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# The Monroe Doctrine in the 1980's: International Law, Unilateral Policy, or Atavistic Anachronism?

by David D. Carto\*

With the movements in this hemisphere we are of necessity more immediately connected. . . . The political system of the [European] powers is essentially different . . . from that of America. . . . [W]e should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.

*President James Monroe - December 2, 1823<sup>1</sup>*

On this side of the Atlantic we must stand together for the integrity of our hemisphere for the inviolability of its nations, for its defense against imported terrorism, and the right of all our citizens to be free from the provocations triggered from outside our sphere for malevolent purposes.

*President Ronald Reagan - March 11, 1981<sup>2</sup>*

In the century and a half since the Monroe Doctrine was first pronounced, it has been maligned, misinterpreted, and misunderstood as often as it has been invoked. If its viability today were to be measured by the number of times U.S. policy-makers had invoked it by name in the last 20 years, the Monroe Doctrine would certainly be declared dead. The simple reason for the reluctance of those sensitive to Latin American sensibilities to mention the Monroe Doctrine is that history has cast an unfavorable light on it from a Latin American point of view. One writer has observed that while the United States has historically perceived the Doctrine of 1823 as a safeguard against European intervention in the Western Hemisphere, to Latin Americans "the Monroe Doctrine is a hypocritical statement calculated to conceal the intent of subjugation, which to them has characterized the attitude of the United States in the past."<sup>3</sup>

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<sup>1</sup> Annual Message to Congress, AM. STATE PAPERS, 5 FOREIGN RELATIONS 250 (Dec. 2, 1823), reprinted in 6 J.B. MOORE, A DIGEST OF INTERNATIONAL LAW 401 (1906) [hereinafter cited as Monroe Message].

<sup>2</sup> Address Before a Joint Session of the Canadian Parliament (Mar. 11, 1981), 17 WEEKLY COMP. PRES. DOCS. 276, 282 (Mar. 16, 1981).

<sup>3</sup> Sarabia, *United States Relations with Latin America*, 51 A.B.A. J. 337, 338-39 (1965). William F. Buckley observed recently that until its "relegitimization" by President Reagan in El Salvador, "the Monroe Doctrine had become, since the October, 1962, Cuban missile crisis, a fugitive term, used only with some embarrassment by historians required to teach atavistic United States diplomacy." Buckley, *Remember the Monroe Doctrine?*, *Newsday* (L.I.), Mar. 14, 1981, at 17, col. 4.

Despite the conflicting perceptions induced by the rare mention of the Monroe Doctrine, its principles and reasons for existence have survived into the 1980's. Far from being an atavistic anachronism, the Doctrine is still a basic thread in U.S. foreign policy as a unilateral safeguard of American interests in Latin America. In addition, as concluded by two highly respected Latin American scholars over a decade ago,<sup>4</sup> the Doctrine has, to a more limited extent, remained the multilateral policy of the Organization of American States (OAS). Moreover, as this note will illustrate, the principles of 1823 have found their way into the framework of international law in the Western Hemisphere. Since the Monroe Doctrine is itself neither a treaty nor a contract between the United States and other nations, its meaning as a principle in international relations is derived largely from its historical origins, interpretations, and applications. Knowledge of the historical background of the Doctrine is therefore essential to understanding its political and legal significance in modern international relations.<sup>5</sup>

## I. HISTORICAL BACKGROUND OF THE DOCTRINE

### A. *Monroe's Proclamation*

The Monroe Doctrine was announced by President James Monroe in a message to Congress on December 2, 1823.<sup>6</sup> It was actually stated in two separate passages in the message, each passage declaring a distinct principle in different contexts. These principles are commonly known as the "non-colonization principle" and the "non-intervention principle."<sup>7</sup>

The pronouncement of the non-colonization principle arose in the immediate context of the border controversy surrounding the Oregon Territory in 1823 and was directed against the colonial claims of Tsarist Russia in that region.<sup>8</sup> But President Monroe asserted a broader principle against further colonization in the entire hemisphere, declaring:

[T]he occasion has been judged proper for asserting, as a principle in which the right and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as

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<sup>4</sup> Thomas & Thomas, *The Organization of American States and the Monroe Doctrine—Legal Implications*, 30 LA. L. REV. 541, 580-81 (1970).

<sup>5</sup> By far the best historical treatment of the Doctrine is found in D. PERKINS, *A HISTORY OF THE MONROE DOCTRINE* (rev. ed. 1963). See also J. MECHAM, *A SURVEY OF UNITED STATES-LATIN AMERICAN RELATIONS* 54-62 (1965); *THE MONROE DOCTRINE* (A. Rappaport ed. 1964); Thomas & Thomas, *supra* note 4, at 542-77.

<sup>6</sup> Monroe Message, *supra* note 1, at 245.

<sup>7</sup> Thomas & Thomas, *supra* note 4, at 542.

<sup>8</sup> D. PERKINS, *supra* note 5, at 29-31.

subjects for future colonization by any European powers.<sup>9</sup>

The non-intervention principle was specifically aimed at the broader threat posed by the reactionary Holy Alliance of European autocrats and those powers' attempts to stamp out revolution in Europe and elsewhere. To Monroe and his advisors in late 1823, it appeared that the European allies were contemplating the reconquest of the infant republics of Latin America which had recently broken the Spanish and Portuguese colonial grip. Although there is much historical doubt that the threat from the Holy Alliance was real at the time of Monroe's pronouncement,<sup>10</sup> the President made clear the American attitude to any threats from Europe, real or imagined:

Of events in [Europe], with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. . . . 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. With the movements in this hemisphere we are of necessity more immediately connected. . . . The political system of the allied powers is essentially different . . . 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 portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and just principles, acknowledged, we 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 than as the manifestation of an unfriendly disposition toward the United States.<sup>11</sup>

In short, the non-intervention principle laid down two basic precepts of U.S. foreign policy—that the United States would not interfere in the affairs of Europe (except when “our rights are invaded or seriously menaced”), and that Europe should not interfere in the affairs of the Western Hemisphere. These precepts, supplemented by the non-colonization principle, came to be known, and later reinterpreted and expanded, as the

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<sup>9</sup> Monroe Message, *supra* note 7, at 246. As is clear from the language, the non-colonization principle did not apply to colonies, such as British Honduras (modern Belize), which had not been liberated at the time of the pronouncement.

<sup>10</sup> See O. PERKINS, *supra* note 5, at 54, 60.

<sup>11</sup> Monroe Message, *supra* note 1, at 250.

### Monroe Doctrine.<sup>12</sup>

The principles of 1823 were a manifestation, and a strengthening, of a popular stream of political thought in the United States dubbed by historians as the "doctrine of the two spheres."<sup>13</sup> The idea that the nations of the Western Hemisphere—the "New World"—are "essentially different" politically<sup>14</sup> and economically<sup>15</sup> from the nations of Europe—the "Old World"—is a concept that has endured since 1823. It is true, of course, that the separation of the Americas from Europe in 1823 was much wider in many respects than it is today. But the perception of common hemispheric interests among the American nations, while strained at times, is certainly not a myth and is today recognized in international law as well as United States foreign policy.<sup>16</sup> As a policy based on the doctrine of the two spheres, therefore, the Monroe Doctrine has direct relevance to American regionalism as a force in international political and legal relations.

### B. *Unilateral Application*

For the first century of its existence, the Monroe Doctrine was the unilateral policy of the United States. As such, it was enforced and interpreted only when the United States saw fit to apply it, and then only when the United States had the power to do so. It was pressure applied by the United States based on the Monroe Doctrine which led to the ouster of the French puppet Maximilian from Mexico in 1866, but only

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<sup>12</sup> Prior to 1853, Monroe's message was referred to as the "principles" or "declaration" of President Monroe, and not until 1853 did the name "Monroe Doctrine" come into vogue. *J. MECHAM, supra note 5, at 55 n.2.*

<sup>13</sup> *Id.* at 54; *D. PERKINS, supra note 5, at 315.*

<sup>14</sup> *Monroe Message, supra note 1, at 250.*

<sup>15</sup> The non-colonization principle, largely the product of then-Secretary of State John Quincy Adams, had an economic as well as a political basis. The return of European colonialism to the newly-opened Latin American markets was an unthinkable state of affairs to Adams and American mercantile and shipping interests, and Monroe's pronouncement against further colonization was a direct response to their apprehensions. *See D. PERKINS, supra note 5, at 30.*

<sup>16</sup> The OAS is the modern institutional manifestation of the American hemispheric concept and is the type of "regional agency" contemplated under Articles 52-54 of the Charter of the United Nations. *See P. CORBETT, THE GROWTH OF WORLD LAW 117 n.1 (1971).* The pursuit of a single policy toward "Latin America" as a whole, however, has been seriously questioned considering the great diversity of interests, needs, and conditions between the separate nations and regions of Central and South America. *See Latin America: Hearings on Major Trends and Issues in the United States Relations with the Nations of Latin America and the Caribbean Before the Subcomm. on Western Hemisphere Affairs of the Senate Comm. on Foreign Relations, 95th Cong., 2d Sess. 23 (1978) (statement of Thomas E. Skidmore) [hereinafter cited as *Hearings on Latin America*]; but cf. *id.* at 131 (statement of Abraham Katz).*

after the American Civil War had ended was it able to do so.<sup>17</sup>

As the United States emerged as a world power in the years prior to World War I, the Monroe Doctrine was expanded and reinterpreted to justify the assertion of U.S. power in Latin America. In 1870 President Grant, in a vain attempt to annex Santo Domingo, added the so-called "no-transfer" corollary to the Doctrine. He stated that "hereafter no territory on this continent shall be regarded as subject to transfer to a European power."<sup>18</sup> By the close of the century, the Monroe Doctrine had been invoked, for a time unsuccessfully, to protect American interests in the building of a transisthmian canal.<sup>19</sup> To the no-transfer corollary and the desire for an American-controlled canal was added the idea that in disputes between European powers and delinquent Latin American nations, the United States would step in to prevent the use of armed force against the delinquent nation—all in the name of the Monroe Doctrine.

The invocation of the Monroe Doctrine to justify the United States role as the universal arbitrator in European disputes with American nations was done largely to protect U.S. economic, strategic, and political interests in Latin America.<sup>20</sup> The Doctrine was a leading consideration in the minds of Washington policy-makers when President Cleveland intervened against Great Britain in the Venezuelan boundary dispute in December 1895.<sup>21</sup> The intervention in that instance was done in the name of arbitration, but not necessarily according to any binding principle of international law. The unilateral and selective character of U.S. interpositions in Latin American affairs—all in the name of the Monroe Doctrine when European powers were involved—was revealed by the fact that the United States refused to take action to prevent recurrent chastisement and punitive measures taken against such countries as Haiti and Nicaragua by nearly all the colonial powers.<sup>22</sup>

Whether or not it is today, the Monroe Doctrine at the end of the 19th century could not in any way be called international law. When acknowledged by other nations at all, it was reluctantly recognized only as the unilateral policy of the United States. And the ways in which the Doctrine was expressed by the United States did nothing to dispell Latin American resentment of their northern neighbor's superior attitude. Sec-

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<sup>17</sup> D. PERKINS, *supra* note 5, at 137-38.

<sup>18</sup> *Id.* at 158-59. Although not included in the original Doctrine, the no-transfer principle antedated it by virtue of the passage in Congress in 1811 of a No-Transfer Resolution to forestall British occupation of the Floridas. A. THOMAS & A. THOMAS, *THE ORGANIZATION OF AMERICAN STATES* 24 n.52 (1963).

<sup>19</sup> D. PERKINS, *supra* note 5, at 161-68.

<sup>20</sup> See LaFeber, *The Background of Cleveland's Venezuelan Policy: A Reinterpretation*, 66 AM. HIST. REV. 947 (1961).

<sup>21</sup> *Id.* at 947-48; D. PERKINS, *supra* note 5, at 173-76.

<sup>22</sup> D. PERKINS, *supra* note 5, at 170; LaFeber, *supra* note 20, at 957.

retary of State Richard Olney, who appreciated the Monroe Doctrine for its "practical benefits,"<sup>23</sup> explained the justification for its exercise by stating:

Today the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition.<sup>24</sup>

Despite the refusal of the European powers to recognize the Doctrine as international law, it is clear from the Olney Fiat and President Cleveland's message to Congress in 1895 that the United States regarded it as such.<sup>25</sup> Scholars may differ as to the actual motivations for United States actions in 1895,<sup>26</sup> but Latin Americans who may have resented U.S. pretensions were also jubilantly grateful to the United States for the role it had assumed.<sup>27</sup> The United States invocation of the Monroe Doctrine in the Venezuelan controversy was an important step in the Doctrine's evolution, if only because Europe and Latin America were made aware of its existence as a *force* in international relations.<sup>28</sup> But the full implications of the groundwork laid by the Olney Fiat soon became apparent to Latin Americans in the forms of the Roosevelt Corollary,<sup>29</sup> "dollar diplomacy,"<sup>30</sup> the Lodge Corollary,<sup>31</sup> and Wilsonian interventionism.<sup>32</sup> During

<sup>23</sup> LaFeber, *supra* note 20, at 948.

<sup>24</sup> 1 PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 545-62 (1895). This statement, known as the "Olney Fiat," was part of a diplomatic instruction sent to Great Britain during the early stages of the Venezuelan controversy in 1895. See D. PERKINS, *supra* note 5, at 175.

<sup>25</sup> In his message to Congress on December 17, 1895, announcing that the United States would step in as arbitrator in the Venezuelan dispute, President Cleveland declared the Monroe Doctrine to be recognized "in those principles of international law which are based upon the theory that every nation shall have its rights protected, and its just claims enforced." See 12 J. RICHARDSON, A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 6087, 6089 (1897). The British eventually acquiesced to arbitration by the United States but it cannot be said that they "accepted" the Doctrine as international law at this time, although it may have been recognized as the legitimate policy of the United States. Cf. J. MECHAM, *supra* note 5, at 65. Nor was the Doctrine actually recognized or accepted as international law by Europe in the 1899 Hague Convention, despite the inclusion in that Convention of an American reservation to the effect that "nothing should be considered to require abandonment of the traditional attitude of the United States towards questions purely American." Quoted in D. PERKINS, *supra* note 5, at 204. See *id.* at 205-206.

<sup>26</sup> D. PERKINS, *supra* note 5, at 190; but see LaFeber, *supra* note 20, at 947, 967.

<sup>27</sup> D. PERKINS, *supra* note 5, at 188-90; J. MECHAM, *supra* note 5, at 65.

<sup>28</sup> D. PERKINS, *supra* note 5, at 190-91.

<sup>29</sup> In his annual message to Congress on December 6, 1904, President Theodore Roosevelt stated: "Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power." 14 J. RICHARDSON, *supra* note 25, at 6923.

<sup>30</sup> The Monroe Doctrine was used by the Taft administration to justify governmental

the period 1905 to 1926 the United States repeatedly intervened, militarily and diplomatically, into the affairs of Latin American nations under the guise of the Monroe Doctrine and its new-found corollaries.

### C. *Multilateral Development*

Yet even as the United States was unilaterally stretching the Monroe Doctrine to unrecognizable dimensions, the groundwork was being laid for its "multilateralization by continentalization"<sup>33</sup> and a return to the original principles of 1823. While the nations of Latin America had been unresponsive to President Wilson's proposal for a Pan American pact based on the fundamental tenets of the Monroe Doctrine,<sup>34</sup> the President was determined to make his concept an instrument of world peace. Wilson began the epic fight for the League of Nations in January 1917 with a trumpet call to the Monroe Doctrine:

[T]he people and Government of the United States will join the other civilized nations of the world in guaranteeing the permanence of peace upon such terms as I have named.<sup>35</sup>

. . . .

I am proposing, as it were, that the nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world; that no nation should seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful.<sup>36</sup>

It is ironic to note that the same Monroe Doctrine which President Wilson proposed as the basis for international cooperation was one of the most potent weapons used by the isolationists who opposed U.S. partici-

promotion of private American financial aid to Latin America—thus the term "dollar diplomacy." J. MECHAM, *supra* note 5, at 70.

<sup>31</sup> The so-called Lodge Corollary was the extension of the Monroe Doctrine as applied by the U.S. Senate in preventing the sale of land on Magdalena Bay, Mexico, by an American company to a Japanese company. *Id.* at 70-71.

<sup>32</sup> During the Wilson administration, United States armed forces occupied Haiti, in 1915, and the Dominican Republic, in 1916. American troops remained in Haiti until 1934, and in the Dominican Republic until 1924. *Id.* at 71-72. See also A. THOMAS & A. THOMAS *supra* note 18, at 18.

<sup>33</sup> Thomas & Thomas, *supra* note 4, at 544.

<sup>34</sup> J. MECHAM, *supra* note 5, at 73. "A startling aspect of the Pact was that it was intended to multilateralize the Monroe Doctrine." A. THOMAS & A. THOMAS, *supra* note 18, at 18.

<sup>35</sup> The terms of peace proposed by President Wilson in his address included equality of rights, self-determination, freedom of the seas, and arms limitation. 17 J. RICHARDSON, *supra* note 25, at 8199-204.

<sup>36</sup> *Id.* at 8203.



pation in the League.<sup>37</sup> Indeed, it was the pressure of Wilson's opposition which resulted in Article 21 of the League Covenant, which provided that "nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace."<sup>38</sup> "Regional understanding" or precept of international law, the recognition of the Monroe Doctrine in the League Covenant, became a Pyrrhic victory when the U.S. Senate failed to ratify the Treaty of Versailles.

The hopeful spirit of Pan-Americanism which Wilson had raised in the name of the Monroe Doctrine in 1916 was finally resurrected with the renunciation of interventionism by the United States in 1933.<sup>39</sup> The adoption of the Good Neighbor policy by the United States and the continentalization of the Doctrine was preceded, however, by a reassessment of its principles by Under Secretary of State J. Reuben Clark in 1928.<sup>40</sup> The Clark Memorandum argued that the original principles of 1823 were based on the policy of "self-preservation," of self-defense, of the United States against *European* encroachments. The Monroe Doctrine could not therefore be used as justification for United States interventions in purely *inter-American* affairs, thus demanding the abandonment of the Roosevelt Corollary "however much it may be justified by the application of the doctrine of self-preservation."<sup>41</sup> Self-defense may still justify United States intervention in Latin American affairs, but not self-defense in the name of the Monroe Doctrine. "So far as Latin America is concerned," concluded Mr. Clark, "the Doctrine is now, and always has been, not an instrument of violence and oppression, but an unbought, freely bestowed, and wholly effective guaranty of their freedom, independence, and territorial integrity against the imperialistic designs of Europe."<sup>42</sup>

By returning to the original principles of self-defense which had given rise to the Monroe Doctrine's application against Europe, a radical change was effected in its scope and operation. Whereas the Doctrine had

<sup>37</sup> D. PERKINS, *supra* note 5, at 285-86.

<sup>38</sup> LEAGUE OF NATIONS COVENANT art. 21.

<sup>39</sup> See Convention on Rights and Duties of States, December 26, 1933, art. 8, 49 Stat. 3097, T.S. No. 881. The 1933 Convention was the beginning of the process of the Doctrine's continentalization and the adoption of a policy of non-intervention by the United States. See A. THOMAS & A. THOMAS, *supra* note 18, at 22.

<sup>40</sup> J. R. CLARK, MEMORANDUM ON THE MONROE DOCTRINE (1930) [hereinafter cited as CLARK MEMORANDUM]. Although the Clark Memorandum became working policy from the time it was submitted in 1928, it did not become publicly known until 1930, when it was officially published. See J. MECHAM, *supra* note 5, at 75.

<sup>41</sup> CLARK MEMORANDUM, *supra* note 40, at xiii-xxiv.

<sup>42</sup> *Id.* at xxv. For an additional view that the Monroe Doctrine is based on the right of self-defense, either unilaterally or multilaterally on a Pan-American basis, see D. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 209-10 (1958).

once been the unilateral policy of the United States based on the individual right of self-defense, by 1940 the Doctrine had become the multilateral policy of the Western Hemisphere based on the collective right of self-defense.<sup>43</sup> This was demonstrated most vividly with the onset of World War II and the adoption of the Declaration of Reciprocal Assistance and Cooperation for the Defense of the Nations of the Americas by the American foreign ministers meeting in Havana in July 1940, which provided:

[A]ny attempt on the part of a non-American state against the integrity or inviolability of the territory, the sovereignty or the political independence of an American state shall be considered as an act of aggression against the states which sign this declaration.<sup>44</sup>

The Havana Declaration of Reciprocal Assistance was put to the test with the Japanese attack on Pearl Harbor in 1941. But for the notable exceptions of Argentina and Chile, the signatories met their obligations by at least severing all relations with the Axis powers.<sup>45</sup> By the end of the war, however, even the recalcitrant Argentina fell into line by signing the Act of Chapultepec.<sup>46</sup> Adopted at the Inter-American Conference on Problems of War and Peace at Mexico City in 1945, the Act of Chapultepec expanded on the Havana Declaration by providing for collective sanctions, including the use of armed force, to be taken against *any* aggressor of an American state—even against an American aggressor.<sup>47</sup> The process of “Pan-Americanizing” the Monroe Doctrine did not culminate, however, until the terms of the Act of Chapultepec had been formalized by their inclusion in the permanent treaty signed by the American nations at Rio de Janeiro in 1947.<sup>48</sup>

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<sup>43</sup> D. BOWETT, *supra* note 42, at 210-11. At the Second Meeting of the Foreign Ministers of the American Republics at Habana on July 30, 1940, a Final Act was approved which included a resolution called the “Act of Habana concerning the Provisional Administration of European Colonies and Possessions in the Americas.” See 3 DEP’T STATE BULL. 127 (1940). A supplementary Convention reiterated the no-transfer principle on behalf of the collective right of self-defense of all the American republics. See 3 DEP’T STATE BULL. 145 (1940).

<sup>44</sup> *Reciprocal Assistance and Cooperation for the Defense of the Nations of the Americas*, reprinted in THE INTERNATIONAL CONFERENCES OF AMERICAN STATES 360-61 (J.B. Scott ed., Supp. 1933-1940). J. MECHAM, *supra* note 6, at 80, argues that the Havana Declaration did not mark the true continentalization of the Monroe Doctrine, since the signatories only agreed to *consult* in case of aggression by a non-American nation, and had not provided for any mutually-guaranteed sanctions.

<sup>45</sup> See A. THOMAS & A. THOMAS, *supra* note 18, at 24-25.

<sup>46</sup> *Id.* at 28-29.

<sup>47</sup> Act of Chapultepec, Mar. 8, 1945, res. VIII, 60 Stat. 1837, T.I.A.S. No. 1543.

<sup>48</sup> Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, 62 Stat. 1681, T.I.A.S. No. 1838, 21 U.N.T.S. 77 [hereinafter cited as Rio Treaty].

## II. MODERN STATUS OF THE DOCTRINE

A. *The Legal Framework*

The provisions of the Rio Treaty of 1947 serve as part of the legal framework by which the modern status of the Monroe Doctrine must be assessed. Since Article 3 considers an attack by *any* state against an American state to be an attack against them all,<sup>49</sup> it must be conceded that the Rio Treaty goes beyond the original Monroe Doctrine in its application.<sup>50</sup> But the Monroe Doctrine and the Rio Treaty share a mutual basis in that both are grounded in the perception of a common hemispheric interest separate from the rest of the world. Moreover, both find their juridical support in the individual or collective right of self-defense, specifically recognized by Article 51 of the Charter of the United Nations.<sup>51</sup> It is also important to note in this context that in the exercise of that inherent right, the parties to the Rio Treaty may act independently of the U.N. Security Council until the latter "has taken the measures necessary to maintain international peace and security."<sup>52</sup>

The continentalized Monroe Doctrine, as reflected by the terms of the Rio Treaty, was incorporated into the institutional framework set up by the Charter of the Organization of American States, also known as the Charter of Bogota, in 1948.<sup>53</sup> Article 28 of the Charter provides for action by OAS member states in response to any "fact or situation that might endanger the peace of America . . . in furtherance of the principles of

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<sup>49</sup> *Id.* arts. 3, 6-7; see Thomas & Thomas, *supra* note 4, at 547-48.

<sup>50</sup> The Monroe Doctrine as originally stated had no application to wars between American states. See CLARK MEMORANDUM, *supra* note 40, at 186; but cf. A. THOMAS & A. THOMAS, *supra* note 18, at 356-57, where it is argued that the Rio Treaty's application to inter-American aggression represents a new corollary to the Monroe Doctrine, similar to the Roosevelt Corollary, which would allow "collective American counter-intervention in the affairs of an American state to remove a certain type of non-American interventionism" (i.e., communism).

<sup>51</sup> U.N. CHARTER art. 51, para. 3; see Rio Treaty, *supra* note 48, art. 3, para. 1.

<sup>52</sup> Rio Treaty, *supra* note 48, arts. 2, 3, para. 4. The parties are required, however, to send the Security Council "complete information" regarding any actions taken or contemplated in the exercise of the right of self-defense. *Id.* art. 5. But see P. CORBETT, *supra* note 16, at 145: "It was . . . to be expected, especially in the exercise of peace-keeping functions, that disputes would occur about the division of competence between [the United Nations and regional organizations]. These have been particularly sharp in the relations between the Organization of American States and the United Nations."

<sup>53</sup> Charter of the Organization of American States, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, as amended by the Protocol of Buenos Aires, Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847 [hereinafter cited as OAS Charter]. Article 27 of the Charter provides that: "Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States."

continental solidarity or collective self-defense. . . ."<sup>54</sup> It is worth to recall at this point that the pronouncement of the Monroe Doctrine in 1823 was directed in part against the reimposition of European absolutism in the Western Hemisphere. Its justification was, as noted above, the "doctrine of the two spheres" coupled with the idea that every American nation has the inherent right of political self-determination. Any extracontinental threat to the rights of self-determination of an American state, therefore, falls within the purview of the Monroe Doctrine. The "political independence" of any American state is expressly protected from intracontinental as well as extracontinental aggression by Articles 27 and 28 of the OAS Charter.<sup>55</sup> At least as applied to extracontinental threats to the internal political structure of an American state, therefore, the principles of 1823 would seem to be clearly expressed in the collective security provisions of the OAS Charter.

The signing of the Rio Treaty and the formation of the OAS completed the international legal framework upon which the multilateralized Monroe Doctrine is based today. The authority of the OAS to act as a regional agency under Article 52 of the U.N. Charter<sup>56</sup> has been accepted from the beginning by the United Nations.<sup>57</sup> Article 51 of the U.N. Charter provides legal justification for the exercise by a regional agency of the right of individual and collective self-defense.<sup>58</sup> As we have seen, it is the right of self-defense upon which the Monroe Doctrine, the Rio Treaty, and the OAS are all based in part. In their continentalized form, therefore, the principles of 1823 have the sanction of international law.

### B. *The Monroe Doctrine in the Cold War*

Just as the Doctrine in 1823 underwent expansion and permutation in the century following its pronouncement, so has the continentalized Doctrine as expressed in the collective security provisions of the Rio Treaty and the OAS Charter undergone revision and broad interpretation. With the onset of the Cold War, a new threat was presented to the Western Hemisphere which the Monroe Doctrine in its multilateralized form was theoretically equipped to handle: the threat of Soviet-inspired Communism. Following the lead of the United States in the early 1950's, the American nations adopted a firm attitude against what was perceived as an international communist movement attempting to infiltrate the gov-

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<sup>54</sup> *Id.* art. 28.

<sup>55</sup> *Id.* arts. 27, 28.

<sup>56</sup> *Id.* art. 1 expressly defines the OAS as a regional agency within the United Nations.

<sup>57</sup> Akehurst, *Enforcement Action by Regional Agencies, With Special Reference to the Organization of American States*, 42 BRIT. Y.B. INT'L L. 175, 178-79 (1967).

<sup>58</sup> Fenwick, *The Organization of American States: The Transition from an Unwritten to a Written Constitution*, 59 AM. J. INT'L L. 315, 317 (1965).

ernments of the Western Hemisphere.<sup>59</sup> This attitude was formally expressed by the Tenth Inter-American Conference at Caracas in 1953, which adopted a resolution revealingly entitled the "Declaration of Solidarity for the Preservation of the Political Integrity of the American States Against the Intervention of International Communism."<sup>60</sup> This resolution declared:

[t]hat 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 extracontinental power*, would constitute a threat to the sovereignty and political independence of the American states, endangering the peace of America. . . .<sup>61</sup> [Emphasis added].

The declaration above was based on a perception, mainly on the part of United States policy-makers, very similar to that of Monroe and his advisers in 1823—that some forms of totalitarianism (i.e., monarchical absolutism or communism) could not be an indigenous phenomenon in Latin America.<sup>62</sup> By branding communism as an *extracontinental* threat whenever it appeared in an American state, the Monroe Doctrine and the collective security provisions of the American regional agreements could be invoked to justify some kind of intervention in the "communist-infected" state rather than against the *extracontinental* source of the threat. The Caracas Declaration<sup>63</sup> therefore represented a "corollary" to the continentalized Monroe Doctrine similar to the Roosevelt Corollary in that it would allow intervention in the internal domestic affairs of an American state in the name of hemispheric stability.<sup>64</sup>

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<sup>59</sup> See Thomas & Thomas, *supra* note 4, at 545. Secretary of State John Foster Dulles considered the infiltration of "Soviet despotism" to be a direct violation of the Monroe Doctrine. See 31 DEP'T STATE BULL. 43 (1954).

<sup>60</sup> Resolution XIII, TENTH INTER-AMERICAN CONFERENCE 156-57, Dep't. State Pub. 5692 (1955) [hereinafter cited as Caracas Declaration].

<sup>61</sup> *Id.* This provision, which would allow intervention into the *internal* affairs of an American nation in order to meet the "extra-continental" threat of communism, is arguably a justified interpretation of a "fact or situation" affecting the "political independence" of any American state under Article 6 of the Rio Treaty, *supra* note 48, and Article 28 of the OAS Charter, *supra* note 53. See Thomas & Thomas, *supra* note 4, at 546-47.

<sup>62</sup> "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 anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord." Monroe Message, *supra* note 1, at 250.

<sup>63</sup> Caracas Declaration, *supra* note 61.

<sup>64</sup> For a detailed argument that collective OAS intervention in the affairs of a communist-infected American nation is a legal exercise of a broadly-interpreted right of self-defense, despite the U.N. CHARTER art. 51 recognition of such a right only in case of "armed attack," see Thomas & Thomas, *supra* note 4, at 550-54; see also D. BOWETT, *supra* note 42, at 188.

Events in the years following the Caracas Declaration revealed that despite the continentalization and integration of the Monroe Doctrine into international law, it could still be invoked unilaterally by the United States. The Declaration itself had been strongly pushed by the United States in an effort to deal with the popularly-elected (but communist-supported) President of Guatemala, Jacobo Arbenz Guzmán.<sup>66</sup> Following the expropriation of the vast landholdings of the United Fruit Company in March 1953, the United States Central Intelligence Agency (CIA) organized and successfully executed a coup of the Arbenz government in June 1954. The dictatorship subsequently installed promptly abolished the Guatemalan communist party, disenfranchised most of the voting population, suspended the Guatemalan Congress and all constitutional rights, and returned all land to United Fruit.<sup>66</sup> Significantly, the coup was carried out before the consultative provision of the Caracas Declaration was effected; thus the OAS was never faced with having to give its approval to such blatant domestic intervention.<sup>67</sup> The Guatemalan affair is one episode in inter-American relations which revealed the intrinsic paradox of U.S. foreign policy's support of dictatorships in Latin America in the name of the Monroe Doctrine—a doctrine which was ostensibly designed to protect an American nation's right of self-determination.

The rise of Fidel Castro to power in 1959 revealed that the continentalization of the Monroe Doctrine was stronger in theory than in practice. As the nature of the Cuban revolution and the open support of the Soviet Union became apparent, and as some Latin American Governments began to voice complaints about domestic subversion and terrorism exported from Cuba,<sup>68</sup> a clear case for collective action under the continentalized Monroe Doctrine (via the Caracas Declaration) seemed to be presented. Indeed, a direct challenge to regional security and the Monroe Doctrine was issued when Soviet Premier Nikita Krushchev declared in July 1960 that any attack on Cuba would result in nuclear retaliation against the United States by the Soviet Union.<sup>69</sup> "The Monroe Doctrine," announced Krushchev, "has outlived its time . . . has died, so to say, a natural death. Now the remains of this doctrine should best be buried as

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<sup>66</sup> See J. NATHAN & J. OLIVER, *UNITED STATES FOREIGN POLICY AND WORLD ORDER* 217, 218 n.90 (1976).

<sup>66</sup> *Id.* at 217-19.

<sup>67</sup> Thomas & Thomas, *supra* note 4, at 549-50. The United States was able to prevent the U.N. Security Council from hearing the Guatemalan complaint against the United States for its role in the overthrow of Arbenz by successfully arguing that the Security Council had no jurisdiction to discuss the complaint until Guatemala had exhausted the corresponding machinery of the OAS. See Akehurst, *supra* note 57, at 181.

<sup>68</sup> Thomas & Thomas, *supra* note 4, at 554.

<sup>69</sup> N.Y. Times, July 10, 1960, at 1, col. 5.

every dead body is so that it should not poison the air by its decay."<sup>70</sup> The State Department quickly retorted that the "principles of the Monroe Doctrine are as valid today as they were in 1823 when the Doctrine was proclaimed."<sup>71</sup> President Eisenhower indignantly proclaimed that the Doctrine "has by no means been supplanted,"<sup>72</sup> and that the United States, in conformity with its treaty obligations, would not "permit the establishment of a regime dominated by international Communism in the Western Hemisphere."<sup>73</sup>

Despite the war of words and brave rhetoric, neither the OAS nor the United States took any effective action to remove the continental threat posed by Castro's Cuba. In August 1960 the OAS denounced communist intervention in the Western Hemisphere, but did not specifically name Cuba or recommend any collective action.<sup>74</sup> The ill-fated Bay of Pigs invasion in April 1961, conceived during the Eisenhower administration and carried out by the CIA with the approval of President Kennedy, was a unilateral action with no OAS support.<sup>75</sup> Despite the failure of the invasion, President Kennedy subsequently reaffirmed that the United States may still exercise its option of unilateral intervention:

Should it ever appear that the inter-American doctrine of noninterference merely conceals or excuses a policy of nonaction—if the nations of this hemisphere should fail to meet their commitments against outside communist penetration . . . this nation will not hesitate in meeting its primary obligations which are to the security of our nation.<sup>76</sup>

The Eighth Meeting of Consultation of Foreign Ministers, convened at Punta del Este in January 1962, also failed to adopt any collective measures which would effectively eliminate the Cuban threat.<sup>77</sup> Only Cuba was opposed to the adoption of a resolution stating that the goals of

<sup>70</sup> N.Y. Times, July 13, 1960, at 1, col. 4.

<sup>71</sup> U.S. Reaffirms Principles of Monroe Doctrine, 43 DEP'T STATE BULL. 170 (Press Release 392, July 14, 1960).

<sup>72</sup> PUB. PAPERS OF THE PRESIDENTS OF THE UNITED STATES, DWIGHT D. EISENHOWER 1960-61, at 651 (1961). Indeed, the President declared that the Rio Treaty and "other non-intervention treaties" had "merely extended" the Monroe Doctrine to cover modern types of "penetration and subversion." *Id.*

<sup>73</sup> N.Y. Times, July 10, 1960, at 1, col. 8.

<sup>74</sup> PAU, Final Act, Seventh Meeting of Consultation of Ministers of Foreign Affairs, OEA/Ser.C/II 7 (1960).

<sup>75</sup> J. NATHAN & J. OLIVER, *supra* note 65, at 293-94. Nor did the attempted invasion have any support in international legal circles. See Wright, *The Cuban Quarantine*, 57 AM. J. INT'L L. 546 n.4, 555 n.42, 564 n.66 (1963).

<sup>76</sup> PUB. PAPERS OF THE PRESIDENTS OF THE UNITED STATES, JOHN F. KENNEDY 1961, at 304 (1962).

<sup>77</sup> See 2 PAU, *Inter-American Treaty of Reciprocal Assistance Applications* 1960-64, at 69-80 (1964).

international communism were incompatible with the principles of the inter-American political system.<sup>78</sup> But a second resolution declaring that Cuban communism was incompatible with Pan-American principles and calling for the exclusion of the Castro government from the OAS was passed by a bare two-thirds majority.<sup>79</sup> The only collective measures taken under the Rio Treaty at Punta del Este was a recommendation that trade with Cuba in arms and implements of war be immediately suspended.<sup>80</sup> Thereby was revealed the reluctance of a number of Latin American nations to turn the continentalized Monroe Doctrine inward against another American state, even as expanded by the Caracas Declaration.

The differences revealed at Punta del Este were temporarily set aside with the onset of the Cuban Missile Crisis in October 1962. The basic facts are well known: on October 22 President Kennedy revealed the existence of Soviet offensive nuclear weapons in Cuba and ordered an air and naval quarantine of Cuba to halt the buildup.<sup>81</sup> After some very tense days in Washington, Havana, and Moscow, the Russians finally backed down and agreed to remove the offensive weapons in return for a pledge from the United States that it would not invade Cuba. There is some debate as to whether the United States sufficiently defended the Monroe Doctrine in the Cuban crisis,<sup>82</sup> but it is significant in this regard that the United States took great pains to assure that all its actions were carried out according to international law.<sup>83</sup> The Soviet missiles in Cuba constituted a clear "fact or situation that might endanger the peace of America" from an extracontinental source—a bold violation of Article 6 of the Rio Treaty and a challenge to the Monroe Doctrine.<sup>84</sup> In gaining

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* Such a measure is authorized by Article 8 of the Rio Treaty, *supra* note 48. For a good discussion on the legality of the OAS sanctions adopted at Punta del Este, see Akehurst, *supra* note 57, at 190-96.

<sup>81</sup> Address of October 22, 1962, II PUB. PAPERS OF THE PRESIDENTS OF THE UNITED STATES, JOHN F. KENNEDY 1962, at 806-08 (1963).

<sup>82</sup> J. MECHAM, *supra* note 5, at 82, argues that the Doctrine was not vindicated by the removal of the missiles, since Cuba remained communist and dominated by the Soviet Union. Cf. Buckley, *supra* note 3, who argues that President Kennedy's agreement not to invade Cuba, impliedly "repealing" the Monroe Doctrine, was not binding on his successors.

<sup>83</sup> Oliver, *International Law and the Quarantine of Cuba: A Hopeful Prescription for Legal Writing*, 57 AM. J. INT'L L. 373, 376 (1963); Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 519 (1963).

<sup>84</sup> P. CORBETT, *supra* note 16, at 149; Akehurst, *supra* note 57, at 197 n.4; *but cf.* Wright, *supra* note 75, at 548-53, arguing that the installation of the Soviet missiles at Cuba's request violated no international law and that "neither the Monroe Doctrine nor inter-American treaties can impose obligations of international law on the Soviet Union, though politically they constitute a warning to non-American countries of attitudes likely to be taken by the American countries."



the removal of the Soviet nuclear weapons in Cuba, President Kennedy had gone no further than keep his earlier pledge that if Cuba ever became an offensive military base of significant capacity for the Soviets, then the United States would take any action necessary to protect itself and its hemispheric allies.<sup>86</sup> But the Monroe Doctrine was not dead in the minds of Washington policy-makers, at least one of whom felt that the Doctrine was "still an elementary part of the [United States] whole national security interests."<sup>86</sup>

In response to President Kennedy's request,<sup>87</sup> the Council of the OAS, acting as Provisional Organ of Consultation under Article 12 of the Rio Treaty, met on October 23, 1962, to consider the Cuban crisis. Echoing President Kennedy's call for the removal of the missiles from Cuba, the Provisional Organ also authorized member states to take measures against Cuba, individually or collectively under Articles 6 and 8 of the Rio Treaty, including the use of armed force, to prevent the missiles in Cuba "from ever becoming an active threat to the peace and security of the continent."<sup>88</sup> Thus the unilateral quarantine of Cuba by U.S. naval and air forces was ostensibly sanctioned by the OAS as well as the continentalized Monroe Doctrine, at least as applied against the Soviet Union.<sup>89</sup>

The continued existence of the Castro regime in Cuba, however, and that dictator's attempts to export communist revolution to other Latin American countries, constituted a continuing violation of the Monroe Doctrine via the Caracas Declaration.<sup>90</sup> At the request of Venezuela, an Organ of Consultation was convoked by the OAS in 1963 which condemned and recommended sanctions against Cuba for its subversive intervention in the internal affairs of OAS member states.<sup>91</sup> Cuba was warned that if its subversive actions continued in the future, OAS members intended to take measures of self-defense individually or collectively, even so far as to resort to armed force.<sup>92</sup>

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<sup>86</sup> 57 DEP'T STATE BULL. 450, 481 (1962). On the legality of the quarantine, see Wright, *supra* note 75, at 553-63; Akehurst, *supra* note 57, at 199-203; Oliver, *supra* note 83; Meeker, *supra* note 83; Fenwick, *The Quarantine Against Cuba: Legal or Illegal?*, 57 AM. J. INT'L L. 592 (1963).

<sup>86</sup> *Situation in Cuba: Hearings Before the Senate Comm. on Foreign Relations and the Comm. on Armed Services*, 87th Cong., 2d Sess. 34 (1962) (statement of Secretary of State Dean Rusk). See also, Ambassador Stevenson's address to the U.N. Security Council, 47 DEP'T STATE BULL. 731 (1962).

<sup>87</sup> Address of October 22, 1962, *supra* note 80, at 807.

<sup>88</sup> 47 DEP'T STATE BULL. 722 (1962).

<sup>89</sup> See Wright, *supra* note 75, at 559; Thomas & Thomas, *supra* note 4, at 561.

<sup>90</sup> Caracas Declaration, *supra* note 60.

<sup>91</sup> II PAU, INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE APPLICATIONS 1960-64, at 181-86 (1964).

<sup>92</sup> *Id.* at 186.

Resort to armed intervention became a reality in April 1965, but it was directed against the Dominican Republic rather than Cuba and initially took the form of unilateral action by the United States. Once again, the excuse for landing 20,000 U.S. marines in the Dominican Republic on April 28 was the threat of communism arising in that nation, ostensibly as a result of Cuban instigation.<sup>93</sup> This action revealed that the Monroe Doctrine, though not expressly mentioned, could still be used as an instrument for unilateral intervention by the United States into the internal affairs of a Latin American country. The OAS was quick to give its multilateral endorsement to the intervention, however, by convening the Tenth Meeting of Foreign Ministers. One of the measures taken at that meeting was the request to OAS member states to make voluntary contributions to the OAS of military forces in order to form an Inter-American Peace Force.<sup>94</sup> Subsequently, U.S. forces were partially withdrawn from the Dominican Republic and the remainder were joined with the Peace Force under a unified inter-American aggression against the political independence of an American state was thereby prevented in the name of self-defense by military intervention in the threatened state. This brings to mind some of the interventionist corollaries to the Monroe Doctrine at the turn of the century.

### C. *The Paradox of Regionalism and the Doctrine*

The legality of the intervention by the United States in the Dominican Republic, and the authority of the OAS to aid in that intervention without prior U.N. approval, is highly questionable.<sup>95</sup> Legal or not, the Dominican intervention of 1965 revealed a basic paradox of the Monroe Doctrine as it had existed since 1823—the concept of regionalism in a world where spheres of influence by powerful nations is looked upon with increasing disfavor. It has been argued with compelling force that the so-called “Johnson Doctrine”—which had been manifested in the 1965 Dominican intervention—provided reciprocal justification for the so-called “Brezhnev Doctrine”—which is the asserted justification for the Soviet interventions into Hungary in 1956 and Czechoslovakia in 1968.<sup>96</sup> The

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<sup>93</sup> PUB. PAPERS OF THE PRESIDENTS OF THE UNITED STATES, LYNDON B. JOHNSON 1965, at 461 (1966); *U.S. Acts to Meet Threat in Dominican Republic*, 52 DEP'T STATE BULL. 738 (1965); see also A. THOMAS & A. THOMAS, *THE DOMINICAN REPUBLIC CRISIS 1965: BACKGROUND PAPER AND PROCEEDINGS OF THE NINTH HAMMARSKJÖLD FORUM* 7 (1967).

<sup>94</sup> I OAS CHRONICLE 19-41 (Aug. 1975).

<sup>95</sup> See, e.g., A. THOMAS & A. THOMAS, *supra* note 93, at 36-59.

<sup>96</sup> See Franck & Weisband, *The Johnson and Brezhnev Doctrines: The Law You Make May Be Your Own*, 22 STAN. L. REV. 979 (1970); Note, *Ideology and the Use of Force*, 2 GA. J. INT'L & COMP. L. 77 (1972). The Brezhnev Doctrine, announced by Soviet Premier Brezhnev following the 1968 invasion of Czechoslovakia, is translated and reprinted in 7 INT'L LEGAL MAT'LS. 1323 (1968); see also N.Y. Times, Sept. 27, 1968, at 3, col. 1.

concept of regional independence expressed in the Monroe Doctrine has, since its pronouncement, depended largely on the power of the United States to enforce its principles. The Rio Treaty and the OAS Charter—the continentalized expressions of the Monroe Doctrine—are both geographically and ideologically based. The Dominican Republic and Cuba are both “in an area well known to have a special and historical relationship to the United States and the nations of the Western Hemisphere.”<sup>97</sup> As expressed in the Caracas Declaration,<sup>98</sup> communist control of an American state was deemed incompatible with inter-American principles and institutions. Individual or collective action, so the familiar argument goes, is therefore justified to prevent or eliminate such incompatibility.

Such is the rationale, in reverse, for the exercise and policing by the Soviet Union of a sphere of influence over socialist states on its geographical periphery. On the basis of geographical proximity and ideological compatibility, the Brezhnev Doctrine—like the Monroe Doctrine—calls on the dominant power of a geographical region to exercise an international police power to preserve regional stability.<sup>99</sup> By asserting the Brezhnev Doctrine as justification for the 1968 Czechoslovakian invasion, the Soviets verbalized what they perceived as “established, reciprocal norms of the international system” as pronounced by the United States in the Guatemalan, Cuban, and Dominican crises.<sup>100</sup> It was precisely the above rationale which the Soviet Union presented as justification for the invasion of Afghanistan in December 1979.<sup>101</sup>

Based on the foregoing, it is clear that American policy-makers are presently faced with the paradox of justifying the principles of the Monroe Doctrine, be it on a continental or unilateral basis, while simultaneously challenging the right of another regional superpower (the Soviet Union) to maintain a regional sphere of influence.<sup>102</sup> The application of the Monroe Doctrine to “communism” in the Western Hemisphere must be increasingly questioned considering the breakdown of a world-wide “monolithic” communist movement, the indigenous character of most Latin American social unrest, and the unsettling prevalence of U.S.-

<sup>97</sup> Address of October 22, 1962, *supra* note 81, at 807.

<sup>98</sup> *Supra* note 60.

<sup>99</sup> Franck & Weisband, *supra* note 96, at 983-84.

<sup>100</sup> *Id.* at 982.

<sup>101</sup> Whitney, *The View From the Kremlin*, N.Y. Times, April 20, 1980, § 6 (Magazine), at 32, col. 2, 33, col. 3.

<sup>102</sup> The paradox is starkly revealed by the recent comments of Secretary of Defense Caspar W. Weinberger, who said that the United States might supply arms and aid to the insurgents in Afghanistan if such aid was requested, but would not tolerate similar aid by the Soviet Union to the guerrillas in El Salvador on the ground that such Soviet aid would be a violation of the Monroe Doctrine. N.Y. Times, Mar. 10, 1981, at 3, col. 1 (city ed.).

backed military fascism in Latin America.<sup>103</sup> Few attempts have been made to justify the covert interference by the CIA in the 1970 election in Chile of Marxist Salvador Allende and the subsequent operations which resulted in his brutal overthrow and assassination in 1973.<sup>104</sup> Moreover, the 1970's witnessed the partial reintegration of Cuba into the economic and political life of the Western Hemisphere. Almost half of the Latin American nations have re-established diplomatic and commercial relations with Cuba,<sup>105</sup> and until late 1979 the Carter administration was taking significant steps toward the resumption of some commercial ties with Cuba.<sup>106</sup> It is significant to note, however, that Cuba's *rapprochement* with its neighbors was hesitant and was adopted by Castro only when pressured by the Soviet Union to fall in line with *détente*.<sup>107</sup>

In any case, it is apparent that the multilateral aspect of the Monroe Doctrine which had so adamantly condemned communism in the Western Hemisphere waned considerably in the 1970's. The once-solid support of the United States by Latin American nations on international political, economic, and security issues began increasingly to break down in the early 1970's. This breakdown in continental solidarity was prompted by, among other things, the limited U.S.-Soviet *détente*, economic conflicts of interest, the shift of many Latin American nations to a so-called "non-aligned" status, and the rise of sub-regional economic mechanisms.<sup>108</sup> The failure of the Carter administration to take effective measures in response to the large-scale Cuban military adventures in Africa has also made small Caribbean and Central American republics apprehensive about the willingness of the United States to protect them from "Cuba's militarized communism."<sup>109</sup> By the end of the 1970's, these factors and more had contributed to the gradual dissolution of one of the basic precepts of the

<sup>103</sup> See *Hearings on Latin America*, *supra* note 16, at 9, 22. But see Kirkpatrick, *Dictatorships and Double Standards*, COMMENTARY, Nov. 1979, at 35-45.

<sup>104</sup> See J. NATHAN & J. OLIVER, *supra* note 65, at 14, 496-97n. See also STAFF OF THE SENATE SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, 94TH CONG., 1ST SESS., COVERT ACTIONS IN CHILE 1963-1973, at 26-39 (Comm. Print 1975).

<sup>105</sup> *Hearings on Latin America*, *supra* note 16, at 9 (statement of James D. Theberge).

<sup>106</sup> See Salper, *Prospects for Relations and Trade Between the United States and Caribbean Basin Non-Market Economies, Particularly Cuba*, 4 INT'L TRADE L. J. 189, 194 (1978).

<sup>107</sup> *Hearings on Latin America*, *supra* note 16, at 9.

<sup>108</sup> *Id.* at 8-9.

<sup>109</sup> *Id.* at 10. In response to those apprehensions, the Carter administration attempted to dissuade Caribbean fears about Cuba by stating that the United States would "assist those threatened by outside intervention." N.Y. Times, Feb. 3, 1980, at 5, col. 1. On the Cuban military forces in Africa, see *Impact of Cuban-Soviet Ties in the Western Hemisphere: Hearings Before the Subcomm. on Inter-American Affairs of the House Comm. on Int'l Relations*, 95th Cong., 2d Sess. 2-3 (1978) (statement of Gen. James A. Williams).

Rio Treaty, the OAS, and the principles of 1823: the perception of common hemispheric interests and goals in relation to the rest of the world community.

*D. Change in Outlook: The Carter Administration*

Despite, and perhaps as a result of the radical changes in the inter-American system in the 1970's, the Latin American policy of the Carter administration marked a new phase in the evolution of the Monroe Doctrine. In his first address before the Permanent Council of the OAS,<sup>110</sup> President Carter made it clear that his administration was adopting a very different attitude toward Latin America from that of his predecessors. In contrast to the long-held "doctrine of the two spheres" upon which the Monroe Doctrine had originally been based, the President said:

As nations of the New World we once believed that we could prosper in isolation from the Old World. But since the Second World War . . . all of us have taken such vital roles in the world community that isolation would now be harmful to our own best interests. . . . The problems and promises of our region have become as diverse as the world itself . . . [and] sometimes defy regional solutions.

In addition to economic diversity, we have all developed widely varied forms and philosophies of government. . . .

In the light of these changes, a single United States policy toward Latin America and the Caribbean makes little sense. . . . Our own goal is to address problems in a way which will lead to productive solutions—globally, regionally, and bilaterally.<sup>111</sup>

President Carter went on to state that the new approach in U.S. policy would be based on a high regard for the individual sovereignty of each nation, respect for human rights, and recognition of the need to equalize relationships between the developed and developing nations on an extra-regional, global scale.<sup>112</sup>

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<sup>110</sup> President's Address Before the Permanent Council of the OAS, April 14, 1977, 13 WEEKLY COMP. OF PRES. DOC. 523 (April 18, 1977).

<sup>111</sup> *Id.* at 523-24.

<sup>112</sup> *Id.* at 524. Just as President Monroe's policies were largely the product of his close advisors, such as John Quincy Adams, so does it appear that President Carter's new outlook was partly attributable to the ideas of his foreign policy advisor, Zbigniew Brzezinski. In 1970, Mr. Brzezinski wrote that the long-standing idea of a U.S.-Latin American "special relationship" was "bound to decay" as Latin American nationalism and its attendant anti-Yankee spirit became more rampant in the 1970's. "Accordingly," he argued, "it would be wise for the United States to . . . abandon the Monroe Doctrine and to concede that in the new global age geographic or hemispheric contiguity no longer need be politically decisive." In order to improve U.S.-Latin American relations, he concluded, the United States should confine its policies to "cultural-political affinities" and "economic-social obligations." Z. BRZEZINSKI, *BETWEEN TWO AGES: AMERICA'S ROLE IN THE TECHNETRONIC ERA* 288 (1970). For

The changes inaugurated in U.S. policy by the Carter administration were a departure from the original precepts of the Monroe Doctrine insofar as those changes recognized divergent intra-continental interests not always separate from the rest of the world as well as political diversity within the hemisphere. But the new policy was not an abandonment of the Doctrine in that it still contained the strains of, and in a sense was a return to, the principles of 1823 insofar as the territorial and political inviolability (i.e., the right of self-determination) of each American nation was strongly reaffirmed. The President also made it clear in later remarks that the United States was firmly committed to its obligations under the Rio Treaty and the OAS Charter, and would work positively toward more effective operation of the OAS and U.N. dispute-settling machinery.<sup>113</sup> In this regard, therefore, the multilateralized Monroe Doctrine as formally expressed in the Rio Treaty and the OAS Charter was once again stripped of the interventionist corollaries which had been added to it since World War II.

The disclosure in August 1979 of the existence of a Soviet combat brigade in Cuba offered President Carter a chance to reassert the principle of hemispheric security against a tangible extra-continental threat. Without raising the tattered banner of the Monroe Doctrine by name, Secretary of State Cyrus Vance reacted to reports of the brigade by saying that the presence of the Soviet troops in Cuba "runs counter to long-held American policies."<sup>114</sup> While Mr. Vance was partly referring to the "bilateral understandings" of 1962 and 1970 between the United States and the Soviet Union,<sup>115</sup> he was also responding to critics who viewed the Soviet combat presence in Cuba as a direct violation of the Monroe Doctrine.<sup>116</sup>

Despite the opportunity to invoke the principles of 1823 against the Soviet combat presence in Cuba, the President chose instead to dismiss

an in-depth critical analysis of Brzezinski's thesis and its adoption by the foreign policy establishment of the Carter administration, see Kirkpatrick, *supra* note 103, at 39-41; Kirkpatrick, *U.S. Security & Latin America*, COMMENTARY, Jan. 1981, at 30-33. For a short critique of both Kirkpatrick articles, see Wilde, *Jeanne Kirkpatrick: Utilitarianism as U.S. Foreign Policy*, 98 CHRISTIAN CENTURY 226 (1981).

<sup>113</sup> See 14 WEEKLY COMP. OF PRES. DOC. 1596, 1599 (Oct. 2, 1978); 14 WEEKLY COMP. OF PRES. DOC. 1141, 1143 (June 26, 1978).

<sup>114</sup> N.Y. Times, Sept. 5, 1979, at 8, col. 3.

<sup>115</sup> In a letter of July 27, 1978 to Senator Richard Stone of Florida, Vance stated that "the essential understanding is [that] . . . the Soviets agreed in 1962 that offensive weapons could not again be introduced in Cuba. In 1970, it was made clear that this understanding included sea-based systems." N.Y. Times, Sept. 5, 1979, at 8, col. 2.

<sup>116</sup> Upon learning of the Soviet troops in Cuba, Senator Stone stated that their presence "is a base, and our nation's policy for more than a century has been to oppose the establishment of bases in this hemisphere by countries who don't belong here." N.Y. Times, Sept. 1, 1979, at 3, col. 4.

the troops as not being a viable threat to hemispheric security. In his televised address of October 1, 1979, President Carter explained that the Soviet combat brigade had been in Cuba for several years but did not represent a direct threat to the United States. Nevertheless, the presence of the brigade was "a serious matter" because it contributed to tensions in the Caribbean and Central American region.<sup>117</sup> The President went on to explain that Cuba is completely dominated by the Soviet Union and that "the Soviet brigade is a manifestation of Moscow's dominance of Cuba."<sup>118</sup> By increasing surveillance and military capability in the region President Carter pledged:

[W]e will assure that no Soviet unit in Cuba can be used as a combat force to threaten the security of the United States or any other nation in this hemisphere. Those nations can be confident that the United States will act in response to a request for assistance to meet any such threat from Soviet or Cuban forces. [Emphasis added].

This policy is consistent with our responsibilities as a member of the [OAS] and a party to the Rio Treaty. It's a reaffirmation of John F. Kennedy's declaration in 1963 'that we would not permit any troops from Cuba to move off the island of Cuba in an offensive action against any neighboring countries.'<sup>119</sup>

Like his predecessors since President Kennedy, President Carter appeared to accept the fact that Castro's Cuba was an accomplished and continuing violation of the Monroe Doctrine, about which the United States and the OAS could do very little. Aside from the more tangible "threat" of Soviet domination of Cuba, however, Cuban activities in Central America introduced a potentially more serious threat to the increasingly fragile concept of hemispheric solidarity. In the late 1970's and early 1980's, events in Nicaragua and El Salvador revealed that while the principles of 1823 may have remained theoretically intact under the Rio Treaty and the Caracas Declaration, it was still the policy and perceptions of the United States which were determinative of the Monroe Doctrine's practical efficacy in hemispheric affairs.

The overthrow of the Somoza dictatorship in Nicaragua by the Cuban-supported Sandinistas in July 1979 was to many the successful implant of "another Cuba" in the Western hemisphere by the Communist bloc.<sup>120</sup> To the Carter administration, the Sandinista takeover was nothing more than the exercise by the Nicaraguan people of their inherent

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<sup>117</sup> Peace and National Security: Address to the Nation on Soviet Combat Troops in Cuba and the Strategic Arms Limitation Treaty, Oct. 1, 1979, 15 WEEKLY COMP. OF PRES. DOC. 1802, 1803-04 (Oct. 8, 1979).

<sup>118</sup> *Id.* at 1804.

<sup>119</sup> *Id.* at 1804-05.

<sup>120</sup> See N.Y. Times, July 20, 1979, at 4, col. 1; Kirkpatrick, *supra* note 103, at 36.

right of self-determination.<sup>121</sup> On the one hand, the Monroe Doctrine was being violated by Cuban-Soviet aid to the Nicaraguan Marxists, while on the other hand the withdrawal of U.S. support for the Somoza government because of human rights violations represented an effort to cleanse the Doctrine of the unilateral interventionist trapping it had acquired since World War II.<sup>122</sup> In any case, the fears of "another Cuba" seemed justified when the new government of Nicaragua, "a country whose location gives it strategic importance out of proportion to its size or strength,"<sup>123</sup> withdrew from the Central American Defense Council in August 1979, calling the organization an "instrument of U.S. imperialism."<sup>124</sup> By the end of the Carter administration's days in power, the cry of "no more Cubas" had changed in many circles to "no more Nicaraguas."<sup>125</sup>

### *E. Revival of the Doctrine: The Reagan Administration*

As illustrated above, the Monroe Doctrine had not been completely abandoned by the Carter administration, but it was in a state of considerable disrepair by 1981, particularly as an instrument of unilateral policy by the United States. One of the first foreign policy moves by the Reagan administration was to revive the principles of 1823 and to reassert their primacy in U.S. policy toward Latin America. On a fundamental level and in sharp contrast to the changed outlook of the 1970's, the Reagan Presidency appeared to abandon the "globalist approach" of the Carter administration in favor of the traditional idea of a "special relationship" between the United States and Latin America.<sup>126</sup> Based as it is on the old doctrine of the two spheres and the perception that the United States is primarily responsible for the security of the hemisphere, the Reagan approach worked an abrupt "relegitimization of the Monroe Doctrine,"<sup>127</sup> both unilaterally and multilaterally.

El Salvador, the smallest and most densely populated nation in Central America, became the focal point for the revival of the traditional approach toward Latin America as a whole. In October 1979, a military coup had overthrown the repressive regime of General Carlos Humberto Ro-

<sup>121</sup> N.Y. Times, July 26, 1979, at 1, col. 6, 3, col. 6; Kirkpatrick, *supra* note 103, at 36.

<sup>122</sup> Kirkpatrick, *supra* note 103, at 41.

<sup>123</sup> *Id.* at 43.

<sup>124</sup> N.Y. Times, Aug. 9, 1979, at 9, col. 1.

<sup>125</sup> Wilde, *supra* note 112, at 228.

<sup>126</sup> See Kirkpatrick, *supra* note 112, at 40, who advocated such a change because the Carter approach denied "the realities of culture, character, geography, economics, and history." Ms. Kirkpatrick's ideas, while not definitively authoritative as those of the Reagan foreign policy establishment, have apparently been very influential, particularly with respect to Latin America. See Nossiter, *Mrs. Kirkpatrick Tackles U.N. Job With New Zest*, N.Y. Times, June 24, 1981, at 6, col. 4.

<sup>127</sup> Buckley, *supra* note 3.



mero and installed a military-civilian junta composed of a coalition of "moderate" political and military elements.<sup>128</sup> The junta, with the aid of the United States, embarked on a program of economic and social reform, but was opposed in such efforts by both the extreme left and extreme right. As 1980 drew to a close, the situation became more chaotic as guerrilla warfare engulfed the country and U.S. aid was withdrawn. As it became increasingly clear that the Sandinista government of Nicaragua had quietly aligned itself with Cuba and the Soviet Union, many feared that the same fate (i.e. a Communist takeover) lay in store for El Salvador.<sup>129</sup> Shortly before the inauguration of President Reagan, the leftist coalition of Marxist guerrilla groups in El Salvador launched a "general offensive" against the government, which failed but which prompted the new administration to quickly search for a new policy to deal with the situation.<sup>130</sup>

What the Reagan administration chose to emphasize with regard to the situation in El Salvador was reminiscent of the attitudes of the 1950's concerning Guatemala and the Caracas Declaration. In February 1981, the State Department reported that captured guerrilla documents revealed that the Salvadoran rebels were being covertly supplied with arms, munitions, and equipment through Cuba and Nicaragua from other Communist countries, including the Soviet Union, Vietnam, East Germany and Czechoslovakia.<sup>131</sup> "In short," proclaimed the State Department, "over the past years, the insurgency in El Salvador has been progressively transformed into a textbook case of indirect armed aggression by Communist powers through Cuba."<sup>132</sup> As a result, the United States increased military aid to prevent "outside forces" from accomplishing "a Communist state takeover in El Salvador."<sup>133</sup>

Although the involvement of extra-continental Communist powers in El Salvador was doubted or denied by some,<sup>134</sup> it is clear that the evi-

<sup>128</sup> See *Communist Interference in El Salvador*, 81 DEP'T STATE BULL. 7 (Mar. 1981); N.Y. Times, Feb. 20, 1981, at 4, col. 2; Kirkpatrick *supra* note 112, at 39.

<sup>129</sup> Kirkpatrick, *supra* note 112, at 38-39.

<sup>130</sup> Shortly before President Carter left office, the United States resumed military aid to the junta in response to reports of increased military aid to the Salvadoran guerrillas from Nicaragua. N.Y. Times, Jan. 19, 1981, at 11, cols. 1, 5. Economic aid to Nicaragua was suspended shortly thereafter. N.Y. Times, Jan. 23, 1981, at 3, col. 1. The failed offensive, however, revealed that the Marxist guerrillas in El Salvador did not enjoy the degree of popular support that similar elements in Nicaragua had. As Robert E. White, former Ambassador to El Salvador, put it, "They gave a war and nobody came." *Arms Aid and Advisers: Debating the New Policy on El Salvador*, N.Y. Times, Mar. 8, 1981, § 4, at 2, col. 1.

<sup>131</sup> N.Y. Times, Feb. 6, 1981, at 1, col. 3, 4, col. 2; N.Y. Times, Feb. 20, 1981, at 1, col. 1.

<sup>132</sup> *Communist Interference in El Salvador*, *supra* note 128, at 7.

<sup>133</sup> N.Y. Times, Feb. 18, 1981, at 1, col. 2.

<sup>134</sup> See, e.g., N.Y. Times, Feb. 15, 1981, at 1, col. 5; Plain Dealer, Feb. 22, 1981, § A, at 1, col. 1; N.Y. Times, Feb. 27, 1981, at 4, col. 1; N.Y. Times, Mar. 5, 1981, § 1, at 1, col. 3.

dence compiled and the response to that evidence by the United States was an attempt to resurrect nothing less than the Monroe Doctrine itself via the Caracas Declaration. By branding the threat to El Salvador as emanating from outside the hemisphere, "extending to this hemisphere the political system of an extracontinental [sic] power," it could be easily argued that "the sovereignty and political independence of the American states was threatened, "endangering the peace of America."<sup>185</sup> It could also be argued that the Communist interference in El Salvador by Cuba and the Soviet Union was a "fact or situation that might endanger the peace of America" in violation of Article 6 of the Rio Treaty.<sup>186</sup> In these respects, therefore, the Communist aid to the Salvadoran guerrillas violated the multilateralized Monroe Doctrine and would provide justification for collective action by OAS member states. In the absence of collective action, of course, unilateral action by the United States was mandated by the Doctrine when hemispheric security interests were at stake.

The attitude and action taken by the United States in El Salvador was done without the strong backing of some important OAS member states. In Mexico, for example, President José López Portillo felt that U.S. military aid and the inordinate attention being paid to tiny El Salvador had turned Central America and the Caribbean into "a zone of hegemonic confrontation" between East and West, elevating the region "to the undersirable category of a strategic frontier."<sup>187</sup> Indeed, that was precisely what U.S. policy-makers had intended. But, as certain statements indicate, it was less a cold war "containment" of Communist expansion policy than it was hemispheric protectionism based on the Monroe Doctrine. When asked in a March news conference about comparing U.S. involvement in El Salvador with that in Vietnam, President Reagan made an important and revealing distinction:

The situation here is, you might say, our front yard . . . it isn't just El Salvador.

What we're doing in going to the aid of a government that asked that aid of a neighboring country—and a friendly country in our hemisphere—is try to halt the infiltration into the Americas, by terrorists and by outside interference, and those who aren't just aiming at El Salvador but . . . are aiming at the whole of Central and possibly later South

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<sup>185</sup> Caracas Declaration, *supra* note 61.

<sup>186</sup> Rio Treaty, *supra* note 48, art. 6. Presumably, it was the Rio Treaty and the Caracas Declaration which Secretary of State Alexander Haig felt were being violated by the "illegal Soviet interventionism in El Salvador." See 81 DEP'T STATE BULL. 1, 11 (May 1981). In Secretary Haig's view, there has been "a fundamental modification of the so-called Brezhnev doctrine" by its extension beyond the Soviet Union's geographical periphery and into the Western hemisphere. *Id.* at 11.

<sup>187</sup> N.Y. Times, Feb. 25, 1981, at 6, col. 1.

America and . . . eventually North America. . . . [W]hat we're doing is trying to stop this destabilizing force of terrorism and guerrilla warfare and revolution from being exported in here, backed by the Soviet Union and Cuba and those others that we've named.<sup>138</sup>

While the Reagan foreign policy in many areas is still in its incubation stages, it could not be clearer with regard to Latin America. It has abandoned the emphasis on human rights in Latin America in favor of hemispheric security.<sup>139</sup> Perhaps most importantly, it appears to have abandoned the "globalist approach" in favor of the doctrine of the two spheres, as pointed out above. In short, the Monroe Doctrine is once again in vogue in United States foreign policy.

### III. CONCLUSION

The Monroe Doctrine in the 1980's, as it has been in every decade since its pronouncement in 1823, is a product of geography and historical perceptions. Its vitality in any given period is, as we have seen, largely shaped by the attitudes and actions of U.S. Presidents and policy-makers. Though it dare not be mentioned by name in inter-American diplomacy, lest the ghosts of its corollaries be raised, the Monroe Doctrine as a principle in inter-American relations is not an anachronism in the 1980's. It would be naive to think that the United States has forever precluded itself from unilateral intervention when its hemispheric security interests are at stake. If and when the United States ever acts unilaterally against an American state to eliminate what is perceived to be an extra-continental threat, it would be by definition a manifestation of the Monroe Doctrine. By the same token, the Doctrine's multilateral aspect will survive as long as there remains a distinct and viable body of regional international law in the inter-American system.<sup>140</sup>

The lawyer involved in inter-American relations must of necessity understand the complex relationship of principles of 1823 to modern hemispheric affairs. It is apparent from the long and tortured history of the Doctrine that its status has depended largely on the actions of the United States and U.S. policy-makers' pronounced justifications for those actions. As Professors Franck and Weisband have warned, the lawyer must be careful not to make "the common jurisprudential error of confusing what the law is with what it ought to be. For evidence of what the law

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<sup>138</sup> The President's News Conference of March 6, 1981, 17 WEEKLY COMP. PRES. DOCS. 245 (Mar. 9, 1981).

<sup>139</sup> See, e.g., *U.S. Moves to Improve Ties to Latin Military Regimes*, N.Y. Times, Mar. 8, 1981, § 1, at 8, col. 5; *Repression Increased in Guatemala As U.S. Tries to Improve Relations*, N.Y. Times, May 3, 1981, § 1, at 1, col. 2.

<sup>140</sup> See generally Note, *International Law in Latin America*, 7 LAW. AM. 605 (1975).

is, the lawyer must examine the actual practice of nations, which consists, first, of what states do and, second, of their exegetic endeavors to give conceptual definition to their acts."<sup>141</sup> The Monroe Doctrine in the 1980's will be shaped as it has since 1823: by the actual practice of nations in the Western Hemisphere, particularly the United States. Thus the lawyer's responsibility *vis-a-vis* the Doctrine of Monroe is to assure that its invocation in actual practice conforms more closely to the principles as they were intended in 1823.

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<sup>141</sup> Franck & Weisband, *supra* note 96, at 979.

