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ARTICLE

THE RIGHT OF MEMBERS OF THE ORGANIZATION OF AMERICAN STATES TO REFER THEIR "LOCAL" DISPUTES DIRECTLY TO THE UNITED NATIONS SECURITY COUNCIL

Domingo E. Acevedo*

INTRODUCTION

The United Nations Charter recognizes the existence of regional arrangements or agencies, such as the Organization of American States (OAS), the Organization of African Unity, and the League of Arab States.¹ The Charter clearly indicates that these agencies must be "consistent with the Purposes and Principles of the United Nations"² and that, in matters of peace and security, the regional agencies are to be considered subordinate to the United Nations Security Council.³

The OAS Charter declares that the OAS is a regional agency within the United Nations.⁴ Listing the essential purposes of the OAS, the Charter states the OAS was established "to put into practice the principles on which it [the OAS] is founded and to fulfill its regional obligations under the [United Nations] Charter."⁵ The OAS Charter further states that none of its provisions "shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations."⁶

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1. U.N. CHARTER art. 52, para. 1.
2. *Id.*
3. *Id.*
4. OAS CHARTER art. 1.
5. *Id.* art. 2.
6. *Id.* art. 137.

The interpretation and application by the OAS of several provisions concerning the role and scope of competence of regional arrangements has created certain conflicts between the universal and the regional organizations. Forty years after the approval of the OAS Charter, these conflicts have not yet been completely resolved.

This Article examines the practice of the members of the OAS, particularly the evolving practice of recent years, regarding the issue of OAS jurisdiction vis-à-vis the United Nations in the settlement of intraregional disputes. Analysis of specific cases will demonstrate that in certain respects, political realities of the postwar era rather than rules and principles which normally guide the interpretation of legal instruments are the major source of this complicated question.⁷

Two central issues that have given rise to conflicts between the OAS and the United Nations relate to the fundamental question of "priority" of jurisdiction in the settlement of intraregional disputes and to the "enforcement action" authorized by the OAS. As Professor Franck pointed out, "[a]rticles 52 and 53 of the United Nations Charter have been interpreted to legitimize the use of force by regional organizations in their collective self-interest and, specifically, the role and primacy of regional organizations in settling disputes between their members."⁸ The issue of the competence of regional agencies to establish a multi-lateral peacekeeping force is a third issue of competence which also has far-reaching implications for the relationship between the United Nations and regional arrangements or agencies.

The first issue, that of priority, relates to the availability of a suitable forum. At issue is competence, which in turn raises the question of the relative priority, if any, to be given to regional organizations such as the OAS as against the Security Council to promote the settlement of intraregional disputes. To put it another way, do members of the United Nations that are also members of regional organizations have the right to insist on action by the United Nations in a dispute, or in a situation that "might lead to international friction," or should they present the case to a regional organization for prior consideration? On various occasions, a number of OAS members, invoking article 23 of

7. Cf. I. CLAUDE JR., *POWER AND INTERNATIONAL RELATIONS 194-95* (1962) (describing the East-West polarization of the post-war world); Claude, *The OAS, the UN, and the United States*, 547 INT'L CONCILIATION 1, 21-46 (1964) (analyzing the conflict of jurisdiction between the OAS and the United Nations Security Council); Bowett, *Interrelación de Estados Americanos y las Naciones Unidas dentro del Marco de la Seguridad Colectiva*, 15 REVISTA DE LA FACULTAD DE DERECHO DE MEXICO 860, 861 (1965) (discussing the interplay between the OAS and the United Nations Security Council in the area of collective security).

8. Franck, *Who Killed Article 2(4)?*, 64 AM. J. INT'L L. 809, 822 (1970).

the Charter of the OAS,⁹ article 2 of the Rio Treaty¹⁰ and article II of the Pact of Bogotá,¹¹ have argued that the Inter-American procedures for pacific settlement of disputes take priority over the United Nations procedures. In other words, when a "local" dispute develops between member states of the OAS, those states must resort to the regional procedures before going to the United Nations.¹² A similar type of conflict has occurred when some American states have attempted to take "local"¹³ disputes to the Security Council after the OAS had already begun to deal with the case. A further complication has occurred in the Malvinas conflict of 1982 and, to a certain degree, in the Nicaraguan situation of 1983, when the OAS decided to exercise jurisdiction after the Security Council was already seized of the matter.

The issue of the competence of the United Nations and of regional arrangements regarding the settlement of international disputes has yet another dimension. Namely, whether the International Court of Justice (ICJ) is precluded from adjudicating legal disputes related to matters that are also being considered by the Security Council or regional agencies, or both. Several cases brought before the Court prior to 1984 raised this issue, but it was dealt with in greater detail by the respective Parties and by the ICJ in the Nicaraguan Case.¹⁴

The second issue relates to the definition, and indeed the application by the OAS, of "enforcement action" as set forth in article 52 of the

9. OAS CHARTER art. 23.

10. Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, art. 2, 62 Stat. 1681, 1682, T.I.A.S. No. 1838, 21 U.N.T.S. 77, 80 [hereinafter Rio Treaty].

11. American Treaty on Pacific Settlement of Disputes, art. II, 17 OASTS 15, 15, OAS Doc. OEA/ser. A/3/SEPF. (1961) [hereinafter Pact of Bogotá]; see also 1 GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, THE INTER-AMERICAN SYSTEM 212-59 (1983) (describing the Pact of Bogotá).

12. *Resolution I: Declaration of San Jose, Seventh Meeting of Consultation of Ministers of Foreign Affairs, San Jose, Costa Rica*, OAS Doc. OEA/ser. C./II.7 5 (1960).

13. See 5 U.N. GAOR Supp. (No. 14) at 8, U.N. Doc. A/1388 (1950) (outlining the definition of a local dispute). The document states:

A dispute or situation may be considered as 'local' and appropriate for regional action, within the meaning of Article 52, not so much because of the place where it occurs or the region to which the parties or states concerned belong as because they participate in a regional arrangement or constitute a regional agency of peaceful settlement of disputes.

Id.

14. Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.) 1984 I.C.J. 392, 392 (Judgment of Nov. 26); see Acevedo, *Disputes under consideration by the U.N. Security Council of Regional Bodies*, in THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 242 (L. Damrosch ed. 1987) (outlining the discussion in the Nicaragua case as to whether Security Council consideration of a case precludes the International Court of Justice from considering the case).

United Nations. A clear absence of any legal definition and the restrictive interpretation of this concept made by the OAS Meeting of Consultation has caused the confusion surrounding this issue. Although on several occasions since 1960, a majority of OAS members have held that "enforcement action" refers only to measures involving the use of armed force, in 1982 the Meeting of Consultation of Ministers of Foreign Affairs¹⁵ apparently changed its previous narrow interpretation in a resolution adopted in connection with the situation in the South Atlantic.

In December 1985, the OAS General Assembly adopted several amendments to the OAS Charter through the Protocol of Cartagena de Indias (Protocol of Cartagena).¹⁶ Perhaps the most significant change introduced in the Protocol of Cartagena concerns the clarification of the competence of the OAS as a regional agency under Chapter VIII of the United Nations Charter, vis-à-vis the competence of the United Nations.

The text of article 23 now in force, adopted originally in 1948, provides that all international disputes that arise between members of the OAS "shall be submitted" to the procedures established in the OAS Charter before being referred to the United Nations Security Council. This article appears to grant the OAS "priority" jurisdiction with respect to the Security Council, in apparent disregard for the principles established, *inter alia*, in articles 24, 34, 35, and 103 of the United Nations Charter. In the Protocol of Cartagena, an effort was made to adapt article 23 of the OAS Charter to the provisions contained in article 52, paragraphs 2 and 4 of the United Nations Charter. In effect, after determining that member states must submit international disputes to the procedures for peaceful settlement established in the OAS Charter, the new provision adds in its second paragraph that member states shall not interpret this provision as an impairment of their rights and obligations under articles 34 and 35 of the United Nations Charter.¹⁷

15. *Resolution II: Serious Situation in the South Atlantic, Twentieth Meeting of Consultation of Ministers of Foreign Affairs*, OAS Doc. OEA/ser. F./II.20 doc. 80/82 rev. 2 (1982) [hereinafter *Resolution II*] (urging the United States to lift the coercive measures against Argentina and to refrain from providing material assistance to Great Britain in the Malvinas conflict); *Resolution: Coercive Measure, XVII Annual Meeting of the Inter-American Economic and Social Council at the Ministerial Level*, CIES Res. 234, OAS Doc. OEA/ser. H./X.40/CIES.3730/82 corr. 1 (1982).

16. *Protocol of Amendment to the Charter of the Organization of American States*, Dec. 15, 1985, 66 OASTS 23, OEA/ser. A./41 (SEPF) (1986) [hereinafter *Protocol of Cartagena de Indias*].

17. See Acevedo, *Introductory Note*, 25 I.L.M. 527, 527-28 (1986) (noting the detailed review of the amendments).

I. APPLICABLE PROVISIONS

A. THE UNITED NATIONS CHARTER

The provisions of the United Nations Charter, while not necessarily contradictory, are nonetheless confusing. The Charter not only recognizes the validity of regional arrangements, but also confers jurisdiction or competence on such arrangements for the resolution of regional disputes through regional machinery. Article 52, paragraph 1 of the United Nations Charter provides for the existence of regional arrangements or agencies to deal with matters related to the maintenance of international peace and security appropriate for regional action. The pacific settlement of disputes is mentioned in article 33, paragraph 1. Under this article, the parties to a dispute shall first seek a peaceful solution through regional agencies or arrangements. In general, local disputes are referred to in article 52, paragraph 2, which provides that United Nations members entering into regional arrangements or constituting regional agencies shall "make every effort" to achieve pacific settlement of "local" disputes through these regional arrangements or agencies before referring them to the Security Council.

These two provisions, however, should be read in light of article 52, paragraph 4, which expressly preserves the right of members of regional arrangements to submit a dispute or situation directly to the United Nations Security Council, or to the General Assembly pursuant to article 11 of the Charter.¹⁸ The members of regional arrangements that are parties to a dispute or situation that is likely to endanger the maintenance of international peace and security thus have no obligation to attempt to settle the dispute through regional arrangements before submitting it to the United Nations Security Council or General Assembly.

Professor Jimenez de Arechaga observed that, based on these provisions, the member states of a regional agency or arrangement are entitled to direct recourse to United Nations jurisdiction. He added that member states also have the option, depending on the circumstances, to have recourse to one jurisdiction, the United Nations, or the other, regional, for legal protection.¹⁹ The practice, particularly recent practice,

18. U.N. CHARTER art. 33, para. 4; see H. Kelsen, *THE LAW OF THE UNITED NATIONS* 434-435 (1951) (describing article 33, paragraph 1 and article 52, paragraph 2). According to Kelsen, this inconsistency, in turn, raised the question of whether article 33, paragraph 1 must be interpreted as being restricted by article 52, paragraph 2. *Id.* "This question must be answered in the affirmative." *Id.* International practice has proven this theory invalid. *Id.*

19. E. J. DE ARECHAGA, *DERECHO CONSTITUCIONAL DE LAS NACIONES UNIDAS* 356 (1958).

of the Security Council and opinions of the ICJ tend to support this assertion.

The United Nations Charter establishes further in article 52, paragraph 3 that the Security Council shall encourage the development of pacific settlement of local disputes through regional arrangements or regional agencies, either on the initiative of the states concerned or through reference from the Security Council. Furthermore, under article 33, paragraph 2, the Security Council shall, when it deems necessary, call upon the parties to settle their disputes through peaceful means, including resort to regional arrangements or agencies.

Article 34 gives the Security Council the competence to investigate any dispute or any situation likely to threaten international peace and security and article 35, paragraph 1 authorizes any member to bring any such dispute to the attention of the Security Council. In addition, article 35, paragraph 2 provides that a state which is not a member of the United Nations may also bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purpose of the dispute, the obligations of pacific settlement provided for in the Charter.

Several provisions of the United Nations Charter thus clearly indicate that regional agencies or arrangements are to be considered subordinate to the United Nations. Consequently, regional procedures for the peaceful settlement of disputes are not necessarily to be given priority over the United Nations Security Council and General Assembly under articles 34 and 35 of the United Nations Charter. This subordinate status, in addition to being indicated in article 52, paragraphs 2 and 4 is further specified, with regard to enforcement action, in article 53 of the United Nations Charter, which states that the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement under its authority. "But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council . . ."²⁰

Article 54 also seems to provide further evidence of the subordinate status of the regional agencies or arrangements. Under that article, "the Security Council shall at all times be kept informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security."²¹

20. U.N. CHARTER art. 53.

21. *Id.* art. 54.

Apart from the preceding provisions, the entire system, established by the United Nations Charter for peaceful settlement through United Nations organs, may be applicable in some way to matters appropriate for regional action.²²

B. PROVISIONS OF THE INTER-AMERICAN INSTRUMENTS

1. OAS Charter

The questions of the right of the members of the OAS to refer their disputes to the United Nations has been complicated, at least in part, by article 23 of the OAS Charter which provides that “[a]ll international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations.”²³ The wording of this article appears to extend beyond the provisions of the United Nations Charter. Indeed, according to article 23 of the OAS Charter, it would not suffice for the parties to a dispute to “make every effort to achieve pacific settlement of local disputes” as article 52, paragraph 2 of the United Nations Charter requires. Instead, they must submit such disputes to the procedures set forth in the OAS Charter before referral to the Security Council.

2. The Rio Treaty

Article 2 of the Rio Treaty states that the parties to the Treaty shall endeavor to settle any controversy among themselves through procedures in force in the Inter-American system before referring it to the United Nations General Assembly or Security Council. In 1975, however, the member states adopted several amendments to the Rio Treaty.²⁴ The new Protocol, not yet in force, amends article 2 by elimi-

22. See *Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations*, 25 U.N. GAOR Supp.(No. 28) at 121, U.N. Doc. A/8028 (1970) (noting the development and affirmation of Chapter VI of the United Nations Charter); see also *Manila Declaration on the Peaceful Settlement of International Disputes*, G.A. Res. 10, 37 U.N. GAOR C.6 Annex at 1, U.N. Doc. A/37/10 (1983) (affirming and developing the provisions of Chapter VI of the United Nations Charter).

23. OAS CHARTER, *supra* note 4, art. 23.

24. Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance, July 26, 1975, 61 OASTS 1, OAS Doc. OEA/ser. A./X./II (1975), reprinted in 1 THE INTER-AMERICAN SYSTEM: TREATIES, CONVENTIONS, AND OTHER DOCUMENTS 359 (F.V. Garcia-Amador, ed. 1983) (noting the amendments to the Rio Treaty). The Protocol will enter into force when two-thirds of the Signatory States have deposited their instruments of ratification. *Id.* As of September 30, 1988, seven states had ratified the Protocol.

nating the reference to the General Assembly. The amendment also added that "[t]his provision shall not be interpreted as an impairment of the rights and obligations of the States Parties under articles 34 and 35 of the Charter of the United Nations."

3. *The Pact of Bogotá*

Article II of the American Treaty on Pacific Settlement (the Pact of Bogotá) provides that:

The High Contracting Parties recognize the obligations to settle international controversies by pacific procedures before referring them to the Security Council of the United Nations. Consequently, in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present treaty.²⁵

The first paragraph of this article establishes an even stricter obligation on the parties to a dispute than the OAS Charter. It states that the parties have the obligation to settle "international controversies" before referring them to the United Nations Security Council. Thus, in this case, it is not merely a question of submitting a dispute to regional procedures, as with the OAS Charter, but of resolving it in accordance with such procedures. Undoubtedly, this paragraph is, at best, poorly drafted. The paragraph is inherently flawed because there would no longer exist any dispute to refer to the Council or, for that matter, to any other body under the present requirement that the parties settle a dispute before referral to the Security Council.

4. *The 1985 Protocol of Amendments to the OAS Charter*

As stated above, the Protocol of Cartagena introduced an important change in the OAS Charter. The Protocol reaffirmed the right that OAS members have under articles 34 and 35 of the United Nations Charter. In particular, member states have the right to refer any dispute, or any situation that "might lead to international friction or give

25. Pact of Bogotá, *supra* note 11, art. II. Article II of the Pact of Bogotá contains something tantamount to a veto to which any state party in a dispute can resort, if such party believes that it can settle the dispute by direct diplomatic means. *Id.*; see Robledo, *Naciones Unidas y Sistema Interamericano*, reprinted in OAS Doc. OEA/ser. G./CEESI doc.47/74 14 (1974) (observing the application of the Pact). Professor Gomez Robledo made the observation that "if only one of the parties insists that the dispute, in its view, can be settled through direct negotiations, under the terms of the Pact it cannot be forced to use any of the means of pacific settlement stipulated therein." *Id.*

rise to a dispute," directly to the Security Council.²⁶

II. REGIONAL VERSUS UNIVERSAL AUTHORITY IN PRACTICE

A. A COMPLAINT ORIGINALLY PRESENTED TO THE SECURITY COUNCIL WHERE THE OAS HAS, IN PRACTICE, EXERCISED PRIMARY JURISDICTION: THE GUATEMALAN CASE

The first occasion upon which the issue of the "priority" of the OAS as a forum for settlement of disputes between OAS members occurred on June 19, 1954, when the representative of Guatemala requested an urgent meeting of the Security Council. He alleged that his country was the object of "an open aggression."²⁷

This case is significant for several reasons. First, the case in part related to the so-called "East-West" conflict in which Guatemala found itself an unwitting victim.²⁸ As early as April 1, 1953, the Permanent Representative of Guatemala to the United Nations delivered a communication to the Secretary General describing "a series of facts amounting to open hostility and a threat of intervention in the internal affairs of the Republic of Guatemala."²⁹ The same communication was presented to the Security Council on April 15, merely to be put "on record in case events should occur constituting a violation of Guatemala's territory and national independence."³⁰ Four days later, the government of Guatemala complained to the Security Council that the governments of Honduras and Nicaragua, at the instigation of certain foreign monopolies, had perpetrated an open aggression.³¹

26. Protocol of Cartagena de Indias, *supra* note 16, art. II. The Protocol of Cartagena entered into force on November 16, 1988.

27. Cablegram dated June 19, 1954 from the Minister of Foreign Relations of Guatemala to the United Nations Addressed to the President of the Security Council at 3, U.N. Doc. S/3232 (1954).

28. Drier, *The Special Nature of Western Hemisphere Experience with International Organizations*, in *INTERNATIONAL ORGANIZATIONS IN THE WESTERN HEMISPHERE* 9, 34 (R. Gregg ed. 1968). Drier observed that "[t]he outright failures of the regional collective security system, of course, have been those concerned not with truly inter-American disputes but with broader power conflicts, essentially those of the Cold War, which lie outside of the competence of a regional system as such. Such was the case of Guatemala in 1954 and of Cuba in 1960." *Id.*

29. Letter of the Permanent Representative of Guatemala to the United Nations Addressed to the Secretary General at 2, U.N. Doc. S/2988 (1953).

30. *Id.* at 1.

31. Simultaneously the Government of Guatemala appealed to the Inter-American Peace Committee, a subsidiary organ of the OAS Council, but subsequently withdrew its request to allow treatment of its cause exclusively by the Security Council. The expression "foreign monopolies" referred to the United Fruit Company, some of whose 85% uncultivated land had been expropriated by the Government of Guatemala.

On June 20 and 25, the Security Council fully discussed the jurisdictional issue at their 675th and 676th meetings. At the first meeting, the two Latin American members of the Council, Brazil and Colombia, presented a draft resolution that indicated the availability of Inter-American machinery established for the specific purpose of dealing with Inter-American peace and security. These members, in turn, asked that the Security Council refer the complaint of the government of Guatemala to the OAS for urgent consideration.³²

The Guatemalan representative replied that his government, "exercising the option which is open to the Organization's members, officially declined to allow the [OAS] and the Inter-American Peace Committee to concern themselves with this situation."³³ He argued that the issue was simply aggression under Chapter VII of the United Nations Charter, as opposed to a dispute under Chapter VI.³⁴ J. Fawcett pointed out that the legal issue before the Council was whether the armed intervention of which Guatemala complained was an act of aggression or a "dispute," particularly a "local dispute" within the meaning of article 52, paragraphs 2 and 3 of the United Nations Charter.³⁵ Fawcett's contention is noteworthy because the representative of Guatemala based his government's appeal on articles 34, 35, and 39 of the Charter which, he argued, gave his country an undisputed right to appeal to the Security Council. He added that the OAS might be appropriate for trying to resolve peaceful disputes among members, but was quite incapable of dealing with a situation where an invasion had already taken place.³⁶ Consequently, the Guatemalan representative

American officials maintained that the disagreements between the United States and Guatemala had nothing to do with the United Fruit Company, but rather concerned the failure of President Arbenz to oust Communists from his government. Nevertheless, "American national security considerations were never compelling in the case of Guatemala. State Department analysts in late 1953 treated the influence of Communists as relatively trivial except insofar as they had Arbenz's ear." S. SCHLESINGER & S. KINZER, *BITTER FRUIT: THE UNTOLD STORY OF THE AMERICAN COUP IN GUATEMALA* 107 (1982).

32. 9 U.N. SCOR (675th mtg.) at 15, U.N. Doc. S/3907 (1954).

33. *Id.* at 13.

34. *Id.*

35. Fawcett, *Intervention in International Law*, in 2 *RECUEIL DES COURS* 103, 347-79 (1961).

36. 9 U.N. SCOR (675th mtg.) at 20, U.N. Doc. S/3907 (1954). Later the Guatemalan Representative suggested that the complaint could be regarded as a situation "which could lead to international friction or give rise to a dispute" contemplated in article 34 of the United Nations Charter. In the Security Council the question was described as a "situation," a "dispute," a "matter," a "complaint of aggression," and an "act of aggression," but the Council made no determination as to whether the matter was or was not a "dispute" as envisaged in article 34 or whether it was subject to the provisions of article 39 of the United Nations Charter. Fawcett, *supra* note 35, at

asked the Security Council to call on the governments of Honduras and Nicaragua to halt the operations and to apprehend those who were involved in organizing and directing them. Finally, he requested that the Security Council establish an observation committee to be sent to Guatemala, and to Honduras and Nicaragua if necessary, to verify whether the charges his government had made were well-founded. In connection with the Guatemalan request, Evan Luard pointed out that "[t]his was a procedure not unlike that which the [United Nations] had used in dealing with the somewhat similar charges raised by the Greek Government against its neighbors."³⁷

The draft resolution was vetoed by the Soviet Union. The Council subsequently unanimously approved a resolution based on a draft presented by France which called for the "immediate termination of any action likely to cause bloodshed." Furthermore, the Council asked the members of the United Nations to abstain from assisting such actions.³⁸

On June 25, the Security Council met again at the request of the representative of the Soviet Union and resumed the debate on the jurisdictional issue. Mr. Lodge, the United States representative, argued that the most critical issue was the relationship of the United Nations, a universal organization, to regional organizations, notably the OAS. The United States representative added that the failure of the Security Council to "respect the right of the OAS to achieve a peaceful settlement of the dispute between Guatemala and its neighbors would produce a catastrophe of such dimensions as will gravely impair the future effectiveness of both the United Nations itself and of the OAS."³⁹

The United States representative argued that Guatemala's effort to bypass the OAS was a violation of the United Nations Charter, article 52, paragraph 2. He then warned the members of the Council that if the Security Council assumed jurisdiction, "the clock of peace will have been turned back and disorder will replace order."⁴⁰

Despite these strong statements, Denmark, Lebanon, and New Zealand joined the Soviet Union in voting for an immediate United Nations discussion of the case. Brazil and Colombia voted against the dis-

379; REPERTORY OF UNITED NATIONS PRACTICE at 448, U.N. Sales No. 1957.V.4 (Supp. 1) (Vol. II).

37. See 1 E. LUARD, A HISTORY OF THE UNITED NATIONS: THE YEARS OF WESTERN DOMINATION, 1945-1955 296 (1982) (stating that this procedure resembles that used in dealing with Greek complaints against Albania, Bulgaria, and Yugoslavia).

38. 9 U.N. SCOR (675th mtg.) at 38, U.N. Doc. S/3907 (1954).

39. *Id.* at 26-28.

40. *Id.*

cussion, along with China, Turkey, and the United States. France and the United Kingdom abstained. The representatives of both abstaining states maintained that their actions did not signify that the Security Council was divesting itself of its responsibility but failed to explain how else the decision of the Security Council might be interpreted. The resolution thus failed and the issue remained unsettled. Having failed to obtain any satisfaction from the Security Council, the Guatemalan government decided to cooperate with the Inter-American Peace Committee, which then arranged for an investigating group to visit Guatemala, Honduras, and Nicaragua. This committee, despite the seriousness of the situation, did not leave Washington until June 29.⁴¹

Meanwhile, on June 26, in an obvious attempt to emphasize their concern with the situation, the United States and nine other members of the OAS (Brazil, Costa Rica, Cuba, the Dominican Republic, Haiti, Honduras, Nicaragua, Panama, and Peru) requested that the Meeting of Consultation be convened pursuant to articles 6 and 11 of the Rio Treaty.⁴² These countries wanted to consider the danger to the peace and security of the continent and to agree upon measures in view of the "demonstrated intervention of the international communist movement in the Republic of Guatemala."⁴³ Inis Claude observed that:

[I]t appears that the transfer of the case from the Security Council to the OAS was not simply a matter of having the latter substitute for the former as a peaceful settlement mechanism, but a device for reversing the terms of the case. The OAS was prepared to treat Guatemala as a defendant, not the plaintiff. Whereas the Security Council had appealed for the cessation of the attack the OAS declared its intent to consider means to demise the government of Guatemala.⁴⁴

It is clear, as Professor Bowett pointed out:

[T]hat much of this practice and the jurisdictional conflict between the OAS and the Security Council is politically motivated. The [United States] has feared that, within the Security Council, the veto of the Soviet Union will frustrate settlement and the Soviet Union has opposed reference to the OAS because it feared that the influence of the [United States] within the OAS would predominate.⁴⁵

41. Before the Inter-American Peace Committee reached Guatemala, however, the government of Guatemala had fallen and a cease-fire had been arranged. See Report of the Inter-American Peace Committee, OEA/ser. C./CIP-131/54 1 (1954).

42. 1 GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE: APPLICATIONS, 1948-1956 165 (1973).

43. *Id.*

44. I. CLAUDE, *supra* note 7, at 282.

45. Bowett, *The United Nations and Peaceful Settlement*, in DAVID DAVIES MEMORIAL INSTITUTE OF INTERNATIONAL STUDIES, INTERNATIONAL DISPUTES, THE LEGAL ASPECTS 191 (1972); see Moore, *The Role of Regional Arrangements in the*

The Guatemalan case, insofar as it involved the question of "priority" of competence between the United Nations and a regional arrangement, underscored the importance of distinguishing between a dispute under Chapter VI and an act subject to the provisions of Chapter VII of the United Nations Charter. The government of Guatemala contended that it was the victim of aggression and that it was, consequently, entitled to take its case to the Security Council.⁴⁶ The United States maintained, in the Security Council, that this was a local dispute that had to be dealt with by the OAS. The United States, Brazil, and Colombia based the case on article 33 and Chapter VIII of the United Nations Charter, while Guatemala invoked articles 34, 35, and 39, respectively.⁴⁷

As this Article will show, a similar situation occurred in 1983 between Nicaragua, Honduras, and the United States. More importantly, as a result of the efforts made to prevent any Security Council discussion of the events in Guatemala, neither the OAS nor the United Nations could assist the government of Guatemala against an action requiring application of Chapter VII of the Charter, that is to say, an "[a]ction with respect to threats to the peace, breaches of the peace, and acts of aggression."

B. CASES ORIGINALLY TAKEN TO THE SECURITY COUNCIL THAT WERE DEFERRED TO THE OAS BY A DECISION OF THE SECURITY COUNCIL

Maintenance of World Order, in *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* 131 (C. Black & R. Falk eds. 1971) [hereinafter Moore: *The Role of Regional Arrangements*] (observing the concept of regional authority). Professor John Norton Moore states that:

Since the major tests of regional authority have involved a regional organization identified with a major cold war power, tests of regional authority have been perceived by all concerned primarily in cold-war terms. Thus, the United States tends to equate regional autonomy with OAS autonomy and press for broad regional authority. And the Soviet Union equates regional autonomy with autonomy of a United States-dominated OAS and opposes increased regional autonomy. As a result, the general issue of regional versus universal authority tends to be subordinated to more immediate cold-war interests.

Id.

46. See *supra* notes 33-34 and accompanying text (discussing the contentions of the Republic of Guatemala).

47. See E. J. DE ARECHAGA, *supra* note 19, at 362-363 (noting the broad scope of Chapter VII of the United Nations Charter).

The refusal to consider a request such as the one made by Guatemala to the Security Council constitutes a violation of the provisions of the U.N. Charter which give the Security Council primary responsibility for the maintenance of international peace and security whenever there is an act of aggression. The provisions of Chapter VII are by no means limited by those that regulate the action of regional arrangements.

Id.

1. *Without the consent of the complainant State: The Cuban Case (1960-1961)*

In 1960 a situation similar to the one in Guatemala began to develop in Cuba. On July 11, 1960, the Cuban Government complained to the Security Council about what it characterized as the United States policy of threats, reprisals, and aggressive acts against Cuba. To prevent referral of its complaint to the OAS forum, the government of Cuba invoked, primarily, article 52, paragraph 4, and article 103 of the United Nations Charter.⁴⁸ The United States government denied the Cuban charges of intervention in a letter to the President of the Security Council,⁴⁹ and argued that the Inter-American Peace Committee had been investigating tensions in the Caribbean for the last year.⁵⁰ Two days after Cuba filed the complaint with the Security Council, Peru requested the convocation of the OAS Meeting of Consultation in accordance with article 39 of the Charter of Bogotá, to consider hemispheric solidarity, defense of the regional system, and the defense of American democratic principles.⁵¹

At the Security Council meetings on July 18 and 19,⁵² Argentina

48. U.N. Doc. S/4378 (1960). Cuba also invoked articles 24, 34, 35, paragraph 1, and article 36 of the United Nations Charter. *Id.*

49. Letter Dated 15 July 1960 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council at 1, U.N. Doc. S/4388 (1960); see Bowett, *supra* note 7, at 861 (noting that "the substance of [the Cuban] charges . . . was soon to be supported by the Bay of Pigs invasion on April 17, 1961").

50. See M. ETZIONI, *THE MAJORITY OF ONE: TOWARDS A THEORY OF REGIONAL COMPATIBILITY* 148 (1970) (stating that the task of the Inter-American Peace Committee, to investigate exile-incited tension in the Caribbean, had, in fact, nothing to do with the Cuban charges of United States aggression).

51. The Meeting of Consultation was held in San Jose, Costa Rica, from August 22 to August 29, 1960. This Meeting approved 13 resolutions, the most important of which was the "Declaration of San Jose," which, *inter alia*, decided to:

[C]ondemn . . . the intervention or the threat of intervention . . . by any extracontinental power in the affairs of the American republics . . . [r]eject the attempt of the Sino-Soviet powers to make use of the political, economic, or social situation of any American state, inasmuch as that attempt is capable of destroying hemispheric unity and endangering the peace and security of the hemisphere . . . [r]eaffirm that the inter-American system is incompatible with any form of totalitarianism; [p]roclaim that all member states of the regional organization are under obligation to submit to the discipline of the inter-American system; [d]eclare that all controversies between member states should be resolved by the measures for peaceful solution that are contemplated in the inter-American system.

Seventh Meeting of Consultation of Ministers of Foreign Affairs, OAS Doc. OEA/ser. C./II.7 4-5 (1960) (emphasis added).

52. 15 U.N. SCOR (875th and 876th mtgs.) at 1, U.N. Doc. S/4395 (1960).

and Ecuador sponsored a resolution which contained certain pragmatic arguments in favor of the competence of the OAS.⁵³ It requested that the Security Council suspend consideration of the case until the OAS could submit a report. The Security Council approved the draft with Poland and the Soviet Union abstaining. This action constituted, in effect, a repetition of the Guatemalan case.

Some of the members of the Security Council contended that the resolution did not impair the United Nations' primary jurisdiction and the right of members to have direct recourse to the Security Council. In some respects, however, those advocating the priority of OAS competence obtained substantially more than they did in the Guatemalan case. In the case of Cuba, the Security Council had actually passed a resolution referring the case to the OAS.⁵⁴

There was a second phase of this case. In October 1960 Cuba appealed again to the United Nations but it followed a different strategy. This time Cuba took its complaints to the General Assembly instead of the Security Council.⁵⁵ The General Assembly referred the case to the First Committee which did not take up the case until April 15, 1961.

Meanwhile, on December 31, 1960, and January 3, 1961, Cuba asked the Security Council to include in its agenda the consideration of the complaint. Cuba relied on articles 24, 31, 32, 34, 35, paragraph 1, article 52, paragraph 4, and article 103 of the United Nations Charter as well as article 102 of the OAS Charter.⁵⁶ The Council agreed to discuss the Cuban case on January 4, 1961. A draft resolution proposed by Chile and Ecuador endorsing the principle of non-intervention and bringing peaceful settlement of the conflict without mentioning the OAS did not obtain the necessary support. Consequently, the resolution was withdrawn. The Security Council then ended its consideration of the case. The fate of the complaint of Cuba remained solely with the First Committee of the General Assembly, which discussed it on April 15, 1961, the day of the Bay of Pigs invasion.

A few days later, the General Assembly adopted a resolution that

53. *Id.* at 2. The resolution also invites the OAS to lend assistance to the realization of a peaceful settlement. *Id.*

54. It is important to observe, however, that technically the Security Council, in approving the resolution, did not abdicate its jurisdiction on the Cuban complaint.

55. 15 U.N. GAOR (909th mtg.) at 787, U.N. Doc. A/PV. 909 (1960); 15 U.N. GAOR (910th mtg.) at 801, U.N. Doc. A/PV. 910 (1960).

56. Letter dated 31 Dec. 1960 from the Minister for External Relations of Cuba addressed to the President of the Security Council at 1, U.N. Doc. S/4605 (1960); Letter dated 3 January 1961 from the Minister for External Relations of Cuba addressed to the President of the Security Council at 1, U.N. Doc. S/4611 (1961). The Cuban Minister for External Relations requested an immediate meeting of the Security Council, stating that new and alarming developments demanded it. *Id.*

urged the member states to assist in achieving a settlement through peaceful means in accordance with the principles and purposes of the United Nations Charter. The resolution asked that a report on the measures taken be submitted to the General Assembly at its sixteenth session. The resolution also asked the member states to abstain from aggravating existing tensions.⁵⁷ Clearly, this resolution did not grant any particular right of priority to the OAS. Neither the United Nations nor the OAS took any further action on the complaint after the adoption of this resolution.

2. *The Cuban Missile Crisis (1962)*

On October 22, 1962, the United States government requested an immediate convocation of the Organ of Consultation pursuant to article 6 of the Rio Treaty. The United States wished to consider the action that should be taken "for the common defense and for the maintenance of peace and security of the continent."⁵⁸ Although the OAS and the United Nations acted simultaneously pursuant to the request of the United States, this case is only of marginal importance with regard to jurisdiction.

The OAS Council adopted a resolution on October 23, 1962. Acting provisionally as Organ of Consultation, the Council resolved to recommend that:

[M]ember states, in accordance with [A]rticles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance, take all measures, individually and collectively, including the use force, which they may deem necessary to ensure that the government of Cuba cannot continue to receive from the Sino-Soviet Powers military material and related supplies which may threaten the peace and security of the continent."⁵⁹

This resolution provided, in this particular emergency, legitimation for the quarantine measures and, consequently, the basis for its symbolic multilateral character.

At the same time, however, the United States requested a meeting of the Security Council to deal with the dangerous threat to peace.⁶⁰ At this meeting, the United States presented a draft resolution whereby the Council would call for removal of the missiles. The resolution

57. *Id.*

58. 2 GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE: APPLICATIONS 1960-1972 109 (1973) [hereinafter TREATY OF RECIPROCAL ASSISTANCE: APPLICATIONS].

59. *Id.* at 112.

60. 17 U.N. SCOR (1022d mtg.) at 15, U.N. Doc. S/PV. 1022 (1962).

would authorize the Secretary General to send an observer group to verify and report on compliance with the resolution and to lift the quarantine after the withdrawal of the missiles. The resolution urgently recommended that the United States and the Soviet Union confer to remove the threat to peace and security that the crisis caused.⁶¹

Thus, in this case, both the OAS and the United Nations exercised jurisdiction on the same question. The United States recognized, however, that the OAS was not the appropriate organ in which to settle its dispute with Moscow, even though it might be used to give an appearance of legitimacy to measures that otherwise would require justification under article 51 of the United Nations Charter.⁶²

3. *With the acceptance of the complainant states: The Haitian Case 1963*

The complaint by Haiti against the Dominican Republic in May 1963, showed further evidence of the support of OAS members for maintaining access to the United Nations. On May 5, 1963, the Minister of Foreign Affairs of Haiti sent a telegram to the President of the Security Council requesting, pursuant to articles 34 and 35, paragraph 1 of the United Nations Charter, an urgent meeting of the Council to consider the situation arising from alleged repeated threats of aggression and attempted interference from the Dominican Republic.⁶³ The next day the Permanent Mission of the Dominican Republic transmitted to the Secretary General of the United Nations, through a *note verbale*, the text of a letter from the President of the Dominican Republic to the Chairman of the Council of the OAS. The letter states that his government would agree to cooperate with OAS appointed Commission, acting as Provisional Organ of Consultation, to study the situation *in loco*.⁶⁴

During the Security Council's consideration of this matter,⁶⁵ the representative of the Dominican Republic observed that the OAS was already considering the Haitian government's question. He asserted that the OAS had already taken steps toward finding a peaceful solution to

61. *Id.*

62. L. GOODRICH, E. HAMBRO & A. SIMMONDS, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS 359 (3d ed. 1969).

63. Telegram dated 5 May 1963 from the Minister for Foreign Affairs of Haiti addressed to the President of the Security Council at 2, U.N. Doc. S/5302 (1963).

64. *Note Verbale* dated 6 May 1963 from the Permanent Mission of the Dominican Republic addressed to the Secretary General at 1, U.N. Doc. S/5306 (1963).

65. 18 U.N. SCOR (1035th mtg.) at 1, U.N. Doc. S/PV. 1035 (1963); 2 REPERTORY OF UNITED NATIONS PRACTICE 278-79 (1955).

the problem and therefore should deal with the matter. After quoting the United Nations Charter, article 52, paragraphs 2 and 3, he further stated that those provisions simply applied the principle established in articles 33 and 36. The settlement of international disputes should preferably be implemented by such peaceful means chosen by the parties. He expressed his government's hope that the Security Council would decide to suspend the consideration of the matter and leave it to the OAS.⁶⁶ In the opinion of the representative of Haiti, the dispute was of the same nature as those mentioned in articles 34 and 35, because there was a threat to the peace of the region.

Although the Security Council directed this case to the OAS with the agreement of the complainant,⁶⁷ the debate in the Security Council revealed increasing support among OAS members for the right of members of regional arrangements to bring a local dispute directly to the Security Council. For example, the Representative of Venezuela stated that states should exhaust peaceful settlement procedures at the regional level before seeking United Nations consideration. He added that any member of the OAS had a right to bring a regional controversy to the Security Council.⁶⁸

4. *The Panamanian Case (1964)*

In a letter dated January 10, 1964, the representative of Panama requested that the President of the Security Council, in accordance with articles 34 and 35, paragraph 1 of the Charter, convene an early meeting. He wished the Council to consider urgent matters pertaining to the Canal Zone. According to the Panamanian representative, a tense situation had developed because of repeated threats and acts of aggression committed by the government of the United States in Panama. These acts, he argued, infringed its territorial sovereignty, violated its territorial integrity and constituted in practice a serious danger to international peace and security.

During the meeting of the Council on January 10, 1964, the representative of Panama stated that his country was the victim of an unprovoked armed attack by the United States armed forces stationed in the Panama Canal Zone. He requested the intervention of the Security Council to restore peace and tranquillity in the Canal Zone. He also

66. See 2 TREATY OF RECIPROCAL ASSISTANCE: APPLICATIONS, *supra* note 58, at 161-212 (giving a detailed analysis of this case within the OAS).

67. The Security Council remained seized of the question.

68. 18 U.N. SCOR (1036th mtg.) at 1, U.N. Doc. S/PV. 1036 (1963); 18 U.N. GAOR (Supp. No. 2) at 1, U.N. Doc. A/5502 (1963).

requested that the Security Council find a lasting solution to the question.

The representative of the United States noted that the Inter-American Peace Committee of the OAS had unanimously agreed, pursuant to the request of both governments, to go to Panama to ascertain the facts. He then denied the allegations of United States aggression and stated that the United Nations Charter, in both article 33 and article 52, provided for peaceful settlement of local disputes through regional agencies, as did article 20, now article 23, of the OAS Charter. Without derogating from the responsibilities of the Council, he asserted, local disputes could most effectively be dealt with through regional procedures. While expressing confidence in the OAS' ability to handle the situation, the representative of Brazil stated that the Security Council and should also be seized of the matter, and should, and adopt emergency measures applicable to the case.⁶⁹ Several members of the Security Council, while agreeing that a regional agency could give substantial assistance to the Security Council, supported the proposal of the representative of Brazil. They supported action by the regional organization that might provide the Council with the necessary assistance for handling the problem.

The Panamanian representative stated that the proposal by Brazil was not incompatible with previous OAS action. The United States representative also welcomed the Brazilian proposal. The Security Council directed the question to the OAS and decided that the matter would remain on the agenda of the Council.⁷⁰

C. SHARING OF JURISDICTION

1. *Parallel Action by the Security Council after the OAS had already seized of the matter: The Dominican Republic Case (1965)*

In April 1965, the United States landed armed forces in the Dominican Republic, initially to protect its own nationals and nationals of

69. 19 U.N. SCOR (1086th mtg.) at 44-45, U.N. Doc. S/PV. 1086 (1964). The representative of Brazil suggested the following course of action:

We . . . would like to express our confidence in the OAS' ability to handle that delicate situation. We believe, nevertheless, that the Security Council should also be seized of the matter and adopt measures of an emergency character which might be applicable to the case in issue.

. . . . I would suggest . . . that the President of the Security Council be authorized to address an appeal to the governments of the United States of America and Panama to bring to an immediate end the exchange of fire and the bloodshed now occurring and to request that they exercise the utmost restraint . . .

Id.

70. *Id.*

other countries. At the request of Chile, the Meeting of Consultation of the OAS was convoked on April 30, 1965, pursuant to articles 39 and 40 of the Charter of Bogotá.⁷¹ The agenda specified a discussion of the armed strife in the Dominican Republic.⁷²

On May 1, the Tenth Meeting of Consultation established a Special Committee to aid in obtaining a cease-fire and to assist in evacuating foreign nationals and Dominican citizens. The Committee would also investigate other aspects of the Dominican situation.⁷³ Before the arrival of the Special Committee in Santo Domingo, however, the Papal Nuncio in the Dominican Republic arranged a temporary cease-fire. The Committee then focused its efforts on extending and ratifying the cease-fire. As a result, the parties signed the Act of Santo Domingo on May 5, 1965.⁷⁴

Subsequently, on May 6, the Tenth Meeting of Consultation approved a proposal presented by the United States calling for an Inter-American Force,⁷⁵ the formation of which, *ipso facto*, transformed the American forces in Dominican territory into a multilateral OAS force. At the same time, while the first session of the Meeting of Consultation was taking place on May 1, the Soviet Union requested an urgent meeting of the Security Council to consider the United States armed interference in the internal affairs of the Dominican Republic.⁷⁶

The Security Council took no action during the first few days of discussion. On May 14, the Security Council, responding to an urgent request by Dr. Jottin Cury, who called himself the Minister of Foreign Affairs of the Constitutional Government of the Dominican Republic, unanimously adopted a resolution based on a draft presented by Jordan, Malaysia, and the Ivory Coast that called for a strict cease-fire. The resolution also invited the Secretary General to send a representative to the Dominican Republic to report to the Security Council. Finally, the resolution called for cooperation with the representative of the Secretary General.⁷⁷

71. *Tenth Meeting of Consultation of Ministers of Foreign Affairs*, OAS Doc. OEA/ser.C./II.10 24 (1970) [hereinafter *Tenth Meeting of Consultation*].

72. *Id.*

73. *See id.* at 9 (noting Resolution I: Special Committee to Seek the Reestablishment of Peace and Normal Conditions in the Dominican Republic).

74. *See* THE OAS CHRONICLE, Aug. 1965, at 28-29 (noting the Act of Santo Domingo).

75. *Tenth Meeting of Consultation*, *supra* note 71, at 10-12 (noting Resolution III: Inter-American Force, adopted at 3d Plenary Session, May 6, 1965).

76. 20 U.N. SCOR (1208th mtg.) at 1-2, U.N. Doc. S/PV. 1208 (1965).

77. *Id.* at 6. In compliance with this resolution, No. 203, the United Nations Secretary General sent an advance party to Santo Domingo, under Major General I.J. Rikhye. *Id.* The Secretary General subsequently appointed Mr. Jose Antonio Mayobre,

The members of the Security Council did not challenge the competence of the Security Council to deal with this particular dispute, even though the OAS was still actively involved in obtaining a settlement. As Ana L. Levin pointed out, "the Security Council activities were not limited, as they have been in previous cases, to formal discussion and the adoption of hortatory resolutions."⁷⁸ This was a case of exercising parallel consideration of the same situation, i.e., "concurrent" jurisdiction of both organizations.⁷⁹

Some authors criticized the concurrent jurisdictional roles of the OAS and of the United Nations. For example, F. V. Garcia-Amador, then Director of the Department of Legal Affairs of the General Secretariat of the OAS, considered that in light of previous United Nations practice there seemed to be no justification for the Security Council's action. He stated that:

Since this amounts to an instance of concurrent jurisdiction, intervention by the world organization while the regional agency is making all possible efforts to reach a pacific settlement is a form of 'abuse of power'. The Security Council could very well, as it has done repeatedly in the past, have allowed time for the regional action to produce results, especially inasmuch as some results had already been attained.⁸⁰

The United Nations Secretary General, however, publicly voiced some concern about the role of the OAS in the Dominican Republic.⁸¹

2. *Action by the OAS Meeting of Consultation after the Security Council was seized of the case: The Malvinas Conflict (1982)*

The question of United Nations and OAS competence developed into a new form of parallel action on the part of both organizations as a result of the Malvinas conflict. This case of parallel action was completely different from any previous case that had arisen between the United Nations and the OAS.

then Executive Director of the Economic Commission for Latin America (ECLA), as his personal representative in the Dominican Republic. *Id.*

78. See THE UN-OAS RELATIONS IN THE PEACE AND SECURITY FIELD at 68, 75 UNITAR Publication No. E (1974) [hereinafter RELATIONS IN PEACE AND SECURITY] (noting the statement by Ana Levin).

79. See Moore, *supra* note 45, at 148 (observing that "there seems to be a general understanding that regional organizations may exercise concurrent jurisdiction, at least in the absence of United Nations terminating regional jurisdiction").

80. Garcia-Amador, *The Dominican Situation, The Jurisdiction of the Regional Organization*, AMERICAS, July 1965, at 1, 3.

81. N.Y. Times, May 23, 1965, at 1; N.Y. Times, May 28, 1965, at 1; Garcia-Amador, *supra* note 80, at 3 (1965).

a. *Background*⁸²

On April 1, 1982, when news of an imminent invasion of the Malvinas by Argentine forces began to circulate, the Security Council met in informal consultations. The President of the Council issued a strong appeal for restraint on behalf of that organ to the representatives of Argentina and of the United Kingdom.⁸³

On April 2, Argentine forces invaded the Malvinas. The Security Council met immediately and discussed a draft resolution presented by the representative of the United Kingdom.⁸⁴ The text of this draft was virtually identical to the text of Resolution 502, adopted by the Security Council at its 2350th meeting on April 3, 1982, which demanded an immediate withdrawal of all Argentine forces from the islands and called upon both Argentina and the United Kingdom to seek a diplomatic solution to the fundamental dispute. Immediately thereafter the British government, invoking article 51 of the United Nations Charter, initiated military preparations with the objective of securing the withdrawal of the Argentine forces from the islands, in case of noncompliance with the Security Council demand.

Argentina, at that time, was willing to consider the settlement of its dispute with Great Britain, but would not negotiate sovereignty over the Malvinas. Argentina argued that the Malvinas were part of its national territory which Great Britain had occupied by an act of aggression, by the use of force, since 1833. Therefore, a British invasion to recapture the islands would constitute an act of aggression.⁸⁵

While attempting to recapture the islands by force the British government also used economic and diplomatic means as part of a so-

82. Parsons, *The Falkland Crisis in the United Nations, 31 March-14 June, 1982*, 59 INT'L AFFAIRS 169, 169-78 (1983); Fisher, *Falklands and the U.N.*, N.Y. Times, Apr. 20, 1982, at A27; Connell-Smith, *The OAS and the Falklands Conflict*, THE WORLD TODAY, Sept. 1982, at 340-47.

83. 37 U.N. GAOR (2345th mtg.) at 1, U.N. Doc. A/14944 (1982).

[T]he Security Council, mindful of its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, expresses its concern about the tension in the region of the Falkland Islands (Islas Malvinas). The Security Council accordingly calls on the Governments of Argentina and the United Kingdom to exercise the utmost restraint at this time and in particular to refrain from the use or threat of force in the region and to continue the search for a diplomatic solution. The Security Council will remain seized of the question.

Id.

84. 37 U.N. GAOR (2351st mtg.) at 1, U.N. Doc. A/149472 (1982).

85. See U.N. CHARTER art. 2, para. 3 (prescribing that "[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered").

called "graduated pressure" on Argentina.⁸⁶ A period of intense activity followed in the United Nations. At the same time the United States, through Secretary of State Alexander Haig, made an effort to mediate the dispute. Meanwhile, on April 19, with the British forces ready to engage their Argentine counterparts in the South Atlantic, Argentina requested the convocation of the OAS Organ of Consultation pursuant to articles 6 and 13 of the Rio Treaty.⁸⁷ On April 21, 1982, the Permanent Council of the OAS convoked the Organ of Consultation to consider the "serious situation in the South Atlantic," and decided that the Organ of Consultation should meet on April 26, 1982, in Washington, D.C.⁸⁸ Thus, the OAS took a first step toward creating a potential conflict of jurisdiction.

Although unusual, it is not *per se* inconsistent or in conflict with the jurisdiction of the Security Council for a regional arrangement such as the OAS to deal with a conflict after the Security Council has been seized of the matter. After all, the United Nations and the OAS have essentially the same purposes. In certain situations, their activities may reinforce each other.

b. *Actions of the Twentieth Meeting of Consultation*

The Twentieth Meeting of Consultation acted twice on the Malvinas conflict.⁸⁹ Between April 26 and 28, 1982, the Meeting adopted a reso-

86. FOREIGN AND COMMONWEALTH OFFICE, *THE FALKLAND ISLANDS: THE FACTS* 12 (1982). In addition to unilateral economic sanctions, on April 6, 1982 the British Government formally requested that the European Economic Community (EEC) join in the economic sanctions against Argentina. *Id.* On April 14 the EEC decided to impose a ban on imports of Argentine products. *Id.* On April 17, 1982, other members of the Commonwealth (Australia, Canada, New Zealand) and Hong Kong joined in the EEC action. *Id.*

87. OAS Doc. OEA/ser. G./CP. doc.1253/82 1 (1982); OAS Doc. OEA/ser. F./II.20. doc. 6/82 1 (1982).

88. OAS Doc. OEA/ser. G./CP/SA - CP/RES doc. 493/82 33, 33 (1982) (stating that eighteen countries voted in favor of convocation of the Organ of Consultation and three — Colombia, Trinidad and Tobago, and the United States — abstained). OAS Doc. OEA/ser. G./CP./RES. 360 doc. 493/82 corr. 1 33 (1982); OAS Doc. OEA/ser. F./II.20 doc.4/82 1 (1982).

89. See generally Franck, *Dulce et Decorum Est: The Strategic Role of Legal Principles in The Falklands War*, 77 AM. J. INT'L L. 109, 109-24 (1983) (discussing the Malvinas crisis as a case study of the potential role of international legal principles in world politics, and the danger of ignoring them); Hassan, *The Sovereignty Dispute over the Falkland Islands*, 23 VA. J. INT'L L. 53, 61 (1982) (discussing the practical effect of the Twentieth Meeting of Consultation); Moore, *The International System Snarls in Falklands War*, 76 AM. J. INT'L L. 830, 830-31 (1982) [hereinafter Moore: *Falklands War*] (discussing the actions of the OAS during the Malvinas conflict); Reisman, *The Struggle for the Falklands*, 93 YALE L.J. 287, 287-317 (1983) (discussing other aspects of the Malvinas conflict).

lution urging the government of the United Kingdom to end "the hostilities it is carrying on within the security region defined in article 4 of the Inter-American Treaty of Reciprocal Assistance." The resolution also urged the United Kingdom to refrain from any act affecting Inter-American peace and security, and urged the government of Argentina to refrain from taking any action exacerbating the situation. The resolution additionally urged both governments to call a truce that would make it possible to resume negotiations aimed at a peaceful settlement of the conflict.⁹⁰

No specific decision on the question of jurisdiction resulted from the discussions of the Organ of Consultation.⁹¹ The positions taken by several delegations indicated, however, that a greater number of OAS members would now advocate the right of the American states to submit their regional disputes or situations directly to the United Nations. Four different views on the subject were put forward.

1. States that advocated the exclusive competence of the United Nations

The representative of Colombia took the most extreme view. He stated that the states must approach the question as a disturbance of the peace. Regardless of potential action at a regional level, the authority of the Security Council was paramount, as Resolution 502 had shown. In essence the Delegate of Colombia argued that the Rio Treaty did not apply to the conflict.⁹²

Unfortunately, the reasons he used to draw his conclusions reveal that the Colombian representative utterly misconstrued the purposes of the Treaty and the nature of the OAS as a regional arrangement. In his view, the Rio Treaty did not apply because the Organ of Consultation could not adopt any of the measures provided for in article 8 of that Treaty.⁹³ Therefore, he declared, the weak resolution adopted bore

90. See *Minutes of the Second Plenary Session*, OAS Doc. OEA/ser. F./II.20 doc. 33/82 6-7 (1982) (noting that the resolution was adopted by 17 votes in favor and 4 abstentions (Chile, Colombia, Trinidad and Tobago, and the United States)).

91. Of course, the fact that the Organ of Consultation was convoked, discussed the question and adopted a resolution constitutes in itself evidence that the majority of the members of the OAS that are parties to the Rio Treaty thought (and determined) that they were competent to act in application of that Treaty.

92. That in itself constitutes a controversial view. It is suggested that, *prima facie*, there was no impediment against applying the Treaty if its application would have been consistent with the decision previously adopted by the Security Council, that is to say, consistent with Resolution 502. It is, however, desirable that regional arrangements should not interfere in situations where the Security Council has already taken action.

93. Article 8 of the Rio Treaty provides that "the measures on which the Organ of Consultation may agree comprise one or more of the following: recall of chiefs of diplo-

no relation to any of the mechanisms of collective security of the hemisphere.⁹⁴ According to his interpretation, the Treaty could only apply in situations where the Organ of Consultation could take measures for self-defense or for the maintenance of peace and security.

Neither the provisions of the Treaty nor the practice of the OAS support that interpretation. From the discussions on the Rio Treaty it should be clear that technically the Treaty does not constitute an autonomous system of collective security. On the other hand, the Organ of Consultation had met, sometimes very effectively indeed, in application of the Treaty, without adopting any of the measures provided for in article 8. Furthermore, the Rio Treaty, and the OAS, had been politically useful in certain situations or disputes whenever one or both sides wanted to back down while saving face.⁹⁵

2. *States in favor of concurrent jurisdiction within the framework of Resolution 502*

Two members of the OAS, Chile⁹⁶ and Trinidad and Tobago,⁹⁷ accepted the "concurrent" jurisdiction of the OAS and the Security Council, but strictly within the framework of Security Council resolution 502. The Delegate of Trinidad and Tobago indicated that his country holds the United Nations to be preeminent in establishing and maintaining the rule of international law.⁹⁸ Professor Gordon Connell-Smith has stated that "during the debate, Mexico and Colombia had joined with the United States in arguing that the proper forum for action on the dispute was the United Nations within the framework of Resolution 502, reference to which was made in the preamble of the OAS resolution."⁹⁹

Regarding the United States, Professor Connell-Smith's assessment

matic missions; breaking of diplomatic relations; breaking of consular relations, partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force." Rio Treaty, *supra* note 10, art 8.

94. OAS Doc. OEA/ser. F./II.20 doc. 33/82 23 (1982).

95. Had the Argentine Military Government been willing to use the occasion to back down and accept the proposals made by Secretary of State Haig or by the Secretary-General of the United Nations, or indeed any other proposal, the Rio Treaty would have served a useful purpose. John Drier pointed out that "a scrupulous regard for the sensibilities of sovereignty, the niceties of protocol, and the importance of face-saving formulas characterize most of the handling of inter-Latin American disputes by the OAS." Drier, *supra* note 28, at 32.

96. OAS Doc. OEA/ser. F./II.20 doc. 33/82 rev. 22 1 (1982).

97. OAS Doc. OEA/ser. F./II.20 doc. 27/82 rev. 5-7 1 (1982).

98. *Id.* at 6.

99. Connell-Smith, *supra* note 82, at 345.

is inaccurate. While it is clear that the United States in principle advocated a solution to the conflict within the framework of Resolution 502 of the Security Council, the United States Delegation to the OAS never made any reference to the United Nations as the proper forum.¹⁰⁰ On the contrary, the United States seemed to be very careful to avoid raising the question of OAS jurisdiction vis-à-vis the United Nations.¹⁰¹ The United States explanation for its abstention at the convocation of the Meeting of Consultation and at the adoption of the resolution was that Secretary of State Alexander Haig was still attempting to assist the parties to settle their dispute peacefully. The United States Delegation never said that it abstained because of jurisdiction.¹⁰²

3. States that accepted the jurisdiction of the OAS but argued, in addition, in favor of "freedom of choice" of forum

Ecuador, Nicaragua, and Mexico, while accepting OAS competence, also argued in favor of freedom of American states to choose to bring a regional dispute or situation to either the United Nations or the OAS.¹⁰³ The Delegate of Nicaragua, for example, indicated that on March 25, 1982, his government had complained to the United Nations Security Council of threats of use of force and of aggression against Nicaragua by the United States. He made it very clear that, in his government's opinion, members of the United Nations that are also members of a regional organization have two choices before them in a

100. *Minutes of the Fourth Meeting of the General Committee*, OAS Doc. OEA/ser. F./II.20 doc. 67/82 34 (1982). In fact, it was not until May 27 that the United States position was formally stated within the OAS in a speech delivered by Secretary of State Haig, indicating that "Resolution 502 embodies the principles which must govern our [the Meeting of Consultation] search for peace." *Id.*

101. One could only speculate that the United States position intended to: a) be consistent with views held by the United States in the Guatemala case (1954); the Cuban case (1960-61 and 1962); the Haitian and Panamanian cases (1963 and 1964), and the Dominican Republic case (1965), and b) neutralize the efforts that Nicaragua was making at that time to bring future complaints against the United States directly to the Security Council. In fact, on March 25, 1982, the Security Council heard a statement made by the "Coordinator of the Board of Government of National Reconstruction of Nicaragua" alleging "aggressive activities" carried out against his Government by the United States Administration. 37 U.N. SCOR (2336th mtg.) at 47-48, U.N. Doc. S/PV. 2336 (1982).

102. Thus, after the resolution was approved, the United States Delegate gave the following explanation:

Thank you, Mr. President. I think the United States explained its position on why we abstained. The essence of it was that Secretary Haig's mission was still in a delicate stage, and we want that to be continued.

OAS Doc. OEA/ser. F./II.20 doc. 33/82 17 (1982).

103. Mexico, nonetheless, considered that in the Malvinas case, the Security Council should be the proper forum. *Id.* at 15.

regional situation or dispute. They can use "the collective security of the global organization or they can resort to the collective system within the regional arrangement."¹⁰⁴ This view is not necessarily inconsistent or incompatible with the views of the countries that accepted "concurrent" jurisdiction in the Malvinas case, within the confines of Resolution 502.

The Delegate of Mexico did not actually deny the competence of the OAS in the conflict. He reasoned that the United Nations and the OAS are not parallel organizations, but that the OAS is clearly subordinate to the United Nations. The Mexican Representative concluded that no American state should be deprived of the right to take any matter affecting its vital interests to the Security Council whenever it considers it necessary.¹⁰⁵

4. Implied acceptance by several states of unqualified OAS jurisdiction

The remaining OAS members that participated in the Organ of Consultation seemed to have accepted the competence of the OAS with apparent disregard for the fact that the Security Council was already seized of the question. The Meeting of Consultation resumed its consideration of the conflict on May 27, 1982. By then Secretary of State Alexander Haig had terminated his peace effort and the United States had decided, during the intervening period, to officially support Great Britain. Except for the addition of Resolution II, adopted on May 29, 1982, which involved an action by a regional arrangement that in certain respects is inconsistent with the decisions of the Security Council, this case added nothing new from the jurisdictional standpoint.¹⁰⁶

c. Jurisdiction and Action of the OAS in the Malvinas Conflict: An Appraisal

As previously pointed out, it is commonly accepted that under certain circumstances, regional organizations may exercise concurrent jurisdiction. At least where the United Nations takes no concrete action to either ban or terminate regional jurisdiction in a specific situation, concurrent jurisdiction occurs.¹⁰⁷ The Security Council seems to have

104. OAS Doc. OEA/ser. F./II.20 doc. 24/82 13 (1982).

105. *Id.* at 21.

106. OAS Doc. OEA/ser. F./II.20 doc. 24/82 rev. 3 corr. 1 1 (1982). This resolution involved an action by a regional arrangement that in certain aspects is inconsistent with the decision of the Security Council. *Id.*

107. Moore: *The Role of Regional Arrangements*, *supra* note 45, at 148; Garcia-

the power to revoke or terminate regional jurisdiction under the provisions of articles 24, 25, 39, 51, 52, and 53 of the United Nations Charter.

Convocation of the OAS Meeting of Consultation to consider the Malvinas conflict was unprecedented as a case of "concurrent" jurisdiction in one particular respect. In previous cases the United Nations and the OAS shared jurisdiction, either because the United Nations itself deferred the question to the OAS,¹⁰⁸ or because the United Nations considered a situation after the OAS originally dealt with it.¹⁰⁹ The OAS has never unilaterally decided to assume jurisdiction after the Security Council had taken action and, as in the Malvinas case, remained seized of the matter.

This case was significant in several other respects with regard to the issue of the jurisdiction or competence of the OAS. First, by the time of the convocation of the Meeting of Consultation, the Security Council had already adopted Resolution 502, demanding immediate cessation of hostilities, withdrawal of all Argentine forces from the Islands, and calling on the governments of both parties to seek a diplomatic solution to their differences. Second, one of the parties in the conflict was a major Western power that was not a member of the OAS, a fact that *a priori* creates a serious obstacle to the effective use of a regional forum. Thus, in the absence of a nonmember's consent, as with the Malvinas conflict, the natural forum seems to be, *ab initio* and exclusively, the United Nations. Third, the OAS machinery can indeed be useful in certain circumstances even after the United Nations has been seized of a question. For example, the machinery has been used according to the imperatives of East-West competition, i.e., in situations involving "non-Western" powers on one side and the major OAS partner on the other. It provides legitimacy to measures that would otherwise require justification under United Nations Charter, article 51, as in the Cuban Missile Crisis.¹¹⁰

Amador, *supra* note 80, at 3; see RELATIONS IN PEACE AND SECURITY, *supra* note 78, at 71 (noting Ana Levin's views concerning concurrent jurisdiction).

108. For instance the Cuban case, first phase (1960), and the Haitian and Panamanian cases (1963 and 1964) respectively.

109. For instance the Cuban missile crisis (1962) and the Dominican Republic case (1965).

110. L. GOODRICH, E. HAMBRO & A. SIMMONDS, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 359 (1969). Of course, one can make a case for anticipatory self-defense under general international law and also under article 51 of the Charter, for the United States' quarantine of October 1962. *Id.* Professor Louis Henkin, however, pointed out that:

[T]he United States government itself refrained from claiming justification under Article 51. United States authorities apparently recognized that to invoke

The Rio Treaty calls for hemispheric military assistance in the event of any armed attack within the region described in article 4. Discussion of jurisdiction therefore mainly focused on whether that Treaty applied to the crisis in the South Atlantic.¹¹¹ The Meeting of Consultation condemned the "unjustified and disproportionate" aggression by Great Britain against Argentina.¹¹²

As Security Council Resolution 502 clearly and conclusively suggested, it is doubtful whether the first use of force by Argentina, regardless of the fundamental question of sovereignty, could be regarded as legitimate under any of the prevailing rules and standards of international law. Consequently, as long as British action remained within the terms of Resolution 502, and being, as it was, an action that had not prejudged ultimate sovereignty over the islands, the application of the Rio Treaty was indeed very doubtful or at least undesirable. Had British action exceeded Resolution 502, applicability of the Rio Treaty, i.e., the question of OAS competence, would have no longer been legally questionable.

Without arguing against OAS competence, Professor John Norton Moore suggested that:

[T]he OAS might have sought to reinforce the peace initiatives of the United States or to recommend that both parties accept international arbitration or jurisdiction of a Special Chamber of the International Court of Justice as Canada and the United States have done in the *Gulf of Maine* dispute. At minimum, the Organization could have endorsed Security Council Resolution 502 calling for an immediate Argentine withdrawal, a cease-fire and negotiations by all parties.¹¹³

This statement essentially reflects the author's view, but merits one important qualification. The order of priority that Professor Moore uses to justify OAS action in this particular case is inadequate and, to a cer-

that article required reading it as permitting any force in "anticipatory self-defense"; any nation could then justify any aggression on the pretext of "anticipatory self-defense". . . . Indeed, to justify our action in Cuba on the basis of article 51 is to read that article as permitting force in circumstances which would not have been deemed 'self-defense' even in the days long before the Charter outlawed force.

57th Annual Meeting of the ASIL: Force, Intervention and Neutrality in Contemporary International Law, in 1963 PROCEEDINGS OF THE ASIL 147, 151-52. See, Akehurst, *Enforcement Action by Regional Agencies with Special Reference to the Organization of American States*, 42 BRIT. Y.B. INT'L L. 175, 197-203 (1967) (offering an extended discussion of the same topic).

111. Chile, Colombia, Trinidad and Tobago, the United States, and, less forcefully, Mexico argued that the Rio Treaty did not apply. These countries, however, did not invoke similar reasoning.

112. See *Resolution II*, *supra* note 15, para. 1 (noting the opinion of the Meeting of Consultation).

113. Moore: *Falklands War*, *supra* note 89, at 830-31.

tain degree, dangerous.

The first and most compelling issue before the OAS, from the point of view of justifying its jurisdiction, was, under the circumstances, to act in absolute conformity with the decision of the Security Council. This meant supporting Resolution 502 in its entirety. The argument that the OAS action could have been justified by virtue of having reinforced the peace initiatives of the United States alone, or that it could have recommended "that both parties accept international arbitration . . ." may, at best, have some practical validity. From a legal standpoint, however, the argument is ludicrous.¹¹⁴ If the Security Council takes a clear and unequivocal decision¹¹⁵ in a situation that falls under Chapter VII of the United Nations Charter, the justification for parallel action by a regional arrangement should not be based on unilateral initiatives of single member states which, not infrequently, have their own vested interests in the outcome of the conflict.¹¹⁶

3. *The situation of Grenada (1983)*¹¹⁷

This Article will not discuss several aspects of legal significance of

114. There is, in addition, a factual error in Professor Moore's argument. On May 29, 1982, when the Meeting of Consultation adopted Resolution II, the United States was no longer engaged in any "peace initiative." Furthermore, paragraph 4 of the resolution states that:

[T]o express its conviction that it is essential to reach with the greatest urgency a peaceful and honorable settlement of the conflict, under the auspices of the United Nations, and in that connection, to recognize the praiseworthy efforts and good offices of Mr. Javier Perez de Cuellar, the Secretary General of the United Nations, and to lend its full support to the task entrusted to him by the Security Council.

Resolution II, supra note 15, at para. 4. Professor Moore then states that the OAS had "also urged the United States 'to refrain' from materially aiding Britain in deference to the principle of 'hemispheric solidarity'." Moore: *Falklands War, supra* note 85, at 831. Curiously enough, however, no mention is made in Professor Moore's editorial comment of the fact that the resolution also "urged the government of the United States of America to order the immediate lifting of the coercive measures" applied against Argentina. *Id.*

115. All members of the United Nations are obligated "to accept and carry out" the decisions of the Security Council, in accordance with article 25 of the United Nations Charter.

116. *America's Falklands War*, THE ECONOMIST, Mar. 3, 1984, at 29; Pincus, *British Got Crucial Data in Falklands*, Wash. Post, Dec. 23, 1984, at 1.

117. See generally UNITED STATES DEPARTMENT OF STATE, GRENADA: A PRELIMINARY REPORT 1 (Dec. 16, 1983) (discussing the Grenada crisis); Massing, *Grenada Before and After*, THE ATLANTIC, Feb. 1984, at 76 (same); Naipal, *An Island Betrayed*, HARPER'S, Mar. 1984, at 61 (same); KEESINGS CONTEMPORARY ARCHIVES, GRENADA, MILITARY COUP-INTERVENTION BY U.S. AND CARIBBEAN FORCES, 120 (1984) (giving an overview of this subject); see also AMERICAN BAR ASSOCIATION, SECTION OF INTERNATIONAL LAW AND PRACTICE, REPORT OF THE COMMITTEE ON GRENADA 1 (Jan. 1984) (discussing the international law implications of the Grenada

the invasion of Grenada, such as the fundamental question of peaceful settlement of disputes and the use of force, as they do not directly relate to the issue of competence. This case is significant from the standpoint of the competence of the OAS vis-à-vis the competence of the United Nations only in that it constituted an intraregional or "local" situation which the OAS has chosen not to address.

The OAS became acquainted with the crisis at a special session of its Permanent Council held on October 26, 1983. At that meeting, some individual member States criticized, ineffectually, the invasion. Neither the Council nor any other OAS body, however, made any specific assertion of jurisdiction regarding the situation in Grenada.¹¹⁸

Notwithstanding the fact that the invasion constituted an obvious breach of the peace within the region described in article 4 of the Rio Treaty, Meeting of Consultation was not convoked to examine this situation, as would be appropriate under articles 3 or 6 of the same treaty. This inaction of the OAS was particularly surprising because during the meeting of the Permanent Council, the majority of the delegations accused the United States, and the other Caribbean states involved in the invasion, of committing an illegal act of armed intervention contrary to both the United Nations and the OAS Charters.¹¹⁹ In fact, in addition to article 8, paragraph 4 of the OECS Treaty, articles 22 and 28 of the OAS Charter were invoked as the legal basis for the invasion. Furthermore, some of the OAS members that participated in the invasion of Grenada, have in similar situations in the past, strongly favored

invasion); Franck, *Of Gnats and Camels: Is There a Double Standard at the United Nations?*, 78 AM J. INT'L L. 811, 811 (1984) (discussing the alleged "double standard" in United Nations treatment of aggression of Western nations and socialist countries); Goldman, *Some International Law Questions Posed by the United States Invasion of Grenada* 1 [on file at ASIL] (discussing the international law implications of the invasion); Joyner, *The United States Action in Grenada, Reflections on the Lawfulness of the Invasion*, 78 AM. J. INT'L L. 131, 131 (1984) (examining the law governing such situations and making recommendations for future legal reflection); Moore, *Grenada and the International Double Standard*, 78 AM. J. INT'L L. 145, 153-59 (1984) (discussing the politicization of the rule of law in the context of the debate over the invasion of Grenada); Thornbide, *The Grenada Crisis*, THE WORLD TODAY, Dec. 1983, at 468 (discussing the invasion); Vagts, *International Law Under Time Pressure: Grading the Grenada Take-Home Examination*, 78 AM. J. INT'L L. 169, 172 (1984) (discussing the Grenada situation); Nanda, *The United States Armed Intervention in Grenada-Impact on World Order*, 14 CAL. W. INT'L L.J. 395, 395-401 (1984) (same); Boyle, Chayes, Dore, Falk, Feinrider, Ferguson, Fine, Nunes & Weston, *International Lawlessness in Grenada*, 78 AM. J. INT'L L. 172, 172 (1984) (deploring the invasion as a violent intervention into the affairs of another country).

118. OAS Doc. OEA/ser. G./CP./ACTA doc. 543/83 2 (1983).

119. *See id.* (noting the statements made during that session, among others, by the Representatives of Colombia, Mexico, Peru, Argentina, Ecuador, Bahamas, the Dominican Republic, Venezuela, Brazil, Honduras, Chile, Uruguay, and Nicaragua).

the competence of the OAS, disregarding rules clearly established, *inter alia*, in articles 24, 34, 35 and 103 of the United Nations Charter. The United Nations General Assembly, on the other hand, adopted a resolution in November 1983 that deeply regretted the use of force as a solution to the problem of Grenada.¹²⁰ Thus, the OAS was bypassed when, as a matter of law, OAS competence seems clearer in the Grenada case than in the Malvinas case. Grenada involved an action by members of the OAS.

4. *The Nicaraguan case (1983)*

As early as March 25, 1982,¹²¹ the government of Nicaragua complained to the Security Council of aggressive activities carried out by the United States Administration against the Sandinista revolution and the government of Nicaragua. On March 23, 1983, the Security Council met to consider a Nicaraguan complaint of "a grave increase of acts of aggression against Nicaragua and the Sandinista People's Revolution." The Nicaraguan government claimed that a situation existed that endangered international peace.¹²² Referring to the formulation of the complaint, the representative of the United Kingdom commented:

I assume that, by definition, the Council is not being asked to consider the internal affairs of Nicaragua. The "Sandinista People's Revolution" is an internal matter for the people of Nicaragua. The essence of the complaint, therefore, is aggression against Nicaragua.¹²³

Between March 23 and March 29, 1983, the Security Council held eight meetings to consider the complaint of Nicaragua. The Security Council did not make a decision, but remained seized of the situation. At the end of its 2427th meeting, however, the President of the Council for the month of March, Sir John Thomson, speaking as the Representative of the United Kingdom, suggested that the Security Council should "assist in bringing . . . a dialogue into being, and that the good offices of the Secretary General could be an effective means toward that end"¹²⁴

In Washington the following day, the Representative of Honduras to

120. See G.A. Res. 38/7, 38 U.N. GAOR (43d plen. mtg.) at 19-20, U.N. Doc. A/38/47 (1983) (concerning the situation in Grenada and the action of the United Nations Secretary General immediately after the General Assembly adopted Resolution 38/7).

121. OAS Doc. OEA/ser. F./II.20 doc. 24/82 rev. 3 corr. 1 1 (1982).

122. Letter Dated 22 March 1983 from the Representative of Nicaragua Addressed to the President of the Security Council, U.N. Doc. S/15651 (1983).

123. 38 U.N. SCOR (2427th mtg.) at 37, U.N. Doc. S/PV. 2427 (1983).

124. *Id.* at 42.

the OAS requested a meeting of the Permanent Council of the OAS to discuss a proposal made a few days earlier within the Permanent Council by the Foreign Minister of Honduras. The proposal urged the Central American nations, especially Honduras, Costa Rica, El Salvador, Guatemala, and Nicaragua, to initiate at the earliest possible date, a process of overall and regional negotiations, to reach responsible, serious and lasting agreements to restore the peace and security of Central America.¹²⁵ When the OAS Permanent Council met on April 5, 1983, Honduras submitted a draft resolution essentially based on this proposal. The Representative of Nicaragua, without rejecting the possibility of a dialogue within the OAS, indicated that Nicaragua had already submitted a complaint to the Security Council and that, consequently, the question was now under the jurisdiction of the United Nations. He also mentioned that the consideration of this question was still open at the United Nations. The Nicaraguan Representative reiterated the position of Nicaragua in favor of the freedom of OAS members to choose, in situations of this nature, either the United Nations or the OAS as forum.¹²⁶

The Nicaraguan Representative then suggested that any attempt to find a solution for the Central American crisis through the Honduran proposal would be a "waste of time." He maintained that the principal cause of the situation was United States policy, and implied that the Honduran proposal was, in fact, a United States stratagem designed to place Nicaragua in a disadvantageous negotiating position vis-à-vis four Central American states strongly influenced and dominated by the United States.

To reinforce his argument in favor of the exclusive jurisdiction of the United Nations, the Representative of Nicaragua asserted that a meeting of the Central American nations would be pointless because Nicaragua was on good terms with Guatemala. He claimed that whatever problems existed with Costa Rica at the time were in the process of bilateral resolution. With regard to El Salvador, he said, there were only unfounded accusations by the United States government. The Nicaraguan Representative admitted that at the time, his country's major difficulty was with Honduras, though not with Honduras *per se*. The problems, he claimed, existed only insofar as that government had given in to United States pressure and had allowed bands of irregulars

125. OAS Doc. OEA/ser. G./CP. doc. 1354/83 1 (1983). The use of the adverb "especially" in that context is rather curious. Since Belize is not a member of the OAS, there are no other nations in Central America to which the letter could have referred.

126. Minutes of the special meeting of the Permanent Council of the OAS, April 5, 1983, OAS Doc. OEA/ser. G./CP./ACTA doc. 520/83 24-28 (1983).

trained, financed and supervised by the United States solely in order to "destabilize" the Sandinista government, to use Honduran territory.

The Permanent Council of the OAS took no action on April 5. It met again on April 11 to continue discussing the jurisdictional question and eventually the Honduran proposal. Colombia, however, one of the members of the Contadora Group,¹²⁷ requested a deferral until a later date. In the course of the discussion some countries voiced concern over the jurisdictional question, particularly because the Security Council had already begun considering the Nicaraguan complaint which appeared to be closely connected with the proposal made by Honduras at the OAS.

Meanwhile, at the United Nations, in a letter addressed to the President of the Security Council on April 6, 1983, France gave its support to the proposal made in the Security Council by the representative of the United Kingdom that the Secretary General should, with his consent, be entrusted with a mission of good offices in Central America.¹²⁸ Two days later the United States Representative presented the position of her Government in a letter. The letter stated that the OAS had already been seized of the problem in Nicaragua. In accordance with United Nations Charter, article 52, regional problems are best solved at the regional level. The United States therefore supported the regional efforts already underway, including those in the OAS, to address the issue.¹²⁹ The same day, El Salvador submitted a letter to the Security Council supporting the call for "a regional dialogue with no exclusions." The Salvadoran letter also suggested that:

Inasmuch as there now exists a concrete initiative to that end in the form of a draft resolution submitted to the Permanent Council of the Organization of American States (OAS), which is the appropriate regional forum, my government supports that initiative as a serious and viable effort for the cause of peace

127. Four countries formed the group: Mexico, Venezuela, Colombia and Panama. The group was named after an island off Panama's Pacific coast where their peace initiative was launched in January 1983. Support to this group was subsequently given by resolution 530 of the Security Council in Resolution 38/10 of the United Nations General Assembly, as well as Resolution AG/RES. 675 (XIII/0/83) of the General Assembly, of the OAS. On October 1984 the Contadora Group, with the consent of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, adopted the *Act of Contadora for Peace and Cooperation in Central America*, OAS Doc. OEA/ser. G./CP./INF. 2222 1 (1984).

128. Letter Dated 6 April 1983 from the Permanent Representative of France to the United Nations Addressed to the President of the Security Council at 1, U.N. Doc. S/15689 (1983).

129. Letter Dated 8 April 1983 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council, at 1 U.N. Doc. S/15694 (1983).

in the Central American region.¹³⁰

The Permanent Representative of Honduras to the United Nations, in a letter addressed to the President of the Security Council pointed out that:

Both Nicaragua and Honduras had a regional and continental commitment, as members of the Organization of American States, whose Charter clearly stated that disputes between member countries should be submitted to the procedures provided for in the Charter before they could be taken to the United Nations Security Council.¹³¹

The views expressed in the United States and in the Salvadoran letters asserted that the OAS had already agreed to deal with the Honduran proposal. As stated, however, the OAS did not reach a decision either with regard to the jurisdictional question or with regard to the Honduras proposal. Interestingly, during the proceedings before the International Court of Justice in the Nicaraguan case the United States agents, in referring to the primary responsibility of the Security Council for the maintenance of peace and security, contended that article 24, paragraph 1 of the United Nations Charter takes into account not only the General Assembly of the United Nations, but also the role of regional arrangements or agencies as recognized in article 52 of the Charter.¹³² The United States also argued that the Contadora Process, endorsed in the United Nations and in the OAS as the accepted mechanism for addressing the conflict in Central America, constituted a regional arrangement under article 52 of the Charter.¹³³

Since 1983, the OAS General Assembly, the United Nations Security Council, and the United Nations General Assembly have, on several occasions, supported and endorsed the work of the Contadora Process and that of its Support Group.¹³⁴ These endorsements, however, should

130. Letter Dated 8 April 1983 from the Permanent Representative of El Salvador to the United Nations Addressed to the President of the Security Council at 1, U.N. Doc. S/15691 (1983).

131. Letter Dated 11 April 1983 from the Permanent Representative of Honduras to the United Nations Addressed to the President of the Security Council at 2, U.N. Doc. S/15700 (1983).

132. Counter-Memorial of the United States of America, (Nicar. v. U.S.) 1984 I.C.J. Pleadings 1, 188, para. 6 (Aug. 17, 1988). Concerning the allocation of residual responsibilities for the maintenance of international peace and security, it should be observed it is not certain that article 24, paragraph 1 "takes into account" regional arrangements or agencies. *Id.*

133. *Id.* at 190, 234.

134. *See, e.g.*, OAS G.A. Res. AG/RES. 675 (XIII/0/83), OAS Doc. OEA/ser. P./XIII.0.2 vol. 1 84, 85 (1983) (reaffirming support for the Contadora Group); AG/RES. 702 (XIV/0/84), OAS Doc. OEA/ser. P./XIV.0.2 vol. 1 (1985) (urging the Contadora Group to persevere in reaching an agreement for peace and cooperation);

not be construed as an implied recognition that the OAS was seized of the question. Moreover, the reference to article 52 of the United Nations Charter appears to ignore, *in limine*, the distinction between a dispute and an action covered under Chapter VII of the United Nations Charter which is the subject of the complaint of Nicaragua.¹³⁵

The Salvadoran position categorically concluded that the OAS is the proper forum. The majority of OAS members, however, do not now readily accept this view. Nor does the Office of the Legal Counsel of the OAS General Secretariat support the Salvadoran view. In a recent legal opinion on the subject, that office stated:

At present the sovereign right of each State to choose the forum it considers suitable to take cognizance of an international dispute or of a situation that may endanger international peace and security is recognized; that is to say, primacy has been given to the rule contained in article 35 of the Charter of the United Nations, as a recognition of its regulatory hierarchy and in order not to subject the States, *a priori*, to a certain procedure

. . . .

In conclusion, we consider that at present, the thesis in favor of free selection of the forum prevails.¹³⁶

The ICJ addressed the question of the competence of the Security Council and of regional arrangements *in extenso*, in *Nicaragua v. United States*.¹³⁷ The issue was raised as the result of an objection of the United States to the effect that the existence of a global and regional negotiation process, namely the United Nations Security Council and the Contadora Group, constituted an obstacle to the admissibility of the Nicaraguan application. The United States contended that:

[G]iven the commitment of both Nicaragua and the United States to the Contadora Process, the endorsement of that process by the competent political organs of the United Nations and the [OAS], and the comprehensive, integrated nature of that process itself, the Court should refrain from adjudicating the merits of

AG/RES. 770 (XV/0/85), OAS Doc. OEA/ser. P./XV.0.2 vol. 1 27, 27 (1985) (same); AG/RES. 831 (XVI/0/86), OAS Doc. OEA/ser. P./XVI.0.2 vol. 1 59, 59 (1986) (recognizing the laudable efforts of the Contadora Group and the Support Group to achieve peace in Central America); *see also* 38 U.N. SCOR Res. 530 (1983) (regarding the United Nations organs); *see also* 40 U.N. SCOR Res. 562 (1985) (reaffirming its support to the Contadora Group and urging it to intensify its efforts); OAS G.A. Res. AG/RES. 810 (XIII/0/1983), OAS Doc. OEA/ser. P./XIII.0.2 vol. 1 (1983) (same); A.G. Res. 871 (XVI/0/87), OAS Doc. OEA/ser. P./XVI.0.2 vol. 2 (1987) (same).

135. *See* E.J. DE ARECHAGA, *supra* note 19, at 362 (noting the broad scope of Chapter VII of the United Nations Charter).

136. OAS Doc. OEA/ser. G./CP. doc.1354/83 4 (1983).

137. Case Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicar. v. U.S.*), 1984 I.C.J. 215, 215 (Order of October 4).

the Nicaraguan allegations and that it should hold the Nicaraguan application of 9 April to be inadmissible.¹³⁸

The ICJ considered that the existence of active negotiations such as the Contadora Process that involved both parties should not prevent the Security Council and the Court from exercising their separate functions under the Charter. The Court added that all arrangements that the parties to this case may have made regarding the settlement of disputes or ICJ jurisdiction are subject to the United Nations Charter, article 103.¹³⁹

CONCLUSION

Analysis of the disputes that have given rise to conflicts of competence between the OAS and the United Nations clearly indicates that such conflicts arise only if an OAS member party to a dispute tries to bypass the regional forum and take the case directly to the United Nations Security Council, when other member states prefer to deal with the same dispute or situation at the regional level. Obviously, if all interested parties to a "local" dispute agree that the United Nations or any other forum or procedure that they find acceptable should deal with a question, then no possibility of a jurisdictional conflict exists.

Members of the international community involved in a serious international dispute have an obligation under the United Nations Charter to endeavor to seek a solution to the dispute by themselves, as provided in article 33 of the Charter. If the dispute persists, the parties, or other United Nations members, can bring it before the Security Council pursuant to article 35, paragraph 1 of the United Nations Charter. Thus, a member of the United Nations, even if not directly involved, may bring a dispute or situation of the nature described in article 34, to the attention of the Security Council or the General Assembly. The United Nations Secretary General also may call to the attention of the Security Council any matter which in his/her opinion may threaten the maintenance of international peace and security. In addition, it is important to note once again that the provisions of Chapter VII of the United Nations Charter regarding "action with respect to threats to the peace, breaches of the peace, and acts of aggression" are not limited in any way by the provisions that regulate the action and functioning of regional arrangements under Chapter VIII.

138. Counter-Memorial of the United States of America, (Nicar. v. U.S.) 1984 I.C.J. Pleadings 1, 237 (Aug. 17, 1984).

139. Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.) 1984 I.C.J. 215, 440 (Order of October 4).

Although article 23 of the OAS Charter provides that disputes that may arise between members of the OAS "shall be submitted" to the procedures set forth in the same Charter,¹⁴⁰ neither that provision nor any other of a similar scope should preempt the right of the members of regional arrangements to choose the Security Council or the United Nations General Assembly, if they believe that regional procedures will not provide a fair or balanced consideration of the dispute in question, and consequently will not serve their interests. Moreover, if those members of the United Nations that are not members of the OAS may bring any dispute or situation, "the continuance of which is likely to endanger the maintenance of international peace and security," to the attention of the Security Council or the General Assembly, it would not be reasonable to assume that in a local dispute or situation to which only OAS members are parties, they should have, in that case, fewer rights than states that are not members of the OAS.

If, for example, an Asian or European state could conceivably bring to the attention of the United Nations organs a controversy involving only members of the OAS, it would be fundamentally unfair in that case to assume that a member of the OAS should not enjoy the same right, notwithstanding the provision of article 23 of the OAS Charter. Furthermore, as Judge Ruda has observed, "it is even less conceivable that [a member of the OAS] should be unable to exercise the rights which it enjoys as a member of the United Nations."¹⁴¹ To accept the proposition that an OAS member cannot have direct access to the United Nations political organs in a case of a "local" dispute without previously submitting such dispute to regional procedures would, in short, be tantamount to admitting that members of the OAS are, with regard to the peaceful settlement of international disputes, at a disadvantage and therefore in a position of inferiority vis-à-vis other United Nations member states that are not members of that regional arrangement.

To recapitulate, the members of the United Nations that are also members of regional arrangements such as the OAS are, according to article 52, paragraph 2 of the United Nations Charter, obligated to "make every effort" to achieve a peaceful settlement of local disputes through regional procedures before referring them to the United Na-

140. See OAS CHARTER art. 24 (requiring direct negotiation, good offices, mediation, investigation, and conciliation, judicial settlement, arbitration, and those which the parties to the dispute may especially agree upon at any time).

141. Ruda, *Relaciones de la O.E.A. y la O.N.U. en cuanto al mantenimiento de la paz y la seguridad internacionales*, 1961 REVISTA JURIDICA DE BUENOS AIRES I-II 15, 39.

tions Security Council. Nevertheless, submission of a dispute or situation to the OAS is not a precondition to submission of the same dispute or situation to the Security Council. The OAS members that are parties to a local dispute, therefore, are under no obligation "first of all," that is to say before submitting the dispute to the consideration of the Security Council, to try to settle the dispute through the methods indicated in article 33, paragraph 1, of the United Nations Charter which, of course, includes as one of the methods "resort to regional agencies or arrangements." As Professor Jimenez de Arechaga pointed out:

[L]es dispositions d'un accord regional ne peuvent être invoqués pour interdire aux pays associés d'avoir acces direct à la juridiction des Nations-Unies, non plus que pour les soustraire, fût-ce temporairement, à l'action protectrice des organes de cette communauté universelle.¹⁴²

Legally this conclusion is supported, *inter alia*, by article 52, paragraph 4 of the United Nations Charter, which qualifies the role of regional arrangements by stating that "this [a]rticle in no way impairs the application of articles 34 and 35,"¹⁴³ and by article 103, which provides that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." The conclusion is further supported by the OAS Charter itself which, in its article 137, states that "none of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations."¹⁴⁴

Finally, the same conclusion is reinforced by the current practice of the organs of the United Nations and of the OAS, and by the opinion of the majority of the members of the OAS as well. To be sure, the Security Council and the United Nations General Assembly are not strictly organs of first instance. They are neither replacements for traditional procedures for peaceful settlement of international disputes, nor are they substitutes for regional arrangements. They were established to "step in" when the traditional procedures mentioned in article 33 of the United Nations Charter or when regional arrangements are

142. *La Coordinacion Des Systemes De L'ONU et de L'Organisation Des Etats Americains Pour le Reglment Pacifique des Differends et la Securite Collective*, in 1 RECUEIL WDES COURS 111, 426 (1964).

143. See *supra* note 16 and accompanying text (noting a similar provision has recently been included in the Protocol of Amendments to the OAS Charter, called the "Protocol of Cartagena de Indias").

144. Article 10 of the Rio Treaty has a similar provision with regard to the application of that treaty. Rio Treaty, *supra* note 10, art. 10.

ineffective or inadequate. The Charter insists, first of all, upon voluntary action by the parties to a dispute. Because of this, traditional methods receive priority. The Security Council and the General Assembly exist to deal with a dispute when other procedures have failed or when a member state is dissatisfied with the handling of a case at the regional level.¹⁴⁵

Beyond that, and apart from the inconsistencies of some legal provisions analyzed above, the majority of cases reviewed within this Article — those of Guatemala, the Dominican Republic, Cuba, and Grenada, as well as the present situation in Central America — conclusively demonstrate that the underlying reasons for the conflicts between the OAS and the United Nations are to be found in the political configuration of the OAS membership and in the imperatives of the East-West competition rather than in the ambiguities of any international instrument.

As the Secretary General of the United Nations recently pointed out with regard to the crisis in Central America:

The situation in Central America has steadily deteriorated with the increasing intrusion of conflicting ideologies, the attempts to impose unilateral solutions to the problems of the region and the resort to force I believe that only by insulating the Central American situation from the East-West conflict and seeking a Latin American solution that takes account of the economic and social needs of the area can a genuine settlement be achieved.¹⁴⁶

On January 20, 1987, the President of Honduras expressed a similar view with regard to the Central American crisis. He recognized that the international factor that exacerbates the crisis in that region is the East-West confrontation. Nevertheless, he said that every possible effort must be made to extricate Central America from that confrontation.¹⁴⁷ Thus, the strictly legal issue concerning United Nations authority versus OAS authority with reference to this, as well as other matters, has been subordinated to more pressing political interests. In other words, the jurisdictional conflicts between the universal and the regional organizations are, as Professor Bowett put it, "politically motivated."

145. It should be observed, however, that for the settlement of strictly legal issues the ICJ, and not the Security Council, is normally the most appropriate forum.

146. 41 U.N. REPORT OF THE SECRETARY-GENERAL ON THE WORK OF THE ORGANIZATION 7 (1986), U.N. Doc. DPI/897-41114-Sept. 1986-15M.

147. See OAS Doc. OEA/ser. G./CP./INF. doc. 2495/87 (1987) (containing the letter of January 20, 1987, from the President of Honduras to the Presidents of the member states of the Contadora Group and the Support Group on the occasion of the visit to Honduras of their Foreign Ministers, accompanied by the Secretaries General of the OAS and of the United Nations).

With regard to its political configuration, contrary to other regional agencies such as the OAU or the Arab League, the OAS is totally asymmetrical, with a military and industrial superpower with global responsibility on one side and a group of weak, mostly undeveloped, states on the other. Thus, when the most powerful member of the OAS was involved in a dispute or situation with a small state, as in the specific cases of Guatemala, Cuba, the Dominican Republic, and the current case of Nicaragua, the regional forum seemed inadequate. It is clear from the analysis of these cases that the power differential within the OAS membership worked to the disadvantage of the smaller countries once the OAS was chosen as a forum. In each of these situations the threat of Communist ideology appears to have been the real justification for advocating their exclusive consideration at the regional level and consequently, the reason for preventing the United Nations from dealing with matters that are clearly under its jurisdiction.

Viewed from a strictly factual standpoint, the ultimate reason appears to have been primarily the determination of the United States not to jeopardize its position by subjecting those cases to the jurisdiction of the Security Council. The United States action intended to maintain control of regional situations within the United States sphere of influence.

Even though from a formalistic vantage point the Guatemalan, the Cuban, or the Nicaraguan situations, among others, could be characterized as "local" or regional, some states of the OAS, in particular those favoring the priority of the regional forum, perceive these situations as basically part of the expansionist policies of the Soviet Union in the Western Hemisphere. That perception usually has the effect of altering the local nature of the disputes or situations and transforming them into disputes of an extracontinental dimension which, *ab-initio*, should not be dealt with by the OAS but by the United Nations.

The United States and other OAS members effectively opposed the Guatemalan and Cuban attempt to take their respective situations to the United Nations. The outcome of the jurisdictional conflicts in the Security Council with regard to these cases meant that, in actual practice, the United Nations relinquished substantial jurisdiction to the OAS on matters under Chapter VII of the United Nations Charter.

With regard to the position of the states that favor the autonomy of the OAS as a forum for the consideration of regional disputes and situations, two other considerations should be added. First is the fact that, by forcing the adoption of regional procedures that are unacceptable to certain states involved in a dispute or situation, the possibility of satisfactorily resolving such cases becomes less likely. Second is the perplex-

ing lack of consistency shown by those same states in support of the OAS as the "proper" forum.

The case of Grenada, for example, demonstrates that states respond selectively to the choice of the regional forum, largely as a function of self-serving objectives and of immediate political considerations. Had Meeting of Consultation been convoked to consider this case, politically it would have been very difficult for the majority of the OAS members not to express their disapproval with regard to the action. In fact, eighteen of those States voiced their strong opposition at a relatively inconsequential meeting of the OAS Permanent Council on October 26, 1987.

Needless to say, the OAS is, in many respects, better equipped than the United Nations to find constructive and satisfactory solutions to regional disputes. The OAS is an established regional agency composed of states that have many historical, cultural and sociopolitical links and a great deal of experience and tradition regarding the peaceful settlement of intraregional disputes. But the OAS is useful and efficacious in helping to resolve intraregional disputes only insofar as the ideological confrontation between the East and West is not one of the factors that actually gave rise to the dispute or situation.