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Human Rights and Non-Intervention in the Inter-American System

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HUMAN RIGHTS AND NON-INTERVENTION IN THE INTER-AMERICAN SYSTEM*

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THE promotion and protection of human rights is a recent and significant innovation in the inter-American system. For more than a decade after its founding, the Organization of American States (OAS) exhibited no particular inclination to undertake a program to provide international protection for fundamental freedoms within member states. The proclamation in 1948 of the highly-vaunted American Declaration of the Rights and Duties of Man[1] and the frequent invocation of "human rights," "universal morality," and "the rights of man" in resolutions and international instruments produced by the regional organization of the American republics amounted to little more than well-intentioned, but quite fanciful, rhetoric.

The long silence of the inter-American system is remarkable when contrasted with the continuing efforts of the United Nations to elaborate an International Bill of Rights and the significant accomplishments of the Council of Europe in implementing on a regional basis the principal values enunciated in the Universal Declaration of Human Rights. The OAS' lack of interest, until quite recently, in undertaking a similar international program to protect human rights in the American republics is a function of several very special factors, the most important of which is the traditional Latin American repudiation of intervention, in whatever form and for whatever reason, in the internal affairs of American states. This article will examine the recent efforts to protect such rights in the American continent within the context of the evolution of the inter-American system and the development within that system of the law of non-intervention.

I. NON-INTERVENTION AND "AMERICAN INTERNATIONAL LAW"

The concept of what Judge Alejandro Alvarez styled "American international law" was not of Latin American origin. Nor was it

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1. Resolution XXX, Ninth International Conference of American States, Bogotá, Colombia, March 30–May 2, 1948, *Final Act* (Pan-American Union 1948), p. 38. For a convenient text, see 43 AM. J. INT'L L. 133 (Supp. 1949).

intended by its Latin American proponents to be applied exclusively by the Latin American states in their relations with one another. Although much of the impetus for the development of a regional international law came from Latin American statesmen and jurists, and a considerable part of its appeal is attributable to the common Hispanic cultural heritage of the nations of Latin America, the idea of a regional system of public order has its source in President Monroe's historic pronouncement of 1823.[2] The American international law expounded by Alvarez, Drago, and the disciples of Calvo developed as a response to the interventionist claims of European creditor states in the latter part of the nineteenth and the beginning of the twentieth centuries, and subsequently as a reaction to the United States' own version of "American public law." The principal object of the regional international law propounded by Latin American jurists was the negation of the European claims and the replacement of the unilateral North American concept of a regional system of public order with one that reflected the interests of all of the American republics.

Because of its predominant economic and military position, the United States had come to regard the New World as its historic sphere of influence and had based its conceptions of national security upon the detachment of the hemisphere from the political affairs of the rest of the world. The Monroe Doctrine, stated as a putative principle of public international law, evolved to express the policy goals of the nation that had fathered it. Until the last decades of the nineteenth century and the resurgence of Manifest Destiny, resort by the United States to the Monroe Doctrine had, with varying degrees of success, been limited to protesting or forestalling new acquisitions of territory in the American hemisphere by extra-continental powers. In 1895, however, the United States invoked the Doctrine in its efforts to have the Anglo-Venezuelan boundary dispute settled amicably. The note of the Department of State to the British Government, which affirmed that the United States would

2. For the text of the pertinent extracts of President Monroe's annual message to Congress, see 6 MOORE, DIGEST OF INTERNATIONAL LAW 401 (1906). The most comprehensive studies of the origins and development of the Monroe Doctrine are the series of volumes by Professor Dexter Perkins: HANDS OFF: A HISTORY OF THE MONROE DOCTRINE (1941); THE MONROE DOCTRINE, 1867-1907 (1937); THE MONROE DOCTRINE, 1826-1867 (1933); THE MONROE DOCTRINE, 1823-1826 (1932). A good documentary history of the Doctrine, including a useful collection of the views of North American and Latin American jurists and statesmen is provided in Judge (then Professor) Alvarez's work in commemoration of the centennary of President Monroe's pronouncement. ALVAREZ, THE MONROE DOCTRINE: ITS IMPORTANCE IN THE INTERNATIONAL LIFE OF THE STATES OF THE NEW WORLD (1924).

regard as a violation of the Monroe Doctrine any pressure brought on Venezuela to yield to British territorial demands, could hardly have been fully satisfactory to Latin American statesmen, some of whom had hoped that the Doctrine merely meant that the United States would insulate the Western Hemisphere from territorial claims by European powers. For, in asserting "a doctrine of American public law . . . long and firmly established and supported, . . ." Secretary of State Richard Olney offered a new and portentous rationale:

> To-day the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition. Why? It is not because of the pure friendship or goodwill felt for it. It is not simply by reason of its high character as a civilized state, nor because wisdom and justice and equity are the invariable characteristics of the dealings of the United States. It is because, in addition to all other grounds, its infinite resources combined with its isolated position render it master of the situation and practically invulnerable as against any or all other powers.[3]

During the administration of Theodore Roosevelt, the United States used the Monroe Doctrine to claim competence to exercise "an international police power" in the New World. Rather than risk European armed intervention to enforce the debt obligations

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3. 6 MOORE, *op. cit. supra* note 2, at 553. In a July 14, 1870, communication from Secretary of State Hamilton Fish to President Grant the Doctrine was described as "a principle of government for this continent and its adjacent islands . . . ." *Id.* at 430. In response to Secretary Olney's pronouncements on the Monroe Doctrine, which he described as "Mr. Olney's doctrines," the British Foreign Secretary, Lord Salisbury, rejected the claim that the Doctrine or its recent invocations were a part of, or sanctioned by, international law:

> [I]nternational law is founded on the general consent of nations; and no statesman, however eminent, and no nation, however powerful, are competent to insert into the code of international law a novel principle which was never recognized before, and which has not since been accepted by the Government of any other country. The United States have a right, like any other nation, to interpose in any controversy by which their own interests are affected; and they are the judge whether those interests are touched, and in what measure they should be sustained. But their rights are in no way strengthened or extended by the fact that the controversy affects some territory which is called American. . . . Mr. Olney's principle that "American questions are for American decision," . . . can not be sustained by any reasoning drawn from the law of nations.

Lord Salisbury to Sir Julian Pauncefote, the British Minister to the United States, Nov. 26, 1895, in *id.* at 563. Less than a month after the transmission of Lord Salisbury's response, a forceful rejoinder on the question of the Doctrine's place in international law was provided by President Cleveland in a special message to Congress on the Venezuelan affair, December 17, 1895:

> Practically the principle for which we contend has peculiar if not exclusive relation to the United States. It may not have been admitted in so many words to the code of international law, but since in international councils every nation is entitled to the rights belonging to it, if the enforcement of the Monroe Doctrine is something we may justly claim it has its place in the code of international law as certainly and as securely as if it were specifically mentioned . . . .

Id. at 577.

of Latin American states, the United States asserted, in the so-called Roosevelt Corollary to the Monroe Doctrine, the right to intervene in the affairs of Latin American states in order to prevent intervention by extra-continental powers.[4] Naturally enough, *Monroísmo* came to be regarded in Latin America as synonymous with the Roosevelt policy of "the big stick" and with the unilateral claim to the right to intervene in the internal affairs of states that failed to conform to the United States' conception of "reasonable efficiency and decency in social and political matters."

The Roosevelt Corollary—and, for that matter, the Olney Pronouncement of 1895 and much of the Latin American policy of the United States until the administration of Franklin Roosevelt—was significant not simply for its implicit denial of the principle of equality of states that underlies the very concept of international law. Of equal importance was the unabashed proclamation, which invariably accompanied the applications of this new version of the Monroe Doctrine, of the superiority of United States political and social institutions and the express denial of confidence in both the standards and the machinery of justice of the Latin American states. Indeed, this lack of respect for the political independence and sovereignty of the Latin American states in "flagrant cases of wrongdoing or impotence" was a faithful expression of the dominant North American conception of American regional law.

It is no coincidence that, while the law asserted by the United States to govern the international relations of states in the Western Hemisphere reflected confidence in her own institutions and standards of justice and suspicion of those of its southern neighbors, the law propounded by Latin American publicists revealed an overwhelming concern for the unlimited independence and territorial integrity of the American states as well as respect for local standards of justice. The "American international law" promoted by Latin American writers and statesmen may indeed have found an appealing rationale in "the spirit of American fraternity," as Alvarez sug-

4. Roosevelt's doctrine of "protective intervention" was asserted in his annual message to Congress in 1904:

> Any country whose people conduct themselves well can count upon our hearty friendship. If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of wrongdoing or impotence, to the exercise of an international police power.

6 MOORE, *op. cit. supra* note 2, at 596-97; also quoted in THE EVOLUTION OF OUR LATIN AMERICAN POLICY: A DOCUMENTARY RECORD 361-62 (Gantenbein ed. 1950).

gested,[5] but the traditional rhetoric of Pan Americanism was not its principal source. The interest of Latin Americans in an American international law was aroused not by "continental solidarity"[6] or *l'esprit international americain*,[7] but rather by a common fear of North American expansionism and a common concern for Latin American political independence. The work of jurists such as Alvarez in elucidating the concept of regional international law, the affirmation and ultimate acceptance of the Drago Doctrine, the persistent assertion of the doctrine that bears the name of Carlos Calvo, and the slow start and unique form of the human rights program of the OAS can be understood only against the background of the United States' historic claim to a special competence in shaping the public order of the Americas and the response to this claim by the Latin American states.

From the time that the Latin American states obtained their independence from Spain and Portugal, they have been acutely concerned with the fundamental problem of national existence: how to maintain the respect of other, more powerful states for their political independence and territorial integrity. The Latin American states are, as Professor S. E. Finer has recently observed, "the oldest of the 'new states.' "[8] Not unlike the emergent states of Africa and Asia in the 1950's and 1960's, the Latin American republics were poor, weak, and fearful of the intentions of larger powers. Turning to international law for the protection of their vital interests, they nonetheless rejected or sought to modify those principles of law which they had played no role in forming and which now seemed to serve only the interests of the large powers.

In their own self-interest, Latin American jurists readily accepted the "two worlds" idea that lay at the heart of the Monroe Doctrine and the Roosevelt Corollary; they also agreed that the separation of the Old World and the New World required the elaboration of an international law responsive to this separate development. In addition, they were receptive to the principle of non-intervention by extra-continental powers in the internal affairs of states in the Western Hemisphere. But they could not have been expected to accept, and they did not accept, the United States' claim that it could exercise an international police power, even where that power was ostensibly

5. Alvarez, *Latin America and International Law*, 3 AM. J. INT'L L. 269, 294 (1909).
6. *Id.* at 336-37.
7. Asylum Case, [1950] I.C.J. Rep. 266, 294 (Alvarez, J., dissenting).
8. Finer, *The Argentine Trouble: Between Sword and State*, in Encounter, Sept. 1965, pp. 59, 66.

designed merely to forestall intervention by European states.[9] What Latin American proponents of an American international law sought, therefore, was a body of law that expressed their common abhorrence both of intervention in their internal affairs and of threats to their political independence.

While realizing the very practical benefits that they might derive from an *American* international law, Latin American statesmen and jurists rejected the contention that the United States was, or could be, the sole source of that law. A true public order of the Americas, they argued, must rest on the recognition of the juridical equality of states: each American state must have an equal voice in formulating that order. Although not unaware of the resulting numerical advantage that the Latin American states would thereby enjoy in matters of common interest, Latin American publicists fully realized that no legal regime for the relations of the American states could possibly serve their purposes without the ratification and cooperation of the wealthiest and most powerful of their number. So it was that in the very years in which the United States was asserting a strongly interventionist doctrine as the settled law of the New World, the convergence of Latin American legal philosophy and diplomatic practice took place. As Professor Samuel Flagg Bemis has observed: "Latin American jurisprudence strained toward the Doctrine of Non-Intervention under whatever circumstances, toward the absolute and unhampered sovereignty of the state, even toward its complete irresponsibility to foreign governments."[10] He continued:

> It was the supreme diplomatic objective of the twenty Latin American republics to write this into a code of "American international law," and to get the United States to ratify it. That would bind the United States against further interventions, even of a protective

9. Professor Bemis, who believes that "[the] Manifest Destiny of imperialism . . . was not the true spirit of American nationality, nor altogether a permanent feature in the history of the Republic," prefers to call this claim to an international police power "protective imperialism." "The New Manifest Destiny, the Cuban question and the war with Spain had ushered in . . . an era of protective imperalism focused on the defense of an Isthmian canal in a passageway between the two seacoasts of the Continental Republic vital to its naval communications and to its security." BEMIS, THE LATIN AMERICAN POLICY OF THE UNITED STATES 140 (1943). It may be observed that few other North American authorities on the United States' Latin American policy in the late nineteenth and early twentieth century have been as unabashedly sympathetic in their assessment of the United States' policy goals and the means chosen to implement them. There is perhaps something revealing about the fact, noted by Professor Charles G. Fenwick, that North American writers have tended to treat the Monroe Doctrine under the heading of self-defense, while Hispanic American publicists have customarily dealt with the same subject matter under the heading of non-intervention. Fenwick, *Intervention: Individual and Collective*, 39 AM. J. INT'L L. 645, 649 (1945).

10. BEMIS, *op. cit. supra* note 9, at 237.

> nature, to prevent European intervention. It would not only secure a renunciation of the right of intervention as commonly understood by the law of nations in the global or universal sense; it also would line the United States up against the right of intervention in the New World by a non-American state, even to protect its subjects against denial of justice.[11]

Although efforts to codify international law ordinarily engage only the interest of specialists, one notable exception was the Latin American movement for the codification of public international law in the Western Hemisphere, a movement that has exercised a profound and prolonged influence on the life of the American continent and which constitutes a unique chapter in the history of international relations. The success of this movement constituted the major political triumph of the Latin American states in the second quarter of the twentieth century. In a series of historic conferences in the 1930's, the American republics codified the United States' renunciation of its claim to be competent to exercise an international police power in the Western Hemisphere and its acceptance of the doctrine of absolute non-intervention.[12] At the Inter-American Con-

11. *Id.* at 237-38.

12. The Drago Doctrine—that "the public debt [of an American state] cannot occasion armed intervention nor even the actual occupation of the territory of American nations by a European power"—was put forward as a corollary to the Monroe Doctrine by the Minister of Foreign Affairs of Argentina during the Venezuelan debt controversy with Great Britain, Germany, and Italy (1902). For the text of the Drago Doctrine, as embodied in Drago's instructions to the Argentine minister to the United States, see 1903 FOREIGN RELATIONS OF THE UNITED STATES 1, reprinted in 1 AM. J. INT'L L. 1 (Supp. 1907). For an illuminating interpretation of the significance of the Drago Doctrine in the context of the historical growth of the "Western Hemisphere Idea," see WHITAKER, THE WESTERN HEMISPHERE IDEA: ITS RISE AND DECLINE 86-107 (1954). Subject to an obligation on the part of a debtor state to accept an offer of arbitration, the doctrine was accepted at the Second Hague Conference (1907). However, this condition proved unacceptable to a majority of Latin American states. These states were unwilling to accept any qualifications upon the prohibition of armed force, intervention, or the occupation of an American state. See BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD 308-25 (1915); SCOTT, THE HAGUE PEACE CONFERENCE OF 1899 AND 1907, at 386-422 (1909); Drago, *State Loans in Their Relation to International Policy*, 1 AM. J. INT'L L. 692 (1907).

At the Havana Conference of 1928, the United States' opposition compelled the withdrawal of a draft treaty that enunciated the principle that no state had the right to intervene in the internal affairs of an American republic. But at the Seventh International Conference of American States, held in Montevideo in 1933, the United States joined the Latin American states in adherence to the Convention on Rights and Duties of States. Article 8 of the convention read as follows: "No state has the right to intervene in the internal or external affairs of another." This instrument marked the first occasion on which the United States had accepted the non-intervention doctrine. Although the United States issued a reservation of its rights by "the law of nations as generally recognized," casting some small doubt on the extent of its commitment to the principle adopted at Montevideo, the breakthrough for the Latin Americans and the trend of North American policy was confirmed by the subsequent withdrawal of United States armed forces or other forms of direct political control from Haiti, the Dominican Republic, and Cuba. Shortly before the inaugura-

ference on Problems of War and Peace, held in Mexico City in early 1945 to lay the groundwork for the post-war reorganization of the inter-American system, the American republics were able to declare that the principle of non-intervention proclaimed at the Montevideo Conference of 1933 and the Buenos Aires Conference of 1936 now constituted a part of the international law of the New World.[13]

The success of the codification movement was in large part the result of the efforts of tenacious Latin American jurists such as Alvarez, and of sympathizers and allies in numerous North American organizations and foundations which were devoted to the cause of peace and the development of international law.[14] Equally important to the success of the movement were the ebbing of imperialist sentiment in the United States and the growing conviction among North

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tion of President Franklin Roosevelt, the Hoover administration had ordered the withdrawal of United States troops from Nicaragua (January 1933).

At the Inter-American Conference for the Maintenance of Peace, held in 1936 in Buenos Aires, whatever doubts may have existed after 1933 about the meaning of the United States' reservation at Montevideo were wiped away by its acceptance of the Additional Protocol Relative to Non-Intervention, which explicitly re-affirmed the doctrine set forth at Montevideo, and in its first article declared "inadmissible the intervention of any [High Contracting Party], directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties." The doctrine of non-intervention was re-affirmed still again, and the Drago Doctrine's proscription of "forcible collection of pecuniary debts" was re-asserted, in the Declaration of Principles of Inter-American Solidarity and Cooperation, promulgated at the Buenos Aires Conference.

In the Declaration of American Principles issued by the Eighth International Conference of American States, held in Lima in 1938, the American republics re-committed themselves to the principle that "the intervention of any State in the internal or external affairs of another is inadmissible."

The Montevideo, Buenos Aires, and Lima conferences codified what some authors have called the doctrine of *absolute* non-intervention. This statement of the doctrine is presumably intended to convey the unique formulation given to the principle of non-intervention in the international law of the Western Hemisphere—one which is explicitly and deliberately designed to prohibit the various forms of intervention permitted under universal customary international law.

The texts of the pertinent documents of the Montevideo, Buenos Aires, and Lima conferences are conveniently brought together in THE EVOLUTION OF OUR LATIN AMERICAN POLICY: A DOCUMENTARY RECORD app. A (Gantenbein ed. 1950).

13. See Preamble to the Act of Chapultepec arts. 5(B) & (G), in 12 DEP'T STATE BULL. 339 (1945), reprinted in 39 AM. J. INT'L L. 108 (Supp. 1945).

14. Among the notable Latin American advocates of codification of "American international law" were Judge Alvarez and Judge Antonio Sánchez de Bustamante y Sirvén. Another was Dr. José G. Guerrero, also a member of the World Court. The North Americans included Elihu Root, the Secretary of State in the administration of Theodore Roosevelt, a long-time president of the American Society of International Law and a leading proponent of United States commitment to international arbitral and judicial procedures. Another, and perhaps the most important of all, was Dr. James Brown Scott. A close friend and collaborator of Alvarez, and a former solicitor of the Department of State, Dr. Scott served for many years as secretary of the Carnegie Endowment for International Peace and president of the American Institute of International Law, an adjunct of the Endowment devoted to the promotion and codification of "American international law." He served for more than thirty years as an editor of the *American Journal of International Law.*

American intellectuals and statesmen that intervention had failed to cure the social and political ailments of the Latin American republics and had failed to accomplish the United States' basic policy objectives. Although the United States remained committed to the political and strategic doctrine that the security of the Western Hemisphere and the security of the United States were indivisible, the rise of aggressive totalitarian regimes in Europe and Asia further emphasized the need for unity in the Americas. The "good neighbor" policy to which Franklin Roosevelt dedicated the United States in his 1933 inaugural address recognized that the most effective means of achieving the hemispheric unity deemed essential to the United States' national security was to enlist the positive cooperation of the Latin American states in a common resistance to intervention by extracontinental powers. Not surprisingly, therefore, the repudiation of the unilateral claim to the right of intervention and the acceptance of the doctrine of absolute non-intervention by the United States was directly related to the development (at the urging of the United States) of a system of mutual consultation on matters affecting the peace of the hemisphere. The system of consultation established in the late 1930's formed the basis of the mutual security system organized after the war to "panamericanize" or "multilateralize" the basic political and strategic tenets of the Monroe Doctrine. One eminent student of the American regional system of public order accurately assessed the inter-relationship of the codification of the doctrine of non-intervention and the development of the regional system of collective defense when he wrote:

> One of the most important factors, if not the most important factor in bringing about the change of policy on the part of the United States was doubtless the adoption, at the same Buenos Aires Conference, of the provisions for general "consultation."[15]

To the apparent satisfaction of both the United States and the states of Latin America, the inter-American system as constituted after the Second World War rested on the twin pillars of non-intervention and hemispheric security.

II. Human Rights and the Inter-American System

In the years after World War II, as the American republics proceeded to organize a regional system of public order, the Latin American states continued to be as much concerned with the re-

15. Fenwick, *supra* note 9, at 656. For a concurring view, and an incisive examination of the relationship of the renunciation of intervention and the evolution of "collective intervention," see Falk, *The Legitimacy of Legislative Intervention by the United Nations*, in Essays on Intervention 31, 36 (Stanger ed. 1964).

affirmation and re-codification of the doctrine of non-intervention as they were with the creation of a system of collective defense. Neither the establishment of a world organization based upon the principles of the sovereign equality of states and the prohibition of the use of force against a state's territorial integrity or independence, nor the freedom-protecting character of the United States' new global role, were sufficient to assuage the traditional Latin American concern for legal protection from hegemonic interventionism. The days of Manifest Destiny were not so distant, and the success of the movement against *Monroismo* was all too recent, for the Latin Americans to abandon their efforts to codify the legal principles they deemed vital to their security and independence.

A. *The Enthronement of the Doctrine of Non-Intervention*

The Charter of the OAS (1948),[16] pursuant to which the consultative machinery of the pre-war Pan Americanism was re-organized as a "regional arrangement" under the United Nations, codified once again the American international law doctrine of non-intervention. Articles 15 and 17 of the Charter give the doctrine its broadest formulation:

> Art. 15: *No State or group of States* has the right to intervene, directly or indirectly, *for any reason whatever*, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.
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> . . .
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> Art. 17: The territory of a State is inviolable; it may not be the object, *even temporarily*, of military occupation or of other measures of force taken by another State, directly or indirectly, *on any ground whatsoever*. No territorial acquisition or special advantages obtained either by force or by other means of coercion shall be recognized.[17]

The other keystone of the modern inter-American system is provided by chapter V of the Charter, which incorporates by reference the Inter-American Treaty of Reciprocal Assistance of 1947 (the so-called "Rio Treaty").[18] As a result, the OAS may be regarded as both a "regional arrangement" under the United Nations Charter and an

16. For a convenient text, see 46 AM. J. INT'L L. 43 (Supp. 1952).
17. *Id.* at 46-47. (Emphasis added.)
18. 21 U.N.T.S. 77, 62 Stat. 1681 (1948).

organization for collective self-defense. The manifold implications of this dual role, and the extent to which the OAS may lawfully act to enforce its decisions with respect to the maintenance of international peace and security without the authorization of the Security Council of the United Nations, remain a subject of considerable controversy.[19] They do not, however, directly concern us at this time.

19. Under the Charter of the United Nations, a distinction may be drawn between "collective self-defense" organizations and so-called "regional arrangements." Article 51 of the Charter provides that nothing in the Charter "shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations." International organizations constituted under this provision, such as the North Atlantic Treaty Organization and the Warsaw Treaty Organization, are required to report only to the Security Council on "measures taken in exercise of this right of self-defense." Chapter VIII of the Charter (articles 52-54), on the other hand, recognizes the complementary role of "regional arrangements or agencies" in "such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations." Drafted in San Francisco to accommodate the demands of the states of the inter-American system for a special role in maintaining the peace and security of the Western Hemisphere, chapter VIII seeks to reach a compromise between the divergent demands of "regionalists" and "globalists." While article 24 of the Charter accords to the Security Council "*primary* responsibility for the maintenance of international peace and security" (emphasis added), chapter VIII envisions prior recourse to an appropriate regional agency in the case of "local disputes." Under chapter VIII, moreover, provision is made for the use by the Security Council of regional agencies for enforcement action "under its [*i.e.*, the Security Council's] authority," and enforcement action by a regional agency without the authorization of the Council is prohibited.

The fundamental question of the extent to which a regional arrangement may operate independently of the universal organization has attracted much attention in recent years, particularly after the adoption of coercive measures by the OAS against the Dominican Republic (1960) and Cuba (1962) and the launching of "peacekeeping operations" in the Dominican Republic in 1965-1966. The discussion has centered on several related issues: whether action taken by the OAS constitutes "enforcement action" so as to require the authorization of the Security Council; whether, if it is to be considered "enforcement action," the Charter requires *prior* authorization by the Council; and whether the failure of the Security Council to take any action with respect to enforcement action undertaken by a regional agency (because of a veto or the threat of a veto by one of the permanent members) may be deemed to constitute authorization. In the case of the OAS, the matter is complicated by the additional factor that the inter-American system is organized not only as a "regional arrangement," but also, under the Rio Treaty of 1947, as a "collective self-defense" organization. The former Legal Adviser of the Department of State has likened the OAS to a "junior grade U.N." whose diplomatic and economic sanctions do not constitute "enforcement action" under the UN Charter and do not, therefore, require the authorization of the Security Council. He has offered the OAS as an "obvious candidate for the peacekeeping role within its regional terms of reference" in the light of the paralysis of the Security Council occasioned by the use or threat of the veto. See Remarks of Mr. Abram Chayes, then Legal Adviser of the Department of State, in *The Inter-American Security System and the Cuban Crisis*, BACKGROUND PAPERS AND PROCEEDINGS OF THE THIRD HAMMARSKJOLD FORUM 37, 47-48 (Tondel ed. 1964). Others have noted the OAS' similarities to NATO and the Warsaw Treaty Organization and have doubted the wisdom of according to such an organization the freedom of action that Mr. Chayes would allow to a putative "junior grade U.N." For discussions of the general problem, see *ibid.*; BECKETT, THE NORTH ATLANTIC TREATY, THE BRUSSELS TREATY, AND THE CHARTER OF THE UNITED NATIONS (1950);

For our present purposes it may be sufficient to note that the individual and collective measures that may be taken under the Rio Treaty were intended to be limited to cases in which a state is subjected to armed aggression, or to cases not involving armed aggression but affecting "the inviolability or the integrity of the territory or the sovereignty or political independence of any American state. . . ."[20]

It is apparent from its constituent instruments that, in its early years, the post-war inter-American system was primarily concerned with the maintenance by each state of absolute and exclusive authority over its own territory, free of extra-continental or intra-continental intervention. It also seems clear that those who signed the OAS Charter in 1948 did not imagine that the OAS would be empowered to undertake "multilateral intervention" or "collective security action" against a member state of the Organization, except perhaps in the limited instance where a state's non-compliance with

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BOWETT, THE LAW OF INTERNATIONAL INSTITUTIONS 135-38, 186-87 (1964 ed.); HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS 169-70 (1963); Bebr, *Regional Organizations: A United Nations Problem*, 49 AM. J. INT'L L. 166 (1955); Halderman, *Regional Enforcement Measures and the United Nations*, 52 GEO. L.J. 89 (1963). For the professedly "pragmatic" or non-"fundamentalist" view, assertedly based on the "working precepts of the American constitutional lawyer," one must turn to the speeches and writings of Professor Abram Chayes and Mr. Leonard Meeker, the present Legal Adviser of the Department of State. See Remarks of Mr. Abram Chayes, *op. cit. supra*; Chayes, *The Legal Case for the U.S. Action in Cuba*, 47 DEP'T STATE BULL. 763 (1962); *Remarks by Abram Chayes*, 1963 A.S.I.L. PROCEEDINGS 10; Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515 (1963); Meeker, *The Dominican Situation in the Perspective of International Law*, 53 DEP'T STATE BULL. 60 (1965). The subject is viewed from a different perspective by Henkin, *Force, Intervention and Neutrality in Contemporary International Law*, 1963 A.S.I.L. PROCEEDINGS 147, and Friedmann, *United States Policy and the Crisis of International Law*, 59 AM. J. INT'L L. 857 (1965). Professor Friedmann's article is a forceful critique of the Chayes-Meeker approach.

20. Article 6 of the Rio Treaty, 21 U.N.T.S. 97 & 99, 62 Stat. 1683 (1948). "In other words, the framers of the [Rio] Treaty did not intend to put into effect the sanctions enumerated in [article 6] unless the circumstances were of a serious and urgent character pressing, in a sense, upon the very political existence of the state." Fenwick, *The Issues at Punta del Este: Non-Intervention v. Collective Security*, 56 AM. J. INT'L L. 469, 471 (1962). The Rio Treaty, as a recent but yet unpublished study of the concept of self-defense in the inter-American system has concluded,

> was not meant to provide . . . a sanctioning competence for the Inter-American System, but to build a structure for self-defence. Yet its application has been quite different, for the Treaty has been used more and more as a substitute for collective security action and collective sanctions, becoming nowadays a punitive machinery and a device to redress the "wrong" done, even if no attempt has been made . . . to show that the OAS was faced by illegal conduct of the State concerned.

Sepúlveda, The Development of the Concept of Collective Self-Defence in the Practice of the Organization of American States (Dissertation submitted for the Diploma in International Law in the University of Cambridge, 1966). In any event, it should be noted that the Rio Treaty calls for individual action (as well as consultation) only in the case of an armed attack upon an American state. Article 6, encompassing any "fact or situation" other than an armed attack, and invoked by some in defense of the United States' unilateral action in the Dominican Republic in 1965, provides a basis only for consultation, and for *collective* action, at most.

the doctrine of non-intervention compelled corrective action by the OAS in order to sustain the doctrine. The scope of permissible "multilateral intervention" would presumably be limited further by article 17's explicit and blanket proscription of military occupation of a state—*even temporarily* and *on any ground whatsoever.*

Unlike the UN Charter, the OAS Charter makes only the most cursory mention of human rights. Moreover, the scant references that do appear do not arise in any context which might conceivably be regarded as qualifying the doctrine of non-intervention. Rather, human rights are mentioned only in the ritualistic manner that has become a familiar, but meaningless, part of the pronouncements of international institutions since the end of World War II. While blandly proclaiming as a principle of the inter-American system "the fundamental rights of the individual without distinction as to race, nationality, creed or sex,"[21] the Charter does not indicate that either the promotion or the protection of human rights is one of the regional agency's purposes. It neither makes reference to, nor appears to envisage the creation of, a body within the Organization devoted exclusively to matters of human rights. It is significant that the principle of non-intervention apparently was intended to apply to the OAS itself, as well as to its individual members.[22] And it is also noteworthy that when the American republics were called upon to consider two draft statements of principles drawn up by the Inter-American Juridical Committee for the Bogotá Conference of 1948—one statement setting forth the "fundamental rights and duties of states" (including, *inter alia,* the doctrine of non-intervention), the other stating "the rights and duties of man"—they chose to incorporate the first but not the second into the OAS Charter. The statement of principles on human rights was issued separately as the American Declaration of the Rights and Duties of Man.[23]

The constituent instruments of the inter-American system reveal the unwillingness of the Latin American states to qualify the prin-

21. Article 5(j) of the OAS Charter, reprinted in 46 AM. J. INT'L L. 43 (Supp. 1952).

22. One critic of the doctrine of absolute non-intervention has reluctantly concluded:

> Whether one regards the OAS as a jural personality distinct from the legal personalities of the individual states of which it is composed or merely as an associated group of states having no existence apart from its members, it is clear that the organization as well as its members is bound by the principle of non-intervention.

Thomas, *Non-Intervention and Public Order in the Americas,* PROCEEDINGS OF THE AM. SOC'Y OF INT'L L. 72, 75 (1959). Elsewhere the same author has concluded that as a result of the OAS' apparent proscription of all forms of intervention "human rights are now less protected than they were under general international law." THOMAS & THOMAS, NON-INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS 390 (1956).

23. *Op. cit. supra* note 1; see Fenwick, *The Ninth International Conference of American States,* 42 AM. J. INT'L L. 553, 563 (1948).

ciple of non-intervention any more than is absolutely required by a collective defense system. If, as Professor Thomas has argued, the "absolute doctrine [of non-intervention] creates difficulties for a system of public order . . . [because] [i]t makes impossible the complete protection through the legal process of 'basic goal values' of the community"[24]—which he takes to include human rights and representative democracy—one must conclude either that the doctrine of absolute non-intervention was specifically intended to create just such difficulties or that these "basic goal values" were not deemed sufficiently clear or compelling to warrant a provision for protective intervention. Without unduly stretching the limits of credibility, one might consider the possibility that the doctrine of absolute non-intervention was simply intended to prevent the hemisphere's dominant power, or a group of states allied to that power, from deciding what these "basic goal values" are and then compelling conformity from the other states in the inter-American system. Moreover, there is considerable evidence to contradict the proposition that the promotion or protection of human rights and representative democracy in the member states was an avowed "goal value" of the OAS. The all-embracing provisions on non-intervention in the OAS Charter and the evident lack of enthusiasm of its drafters for giving the regional agency a human rights role merely confirmed the defeat several years earlier of the so-called Rodríguez Larreta Doctrine, which would have permitted multilateral intervention in cases where the violations of human rights were deemed to affect the peace of the Americas. As J. C. Dreier has observed: "The potential dangers inherent in permitting any kind of intervention were considered greater than the evils which intervention under the Rodríguez Larreta Doctrine was intended to correct."[25] Thus, during the years

24. Thomas, *Non-Intervention and Public Order in the Americas*, PROCEEDINGS OF THE AM. SOC'Y OF INT'L L. 72, 73 (1959).

25. DREIER, THE ORGANIZATION OF AMERICAN STATES AND THE HEMISPHERE CRISIS 95 (1962). The proposal of Dr. Rodriguez Larreta, the Foreign Minister of Uruguay, for "multilateral intervention" in defense of human rights, was contained in a note sent to all of the American republics in November 1945. It constituted a thinly-veiled condemnation of the Perón regime of Argentina and envisaged consultations and collective action against governments which violated American "democratic solidarity" and fundamental freedoms. Although the United States was apparently somewhat receptive to the proposal, only three Latin American states (Guatemala, Panama, and Venezuela) supported the Uruguayan initiative. See RONNING, LAW AND POLITICS IN INTER-AMERICAN DIPLOMACY 68-69, 80 (1963). A related development was the rejection by the Mexico City Conference in 1945 of a Guatemalan proposal that the American states resolve not to recognize "anti-democratic" governments. This relatively modest form of "multilateral intervention" was similarly rejected as inconsistent with the American law of non-intervention. The task of defining "democratic" and "anti-democratic" regimes was regarded as too subjective and unworkable. Ball, *Issue for*

between the Bogotá Conference, which established the Organization, and the Fifth Meeting of Consultation of Ministers of Foreign Affairs in Santiago, Chile, in 1959, the OAS' indifference toward a human rights program closely paralleled its own generally strict adherence to the principle of non-intervention.[26]

It should be mentioned that one small spark of interest in a human rights role for the regional agency had been revealed in 1948 by the promulgation of the American Declaration of the Rights and Duties of Man and the adoption of a recommendation that human rights be protected by a juridical organ and that "where internationally recognized rights are concerned, juridical protection, to be effective, should emanate from an international organ."[27] In addition, the Inter-American Juridical Committee was asked to prepare a draft statute for an Inter-American Court for the Protection of the Rights of Man.[28] However, the vagueness of the resolution, the haphazard manner of its adoption, and the subsequent relegation of

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the Americas: Non-Intervention v. Human Rights and the Preservation of Democratic Institutions, 15 INTERNATIONAL ORGANIZATION 21, 22-23 (1961). On more recent efforts to revive the idea of collective action, in the form of non-recognition, against regimes that have seized power from democratically-elected and constitutional governments, see Fenwick, *The Recognition of De Facto Governments: Is There a Basis for Inter-American Collective Action?*, 58 AM. J. INT'L L. 109 (1964). Apparently oblivious to these revealing decisions with respect to multilateral action in defense of human rights and democratic institutions, Professor Macdonald has categorically asserted that "there is no doubt that the O.A.S. can take common action to protect human rights under article 19 [of the OAS Charter]." Macdonald, *The Organization of American States in Action*, 15 U. TORONTO L.J. 359-70 (1964). Article 19 of the OAS Charter states that "Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 15 and 17 [on non-intervention and territorial inviolability, respectively]." However, the very fact that the enforcement measures permitted by the Rio Treaty and the United Nations Charter are thereby excluded from the doctrine of non-intervention as formulated in the OAS Charter has convinced Professor Thomas of the intention of the framers to bind the OAS itself to the doctrine of non-intervention in matters not directly related to enforcement measures or the inherent right of self-defense. Thomas, *Non-Intervention and Public Order in the Americas*, PROCEEDINGS OF THE AM. SOC'Y OF INT'L L. 72, 75 (1959).

26. This is not to suggest that the OAS had, until then, effectively prevented the alleged interventionist acts of member states, but merely that the Organization itself had remained generally free of charges of interventionism.

27. Resolution XXXI, Ninth International Conference of American States, Bogotá, Colombia, March 30–May 2, 1948, *Final Act* (Pan-American Union 1948), p. 45, quoted in Fenwick, *The Ninth International Conference of American States*, 42 AM. J. INT'L L. 553, 563 (1948); see Inter-American Juridical Committee, *Report to the Inter-American Council of Jurists Concerning Resolution XXXI of the Bogotá Conference (Inter-American Court To Protect the Rights of Man)*, reprinted in ANUARIO JURIDICO INTER-AMERICANO, 1949, at 298 (1950).

28. Resolution XXXI, Ninth International Conference of American States, *op. cit. supra* note 27. See also Freeman, *The First Meeting of the Inter-American Council of Jurists*, 44 AM. J. INT'L L. 374, 380 (1950); Kunz, *The Bogotá Charter and the Organization of American States*, 42 AM. J. INT'L L. 568, 573 (1948).

the subject to a position of insignificance in the work program of the OAS' juridical bodies made it apparent that the proposal was not intended to be taken very seriously. Indeed, the draft statute that the Inter-American Juridical Committee was asked to prepare was not to be considered by a ministerial-level conference until its submission to the next Inter-American Conference, scheduled for five years later, and even then, it was merely to be "studied" by that Conference. Consequently, this one spark of interest in a human rights program was quickly dashed by the Inter-American Juridical Committee, which reported unanimously to the Inter-American Council of Jurists (its parent body) that, in the absence of a body of positive law that might serve as a basis for developing measures of implementation, the Committee would be unable to prepare the draft statute requested by the Bogotá Conference.[29] Clearly, the American Declaration of the Rights and Duties of Man was not regarded as a sufficient foundation on which to build.

In their movement to codify, in much-expanded form, the doctrine of non-intervention enunciated by Drago, the Latin Americans had effectively prohibited only the more obvious forms of "intervention." However, their efforts to codify the much broader principle of non-intervention formulated by Calvo, which in its strictest form would prohibit recourse by aliens to diplomatic interposition in any matter justiciable in an American republic, were begun as early as the first Pan American Conference in 1889. Moreover, despite the firm and continued opposition of the United States and the great majority of non-Latin American authorities in international law, Latin American states have persistently adhered to the Calvo Doctrine, have embodied it in countless constitutions, and have continued to make frequent use of it (through the so-called "Calvo Clause") in concession agreements with foreign corporations.[30] Indeed, their efforts to codify the Calvo Doctrine as a principle of

29. Inter-American Juridical Committee, *supra* note 27; Freeman, *supra* note 28, at 381.

30. See BORCHARD, *op. cit. supra* note 12, at 792; 1 CALVO, LE DROIT INTERNATIONAL THÉORIQUE ET PRATIQUE §§ 204-05 (5th ed. 1896); 3 *id.* § 1278; 6 *id.* § 256. An early and classic statement of the Calvo Doctrine is offered by Harmodio Arias (later president of the Republic of Panamá), *The Non-Liability of States for Damages Suffered by Foreigners in the Course of a Riot, an Insurrection, or a Civil War*, 7 AM. J. INT'L L. 724 (1913). See also Freeman, *Recent Aspects of the Calvo Doctrine and the Challenge to International Law*, 40 AM. J. INT'L L. 121 (1946); Lipstein, *The Place of the Calvo Clause in International Law*, 1945 BRIT. YB. INT'L L. 130. Professor Paul Henri Laurent has traced the origins of the doctrine attributed to Calvo to indemnification cases arising from the Belgian independence war of 1830. Laurent, *State Responsibility: A Possible Historic Precedent to the Calvo Clause*, 15 INT'L & COMP. L.Q. 395 (1966).

American international law continued unabated after the successful codification of the narrower principle of non-intervention and have persisted to this day as one of their major political objectives.

As recently as September, 1965, a juridical body of the OAS re-affirmed in the strongest terms the principle that, in the Western Hemisphere, there exists no duty imposed by international law that aliens be given treatment in any wise different from that accorded to nationals. The Inter-American Juridical Committee re-asserted the traditional Latin American reluctance to have their municipal administration of justice judged by any standard other than their own and strenuously rejected the theory of state responsibility for a denial of justice to aliens.[31] It pointedly declared: "In contrast to the Latin American position, that of the United States is one of continuing to apply nineteenth-century standards set by the European powers, in order to assure a privileged status to foreign firms and to their nationals settled or domiciled abroad."[32] Identifying the Latin American viewpoint with that of other "new countries," the Committee added:

> There is no novelty in the United States position regarding standards that have been praised by the greater powers, standards that their jurists classify as part of universal international law, or simply, with unparalleled modesty, as international law itself.
>
> In these circumstances, those who stubbornly hold to obsolete ideas that are now totally without foundation—if they ever had any, from the moral point of view—can make no contribution to the development of international law in the subject of which we speak. *Rather, the contribution must be made by those who want to establish a different structure that will take into account the presence in the world of new countries and new situations.*[33]

Viewed from the perspective of the historic commitment of the Latin American states to a doctrine of non-intervention that some have come to regard as a doctrine of international irresponsibility,[34]

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31. Inter-American Juridical Committee, *Contribution of the American Continent to the Principles of International Law That Govern the Responsibility of the State*, OAS OFFICIAL RECORDS, OEA/Ser. I/VI.2 (English), CIJ-78 (Sept. 1965). On the work of the Inter-American Juridical Committee and its parent body, see Freeman, *The Contribution of the Inter-American Juridical Committee and the Inter-American Council of Jurists to the Codification and Development of International Law*, PROCEEDINGS OF THE AM. SOC'Y OF INT'L L. 14 (1965).

32. Inter-American Juridical Committee, *op. cit. supra* note 31, at 5.

33. *Id.* at 5-6. (Emphasis added.)

34. See, *e.g.*, the views of Freeman in *Recent Aspects of the Calvo Doctrine and the Challenge to International Law*, 40 AM. J. INT'L L. 121 (1946); and in *The Contribution of the Inter-American Juridical Committee and the Inter-American Council of Jurists to the Codification and Development of International Law*, PROCEEDINGS OF THE AM. SOC'Y OF INT'L L. 21-22 (1965); and the dissenting views of Professor James O. Murdock,

it is not difficult to comprehend why, as late as 1959, the inter-American system remained relatively unconcerned with the promotion of human rights and representative democracy in member states. However, in 1959, certain events occurred which altered that situation.

B. *The Decline of Absolute Non-Intervention*

The OAS' indifference toward human rights problems first showed significant signs of breaking down in August, 1959, when the Fifth Meeting of Consultation of Ministers of Foreign Affairs was convened in Santiago, Chile, to consider the political tension in the Caribbean area. The Santiago conference was primarily concerned with Venezuela's charge that the Trujillo regime of the Dominican Republic had attempted to undermine the government of Venezuela and to assassinate its chief executive. For the previous three decades, the Trujillo government had been the eyesore of the American continent, but, undoubtedly because Trujilloism was not an expansionist idealogy and had remained an insular phenomenon, the OAS had never resolved (as it was later to do in the case of Cuban communism) that the Dominican government was incompatible with the inter-American system, and the OAS had never before considered corrective action. However, the alleged external terrorist activities of the Trujillo regime began to turn the OAS toward the view that violations of human rights and denials of democratic freedoms within member states might affect the peace of the Americas and might thus become a proper concern of the Organization. It is important to stress, however, that it was the Dominican regime's alleged violation of the non-intervention doctrine itself that first prompted the OAS to examine its role in promoting respect for human rights.

As the preamble to the Declaration of Santiago indicates, the representatives to the Fifth Meeting of Consultation concluded that the peace of the Americas "can be effective only insofar as human rights and fundamental freedoms and the exercise of representative democracy are a reality within each one of them."[35] They decided

the North American member of the Inter-American Juridical Committee, in *Contribution of the American Continent to the Principles of International Law That Govern the Responsibility of the State*, OAS OFFICIAL RECORDS, OEA/Ser. I/VI.2 (English), CIJ-61 (Jan. 1962).

35. Declaration of Santiago, Chile (1959), OAS, Fifth Meeting of Consultation of Ministers of Foreign Affairs Aug. 12-18, 1959, *Final Act*, OEA/Ser. C/II.5 (English), p. 5, reprinted in 55 AM. J. INT'L L. 537, 538 (1961). The charges against the Trujillo regime were referred to the Inter-American Peace Committee, which reported in June 1960 that "flagrant and widespread violations of human rights" in the Dominican Republic

that treaty obligations insuring respect for human rights and representative democracy were wanting[36] and consequently asked the Inter-American Council of Jurists to prepare a draft Inter-American Convention on Human Rights modeled after the work of the United Nations and the Council of Europe. The Council was also asked to prepare an instrument creating an Inter-American Court for the Protection of Human Rights[37] and it was resolved to establish an Inter-American Commission on Human Rights, composed of seven members elected in their individual capacity by the OAS Council.[38] The mandate of the new Commission was vague—"to promote respect for human rights" and to "develop an awareness of human rights among the peoples of America"—and the OAS Council was assigned the task of preparing the Commission's statute.

The Inter-American Council of Jurists, meeting in Santiago after the Meeting of Consultation, promptly prepared a draft convention on human rights, including a separate chapter on civil and political rights and another on economic, social, and cultural rights. The draft convention provided for an Inter-American Commission for the

had aggravated international tensions in the Caribbean, and concluded that the Dominican Republic had been guilty of "acts of intervention and aggression" against Venezuela. In August 1960, the Organ of Consultation of the OAS, in its first substantial departure from the doctrine of absolute non-intervention, imposed sanctions for the first time on a member of the organization. It is significant that, in this first departure from the doctrine, the issue of human rights violations by the Dominican regime was very much intertwined with the larger question of aggression and intervention by the Trujillo government. For the text of the Organ's resolution, see 43 DEP'T STATE BULL. 358 (1960). See generally Ball, *supra* note 25.

36. Citing the work of the United Nations and the Council of Europe, the Meeting concluded "that eleven years after the proclamation of the American Declaration of the Rights and Duties of man, . . . the climate in this hemisphere is ready for the conclusion of a convention . . . ." Declaration of Santiago, Chile, *supra* note 35, at 11, quoted in ROBERTSON, HUMAN RIGHTS IN EUROPE 174 (1963).

37. Declaration of Santiago, Chile, Resolution VIII, Part I, *op. cit. supra* note 35, at 11, reprinted in OAS, *Annual Report of the Secretary-General to the Council of the Organization*, OEA/Ser. D/III.12 (English) (1960), p. 21. The Meeting had groped for a formula that would, in the words of Secretary of State Christian A. Herter, "harmonize the common desire to preserve human rights inviolate with absolute respect for the principle of non-intervention." The Times (London), Aug. 13, 1959, p. 8, col. 4. See also *id.*, Aug. 19 & 21, 1959. "The Latin Americans," Miss Ball has quite accurately noted, "have not always recognized the existence of a conflict, or potential conflict, between the principle of non-intervention and the protection of human rights and democratic institutions." Ball, *supra* note 25, at 29. This is amply verified by the work of the Inter-American Juridical Committee over the decades. See, *e.g.*, Inter-American Juridical Committee, *Differences Between Intervention and Collective Action*, OAS OFFICIAL RECORDS, OEA/Ser. I/VI.2 (English), CIJ-81 (Jan. 1966). But in view of the position taken by the Secretary of State of the United States in 1959, and in the light of developments since 1959, the same conclusion would seem to be applicable to the North Americans as well. See note 70 *infra*.

38. Declaration of Santiago, Chile, Resolution VIII, Part II, *op. cit. supra* note 35, at 11, reprinted in OAS, *Annual Report of the Secretary-General to the Council of the Organization*, OEA/Ser. D/III.12 (English) (1960), p. 19.

Protection of Human Rights and for an Inter-American Court of Human Rights. These institutions were expected to function substantially like the comparable bodies in the human rights machinery of the Council of Europe.

The draft convention floundered in different organs of the OAS for seven years, and it was only at the Second Special Inter-American Conference, held in Rio de Janeiro in November, 1965, that there was some indication that it might soon emerge from the wilderness. The Rio Conference sent the 1959 draft convention and two other draft conventions offered by Chile and Uruguay to the Council of the Organization, which was asked to consider the drafts, to hear the views of the Inter-American Commission on Human Rights and other interested organs, and to complete the necessary revisions of the convention within one year. The Conference's resolution also provides that, within three months of completion, the draft convention is to be submitted to governments for observations and suggested amendments. Within a further thirty days, the Council is to convoke an Inter-American Specialized Conference to approve and sign a convention on human rights.[39]

The Commission created at Santiago in 1959 assumed a surprisingly vigorous role in the fulfillment of its vague mandate to "promote respect for human rights." The Council had not carefully defined the Commission's precise role or its rules of procedure.[40] Rather, it merely stated that the Commission was to be "an autonomous entity of the Organization of American States, the function of which is to promote respect for human rights."[41] Its functions and powers were stated in similarly vague fashion,[42] and some of those omitted were

39. Second Special Inter-American Conference, Rio de Janeiro, Brazil, Nov. 17-30, 1965, *Final Act*, Resolution XXIV, OEA/Ser. C/I.13 (English). At last report, the Commission on Human Rights had finished its consideration of the Draft Convention and had submitted an opinion on it to the Council of the OAS, which is still considering the Draft Convention. Letter from Dr. Luis Reque, Executive Secretary of the Inter-American Commission on Human Rights, to José Cabranes, March 22, 1967.

40. For the act authorizing the creation of the Commission, see OEA/Ser. L/V/I.1 (1960).

41. *Id.* art. 1.

42. *Id.* art. 9, stating the Commission's functions and powers, deserves to be quoted at length:

a. To develop an awareness of human rights among the peoples of America;
b. To make recommendations *to the governments of the member states in general*, if it considers such action advisable, for the adoption of progressive measures in favor of human rights *within the framework of their domestic legislation* and, in accordance with their constitutional precepts, approprite measures to further the faithful observance of those rights; [Emphasis added.]
c. To prepare such studies or reports as it considers advisable in the performance of its duties;
d. To urge the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

at least as significant as those enumerated. Its mandate remained the *promotion* of human rights; nothing was said of the *protection* of these rights. Moreover, the important power to consider petitions from individuals and organizations failed to gain the approval of the Council.[43]

Under the circumstances, it was perhaps natural that the Commission should resort to improvisation in defining its role. At its first session, it resolved to interpret its mandate broadly. While acknowledging that it was not "empowered to make any *individual decision* regarding the written communications or claims that it receives involving the violation of human rights in the American states," the Commission decided that "for the most effective fulfillment of its functions, . . . [it would] take cognizance of them by way of information."[44] It thereupon interpreted article 9(b) of its statute to mean that it could address general recommendations to individual members of the OAS (not merely to all of them collectively) based upon the information it had obtained. Also at the first session, the Commission "took note" of thirty communications regarding alleged violations of human rights in American states, thereby taking the first cautious steps in the direction of the *protection* as well as the *promotion* of human rights in the American continent. Yet the Commission remained so dubious of its powers that it requested from the outset that the OAS Council explicitly allow it to "examine communications or claims directed to it by any person or group of persons."[45] Although this authority was not formally granted until the Second Special Inter-American Conference of 1965,[46] the Commission's procedure of "taking note" of petitions and addressing to member states recommendations based upon them amounted to the same thing. This practice had become so familiar by 1961 that the Secretary-General of the OAS could casually observe that "from the

e. To serve the Organization of American States as an advisory body in respect of human rights.

In the performance of its functions, the Commission is directed by article 10 to act "in accordance with the pertinent provisions of the Charter of the Organization and bear in mind particularly that, in conformity with the American Declaration of the Rights and Duties of Man, the rights of each man are limited by the rights of others . . . ." OAS, *Annual Report of the Secretary-General to the Council of the Organization*, OEA/Ser. D/III.12 (English) (1960), p. 19.

43. Scheman, *The Inter-American Commission on Human Rights*, 59 AM. J. INT'L L. 335, 338 (1965).

44. Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its First Session, October 3-28, 1960*, OEA/Ser. L/V/II.1, Doc. 32 (English), p. 13. (Emphasis added.)

45. *Id.* at 10.

46. Second Special Inter-American Conference, *op. cit. supra* note 38, Resolution XXII. The text of the resolution appears at 60 AM. J. INT'L L. 458 (1966).

beginning [the Commission] attended to private individuals' petitions and protests on violations of human rights, both in Cuba and the Dominican Republic."[47]

Thus, from its inception, the Commission became involved on an *ad hoc* basis in the protection of fundamental rights during periods of internal turmoil in member states. Alongside a modest program devoted to the general study and promotion of human rights,[48] the Commission has attempted on a case-by-case basis to use its information-gathering power, its authority to make recommendations to states on measures that might be taken in favor of human rights "within the framework of their domestic legislation,"[49] and its discretionary power to make public its recommendations and conclusions, to protect human rights within member states. The Commission and its secretariat also have undertaken the task of compiling information on alleged violations of human rights in member states. Between the Commission's sessions, the secretariat devotes much of its time to "attending to complaints and claims of violations of human rights, as well as listing communications received in this regard . . . ."[50] The Commission has frequently heard oral testimony of opposition groups and has followed up complaints against the government of a member state by requesting relevant information. It has also requested permission to hold sessions, for informational

47. OAS, *Annual Report of the Secretary-General to the Council of the Organization*, OEA/Ser. D/III.13, Introduction (1961). In 1963 the Secretary-General of the OAS is reported to have "pointed out that the work performed by the Commission responded to the requirements of the American peoples, and that the organizations that were created with vitality and greatness, as was the case with the Inter-American Commission on Human Rights, *could not be limited by the simple device of regulations.*" He reportedly went on to express confidence that the Commission would "extend its activities in behalf of human rights and the effective exercise of democracy." Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Sixth Session, April 16 to May 8, 1963*, OEA/Ser. L/V/II.7, Doc. 28 (Aug. 21, 1963), p. 2. (Emphasis added.) Behind the Secretary-General's rhetoric lies a clear-cut recognition that the Commission's work was largely improvisatory and unfettered by any of the statutes or regulations formulated by the political organs of the OAS.

48. The Commission's "work program" is, in reality, a program of special studies undertaken by different members. They include, *inter alia*, "the political, economic, and social conditions of the countries of Latin America that may influence human rights;" "[the] relation between the promotion and protection of human rights and the effective exercise of democracy;" and a "comparative study of the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, and the corresponding constitutional texts of the American States." Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Third Session, October 2 to November 4, 1961*, OEA/Ser. L/V/II.3, Doc. 32 (Nov. 4, 1961), pp. 13-14.

49. See article 9(b) of the act authorizing the creation of the Commission, quoted in note 42 *supra*.

50. Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Third Session, October 2 to November 4, 1961*, OEA/Ser. L/V/II.3, Doc. 32 (Nov. 4, 1961), p. 8.

purposes, in states charged with violating human rights,[51] and, where it has deemed it necessary, the Commission has transmitted to those states recommendations for corrective action.

The Commission's *ad hoc* approach to the protection of human rights is best illustrated by its activities with respect to human rights in Cuba and in the Dominican Republic. During its third session in 1961, the Commission sent a note to the Government of Cuba requesting information "on some of the more urgent claims," and suggested to that government that "if the imputations made to the Commission were correct . . . [it should] adopt 'progressive measures favoring human rights' within Cuban domestic law."[52] Not long thereafter, the Commission intervened in the aftermath of the abortive 1961 invasion of Cuba to request of the Cuban Government that "the proceedings initiated against the prisoners of the Bay of Pigs be in accordance with the obligations contained in Article 26 of the American Declaration of the Rights and Duties of Man."[53] The

51. For example, in response to communications from Haitian exiles claiming widespread violations of human rights in that republic, the Commission in 1962 requested the permission of the Government of Haiti to hold part of its fifth session there. This request was denied by the Foreign Minister of Haiti, who charged that the Commission was interferring in the internal affairs of Haiti. In a subsequent note to the Government of Haiti, the Commission re-asserted its constitutional authority to undertake such visits, but grudgingly acquiesced in the face of the refusal of the Haitian Government to grant its consent. A similar request was made in 1962 of the Government of Nicaragua, which initially agreed to permit the Commission to sit in the capital city of Managua, but not before the scheduled presidential elections there (as the Commission had explicitly requested). Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Fifth Session, September 24 to October 26, 1962*, OEA/Ser. L/V/II.5, Doc. 40 (Feb. 18, 1963), pp. 7, 9, 10-12, 15. When the Nicaraguan Government refused a second request to visit Managua before the Nicaraguan presidential election (in response to charges of intimidation of voters and other violations of human rights), the Commission concluded that "the [Nicaraguan] Government did not look with sympathy upon the Commission's holding part of its session on Nicaraguan territory for the purpose of ascertaining in reality whether human rights were observed in that country," and expressed regret that it had been prevented "from confirming whether the electoral process in Nicaragua was in accord with the provisions of Article 20 of the American Declaration of the Rights and Duties of Man, approved at Bogotá [in 1948] with the affirmative vote of Nicaragua." Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its First Special Session, January 2 to 23, 1963*, OEA/Ser. L/V/II.6, Doc. 18 (April 25, 1963), p. 6.

52. Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Third Session, October 2 to November 4, 1961*, OEA/Ser. L/V/II.3, Doc. 32 (Nov. 4, 1961), p. 10.

53. Inter-American Commission on Human Rights, *Report on the Situation Regarding Human Rights in the Republic of Cuba*, OEA/Ser. L/V/II.4, Doc. 30 (May 1, 1962), pp. 6-7. Article 26 of the American Declaration, Resolution XXX, Ninth International Conference of American States, Bogota, Columbia, March 30-May 2, 1948, *Final Act* (Pan-American Union 1948), p. 43, reprinted in 43 AM. J. INT'L L. 133 (Supp. 1949), reads:

> Every accused person is presumed to be innocent until proved guilty.
>
> Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing law, and not to receive cruel, infamous or unusual punishment.

Commission also asked that the Cuban Government refrain from applying the death penalty to these prisoners. The Foreign Minister of Cuba challenged the Commission's authority to propose the application of "alien norms to matters in the internal jurisdiction of the Cuban Government" and denounced the Commission for its readiness to intervene on behalf of the invaders while not commenting on the invasion itself.[54] The Commission replied

> that it lacks competence to investigate the siutation referred to in the second part of [the Cuban Foreign Minister's] communication, which inures to the other organs of the Inter-american system; but it does have competence to formulate recommendations to the governments of the American states in cases such as those contemplated in the cablegram to the Government of Cuba [that is, with respect to the prisoners of the Bay of Pigs].[55]

Powerless to proceed any further with the matter, the Commission merely made public its exchange of communications with the Cuban Government and expressed "profound concern" that the proceedings against the prisoners had apparently not conformed to article 26 of the American Declaration of the Rights and Duties of Man.

In 1962 the Commission formally requested permission from the Cuban Government to hold one of its sessions in Cuba in pursuance of its statutory fact-gathering function. This request went unanswered.[56] In 1963, however, with the permission of the United States Government, the Commission held its first special session in Miami, Florida, where a subcommittee conducted hearings on the situation of political prisoners and their families in Cuba, accumulating evidence from more than eighty exiled Cubans. The result was a long report which embodied much of the testimony collected by the Commission and enumerated instances of violations of human rights.[57] The report also charged the Cuban Government with lack of cooperation.

The Commission's varied activities in the Dominican Republic during the past several years is perhaps most illustrative of its capacity to improvise while attempting to protect human rights during domestic political turmoil. In October, 1961, during a period of political unrest following the assassination of Generalissimo Trujillo, the

54. Inter-American Commission on Human Rights, *op. cit. supra* note 53, at 7.

55. *Ibid.*

56. Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Fifth Session, September 24 to October 26, 1962*, OEA/Ser. L/V/II.5, Doc. 40 (Feb. 18, 1963), p. 16.

57. Inter-American Commission on Human Rights, *Report on the Situation of Political Prisoners and Their Relatives in Cuba*, OEA/Ser. L/V/II.7, Doc. 4 (May 17, 1963).

Commission was allowed to visit the Dominican Republic in order "to enlarge its study of the situation regarding human rights in that country with an on-the-spot analysis of facts denounced in numerous communications."[58] During its visit, the Commission conducted a series of interviews with government and opposition groups in the capital and in provincial cities; it received written and verbal complaints of violations of human rights; and, shortly before departing for Washington, it gave the Dominican Foreign Ministry a list of persons who were apparently under detention by the regime but whose whereabouts were unknown. Upon its return to Washington, the Commission drafted a note to the Government of the Dominican Republic, bringing to its attention a series of abridgments of human rights which were observed during its visit.[59] The Commission subsequently issued a report[60] in which it condemned the regime of the late Generalissimo Trujillo for "the most flagrant violations of human rights" and noted that "serious violations continued" under the incumbent regime of Dr. Joaquín Balaguer.[61]

In late April, 1965, an uprising in the Dominican Republic precipitated the unilateral armed intervention of the United States. This intervention, the first of its kind in more than three decades, has at different times been supported by high officials of the United States Government as a humanitarian intervention and as an effort to prevent "the establishment of another communist government in the Western Hemisphere."[62] The United States' action was subsequently approved by the Tenth Meeting of Consultation of Ministers of Foreign Affairs, which agreed to send a conciliation group to the Dominican Republic. The Meeting subsequently established an Inter-American Peace Force, whose purpose would be

> that of co-operating in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants

58. Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Third Session, October 2 to November 4, 1961*, OEA/Ser. L/V/II.3, Doc. 32 (Nov. 4, 1961), p. 4.

59. *Id.* at 6-7.

60. *Report on the Situation Regarding Human Rights in the Dominican Republic*, OEA/Ser. L/V/II.4, Doc. 32 (May 22, 1962).

61. In 1963, a complaint to the OAS Secretary-General by four leaders of political organizations in the Dominican Republic was referred to the Commission, which was then in the midst of its sixth session. With the permission of the Dominican Government, the Commission travelled for a second time to the Dominican Republic. After discussions with all sides to the controversy, the Commission withdrew without further comment. Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Sixth Session, April 16 to May 8, 1963*, OEA/Ser. L/V/II.7, Doc. 28 (Aug. 21, 1963), p. 14.

62. The late Adlai E. Stevenson, then ambassador of the United States to the United Nations, quoted in The Times (London), May 4, 1965, p. 12, col. 5.

and *the inviolability of human rights, and the establishment of an atmosphere of peace and conciliation that will permit the functioning of democratic institutions.*[63]

The events which led to the collapse of the doctrine of absolute non-intervention and the full-bodied re-emergence of the doctrine of "counter-intervention" were also the occasion for the most dramatic and significant chapter in the seven-year history of the Inter-American Commission on Human Rights. On May 25, 1965, the Secretary-General of the OAS requested that the Commission on Human Rights send a delegation to Santo Domingo. Its presence was "essential and urgent," said the Secretary-General, "in view of numerous denunciations of violations of human rights formulated by both parties."[64] By June 1, 1965, the chairman and executive secretary of the Commission had arrived to assist the other OAS groups in the Dominican Republic in fulfilling the Organization's objective of protecting human rights and establishing "an atmosphere . . . that will permit the functioning of democratic institutions." The Commission's work was, necessarily, wholly improvised. It interviewed representatives of both factions and secured their signatures on a document which bound their "governments" to respect the principles embodied in the American Declaration of the Rights and Duties of Man and "to provide the Commission with all the facilities essential for the fulfillment of its mission."[65] The Commission visited places of detention of both factions and, in some instances, procured the release of prisoners; it negotiated permission for the unloading of ships carrying food and medicines; it secured diplomatic asylum in the embassies of other American republics for diverse political figures and secured for others permission to leave the Dominican Republic.

In a report on his labors in the Dominican Republic, the chairman recommended that a "representation" of the Commission remain in that country "continuously, for the purpose of observing and solving problems relating to human rights."[66] He later recommended that the Commission remain in the Dominican Republic "in order to watch over the rights of the individual *in accordance with the precepts of the Commission itself*, and providing that it is so autho-

63. OAS, *Tenth Meeting of Consultation of Ministers of Foreign Affairs*, Doc. 39 (English) Rev. Corr. (1965), reprinted in 52 DEP'T STATE BULL. 863 (May 31, 1965), and 59 AM. J. INT'L L. 987 (1965); and in 4 INTERNATIONAL LEGAL MATERIALS 594 (1965). (Emphasis added.)

64. OAS, Tenth Meeting of Consultation of Ministers of Foreign Affairs, *Situation Regarding Human Rights in the Dominican Republic (Preliminary Report)*, OEA/Ser. L/V/II.12, Doc. 2 Rev. (June 23, 1965), p. 1.

65. *Id.* at 5-6.

66. *Id.* at 22.

rized by the provisional government that is established in the Dominican Republic."[67] On September 27, 1965, the Provisional Government of the Dominican Republic—constituted by an OAS-procured agreement of all factions to govern the country until the elections scheduled for June 1, 1966—invited the Commission to remain in the country until the freely elected government was installed in power. The Commission promptly accepted the invitation to continue its informal efforts to protect human rights.

The Commission's role in the aftermath of the civil strife and unilateral intervention of the United States has been described by one of its own members, without undue exaggeration, as "the most constructive contribution of the inter-American system in the Dominican Republic."[68] It is significant, however, that a report by the same member on the Commission's work in the Dominican Republic, including a description of the legal bases for the Commission's activities there, has been kept confidential, available only for the use of the members of the Commission.[69]

Nonetheless, the doubts which may have existed concerning the Commission's improvisations over the past seven years appear to have been largely dispelled by the action taken by the Second Special Inter-American Conference, held in Rio de Janeiro in November, 1965.[70] In effect, the Conference confirmed the powers which the Commission had already exercised on the basis of its own liberal interpretation of its statute.

III. Prospects for the Future

The new interest of the OAS in a program to promote human rights in the Western Hemisphere has accompanied the erosion since 1959 of the doctrine of absolute non-intervention. Although the litany of absolute non-intervention continues to be sung in the foreign ministries of all the American republics, regardless of their views of the recent events, and although a high official of the Department of State responsible for the direction of Latin American policy has vigorously denied (even after the Dominican affair of 1965-1966) that the doctrine of non-intervention is obsolete,[71] there seems to be little

67. Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Eleventh Session (Special), July 21 to 23, 1965*, OEA/Ser. L/V/II.12, Doc. 10 (Sept. 20, 1965), p. 6. (Emphasis added.)

68. Dr. Carlos Dunshee de Abranches of Brazil, in *id.* at 7.

69. *Id.* at 6.

70. Second Special Inter-American Conference, *op. cit. supra* note 39, Resolution XXII, reprinted in 60 Am. J. Int'l L. 445, 458 (1966).

71. Mr. Thomas C. Mann, then Under Secretary of State for Economic Affairs and generally acknowledged to be a principal spokesman and policy-maker with respect

doubt that the much-cherished American international law of non-intervention has undergone a profound metamorphosis since 1959. In January 1962, the Eighth Meeting of Consultation of Ministers of Foreign Affairs, meeting in Punta del Este, Uruguay, condemned adherence to communism as incompatible with the inter-American system, excluded the Cuban Government from participation in the system, and resolved to impose a series of political and economic sanctions against Cuba.[72] In October, 1962, in the case of the Cuban "quarantine," the OAS acquiesced for the first time in the open use of military force against another American republic. And in April, 1965, the United States on its own authority landed its armed forces in the Dominican Republic, ostensibly to preserve the lives of foreign nationals,[73] but more probably to forestall what it feared would be the "establishment of another communist government in the Western Hemisphere."[74] This re-assertion by the United States of an

to Latin America, in *The Dominican Crisis: Correcting Some Misconceptions*, 53 DEP'T STATE BULL. 730 (1965). Mr. Theodore Draper has noted that, in the midst of the Dominican affair and recurring charges that the United States had abandoned adherence to the policy of non-intervention codified since the 1930's in the basic instruments of the inter-American system, Secretary Mann "had criticized both the OAS and the U.N. Charters for having been drawn up in '19th century terms.'" Draper has also observed that it was another high official of the Department of State, Mr. W. Averell Harriman, who had told a group in Montevideo (again, in the midst of the Dominican intervention) that the doctrine of non-intervention was becoming "obsolete." Draper, *The Dominican Crisis: A Case Study in American Policy*, in Commentary, vol. 40, no. 6, Dec. 1965, pp. 33, 66, citing the New York Times, May 7 & 9, 1965, and Look, June 15, 1965.

72. For a survey of the Punta del Este Conference and its implications for the inter-American system, see Macdonald, *The Organization of American States in Action*, 15 U. TORONTO L.J. 359, 382-95 (1964). See also, Fenwick, *The Issues at Punta del Este: Non-Intervention v. Collective Security*, 56 AM. J. INT'L L. 469 (1962).

73. Mann, *supra* note 71; Meeker, *The Dominican Situation in the Perspective of International Law*, 53 DEP'T STATE BULL. 60 (1965).

74. President Johnson and the Department of State initially maintained that the United States' intervention was undertaken to preserve the lives of foreign nationals. After the United States' commitment of troops increased, however, officials in Washington began to speak of a "second stage" in the intervention, in response to what Under Secretary of State Thomas C. Mann characterized as "a clear and present danger of the forcible seizure of power by the Communists." President Johnson spoke equally plainly to a group of visitors to the White House: "We don't propose to sit here in our rocking chairs with our hands folded and let the Communists set up any Government in the Western Hemisphere." Mr. Leonard C. Meeker, the Legal Adviser of the Dominican affair. Although he has said that "we might simply have invoked the we did not pursue some particular legal analysis or code, but instead sought a practical and satisfactory solution to a pressing problem." As the Department's problem became ever more pressing, its search for a "practical and satisfactory solution" led it to the conclusion that the United States had actually landed its armed forces in the Dominican Republic in order to bring an end to a civil war and to maintain minimum public order. This third explanation for the United States' unilateral action appears to form the basis for Mr. Meeker's non-"fundamentalist" and retrospective analysis of the Dominican affair. Although he has said that "we might simply have invoked the Monroe Doctrine," Mr. Meeker apparently rejected that rationale, not because the

international police power in the New World was not merely subsequently endorsed by the OAS, but the "peace-keeping" operation of its ostensible surrogate was assumed by the Organization.[75] The invocation of the notion of "multilateral intervention" or "collective intervention" and the continuing controversy over the latitude afforded to regional arrangements under the UN Charter must not obscure the simple fact that the territory of an American republic was occupied by the armed forces of another, in contravention of the fundamental tenet of the inter-American system. These developments, as well as the formation and operation of the Inter-American Commission on Human Rights, the progress toward the adoption of an inter-American convention on human rights, and the launching of an ambitious program for the economic development of Latin America, have reflected the growing recognition that the public order of the American continent may be threatened as much by internal forces within the American republics as by intervention from without.

Regardless of one's own views of the propriety or lawfulness of

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Monroe Doctrine as a legal basis for armed intervention in the affairs of American states was discarded three decades ago, but rather because it was apparently deemed to be too "theoretical" and not altogether consistent with his "practical view" of international law.

For the text of the official statements, over a period of days, justifying the armed intervention on different, and occasionally inconsistent grounds, see White House Press Release, April 28, 1965, in 52 DEP'T. STATE BULL. 738 (1965); Statement by President Johnson, April 30, 1965, in *id.* at 742; Statement by President Johnson, May 2, 1965, in *id.* at 744-48. See also, The Guardian, May 4, 1965; The Times (London), May 7, 1965. For Mr. Meeker's views, see *The Dominican Situation in the Perspective of International Law*, 53 DEP'T STATE BULL. 60 (1965). For Secretary Mann's description of the "two stages" of the Dominican intervention—humanitarian intervention followed by the effort to prevent a Communist seizure of power—see *The Dominican Crisis: Correcting Some Misconceptions*, 53 DEP'T STATE BULL. 730 (1965). For a well-documented account of the Dominican affair and the view that "two stages" never existed except in the press releases issued by the White House and the Department of State, see Draper, *supra* note 71.

In an editorial of May 3, 1965, The Times (London), p. 13, col. 2, noted that "President Johnson has taken the deliberate risk of touching Latin American feelings on their most sensitive spot by recalling the days when Theodore Roosevelt policed the Caribbean with marines . . . ." In an editorial of May 3, 1965, The New York Times, p. 32, col. 1, questioned the factual basis of the United States' decision to intervene "to prevent another Cuba," and added:

> The massing of American Marines and paratroopers in ever-increasing numbers already has stirred bitter recollections throughout Latin America and the world of the excesses of "gunboat diplomacy." A unilateral decision to assign these troops an active role in helping the Dominican military junta put down the revolt would run counter to all the principles of "progress, democracy and social justice," for which Mr. Johnson appealed . . . .

75. For the resolution establishing the Inter-American Peace Force, see *Tenth Meeting of Consultation of Ministers of Foreign Affairs*, OAS Doc. No. 39 (English), reprinted in 59 AM. J. INT'L L. 987 (1965), and 4 INTERNATIONAL LEGAL MATERIALS 594 (1965).

the new interventionism, there is a natural and justifiable inclination to applaud the essentially non-political work of the Commission. The Commission's success, particularly in the Dominican Republic, may do much to encourage the belief that there may yet emerge for the American continent a legal regime for the protection of human rights similar to the European model. Nevertheless, I would like to suggest that Latin American history, the remains of the American international law of non-intervention, and the constitutional inhibitions of the United States all weigh heavily against such optimism.

There are several fundamental reasons why a legal structure for the protection of human rights such as that created in Western Europe would prove unworkable in the Americas. In the first place, the European Convention on Human Rights and the machinery established thereunder reflect the unique post-war situation of Western Europe and the renewed commitment of those shattered democracies to rebuild their societies on the basis of guarantees for fundamental freedoms. As Dr. A. H. Robertson has observed:

> The provisions about human rights in the Statute of the Council of Europe, the obligations undertaken in the European Convention and the machinery of the Commission and the Court are . . . primarily *to preserve* the rule of law and the principles of democracy in the member States and, should the danger arise, forestall any trend to dictatorship before it is too late.[76]

It is most significant that the human rights program of the Council of Europe is primarily designed to preserve existing rights rather than to create and enforce new and unknown rights. The program rests in large part on the assumption that the states adhering to the Convention are generally committed to democratic government and basic freedoms. It rests, too, upon a considerable degree of political and economic inter-dependence amongst the parties and upon a substantial number of common interests and common ideals. The states adhering to the Convention, and particularly those that have accepted the right of individual petition, have relinquished a portion of their sovereignty as an expression of their commitment to the principles of the Convention and as an indication of their willingness to subject their domestic institutions to the scrutiny of a world beyond their separate frontiers. They have chosen to permit an international body to adjudge the extent to which their political and judicial institutions conform to the international standards set by the Convention in the

76. ROBERTSON, HUMAN RIGHTS IN EUROPE 6 (1963). (Emphasis added.)

confidence that their institutions will meet the test and with a readiness to make adjustments in the event that they are found wanting.

It requires no particular expertise to perceive, from a mere glance at the problems confronting the American republics today, that they are simply not ready for a system that vests individuals with basic rights under international law and provides judicial machinery for the vindication of those rights. Dictatorship remains endemic in the political life of Latin America, violence continues to be the principal vehicle for the attainment of political power in too many states, and, as Professor Tannenbaum has noted, "constitutional government has remained an unsatisfied aspiration," despite "an almost universal commitment to the ideals of democracy among Latin American intellectuals and statesmen."[77] It would be a mere delusion to believe that in states struggling to achieve cultural and national unity[78]—little concerned with the interest of their Latin American neighbors and very much concerned with the maintenance of their own national sovereignty—respect for human rights and democratic principles can be effectively inculcated by the erection of a juridical superstructure reflecting the political values and development of Western Europe. If one can fairly say that the European Convention on Human Rights embodies the political faith of the people of Western Europe, one must also acknowledge that it embodies only the wistful longings of the peoples of Latin America.

Latin America is, as Arnold Toynbee has observed, "a world in itself," one in which the uncritical adoption of alien political forms and institutions has had an unhappy history. The primitive state of the judicial machinery in many Latin American states, the tenacity with which the Latin American republics have continued to adhere to the principle of international non-responsibility for denial of

77. Tannenbaum, *The Political Dilemma in Latin America*, 38 FOREIGN AFFAIRS 497, 499 (1960).

78. As Philip W. Quigg has cogently written:

> Despite the importance and appearance of hemispheric solidarity, these factors do not apply to the countries of Latin America. Their common Hispanic culture and certain similarities in the way they look upon life and the world around them obscure a vast indifference to one another and a marked desire to be considered unique . . . . [T]heir knowledge or awareness of other countries of South and Central America is limited largely to contacts sponsored by public or private agencies of the United States. Pan Americanism has not cut deep, and even the effort to establish a Common Market has not much strengthened the Latin's sense of involvement with one another. Though an incident in Panama or Cuba will remind them how closely their destinies are linked, it is easier to find unity in what they are against than in what they are for.

Quigg, *Latin America: A Broad-Brush Appraisal*, 42 FOREIGN AFFAIRS 399-400 (1964). A similar view is expressed by Professor Ernest R. May in *The Alliance for Progress in Historical Perspective*, 41 FOREIGN AFFAIRS 757, 773 (1963). For a thoughtful study of the concept of hemispheric solidarity, see WHITAKER, THE WESTERN HEMISPHERE IDEA: ITS RISE AND DECLINE (1954).

justice to aliens, and the dismal failure of past efforts to establish regional adjudicative tribunals[79] all militate strongly against the

79. Despite the assumption of authorities such as Professor Manley O. Hudson that "since their independence began the five Central American states have had a tradition of solidarity," an immense amount of good will, and two separate cash gifts from Mr. Andrew Carnegie (to build a permanent headquarters), the Central American Court of Justice (1908-1918) failed to play a significant role in the life of the area. Its most sympathetic student, Professor Hudson, was compelled to conclude that the Court did not exercise "any great influence during its short lease of life." Hudson, *The Central American Court of Justice*, 26 AM. J. INT'L L. 759, 785 (1932). Yet such was the faith of Professor Hudson in international judicial machinery that he attributed the failure of the Court to incidental factors such as the justices' lack of judicial independence; their relatively short terms of office; the manner of paying their salaries (by each justice's own government); and the national oaths required of each member of the Court. These factors, of course, merely reflected the underlying fragmentation of Central American society, which doomed the Central American Court of Justice from the outset.

The proposal of Dr. James Brown Scott and others, see note 14 *supra*, in the 1920's and 1930's for an Inter-American Tribunal of International Justice did not arouse much interest in the United States. See INTER-AMERICAN TRIBUNAL OF INTERNATIONAL JUSTICE: MEMORANDUM PROJECT AND DOCUMENTS ACCOMPANIED BY OBSERVATIONS (Carnegie Endowment for International Peace, Division of International Law, Pamphlet No. 56, 1937). This lack of interest was doubtless caused by the fear that the United States would be placed at a severe disadvantage before such a tribunal. Professor Bemis, one of the skeptics, undoubtedly expressed a widely-held view when he wrote:

> [U]nlike the Permanent Court of International Justice that had had been set up in Europe as an organ of the League of Nations, the judges of the proposed American court would have been overwhelmingly representative of Latin American jurisprudence by the proportion of ten to one. Whether such a court were a safe refuge for justice for the United States was debatable.

BEMIS, THE LATIN AMERICAN POLICY OF THE UNITED STATES 245 (1943).

More recent suggestions by Latin American states for the establishment of regional international tribunals have proved equally fruitless. There is reason to believe that the views expressed by Professor Bemis in the early 1940's would be widely shared by United States policy-makers today. At the Tenth Inter-American Conference, held in Caracas in 1954, a resolution was adopted asking the Council of the OAS to ascertain the views of members with regard to the establishment of an Inter-American Court of Justice and, in the event that a majority of states favored such a proposal, to order the Inter-American Juridical Committee and the Inter-American Council of Jurists to prepare a draft statute for such a court. *Final Act*, Resolution C, in 48 AM. J. INT'L L. 123, 131 (Supp. 1954). The proposal appears to have been relegated to the limbo of OAS resolutions on juridical matters.

There have been some faint signs of a renewed interest in the creation of a Central American Court of Justice. See, *e.g.*, Palma Martinez, *La Corte de Justicia Centoramericana*, in ORGANIZACIÓN DE ESTADOS CENTROAMERICANOS (ODECA), BOLETÍN JURÍDICO Y LEGISLATIVO 57 (Guatemala 1957). At the Sixth Extraordinary Meeting of Ministers of Foreign Affairs of Central America, held in Panama in December 1962, a new charter for the Organization of Central American States (ODECA) was adopted. This Charter provides for the establishment of a new Central American Court of Justice, apparently along somewhat less ambitious lines than its ill-fated predecessor. According to one report, the Court is to serve as "an organ of consultation in judicial matters" and as the Court of Arbitration envisioned in the Central American Treaty of Economic Integration. Engel, *The New Charter of the Organization of Central American States*, 58 AM. J. INT'L L. 127, 129-31 (1964). For the text of the new Charter, see INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, THE INTER-AMERICAN SYSTEM: ITS DEVELOPMENT AND STRENGTHENING 480 (1966). The precise purposes, structure, terms of reference, and rules of procedure of the projected tribunal have apparently remained somewhat obscure. Even the composition of the court seems to

start in the Americas of a human rights program which is based upon the European Convention on Human Rights and which provides machinery to adjudicate claims of non-compliance. Moreover, it would appear somewhat fantastic to expect the very nations that have most strenuously resisted and challenged the principle of international responsibility for the treatment of *aliens* to undertake positive international obligations with respect to the treatment of their own *nationals.*

There is yet another reason why we must regard with considerable skepticism efforts to encourage the inter-American system to adopt the basic structure of the human rights program of the Council of Europe, or perhaps any convention on human rights. Without the support and adherence of the United States there can be no reasonable expectation that a human rights convention operating within the framework of the inter-American system will ever be widely ratified. The Latin Americans would doubtless feel that it was an unflattering and paternalistic assessment of their national institutions to be asked to surrender a substantial degree of *their* national sovereignty while the United States remains unwilling to do likewise. And there is little doubt that the same constitutional considerations that to date have prevented United States ratification of other conventions in the human rights field will continue to compel it to refrain from adhering to an American version of the European Convention on Human Rights.[80] It would be wise to consider the possibility that a convention which does not work and which is not widely ratified may do more harm to the cause of international protection of human rights than would no convention at all.

Thus, for the effective protection of human rights in the Amer-

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be open to some doubt. Thus, Mr. Engel is able to report only that the provision of article 14 of the new ODECA Charter, providing for a tribunal composed of the "presidents of the Judicial Powers" of the member states "*probably* means the presidents of the respective Supreme Courts." Engel, *supra* at 129. (Emphasis added.) On March 30, 1965, the new Charter of ODECA came into force. See Engel, *The New ODECA*, 60 AM. J. INT'L L. 806 (1966).

80. From the very outset, the United States announced that it would be unable to adhere to an American human rights convention or to accept the jurisdiction of a regional court of human rights. Fifth Meeting of Consultation of Ministers of Foreign Affairs, *Final Act* 18-19 (1959); Ball, *Issue for the Americas: Non-Intervention v. Human Rights and the Preservation of Democratic Institutions*, 15 INTERNATIONAL ORGANIZATION 21, 26 (1961). For a comprehensive examination of the constitutional problems involved, from the perspective of North American municipal law and of international law, and a resounding dissent from what appears to remain the prevailing view, see McDougal & Leighton, *The Rights of Man in the World Community: Constitutional Illusions Versus Rational Action*, 14 LAW & CONTEMP. PROB. 490 (1949), reprinted in 59 YALE L.J. 60 (1949), and in MCDOUGAL, STUDIES IN WORLD PUBLIC ORDER 335 (1960).

ican continent, within obvious limitations, it may be preferable to rely upon the non-judicial, and essentially non-political, efforts of an agency like the Inter-American Commission on Human Rights. The Commission can concern itself with the more flagrant violations of human rights, can use the exposure techniques at its disposal to seek corrective action within the framework of municipal law, and can play some role in safeguarding fundamental freedoms during periods of strife in the internal order of states. The only other effective alternative in contemporary Latin America would seem to be a regional program of coercion based upon the notion that the constituent instruments of the inter-American system permit, or should permit, "collective intervention" in any case deemed to affect the peace of the Americas. Such a program for the protection of human rights might well appeal to those who agree with Professor Richard Falk that "there is a basic difference between regional coercion that contradicts and that which fulfills universal conceptions of minimum conditions for an acceptable form of domestic order."[81] However, it would appear to be a less than satisfactory solution to those who do not have complete faith in their ability to perceive these "universal conceptions," or who would be reluctant to allow a regional arrangement the freedom to act upon its own formulation of these "universal conceptions" without the authorization of the global institution created for the maintenance of international peace and security—the United Nations.

One student of the inter-American system, in noting the United States' inevitable objections to an international instrument like the European Convention, has suggested as an alternative a treaty that would elaborate "a more definite statement" of the principles of democratic government and human rights and that would establish a commission with broad powers to investigate alleged violations of human rights. In 1962, he wrote:

> Such a treaty would confirm the principles to which the OAS adheres, but would not attempt to set up an international system to review and pass upon the judicial processes of individual governments—a step for which the American republics are still not prepared.[82]

A human rights program such as the one outlined above does not, of course, require a treaty. A commission of the kind suggested is

81. Falk, *Janus Tormented: The International Law of Internal War*, in INTERNATIONAL ASPECTS OF CIVIL STRIFE 185, 243 (Rosenau ed. 1964).

82. DREIER, THE ORGANIZATION OF AMERICAN STATES AND THE HEMISPHERE CRISES 134 (1962).

already in existence, and its work program is in fact designed to provide "a more definite statement" of the principles of democracy and human rights. Its recent history indicates that an agency dedicated to impartial fact-gathering and to the exposure of the more flagrant violations of fundamental liberties might well be the most prudent and workable alternative to a *carte blanche* grant of authority to the political organs of the OAS or to the creation of administrative and judicial machinery unsuited to the political realities of modern Latin America. However, the extent to which political realities will permit even the present Commission to operate even-handedly is not free of doubt. Although the Commission has reported the receipt of petitions from within the United States, it has shown no inclination to undertake an inquiry into alleged violations of civil rights in the United States. In view of the rebuff that it might receive if it sought to do so, and of the ensuing detrimental effect upon the Commission's future usefulness, this reluctance is well considered. But it raises the fundamental question of the extent to which an international body of this kind, avowedly concerned with the promotion and protection of human rights in all of the American republics, can indulge the United States' traditional reluctance to accept any international responsibility for alleged deprivations of the rights of its nationals. If the United States' constitutional and political inhibitions are indeed to be indulged, in the interest of the Commission's effective operation in less-well-endowed parts of the Western Hemisphere, the Commission will ultimately be required to acknowledge that it exists only to oversee the conduct of the OAS' Hispanic-American members. Alternatively, if there is to be any pretense at an even-handed administration of its mandate, the Commission may feel obliged to confine its intervention to situations in which the national system of government and law enforcement has completely broken down.

The next year or two will be especially important in determining the future usefulness of the Inter-American Commission on Human Rights. If it can remain scrupulously free of the political decision-making and goals of the OAS and if it can retain its reputation for impartiality, we may expect the Commission to continue to exercise an important, and possibly expanded,[83] role in the years ahead. If so,

83. At its thirteenth session, in April 1966, the Commission took a far-reaching step in the direction of expanding its role and functions. In pursuance of the request made in Resolution XXII of the Second Special Inter-American Conference (Rio de Janeiro, November 1965), that it "conduct a continuing survey of the observance of fundamental human rights in each of the member states of the Organization," and under the authority of article 9 d. of its enabling act (empowering it "to urge the Gov-

the Inter-American Commission on Human Rights may well have paved a middle road toward the international protection of the fundamental human rights of the peoples of the New World.

ernments of the member states to supply it with information on the measures adopted by them in matters of human rights"), the Commission resolved to request annual reports from each member state of the OAS on the measures adopted by each to adjust their municipal law to the principles enunciated in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights. These annual reports are also to provide information on "any suspension of guarantees and the reasons therefor." Inter-American Commission on Human Rights, *Report on the Work Accomplished During Its Thirteenth Session, April 18 to 28, 1966*, OEA/Ser. L/V/II.74, Doc. 35 (English) (Sept. 30, 1966), pp. 38-39.