other things to be necessary "in view of the clear and present danger of the forcible seizure of power by the Communists." Voices have been raised claiming that the possibility of a communist take-over was an exaggeration by the United States. Nevertheless, United States authorities viewed the threat as real and imminent because of increasing control of the rebel forces by a hard core of disciplined communists trained in Cuba. Thus Adolf Berle has remarked that the revolt in the Dominican Republic "liberated a force organized by three communists groups—Communists claiming support from Fidel Castro in Cuba, Communists claiming to follow Moscow,

72. On the dispute between the United States and Guatemala over the takeover of United Fruit Company properties, see A. Thomas & A. Thomas, Non-Intervention: The Law and Its Import in the Americas 348 (1956).
73. See, e.g., the Mexican expropriations and the United States reaction, id. at 50-51.
74. Address by Thomas C. Mann, Under Secretary of State for Economic Affairs, Dep't State Press Release 241, Oct. 12, 1965, at 8. See also statement by President Johnson May 2, 1965, 52 Dep't State Bull. 744 (1965); address by President Johnson, id. at 989; statement of Secretary of State Rusk, Dep't State Pub. 7971, Inter-American Series 92 (1965.)
and Communists claiming to follow the Peking line.” He went on to say:

“Indications suggested that the Moscow-Castro Communists had entered the fray; the situation was made to order for such a move. Given the nearby presence of the Russian-oriented communist government of Cuba, with a contingent of Soviet soldiers, Russian weapons, and 250,000 Cubans under arms, and Fidel Castro’s stated intention and capacity to move, there was little chance that the power vacuum would long remain unfilled.”

Internal revolutions which result in the use of force for the overthrow of a government in a nation normally could not be considered as “armed attack” or “aggression” for purposes of the United Nations Charter or the Rio Treaty. Nevertheless action in abetting, fomenting, and aiding subversive or revolutionary movements in another state is a violation of international law and has been labelled as aggression, or to some, indirect aggression. When armed rebellion breaks out in a country as a result of foreign subversive activities it can be considered that an armed attack has occurred for the force necessary for armed attack includes not only a direct use of force by regular military units from a foreign state, but also an indirect use of force whereby a state operates through irregular groups or rebels of the victim state. In such an instance the victim may exercise its right of self-defense against the aggressor state and of course may act against the subversive groups within the country. In

76. A. Berle, Power 44 (1969). Mr. Berle remarked at the time of the Dominican crisis: the situation in such a case is no longer an indigenous revolutionary movement, but an “overseas attack” on an American republic. Christian Science Monitor, Nov. 1, 1965, at 13. Ambassador John Bartlow Martin states emphatically that “there was a real danger of a Communist takeover of the Dominican Republic.” He further states that President Johnson under the circumstances had no choice but to send troops. J. Martin, Overtaken by Events 705 (1966).


the Dominican case if it is accepted that there was an armed attack aided and abetted from Cuba or other foreign communist movements, and if it is accepted that there was a clear and present danger of a seizure of power in the Dominican Republic by those forces under foreign control, a forceful intervention by the United States or other American republics to stop the armed aggression and prevent it from bearing fruit could be said to come within the terms of article 3 of the Rio Treaty which provides that an armed attack against an American state is an attack against all of the American states. Each nation is thereby obligated to take certain measures to assist the victim upon the latter's request in the exercise of the inherent right of individual and collective self-defense until the organ of consultation of the OAS can meet to determine the collective measures necessary to be taken.

The difficulty in the Dominican case centers around the problem of who had the capacity to speak for the state and request aid. The de jure government of the state would normally be the entity requesting aid, but that government had collapsed the second day of the revolution. The rebel forces had no identifiable leadership until some six days after the commencement of the revolt. Loyalists, those opposing the rebels, did quickly form a military junta to govern and it was this junta which, after admitting a situation of anarchy, requested United States armed intervention.79

It is problematic, however, whether either faction would speak for the Dominican Republic; hence contention can be made that the request of the victim state provision of article 3 was not properly met. On the other hand the drafters of article 3 probably never contemplated a situation of anarchy when constituted governmental authority would disappear. It could well be thought, therefore, that a request from the military junta, which, in the words of the late Ambassador Stevenson, was the "only apparent responsible authority left in the country,"80 would be sufficient. A further difficulty is met. The junta did request a United States military force to restore law and

79. For an historical sketch of this initial period of the revolution, see Committee on Foreign Relations United States Senate, Background Information Relating to the Dominican Republic, 89th Cong., 1st Sess. (1965); D. Kurzman, SANTO DOMINGO: REVOLT OF THE DAMNED 40 (1965).
80. S/PV.1200 (5 May 1965), at 11.
order and save lives, but it did not request additional troops to avert communist aggression.81

The question therefore arises as to whether a request for aid by the victim state is always necessary. For example, if anarchy prevents a state from countering an attack against it and from requesting aid from its fellow states, would its fellow state be precluded from exercising a right of collective self-defense to aid the victim? If collective self-defense means that two or more nations can take collective action in the right of self-defense when each state has an individual right of self-defense, then a request from the state actually attacked would not appear necessary. A fellow state might then act in self-defense if it can show some legal interest of its own being invaded. It has been recognized that a state may act in self-defense to assist another state to repel aggression when a close relationship exists between the two states based on solidarity, for the legal interests of both states would be violated by an armed attack against either of them.82 If the security of a group of states, such as those who are members of the OAS, is dependent in fact upon the security of each and every one of them, a violation of the rights of any members of the group would be a violation of all permitting joint efforts for protection. The OAS is founded on the close integration of its members. It recognizes the right of collective self-defense and declares that an attack against one American state is an attack against all. Thus each state of the Americas has a legal right in the security of all other states: an aggression against one is an aggression against all.83 The indirect armed attack or aggression against the Dominican Republic was therefore also an aggression against each nation of the hemisphere, including the United States. The latter thereby suffered a violation of its own legal rights and could exercise the right of self-defense to protect not only against injury to itself but also against injury to the Dominican Republic even in the absence of a request from that nation.

81. See Statement by President Johnson, April 28th, 1965, 52 DEP'T STATE BULL. 738 (1965). Friedman, United States Policy and the Crisis of International Law, 59 AM. J. INT'L. L. 857, 868 (1965), sets out the view that there was an absence of request from a government in the Dominican case and that the United States intervention therefore could not be justified.

82. Bowett advances such a proposition. See Bowett ch. X.

CONCLUSION

There still remains ample legal scope for a collective as well as a unilateral application and enforcement under the international law of the United Nations Charter, the Charter of Bogotá, and the Rio Treaty. Issue may and has been taken with the broad theory of the right of self-defense by those who interpret the right narrowly to meet an actual armed attack. Nevertheless, respectable authority supports the broader view. Moreover, the existence of any special relationship or solidarity of the nations of the Western Hemisphere has been questioned in recent times as has the fact that the security of the American states rests upon the security of each so that an aggression against one becomes an aggression against all. In particular it is often emphasized that the security of the United States is not necessarily bound up or connected with that of Latin America. Such thinking strikes at the heart of the inter-American system and its system of collective security against extra-continental and intra-continental aggression. It also strikes against the Monroe Doctrine, for the principal basis of that doctrine has been the fear that extra-continental interventions in the hemisphere and the imposition of extra-continental totalitarian regimes would create security problems for the United States. If this negative line of reasoning should prevail the whole legal underpinning for unilateral and collective action for the defense of the Americas will disappear, since the principle of self-defense means that action can be taken against serious delicts of other states endangering the essential interests or security of another state, here an American state or states.

Again there are those who, in accepting either the narrow or broad view of the principle of self-defense to protect a nation's security, still question the facts in the cases which have arisen in such a manner as to destroy the legal grounds for action. In the Cuban missile crisis argument is advanced that the local-

84. See, e.g., D. Perkins, A History of the Monroe Doctrine 389 (Rev. ed. 1955), who belittles the danger of international communism in the hemisphere. See also D. Perkins, The United States and Latin America (1961). Senator Fulbright has stated the belief that the Castro regime is of little importance to the security of the United States. He has said "The Castro regime is a thorn in the flesh; but it is not a dagger in the heart." Quoted by A. Schlesinger, Jr., A Thousand Days 251 (1965). But see J. Deheer, The Organization of the American States and the Hemisphere Crisis 6 (1962) and a summing up of the importance of Latin America in R. Burr, Our Troubled Hemispheres ch. II (1967).
tion of the missiles in Cuba did not constitute the requisite imminent threat. In the Dominican Republic case disbelief was expressed with the view of the Government of the United States and others to the effect that the facts were such as to show an imminent communist peril because of the increasing control of rebel forces by communists trained in Cuba. As a result, to these questioners the United States military action becomes an illegal intervention in a situation of civil strife, not a reaction against an indirect armed attack on an American Republic.

Resort to individual or collective action to remove or attempt to remove a communist-infiltrated government in the Americas is often condemned because the fact of such infiltration is in issue. In addition there exists a strong trend of thought which minimizes or dismisses the danger of a communist government in an American state because of the disintegration of monolithic Moscow-controlled communism. This diversity in communist ranks, so it is stated, is a counteractant to and minimizes the dangers of communism’s aggressive qualities. Finally there are those who differentiate between fascist and communist totalitarianism. They would apparently support actions against aggressive fascist intervention but not against aggressive communist intervention because they see in communism, at least since the ending of the Stalin era, a liberalizing trend. Communism is not therefore regarded with the same degree of apprehension as fascism.

Contention can and has been taken with all of these premises and positions and some of the ideas appear tenuous at best. To find much liberalization in the human rights field in the communist world demands something of a creative imagination. A minimization of the aggressive qualities of communism hardly seems warranted, even though there might be a split in the communist bloc. Despite that split, subversion and indirect aggression have continued in the Western Hemisphere with

85. Wright, 47 DEP’T STATE BULL. 549 (1962), sets forth the belief that the stationing of the missiles in Cuba did not even constitute an illegal threat of force much less an imminent threat.
86. See authorities cited in note 75 supra.
87. See, e.g., Slater, THE OAS AND UNITED STATES FOREIGN POLICY 108 (1967); Morgenthau, To Intervene or Not To Intervene, 45 For. Aff. 425, 432 (1967).
Cuba (which is still in league with the Soviet Union and yet retains its sympathy with Maoism) as the prime source. To downgrade the threat to the security of the hemisphere and of the United States from communism's aggressions is foolhardy. It can hardly be gainsaid that additional Cubas in the continent would be destructive of continental security and a most serious threat to the security of the United States.

The unilateral and multilateral Monroe Doctrine would then seem to remain of import in the modern world in order to contribute to the security of the American States, but its application appears to be limited and its effectiveness, or at least its effective application, questioned. After all that has been said and done since the rise of Castro and his association with Marxism-Leninism, the communist regime in Cuba has not been supplanted. A violation of the Monroe Doctrine continues. The multilateral doctrine was applied with success on the occasion of the Cuban missile crisis when it was directed outwardly against an extra-continental power. At this time the American republics were shocked into a state of unity and were able to invoke collective measures to remove this threat of hemispheric challenge. They faced the challenge and met it. But the OAS has not found such unity when it was confronted with a situation which would demand an inward turning of the doctrine against an American state which had become dominated by extra-continental totalitarianism. Collective measures were finally directed against Cuba because of her subversive activities against Venezuela but these measures of an economic and diplomatic nature were too little and came too late either to topple the regime in Cuba or to prevent the continuing aggressions emanating therefrom. Collective action turned inward against an American state to prevent a communist take-over has also been met with Latin American resistance. Measures were authorized in the Dominican case, but most reluctantly and with dissension.

It is ironic to note that in these cases the action, unilateral and multilateral, appears to be taken in many instances against the wrong state. To relieve an American nation which has come to be dominated by an extra-continental totalitarianism through subversive intervention, the action should be within the classic meaning of the Monroe Doctrine directed against the non-American intruder or aggressor, say the Soviet Union. In a case like the Dominican case where action is taken in the country to
prevent a rebel group controlled by Cuba from acquiring power, it would seem that the troublemaker is Cuba and action should be taken against her. Practical reasons might militate against such measures however. Measures taken against the Soviet Union would either be so limited as to be ineffective to remove the intrusion, or they would result in a nuclear war. An outright invasion of Cuba would appear to be the only means of ridding the island of communism but with the Soviet Union's backing of the Castro regime, this, too, would run the risk of nuclear war.

Consideration of the unilateral action of the United States in these cases leads to the conclusion that as United States policy the Monroe Doctrine remains alive, at least in instances when the OAS will not or cannot mutually protect continental security. But it remains to be seen whether or not the United States will in the future, should the occasion arise, act to prevent a subversive take over in other American states. The strong criticism at home and abroad directed at its efforts in the Dominican Republic coupled with its Vietnam experience might well make the country chary of further involvements. On the other hand even in our most isolationist period, a special relationship with Latin America has existed, enforced by a pervasive belief that the security of the hemisphere is bound up with our security.