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# THE UNITED STATES ACTION IN THE 1965 DOMINICAN CRISIS: IMPACT ON WORLD ORDER—PART II

BY VED P. NANDA\*

*Professor Nanda projects the United States action in the 1965 Dominican crisis against the background of the United Nations and OAS Charters. He concludes that under contemporary international law norms, the unilateral use of force in a primarily internal conflict situation cannot be considered a legitimate self-defense measure. In a discussion of the relative competence of a regional versus a universal organization to deal with a regional conflict, Professor Nanda analyzes the trend toward a greater reliance on the regional organization. The Dominican crisis is seen as an attempt to counteract past trends. To avoid unilateral intervention in internal conflicts, Professor Nanda recommends the formulation of procedures which will enable regional and universal organizations, rather than the individual nation-state, to regulate the use of force.*

THE preceding article in this series examined two grounds on which the United States relied to justify its original dispatch of Marines during the 1965 Dominican conflict—to protect United States nationals and to serve humanitarian purposes.<sup>1</sup>

This article will examine the validity of the United States claim that forces were sent to prevent a threatened Communist take-over in the Dominican Republic. It will also discuss the merits of the United States claim regarding the competence of the OAS *vis-a-vis* that of the United Nations to deal with the Dominican crisis.

## I. THE PREVENTION OF "ANOTHER CUBA"

The Dominican conflict had hardly entered its second week when the United States declared that its objective had changed from the protection of its nationals and other foreigners to the prevention of a Communist take-over in the Dominican Republic.<sup>2</sup> It therefore sent more troops to the Dominican Republic, their total number at one time exceeding 20,000.<sup>3</sup> Subsequently, these troops formed the

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<sup>1</sup> 43 DENVER L.J. 439 (1966).

<sup>2</sup> See notes 6-16 *infra*.

<sup>3</sup> See, *e.g.*, 52 DEP'T STATE BULL. 912 (1965) (Ambassador Bunker's note to the Assistant Secretary General of the OAS).

bulk of the Inter-American Peace Force that was established by the Organization of American States (OAS),<sup>4</sup> and the last units of which stayed in the Dominican Republic until September 1966.<sup>5</sup>

After presenting the official United States position and that of its critics, the present study will assume the accuracy of the official United States position for lack of a definitive conclusion on this controversial but crucial point. Accepting the existence of the threat of "another Cuba," the paper will test the validity of the United States action on the principles of international law. The discussion will center primarily on the treaty obligations of the United States under the United Nations and the OAS Charter.

### A. *The Official United States Position*

A glance at the views of United States decision-makers will indicate their preoccupation with the possibility of a Communist controlled Dominican Republic. A meeting at the White House on April 30 between President Johnson and administration leaders at the higher policy making echelons, sheds light on the United States' perception of the danger of a Communist take-over in the Dominican Republic. One of those leaders present, special presidential envoy during the Dominican crisis, John Bartlow Martin, reported:

The President said he foresaw two dangers — very soon we would witness a Castro Communist-dominated government in the Dominican Republic, or we would find ourselves in the Republic alone without any support in the Hemisphere. He didn't want either one to happen.<sup>6</sup>

Martin quotes the President as having further said that, while he had every intention of working for peace through the OAS or any other channel, he did not intend

to sit here with my hands tied and let Castro take that island. What can we do in Vietnam if we can't clean up the Dominican Republic? I know what the editorials will say but it would be a hell of a lot

<sup>4</sup> *Id.* at 862-3, per Resolution adopted on May 6, 1965, in the Plenary Session of the Tenth Meeting of Consultation of Ministers of Foreign Affairs by a vote of 15 to 5 with one abstention.

<sup>5</sup> See N.Y. Times, Sept. 28, 1966, p. 3, col. 1 (city ed.), for a report that the last unit of the Inter-American Peace Force had left the Dominican Republic on September 21, 1966.

See U.N. Doc. No. S/6316 (1965), for a letter from the Permanent Representative of the Soviet Union to the Security Council President requesting him to convene an "urgent meeting" of the Security Council to consider the question of "armed interference by the United States in the internal affairs of the Dominion Republic." See also U.N. Doc. No. S/6314 (1965), for the text of a note addressed by the Cuban Minister for Foreign Affairs to the Secretary General of the United Nations denouncing the "illegal action" of the United States and drawing attention to "the threat to peace which this criminal action entails."

<sup>6</sup> MARTIN, OVERTAKEN BY EVENTS 661 (1966). Those present at the meeting included Rusk, Ball, McNamara, General Wheeler and Martin.

worse if we sit here and don't do anything and the Communists take that country.<sup>7</sup>

On May 2, 1965, two days after his arrival in Santo Domingo, Martin said at a press conference that, in his opinion, the purpose of the presence of the United States Marines now was or ought to be "to prevent a Castro/Communist takeover, because what began as a PRD revolt had in the last few days fallen under the domination of Castro/Communist and other violent extremists."<sup>8</sup> The same evening, President Johnson declared in a national radio-television broadcast that

The revolutionary movement [in the Dominican Republic] took a tragic turn. Communist leaders, many of them trained in Cuba . . . joined the revolutions. They took increasing control. And what began as a popular democratic revolution . . . very shortly moved and was taken over and really seized and placed into the hands of a band of Communist conspirators.<sup>9</sup>

The President was quite emphatic in his warning that "the American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere."<sup>10</sup>

Similar statements by Rusk,<sup>11</sup> Stevenson,<sup>12</sup> Bunker,<sup>13</sup> Ball,<sup>14</sup> Meeker,<sup>15</sup> and several members of Congress<sup>16</sup> were made to the

<sup>7</sup> *Ibid.*

<sup>8</sup> MARTIN, OVERTAKEN BY EVENTS 676 (1966). See also, *Communist Subversion in The Dominican Crisis* (Dep't of State Publication 7971, Inter-American Series 92, Oct. 19, 1965).

<sup>9</sup> 52 DEP'T STATE BULL. 744, 745 (1965).

<sup>10</sup> *Id.* at 746.

<sup>11</sup> See, *e.g.*, 52 DEP'T STATE BULL. 843-44 (1965), wherein Secretary Rusk stated that, "What began in the Dominion Republic as a democratic revolution was taken over by Communist conspirators who had been trained for, and had carefully planned, that operation. Had they succeeded in establishing a government, the Communist seizure of power would in all likelihood have been irreversible, thus frustrating the declared principles of the OAS. We acted to preserve the freedom of choice of the Dominican people until the OAS could take charge and insure that its principles were carried out. It is now doing so.

See also *id.* at 939-40 (statement by Rusk at a press conference held May 26, 1965). In a more recent address made before the Veterans of Foreign Wars convention on August 22, 1966, at New York, Rusk has reiterated that "We cooperated with the OAS . . . in preventing chaos and a possible Communist takeover in the Dominican Republic . . ." 55 DEP'T STATE BULL. 362, 367 (1966).

<sup>12</sup> See *e.g.*, 52 DEP'T STATE BULL. 869, 871, 880-82 (1965) (statements by Stevenson before the U.N. Security Council).

<sup>13</sup> See *e.g.*, *id.* at 908-10 (statements by Bunker before the Tenth Meeting of Consultation of Ministers of Foreign Affairs).

<sup>14</sup> *Id.* at 1042, 1046 (address by Ball on June 6, 1965).

<sup>15</sup> Meeker, *The Dominican Situation in the Perspective of International Law*, 53 *id.* at 60.

<sup>16</sup> See, *e.g.*, 111 CONG. REC. 8778 (daily ed. April 30, 1965), for remarks by Senator Stennis that "We cannot afford to wait for the OAS to act first . . . . We cannot permit a Communist regime to set itself up in the Dominican Republic . . ." See *id.* at 8838 (daily ed. May 3, 1965), for remarks by Representative Andrews that the President's "expressed determination to prevent the establishment of another Communist regime in this hemisphere [as indicated by the United States action] is the most encouraging announcement in America's foreign policy since January 1961."

effect that the United States decision to send in additional troops to the Dominican Republic and to maintain them there was in response to the Communist danger to take over the rebel leadership.

It is difficult to establish an evidentiary basis for the official United States view of the Dominican crisis. Official statements

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He further urged the President "to quickly announce that the liquidation of Cuba's Communist government is a definite aim of American foreign policy, and that no pressures from any source . . . will dissuade us from that goal." For more remarks made in the Congress on May 3 on the Communist take-over in the Dominican Republic, see *id.* at 8809, 8840, 8882. See also *id.* at 9000-10 (daily ed. May 4, 1965), for Senator Lausche's statement that "we cannot suffer the existence of another Cuba at our shores in the Caribbean . . . [T]he overwhelming evidences are that the Communists have taken hold." See *id.* at 9038, for Senator Long's remarks; *id.* at 9722 (daily ed. May 10, 1965), for remarks by Senator Gruening that "The United States, having intervened to stave off a Communist dictatorship, cannot now abandon the Dominican people." See *id.* at 11029 (daily ed. May 24, 1965), for remarks by Senator Dodd that,

The Communists began to infiltrate and take control of the insurrection almost from the moment it was launched on the morning of April 24. By April 26, they already exercised a serious degree of control. By April 27, their control had reached such alarming proportions that virtually all of the authentic non-Communist leaders had abandoned the revolution . . . By his action, President Johnson has prevented the emergence of a second Castro regime in the Americas.

See *id.* at 11585 (daily ed. May 28, 1965), for remarks by Representative Gallagher that,

I believe the action that the United States took at the end of April probably saved the Dominican Republic from a Communist takeover. The exact degree of Communist control over the rebel movement at that moment can never be measured accurately, of course. But the fact remains that the risk was grave; it left this Government with no alternative but to arrest the threat.

See *id.* at 13468 (daily ed. June 17, 1965), for remarks by Representative Rogers that,

It is clear that had the United States acted as swiftly in Cuba as was done in the Dominican Republic Castro and communism would not be in Havana today. It is also clear that we must pursue a firm policy in the Dominican Republic to curb Castroism in the Caribbean.

See *id.* at 20720 (daily ed. Aug. 24, 1965), for remarks by Senator Lausche that "the proof before that Committee [Senate Foreign Relations Committee] was clear that within 3 days after the violence broke out, groups connected with Peiping, Moscow, and Castro took over." See *id.* at 22427 (daily ed. Sept. 9, 1965), for remarks by Representative Flood when he talked of the "attempted Red takeover of the Dominican Republic on April 24, 1965, requiring armed intervention by the United States to prevent the establishment of a second Soviet satellite in the Caribbean." He further said that that was a key element "in the strategy of the international revolutionary conspiracy for world domination." See *id.* at 24076 (daily ed. Sept. 23, 1965), for remarks by Representative Selden, Chairman of the House Subcommittee on Inter-American Affairs: "U.S. intervention not only prevented a Communist takeover, but there is every reason to believe it also will provide the Dominican people another chance to let their wills be known at the ballot box." See Dubois, *Report from Latin America*, *id.* App. A at 2684, 2685 (daily ed. May 26, 1965), wherein Dubois says, "Lt. Gen. Bruce Palmer, Jr., commander of American land forces here, said earlier that part of his mission was to prevent a Communist takeover and establishment of a government inimical to the interest of the United States." See also *id.* at 20505-48, 20562-63 (daily ed. Aug. 23, 1965), for an extensive record of reports by press correspondents who thought that the danger of Communist take-over was not a myth but a reality. These reports were introduced into the Congressional Record by Senator Dodd. See also the OAS Special Committee Report at the Fourth Plenary Session of the Tenth Meeting of Consultation of Ministers of Foreign Affairs (Document 46 (provisional) May 7-8, 1965), recorded *id.* at 20551-62.

repeatedly referred to classified information which formed the basis for their decisions. On October 12, 1965, Undersecretary Mann said:

All those in our Government who had *full access to official information* were convinced that the landing of additional troops was necessary in view of the clear and present danger of the forcible seizure of power by the Communists. The evidence we have indicates that at that stage the paramilitary forces under the control of known Communists exceeded in military strength the forces controlled by the non-Communist elements within the rebel movement.<sup>17</sup>

He went on to say that:

The strength of the Communist component of the rebel side must be measured not only by its men and arms and its superior discipline but by the weakness, the divisions, and the lack of leadership within the rebel movement. It needs to be measured in light of the fact that the Communists were operating in a total political vacuum during the early days of the crisis.<sup>18</sup>

In a statement made in the Senate on September 16, Senator Dodd reviewed some of the information which had "convinced the administration that the Communists had seized control of the revolt and that any serious delay in intervening was bound to result in another Cuba in the Carribean. . . ."<sup>19</sup> Senator Dodd went on to assure his colleagues that "the U.S. Government knew much more, which for a variety of reasons, cannot be documented publicly."<sup>20</sup>

The Administration, on several occasions, made public lists of known Communists in the rebel movement.<sup>21</sup> These lists have, however, been so thoroughly discredited<sup>22</sup> that not much credence can be put on their accuracy. Moreover, to measure the degree and extent of the control of a rebel movement by counting the number of known

<sup>17</sup> Mann, *The Dominican Crisis: Correcting Some Misconceptions*, 53 DEP'T STATE BULL. 730, 736 (1965). (Emphasis added.)

<sup>18</sup> *Ibid.*

<sup>19</sup> 111 CONG. REC. 23297 (daily ed. Sept. 16, 1965).

<sup>20</sup> *Ibid.*

<sup>21</sup> See 111 CONG. REC. 23007 (daily ed. Sept. 15, 1965) (statement by Senator Smathers that there were approximately fifty-eight Communist leaders active in the rebel movement); *id.* at 24079-81 (daily ed. Sept. 23, 1965) (a list of seventy-seven such Communists); *id.* App. A at 3071-72 (daily ed. June 14, 1965), article by O'Leary, reprinted in the Congressional Record from Washington Star, June 13, 1965, entitled, *U.S. Documents Red Attempt to Seize Revolt* . . .). See 52 DEP'T STATE BULL. 816 (1965), to the effect that Johnson had declared as early as May 4 that the United States intelligence reports showed that several rebels had been trained by Communist forces, saying "up to yesterday they had the names and addresses and experiences and numbers and backgrounds of some 58. . . . They . . . took increased leadership in the movement. . . . *Id.* at 821. See also *id.* at 745 (President's statement of May 1, 1965).

<sup>22</sup> See, e.g., Draper, *The Dominican Crisis*, COMMENTARY 33, 54-55 (Dec. 1965); (exposé of the lists of Communists said to be involved in the Dominican Conflict); Goodsell, *Christian Science Monitor*, May 19, 1965, p. 1, col. 1; Geyelin, *Dominican Flashback: Behind the Scenes*, *Wall Street Journal*, June 25, 1965, p. 8, col. 3.

Communists participating in the movement is to apply a criterion of doubtful validity.<sup>23</sup>

### B. *Criticism of the United States Position*

Several critics have suggested that the United States over-reacted to the situation and disproportionately magnified the danger of a Communist coup. These critics argued that while Communist participation in the rebel movement should be acknowledged, this participation should be carefully distinguished from the degree of Communist control of the movement. They dismiss any possibility of Communist control by pointing to the weakness of the Communist movement within the Dominican Republic coupled with the lack of any evidence of significant external assistance to the rebels from the International Communist movement, especially from Cuba.<sup>24</sup>

Senator Fulbright led the attack on the official United States position regarding the degree and extent of Communist control in the rebel movement. His observations were based on the conclusions he drew from the Dominican hearings before the Senate Committee on Foreign Relations. He declared on the Senate floor that

The weight of the evidence is that Communists did not participate in planning the revolution. . . . The evidence does not establish that the Communists at any time actually had control of the revolution. There is little doubt that they had influence within the revolutionary

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<sup>23</sup> See, e.g., 52 DEP'T STATE BULL. 876, 882 (1965), wherein Ambassador Stevenson stated:

But I would remind you that only 12 men went to the hills with Castro in 1956 and that only a handful of Castro's own supporters were Communists. I would also remind you that Castro, too, came into power under cover of constitutionalism, moderation, and cooperation with others.

See also MARTIN, *op. cit. supra* note 8, at 706: "I would point out that in such a situation a few leaders can exert great leverage on large numbers of uninformed people." See also note 28 *infra* (statement by Senator Smathers); 111 CONG. REC. 23296 (daily ed. Sept. 16, 1965) (statement by Senator Dodd). Senator Dodd, is however, emphatic that:

Criterion No. 1 in determining whether a movement or uprising is simply supported by Communists or controlled by them, is the number of identifiable Communists, many of them with training in Castro Cuba, who occupied command positions in the rebel movement.

Criterion No. 2 is the general political composition of the revolt.

*Ibid.* Applying these criteria, Senator Dodd asserts that the Communists were in control of the Dominican revolution. *Id.* at 23297.

<sup>24</sup> See e.g., former President Juan Bosch's statement, in Bosch, *Communism and Democracy in the Dominican Republic*, Saturday Review, Aug. 7, 1965, inserted in 111 CONG. REC. 18922 (daily ed. Aug. 6, 1965). See also *id.* App. A at 5376-78 (daily ed. Sept. 22, 1965) (statement by Bosch); *id.* at 18131 (daily ed. July 29, 1965) 36; *id.* at 23366 (daily ed. Sept. 17, 1965) (statement by Senator Clark); *id.* at 26423 (daily ed. Oct. 19, 1965) (editorial from the St. Louis Post-Dispatch, Oct. 14, 1965, entitled *Lame Rebuttal*, saying in part that "The administration appears to contend that any Communist activity in Latin America must by definition represent intervention by a Communist state. But no evidence has been presented of any substantial involvement in Santo Domingo of Cuba, China, Russia, or any other Communist government.").

movement, but the degree of that influence remains a matter of speculation.<sup>25</sup>

Further, maintaining that there is a crucial distinction between "Communist support" and "Communist control" of a political movement, Senator Fulbright argued that since the Administration had acted on the premise that "the revolution was controlled by Communists — a premise which it failed to establish at the time and has not established since," the burden of proof was on the Administration "and the administration has not proven its assertion of Communist control."<sup>26</sup>

Senator Fulbright's views were vehemently challenged by some of his colleagues in Congress, including the members of the Senate Committee on Foreign Relations. Senators Long,<sup>27</sup> Smathers,<sup>28</sup> Dodd,<sup>29</sup> Lausche,<sup>30</sup> and Representative Selden,<sup>31</sup> were notable in disagreeing with his position. Equally strong views were expressed

<sup>25</sup> 111 CONG. REC. 23001 (daily ed. Sept. 15, 1965).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Id.* at 23005 (daily ed. Sept. 15, 1965):

So far as I am concerned, this was simply a matter of whether this country was going to stand aside and risk another Cuban type Communist takeover, or whether we were going to move on the theory that this looked very much as though it might be a Communist takeover, and that we would rather take the chance of moving when it might not be necessary, than take the risk — as President Eisenhower did — that this would be a Communist takeover. We have information now that the Communists in the Dominican Republic are stronger than Castro was when he started out to take Cuba.

We have information, available to the Senator from Arkansas, to lead us to believe there is a real threat of Communist subjugation and conquest of that island. That we do not wish to see take place.

See also *id.* at 23617 (daily ed. Sept. 20, 1965).

<sup>28</sup> 111 CONG. REC. 23006 (daily ed. Sept. 15, 1965):

[F]or a certainty they sought to take over the Dominican Republic just as they did Cuba, and that was a matter of grave concern to us when the President sent in our troops to Santo Domingo. . . . What is wrong with trying to save a country from Communism?

We had already lost Cuba to Castro. It has been admitted that there were only about 12 known Communist leaders in Cuba with Castro when he started his revolution.

<sup>29</sup> *Id.* at 23294, 23296-97 (daily ed. Sept. 16, 1965). See also *id.* at 23296, where Dodd suggests certain criteria to determine "with a reasonable degree of accuracy" the extent of Communist control; *id.* at 23297, Dodd applies the set criteria to the Dominican situation to prove that the Administration was convinced "that the Communists had seized control of the revolt and that any serious delay in intervening was bound to result in another Cuba in the Caribbean." For statements by several Latin American ambassadors conceding the threat of a Communist take-over and introduced into the Congressional Record by Senator Dodd, see *id.* at 23295-96.

<sup>30</sup> *Id.* at 23345-46 (daily ed. Sept. 17, 1965):

[T]he proof was clear and convincing that unless we had stepped in we would have at our shores another Cuba. . . .

When the coup began, they [the Communists] immediately sprung to the forefront, and within a few days they were occupying the leading positions in what was happening. . . .

I am firmly of the conviction that if the President had not acted as he did . . . we now would have practically at our shores another Cuba.

<sup>31</sup> *Id.* at 24073 (daily ed. Sept. 23, 1965).



in support of Fulbright's position, notably by his colleagues, Senators Clark,<sup>32</sup> Morse,<sup>33</sup> and Young of Ohio.<sup>34</sup>

Thus we are left with two conflicting contentions by the proponents and the opponents of the official United States position as to the threat of a Communist take-over. In the absence of an independent fact-finding agency whose conclusions might be acceptable to all concerned,<sup>35</sup> we have perhaps no other choice but to rely upon the official United States position that not only did the Administration perceive the Communist threat as imminent but that it also had sufficient evidence to prove it, and that security reasons alone prevent the Administration from divulging secret information on Communist participation and control of the rebel movement.<sup>36</sup>

Granting then that the danger of a Communist take-over in the Dominican conflict was a real one,<sup>37</sup> the next section will test the

<sup>32</sup> See, e.g., Clark's comment that the Committee on Foreign Relations was given a whole sheaf of classified information on alleged Communist domination of the Dominican revolt but that

[I]t was completely unconvincing as to any control of the revolution by Communists except that it indicated that after, *but not before, the massive American intervention, a number of Communists did raise their heads and take an active part in the revolution.*

*Id.* at 23541 (daily ed. Sept. 20, 1965) (emphasis added). See also *id.* at 23366 (daily ed. Sept. 17, 1965). For the criticism of the United States action by some prominent Latin American leaders—Presidents of Venezuela, Peru, Chile, and Mexico—see *id.* at 23540-41 (daily ed. Sept. 20, 1965). See also *id.* at 10209 (daily ed. May 14, 1965), N.Y. Times editorial entitled *The Dominican Morass*, which reads in part:

Whether there was or was not a genuine threat of a Communist coup—and U.S. correspondents are emphatic in casting doubt on Washington's assertions that there was—it is clear that Dominican and Latin American communism has been strengthened in reaction against the American intervention.

<sup>33</sup> See, e.g., Morse's remarks that "the contention of the State Department that the revolution was Communist-controlled was never substantiated by the State Department before our committee [Senate Committee on Foreign Relations]." *Id.* at 26184 (daily ed. Oct. 15, 1965).

<sup>34</sup> See *id.* at 23846 (daily ed. Sept. 23, 1965), to the effect that there was "no evidence of any Castro-like takeover." Young contends that "No communist was a leader in the revolt. . . . [T]here was no preponderance of the evidence available or adduced that such a Communist takeover was even remotely in prospect."

<sup>35</sup> See OEA/Ser. L/X/II, at 4-5 (Nov. 10, 1965), for the Report of the Special Consultative Committee of the OAS on the Dominican Situation, PAU, Special Consultative Committee on Security, *Report of the Special Consultative Committee on Security on the Work Done during its Fifth Regular Meeting*.

<sup>36</sup> See, e.g., Olsen, *U.S. Holding Back Dominican Paper*, N.Y. Times, Nov. 7, 1965, p. 34, col. 1 (city ed.), for a report that a State Department White Paper, about 60 manuscript pages, "is said to contain heretofore unpublished evidence supporting the Government's appraisal of the Communist menace inherent in the April 24 revolt."

<sup>37</sup> See, e.g., MARTIN, *op. cit. supra* note 8, at 705: "I have no doubt whatsoever that there was a real danger of a Communist takeover of the Dominican Republic." Compare HALPERN, *BAD NEIGHBOR POLICY* (1966), *The New York Review of Books*, Dec. 29, 1966, p. 10, 11, col. 2:

The only guiding principle of Washington's present Latin American policy appears to be an obsession with the danger of a Communist takeover in some Latin American country where things are not kept firmly enough under control. . . . [S]ince the missile crisis of October 1962, Latin Americans tend to regard it as a mere pretext for interference in the internal affairs of their countries.

validity of the United States action against the norms of international law.

### C. *Validity of the United States Action*

Translated into legal terms, the United States' claim that it was sending forces to prevent another Cuba implies that the situation warranted self-defense measures by the United States. Thus, to justify the United States action, one must first determine the boundaries of legitimate self-defense in international law. One could point to Article 51 of the United Nations Charter, Articles 3 and 6 of the Rio Treaty, and various OAS resolutions declaring Communism to be incompatible with the Inter-American system,<sup>38</sup> to indicate what those boundaries are.

The United States did not base its claim on Article 51 of the United Nations Charter which, notwithstanding the restrictions on the use of force by a member state as contained in Article 2 (4) of

<sup>38</sup> On the general question of the Communist "intervention" in the hemisphere, the Eighth Meeting of Consultation of Ministers of Foreign Affairs, at Punta del Este, decided per its Resolution II(1) to request the OAS Council "to maintain all necessary vigilance" regarding the Communist interventionist activities in the hemisphere, both to warn the governments of such actions and to recommend appropriate measures with regard thereto. Subsequently the Council, on October 9, 1962, resolved to entrust the task to a Special Committee to deal with Resolutions II(1) and VIII of the 8th meeting. See also Report of the Special Consultative Committee on Security, "*The First Tricontinental Conference, Another Threat to the Security of the Inter-American System*, (study prepared by the Special Consultative Committee on Security at its Sixth Regular Meeting); OEA/Ser. L/X/II. 12 (April 2, 1966) (regarding a study on the *First Afro-Asian-Latin American Peoples' Solidarity Conference* Havana, Jan. 3-15, 1966). *Id.* at 240-241, the Conference adopted a resolution condemning the United States. House of Representatives Resolution of September 20, 1965 (notes 87-91 *infra*). *Id.* in operative paragraph 1, the Conference rejected "the pretensions of the House of Representatives of the United States that arbitrarily intends to abrogate the right of intervening in the internal affairs of the Latin American countries." *Id.* in operative paragraph 4, the Conference proclaimed "the right of the peoples and governments of Latin America to request the assistance of any other state in the world in case the imperialists intervene in their internal affairs, and the right and duty of all countries to offer moral and material support to the peoples of our continent." *Id.* at 242-44, resolutions condemning the "so-called Inter-American Peace Force and the Governments that support it," alleging that its purpose was to intervene in the national liberation movements. See also *id.* at 239, for criticism of the OAS for creating the Inter-American Peace Force; *id.* at 238-39, for resolutions on the OAS. *Id.* at 239, the Conference proclaimed that:

Neither the peoples of Latin America nor the governments that may come into power as a result of the victory of the national liberation movements in this continent are bound by any agreements or treaties of the Organization of American States, particularly the Inter-American Treaty of Reciprocal Assistance, and those that deny in practice the principles of non-intervention, self-determination, sovereign equality and independence.

See also Council of the OAS, OEA/Ser. G./IV, C-i-769 (Pan Am. Union 1966) for the November 28, 1966 Report of the Special Committee to Study Resolutions II.2 and VIII of the Eighth Meeting of Consultation of Ministers of Foreign Affairs on the First Afro-Asian-Latin American Peoples' Solidarity Conference and its Projections (Tricontinental Conference of Havana) — New Instrument of Communist Intervention and Aggression. For an earlier report of the Special Committee, see Council of the OAS, OEA/Ser. G./IV, C-i-605 (Pan Am. Union 1963). See also the *Declaration of Solidarity for the Preservation of the Political Integrity of the American States Against the Intervention of International Communism* at the Tenth Inter-American Conference, Caracas, 1954. On the Caracas conference, see generally Tenth Inter-American Conference, Caracas, Venezuela March 1-28, 1954 (Report of the Pan Am. Union on the conference, PAU 1955). For a recent report on the "trouble-

the United Nations Charter,<sup>39</sup> leaves the "inherent right of individual or collective self defense" of a member state unimpaired in case of an "armed attack" occurring against it.<sup>40</sup> A brief discussion of the nature and scope of article 51 will, however, be helpful in putting the question of self-defense in a proper prospective.

It may be recalled that the Cuban Quarantine in November 1962, had reopened the debate on the import of "armed attack" within the context of article 51. Challenging the legality of the United States action, Professor Quincy Wright reiterated his earlier stand that the use of force by a nation state must be in response to an "actual armed attack."<sup>41</sup> More recently, in his discussion on the Viet-Nam conflict, Professor Wright has again asserted that

it is true that traditional international law permitted military action if in self-defense there were an instant and overwhelming necessity

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some resurgence of guerrilla activity" in Latin America, see Goodsell, *New terrorist acts called Castro's work*, The Christian Science Monitor, April 1, 1967, p. B7, col. 1-3. See also Gonzalez, *Guerrilla Groups in Latin American Countries*, 112 CONG. REC. 25977 (daily ed. Oct. 14, 1966). See also Goodsell, *Dominican backlash touched off*, The Christian Science Monitor, May 11, 1967, p. 5, col. 3, reports on terrorist activities and "mounting political tension" in the Dominican Republic. See also Goodsell, *Civil War Echo: Dominican Republic Terrorism Mounts*, *id.* May 16, 1967, p. 11, col. 4-5; Reuter's report *Dominican sees plot by Hundreds: Balaguer charges Reds are fomenting a revolution*, N.Y. Times, May 10, 1967, p. 10, col. 1; an editorial entitled, *Violence in Santo Domingo*, *id.* May 13, 1967, p. 32, col. 1-2, and a new item from Hong Kong reportedly based on a commentary in Hsiaohua, the Red Chinese news agency and entitled *Peking Acclaims Dominican Reds: says Mao's ideas help them make giant strides*, *id.* p. 9, col. 1. On the recent activities of reportedly Castroite guerrillas in Bolivia, see *id.*, May 11, 1967, p. 9, col. 1. On the "increasing tempo of the activities of the Havana-based Tri-Continental Congress" that was reportedly resulting in unrest in Latin America, see Senator Thurmond's remarks entitled *Latin American subversion*, a collection of several articles dealing with the "plan of the international Communist conspiracy," 113 CONG. REC. S 7181 (daily ed. May 19, 1967).

<sup>39</sup> U.N. CHARTER art. 2, para. 4, provides:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

<sup>40</sup> U.N. CHARTER art. 51, provides in part:

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

<sup>41</sup> Wright, *The Cuban Quarantine*, 57 AM. J. INT'L L. 546 (1963). Wright concludes:

It cannot be doubted that the United States Government acted skillfully to obtain the removal of the long-range missiles from Cuba. . . . It cannot be easily argued, however, that the United States has lived up to its legal obligations to respect the freedom of the seas, to submit threats to the peace to the United Nations before taking unilateral action, and to refrain from use or threat of force in international relations except in individual or collective self-defense against armed attack, under authority of the United Nations, or with consent of the state against which the force is used.

The episode has not improved the reputation of the United States as a champion of international law. . . .

The Cuban quarantine, like the Suez and Hungarian episodes of 1956, demonstrates the reluctance of a great Power to observe its legal obligations when dealing with unpalatable action or attitudes of a small state, especially when that small state is located in a position of strategic importance to the great Power.

permitting no moment for deliberation, *i.e.*, if hostile forces were about to attack. It seems clear, however, that the San Francisco Conference, by limiting self-defense to cases of 'armed attack' intended to eliminate all preventive or pre-emptive action in order to maintain to the utmost the basic obligation of Members of the United Nations to 'refrain in their international relations from the threat or use of force.'<sup>42</sup>

Professor Myres McDougal, on the other hand, would construe article 51 to honor "appropriate responses to threats of imminent attack."<sup>43</sup> He would consider article 51 to safeguard the customary right of self-defense and not to restrict it. This would mean that anticipatory self-defense measures by a nation state, once it had met the customary standards of necessity and proportionality, would be considered permissible.<sup>44</sup> Commenting on the Cuban Quarantine controversy, Professor Brunson MacChesney concluded that nothing in the history of article 51 required "a construction limiting self-defense to a response to an armed attack."<sup>45</sup> He warned that realism, common sense, and the destructive nature of modern weapons demand the retention of this customary right under adequate safeguards until the community system makes its use no longer necessary.<sup>46</sup>

Perhaps by "realism" and "common sense" Professor MacChesney refers to the need to meet the pressing challenges of what have often been described as acts of "indirect aggression" in the present world. One such case in point was that of Lebanon which, in June 1958, had claimed the application of provisions of article 51 to justify the landing of United States forces on its soil. Lebanon said that the United States forces in Lebanon were in response to its request for assistance against what it termed was the indirect aggression of the United Arab Republic.<sup>47</sup>

In the Security Council debates the United States representative, Ambassador Lodge, urged the United Nations to support the efforts

<sup>42</sup> Wright, *Legal Aspects of the Viet-Nam Situation*, 60 AM. J. INT'L L. 750, 765 (1966.)

<sup>43</sup> McDougal, *The Soviet-Cuban Quarantine and Self-defense*, 57 AM. J. INT'L L. 597, 600 (1963).

<sup>44</sup> *Ibid.*:

There is, further, nothing in the subsequent conduct of the parties to the agreement expressed in the United Nations Charter which would indicate genuine shared expectations that they had in Article 51 given up their customary right of self-defense; indeed, again, the most relevant official utterances would suggest the exact opposite.

Professor McDougal refers to Mallison, *Limited Naval Blockade or Quarantine-Interdiction: National and Collective Defense Claims Valid Under International Law*, 31 GEO. WASH. L. REV. 335 (1962); McDevitt, *The UN Charter and the Cuban Quarantine*, 17 JAG J. 71 (1963) (collection of relevant official utterances).

<sup>45</sup> MacChesney, *Some Comments on the 'Quarantine' of Cuba*, 57 AM. J. INT'L L. 592, 594 (1963).

<sup>46</sup> *Ibid.*

<sup>47</sup> See U.N. Doc. No. S/4007 (1958), for letter dated May 22, 1958 from the Lebanese Representative addressed to the Security Council President; U.N. SECURITY COUNCIL OFF. REC. 13th year, 823d meeting 1-22 (S/PV.823) (1958) (Lebanese Representative's address before the Security Council).

of a democratically elected government to protect itself from indirect aggression. He recalled the United Nation's handling of the Greek question in 1946 and the "Essentials of Peace" and "Peace Through Deeds" resolutions<sup>48</sup> adopted by the General Assembly to show that the United Nations' duty extended to cases of indirect aggression.<sup>49</sup> President Eisenhower and several representatives at the United Nations also held that since Lebanon's appeal had been made in accordance with the provisions of article 51,<sup>50</sup> the United States was justified in responding to the appeal. It was claimed that: "The armed attack referred to in Article 51 need not be direct attack. Article 51 was intended to cover all cases of attack, direct or indirect . . ." <sup>51</sup> It was asserted by other United Nations representatives that since no "armed attack" had occurred against Lebanon, article 51 did not apply and that the United States action was in violation of article 2(4).<sup>52</sup> The Council debates left the issue unresolved.<sup>53</sup> It may also be recalled that the United Nations' efforts to define "aggression," "armed aggression," "self-defense,"<sup>54</sup> and "armed attack" have thus far remained futile.<sup>55</sup>

Contemporary political conditions would perhaps demand that "armed attack" in article 51 not be read to mean "actual armed attack."<sup>56</sup> Revolutionary changes in science and technology with their impact on armaments, the so-called "wars of national liberation," and highly sophisticated and refined mechanisms of carrying on subversive activities might, after all, prove as dangerous to the "political independence" and "territorial integrity"<sup>57</sup> of a nation state

<sup>48</sup> See U.N. GEN. ASS. Res. 290 (IV) 1949 and Res. 380 (V) 1950, the last of which denounces as a form of aggression and international crime, the "fomenting of civil strife in the interest of a foreign Power."

<sup>49</sup> See U.N. SECURITY COUNCIL OFF. REC. 13th year, 827th meeting 6-11 (S/PV.827) (1958) (statements by Ambassador Lodge).

<sup>50</sup> See GEN. ASS. OFF. REC. 3d Emer. Sp. Sess., Plenary 733, at 7-10 (A/or/ES-III/PV.733) (1958). See also *id.*, Plenary 737, at 51-53 (statement by the Representative of New Zealand, it being a typical statement of a similar plea made by several other representatives).

<sup>51</sup> 2 REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS, Supp. No. 2, at 467 (1964).

<sup>52</sup> See *id.* at 467-68 (summary of this viewpoint).

<sup>53</sup> See *id.* at 468-69. See also Wright, *The United States Intervention in the Lebanon*, 53 AM. J. INT'L L. 112 (1959).

<sup>54</sup> See generally BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW (1958) (on self-defense); BROWNIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (1963) (on self-defense); JESSUP, A MODERN LAW OF NATIONS, AN INTRODUCTION 163-69 (1948) (on self-defense).

<sup>55</sup> See, e.g., U.N. GEN. ASS., *Report of the 1956 Special Committee on the Question of Defining Aggression*, Supp. No. 16 (A/3574) (1957); U.N. GEN. ASS., *Report of the 6th Committee*, (A/3576) (1957), for a wide range of views presented therein. See generally STONE, AGGRESSION AND WORLD ORDER (1958).

<sup>56</sup> For a strong plea for this position by Professor McDougal, see note 43 *supra*.

<sup>57</sup> See U.N. CHARTER art. 2, para. 4, which, as a major principle of the United Nations, prohibits "the threat or use of force against the territorial integrity or political independence of any state."

as an open armed attack.<sup>58</sup> It is no surprise that such a strong advocate of restricting the right of self-defense to cases of "actual armed attack" as Professor Quincy Wright, has recently observed that:

There can be no doubt but that bodies of armed 'volunteers' crossing a frontier or cease-fire line, such as the Chinese in the Korean hostilities of 1950, or ostensibly private 'military expeditions' or 'armed bands' leaving one country for the purpose of attacking another, as the Cuban refugees in the Bay of Pigs affair of 1961, constituted, if of considerable magnitude, an 'armed attack.'<sup>59</sup>

Even if one assumes that the provisions of article 51 concerning armed attack are to be construed to apply to a situation such as that of Greece in 1946 and Lebanon and Jordan in 1958, wherein it was claimed that subversive elements fomented and assisted by external participants threatened the political independence or territorial integrity of a nation state, would the 1965 Dominican conflict qualify as a similar situation? Or would it qualify as a situation similar to the one created by the presence of Soviet missiles in Cuba in 1962 which, it was claimed, posed an imminent threat to the security of the United States, thereby making anticipatory self-defense measures justifiable?

To answer the latter question first, even given Professor McDougal's broad interpretation of article 51, and the official United States view of the "facts" of the Dominican conflict, the United States action in sending armed forces could not be sustained as having complied with the provisions of article 51. To argue that the presence of Communists in the rebel movement or that a Communist threat to take over the movement presented a situation similar to that of the 1962 Cuban missile crisis, thereby constituting an "armed attack" against the United States and giving the United States the right to take anticipatory self-defense measures, would be a futile attempt in reasoning and logic.

The first question, *i.e.*, whether or not indirect aggression threatened the political independence of the Dominican Republic and thus justified collective self-defense measures, will be answered not merely within the framework of article 51 but within the broader

<sup>58</sup> See, *e.g.*, Meeker, *Viet-Nam and the International Law of Self-defense*, 56 DEPT STATE BULL. 54, 59 (1967), stating:

I have heard and read arguments by some that Viet-Nam does not present a situation of "armed attack" because invading armies were not massed at a border and did not march across it in broad daylight. To be sure, that is the way armed attacks occurred in 1914, at the beginning of World War II, and even in Korea. But strategies and tactics have changed. . . . The judgment whether North Viet-Nam has engaged in "armed attack" against the South cannot depend on the form or appearance of its conduct. The crucial consideration is that North Viet-Nam has marshaled the resources of the state and has sent instrumentalities of the state, including units of its regular armed forces, into South Viet-Nam to achieve state objectives by force — in this case to subject the South to its rule.

<sup>59</sup> Wright, *supra* note 42, at 765.

perspective of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty),<sup>60</sup> the OAS Charter,<sup>61</sup> and other community prescriptions as evidenced by declarations and resolutions of the United Nations and the OAS.

Article 3(1) of the Rio Treaty provides that "an armed attack by any State against an American State shall be considered as an attack against all the American States. . . ." In such a situation each member 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 United Nations."

If we consider the provisions of this article in conjunction with article 2(4) of the United Nations, prior OAS declarations, the recent reaffirmation by the United Nations General Assembly that "armed attack by one State against another or the use of force in any other form contrary to the charter of the United Nations constitutes a violation of international law giving rise to international responsibility,"<sup>62</sup> and the earlier discussion on the import of armed attack in the contemporary world, one might come to a tentative conclusion that the threatened Communist take-over of the Dominican Republic constituted an armed attack against the country, and hence, the United States was exercising its right of collective self-defense. After all, the Tenth Inter-American Conference of the OAS had, in a resolution adopted at Caracas in 1954,<sup>63</sup> declared that the domination or control of the political institutions of any American state by the international Communist movement constituted a threat to the sovereignty and political independence of the American states and would call for a Meeting of Consultation to take appropriate measures. Again, in 1962, the Eighth Meeting of Consultation of Ministers of Foreign Affairs, meeting at Punta del Este,<sup>64</sup> declared that Marxism-Leninism was incompatible with the principles of the Inter-American system. The meeting excluded "the present Government of Cuba" from participation in the Inter-American system because of this "incompatibility."<sup>65</sup> It also urged upon

the member States to take those steps they may consider appropriate for their individual or collective self-defense . . . to counteract

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<sup>60</sup> Signed at the Inter-American Conference for the Maintenance of Continental Peace and Security, Rio de Janeiro, Aug. 15-Sept. 2, 1947.

<sup>61</sup> Signed at the Ninth International Conference of American States, Bogota, in 1948.

<sup>62</sup> Resolution adopted on Nov. 30, 1966, by a vote of 98-2-8, U.N. Doc. No. A/2160/XXI (1966).

<sup>63</sup> Resolution adopted at the Tenth American Conference, Caracas; see Resolutions XCIII, *Declaration of Solidarity for the preservation of the political integrity of the American states against the intervention of international Communism*, and XCV, *Declaration of Caracas*, INTERNATIONAL CONFERENCE OF AMERICAN STATES 433, 436 (2d Supp. 1942-54).

<sup>64</sup> Final act, Eighth Meeting of Consultation of Ministers of Foreign Affairs, 1962.

<sup>65</sup> O.A.S., ser. F/11.8 (Resolution VI).

threats or acts of aggression, subversion or other dangers to peace and security resulting from the continued intervention in this hemisphere of Sino-Soviet powers.<sup>66</sup>

Subsequently, the Ninth Meeting of Consultation of Ministers of Foreign Affairs was even more specific in suggesting measures to meet the danger of Communist subversion. After finding Cuba guilty of attempting to subvert Venezuelan institutions through sabotage, terrorism, and guerrilla warfare, the Meeting adopted a resolution warning the Cuban Government that, if it persisted in carrying out aggressive and interventionist acts against one or more member states of the OAS, the member states "shall preserve their essential rights as sovereign States by the use of self-defense in either individual or collective form, which could go so far as a resort to armed forces. . . ." <sup>67</sup>

However, even if the United States qualified, under article 3(1) of the Rio Treaty, to take collective self-defense measures, a prerequisite for taking such unilateral action contained in article 3(2) is that the state attacked must first make a request for help. The responding state could render aid "in fulfillment of the obligation" contained in article 3(1) which aid might continue until the Organ of Consultation took appropriate measures to meet the situation. There was no established government in the Dominican Republic to ask for United States assistance. Ambassador Stevenson asserted that the United States had sent forces to the Dominican Republic because on April 28, "the only apparent responsible authority in Santo Domingo addressed a request to the United States Government to send in armed forces."<sup>68</sup> But it should be noted that in view of the prevailing chaotic conditions in the Dominican Republic, and in view of the almost evenly balanced competing claims of the rebels and the military junta for the control of the people and resources of the country, the military junta could not be said to have the authority to speak for the state. Furthermore, the request for armed forces was initially made to protect United States citizens and other nationals.<sup>69</sup> In the days to follow, the United States was never asked to send in more troops or to keep those that were already there for the new purpose of preventing a Communist take-over which might endanger

<sup>66</sup> Resolution II, Pan. Am. Union, Inter-American Treaty of Reciprocal Assistance Applications 1960-64, 70, 72 (1964).

<sup>67</sup> See *op. cit. supra* note 63, at 186.

<sup>68</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1200th meeting 5 (S/PV.1200) (1965) (Ambassador Stevenson's statement).

<sup>69</sup> See, *e.g.*, 52 DEP'T STATE BULL. 742 (1965), for the President's statement of April 30, 1965:

We took this step when and only when, we were officially notified by police and military officials of the Dominican Republic that they were no longer in a position to guarantee the safety of American and foreign nationals and to preserve law and order.



the political independence or territorial integrity of the Dominican Republic.

The 1965 Dominican crisis would therefore present a situation different from the ones in Lebanon and Jordan in 1958 or in Greece in 1946, and could not be justified under Article 51 of the United Nations Charter. And, since the conditions of Article 3(2) of the Rio Treaty were not met, the United States' action would not be justified under Article 3 of the Rio Treaty.<sup>70</sup>

Article 6 of the Rio Treaty<sup>71</sup> applies to a situation wherein the "inviolability or the integrity of the territory or the sovereignty or political independence" of an American state is affected by "aggression which is not an armed attack," but which might "endanger the peace of America." In view of the earlier discussion on Communist participation in the rebel movement, could the Dominican Republic be said to have been a victim of such an aggression?<sup>72</sup> If so, the strict prohibitions of Articles 15 and 17 of the OAS Charter against intervention in the internal affairs of another member state, no matter for what reason, would be modified by Article 19 of the OAS Charter which authorizes measures undertaken for the maintenance of peace and security in accordance with existing treaties.

However, Article 6 of the Rio Treaty expressly provides the procedure for remedial measures, and these should be undertaken only by the Organ of Consultation. Although the United States'

<sup>70</sup> See Friedmann, *United States Policy and the Crisis of International Law*, 59 AM. J. INT'L L. 857, 868 (1965). Compare Thomas & Thomas, *The Dominican Republic Crisis 1965: Legal Aspects*, HAMMARSKJOLD FORUMS 32-34 (1966). They justified the United States action under the Rio Treaty on the theory that:

[A] third state may act in self-defense to assist another state in repelling an aggression when there exists a close relationship between the two states based on solidarity for the legal interests of both states would be violated by an armed attack against either one of them.

*Id.* at 33-34, they would justify the United States action on the basis of the doctrine of "necessity" which, they admit in the footnote, is "often disputed and is generally limited to the necessity to act in self-defense only." *Id.* at 33-34 n.86. There may be some question as to the application of the customary prescriptions to conditions of anarchy and as to whether such conditions might demand the application of a different set of prescriptions. See BROWNIE, *op. cit. supra* note 54, at 321.

<sup>71</sup> FENWICK, THE ORGANIZATION OF AMERICAN STATES App. B, Inter-American Treaty of Reciprocal Assistance, art. 6, at 574-75 (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 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.

<sup>72</sup> See notes 6-20 *supra* and accompanying text. See also 52 DEP'T STATE BULL. 744, 747 (1965), containing the President's statement of May 2: "[R]evolution in any country is a matter for that country to deal with. It becomes a matter calling for hemispheric action only . . . when the object is the establishment of a Communist dictatorship."

action did not meet with the procedural requirements of article 6, could it perhaps still be argued, since the time factor was crucial, and the initial United States action was undertaken to preserve the status quo until the OAS took over, that the United States did not violate the spirit of the law? Prior to taking any unilateral action had not the United States asked the OAS to meet?<sup>73</sup> And, subsequent to its action, did it not willingly agree to follow the OAS mandate?<sup>74</sup> To illustrate, the official United States memorandum outlining the legal basis for the United States' action was quite explicit in its pronouncement that the continued presence of the United States forces in the Dominican Republic was

for the additional purpose of preserving the capacity of the OAS to function in the manner intended by its charter — to achieve peace and justice by securing a cease-fire and by reestablishing orderly processes within which Dominicans can choose their own government, free from outside interference.<sup>75</sup>

Similar statements were made by, among others, Secretary Rusk,<sup>76</sup> Ambassadors Stevenson<sup>77</sup> and Bunker,<sup>78</sup> and legal advisor Meeker.<sup>79</sup>

This justification for the United States action would be further supported by the subsequent action of the OAS. By establishing an Inter-American Peace Force,<sup>80</sup> the Tenth Meeting of Consultation of Foreign Ministers perhaps implicitly approved of the United States action. Thus it could be argued that the United States took preliminary measures to preserve the situation for collective action, which eventually followed, thereby ratifying the initial unilateral action by the United States. Furthermore, the Security Council of the United Nations had also given implicit approval to the United States action by rejecting the Soviet resolution to condemn the United

<sup>73</sup> The United States had asked the Peace Committee of the OAS to meet on the twenty-seventh. On the morning of the twenty-eighth it again called upon the OAS Council to meet and discuss the Dominican situation. See 52 DEP'T STATE BULL. 941 (1965) (Secretary Rusk's statement).

<sup>74</sup> See, e.g., 52 DEP'T STATE BULL. 874-75, 879-80, 883-85 (1965) (Ambassador Stevenson's statements made in the Security Council debates).

<sup>75</sup> 111 CONG. REC. 10733 (daily ed. May 20, 1965). The Memorandum further said, "The action of the United States has given the organs of the OAS the essential time in which to consider the situation in the Dominican Republic and to determine means of preserving the rights that country has under the Inter-American system."

<sup>76</sup> 52 DEP'T STATE BULL. 842 (1965).

<sup>77</sup> *Id.* at 879-80.

<sup>78</sup> *Id.* at 859.

<sup>79</sup> Meeker, *The Dominican Situation in the Perspective of International Law*, 53 DEP'T STATE BULL. 62 (1965).

<sup>80</sup> See U.N. DOC. NO. S/6333 (1965); U.N. Doc. No. S/6333/Rev. 1 (1965); 52 DEP'T STATE BULL. 862-63 (1965), for the text of the resolution adopted in Plenary Session by the Tenth Meeting on May 6, 1965, regarding the formation of an Inter-American force as recommended by the Special Committee. The vote was 15-5 (Chile, Ecuador, Mexico, Peru and Uruguay) with Venezuela abstaining. See also 17 AMERICAS 41-43 (May 1965).

States armed intervention in the internal affairs of the Dominican Republic.<sup>81</sup>

The conclusion, however, is inescapable that since the United States had unilaterally used armed forces in a primarily internal conflict situation, it did not comply with the spirit of the law.<sup>82</sup> This conclusion follows regardless of the ex post facto vindication of the United States claim by the OAS and the United Nations,<sup>83</sup> and regardless of the distinctions forwarded to contrast this action from the prior "gunboat diplomacy" of the nineteenth and early twentieth century.<sup>84</sup>

The reaction of the United States Congress following the Dominican conflict gives an interesting insight into its members' perception of the relevance of international law to such a situation. A House Resolution adopted on September 20, 1965,<sup>85</sup> provides that,

<sup>81</sup> See U.N. Doc. No. S/6328 (1965) (draft resolution by the Soviet Union).

<sup>82</sup> Even an ardent critic of the United States action in the Dominican Republic, Senator Fulbright, concedes that pursuant to the United States action there has been stability in the country. See generally FULBRIGHT, *ARROGANCE OF POWER*, 83-92 (1967).

Those of us who criticized the American intervention must concede that a degree of order and stability in the Dominican Republic was restored more quickly than seemed likely in the spring and summer of 1965 and that credit for this properly belongs to United States diplomacy, to the Organization of American States, and to the Inter-American Force which remained in the Dominican Republic until the summer of 1966, as well as to the provisional government which held office from September 1965 to July 1966 and to the elected government which succeeded it.

*Id.* at 84. For recent reports on the political situation in the Dominican Republic, see Rodman, *Belaguer: The First Nine Months — An interim report on the Dominican Republic*, *The New Republic*, March 25, 1967, at 19-23; Meagher, *Belaguer's Progress gives reasons for Hope*, *The National Observer*, March 13, 1967, p. 12, col. 3.

<sup>83</sup> See U.N. Doc. No. S/6328 (1965), for the text of the Soviet resolution condemning the United States action and asking for withdrawal of United States forces from the Dominican Republic. The resolution asking for United States condemnation was lost in the Council, with the Soviet Union alone voting in its favor and four members, France, Ivory Coast, Jordan and Malaysia, abstaining. See U.N. SECURITY COUNCIL OFF. REC. 20th year, 1214th meeting 22-23 (S/PV.1214) (1965), for voting on the withdrawal part of the Soviet resolution which was lost with only two in favor — Soviet Union and Jordan. See also *id.* 1204th meeting 1-2 (S/6346/Rev. 1) (rejection of the Soviet amendments to the Uruguayan resolution); *id.* 1214th meeting 10-12 (to the same effect); *id.* 1216th meeting 10-11. See also Comment, *The Dominican Crisis: An Examination of Traditional and Contemporary Concepts of International Law*, 4 DUQUESNE U.L. REV. 547, 565 (1965-66):

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.

It is submitted that this conclusion does not follow from the Council's rejection of the Soviet resolution condemning the United States' action; non-condemnation does not necessarily mean approval. As is suggested later, in notes 128-38 *infra* and accompanying text, the Council did not resolve the issue.

<sup>84</sup> See, e.g., *The New Diplomacy*, 52 DEP'T STATE BULL. 1042, 1045 (1965) (Undersecretary Ball's address of June 6, 1965), wherein Ball contrasts prior United States interventions in the Dominican Republic with the "new diplomacy" adopted in the 1965 crisis. Compare FENWICK, *op. cit. supra* note 71.

<sup>85</sup> See 111 CONG. REC. 23458-73 (daily ed. Sept. 20, 1965) (discussion of the H.R. 560). For voting on the resolution (312 for, 52 against, three answering "present" and 65 not voting), see *id.* at 23473-74.

since any Communist domination or threat of it violates the principles of the Monroe Doctrine,<sup>86</sup> and of collective security as declared by the OAS resolution and acts,<sup>87</sup> and is dangerous to the peace and safety of the Western Hemisphere, any member state can,

in the exercise of individual or collective self-defense, which could go so far as to resort to armed force . . . take steps to forestall or combat intervention, domination, control, and colonization in whatever form, by the subversive forces known as international Communism and its agencies in the Western Hemisphere.<sup>88</sup>

The resolution apparently disregards well-established community norms contained in Articles 2(4) and 2(7) of the United Nations Charter, and Articles 15 and 17 of the OAS Charter.

As expected, some Latin American countries were unfavorably disposed toward this resolution. While Peru's Chamber of Deputies voted to protest against it, and reject it, Colombia's Congress called it "openly aggressive and contrary to the jurisdiction and political system of Latin America."<sup>89</sup>

## II. THE COMPETENCE OF THE ORGANIZATION OF AMERICAN STATES *vis-a-vis* THE UNITED NATIONS<sup>90</sup>

The Dominican crisis reopened the debate on the proper delineation of competence and responsibility between the Organization of American States and the United Nations to deal with regional conflicts in the Western Hemisphere. This section will examine the relevant provisions of the charters of the OAS and the United Nations and past trends in similar situations, and then appraise the problem in the light of the Dominican experience.

<sup>86</sup> See THE MONROE DOCTRINE (Dozer ed. 1965) (recent study on the Monroe Doctrine).

<sup>87</sup> The Resolution especially referred to the declaration made by the Ninth Meeting of Consultation of the Ministers of Foreign Affairs, serving as Organ of Consultation at Punta del Este in 1962.

<sup>88</sup> 111 CONG. REC. 23458 (daily ed. Sept. 20, 1965). See *Id.* at 24710 (daily ed. Sept. 30, 1965) (criticism by Senator Fulbright); *id.* at 25322 (daily ed. Oct. 7, 1965) (criticism by Senator Clark).

<sup>89</sup> DENNIS, DOMINICAN DILEMMA 270 (Editorial Research Report 1966).

<sup>90</sup> CAYNES, THE ORGANIZATION OF AMERICAN STATES AND THE UNITED NATIONS (6th ed. 1963); CONNELL & SMITH, THE INTER-AMERICAN SYSTEM 214-19, 312-15 (1966); INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, THE INTER-AMERICAN SYSTEM (1966). See generally Claude, Jr., *The OAS, the UN, and the United States*, 547 INT'L CONC. (March 1964); Halderman, *Regional Reform Measures and the United Nations*, 52 GEO. L.J. 89, (1963); MacDonald, *The Developing Relationship between Superior and Subordinate Political Bodies at the International Level: A Note on the Experience of the United Nations and the Organization of American States*, 2 CAN. YB. INT'L L. 21 (1964); Whitaker, *Development of American Regionalism*, 469 INT'L CONC. (March 1951); Wilcox, *Regionalism and the United Nations*, 29 INT'L ORGN. 789, 797-803 (1965); Wood & Morales M., *Latin America and the United Nations*, XIX, 29 INT'L ORGN. 714 (1965).

### A. *The Charter Provisions*

Chapter VIII of the United Nations Charter, dealing with "Regional Arrangements," was a compromise between "regionalists"<sup>91</sup> and "universalists"<sup>92</sup> and was adopted at the United Nations Conference on International Organization at San Francisco.<sup>93</sup> As such, it is capable of varying and even conflicting interpretations. One interpretation would be that regional organizations should be used to settle local disputes before bringing them to the United Nations. Article 52(2) of the United Nations Charter for instance, specifically provides for such an arrangement,<sup>94</sup> and article 52(3) provides for the encouragement of pacific settlement of local disputes through regional machinery. Articles 33 and 51 support the argument that regional arrangements have priority to deal with disputes of a local nature. Article 33 calls upon the parties to a dispute to seek, among other means, pacific resort to "regional agencies or

<sup>91</sup> Proceedings at the 1945 Inter-American Conference in Mexico City (February 21 to March 13) and the resulting resolution VIII on "Reciprocal Assistance and American Solidarity," also known as The Act of Chapultepec, show the strong feelings of the Latin American countries toward regionalism. In large measure, this attitude stemmed from their misgivings about the effectiveness of a veto-ridden Security Council as anticipated in the Dumbarton Oaks Proposals. See generally INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra* note 90, at XXIX-XXXI. See also *id.* at XXXI:

The American Republics were particularly concerned by the fact that within the world structure for the maintenance of peace the privilege of the veto was established for the so-called "great powers," which, they felt, might retard or even completely paralyze regional action. [The adoption of Ch. VIII and the acceptance of the formula incorporated in Article 51 recognizing the inherent right of individual and collective self-defense.] Acceptance was thereby given to the legitimacy of regional action with respect to the pacific settlement of disputes as well as with respect to collective security and, therefore, to the compatibility of such action with the principles and procedures governing both matters in the United Nations Charter.

See also CAYNES, *THE ORGANIZATION OF AMERICAN STATES AND THE UNITED NATIONS* (5th ed. 1960). On the Chapultepec Conference, see INMAN, *INTER-AMERICAN CONFERENCES 1826-1954: HISTORY AND PROBLEMS* 210-20 (1965) (Chapultepec Conference).

At San Francisco, Senator Arthur H. Vandenberg, among others, was a strong supporter of regionalism. See generally *THE PRIVATE PAPERS OF SENATOR VANDENBERG 186-93* (Vandenberg, Jr. ed. 1952), wherein Senator Vandenberg seems primarily concerned with the protection of the Monroe Doctrine and regionalism from the possible inroads made by the United Nations.

<sup>92</sup> At the higher echelons of the United States decision makers, Secretary Hull's name should be especially mentioned as a strong proponent of universalism. At the earlier stages of discussion on the establishment of an international organization, he was instrumental in formulating the United States preferences toward the subordination of regional organizations to the projected United Nations. See generally 2 *THE MEMOIRS OF CORDELL HULL* 1640-46 (1948). See also RUSSELL & MUTHER, *A HISTORY OF THE UNITED NATIONS CHARTER* 121, 255, 398-99 (1958).

<sup>93</sup> The conference was held from April 25 to June 26, 1945. See generally 12 *Documents of the United Nations Conference on International Organization, San Francisco, 1945* 663-866 (1945) (debates in Commission III, Committee IV).

<sup>94</sup> U.N. CHARTER art. 52, para. 2 provides:

The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

arrangements" for its solution, and article 51 recognizes the "inherent right" of collective self-defense. Several provisions in the Inter-American instruments would further strengthen this contention. Article 20 of the OAS Charter stipulates that international disputes between American states "shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations." Article 2 of the Rio Treaty provides for the settlement of "every controversy" between member states through the Inter-American machinery "before referring it to the General Assembly<sup>95</sup> or the Security Council of the United Nations." Article II of the 1948 Pact of Bogota<sup>96</sup> has a similar provision.

Articles 52(4), 34 and 39, read in conjunction with Articles 103 and 24 of the United Nations Charter, Article 102 of the OAS Charter and Article 10 of the Rio Treaty, support a contrary view. While Article 34 of the United Nations Charter authorizes the Security Council to investigate any dispute or situation "which might lead to international friction or give rise to a dispute," and article 35 confers upon member states the right to bring before the United Nations any dispute or situation "of the nature referred to in Article 34," article 39 provides that the "Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression" and take appropriate measures to maintain or restore international peace and security. Article 103 states that the obligations of a member state under the United Nations Charter take precedence over its obligations "under any other international agreement" and if there is a conflict between those obligations, article 24 assigns to the Security Council the primary responsibility for maintaining international peace and security. Similarly, by declaring that nothing in the Inter-American agreements would be construed as impairing the rights and obligations of member states under the United Nations Charter, Article 102 of the OAS Charter and Article 10 of the Rio Treaty establish the subordination of regional to universal obligations.

Other pertinent articles in the United Nations Charter are Articles 36, 41, 43, 53 and 54. While article 36,<sup>97</sup> dealing with pacific settlement, may be construed to support either position, article 41 and

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<sup>95</sup> No other Inter-American instrument mentions the General Assembly in this context.

<sup>96</sup> See STOETZER, *THE ORGANIZATION OF AMERICAN STATES* 98-115 (1965) (text of Pact of Bogota, also called the Inter-American Treaty on Pacific Settlement).

<sup>97</sup> U.N. CHARTER art. 36 provides in part:

(1) The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

(2) The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

42, referring to appropriate measures to maintain or restore international peace and security, are especially important in the context of article 53, which prohibits regional organizations from taking any "enforcement action" without prior authority by the Security Council. Article 54 calls upon the regional organizations to keep the Security Council fully informed at all times of their "activities undertaken or in contemplation" for the maintenance of international peace and security.

Any attempt to reconcile the conflicting interpretations which the charter provisions pose must consider the key words in these articles, "disputes" and "enforcement action." First, to what kinds of disputes are the Charter provisions prescribing procedures and priorities for regional organizations applicable? Second, does the prior seizing of a local "dispute" by a regional organization preclude its discussion, investigation, and disposal by the Security Council? Finally, what does the term "enforcement action" encompass?

Unlike other parts of the United Nations Charter, Chapter VIII makes no distinction between "disputes" and "situations,"<sup>98</sup> and neither does any Inter-American instrument. Similarly, the term "enforcement action" is nowhere defined in the United Nations Charter or in the Inter-American instruments. Thus, the only discernible guideline for clarification, if any, will be available through a study of the past trends.

### B. *Past Trends*

It would seem that the charter provisions contemplate no definable limit to the scope of "dispute." Different types of disputes, both in terms of participants and the nature of the dispute, have been brought before the United Nations. While participants have ranged from a Latin American state against the United States or against another state to a member state against the OAS, the nature of disputes has varied from outright armed conflicts and conflicts involving diplomatic and economic sanctions to those alleged to cause a threat to the peace or breach of the peace. In this section, a summary review of some selected regional disputes before the United Nations will show that their prior seizure by the regional organization has not been considered a strong enough reason to preclude a member state from raising the controversy before the United Nations, thereby indicating that the obligation of member states to bring local disputes before the OAS does not bar their access to the international arena. The following discussion will also show that the term "enforcement action" has consistently been given a narrow con-

<sup>98</sup> See INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra* note 90, at 183-89 (an elaboration).

struction, thereby recognizing the autonomy of the OAS to deal with most regional disputes without prior United Nations authorization.

### 1. Access to the United Nations

The 1954 Guatemalan crisis,<sup>99</sup> for the first time, raised the question of the relative competence of the United Nations and the OAS to deal with a regional dispute.

Following the crossing of the Honduras-Guatemala border by a rebel army on June 18, 1954, the Government of President Arbenz appealed simultaneously to the President of the Security Council<sup>100</sup> and the Inter-American Committee<sup>101</sup> to take appropriate measures to meet the situation. Subsequently, Arbenz asked the Inter-American Committee to suspend consideration of Guatemala's complaint and requested its complete withdrawal since the case was already before the Security Council.<sup>102</sup>

In its complaint before the Security Council, Guatemala invoked Articles 34, 35 and 39 of the United Nations Charter, seeking the Council's assistance to "put a stop to the aggression in progress" against it.<sup>103</sup>

The Security Council met on June 20 to consider the complaint.<sup>104</sup> The Guatemalan representative contended that there was no dispute between Guatemala and any other state, but that it was a case of aggression and therefore articles 33 and 55(2) giving priority to the regional organizations did not apply. He accused Honduras, Nicaragua, and the United States of conspiring to overthrow the Guatemalan government and asked the Council to send an observation team to Guatemala and to warn the states named against continuing to support the rebels. The Brazilian-Colombian draft resolution, which would have referred the complaint to the OAS for urgent consideration,<sup>105</sup> was vetoed by the Soviet Union. The Council then unanimously adopted the French draft calling upon the member states to refrain from assisting the belligerents and urging

<sup>99</sup> JAMES, *RED DESIGNS FOR THE AMERICAS: GUATEMALAN PRELUDE* (1954); MECHAM, *THE UNITED STATES AND INTER-AMERICAN SECURITY 1889-1960* 445-53 (1961); SILVERT, *THE CONFLICT SOCIETY: REACTION AND REVOLUTION IN LATIN AMERICA* 113-41 (1961); TORIELLO, *LA BATALLA DE GUATEMALA* (1955); Dreir, *The Organization of American States and United States Policy*, 17 INT'L ORGN. 36 (1963); Grant, *Guatemala and United States Foreign Policy*, 9 J. INT'L AFF. 64 (1955); Taylor, *The Guatemalan Affair—A Critique of United States Foreign Policy*, 50 AM. POL. SCI. REV. 787 (1956).

<sup>100</sup> U.N. SECURITY COUNCIL OFF. REC. 9th year, Supp. May-June 1954, at 13(S/32) (1954).

<sup>101</sup> See *Report of the Inter-American Peace Committee to the Fifth Meeting of Consultation*, App. D (1959).

<sup>102</sup> See INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra* note 90, at 89-90 (brief report).

<sup>103</sup> See note 100 *supra*.

<sup>104</sup> U.N. SECURITY COUNCIL OFF. REC. 9th Year, 675th meeting (S/PV.675) (1954).

<sup>105</sup> *Id.* at 15.



an immediate termination of hostilities. Thus, the Council assumed competence to discuss the case, notwithstanding assertion by some Latin American states and the United States that it should not do so.

Five days later, the Council again met to discuss Guatemala's complaint that Honduras and Nicaragua were not complying with the Council's resolution.<sup>106</sup> Guatemala invoked Article 103 of the United Nations Charter in support of its right to obtain access to the Security Council instead of resorting to the OAS. The vote on placing the Guatemalan issue on the Council agenda was four in favor, five against and two (France and the United Kingdom) abstaining. The outcome, however, did not reflect the Council's verdict against its competence to deal with a regional conflict but rather was a recognition of special political and ideological undertones of the Soviet-United States confrontation in an area of primary United States influence.<sup>107</sup>

Since the Security Council and the OAS did nothing to prevent the fall of the Arbenz government and Guatemala's take-over by Colonel Castillo Armas, at the next General Assembly session several Latin American representatives severely criticized the failure of the Security Council to act. To illustrate, the Argentine representative asserted that:

The existence of regional arrangements does not mean that they or the agencies created under them take precedence over the United Nations, or that the United Nations should refrain from discussing or endeavouring to settle problems submitted to it by a government representing a member state. . . . To hold that the regional organization has exclusive jurisdiction would in our view lead to the absurd position that a State Member of the United Nations which was a party to a regional agreement would be at a disadvantage as compared with other States . . . not members of regional agencies.<sup>108</sup>

In his annual report the Secretary General seems to endorse this view:

[I]n those cases where resort to such [regional] . . . arrangements is chosen in the first instance, that choice should not be permitted to cast any doubt on the ultimate responsibility of the United Nations. Similarly, a policy giving full scope to the proper role of regional agencies can and should at the same time fully preserve the right of a Member nation to a hearing under the Charter.<sup>109</sup>

As the following discussion would indicate, since then, the right of a member state to obtain access to the international arena has

<sup>106</sup> *Id.* 676th meeting (S/PV.676).

<sup>107</sup> See Claude, *supra* note 90, at 28-33 (elaboration of this point).

<sup>108</sup> U.N. GEN. ASS. OFF. REC. 9th Sess., Plenary 488, at 174. See also *id.* Plenary 481, at 98; *id.* Plenary 485, at 148; *id.* Plenary 486, at 150 (similar arguments by representatives of Uruguay, Ecuador and Brazil, respectively).

<sup>109</sup> See U.N. GEN. ASS. OFF. REC. 9th Sess., Supp. No. 1, at 11 (A/2663) (1954), cited with approval later in the 1965 Dominican crisis by the Cuban representative in U.N. SECURITY COUNCIL OFF. REC. 20th year, 1198th meeting 16-17 (S/PV.1198) (1965).

never been denied. But with the exception of the Dominican crisis, no significant action has been taken by the United Nations in the area of OAS competence.

In July 1960, responding to a Cuban complaint against the alleged United States intervention in Cuba's domestic affairs and its economic aggression against Cuba,<sup>110</sup> the Security Council discussed the situation on July 18 and 19.<sup>111</sup> In the Council debate, the issue was joined on the right of a member state to bring a dispute directly before the United Nations without first exhausting the "local" remedies. While the United States contended that Cuba was under an obligation to resort to the Inter-American machinery,<sup>112</sup> the Soviet Union challenged this position, asserting that not only did a member have a right of access to the Council but that the Council had a responsibility to deal with a Cuban type complaint.<sup>113</sup> The Argentine-Ecuador draft resolution, approved by the Council,<sup>114</sup> expressed the Council's concern about the situation and, noting that the situation was under consideration by the OAS, adjourned its consideration of the matter pending the receipt of a report from the OAS. The following remarks by the United States' representative on the draft resolution are helpful in clarifying the purpose of the draft. He asserted that the resolution would not

deny the Council's competence in the matter, or even settle the legal question of which organization should act first. What is suggested is a noting of the concrete circumstance that the regional organization is dealing with the question, and a recognition that, for a better evaluation of the issues, it is useful to have before us the considerations at which the regional organization may arrive. This preliminary measure cannot prevent the Council from . . . [ensuring] that the existing situation does not deteriorate before the report of the Organization of American States is transmitted to us.<sup>115</sup>

At the next General Assembly session, Cuba requested the inclusion of the item of the alleged United States interventionist activities and acts of aggression against Cuba on the agenda for urgent attention in the plenary session.<sup>116</sup> However, after the inclusion of the item on the agenda,<sup>117</sup> but before its discussion in the Assembly, Cuba again sought the Security Council consideration of an impend-

<sup>110</sup> *Id.* 15th year, Supp. July-Sept. 1960, (S/4378) (1960).

<sup>111</sup> *Id.* 874-76th meetings (1960).

<sup>112</sup> *Id.* 874th meeting 28 (1960).

<sup>113</sup> *Id.* 876th meeting 17 (1960).

<sup>114</sup> U.N. SECURITY COUNCIL OFF. REC. 15th year, Supp. July-Sept. 1960 (S/4392) (1960); U.N. DOC. NO. S/4395 (1960) (voting was 9-0-2).

<sup>115</sup> U.N. SECURITY COUNCIL OFF. REC. 15th year, 874th meeting (S/PV.874) (1960).

<sup>116</sup> U.N. GEN. ASS. OFF. REC. 15th Sess., Gen. Comm. (1960).

<sup>117</sup> *Id.* Plenary 909th (1960).

ing United States invasion of the island. The Council discussed the matter but took no formal action.<sup>118</sup>

Following the abortive Bay of Pigs invasion, the First Committee of the General Assembly discussed the pending Cuban complaint<sup>119</sup> and in a plenary meeting adopted a modified version of a joint draft resolution that had been recommended by the First Committee.<sup>120</sup> The first operative paragraph of the draft resolution, which would have recognized the role of the OAS to solve the Cuban question was rejected in the plenary meeting. And in the only operative paragraph adopted, the General Assembly, without any special reference to the OAS procedures, exhorted member states to take such peaceful action as was open to them to remove existing tension.<sup>121</sup>

At the Fifteenth Session of the General Assembly, representatives of Ecuador and Peru reopened the debate on their twenty-year-old boundary dispute. Ecuador denounced the alleged Peruvian aggression of 1941-42,<sup>122</sup> and the Peruvian representative denied the charges.<sup>123</sup> Although the Assembly took no formal notice of Ecuador's accusations, another precedent of a Latin American state seeking an international forum to air its dispute with a second Latin American state was set.

Prior to the 1965 Dominican crisis, two more conflicts were discussed at the Security Council—the Haiti-Dominican Republic dispute in May 1963, brought before the Council by Haiti,<sup>124</sup> and the United States-Panamanian dispute in January 1964, brought before the Council by Panama.<sup>125</sup> In both instances, the Council assumed competence and since the parties concerned had in each case voluntarily agreed to find a peaceful settlement of their disputes through the OAS procedures and the OAS was already appraised of

<sup>118</sup> U.N. SECURITY COUNCIL OFF. REC. 16th year, 921st-923d meetings (S/PV.921-923) (1961).

<sup>119</sup> U.N. GEN. ASS. OFF. REC. 15th Sess., 1st Comm., 1149th-1161st meetings (1961).

<sup>120</sup> See *id.* 1161st meeting at 108-109 (1960) (voting on the draft resolutions in the 1st Committee). See U.N. GEN. ASS. RES. 1616 (XV) (text of the resolution adopted by a vote of 59-13-24).

<sup>121</sup> See Claude, *supra* note 90, at 43. Professor Claude concludes that "The Cuban case suggested that Guatemala had not provided a precedent, but had produced a reaction."

<sup>122</sup> U.N. GEN. ASS. OFF. REC. 15th Sess. Plenary 878, at 238 (1960); *id.* at 242-244 (speech by the representative of Ecuador).

<sup>123</sup> *Id.* at 244-46 (speech by the representative of Peru); *id.* at 260 (reply by the representative of Ecuador). See also N.Y. Times, March 13, 1967, p. 30, col. 4 (city ed.) (recent report on the conflict).

<sup>124</sup> U.N. SECURITY COUNCIL OFF. REC. 18th year, 1035-1036th meetings 8-9 (S/PV.1035-1036) (1963). See U.N. DOC. NO. S/5302 (1963) (Haitian telegram to the President of the Security Council).

<sup>125</sup> U.N. SECURITY COUNCIL OFF. REC. 19th year, 1086th meeting (S/PV.1086) (1964). See U.N. DOC. NO. S/5509 (1964) (letter dated Jan. 10, 1964 from the permanent representative of Panama to the President of the Security Council).

the situations, the Council endorsed the OAS efforts without making any formal decisions.<sup>126</sup> The Council, nonetheless, kept these items on its agenda.<sup>127</sup>

## 2. Meaning and Scope of Enforcement Action

Article 53 of the United Nations Charter prohibits regional organizations from taking "enforcement action" without prior authority from the Security Council. The limits thereby placed on regional organizations must be sought in the definition of "enforcement action." The first occasion for the Council debate on the meaning and scope of the phrase "enforcement action" as contained in Article 53 of the United Nations Charter arose after the Sixth Meeting of the Organ of Consultation found the Dominican Republic guilty of interventionist and aggressive acts not amounting to overt military attacks against Venezuela. On August 20, 1960, the Organ of Consultation resolved to apply diplomatic and economic sanctions envisaged by Article 8 of the Rio Treaty.<sup>128</sup> The resolution simply authorized the Secretary General of the OAS "to transmit to the Security Council of the United Nations full information concerning the measures agreed upon in its resolutions," and the Secretary General complied with these instructions.<sup>129</sup>

The Soviet Union requested a Security Council meeting to consider the OAS resolution,<sup>130</sup> and moved that pursuant to article 53, the regional measures be approved by the Council.<sup>131</sup> The Council considered the question at the three meetings,<sup>132</sup> and adopted a joint draft resolution by which it merely took note of the information transmitted by the Secretary General.<sup>133</sup> Did the Council impliedly

<sup>126</sup> The Organ of Consultation which had been studying the Haitian-Dominican Republic situation declared its action concluded on August 12, 1966, since the situation had considerably improved. 17 AMERICAS 42 (Oct. 1966).

<sup>127</sup> INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra* note 90, at 186-88 (summary of the Council's action).

<sup>128</sup> RIO TREATY art. 8 provides:

For the purpose of this Treaty, the measures on which the Organ of Consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force.

<sup>129</sup> U.N. SECURITY COUNCIL OFF. REC. 15th year, Supp. July-Sept. 1960 (S/4476) (1960).

<sup>130</sup> See U.N. DOC. No. S/4477 (1960) (the Soviet note).

<sup>131</sup> U.N. DOC. No. S/4481 (1960). See also U.N. DOC. No. S/4481/Rev.1 (1960) (draft resolution).

<sup>132</sup> U.N. SECURITY COUNCIL OFF. REC. 15th year, 893d-895th meetings (S/PV.893-895) (1960).

<sup>133</sup> U.N. SECURITY COUNCIL OFF. REC. 15th year, 895th meeting 5 (S/4484) (1960) (jointly moved by Argentina, Ecuador and the United States and adopted by 9-0-2).

approve the United States position that only coercive, military measures constituted "enforcement action" needing prior Council authorization under article 53? Since the Soviet draft resolution was never voted upon and the adopted resolution had taken note of the regional action, it could be argued that the United States position was not that of the Council and that the meaning of "enforcement action" was still an open question.

Thus, but for laying down the rough guideline that intense coercive measures involving the use of military force may not be employed by a regional organization without prior Council authorization, the Security Council debates did not clarify the concept "enforcement action" any further.

In February 1962, Cuba requested a Council meeting<sup>134</sup> to discuss the illegality of the alleged enforcement measures undertaken against her by the Eighth Meeting of the Organ of Consultation in Punta del Este in January 1962. Those sanctions included the exclusion of the Cuban government from the OAS, the imposition of trade restrictions and partial economic sanctions against her.<sup>135</sup> After a lengthy debate on February 27, 1962, the Council decided, by a vote of four in favor and seven abstentions, against inclusion of the Cuban note on the Council agenda.<sup>136</sup> However, one reason forwarded for this rejection was that the General Assembly had already debated substantially the same Cuban charges without taking any formal action.<sup>137</sup> Another rationale for inaction, forwarded in Council debate, was that the Council decision in the prior Dominican debate had set a precedent that non-military measures could be undertaken by a regional organization without prior Council approval.<sup>138</sup> The United States' conception of the limited scope of "enforcement action" was reinforced.

The Dominican precedent was again invoked a few days later when the Council included on the agenda the Cuban request for an advisory opinion from the International Court of Justice on three legal questions. One question was addressed to the scope of the expression "enforcement action" in article 53, that is, if it included

<sup>134</sup> U.N. SECURITY COUNCIL OFF. REC. 17th year, Supp. Jan.-March 1962, at 82 (S/5080) (1962) (Cuban note dated Feb. 22, 1962).

<sup>135</sup> INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra* note 90, at 159-62.

<sup>136</sup> U.N. SECURITY COUNCIL OFF. REC. 17th year, 991st meeting (S/PV.991) (1962).

<sup>137</sup> U.N. GEN. ASS. OFF. REC. 16th Sess., 1st Comm., Plenary 1231st-1243d (1962); *id.* Plenary 1104th-1105th (1962).

<sup>138</sup> CAYNES, *THE ORGANIZATION OF AMERICAN STATES AND THE UNITED NATIONS* 58 (5th ed. 1960): "The action taken by the Security Council in this [Dominican] case has established a precedent of great significance in the operation of the Inter-American system of collective security." Compare Claude, *supra* note 90.

the article 41<sup>139</sup> measures and if the list of those measures in article 41 was exhaustive.<sup>140</sup> By a vote of four in favor and seven against, the Council rejected the Cuban bid for resort to the International Court of Justice.<sup>141</sup> At the Council meeting the Soviet Union reiterated its earlier argument that if the Security Council did not nullify the Punta del Este sanctions against Cuba,

then tomorrow similar action may be taken against any other country of Latin America, Africa, Asia or any continent whose neighbors, upon some pretext or other, having assembled at a regional meeting, arbitrarily decide to apply to it the machinery of coercion in the form of enforcement action, thus usurping prerogatives of the Security Council.<sup>142</sup>

However, as the voting indicates, the opposing argument that it was a disguised Soviet move to extend its veto over the OAS activities which would eventually be extended to all regional organizations evidently appealed to Nationalist China and all the Western and Latin American member states.<sup>143</sup> Thus, the Council action, stemming basically from a fear of uncertainty of the Court's opinion, perhaps strengthens the prior United States stand in the Dominican case. After the Council voting, the United States' representative declared that by rejecting the Cuban proposal, the Security Council had "forthrightly, resolutely and decisively upheld the integrity and independence of regional organizations."<sup>144</sup>

A few months later, in October 1962, in the face of the Cuban missile crisis,<sup>145</sup> the initial measures taken unilaterally by the United States were endorsed by the regional organization, after the Council of the OAS acting as a provisional Organ of Consultation recommended in a resolution that "the member states, in accordance with articles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance, take all measures, individually and collectively including the

<sup>139</sup> U.N. CHARTER art. 41, provides:

The Security Council may decide what measures not involving the use of armed forces are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

<sup>140</sup> See generally U.N. SECURITY COUNCIL OFF. REC. 17th year, 992d-998th meetings (S/PV.992-998) (1962). See U.N. Doc. No. S/5086 (1962); U.N. Doc. No. S/5088 (1962) (Cuban letters); U.N. Doc. No. S/5095 (1962) (draft resolution as contained in March 19 letter from the Cuban Representative).

<sup>141</sup> U.N. SECURITY COUNCIL OFF. REC. 17th year, 998th meeting 21, 28 (S/PV.998) (1962).

<sup>142</sup> *Id.* 991st meeting 10 (S/PV.991).

<sup>143</sup> *Id.* 993d meeting 14-15 (S/PV.993); *id.* 998th meeting 14-15, 29 (S/PV.998) (United States position); *id.* 994th meeting 10 (S/PV.994) (Chilean position); *id.* 995th meeting 13 (S/PV.995) (French position); *id.* 6-7 (Chinese position).

<sup>144</sup> *Id.* 998th meeting 30 (S/PV.998).

<sup>145</sup> See generally ABEL, *THE MISSILE CRISIS* (1966).

use of armed force."<sup>146</sup> When the Security Council convened in an emergency session to consider the question,<sup>147</sup> the uppermost concern of the members was naturally with the utmost gravity of the situation. Therefore the question of the OAS-United Nations relationship was virtually cast aside in favor of finding a solution to the explosive situation. The outcome was that although military measures had been undertaken and at the Council debate the question of prior Security Council authorization had also been raised, the OAS action was not seriously challenged by any member state.<sup>148</sup>

Finally, following the decision of the Ninth Meeting of Consultation<sup>149</sup> to apply even more severe diplomatic and economic measures than had been previously imposed against the Cuban government,<sup>150</sup> the Secretary General of the OAS, pursuant to article 54, informed the Security Council of this decision, and the Council never even discussed the issue.

### C. *The Dominican Case*

On May 1, 1965, the Soviet representative addressed a letter to the President of the Security Council asking for an urgent Council meeting on the Dominican situation.<sup>151</sup> The Security Council started discussing the Dominican situation on May 3. It held more meetings on this question (twenty-eight in all, from May 3-25, June 3-31, and

<sup>146</sup> See INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *THE INTER-AMERICAN SYSTEM 164-65* (1966) (text of the resolution).

<sup>147</sup> U.N. SECURITY COUNCIL OFF. REC. 17th year, 1022d-1025th meetings (S/PV.1022-1025) (1962).

<sup>148</sup> See MacDonald, *The Developing Relationship Between Superior and Subordinate Political Bodies at the International Level: A Note on the Experience of the United Nations and the Organization of American States*, 2 CAN. YB, INT'L L. 21, 45-49 (1964). Cf. INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra*, note 146, at 165:

The express mention of Articles 6 and 8 might lead to the impression that this was a collective action, by the Organ of Consultation . . . . However, this was not the case. Rather it was a *sui generis* way of exercising self-defense. . . . Above all, it [this view] is corroborated by the fact that the Organ of Consultation limited itself to "recommending" the measures to be adopted by the member states; that is, it did not "agree" to apply measures in this case of self-defense, as it had in other cases. In reality the only collective action discernible in the October 23 resolution is the decision to recommend the exercise of self-defense.

<sup>149</sup> Held in Washington, D.C. on July 21-26, 1964.

<sup>150</sup> See INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra* note 146, at 166-70, for the measures undertaken.

<sup>151</sup> U.N. Doc. No. S/6316 (1965). See also U.N. Doc. S/6317 (1965) (another letter); U.N. Doc. No. S/6310 (1965) (letter from the permanent representative of the United States to the President of the Security Council informing him of the United Nations action); U.N. Doc. Nos. S/6313, S/6315 (1965) (OAS Council Communications sent pursuant to article 54 of the United Nations Charter); U.N. Doc. No. S/6314 (1965) (text of a note addressed by the Cuban Minister for Foreign Affairs to the Secretary-General of the United Nations drawing attention to the threat to the people caused by the United States' action).

July 20-26, 1965) than on all the others pertaining to Latin America discussed in the preceding section combined.

On the question of regional competence versus that of the United Nations, the Council debates show an interesting but fairly predictable pattern of alignments and positions. The Soviet Union, supported by Cuba, championed the cause of the United Nations whose authority, it asserted, should remain unimpaired by regional actions. The United States, supported by Bolivia, contended that since prior precedents had already recognized that OAS autonomy extended to a wide range of activities as long as they were in conformity with the United Nations Charter, the Council should let the OAS handle this situation and not disturb the existing relationship. Nationalist China, the United Kingdom and the Netherlands took a pro-regional position, while Uruguay joined the Afro-Asian states — Jordan, Ivory Coast and Malaysia — to express concern at the possible encroachment by regional organizations on member states' rights, especially those of small states, were the Council not to safeguard their interests in the international forum. France was also close to this position.

The Council discussion centered on three main issues: access to the international arena; United Nations action in the specific case; and the scope of "enforcement action" as it related to the establishment of the Inter-American Armed Force.

#### 1. Access to International Arenas

Welcoming the Council debate on the Dominican question, Ambassador Stevenson reminded the members of article 33 which prescribed procedures and priorities for dealing with local disputes, but did not "derogate from the authority of this Council."<sup>152</sup> While conceding that the Council had such competence, Ambassador Stevenson contended that the question of competence was not at issue in the Dominican discussion. Even though it had competence, he said, the Council

should not seek to duplicate or interfere with actions through regional arrangements so long as those actions remain effective and are consistent with our Charter. The purpose of the United Nations Charter will hardly be served if two international organizations are seeking to do things in the same place with the same people at the same time.<sup>153</sup>

Notwithstanding the prior seizure of the Dominican question

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<sup>152</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1196th meeting 17 (S/PV.1196) (1965).

<sup>153</sup> *Id.* 1217th meeting 6-7 (S/PV.1217). See also *id.* 1213th meeting 4 (S/PV.1213).



by the OAS, no member ever challenged<sup>154</sup> the Council's competence to consider it. Several representatives went on record to reinforce their stand that no regional action could diminish or impair the United Nations authority to consider a situation that might endanger international peace and security or threaten the interests of small states.<sup>155</sup> Among those members asserting this position, Uruguay, a Latin American state and an OAS member, was in the forefront. Addressing the Security Council meeting on May 4, the Uruguayan Representative said:

[My] delegation has no doubt as to the competence of the Security Council to inquire now and in the future into any dispute or situation the continuation of which may be a threat to the maintenance of peace and international security, even if the dispute is at the time under consideration by a regional body. This authority, which the provisions of article 52, paragraph 4, and articles 34 and 35 of the Charter of the United Nations clearly confer upon the Council, is even more appropriate when the situation involved appears *prima facie* to contravene international law, and in particular, article 2, paragraphs 4 and 7, of the Charter of the United Nations and articles 15 and 17 of the Organization of American States.<sup>156</sup>

Intervening in the debate at a later date to submit a draft resolution, he reiterated his position that articles 33 and 55(2) were not applicable to the Dominican type situation since they related to "the type of international dispute amenable to conciliation and pacific settlement, and not to situations like this one, where charges of aggression have been made."<sup>157</sup> Addressing himself to the broader question of access to the international arena, the Uruguayan Representative quoted with approval from his predecessor's speech to the General Assembly in September 1954, on the Guatemalan case "about a precedent created as a result of a negative attitude on the part of the Security Council".<sup>158</sup>

My country combines membership in the United Nations with membership in the Organization of American States, in the belief that the principles of the regional system and the safeguards which it offers cannot be invoked in order to prevent States from having direct and immediate access to the jurisdiction of the United Nations or to deprive them, no matter how temporarily, of the pro-

<sup>154</sup> See INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *op. cit. supra* note 146, at 171-79 (summary of OAS action); *Organization of American States, Annual Report of the Secretary General 1964-1965* (summary of OAS action). For a brief chronology of the OAS activities in the Dominican crisis see 17 AMERICAS 42-43 (May 1965); *id.* at 42-45 (June 1965); *id.* at 39-40 (July 1965); *id.* at 40-41 (Aug. 1965); *id.* at 41-42 (Sept. 1965); *id.* at 41 (Oct. 1965); *id.* at 43 (Nov. 1965); *id.* at 41-42 (Dec. 1965); *id.* at 42-43 (March 1966); *id.* at 39 (April 1966); *id.* at 45-46 (June 1966); *id.* at 45 (July 1966); *id.* at 43 (Aug. 1966); *id.* at 44 (Nov. 1966).

<sup>155</sup> See, e.g., U.N. SECURITY COUNCIL OFF. REC. 20th year, 1200th meeting 1-2 (S/PV.1200) (1965) (Jordanian Representative's address).

<sup>156</sup> *Id.* 1198th meeting 6 (S/PV.1198).

<sup>157</sup> *Id.* 1204th meeting 5 (S/PV.1204).

<sup>158</sup> *Id.* 1198th meeting 7 (S/PV.1198).

tection of the agencies of the world community. The legal protection afforded by both systems should be combined, never substituted for one another.

The negative decision adopted by the Security Council constitutes a very serious precedent for the countries of America since its result must be to diminish or delay, so far as they are concerned, the respective applications of the jurisdictional safeguards against aggression established in the Charter of the United Nations.<sup>159</sup>

And once again he expressed his belief that all members shared "a desire to examine unequivocally the authority of the Council."<sup>160</sup> At various points in the Council debates representatives of Jordan,<sup>161</sup> Malaysia,<sup>162</sup> Cuba,<sup>163</sup> the Soviet Union,<sup>164</sup> Ivory Coast,<sup>165</sup> and the Netherlands,<sup>166</sup> among others, supported this position.

## 2. The United Nations Action

Unlike the past instances in which the Council had "taken note" of the OAS action or endorsed the OAS moves to reach a pacific settlement of the conflict, or asked for a report of its action and outcome before taking any steps, in the Dominican crisis, the Security Council unanimously adopted a resolution on May 14, 1965, which invited the Secretary General "to send, as an urgent measure, a representative to the Dominican Republic for the purpose of reporting to the security Council on the present situation."<sup>167</sup> It further called upon "all concerned in the Dominican Republic to cooperate with the Representative of the Secretary-General in carrying out his task."<sup>168</sup> While similar to the Council's earlier resolution during the 1954 Guatemalan conflict, the present one also called for a strict cease fire. Pursuant to the Security Council resolution, the Secretary-General appointed Dr. Jose Antonio Mayobre as his representative to the Dominican Republic. Dr. Mayobre arrived in Santo Domingo on May 18,<sup>169</sup> but before that, on May 15, an advance United Nations party had already arrived there<sup>170</sup> and the United Nations machinery was set in motion.<sup>171</sup> Sending a United Nations

<sup>159</sup> U.N. GEN. ASS. OFF. REC. 9th Sess., Plenary 481, at 16-17 (1954).

<sup>160</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1214th meeting 10 (S/PV.1214) (1965).

<sup>161</sup> *Id.* 1204th meeting 7 (S/PV.1204).

<sup>162</sup> *Id.* 1216th meeting 17 (S/PV.1216).

<sup>163</sup> *Id.* 1198th meeting 16 (S/PV.1198); *id.* 1213th meeting 9, 13 (S/PV.1213).

<sup>164</sup> *Id.* 1198th meeting 29 (S/PV.1198).

<sup>165</sup> *Id.* 1223d meeting 3-5 (S/PV.1223).

<sup>166</sup> *Id.* 1216th meeting 17 (S/PV.1216).

<sup>167</sup> *Id.* 1208th meeting 3 (S/PV.1208) (UNITED NATIONS RESOLUTION 203) (1965). (adopted on Jordan's motion).

<sup>168</sup> *Ibid.*

<sup>169</sup> U.N. Docs. Nos. S/6365, S/6369 (1965). These contain the Secretary General's report on the activities of his Representative, Dr. Mayobre.

<sup>170</sup> U.N. Doc. No. S/6358 (1965).

<sup>171</sup> See U.N. Doc. No. S/6365, Annex (1965), containing an appeal from the Secretary General to all the parties concerned for an immediate cessation of hostilities.

representative into the Dominican Republic, thus asserting its physical presence in a conflict that was being handled by the OAS from its very inception,<sup>172</sup> was something new. It may be recalled that not only was the OAS Secretary-General on the scene,<sup>173</sup> but that the OAS had also dispatched a five-member special committee to the Dominican Republic to find a peaceful solution to the crisis<sup>174</sup> and had from the outset kept the Security Council fully informed of its activities.<sup>175</sup> The United Nations resolution did not even mention the OAS and its efforts.

The United Nations action seems to have been prompted by several compelling factors. To mention a few: more than two weeks had already passed since the conflict started and its end seemed nowhere in sight; the "Constitutional Government," a party to the conflict, continued accusing the OAS of its inability to resolve the Dominican crisis because of its domination by the United States and its resulting bias against the rebels;<sup>176</sup> and finally, on May 14, the Council was facing a serious and apparently deteriorating situation in the Dominican Republic.<sup>177</sup> Thus, notwithstanding a parallel of political and ideological confrontations in the Dominican Republic with the prior 1954 Guatemalan crisis, the urgency in the Dominican conflict was primarily instrumental in the unanimous adoption of the Council resolution.<sup>178</sup> This urgency was created by the prolonged struggle<sup>179</sup> coupled with a possibility of a Communist threat in the Dominican Republic. Had the threat been a certainty, as in the Guatemalan situation, the United States might have been more insistent in demanding that the issue be handled by the OAS.

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<sup>172</sup> See ORGANIZATION OF AMERICAN STATES, *op. cit. supra* note 154, at 1-6, 18-19 (brief report of the OAS activities).

<sup>173</sup> *Id.* at 19. On April 30 the Council of the OAS authorized its Secretary-General to go to the Dominican Republic "to indicate the presence of the Organization of American States, which the serious Dominican situation requires," and to help the Dean of the Diplomatic Corps. and others in finding a peaceful settlement.

<sup>174</sup> See U.N. Doc. No. S/6319 (1965), containing the May 1 resolution of the Tenth Meeting establishing the Special Committee consisting of Argentina, Brazil, Colombia, Guatemala and Peru, and instructing the Committee to proceed immediately to Santo Domingo to obtain "as a matter of urgency a ceasefire," and offer its good offices for a peaceful solution.

<sup>175</sup> See note 172 *supra*, where pursuant to article 54 of the United Nations Charter, the OAS began informing the United Nations Secretary-General of the Council action, and subsequently of the actions before the Tenth Meeting.

<sup>176</sup> See, e.g., U.N. SECURITY COUNCIL OFF. REC. 20th year, 1208th meeting 2 (PU/1208) (1965), which contains a telegram by Dr. Jottin Cury, Minister of Foreign Affairs in the Constitutional Government, requesting an emergency meeting of the Security Council, since "It must be acknowledged with regret that the Organization of American States has shown that it is incapable of resolving the Dominican situation and of opposing the wishes of the United States."

<sup>177</sup> *Id.* at 1-2.

<sup>178</sup> See notes 6-16 *supra* and accompanying text on the alleged threat of a communist take-over.

<sup>179</sup> See, e.g., U.N. SECURITY COUNCIL OFF. REC. 20th year, 1216th meeting 17-18 (S/PV.1216) (1965) (Malaysian Representative's remarks implying that it was the emergency situation that had brought about the United Nations action).

Pro-regionalists felt that the United Nations action was an awkward and unnecessary move that might further complicate the situation. Thus, while conceding that "the right of its member states to resort to the world organization is explicitly recognized in its Charter" and that "all participation by the world organization in local matters" is not precluded, Garcia Amador, the director of legal affairs of the Pan American Union, found the United Nations action unjustified in the Dominican case.<sup>180</sup> He said that in consonance with article 52, in the past instances "the world organization has repeatedly abstained from intervening in local disputes and situations when the regional agency has been taking action."<sup>181</sup> Since it was a case of concurrent jurisdiction,

intervention by the world organization while the regional agency is making all possible efforts to reach a pacific settlement is a form of "abuse of power." The Security Council could very well, as it has done repeatedly in the past, have allowed time for the regional action to produce results, especially inasmuch as some results have already been obtained. Furthermore, by the date of the Security Council's decision, the danger of the situation's affecting international peace and security had been averted. It is evident, then, that the Security Council made premature and undue use of its powers.<sup>182</sup>

In its second report submitted to the Tenth Meeting on May 19, 1965,<sup>183</sup> the OAS Special Committee went to considerable length to criticize the United Nations action. In part it said:

this was the first time such an interference between the world agency of the United Nations and of a regional organization of American states had been recorded. . . .

It is essential to mention or to emphasize that the United Nations began a procedure of this significance without noting the serious consequences that this step would have to the prejudice of the action initiated by a regional agency.

It can be said that with the intervention of the United Nations the progress of the negotiations conducted by the special committee was greatly obstructed. . . .

In order that the OAS may achieve its objectives within the principles of the inter-American system, the Special Committee feels it essential to request the United Nations Security Council to suspend all action until the regional procedures have been exhausted, as established in article 52.2 of the United Nations Charter. . . .<sup>184</sup>

<sup>180</sup> Garcia Amador, *The Dominican Situation: The Jurisdiction of the Regional Organization*, 17 AMERICAS 1, 3 (July 1965).

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> U.N. Docs. Nos. S/6370, S/6370/Add. 1 (1965).

<sup>184</sup> U.N. Doc. No. S/6370/Add. 10-14 (1965). See also U.N. SECURITY COUNCIL OFF. REC. 20th year, 1213th meeting 13 (S/PV.1213) (1965), where the Cuban Representative was critical:

With the collaboration of the OAS . . . an attempt is being made to set the seal on the aggression committed against a sovereign State Member of the United Nations and establish a kind of arbitrary trusteeship, which is an extraordinarily dangerous precedent for the countries of America and, in general, for small nations throughout the world.

On May 20, 1965, the Tenth Meeting adopted a resolution thanking the Special Committee for its work, asking the Secretary-General of the OAS to represent it in the Dominican Republic, and instructing him to coordinate with the representative of the Secretary-General of the United Nations, where appropriate to the attainment of the objectives set forth in this resolution.<sup>185</sup>

The next day the United States proposed a draft resolution in the Security Council containing in an operative paragraph, the request that:

the representative appointed by the Secretary-General, in carrying out the responsibilities assigned to him by the Security Council . . . co-ordinate with the Secretary-General of the Organization of American States in light of the resolution adopted by the Organization of American States on 20 May 1965.<sup>186</sup>

On May 22 the United States' Representative criticized a draft Uruguayan resolution for failing to acknowledge OAS efforts in negotiating a cease fire, for not mentioning the OAS Secretary-General's appointment as its representative in the Dominican Republic, for not recognizing the OAS decision to cooperate with the United Nations and for not referring to United Nations reciprocity.<sup>187</sup> Similarly, he criticized the French draft resolution<sup>188</sup> which would recall the earlier Security Council resolution and, without any reference to the OAS activities or the Meeting decision, requested "that the suspension of hostilities in Santo Domingo be transformed into a permanent cease fire."<sup>189</sup> He said: "We consider that . . . a reference to the OAS decisions is the minimum necessary to reciprocate the express desire of the OAS to work in cooperation with the Council."<sup>190</sup> The Bolivian Representative explained his abstention in voting on the Uruguayan resolution:

simply because the Uruguayan draft resolution . . . does not explicitly mention the competence of the Organization of American States to deal with the Dominican situation or the effectiveness of its work and reduces it from its lofty position to the lowly status

<sup>185</sup> U.N. Doc. No. S/6372/Rev. 1 (1965). However, the OAS Secretary-General's report does not even mention the United Nations Security Council action or the presence of the United Nations observer in the Dominican Republic. See OAS, Tenth Meeting of Consultation of Ministers of Foreign Affairs, *Report of the Secretary-General of the Organization of American States regarding the Dominican Situation — Activities from April 29, 1965, until the installation of the Provisional Government*, OAS OFF. REC. OEA/Ser. F/11.10, Doc. 405, 1 Nov. 1965 (Pan. Am. Union 1965).

<sup>186</sup> U.N. Doc. No. S/6373 (1965).

<sup>187</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1216th meeting 4-5 (S/PV.1216) (1965).

<sup>188</sup> *Id.* 1217th meeting 6 (S/PV.1217).

<sup>189</sup> U.N. Doc. No. S/6376 (1965).

<sup>190</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1217th meeting 5 (S/PV.1217) (1965).

of a fact-finding mission invited merely to co-operate with other organizations.<sup>191</sup>

The French resolution was adopted by the Council with the United States' Representative abstaining.<sup>192</sup>

Subsequently, on May 25, in a letter to the President of the Security Council, thirteen Latin American States said that:

In accordance with article 52, paragraph 3, of the Charter of the United Nations, which Member States are bound to uphold, every effort should be made to encourage action by regional agencies for the pacific settlement of local disputes.<sup>193</sup>

At its Fourteenth Conference held in May 1965, the Inter-American Bar Association also went on record declaring 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 in the case until the O.A.S. submits it to the United Nations Security Council.<sup>194</sup>

In the United States Senate Senator Dodd was critical of the United Nations' presence in the Dominican Republic. He said,

The governments of the Americas resent the intrusion of the United Nations observers because they are convinced that it will only undercut their position and complicate their task. They feel that this is their problem, and that they are determined to deal with it on their own.

This is a most wholesome and welcome reaction.<sup>195</sup>

Speaking later he said,

While the United Nations has shown itself to be completely ineffective in upholding the rule of law against the transgressions of the Communist States on the one hand and the Afro-Asian states on the other hand, while it has failed to intervene where it could and should have intervened, the United Nations Secretariat and the majority of the General Assembly apparently seem bent on intruding themselves into the affairs of the American states, where their presence is not needed and not wanted.<sup>196</sup>

Meanwhile, at the United Nations, the United Nations' presence in the Dominican Republic was generally considered a healthy development. To illustrate, the Jordanian Representative felt that the United Nations presence was useful in assuring the Dominican people of the world community's concern and bringing moral pres-

<sup>191</sup> *Id.* 1216th meeting 16 (S/PV.1216).

<sup>192</sup> Adopted by a vote of 10-0-1 (Resolution 205) (1965).

<sup>193</sup> See U.N. Doc. No. S/6409 (1965) (letter from the Representatives of Argentina, Bolivia, Brazil, Colombia, Costa Rico, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay and Peru).

<sup>194</sup> The Conference was held in San Juan, Puerto Rico, May 22-29, 1965. For a report on the said declaration, see Finch, *Inter-American Bar Association*, 60 AM. J. INT'L L. 80, 81 (1966).

<sup>195</sup> 111 CONG. REC. 11029 (daily ed. May 24, 1965).

<sup>196</sup> *Id.* at 14774 (daily ed. June 30, 1965).

sure to bear on opponents.<sup>197</sup> Speaking in the Council debate on July 22, 1965, the French Representative said:

My delegation notes with satisfaction that the Secretary-General's Special Representative does not remain a passive observer. In conformity with the spirit of this mandate, Mr. Mayobre has felt it his duty to be an active witness, moving about whenever necessary and investigating personally or through his colleagues the incidents and facts brought to his attention.<sup>198</sup>

It may be recalled that the Security Council did not dispatch the United Nations' Commission on Human Rights to verify the alleged violation of human rights being committed by the "Government of National Reconstruction" and to take appropriate measures to stop them as requested by the "Constitutional Government."<sup>199</sup> The Council sent a special Secretary-General's Representative instead, leaving the question of human rights to the Inter-American Commission of Human Rights,<sup>200</sup> and leaving some question as to the scope of the functions of the Secretary-General's Representative. The Secretary-General clarified his task on June 11, 1965, when he said in the Council meeting:

The present mandate [under resolution 203 (1965)] involves observation and reporting. This does not, in my view, or that of my Representative, include the actual investigation of complaints and charges about specific incidents and the necessary verification of information concerning them which involves investigation, other than incidents of overt firing which constitute clear breaches of the cease-fire.<sup>201</sup>

However, the United Nations' Representative did investigate one specific instance of alleged mass executions by the officers of the "Government of National Reconstruction" and sent a report of his

<sup>197</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1213th meeting 14-15 (S/PV.1213) (1965).

<sup>198</sup> *Id.* 1231st meeting 5 (S/P.V.1231).

<sup>199</sup> *Id.* 1208th meeting 2-3 (S/PV.1208). Later, in two communications of May 25 and May 29, the request was repeated. See *id.* 1220th meeting 4-5 (S/PV.1220), for the United States Representative's remarks that they would not be a fit subject for the Security Council Meeting.

<sup>200</sup> See U.N. Docs. Nos. S/6404, S/6404/Add. 1, 3 (1965), for a report on the arrival of the Officers of the Inter-American Commission on Human Rights in Santo Domingo. The Soviet Representative still insisted that the United Nations should conduct the inquiry itself and not transfer it to the Inter-American Commission on Human Rights. See U.N. SECURITY COUNCIL OFF. REC. 20th year, 1223d meeting 6 (S/PV.1223) (1965). See also U.N. Doc. No. S/6431 (1965), for the report that both parties affirmed their intention to respect human rights and agreed to provide their facilities to the Inter-American Commission on Human Rights.

<sup>201</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1223d meeting 2 (S/PV.1223) (1965). *But See id.* 1227th meeting 5 (S/P.V.1227) (President's statement of 18 June 1965):

Some members would like to . . . see the [Secretary-General's] representative take on a more intensive role in investigating complaints. Several other members expressed themselves against it because they thought it would cause duplication. I have, therefore, not been able to detect a consensus in the Council to the effect of giving the Secretary-General's representative a more elaborate mandate of investigation than up to now.

findings to the United Nations Secretary-General as well as the chairman of the Inter-American Commission on Human Rights.<sup>202</sup> The Inter-American Commission took appropriate action in the matter.<sup>203</sup> In his summary report to the Security Council's discussion during July 20-26, 1965, the Council President at the last meeting of the Council said that members had condemned gross violations of human rights in the Dominican Republic and had expressed the desire that such violations should cease. He also expressed the Council's desire to continue watching the situation in the Dominican Republic closely and to continue to receive the Secretary General's reports to the Council on the Dominican situation.<sup>204</sup>

Finally, on October 14, 1966, the Secretary General informed the Security Council that the foreign minister of the Dominican Republic had, in a communication to him, expressed his country's appreciation to the United Nations "for its interest in the restoration of peace and harmony in the Dominican Republic" and had stated that in the Dominican Government's view "the objectives of the Security Council having been achieved, it would be advisable to withdraw the United Nations' Mission from the Dominican Republic."<sup>205</sup> The Secretary-General therefore initiated arrangements for the withdrawal of the United Nations Mission in the Dominican Republic.

### 3. The Inter-American Peace Force<sup>206</sup>

In the Council debates the Soviet Union<sup>207</sup> and Cuba<sup>208</sup> led the attack against the dispatch of the American troops in the initial stages of the Dominican crisis, contending that the article 53 requirement had not been met.

<sup>202</sup> U.N. Doc. No. S/6432 (1965). See also U.N. Doc. No. S/6430 (1965).

<sup>203</sup> See U.N. Doc. No. S/6443 (1965).

<sup>204</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1233d meeting 1-2 (S/PV.1233) (1965).

<sup>205</sup> U.N. Doc. No. S/7552 (1966).

<sup>206</sup> See generally Thomas & Thomas, *The Dominican Republic Crisis 1965: Legal Aspects*, HAMMARSKJOLD FORUMS 32 (1966); WARSCHAUER, *THE INTER-AMERICAN MILITARY FORCE* (1966). The strength of the United States' force at its peak was 21,500. Other countries sent the following contingents to constitute the Inter-American Peace Force: Brazil, 1140; Honduras, 250; Nicaragua, 166; Costa Rica, 21 (policemen); El Salvador, 3. 17 AMERICAS 44 (June 1965). For the beginning of the withdrawal of the peace force on June 28, 1965, see 18 *id.* at 43 (Aug. 1966), and for its completion on September 21, 1966, see 18 *id.* at 44 (Nov. 1966).

<sup>207</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1196th meeting 44 (S/PV.1196) (1965); *id.* 1198th meeting 2 (S/PV.1198); *id.* 1200th meeting 32 (S/PV.1200); *id.* 1202d meeting 10-11 (S/PV.1202) (where the Soviet Representative asked, "where is the [Council's] mandate for the carrying out of military operations and enforcement action against the Dominican Republic?").

<sup>208</sup> *Id.* 1196th meeting 24 (S/PV.1196): ("a special OAS mission left for Santo Domingo in an attempt to legalize the United States military occupation.") See also *id.* 1198th meeting 21 (S/PV.1198).



Following the OAS decision on May 6 to establish an Inter-American Armed Force<sup>209</sup> and the steps it took later to implement that decision,<sup>210</sup> Cuba and the Soviet Union mounted their attack on the alleged illegal nature of the United States and the OAS action.<sup>211</sup> The Soviet Representative, for example, contended that:

The Security Council has still not been told on what basis the occupation troops are in the Dominican Republic, or who instructed the regional agency to engage in actions involving the use of armed force. . . . No kind of effort to replace or circumvent the Security Council in international affairs is justified.<sup>212</sup>

Later in the debate, reiterating his earlier stand he asked, "Where is the mandate which the United States requires under Article 53 of the United Nations Charter?"<sup>213</sup> He characterized the United States and the OAS actions as "an open challenge . . . to the authority of the Security Council," that constituted "an act of unparalleled illegality and arbitrariness which will led to the undermining of the very foundation of the United Nations Charter."<sup>214</sup> He also criticized the OAS<sup>215</sup> resolution as having violated Articles 2, 39 and 53 of the United Nations Charter and Article 15 of the OAS Charter.<sup>216</sup>

The Cuban Representative emphasized that the act of establishing the Inter-American Peace Force not only detracted from the OAS objectives, because, he alleged, it was done in order to legalize the United States action, but was "a flagrant violation" of Article 43 of the United Nations Charter which authorizes only the Security Council to organize forces for maintaining international peace and security.<sup>217</sup> He ridiculed the United States' contention that since the OAS did not impose binding legal obligations on its members to use

<sup>209</sup> See U.N. Doc. Nos. S/6333, S/6333/Rev. 1 (1965) (text of the resolution adopted by the Tenth Meeting on May 6, 1965, on the formation of an Inter-American Force as recommended by the Special Committee).

<sup>210</sup> See U.N. Doc. No. S/6377/Rev. 1 (1965) (resolution adopted at the Thirteenth Plenary Session of the Tenth Meeting on May 22, 1965, on the working and function of the Inter-American Armed Force, signed at Santo Domingo May 23, 1965).

<sup>211</sup> However, note the argument that since the force was created "to provide a means for preserving the peace," the OAS action to establish the force could be compared with the United Nations creation of U.N.E.F. and U.N.I.C.Y.P. and thus could be termed a "legitimate device." McLaren, *The Dominican Crisis: An Inter-American Dilemma*, 4 CAN. YB. INT'L L. 178, 186-87 (1966). See also Amador, *supra* note 180, at 3 (United Nations Secretary-General's reaction to the establishment of the force).

<sup>212</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1208th meeting 13 (S/PV.1208) (1965).

<sup>213</sup> *Id.* 1218th meeting 6 (S/PV.1218).

<sup>214</sup> *Ibid.* See also *id.* 1213th meeting 20 (S/PV.1213); *id.* 1216th meeting 11, 13, 15 (S/PV.1216); *id.* 1220th meeting 22 (S/PV.1220).

<sup>215</sup> The Soviet Representative referred to the OAS as the "so-called Organization of American States," in *id.* 1227th meeting 12 (S/PV. 1227).

<sup>216</sup> *Id.* 1220th meeting 7-9 (S/PV.1220). See U.N. Doc. No. S/6411 (1965) (text of the Soviet Government's statement).

<sup>217</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1219th meeting 5 (S/PV.1219) (1965).

armed force, the Inter-American Force did not constitute an enforcement action. He called it merely a "euphemism" that had been employed to flout obligations under Articles 2(4) and 2(7) of the United Nations Charter and Articles 15 and 17 of the OAS Charter. He further argued that the very presence of foreign military forces in a sovereign state constituted an act of a coercive nature and made the measure "an enforcement action."<sup>218</sup>

In response to the Soviet-Cuban attack, the United States' Representative reminded the Council that from a study of the objectives of the Inter-American Peace Force, the OAS action could not be termed an enforcement action.<sup>219</sup> He was referring to the "sole purpose" of the force as declared in the OAS resolution establishing it, which was to cooperate

in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human rights, and in the establishment of an atmosphere of peace and conciliation that will permit the functioning of democratic institutions.<sup>220</sup>

The United States Representative emphasized that since the Force was established voluntarily and solely for the purpose mentioned above and was not designed to act against the Dominican Republic or the Dominican people, "the requirements of the United Nations Charter are those set forth in Articles 52 and 54 rather than in Article 53."<sup>221</sup> He went on to attack the Soviet motive in challenging the OAS action in these words:

the Soviet Government objects to peace-keeping operations under the auspices of the OAS, but it also objects to such operations undertaken at the recommendation of the General Assembly. It insists that only the Security Council, where it has a veto — used over a hundred times — can take action to keep the peace. In short, the Soviet Union is trying to establish a *de facto* situation where international peace-keeping operations can take place only at the pleasure of the Soviet Union. Having in mind the explosive and dangerous Soviet doctrine of so-called wars of liberation, we can imagine how many and what kind of peace-keeping operations would take place under these circumstances.<sup>222</sup>

Earlier in the debate Ambassador Stevenson justified the OAS action under article 52.<sup>223</sup> He observed that since the issue of "enforcement action" had been "considered exhaustively in the Security Council in

<sup>218</sup> *Ibid.*

<sup>219</sup> *Id.* 1220th meeting 16-17 (S/PV.1220).

<sup>220</sup> U.N. Doc. No. S/6333/Rev. 1 (1965).

<sup>221</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1220th meeting 17 (S/PV.1220) (1965).

<sup>222</sup> *Ibid.*

<sup>223</sup> *Id.* 1200th meeting 33-34 (S/PV.1200).

the past" it hardly required reopening.<sup>224</sup> Commenting on the significance of the historic act — the creation of the Inter-American Peace Force — the Secretary-General of the OAS said that the objectives for which the force was created "clearly come within the broad provisions of the Charter of the OAS concerning matters affecting the peace and security of the continent."<sup>225</sup> Referring to the objectives of the Force he also implied that the Force did not constitute "enforcement action."

It is perhaps ironic that in late July 1965, when the "Constitutional Government" requested that the Security Council to withdraw the "so-called Inter-American Peace Force" from the Dominican Republic "without further delay,"<sup>226</sup> the "Government of National Reconstruction" was making a similar plea for the immediate evacuation of the Force from the Dominican Republic.<sup>227</sup>

The United Nations Secretary-General is said to have viewed the OAS peace-keeping action "as possibly establishing an embarrassing precedent inasmuch as the League of Arab States or the Organization of African Unity might invoke similar rights."<sup>228</sup>

The Soviet Representative had the last say in the Council debate when on July 26, 1965, he alleged that during the Council discussion it had been "amply demonstrated" that the OAS action was taken "in violation of clear-cut provisions of the Charter of the United Nations forbidding regional organizations to take any enforcement action without the authorization of the Security Council."<sup>229</sup>

<sup>224</sup> *Ibid.*

<sup>225</sup> U.N. Doc. No. S/6381, at 3-4 (1965).

<sup>226</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1231st meeting 10 (S/PV.1231) (1965). See *id.* at 2, for the communication of July 20, 1965, from the Minister for Foreign Affairs of the Constitutional Government to the Secretary-General:

The Constitutional Government reminds you, Mr. Secretary-General, and the Security Council that it represents a State Member of the United Nations and as such is entitled to call upon the competence of the Organization in respect to measures to guarantee respect for the sovereignty of free peoples and to safeguard international peace and security, which today are so endangered in the Dominican Republic through military intervention.

See also *id.* 1232d meeting 2-4 (S/PV.1232), for another plea from the representative of the Constitutional Government for the withdrawal of the Force.

<sup>227</sup> *Id.* 1232d meeting 6 (S/PV. 1232). The representative of the Government of National Reconstruction argued that since the Dominican conflict was a civil war, pursuant to Article 2(7) of the United Nations Charter and Article 17 of the OAS Charter, neither of these organizations could "intervene." Thus the element of consent which the International Court of Justice considered was an important element in considering the U.N.E.F. activities as non-enforcement action was lacking in the Dominican situation. See Certain Expenses of the United Nations (Article 17, Paragraph 2 of the Charter), [1962] I.C.J. REP. 151, 170-71 (advisory opinion).

<sup>228</sup> Quoted by Amador, *supra* note 180, at 3.

<sup>229</sup> U.N. SECURITY COUNCIL OFF. REC. 20th year, 1233d meeting 3-4 (S/PV.1233) (1965).

### III. CONDITIONING FACTORS

For a better comprehension of the problems posed in the preceding discussion it will be useful to keep a proper focus on the conditioning factors in the Dominican crisis. Some of these factors are: decentralized structure of the world community and its ideological bifurcation and nuances as reflected at the United Nations; conflicting and contending interests and preferences of member states — the Latin American states' desire to retain their right to bring a dispute before the United Nations untrammelled and at the same time to escape the paralyzing outcome of the Council veto; the United States' dominant role within the Inter-American framework as contrasted with its ineffective position in the veto ridden Council; the Soviet endeavor to extend the Council veto to the OAS actions; and several member states' concern to balance these conflicting interests by a contextual analysis of a specific situation.

### IV. APPRAISAL AND RECOMMENDATION

The Dominican conflict did not resolve the question of the delineation of competence, demarcation, and scope of authority between the United Nations and the OAS. The tenor of the United States' argument was that the OAS, "a recognized arm of the United Nations,"<sup>230</sup> and the United Nations should be mutually strengthening and reinforcing and not competing and conflicting, and that OAS actions that are consistent with the purposes of the United Nations should be encouraged.<sup>231</sup> While several Council members preferred the concept of coordination and cooperation between the two bodies,<sup>232</sup> to a possible conflict between them, they found it hard to apply the abstract principle of cooperation and coordination to the specific situation. The statement by the Representative of Uruguay that he did not believe that this was the most "propitious occasion" for resolving the question of competence between regional bodies and the United Nations<sup>233</sup> sums up the majority view in the Council.

Ambiguities in the OAS and the United Nations Charter provisions, especially the lack of an authoritative interpretation of article 53, are bound to leave an observer uncertain about the way the next case will be decided by the Council. Dr. Alberto Lleras Camargo of

<sup>230</sup> *Id.* 1208th meeting 10 (S/PV.1208).

<sup>231</sup> See, e.g., *id.* 1217th meeting at 6 (S/PV.1217). (Ambassador Stevenson's statement).

<sup>232</sup> See *id.* 1214th meeting 2, 17 (S/PV.1214) (statement by the Representative of Uruguay); *id.* at 17 (statement by the Representative of the United Kingdom); *id.* 1216th meeting 17 (S/PV.1216) (statement by the Representative of The Netherlands); *id.* at 18 (statement by the Representative of Malaysia); *id.* 1212th meeting 26 (S/PV.1212) (statement by the Representative of Ivory Coast).

<sup>233</sup> *Id.* 1214th meeting 12 (S/PV.1214).

Colombia, Chairman of the Commission which dealt with "Regional Arrangements" at the San Francisco conference,<sup>234</sup> suggests that:

There is a clear distinction for the reader of the Charter between the measures of Article 41 (enforcement action) which are not coercive, in the sense that they lack the element of physical violence that is closely identified with military action, and those of Article 42. Enforcement action, with the use of physical force, is obviously the prerogative of the Security Council, with a single exception: individual or collective self-defense. But the other measures, those of Article 41, are not; it may even be said that it is within the power of any State—without necessarily violating the purposes, principles, or provisions of the Charter—to break diplomatic, consular, and economic relations or to interrupt its communications with another State. Thus the use of armed force by the American States is subject to two limitations: they may not use it except in self-defense, when there has been armed attack, or in other cases of aggression and threat of aggression, under the authority of the Security Council.<sup>235</sup>

The legal adviser to the United States Department of State, Leonard Meeker, makes another distinction between "obligatory" and "recommendatory" measures, contending that "enforcement action" does not include action which is not obligatory on member states.<sup>236</sup>

The Council debates and decisions certainly endorse both Dr. Lleras' and Meeker's interpretations. This restrictive interpretation of "enforcement action" coupled with a broad interpretation of "armed attack" in article 51 will give a regional organization unlimited autonomy to act without Council authorization. This position is well reflected in a comment made by the then legal adviser to the United States Department of State, Abram Chayes, in the aftermath of the Cuban missile crisis. Chayes said that since the Security Council's responsibility for dealing with threats to the peace is "primary" and not "exclusive" the United States did not go to the Security Council "before taking other action to meet the Soviet threat in Cuba."

He explained this decision thus:

[E]vents since 1945 have demonstrated that the Security Council, like our own electoral college, was not a viable institution. The veto has made it substantially useless in keeping the peace.

The withering away of the Security Council has led to a search for alternative peacekeeping institutions. In the United Nations itself the General Assembly and the Secretary-General have filled the void. Regional organizations are another obvious candidate.<sup>237</sup>

<sup>234</sup> 12 U.N. COMMISSION ON INTERNATIONAL ORGANIZATION 663 (1945).

<sup>235</sup> INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *THE INTER-AMERICAN SYSTEM* 190 (1966).

<sup>236</sup> Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515, 521 (1961).

<sup>237</sup> 47 DEP'T STATE BULL. 763, 765 (1962).

This view would also find support in the recent advisory opinion of the International Court of Justice wherein the Court made a distinction between "primary" and "exclusive" functions to maintain or restore peace.<sup>238</sup> The Court also declared that since the United Nations operations in the Congo, initiated by the General Assembly, "did not include a use of armed force against a State which the Security Council, under article 39, determined to have committed an act of aggression or to have breached the peace," they were not enforcement actions.<sup>239</sup> The Court said further that since the United Nations armed forces in the Congo were not authorized to take military action against any state, the United Nations operation "did not involve preventive or enforcement measures against any state under Chapter VII" and could not be termed "action" under article 11.<sup>240</sup>

Given the stillborn United Nations collective security system, and the grave financial problems before the United Nations,<sup>241</sup> with their enormous impact on the United Nations peacekeeping functions, the trend seems to be toward an increased regional autonomy. The unpredictable Council alignments, uncertainty of the Council action in view of the veto, the recent increase in the number of the Council membership, and finally the fact that many regional problems may be best suited to a local settlement,<sup>242</sup> have further strengthened the trend.

Among the member states, the United States has, ever since the 1954 Guatemalan crisis, encouraged this trend. The trend may be criticized on the ground that it detracts from acknowledging the supremacy of the United Nations. However, since it meets the needs of the time and can be justified on a reasonable construction of the United Nations and the OAS Charters, it should be accepted as a time gap measure, necessary and lawful, until or if collective security under United Nations auspices becomes practical and real. Special circumstances of the conflict and urgent situations such as presented by the 1965 Dominican crisis might in the future, again bring the

<sup>238</sup> Certain Expenses of the United Nations, *supra* note 227, at 163.

<sup>239</sup> *Id.* at 177.

<sup>240</sup> *Ibid.*

<sup>241</sup> See generally Padelford, *Financial Crisis and the Future of the United Nations*, 3 THE STRATEGY OF WORLD ORDER 733 (Falk & Mendlovitz eds. 1966). See also SINGER, FINANCING INTERNATIONAL ORGANIZATION: THE UNITED NATIONS BUDGET PROCESS (1961); R.F. & H.J. Taubenfeld, *Independent Revenue for the UN*, 18 INT'L ORGN. 241 (1964).

<sup>242</sup> See, e.g., U.N. SECURITY COUNCIL OFF. REC. 20th year, 1198th meeting 12 (S/PV.1198) (1965) (Bolivian Representative's Speech); *id.* 1214th meeting 6-7 (S/PV.1214) (further remarks by the Bolivian Representative); *id.* 1202d meeting 5-6 (S/PV. 1202) (Chinese Representative's address).

United Nations physical presence into a regional conflict. But as long as the aforementioned problems at the United Nations and in the world community exist and as long as extra-legal considerations, mainly expediency, set the tone for formulating major policies by national states in the international arena, this trend is almost irreversible.

Based upon the discussion thus far a few further inquiries concerning basic community policies are pertinent here. The first question pertains to the proper decision-making authority to commit armed force in response to an alleged "armed attack." Latin America is known for military dictatorships, some of which often resort to the magic device of dubbing their opponents "Communists" to suppress them and thus strengthen their otherwise teetering political power. Would the United States insist on making the initial decision to send forces to a Latin American country when the incumbent regime asks for assistance on the ground that it is the target of an "armed attack," and is likely to be taken over by Communists?<sup>243</sup> In a press interview on May 8, 1965, Secretary Rusk responded to a similar question. He said that since the United States action in the Dominican Republic was related specifically to the facts of that situation, it would serve "no useful purpose to speculate on possible responses to any future events elsewhere, particularly when we have no basis for expecting them to occur."<sup>244</sup> Three weeks later, in another interview, he again said that one should not "generalize on a world-wide basis on the experience of the Dominican Republic."<sup>245</sup>

These statements do not provide a satisfactory answer to the question posed. Furthermore, in view of the United States action in the Dominican Republic and the subsequent House Resolution, would not some unscrupulous military juntas justify their military assistance to other juntas to quash their political oppositions on a self-serving interpretation of the obligations of member states under the Inter-American System?<sup>246</sup>

<sup>243</sup> See, e.g., 111 CONG. REC. 26185 (daily ed. Oct. 15, 1965) (remarks by Senator Morse):

Suppose conditions should worsen in Bolivia, now ruled by a military junta. Suppose groups of people in Bolivia should rise up to overthrow that military junta. Suppose that military junta should make a plea to the United States for military assistance and intervention. Are we going in, Mr. Rusk and Mr. Mann?

See also *id.* at 8911 (daily ed. May 3, 1965) (earlier statements by Senator Morse); Matthews, *Santo Domingo and "Non-intervention"*, N.Y. Times, May 10, 1965, p. 32, col. 5 (city ed.).

<sup>244</sup> 52 DEP'T STATE BULL. 843 (1965).

<sup>245</sup> *Id.* at 949.

<sup>246</sup> See, e.g., Kent, *New "Axis" is Eyed: Restless Neighbors Worry Uruguayans*, Washington Post, Aug. 11, 1966, p. E6, col. 1-2.

Perhaps the alternative is that the Organ of Consultation alone must determine in the first instance whether there was an "armed attack," and second, if the "armed attack" affected hemispheric peace or threatened the political integrity of a member state before allowing the commitment of armed forces in a Dominican-type situation. It should, however, be recalled that the OAS action in the Dominican crisis was not taken under the Rio Treaty. The Tenth Meeting of Consultation of Foreign Ministers was convoked under Article 39 of the OAS Charter, to consider the "serious situation" created by armed strife in the Dominican Republic;<sup>247</sup> it was not convened as the Organ of Consultation.

The second question pertains to the application of the doctrine of sovereign equality of nation states,<sup>248</sup> and the right of states to self-determination,<sup>249</sup> to which all member states have at least given unqualified verbal adherence. This verbal adherence would certainly demand that the right of a nation state to adopt its own political institutions be respected. To illustrate, the United Nations recognized this right in the 1956 Hungarian crisis by upholding the specific right of Hungarian people to a government responsive to their national aspirations and dedicated to independence.<sup>250</sup>

The claim of a minor state to exercise its right of self-determination, that is, the claim to control the allocation of those values which primarily affect its internal public order, might conflict with the claim of a major power to use force for protection of its security or with a regional claim to use force to maintain homogeneity of ideology in all states within that region. Thus, the pertinent questions are whether international law can protect these diverse and often competing claims, or whether some exceptions must be made to the principles of self-determination and sovereign equality. Specifically, in the context of the western hemisphere, aims and aspira-

<sup>247</sup> The Representative of Chile had called for the convocation of the meeting. See 52 DEP'T STATE BULL. 739 (1965).

<sup>248</sup> U.N. CHARTER art. 2, para. 1, provides: "The Organization is based on the principle of the sovereign equality of all its Members." Of course, compliance with the principle of "Sovereign Equality" should not be equated with some mythical equality of nation states to be reflected in the authority structures at the United Nations, or with equality in their influence in the international arena.

<sup>249</sup> See U.N. CHARTER art. 1, para. 2, dealing with the purposes of the United Nations, especially mentioning "self-determination of peoples" as a principle to be respected in developing "friendly relations among nations." For the General Assembly resolutions on non-intervention, see 54 DEP'T STATE BULL. 128-29 (1966); 56 *id.* at 32-33 (1967) (Res. 2160 (XXI)). See also Morgenthau, *To Intervene or Not to Intervene*, 45 FOR'N AFF. 452 (1967).

<sup>250</sup> U.N. GEN. ASS. OFF. REC. 2D EMER. SESS., Supp. No. 1, at 2 (A/3355) (1956) (United Nations Resolution on Hungary condemning the Soviet action).



tions of "democracy" imbedded in the OAS Charter,<sup>251</sup> Rio Treaty,<sup>252</sup> and declarations of the OAS Conferences,<sup>253</sup> might conflict with the

<sup>251</sup> The Preamble of the Charter of the Organization of American States reads in part: "Frequent that the true significance of American Solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions . . ." 119 U.N.T.S. 50 (1952). For revenue to democracy in the OAS Charter, see Article 5(d). Compare Article 13. See U.N. SECURITY COUNCIL OFF. REC. 20th year, 1219th meeting 3-4 (S/PV.1219) (1965) (Cuban Representative's comment); *id.* at 4, where the Cuban Representative said that vague political ideas on democracy contained in the OAS Charter "do not insure their practical implementation by means of a legal obligation to organize in a certain manner."

<sup>252</sup> The Preamble of the Inter-American Treaty of Reciprocal Assistance reads in part: "That the American regional community affirms as a manifest truth that . . . peace is founded on . . . the effectiveness of democracy for the international realization of justice and security . . ." 21 U.N.T.S. 95 (1948).

<sup>253</sup> See, *e.g.*, the Resolution adopted by the Tenth Meeting of Consultation at its Third Plenary Session, on May 6, 1965, to establish the Inter-American Peace Force, which says in part:

[T]he Organization [OAS] is under even greater obligation to safeguard the principles of the Charter and to do everything possible so that in situations such as that prevailing in the Dominican Republic appropriate measures may be taken leading to the re-establishment of peace and *normal democratic conditions*. . . . (Emphasis added.)

OAS, Tenth Meeting of Consultation of Ministers of Foreign Affairs, *Report of the Secretary-General of the Organization of American States regarding the Dominican Situation, Activities from April 29, 1965, until the installation of the Provisional Government* 7 (Pan Am. Union, 1965), OAS OFF. REC. OEA/Ser. F/11.10, Doc. 405, at 8, the resolution provides in its operative paragraph 2 that the Inter-American Peace Force

will have as its sole purpose, in a spirit of democratic impartiality, that of cooperating in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human rights, and in the establishment of an atmosphere of peace and conciliation *that will permit the functioning of democratic institutions*. (Emphasis added.)

See also *Special Consultative Committee on Security, Report of the Special Consultative Committee on Security on the work done during its Fourth Regular Meeting, April 12 to May 7, 1965*, OAS OFF. REC. OEA/Ser. L/X/II8, at 19 (1965), the section entitled *The Need to Defend Democracy*. *Id.* at 19-20:

In the Americas, under the protection of democratic freedoms, communism has successfully developed and has used with impunity all the techniques of revolutionary warfare preached by Lenin. . . . As a basic measure of self-defense, the communist problem must be eradicated [*sic*] in order to carry out the reforms demanded by the peoples of the Americas.

*Id.* at 18:

In the opinion of the Committee, the events that have occurred in the Dominican Republic should be the object of a careful investigation with a view to clarifying their relation to international communism. If such a relation exists, it would be one more proof of the grave danger that threatens the Americas.

The Committee reported at its Fifth Regular Meeting, October 18 to November 10, 1965, OEA/Ser. L/X/II10, at 4-5:

The events that began last April in the Dominican Republic, gave rise to a typical case in which the communists attempted to take advantage of an irregular internal situation in order to seize power. This maneuver was not successful owing to the adoption of extraterritorial measures . . . .

Later, by means of a well-directed foreign plan, the communists took advantage of a series of circumstances such as . . . the democratic opinion of the Americas which favored the principle of nonintervention.

See *id.* at 15 ("In the Western Hemisphere, the position of the member states of the OAS is in favor of the survival of democracy as is clearly expressed in its basic documents."); *id.* at 36 ("As long as the present communist regime remains in power in Cuba, the immediate threat of communism will continue in the Americas."); *id.* at 16 ("Thus, it is essential that, for the purpose of strengthening and defending democracy in the Americas, all the available means be applied for eradicating communism or, at least, for slowing the pace and restricting the extent of its infiltration.").

decision in a Latin American country of a majority of its people to live under non-democratic institutions. The United Nations Charter, it may be noted, does not outlaw non-democratic governments or even disapprove of them.

It is recommended that in the case of conflicting claims between a regional organization and a state, pertaining to the state's right of self-determination, an authoritative procedure should be established by which the rest of the community can evaluate a region's policies, vis-a-vis a state's right of self-determination,<sup>254</sup> to determine the permissibility or impermissibility of the limitation imposed by the region. Furthermore, in case of conflicting claims between major and minor powers, one possible solution would be for the community decision-maker to recognize the capacity of major powers to cause deprivation of values to other states and hence to accept "harsh realities" and adopt and apply different standards to different participants in the international arena. If this would not be a desirable solution, the alternative would be for major powers to show restraint and voluntarily comply with international law norms. In this context, legal adviser Meeker has made an encouraging statement in his recent comment on the Viet-Nam controversy. He observes that:

We may feel the absence today of a law-giver outside national governments, who could . . . give and enforce law among the nations. That absence does not relieve us of moral and political obligation. . . . Let us remember, too, that the shape of things to come is in no small way determined by the actions of great powers . . . as we consider the needs and the possibilities for developing effective world law.<sup>255</sup>

The United States action in the 1965 Dominican conflict cannot be said to have created a healthy precedent to strengthen international law. In the world of Nassers and Sukarnos, Duvaliers, Stroessners and Somozas, amidst the tumultuous outcry of such slogans as "wars of national liberation" to justify the use of force, in the presence of the still unresolved colonial conflicts and still more threatened conflicts on the emotionally charged issue of apartheid, and finally, in view of the inadequacies of international law — both substantive norms and procedural safeguards — it becomes more difficult and yet more compelling for a state to comply with law. As the discussion in this paper indicates, the United States' action detracted from strict compliance with law. It is in the interest of the United States and the rest of the world community to strengthen

<sup>254</sup> Cf. Plank, *The Caribbean; Intervention, When and How*, 44 FORN AFF. 37, 41-47 (1965). See also N.Y. Times, Feb. 23, 1967, p. 18, col. 3 (city ed.), for a brief report on the defeat of the Argentine proposal to institutionalize the Inter-American Defense Board as part of the formal structure of the OAS at the recent Buenos Aires meeting. The voting was 11-6-3.

<sup>255</sup> Meeker, *Viet Nam and the International Law of Self-Defense*, 56 DEP'T STATE BULL. 54, 57-58 (1967).

the rule of law by substituting collective action for unilateral action, and strict compliance with international law in its formative years, for expediency.