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The Dominican Crisis: An Examination of Traditional and Contemporary Concepts of International Law

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COMMENTS

THE DOMINICAN CRISIS: AN EXAMINATION OF TRADITIONAL AND CONTEMPORARY CONCEPTS OF INTERNATIONAL LAW

" . . . revolution in any country is a matter for that country alone to deal with. It becomes a matter calling for hemispheric action only, repeat only, when the object is the establishment of a communist dictatorship. . . ."

President Johnson[1]

In late April of 1965 the Dominican Republic became embroiled in internal revolution.[2] On April 25th the Dominican government was toppled by supporters of former Dominican President Juan D. Bosch.[3] For the next three days the pro-Bosch rebel regime demanded the return of the former president. Bosch's return, however, was opposed by units of the Dominican naval and air forces under the command of Dominican Air Force General Elias Wessin y Wessin.[4] The revolution appeared to collapse after heavy fighting in the Dominican capital of Santo Domingo on April 27th.[5] That day the United States Embassy in Santo Domingo announced that the United States Navy was preparing to evacuate American citizens and other foreign nationals from the Dominican Republic.[6] Additional naval vessels with about 1500 United States Marines were reported standing offshore.[7] On April 28th President Johnson announced that 400 marines had been put ashore to aid in the evacuation when it was learned that local authorities would no longer be able to guarantee the safety of United States citizens.[8] It was also revealed at this time that known Communist leaders and agitators, including some Dominican exiles and others who had received their training in Communist Cuba, had been identified among the rebel forces.[9] As the fighting between the military and rebels continued in Santo Domingo, additional contingents of marines and airborne troops were dispatched in an attempt to restore order and deter the Communist elements.

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1. 52 DEP'T STATE BULL. 744, 748 (1965).
2. For a chronological listing of critical events, see 44 CONG. DIG. 264-66 (1965).
3. 44 CONG. DIG. 264 (1965).
4. *Id.* at 264-65.
5. *Id.* at 265.
6. *Id.* at 265.
7. 53 DEP'T STATE BULL. 60, 61 (1965).
8. *Supra* note 1, at 738.
9. *Supra* note 3, at 265. The rebel regime passed out arms to an estimated 3000 civilians with an additional 10,000 to 15,000 persons reportedly in possession of gasoline bottle bombs.

During this period, the Council of the Organization of American States, of which the Dominican Republic is a member, met on April 27th and 28th to consider its responsibilities in the matter.[10] As events in Santo Domingo deteriorated the Council held round-the-clock sessions. That body resolved the following:

> It called for a cease-fire; it appealed for the establishment of an international neutral zone of refuge in Santo Domingo; it dispatched a five-member commission to the Dominical Republic; and it called upon member governments to supply food and medicine to the people of the Dominican Republic.[11]

On May 2, 1965, President Johnson, in an address to the nation, explained his actions to the American people. He stated that:

> What began as a popular democratic revolution that was committed to democracy and social justice moved into the hands of a band of Communist conspirators. . . . The American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere. This was the unanimous view of all the American nations when in January 1962, they declared, and I quote "the principles of Communism are incompatible with the principles of the inter-American system. . . ." [R]evolution in any country is a matter for that country alone to deal with. It becomes a matter calling for hemispheric action only, repeat only, when the object is the establishment of a communist dictatorship. . . . Our goal in keeping the principles of the American system is to help prevent another Communist state in this hemisphere. . . .[12]

The next day, in the United Nations Security Council, the Soviet Union accused the United States of violating the United Nations Charter.[13] This accusation was denied by United States Ambassador Adlai E. Stevenson.

On May 5th a formal cease-fire was negotiated by the five-member O.A.S. peace commission.[14] The following day the meeting of Consultation of the Organization of American States approved, by a vote of 14-5,

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10. *Supra* note 7, at 63.

11. *Ibid.* State Department Legal Advisor, Leonard Meeker, commented: "These actions were taken in light of the presence of U.S. military forces in Santo Domingo. Without that presence, none of the OAS actions would have been meaningful. Without it, the OAS machinery for seeking an orderly political settlement in the strife-torn Dominican Republic could not have become effective."

12. *Supra* note 1, at 744-48.

13. *Supra* note 3, at 265.

14. *Ibid.* Article 17 of the Rio Treaty requires the affirmative vote of two-thirds of the contrasting states—*i.e.*, 14 of the 21 states that are parties to that treaty.

a resolution sponsored by the United States providing for the creation of an Inter-American Military Force to help restore order and constitutional government in the Dominican Republic.[15] On May 10th, by a vote of 14-3, the O.A.S. expanded the mandate of the five-nation peace commission, giving the peace commission the responsibility for restoring governmental machinery and establishing free elections.[16]

On May 14th, the United Nations Security Council, with the United States concurring, approved a resolution calling upon United Nations Secretary-General U Thant to dispatch a representative to report on the situation in the Dominican Republic.[17] By May 21st the United States began to withdraw its troops, with the remainder being placed at the disposal of the Inter-American Military Force.[18] On June 23rd an O.A.S. proposal calling for: an immediate end to the fighting; surrender of all arms in the hands of civilians to the O.A.S.; formation of a provisional government and the holding of free elections under O.A.S. supervision was accepted by both the rebel and military forces.[19]

RELEVANCY OF INTERNATIONAL LAW

A "legal" justification for the recent actions of the United States and the Organization of American States in the Dominican Republic presupposes that this unique situation is not without justiciable qualities consistent with the proper growth of international law.[20] It is not surprising therefore, that the relevancy and scope of international law and its relationship to this situation has been questioned by some authorities.[21]

15. *Id.* at 265-66.

16. *Id.* at 266.

17. *Ibid.*

18. *Ibid.*

19. *Ibid.*

20. Compare Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515 (1963), wherein Mr. Meeker commented: "It cannot be surprising that no settled law was ready at hand to deal with the situation created by the clandestine Soviet introduction of strategic missiles into Cuba in 1962. That situation was unprecedented."

21. Compare former Secretary of State Dean Acheson's approach to the Cuban Crisis of 1962: "Much of what is called international law is a body of ethical distillation with law. We should not rationalize general legal policy restricting sovereignty from international documents composed for specific purposes. . . . The law through its long history has been respectful of power, especially that power which is close to the sanctions of law. . . . The power, position and prestige of the United States had been challenged by another state; and law simply does not deal with such questions of ultimate power—power that comes close to the sources of sovereignty. . . . No law can destroy the state creating the law. The survival of states is not a matter of law." Mr. Acheson, however, notes that, "one can see the influence of accepted legal principles. These principles are procedural devices designed to reduce the severity of possible clash." Acheson, *Remarks*, 57 AM. SOC'Y INT'L L. PROC. 13, 14 (1963). In a like manner Abrom Chayes remarked that, "Perhaps the hardest question to be asked is whether law had anything to do with it [*i.e.*, the Cuban Crisis of 1962] at all." Chayes, *Remarks*, 57 AM. SOC'Y INT'L L. PROC. 10 (1963).

State Department Legal Adviser Leonard Meeker has suggested:

> . . . [R]eliance on absolutes for judging and evaluating the events of our time is artificial, that black and white alone are inadequate to portray the actuality of a particular situation in world politics, and that fundamentalist views on the nature of international legal obligations are not very useful as a means to achieving practical and just solutions to difficult political, economic, and social problems. . . . It does not seem to me that law and other human institutions should be treated as abstract imperatives which must be followed for the sake of obeisance to some supernatural power or for the sake of some supposed symmetry that is enjoined upon the human race by external forces. Rather, it seems to me that law and other institutions of society should be seen as deliberate and hopefully rational efforts to order the lives of human communities—from small to great—in such a way as to permit realization by all members of a community of the full range of whatever creative powers they may possess. . . . We recognize that, regardless of any fundamentalist view of international law, the situation then existing required us to take action to remove the threat and at the same time to avoid nuclear war. In the tradition of the common law we did not pursue some particular legal analysis or code, but instead sought a practical and satisfactory solution to a pressing problem.[22]

Professor Friedmann countered Mr. Meeker's argument stating that:

> The Legal Adviser's argument is one of policy, not of law, and it seeks to justify what is patently, by standards of international law, an illegal action, in terms of the ultimate policy objectives of the United States. But by using the language of legal rather than of political justification, the argument comes unintentionally close to the attempts made by the Nazi and Communist lawyers to justify the interventionist and aggressive actions of their respective governments in terms of a legal order of the future. . . .[23]

If principles of international law are to be considered relevant in this unique situation, the legal environment must be evaluated in its proper perspective. As a result, the existing principles of international law necessarily limit the basis upon which a "contemporary" legal justification may rationally be constructed. The problem thus is one of determining what "law" is to be applied in this case. It should also be permissible

22. *Supra* note 7, at 60.

23. Friedmann, *United States Policy and the Crisis of International Law*, 59 AM. J. INT'L L. 857, 869 (1965).

to assume that international law is in a state of development.[24] Yet this development must not be allowed to obscure the objective of the international community—the maintenance of peace and security.[25]

The factual aspect of the incident in question necessarily provides a point of departure for a discussion of the concepts of unilateral and collective self-defense in international law as they relate to the Dominican case. Consequently, in this regard, the original limited intervention by U.S. military forces providing for the removal of U.S. citizens and nationals of other states (phase one) must be distinguished from the subsequent occupation of the Dominican capital by U.S.-O.A.S. forces (phase two).

TRADITIONAL INTERNATIONAL LAW

It is readily apparent that semantical and definitional problems arise when the Dominican Crisis is subjected to traditional tests. Basic disagreement over the meaning of such terms[26] as "aggression," "intervention," "armed attack" or "invasion" and their relationship to the term "self-defense" prevents an automatic solution to questions of "legality" or "justification" for any given action. In whatever way these terms are defined, however, a thread of similarity runs through them, e.g., all involve to a greater or lesser extent some actual interference with another state's right of political independence or sovereignty.[27] It is from this point that the "rightness" or "wrongness" of the acts in question must be viewed.

Thus in the case of the original limited intervention by the United States for the purpose of removing its citizens and the citizens of other nations, most authorities agree that a state may, as an aspect of self-defense, be permitted to intervene in another state's affairs in order to protect its citizens from injury.[28] The conditions precedent which must exist before a state may take such action in the name of self-defense are: "(1) the imminent threat of injury to nationals, (2) a failure or inability

24. Compare Fenwick, *The Quarantine Against Cuba: Legal or Illegal?*, 57 AM. J. INT'L L. 588 (1963).

25. This community objective is mirrored in Article 1(1) of the United Nations Charter:

> The Purposes of the United Nations are:
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> 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. . . .

26. See FRIEDMANN, THE CHANGING STRUCTURE OF INTERNATIONAL LAW, 254 *et seq.* (1964).

27. *Id.* at 264 n.24.

28. *Supra* note 23, at 867.

on the part of the territorial sovereign to protect them, and (3) measures of protection strictly confined to the object of protecting them against injury."[29] As a result, when the local authorities in the Dominican Republic announced that they could no longer guarantee the safety of United States citizens or the integrity of its embassy,[30] the decision by President Johnson calling for the limited use of United States military forces to aid in the evacuation of United States citizens could be made without fear of criticism by the international community that a violation of international law had occurred.

As long as the previous conditions remained in clear focus, as regards the factual context concerning the events of late April and early May, no violation of existing international law could be established. However, when the original mission (protection and removal of nationals) of the U.S. military forces was completed, a violation of international law would be manifested unless additional grounds for justifying the continued presence of those forces in the Dominican Republic could be found.

CONTEMPORARY INTERNATIONAL LAW

It is this "second phase" of the Dominican Crisis which unquestionably deserves the most attention. As the measures of self-defense in the Dominican case necessarily involved the "use of force" the United Nations Charter and applicable Inter-American security agreements and treaties shall be considered along with existing traditional principles of international law. It will also be useful to consider the case for self-defense in light of the Cuban Crisis of 1962 as a measure of precedent.[31]

The primary restriction against the "threat or use of force" in the United Nations Charter is found in Article 2(4). It provides that:

> All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations.[32]

Although this concise and simple expression of prohibition appears to be complete, the Charter recognizes exceptions to Article 2(4).[33]

29. *Id.* at 867 n.10.

30. This information was transmitted to the State Department via a "critic" cable—one that is reserved for only the most urgent and immediate matters of national security.

31. See, *The Inter-American Security System and the Cuban Crisis*, THE HAMMARSKJOLD FORUMS, ASS'N OF THE BAR OF THE CITY OF NEW YORK, 49 *et seq.* (1964).

32. U.N. CHARTER, art. 2, para. 4.

33. Under the United Nations Charter the use of force other than by the Security Council may be legally resorted to in only three instances: First, under Article 51 as a measure of self-defense; second, under Article 52 as a use of collective action pursuant to a regional agency or arrangement; and third under Article 107 against defeated enemy states.

One exception of great importance is that which preserves the inherent right of national self-defense. It was that concern which led to the inclusion of Article 51 within the provisions of the United Nations Charter.[34] Article 51 provides:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, or until the Security Council has taken measures necessary to maintain international peace and security. . . .[35]

It has also long been recognized in customary international law that the right of self-defense justifies the "use of force."[36] In the *Caroline* case in 1841, Secretary of State Daniel Webster formulated the requirements of national self-defense as involving: ". . . necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation."[37] However, this statement of the doctrine of self-defense has been critized as being too individualized to have any application in international law.[38] Yet the importance of the doctrine cannot be underestimated. In the United States Note of June 23, 1928, on the Treaty for the Renunciation of War, it was stated in part:

> That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defence.[39]

Professor Jessup has suggested that this statement by its nature permits self-defense to escape legal regulation.[40] While it can not be denied that the right of self-defense exists in certain instances, when the right is claimed under the provisions of Article 51, a literal reading of the language of the Charter presents difficulties when application of the right is attempted in a contemporary fact situation such as existed in the Dominican Crisis. The question then immediately arises as to whether a state can claim the right of self-defense in "anticipation" of an armed attack as was the case in the recent Cuban Crisis[41] or whether it may be

34. See GOODRICH & HAMBRO, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS, 297-308 (2d rev. ed. 1955).

35. U.N. CHARTER, art. 51.

36. See BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 40-44 (1963).

37. 1 HYDE, INTERNATIONAL LAW, 239 (2d rev. ed. 1947).

38. JESSUP, A MODERN LAW OF NATIONS 164 (1948).

39. Quoted in JESSUP, *op. cit. supra* note 38, at 163.

40. JESSUP, *op. cit. supra* note 38, at 163.

41. See McDougal, *Remarks*, 57 AM. SOC'Y INT'L L. PROC. 164 (1963). Professor McDougal concluded that the measure of validity in the Cuban case was one of community

claimed as a necessary "counter-measure" to a foreign intervention by "indirect and subversive" elements in the internal affairs of a sovereign state whose geographical locale affords a "special" concern to the state claiming the right of self-defense.[42] Therefore, does the use of the words "if an armed attack occurs" restrict the use of the right of self-defense so that an actual armed attack must occur as a condition precedent to the raising of a claim under Article 51?[43]

It has been affirmatively stated by Professor Jessup that the use of such wording was a restriction. He declared:

> This restriction in Article 51 very definitely narrows the freedom of action which states had under the traditional law. A case could be made out for self-defense under the traditional law where injury was threatened but no attack had yet taken place. Under the Charter, alarming military preparations would justify a resort to the Security Council, but would not justify resort to anticipatory force by the state which believed itself threatened.[44]

On the other hand, Dr. Bowett concluded that a claim of self-defense in anticipation of an armed attack is not inconsistent with the language of Article 51:

> It is not believed, therefore, that Article 51 restricts the traditional right of self-defense so as to exclude action taken against an imminent danger but before an "armed attack occurs." . . . [S]uch restriction is both unnecessary and inconsistent with Article 2(4) which forbids not only force but the threat of force, and furthermore it is a restriction which bears no relation to the realities of the situation which may arise prior to an armed attack and call for self-defense immediately if it is to

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review. He stated: "In the case of our action in Cuba, . . . whether the United States decision as to the necessity was satisfied, there are many indices—who are the parties, what was the provocative action, what was the modality of United States response? The provocateur was the USSR, not little Cuba, with all that implies. The action was in an area of special concern to the United States and one as to which there had been prior warning of that concern through the Monroe Doctrine. There was an immediacy of peril from the missiles in Cuba which by-passed our warning system. Therefore, it was a reasonable conclusion that the military instrument of protection might be needed."

42. *Supra* note 23, at 866-67.

43. See Brownlie, *The Use of Force in Self-Defense*, 37 BRIT. YR. BK. OF INT'L LAW 183, 266 (1962). Dr. Brownlie concluded that the "beginning of an armed attack is a condition precedent for resort to force in self-defense." *But see*, Fenwick, *Remarks*, 57 AM. SOC'Y INT'L L. PROC. 17 (1963). Professor Fenwick stated that in such a case as the Cuban incident, a "constructive armed attack" under the terms of Article 51 was possible. He further noted that "The sheriff in our Western television shows does not have to wait until a shot is fired when he sees the bad man reach for his gun."

44. JESSUP, *op. cit. supra* note 38, at 166.

> be of any avail at all. No state can be expected to await an initial attack which in the present state of armaments, may well destroy the state's capacity for further resistance and so jeopardise its very existence.[45]

The late Professor Westlake outlined the doctrine in a similar manner:

> A state may defend itself, by preventive means if in its conscientious judgment necessary, against attack by another state, threat of attack, or preparations or other conduct from which an intention to attack may be reasonably apprehended. In so doing it will be acting in a manner intrinsically defensive even though externally aggressive.[46]

It would appear from these statements that the traditional theory of self-defense has been preserved in the language of the Charter rather than restricted or impaired through a literal reading of the document. A literal application of the language of the Charter to a contemporary factual situation like that in the Dominican Republic would only frustrate the major purpose of the United Nations to "maintain international peace and security" and its principle to avoid "the threat or use of force."[47]

The propriety of such an interpretation has been summarized by Professor McDougal and Dr. Feliciano:

> . . . [N]either Article 51 nor any other word formula can have, apart from context, any single "clear and unambiguous" or "popular, natural and ordinary" meaning that predetermines decision in infinitely varying particular controversies. The task of treaty interpretation, especially the interpretation of constitutional documents devised, as was the United Nations Charter, for the developing future, is not one of discovering and extracting from isolated words some mystical pre-existent, reified meaning but rather one of giving that meaning to both words and acts, in total context, which is required by the principal, general purposes and demands projected by the parties to the agreement. For determining these major purposes and demands, a rational process of interpretation permits recourse to all available indices of shared expectations . . . .[48]

Thus the use of such terms as "armed attack," the above writers contend,

45. See BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW, 186 (1958).

46. See WESTLAKE, INTERNATIONAL LAW, 312 (2d ed. 1910).

47. U.N. CHARTER, art. 1, para. 1 and art. 2, para. 4.

48. See MCDOUGAL AND FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER: THE LEGAL REGULATION OF INTERNATIONAL COERCION, 234 (1961).

merely represents the superfluous part of "an inept piece of draftmanship."[49]

However, the discovery that the language of the Charter apparently fails when applied to contemporary crisis is not of recent vintage.[50] It is questioned, therefore, whether time has rendered significant portions of the Charter obsolete as far as its literal meaning is concerned. Thus, it would follow that not only must the term "actual" be redefined or discarded, but also, the same would necessarily apply to the term "armed attack." It should be noted that the emphasis nations currently place on political and ideological warfare has, as a matter of necessity, resulted in the creation of new forms of "indirect" or "subversive" interference, that are not amenable to traditional criteria and definitions.[51] Indeed the revolutionary technological and scientific advances in armaments allow a realistic contemplation of total destruction. A state involved in such a situation can now "rationally" contemplate the prospect of national suicide being an event which neither party to a dispute can escape as it considers its response to a threat to its peace and security. Professor Stone has commented:

> The whole basis of our modern sense of crisis is that very few, and possibly only one outbreak of nuclear warfare will spell the end of civilization, and virtually the physical end of man.[52]

Of course, the realistic contemplation of total destruction was not as apparent in the Dominican Crisis as was the case in the Cuban Crisis of 1962. However, from the elements of Communist interference present in the Dominican Crisis, it can be assumed that if these elements were permitted to flourish unchecked, the crisis atmosphere present in the Cuban case would soon be realized. A response that avoids the possibility of a confrontation, it is suggested, permits a more responsible and rational approach to the solution of international conflicts. If it were not the case, human responsibility for state action would be cast aside.[53]

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49. *Ibid.*

50. JESSUP, *op. cit. supra* note 38, at 166-67. Professor Jessup quoted the United States interpretation of Article 51 with respect to proposals for control of atomic warfare: "Interpreting its provisions with respect to atomic energy matters, it is clear that if atomic weapons were employed as part of an 'armed attack,' the rights reserved by the nations to themselves under Article 51 would be applicable. It is equally clear that an 'armed attack' is now something entirely different from what it was prior to the discovery of atomic weapons. It would therefore seem to be both important and appropriate under present conditions that the treaty define 'armed attack' in a manner appropriate to atomic weapons and include in the definition not simply the actual dropping of an atomic bomb, *but also certain steps in themselves preliminary to such action.*" [Emphasis added.]

51. *Supra* note 28, at 254-58.

52. See STONE, QUEST FOR SURVIVAL, 52 (1961).

53. *Id.* at 83. Professor Stone commented: "State action tends to become detached from human responsibility, and to be fastened onto abstract entities, like public opinion, self-

A primary purpose of a legal justification is to attach responsibility for acknowledged obligations. In this regard Article 51 permits a state to use force in the case of self-defense as an exception to the prohibition against such a use found in Article 2(4). To retain some semblance of reality in applying Article 51, particularly in the case of the use of force as an anticipatory or preventive measure, a state claiming such rights is not permitted to be both judge and jury of the legality of its claim. It is required, therefore, under Article 51 that:

> . . . [M]easures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[54]

The requirement of reporting measures taken to the Security Council does not in any way restrict the power of a member to take independent action prior to the Security Council superseding such acts taken in self-defense.[55] The purpose of the reporting requirement has been stated by Professor Lauterpacht:

> The reason of the thing, of course makes it necessary for every State to judge for itself, in the first instance, whether a case of necessity in self-defense has arisen. But, unless the notion of self-preservation is to be eliminated as a legal conception, or unless it is used as a cloak for concealing deliberate breaches of the law, it is obvious that the question of the legality of the action taken in self-preservation is suitable for determination and must ultimately be determined by a judicial authority or by a political body, like the Security Council of the United Nations acting in a judicial capacity.[56]

In this case the reporting requirement was complied with by the United States through a letter to the President of the United Nations Security Council on April 29th.[57]

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defense, vital interests, retaliatory or preemptive military necessity, which cannot be brought to the bar of justice, morals or compassion. From the abstraction the command moves forward, dispersing as it goes, into the hierarchy of command, often to be almost lost in the complex apparatus of decision making before it emerges as dramatic action . . . . The most massive destruction can proceed from acts whose authors feel little personal association, let alone moral responsibility, for the results. . . . Any remaining moral sensibility in the men who act is insulated by space and time from the terrible consequences of action."

54. U.N. CHARTER, art. 51.

55. GOODRICH & HAMBRO, *op. cit. supra* note 34, at 304.

56. 1 OPPENHEIM-LAUTERPACHT, INTERNATIONAL LAW, § 130, at 299 (8th ed. 1962).

57. 52 DEP'T STATE BULL. 739 (1965).

Additional support for the validity of a self-defense claim under the provisions of Article 51 can be found in the resolution of the Organization of American States approving a collective response to a threat to the peace and security of the Western Hemisphere.[58] The support for such collective action by this regional agency is found in Article 3 of the Rio Treaty.[59] That article sets forth the obligations of the contracting states in the case of an armed attack by any state, within or outside the hemisphere, against any American state.[60] Such an armed attack is to be considered as an armed attack against all the American states, and each contracting state "undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations."[61] Professor Charles Fenwick, in questioning whether the Dominican Crisis should be viewed as an act of "intervention" or as one of "collective self-defense" commented:

> The answer must be found in the neighboring state of Cuba, which in the course of six years has demonstrated what may be expected of a Communist-controlled government, every principle of inter-American law being defied, apart from the act of making itself a base of operations for the Soviet Union. *Self-defense must be judged in the light of the experience of a country in a parallel situation.* "One Cuba is enough." [Emphasis added.][62]

The approval of the defensive and humanitarian measures (initially taken by the United States) by the member states of the Organization of American States,[63] after considering the evidence and determining that the peace and security of the Western Hemisphere was threatened, made within Article 51 a collective response to that threat. Such a reaction from a respected regional arrangement of states enhances the notion of community support for such action. The subsequent United Nations review of the Dominican Crisis also implied a significant measure of popular support from the Security Council's apparent approval of the U.S.-O.A.S. actions by virtue of the fact that the Soviet Union's resolution condemning such actions failed to get the required votes

58. Reprinted in 59 AM. J. INT'L L. 987 (1965).

59. 62 Stat. 1681; T.I.A.S., No. 1838 (1948). The Rio Treaty is also cited as the Inter-American Treaty of Reciprocal Assistance.

60. *Ibid.*

61. *Ibid.*

62. See Fenwick, *The Dominican Republic: Intervention or Collective Self-Defense*, 60 AM. J. INT'L L. 64, 65 (1966).

63. It should be noted that the critical character of the Cuban Crisis of 1962 apparently fostered more community support (a unanimous vote) than was given in support of the initial U.S. actions in the Dominican Crisis (a two-thirds vote).

needed for passage.[64] In this regard, it is suggested that great importance should be attributed to the rational manner and procedural steps followed by the United States, individually and collectively with the approval of the Organization of American States, in responding to the threat posed by the Dominican Crisis to the Western Hemisphere.[65]

The main argument relied upon by the United States to justify its part in the Dominican Crisis can be characterized as a "collective measure"[66] upheld by a regional agency pursuant to the terms of Articles 33 and 52 of the United Nations Charter.[67]

The United Nations Charter expressly embodies the concept of regionalism in its terms.[68] Article 52(1) provides:

> Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.[69]

This concept appears to have found its place in the Charter for several reasons: the limits geography places on national interests and influence;[70] expressions of national policy such as that formulated by the Monroe

64. N.Y. Times, May 22, 1965, p. 1, col. 7. No censure motions against the United States or the Organization of American States individually or collectively were considered by the Security Council during the Cuban Crisis.

65. Compare MacChesney, *Some Comments on the "Quarantine" of Cuba*, 57 AM. J. INT'L L. 592, 596-97 (1963). Professor MacChesney stated: "Critics of the self-defense argument contend that self-defense is too dangerous an instrument, and therefore the United Nations Charter must be so construed as to forbid its invocation. But the alternatives seem even more dangerous. Conceding, as these critics do, that states whose survival is threatened will nonetheless react to such threats, such responses will then be either outside the law or above the law. Surely, this cannot be more desirable. The measures employed by the United States were not 'preventive war'. They were moderate measures, skillfully executed, whose purpose was to prevent war. Under all these circumstances, factual and legal, the quarantine of Cuba constituted substantial compliance with both the spirit and the content of the principles and procedures of the world community."

66. These are measures contemplated by Article 1(1) of the Charter of the United Nations. Article 1(1) provides in part: "To maintain international peace and security, and to that end: to take *effective collective measures* for the prevention and removal of threats to the peace. . . ." [Emphasis added.]

67. Article 33(1) implements the provisions of Article 1(1) of the United Nations Charter by placing a duty on the parties to any dispute to first seek a settlement of their dispute by pacific means of their own choice. Article 33(1) specifically permits a "resort to regional agencies or arrangements."

68. GOODRICH & HAMBRO, *op. cit. supra* note 34, at 309-18.

69. U.N. CHARTER, art. 52, para. 1.

70. GOODRICH & HAMBRO, *op. cit. supra* note 34, at 309.

Doctrine;[71] and the motives fostering historical co-operation among nations similarly situated.[72] These factors continue to pervade the promotion of internal solidarity and are especially noticeable in times of international crisis. This reaction seems to have been adequately demonstrated by the collective response that the Organization of American States mounted when confronted with a threat to the peace and security of the Western Hemisphere.

Article 1 of the Charter of the Organization of American States provides that within the United Nations, the Organization is a regional agency.[73] Among the essential purposes of the O.A.S. is that of strengthening the peace and security of the continent;[74] insuring the pacific settlement of disputes that may arise among the member states;[75] and providing for common action on the part of those states in the event of aggression.[76] The O.A.S. Charter additionally proclaims that "States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal rights."[77] The Charter also expressly provides for the concept of "nonintervention."[78] This principle of nonintervention is set forth in Article 15 in broad terms:

> 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.[79]

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71. *Ibid.* See also 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 435 (1943). The principal features of the Monroe Doctrine, as stated by President James Monroe on December 2, 1823, are: "(1) That the American Continents, 'by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers;' (2) That 'we should consider any attempt on their part [the allied powers] to extend their system to any portion of this hemisphere, as dangerous to our peace and safety.' . . ." J. G. Starke has stated that the unilateral character of the doctrine by virtue of the inter-American regional security arrangements has been transformed or multilateralized into a collective understanding. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW, 98-99 (5th ed. 1963).

72. *Ibid.*

73. Article 1 of the Charter of the Organization of American States provides: "The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity and their independence. Within the United Nations, the Organization of American States is a regional agency.

74. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, art. 4, para. a.

75. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, art. 4, para. b.

76. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, art. 4, para. c.

77. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, art. 6.

78. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, art. 15.

79. *Ibid.*

It is further provided in Article 17 that:

> 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 grounds whatever. No territorial acquisitions or special advantages obtained whether by force or by other means of coercion shall be recognized.[80]

In the case of the Dominican Crisis, the actions of the United States in the Dominican Republic were criticized as being in violation of the principle of nonintervention embodied in Articles 15 and 17.[81] However, it is expressly provided in Article 19 of the O.A.S. Charter that: "measures adopted for the maintenance of peace and security in accordance with existing treaties (i.e., the Rio Treaty) *do not* constitute a violation of the principles set forth in Articles 15 and 17." [Emphasis added.][82] Therefore, "collective intervention" under the terms of the Rio Treaty is allowed. Articles 24[83] and 25[84] of the O.A.S. Charter further implement the concept of "collective security" in permitting the use of the measures and procedures embodied in the Rio Treaty by American states in cases contemplated under the terms of Articles 3 and 6 of that treaty.

Justification of the U.S.-O.A.S. actions in the Dominican Republic, it is argued, can be sustained on the ground that Article 52(1) of the United Nations Charter permits the collective use of force by regional organizations to secure the removal of a threat to the peace and security of the region. This use of force by a regional organization pursuant to the terms of Article 52(1) is exclusive of a self-defense claim under the provisions of Article 51 of the United Nations Charter.[85]

Under the terms of the Rio Treaty it is provided, in Article 6:

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80. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, art. 17.

81. 53 DEP'T STATE BULL. 60, 61 (1965).

82. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, art. 19.

83. Article 24 provides: "Every act of agression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States."

84. Article 25 provides: "If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extra-continental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, *the American States*, in furtherance of the principles of continental solidarity or collective self-defense, *shall apply the measures and procedures established in the special treaties on the subject.* [Emphasis added.]

85. Cf. Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L 515-24 (1963); Christol and Davis, *Maritime Quarantine: The Naval Interdiction of Offensive Weapons and Associated Material to Cuba, 1962*, 57 AM. J. INT'L L. 525, 537 (1963).

> If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by *an aggression which is not an armed attack* or by an extra-continental or intra-continental conflict, or *by any other fact or situation that might endanger the peace of America*, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in the case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent. [Emphasis added.][86]

Article 8 of that Treaty authorizes specific coercive measures which include the "use of armed force."[87] It is apparent that the interference of subversive Communist elements in the internal affairs of the Dominican Republic can be found to come within the purview of Article 6 of the Rio Treaty by being termed either "an aggression which is not an armed attack" or "by any other fact or situation that might endanger the peace of America."[88] The aforementioned criteria permit a more flexible approach to the "characterization problems"[89] that surround a contemporary crisis of this sort than one coming within the scope of Article 3 of the Rio Treaty or Article 51 of the United Nations Charter. However, it must be realized that the nature of the Communist problem in the American states makes it exceedingly difficult for a collective security arrangement to confront it.[90] The manner in which the United States and the Organization of American States came to grips with the Dominican Crisis indicates that the preservation of the political integrity of the American states against the outside intervention of the international Communist movement can only be effectively realized through democratic institutions.[91] The resolution of May 6th approved by the Organ of Consultation of the Organization of American States creating the Inter-American Armed Force reflects this idea:

> . . . [T]his Force will have as its sole purpose, in a spirit of democratic impartiality, that of co-operating in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human

86. *Supra* note 59.

87. *Ibid.*

88. *Ibid.*

89. Cf. Fisher, *Intervention: Three Problems of Policy and Law*, in ESSAYS ON INTERVENTION, 18 *et seq.* (Stanger ed. 1964).

90. Resolution I, "Communist Offensive in America." *Final Act, Eighth Meeting of Consultation of Ministers of Foreign Affairs.* Reprinted in 56 AM. J. INT'L L. 601 (1962).

91. See FENWICK, THE ORGANIZATION OF AMERICAN STATES: THE INTER-AMERICAN REGIONAL SYSTEM, 269 *et seq.* (1963).

> rights, and in the establishment of an atmosphere of peace and conciliation that will permit the functioning of democratic institutions.[92]

The maintenance of hemispheric solidarity through democratic institutions has long been a common goal of the American governments. The spread of the subversive activities of international Communism into the Western Hemisphere has been repeatedly rejected.[93] Article 5(d) of the Charter of the Organization of American States expressly states that:

> The solidarity of the American States and the high aims which are sought through it require the political organizations of those States on the basis of the effective exercise of representative democracy . . . .[94]

As recently as 1962 it was resolved at the Eighth Meeting of Consultation of Foreign Ministers held at Punta del Este, Uruguay that the "principles of Communism are incompatible with the principles of the inter-American system."[95] Subsequent resolutions proclaimed adherence to the principle of "self-determination" effectively exercised through free elections that express the unconditional "will of the people."[96] It is suggested, therefore, that a collective course of action that guarantees the realization of the above-mentioned principles, represents a contemporary approach to the Dominican Crisis, within the framework of a developing international law. In this regard, State Department Legal Advisor Leonard Meeker commented:

> We landed troops in the Dominican Republic to preserve the lives of foreign nationals—nationals of the United States and many other countries. We continued our military presence in the Dominican Republic for the additional purpose of preserving the capacity of the O.A.S. to function in the manner intended by the O.A.S. Charter—to achieve peace and justice through securing a cease-fire and through reestablishing orderly political processes within which Dominicans could choose their own government, free from outside interference.[97]

In the case of the Dominican Crisis, as was the case in the Cuban Crisis in 1962[98] the question arises as to whether the collective response of the Organization of American States, as a regional agency subordinate

92. *Supra* note 58.

93. *Supra* note 90.

94. CHARTER OF THE ORGANIZATION OF AMERICAN STATES art. 5, para. d.

95. *Supra* note 89.

96. Resolution III, "Reiteration of the Principles of Non-Intervention and Self-Determination," and Resolution IV, "Holding of Free Elections." *Ibid.*

97. *Supra* note 80, at 62.

98. See Wright, *The Cuban Quarantine*, 57 AM. J. INT'L L. 546, 558 (1963).

to the United Nations, required prior authorization of the Security Council pursuant to Article 53(1) of the United Nations Charter as a condition precedent. Article 53(1) provides in pertinent part:

> The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.[99]

Security Council authorization would not be required if this were a case arising under Article 3 of the Rio Treaty, as it would be permitted under Article 51 of the United Nations Charter as an act of collective self-defense. However, it would appear that under Article 53(1) Security Council authorization of "enforcement action" would be required only when the Organ of Consultation decided to use armed force in a case under Article 6 of the Rio Treaty in which the purpose was not to repel an armed attack on an American state.[100]

The Dominican Crisis appears to fall under the jurisdiction of the Security Council when the collective response of the Organization of American States is considered as an Article 6 case under the Rio Treaty. However, the fact that prior Security Council authorization was not sought seems to support a prior recognition of the likelihood of a veto by the Soviet Union in the Security Council.[101] It should be noted that the presence of a probable veto in a case of this sort leaves the Security Council at a jurisdictional disability. This disability denies the Security Council the power to perform its primary responsibility—the maintenance of peace and security.[102] As a result it can be argued that as there "can be" no preemptive assertion of jurisdiction by the Security Council, the collective response of the Organization of American States was a sectional assertion of jurisdiction justifiable under present international law.[103] It is of interest to note that at the 14th Conference of the Inter-American Bar Association held in San Juan, Puerto Rico, from May 22 to 29, 1965, the Association declared that "the Organization of American States has original jurisdiction over the situation in the Dominican Republic and no other international organization has competence to interfere

99. U.N. CHARTER, art. 53, para. 1.

100. *Supra* note 59.

101. Cf. Meeker, *supra* note 84, at 519-22.

102. Article 24(1) provides: "In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

103. See BISHOP, INTERNATIONAL LAW CASES AND MATERIALS, 448-49 (2d ed. 1962). A state cannot be subject to restriction unless it violates international law. An act is presumed not to conflict with international law and therefore a legal basis for jurisdiction need not be asserted.

in the case until the O.A.S. submits it to the U.N. Security Council."[104] It is suggested that the Organ of Consultation could also have effectuated its collective response under Article 6 of the Rio Treaty while avoiding a Soviet veto in the Security Council by merely "recommending" or "requesting" in its resolution of May 6th that armed force be applied.[105] A mere recommendation or request to the member states of the Organization of American States presumably would not constitute "enforcement action" by a regional agency.[106] It is further argued that prior Security Council authorization was not required, this evidenced by the fact that the Security Council did not approve any of the censure motions submitted to the Council against the United States or the Organization of American States, individually or collectively.[107]

In the final analysis questions of validity are answered by the world community. In this regard Professor Hardy C. Dillard has suggested:

> In international law generally . . . one of the critical points of controversy seems to me to focus on the problems of the dictionary. . . . The question of the validating agency, the dictionary, must of course be the world community; nor does this mean that 'anything goes' if you can get by with it. . . . It only means that in the international sphere, as in less developed societies, the role of the court and jury as a dictionary is displaced by more protean and formless agencies.[108]

CONCLUSION

To abstract a conclusion from the course of events just considered, that international law has lost its efficacy, when it is sought to be applied to a contemporary factual situation, such as the Dominican Crisis, is to predicate the persuasive character of the incident. International law must accept the realities of its time if it is to make a valued contribution to mankind. A responsible and ordered international community is a necessity that cannot be disclaimed by an abject measure of irrationability. In order that international law accept the realities of its time, the traditional rules of the past must be reformed and reconstituted to meet contemporary needs. It has been especially apparent, in recent times, (i.e., the Cuban Crisis of 1962 and the Dominican Crisis) that the

104. See Finch, *Inter-American Bar Association*, 60 AM. J. INT'L L. 80, 81 (1966). State Department Legal Advisor Leonard Meeker has stated that, "There should be no doctrinare assumption that the United Nations and its Security Council are the exclusive guardians of world peace." *Supra* note 81, at 65.

105. *Supra* note 58.

106. Cf. Meeker, *supra* note 84, at 520-22; Alford, *The Cuban Quarantine of 1962: An Inquiry into Paradox and Persuasion*, 4 VA. J. INT'L L. 35, 62-65 (1964).

107. *Supra* note 64.

108. Dillard, *Address*, 57 AM. SOC'Y INT'L L. PROC. 55 (1963).

traditional rules of international law regarding the "use of force" have failed to provide a satisfactory answer to inquiries of its proper application. However, the realization that there exists a total and limitless destructive power in the hands of a growing number of states has of necessity awakened the international community to such inadequacies. Consequently, a conclusion that the actions of the United States and the Organization of American States, individually and collectively were "rational or irrational" measures does not determine an answer to the inquiry, but allows the inquiry to acquire substance. Therefore, to speculate that international law is a stagnating body of conventions, customs and principles is only to reaffirm a conviction that international law is in a state of development. This has been manifested in the events of April-June, 1965, through the "respect" that states accorded procedural norms in times of crisis. Thus speculation of irrational behavior among states returns them to a rule of reason and community responsibility.

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