

AN END TO UNILATERAL U.S. ACTION IN LATIN AMERICA: A CALL FOR EXPANDING THE ROLE OF THE O.A.S.

The day our plenipotentiaries make the exchanges of their power will stamp in the diplomatic history of the world an immortal epoch. When after a hundred centuries, posterity shall search for the origin of our public law, and shall remember the compacts that solidified its density, they will finger with respect the protocols of the Isthmus. In them they will find the plan of the first alliances that shall sketch the mark of our relations with the universe. What, then, shall be the Isthmus of Corinth compared with that of Panama?

Simon Bolivar, 1824.

I. INTRODUCTION

The relationship between the United States and the other nations of the Western Hemisphere has sometimes been characterized as one of hemispheric solidarity and cooperation.¹ Unfortunately, this relationship has too often been marred by the United States' paternalistic attitude towards its southern neighbors,² and by its numerous unilateral acts of military intervention in the affairs of these nations.³ Although it has been argued that the interventionist policies of the United States may have been justified at one point in history,⁴ justification for such interventionist policies can find no legitimate support in modern international law.⁵

1. This is due not only to the geographic proximity of the nations of the Western Hemisphere, but also to the fact that these nations were all at one time part of various European colonial empires and share a common heritage of revolutionary struggle for independence. See, e.g., C. FENWICK, *THE ORGANIZATION OF AMERICAN STATES* 3 (1963); INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *THE INTER-AMERICAN SYSTEM* xv (1966).

2. As result of the American victory in the Spanish American War and the United States' subsequent rise to the status of a world power, it was felt by influential U.S. leaders that Latin America was properly within the United States "sphere of influence." See Boyle, *American Foreign Policy Toward International Law and Organizations: 1898-1917*, 6 *LOV. L.A. INT'L & COMP. L.J.* 185, 274 (1983); Wells, *Institutional Framework of Inter-American Relations*, 13 *CAL. W. INT'L L.J.* 223, 228 (1983).

3. For a brief synopsis of the numerous acts of intervention by the United States between 1898-1967, see Wells, *supra* note 2, at 229-33.

4. In the past, U.S. intervention in Latin America has largely been justified on the pretext of preventing aggression or intervention by extra-continental powers. See *id.* at 229. The U.S. has in a large part been successful in this respect. See, e.g., Thomas & Thomas, Jr., *The Organization of American States and the Monroe Doctrine-Legal Implications*, 30 *LA. L. REV.* 541 (1970); Boyle, *supra* note 2, at 272.

5. For example, Article 2, Paragraph 4 of the United Nations Charter provides that "all

Nevertheless, due to the threat of general warfare in Central America, fears of "Revolution Without Borders," and perceived threats to national security interests, the United States may feel that it has no alternative but to continue its already expanding involvement in this region.⁶

This Note advocates the establishment of a multi-national police force, organized under the auspices of the Organization of American States. Such a force should preclude the perceived need for unilateral U.S. action, and could be utilized without violating international laws prohibiting intervention.⁷

Part II of this Note will discuss U.S.- Latin American relations from a historical perspective. Part III of this Note will discuss the present situation and illustrate the need for some type of affirmative action by the members of the O.A.S. Part IV of this Note will discuss a proposal for the establishment of a multi-national force under the O.A.S., and Part V will conclude that the establishment of such a force would promote the stated goals of the Inter-American system; and that in the absence of such force it is likely that the United States will continue to follow a policy of unilateral action in this area.

II. HISTORICAL OVERVIEW

A. HISTORICAL U.S. POLICIES TOWARDS LATIN AMERICA

Historically, the United States has viewed its relations with Latin America from the context of the Monroe Doctrine.⁸ This

members shall refrain in their international relations from the threat or use of force against the territorial integrity and political interdependence" of another State. U.N. CHARTER art. 2, para. 4. Similarly, Article 15 of the Charter of the Organization of American States (O.A.S.) provides "no state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state." The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements. Charter of the Organization of American States, reprinted in C. FENWICK, *supra* note 1, at 547-71 (O.A.S. Charter); see also Schwenninger, *The 1980's: New Doctrines of Intervention of New Norms of Non-intervention?*, 33 RUTGERS L. REV. 423 (1980). But see Note, *Grenada and The International Double Standard*, 78 AM. J. INT'L L. 145 (1981), for a defense of recent U.S. intervention in the Caribbean.

6. Current U.S. policies seem to reflect a preference for strengthening U.S. capacity for unilateral action in response to threatening situations. Note, *Peacekeeping and Human Rights: A Proposed O.A.S. Response to Civil Strife in Latin America*, 22 VA. J. INT'L L. 293, 341 (1982).

7. See *supra* note 5.

8. Monroe Doctrine, reprinted in G. MOORE, A DIGEST OF INTERNATIONAL LAW 401 (1906). Although some of the principles of the Monroe Doctrine have found their way into

doctrine was proclaimed in an address to Congress by President James Monroe in 1823.⁹ The doctrine's intent was to prevent the further expansion or acquisition of colonial holdings in the Western Hemisphere by European powers.¹⁰ It is based on the underlying principles of non-colonization¹¹ and non-intervention.¹² The non-colonization principle,¹³ although broadly asserted to include the entire Western Hemisphere, was actually a direct response to the immediate threat of Tsarist Russia's purported claims to holdings in the Oregon territory.¹⁴

The portion of the doctrine addressing with non-intervention provided that while the United States would not interfere with any European colonies which already existed in the Western Hemisphere,¹⁵ it would certainly look unkindly on any future European intervention with those American states which had recently gained their independence.¹⁶

During the presidency of James Polk, the Monroe Doctrine was further expanded to include a prohibition against the acquisi-

international law, *see infra* note 44, the Doctrine itself is neither codified international law, treaty or contract, but is rather a presidential proclamation of the international political policy of the United States. *See* Boyle, *supra* note 2, at 271; Thomas and Thomas, Jr., *supra* note 4. For a discussion of the efficacy of the Monroe Doctrine in the 1980's, *see* Note, *The Monroe Doctrine in the 1980's: Inter-national Law, Unilateral Policy, or Atavistic Anachronism?* 13 CASE W. RES. J. INT'L L. 203 (1982). For background and history on the Monroe Doctrine, *see* D. PERKINS, *HANDS OFF: A HISTORY OF THE MONROE DOCTRINE* (1941); F. DONOVAN, *MR. MONROE'S MESSAGE* (1963); *THE MONROE DOCTRINE, ITS MODERN SIGNIFICANCE* (D. Duzer ed. 1965).

9. *See Annual Message to Congress, American State Papers*, 5 FOREIGN REL. 250 (Dec. 2, 1923).

10. *See generally* Note, *supra* note 9.

11. The non-colonization principle asserts that the Western Hemisphere will be henceforth off limits for colonial expansion by European powers. *See* Thomas & Thomas, Jr., *supra* note 4, at 542; *see also* Note, *supra* note 9, at 204.

12. The principle of non-intervention was originally based on two underlying propositions: a statement declaring a policy of non-intervention in European affairs by the United States; and a warning against European intervention in the Americas. *See* Note, *supra* note 9 at 205; Thomas & Thomas, Jr. *supra* note 4, at 542. Obviously, the United States has long ago abandoned any semblance of adherence to the first of these two propositions originally espoused by President Monroe. Nevertheless, contentions that the remaining principles of the doctrine are therefore no longer valid have had little effect, and have been answered with the argument that the Monroe Doctrine was always a unilateral pronouncement of the United States and not a contract or treaty based on certain conditions. *See* Thomas & Thomas, Jr. *supra* note 4, at 542.

13. This principle was stated in a declaration that "the American continents. . .are henceforth not to be considered as subjects for future colonization by any European power." *See* G. MOORE, *supra* note 9, at 401.

14. *See* Note, *supra* note 9, at 204.

15. *See* Boyle, *supra* note 2, at 271.

16. *Id.*

tion of territory located in the Western Hemisphere by cession from one European power to another.¹⁷ Although the Monroe Doctrine was clearly the unilateral policy of the United States,¹⁸ its application during the latter part of the 19th century was generally appreciated by the weak, newly independent republics of Latin America.¹⁹

However, with a U.S. victory in the Spanish-American War and the United States' subsequent rise to the status of a world power, the Monroe Doctrine took on new dimensions.²⁰ In his message to Congress on December 6, 1904,²¹ President Theodore Roosevelt announced yet another corollary to the Monroe Doctrine.²² Under this policy, the United States assigned to itself the role of "international police-man".²³ This policy, which was relied on successively by the Roosevelt, Taft and Wilson administrations,²⁴ was used as justification for numerous acts of intervention,²⁵ including the machinations which led to the U.S. acquisition

17. This was known as the Polk Corollary and was in response to the feared cession of Spanish Florida to Great Britain. These fears were put to rest with the U.S. purchase of Spanish Florida. See E. McCORMACK, JAMES K. POLK: A POLITICAL BIOGRAPHY (1965); Boyle, *supra* note 2, at 271.

18. See *supra* notes 9 and 13.

19. Even though most applications of the Monroe Doctrine were motivated by U.S. interests, it was well understood by the newly independent Latin American States that the Doctrine was in large part responsible for their ability to achieve and maintain independence from their European mother countries. See Boyle, *supra* note 2, at 272; see also Note, *supra* note 9, at 208.

20. See *supra* note 2.

21. See J. RICHARDSON, 9 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 7024, 7053 (1911).

22. This became known as the Roosevelt Corollary to the Monroe Doctrine and provided for U.S. intervention to enforce payment of debts owed to European nations, ostensibly to prevent these creditor nations from taking direct action themselves in contravention of the Monroe Doctrine. For a full discussion of the Roosevelt Corollary, See D. MONROE, INTERVENTION AND DOLLAR DIPLOMACY IN THE CARIBBEAN 1900-1921, at 65-111 (1964).

23. *Id.*; see also Wells, *supra* note 2, at 229; Boyle, *supra* note 2, at 273.

24. See Wells, *supra* note 2, at 229.

25. During this period (1904-1933), the United States set up or attempted to set up economic receiverships in several Latin American countries. Many of these receiverships were accomplished through the use of U.S. armed forces. Additionally, U.S. forces were used to suppress rebellions against governments which the United States supported. Further, under the Wilson Administration, the United States began a policy of non-recognition of new governments which came to power by force. *Id.* at 228-30. Acts of U.S. intervention during the next several decades included the following:

1905 - United States took over the collection of customs duties in the Dominican Republic and began to disburse the proceeds to the Dominican Government and its creditors.

1911 - Customs receivership system extended to Nicaragua.

1915 - Customs receivership system extended to Haiti.

of the Panama Canal Zone.²⁶

Although strenuous objections to these policies were raised by leading Latin American statesmen,²⁷ blatant U.S. intervention into Latin American affairs continued up until 1933.²⁸ The ramifications of this interventionist policy has chronically plagued and hopelessly perplexed U.S. Foreign Policy in this region up to and including the present day.²⁹

B. THE FORMATION OF THE INTER-AMERICAN SYSTEM

The Inter-American system had its genesis in the political theories of the Great Liberator, Simon Bolivar.³⁰ In 1824, Bolivar proposed the formation of a congress comprised of pleni-potentaries

1910 - U.S. forces landed in Nicaragua.

1912 - U.S. forces again used in Nicaragua to suppress rebellion. (This occupation lasted from 1912 till 1933 with the exception of an 11 month period in 1925-26.)

1913 - U.S. forces landed in Mexico.

1914 - U.S. forces landed in Mexico.

1916 - U.S. forces landed in Mexico.

1916 - U.S. occupation of Haiti begins and lasts until 1934.

1916 - U.S. occupation of the Dominican Republic begins and lasts until 1924, at which time the United States establishes a protectorate over that nation lasting until 1941.

Id.

In addition to these acts of intervention, between 1909 and 1912, the Taft Administration unsuccessfully attempted to extend the customs receivership system to Costa Rica, Guatemala, Haiti and Honduras. *Id.*

Further, under Theodore Roosevelt, the United States established a protectorate over Cuba lasting from 1903-1934, and a protectorate over Panama which lasted from 1903-1936. In the latter case, the United States first fomented and supported a rebellion by the province of Panama against the sovereign state of Columbia, and then entered into a treaty with the newly formed state which established a canal zone where the United States was authorized to act in perpetuity. *Id.*

26. *Id.*

27. For example, Luis Drago, the minister of Foreign Affairs in Argentina at the time of the promulgation of the Roosevelt Corollary to the Monroe Doctrine, took the position that neither force nor the occupation of territory was justified for the collection of public debts owed to foreign nationals. This was also the position taken by Chilean political writer Alejandro Alvarez and, suprisingly enough, by Richard Olney, who was Secretary of State under Grover Cleveland, and Elihu Root, who was Secretary of State under Theodore Roosevelt. See A. ALVAREZ, *THE MONROE DOCTRINE: ITS IMPORTANCE IN THE INTERNATIONAL LIFE OF THE STATES OF THE NEW WORLD* (1924); Olney, *The Development of International Law*, 1 AM. J. INT'L L. 427, 433-37 (1914).

28. See *supra* note 26.

29. Due to the fact that these acts of intervention by the United States were seen as "a unilateral policy of hegeomonical imperialism" in contravention to its stated ideals of non-intervention and self-determination, it is not surprising that attitudes of distrust towards U.S. intentions remain until this day. See Boyle, *supra* note 2, at 270; see generally Wells, *supra* note 2.

30. See H. ANGELL, *SIMON BOLIVAR SOUTH AMERICAN LIBERATOR* (1930).

from each state "that should act as a council in great conflicts, to be appealed to in case of common danger, and be a faithful interpreter of public treaties, when difficulties should arise, and conciliate, in short, all our differences."³¹

However, due to nationalistic rivalries between the Latin States, as well as personal animosities between several of the national leaders, the Congress failed to have any lasting effect.³² Nevertheless, the congress of Panama, in spite of its shortcomings, had sown the seeds of the Inter-American system.³³

The Inter-American system, as it is today, began to take shape in 1889.³⁴ At the invitation of the U.S. Government, representatives of all but one of the then-existing 18 Latin American nations assembled in Washington, D.C., to inaugurate the First International Conference of American States.³⁵ The most significant accomplishment of the conference was the establishment of two institutions: The International Union of American Republics, and the Commercial Bureau of the American Republics.³⁶ Although these institutions have undergone significant changes in name, structure and function since 1890, both remain in existence up to the present day.³⁷

Over the course of the next several decades, the nations of the Western Hemisphere were to meet several more times, thus establishing the institutional framework for the creation of the modern Inter-American system.³⁸

31. This proposal was contained in a letter to the governments of Columbia, Mexico, The United Provinces of Central America, The United Provinces of Buenos Aires, Chile, and Brazil. The United States, however, was not invited out of fear of offending Great Britain, which had indicated it would oppose any confederation of which the United States was a member. The United States did subsequently receive an invitation to the congress from the Vice President of Columbia, which was warmly accepted by then Secretary of State Henry Clay. C. FENWICK, *supra* note 1, at 14-16. The full text of Bolivar's letter is reproduced in INT'L CONFERENCES 1889-1928.

32. See generally, C. FENWICK, *supra* note 1, at 17-18.

33. See generally *id.*

34. Wells, *supra* note 2, at 223.

35. The Latin American nations represented at the First International Conference of American States were the following: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela. *Id.*

36. The purpose of the International Union of American Republics was to ensure "[t]he prompt collection and distribution of commercial information." The purpose of the Commercial Bureau of the American Republics was to serve as the International Union's agency for collecting and disseminating international trade information under the supervision of the United States Secretary of State. *Id.* at 224; see also C. FENWICK, *supra* note 1, at 36.

37. Wells, *supra* note 2, at 24.

38. The First International American Conference was followed by a second conference

Though great strides towards increased hemispheric unity were made during this period,³⁹ a major concern for most of the Latin American states was ending the continuing interventionism of the United States.⁴⁰ This goal was finally reached with the announcement of President Franklin Roosevelt's good neighbor policy,⁴¹ and the subsequent U.S. adoption of the principles of non-intervention contained in the Convention on Rights and Duties of States.⁴²

The adoption of these new policies by the United States was followed in short order by the Inter-American Conference for the Maintenance, Preservation and Reestablishment of Peace, held in Buenos Aires, Argentina in 1936.⁴³ At this convention, the principles of consultation and mutual respect were adopted by the nations of the Western Hemisphere.⁴⁴ This in turn was followed by

which met in Mexico City in 1901; a third conference which met in Rio de Janeiro in 1906; and a fourth conference which met in Buenos Aires in 1910. A fifth conference scheduled for 1914 was postponed due to World War I, but did eventually convene in Santiago in 1923. A sixth conference met in Havana in 1928. See Boyle, *supra* note 2, at 292. For an in depth discussion of the substantive content of these conferences, see C. FENWICK, *supra* note 1, at 33-59.

39. See generally C. FENWICK, *supra* note 1, at 33-59.

40. In light of the many acts of intervention in Latin America committed by the United States up to and through out this period of time, it is not surprising that "the principle of non-intervention became the cardinal doctrine of all Latin Americans in their dealings with the U.S., and indeed with one another." In the eyes of Latin America, nonintervention is the cornerstone of the Inter-American system. See Wells, *supra* note 2, at 227, 230; see also C. FENWICK, *supra* note 1, at 54.

41. Roosevelt announced this policy in his inaugural address of March 4, 1933. See C. FENWICK, *supra* note 1, at 56.

42. At the 7th International Conference of American States, held in Montevideo in December, 1933, the United States joined with the nations of Latin America in approving the convention. Article 8 of the convention provides that "[n]o state has the right to intervene in the internal or external affairs of another." See Convention on Rights and Duties of States, reprinted in C. FENWICK, *supra* note 1, at 57.

43. This conference was initiated by President Franklin Roosevelt, who recognized an opportunity to promote his goals of hemispheric cooperation in the climate engendered by the peace protocols which had recently been negotiated at Buenos Aires between Bolivia and Paraguay. At this conference, the nations of the Western Hemisphere agreed to engage in collective consultation in the event of a threat to the peace.

It was also agreed that a common front should be taken against any threatened aggression from Europe. This of course implied an obligation on the part of the United States not to take action under the Monroe Doctrine without first consulting with the other nations. The adoption of a "common front" towards extra-continental aggression was a major step towards the "continentalization" of the Monroe Doctrine and the principles of collective security." See *infra* note 46. It was also felt that the principles of the equality of nations was greatly advanced by this conference. See C. FENWICK, *supra* note 1, at 59-62. For a detailed and contemporaneous discussion of the conference, see Fenwick, *The Inter-American Conference for The Maintenance of Peace*, 31 AM. J. INT'L L. 201 (1937).

44. See generally C. FENWICK, *supra* note 1, at 59-62.

the "continentalization" of the principles of the Monroe Doctrine by the Eighth International Conference of American States held at Lima in 1938.⁴⁵

A commitment to collective action was evidenced by the subsequent adoption of the Declaration of Reciprocal Assistance and Cooperation for the Defense of the Nations of the Americas, at Havana in 1940.⁴⁶ This commitment was soon to be tested with the Japanese attack on Pearl Harbor in December, 1941.⁴⁷ With the notable exception of Argentina and Chile, all of the signatory states met their obligations under the treaty by severing all relations with the Axis powers.⁴⁸

With the end of World War II, the principles of Collective Security were reinforced and expanded with the adoption of the Act of Chapultepec, at Mexico City in 1945.⁴⁹ This act set important precedents, both by providing for the collective use of armed force to combat aggression, and by providing for the application of sanctions to aggressors, even if they be American.⁵⁰ It was additionally agreed that the Inter-American system should be strengthened and reorganized into a regional arrangement, consistent with the principles and procedures of a general international organization to be established in the future.⁵¹

45. With the outbreak of World War II in Europe, the nations of the Western Hemisphere saw the need to strengthen the regional bonds of the American States and to prepare to take measures of common defense. Through the conference at Lima, the American States: (1) reaffirmed the principles of continental solidarity; (2) reaffirmed their commitment to maintain these principles and to defend them "against all foreign intervention and activity;" (3) proclaimed in the event of a threat to the peace, security or territorial integrity of any American republic their common concern and their determination to act in concert; and (4) agreed that the procedure of a consultation would consist of meetings of the Ministers of Foreign Affairs in their several capitals by rotation and without protolary character. This multilateral endorsement of the principles of collective security against extra-continental intervention was referred to as the "continentalization" of the Monroe Doctrine. See C. FENWICK, *supra* note 1, at 63. For a more detailed discussion of the conference at Lima, see Fenwick, *The Monroe Doctrine and the Declaration of Lima*, 33 AM. J. INT'L L. 257 (1939).

46. The declaration provided that, "[a]ny attempt on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty, or the political independence of an American State shall be considered as an act of aggression against the States which sign this declaration." Reciprocal Assistance and Cooperation for the Defense of the Americas, reprinted in THE INTERNATIONAL CONFERENCES OF AMERICAN STATES 360-61 (J.B. Scott ed., Supp. 1933-1940).

47. Note, *supra* note 9, at 211.

48. *Id.*

49. See Act of Chapultepec, Mar. 8, 1945, Res. VIII, 60 Stat.1837, T.I.A.S. No. 1543. This act provided for collective sanctions, including the use of armed force, to be taken against any aggressor of an American State - even an American aggressor.

50. See *id.*

51. Here, the nations of the Americas were considering which definitive form would be

To advance this goal, a draft charter was prepared for presentation to the Ninth International Conference of American States.⁵² This proposed charter would later become the Inter-American Treaty of Reciprocal Assistance (Rio Treaty).⁵³ The Rio Treaty was the first collective security treaty to be drafted in accordance with the inherent right of collective self-defense, as recognized by Article 51 of the U.N. Charter.⁵⁴ It was also the first regional security treaty to be formulated since Article 52 of the U.N. Charter came into effect, permitting "the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action."⁵⁵

Soon after the ratification of the Rio Treaty, the goal of reorganizing and institutionalizing the Inter-American system was realized with the adoption of the Charter of the Organization of American States⁵⁶ (O.A.S.), at the Ninth International Conference of

given to the Union of American Republics after the war. A resolution on establishment of a general international organization was adopted, proclaiming the determination of the American Republics to cooperate in an organization based upon law, justice and equity. C. FENWICK, *supra* note 1, at 71.

52. See Wells, *supra* note 2, at 234.

53. See Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, art. 6, 62 Stat. 1681, T.I.A.S. No. 1838, 21 U.N.T.S. 77 [hereinafter Rio Treaty]. Although the United States was at the time more in favor of universalism under the United Nations, the advent of the cold war considerably increased the attractiveness of a regional organization. See generally Wells, *supra* note 2. The treaty called for the immediate meeting of the Organ of Consultation, later defined as the Ministers of Foreign Affairs, for the purpose of agreeing with a collective courses of action to be taken in the event of aggression. Rio Treaty, *supra*, art. 6. Additionally, the treaty obligated the signatory states to provide for a collective defense. *Id.* art. 3.

Further, the Rio Treaty expanded the definition of aggression to include acts which were not armed attacks. This treaty was entered into by the United States and all of the Latin American States except Ecuador and Nicaragua. See Wells, *supra* note 2, at 235-36; C. FENWICK, *supra* note 1, at 75-80.

54. U.N. CHARTER art. 51; see also Wells, *supra* note 2, at 235.

55. U.N. CHARTER art 52.

56. O.A.S. Charter, Apr. 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3, amended by Protocol of Buenos Aires, Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847, 721 U.N.T.S. 324, reprinted in C. FENWICK, *supra* note 1, at 547-71.

The O.A.S. is structured around eight principle organs with the General Assembly as the supreme organ. The General Assembly meets annually for conferences of the Ministers of Foreign Affairs of the various Member States. The General Secretariat is the central and permanent organ to carry out the instructions of the General Assembly as well as the other councils and organs. Scheman, *The O.A.S. and the Quest for International Cooperation: American Vision or Mirage*, 13 CASE W. RES. J. INT'L L. 83, 86 (1983).

Three separate and equal subordinate councils govern specialized matters of mutual interests: the Permanent Council for Political Affairs, which is in continual year-round session, and two councils for sectoral cooperation, which meet annually, the Inter-American

American States held in Bogata, in 1948.⁵⁷

The purpose of the O.A.S. is to provide an organization within the framework of the United Nations which can be used to advance economic cooperation, human development, and collective security among the member nations.⁵⁸ Although the goal of the O.A.S. is to promote the pacific settlement of disputes⁵⁹ and to abide by the tenets of non-intervention,⁶⁰ the charter provides for the use of force to combat any aggression against a member state.⁶¹

Since the institutionalization of the O.A.S. it has been called upon on numerous occasions to resolve regional disputes.⁶² Some

Economic and Social Council (CIES) and the Inter-American Council for Education, Science, and Culture (CIECC). An Inter-American Juridical Committee conducts studies on codification of international law to attain uniformity of legislation. The other organ is the Inter-American Commission on Human Rights, recently supplemented by an Inter-American Court of Human Rights, with the establishment of the Inter-American Convention of Human Rights on July 18, 1978. The system also provides a formal mechanism for the General Assembly to establish specialized organizations for specific technical ends, and specialized conferences for specific subjects requiring Inter-American cooperation. *Id.*

The principle mechanism for the enforcement of peaceful settlement is the Meeting of Consultation of the Ministers of Foreign Affairs, which can be convened by any Member State or, in the event of an armed attack, by the Chairman of the Permanent Council of the Organization. The Permanent Council has been given broad powers to assist in the peaceful settlement of disputes which any party may bring to it. A special Inter-American Committee on Peaceful Settlement of Disputes is provided for by Articles 83-90 of the O.A.S. Charter, to assist the council in the exercise of these functions, provided that both parties to the dispute agree. *Id.*

57. See C. FENWICK, *supra* note 1, at 81.

58. O.A.S. Charter, arts. 1-19, reprinted in C. FENWICK, *supra* note 1, 548-51. Original signatories of the charter are: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, Venezuela. See *id.* at 571.

The organization now includes 29 nations: the United States, 19 Latin American countries, 8 caribbean states (all former British colonies, including Antigua/Barbuda, admitted in 1981), and Suriname (formerly Dutch Guiana). Not included are Canada, which has always held itself rather self-consciously apart; Cuba, which was expelled in 1962; Guyana, part of whose territory is claimed by Venezuela; and Belize, all of whose territory is claimed by Guatemala. See Wells, *supra* note 2, at 224 (citing M. BALL, THE O.A.S. IN TRANSITION 69-72 (1969)).

59. See O.A.S. Charter, reprinted in C. FENWICK, *supra* note 1, at 548-71.

60. *Id.*

61. *Id.*

62. For example, some specific disputes in which the O.A.S. has helped diffuse the situation are:

1. Costa Rica-Nicaragua, 1948 - helped restore peace.
2. Haiti - Dominican Republic, 1949 - helped restore peace.
3. Guatemala, 1954 - action too late.
4. Costa Rica - Nicaragua, 1955 - helped restore peace.
5. Equador-Peru, 1955 - helped restore peace.
6. Honduras-Nicaragua, 1957 - helped restore peace.
7. Costa Rica-Nicaragua, 1959 - conflict died down.

commentators have observed that in this respect, the O.A.S. has achieved a far more impressive track record than the United Nations.⁶³

III. THE PRESENT SITUATION

At the present time, a consensus exists among the majority of member-states that there is a need to reinvigorate and strengthen the O.A.S..⁶⁴ This consensus exists against a backdrop of continuing strife in the Central American Region.⁶⁵

The theory has been advanced that this region has now obtained the undesirable status of being "[a] zone of hegemonic confrontation" between East and West.⁶⁶ This theory is borne out by the continued efforts of the United States to destabilize the Marxist Government of Nicaragua,⁶⁷ as well as by the existence of a

8. Panama-Cuba, 1959 - helped restore calm.

9. Dominican Sanctions, 1960 - increased pressure for over-throw of Trujillo Regime.

10. Bolivia-Chile, 1962 - helped calm parties.

11. Cuban Missile Crisis, 1962 - support for United States

12. Haiti-Dominican Republic, 1963 - helped restore calm.

13. Panama Canal Riots, 1964 - helped provide forum for discussion.

14. Dominican Republic, 1965 - sanctions Inter-American peace keeping efforts.

15. El Salvador-Honduras, 1969 - established truce in 48 hours.

16. Belize, 1972 - refuted charges of British military presence.

17. Costa Rica-Nicaragua, 1978 - led to replacement of Somoza regime.

Scheman, *supra* note 57, at 90 (citing J. Dominguez, *Ghosts From the Past: War Territorial and Boundary Disputes in Mainland Central and South America since 1960* (May 18, 1977) (presented for discussion at O.A.S. seminar)).

63. See Scheman, *supra* note 57, at 90.

64. See Zanotti, *Regional and International Activities*, 17 U. MIAMI INTER-AM. L. REV. 131, 132-133 (1985).

65. For example, at the present time there are guerilla forces operating against the governments of both Nicaragua and El Salvador. Additionally, the situation is tense in Costa Rica, Honduras and other neighboring countries. See generally Lobel & Ratner, *Is United States Military Intervention in Central America Illegal?*, 12 HUM. RTS. 23 (1984); Friedlander, *Confusing Victims and Victimiziers: Nicaragua and the Reinterpretation of International Law*, 14 DEN. J. INT'L L. 87 (1985).

66. See N.Y. Times, Feb. 25, 1981, at 6, col. 1. This theory was advanced by President Jose Lopez Portillo of Mexico, who felt that "U.S. Military Aid and the inordinate amount of attention" being paid to tiny El Salvador had elevated the region "to the undesirable category of a strategic frontier." *Id.*

67. For discussion of U.S. support for the Nicaraguan Rebels, see, e.g., Beres, *Ignoring International Law: U.S. Policy on Insurgency and Intervention in Central America*, 14 DEN. J. INT'L L. 76 (1985); Friedlander, *supra* note 66; Lobel & Ratner, *supra* note 66, at 39-40; Malloy, *Developments at the International Court of Justice: Provisional Measures and Jurisdiction in the Nicaragua Case*, 6 N.Y.L. SCH. J. INT'L & COMP. L. 55, 58 (1984); Note, *The Legitimacy of U.S. Intervention in Nicaragua*, 6 N.Y.L. SCH. J. INT'L & COMP. L. 135

large body of evidence tending to implicate Nicaragua, Cuba, and ultimately the Soviet Union in the continuing guerilla war being waged against the government of El Salvador.⁶⁸ This theory is further supported by the events which occurred in Grenada during October, 1983.⁶⁹

Although plausible justifications have been advanced to support the actions of the various participants of these disputes,⁷⁰ the fact remains that many of these activities are in violation of international law.⁷¹ Additionally, the actions taken by the United States, whether justified or not, raise the spectre of a return to a policy of unilateral U.S. decision making in this region.⁷²

(1984).

68. See, e.g., Friedlander, *supra* note 66, at 92-94; Note, *supra* note 68, at 144-145.

69. Grenada is a small island nation in the Caribbean belonging to the Organization of Eastern Caribbean States (OECS), which is a sub-regional organization within the O.A.S. In March 1979, the constitutional government was overthrown in a coup led by Maurice Bishop. Over the next several years, the marxist Bishop regime developed strong ties with Cuba and the Soviet Union. Additionally, relationships with such other Soviet client states as North Korea, East Germany and Libya were cultivated. On October 13, 1983, Bishop was placed under arrest by the New Jewel party which was seeking a more hard line Leninization of Grenadian society. This was followed by widespread civil disorder and upheaval as the various factions fought for control. On October 25, 1983, ostensibly to guarantee the safety of some 1,000 U.S. citizens on the island, the U.S. led an O.E.C.S. "peacekeeping" mission to restore order. For an in depth discussion of the events leading up to the U.S. invasion of Grenada, which is generally supportive of the role taken by the United States, see Note, *Grenada and the Inter-National Double Standard*, 78 AM. J. INT'L L. 145 (1984).

70. For example, the United States claims that it is acting in the name of collective security to prevent the subversion of Latin America governments by extra-continental communist forces. Additionally, the United States points to the fact that its assistance was requested by various Central American regimes. Nicaragua, in contrast, bases its actions on the rights of revolution, self-determination and social change. See generally Note, *supra* note 68, at 138-155.

71. Both the U.S. arming of Nicaraguan rebels, and the Nicaraguan arming of El Salvadorian, Honduran and Guatemalan rebels for the purpose of destabilizing the respective governments of these nations violates articles 15-19 of the O.A.S. Charter, which prohibit intervention, either direct or indirect, as well as economic, military, or political coercion against the government of another American state. See O.A.S. Charter, reprinted in C. FENWICK, *supra* note 1, at 550-51.

Additionally, both U.S. and Nicaraguan actions ignore treaty imperatives with regard to non-intervention and the settlement of disputes. Note, *supra* note 68, at 155. Unfortunately, before the conflicting claims of Nicaragua and the United States could be fully litigated in the International Court of Justice, the United States refused to further submit to the courts jurisdiction. See Malloy, *supra* note 68, at 57 (citing *U.S. Withdrawal from the Proceedings initiated by Nicaragua in the International Court of Justice*, reprinted in 24 I.L.M. 246 (1985)).

72. Present U.S. policy in Central America represents in part, a return to the Monroe Doctrine. "There also appears to be emerging, though rather tentatively, a 'Reagan Corollary' to the Monroe Doctrine." Friedlander, *supra* note 66, at 92; see also Note, *supra* note 6; Note, *supra* note 68, at 158-160.

However, international law as a whole lacks a means of enforcement,⁷³ and an adequate peace keeping mechanism still eludes the O.A.S..⁷⁴ Therefore, in the absence of any legitimate regional force, it is likely that the United States will feel compelled to continue with its unilateral actions in this area.⁷⁵

IV. PROPOSAL FOR THE ESTABLISHMENT OF A MULTI NATIONAL POLICE FORCE UNDER THE O.A.S.

“Many commentators and concerned world citizens question the efficacy of international law when effective enforcement appears to be an unascertainable goal”.⁷⁶ It is felt that the O.A.S. should promote positive action on peace keeping, and there is pressure on leaders to find alternatives to the methods being used.⁷⁷

One such alternative would be the establishment of a permanent, multinational “police force,” organized under the auspices of the O.A.S..⁷⁸ Such a force might be organized under the Inter-

73. It can be argued that international law as a whole has no *de facto* method of enforcement, and adherence to its tenets by national actors is mainly a matter of good faith. See Friedlander, *supra* note 66, at 88.

74. See Scheman, *supra* note 57, at 89.

75. It has been pointed out that “in the absence of a legitimate regional military force, the United States occasionally has acted unilaterally to protect perceived interests, especially in response to developments that are interpreted as strengthening Communist influence in the hemisphere.” Note, *supra* note 6, at 306. In view of the disposition of the present administration, it seems likely that in the absence of any such legitimate force, the U.S. might again take unilateral action. See *id.*

76. Note, *supra* note 68, at 158. It has been pointed out that twice in the 20th century international security organizations have been founded for the express purpose of preserving a minimum standard of world order. The League of Nations made a weak attempt and inevitably, failed. Unfortunately, the United Nations in this respect seems to be following the same path. See Friedlander, *supra* note 66, at 89.

77. As development progresses, pressures on national leaders increase, requiring the continuing availability of recognized legal alternatives for maintaining the peace. Scheman, *supra* note 57, at 91. This hemisphere requires a mechanism to promote positive actions in the realm of social and economic progress as well as peace-keeping and international law. *Id.* at 102.

78. The idea of an international police force is hardly novel. For example, the idea of an international police force was widely advocated in the American international legal community during the period of World War I. See Boyle, *supra* note 2, at 205. Fears of U.S. domination of such a force have in the past caused the Latin American members of the O.A.S. to be wary of the role of regional peace keeping. Nevertheless, it can be argued that the existence of such a force might deter arbitrary U.S. action. See generally Scheman, *supra* note 57, at 92. For an in depth discussion of the establishment of such a force for the purpose of protecting human rights, see Note, *supra* note 6. The force advocated there is, however, far more interventionary in nature than the force here proposed. For a proposal calling for the establishment of a general permanent force under the United Nations, see Schwenninger, *supra* note 5, at 432.

American Defense Board, which is the O.A.S. organ charged with military preparation.⁷⁹

Alternatively, this force could be organized as a specialized agency pursuant to Article 53 of the O.A.S. Charter which provides, in relevant part, for the drafting and submission of proposals for the creation of new, specialized agencies.⁸⁰ Either way would be feasible, as the O.A.S. Charter is constructed so as to easily accommodate new agencies or organs.⁸¹ This force could be funded and supplied in accordance with the "ability to pay" quota system which the O.A.S. already employs to fund its present operations.⁸² The man power for the proposed force, should however, be equally drawn from the armed forces of the member states.⁸³

This force would have to be arranged so as to be independent of national influences as much as possible, and subject solely to the control of the O.A.S.. Therefore, while troops would be on duty with the O.A.S., they could not be affiliated with the military of their respective nations.⁸⁴

79. The Inter-American Defense Board was established in 1942, and in its regulations describes itself as "a military international agency, subordinate to the governments of the American states, for consultation and preparation in matters of collective defense." The board is organized under the Advisory Defense Committee, in accordance with Articles 44-47 of the O.A.S. Charter. See C. FENWICK, *supra* note 1, at 112; see also O.A.S. Charter, reprinted in C. FENWICK, *supra* note 1, at 555-56.

80. See O.A.S. Charter, art. 53, reprinted in C. FENWICK, *supra* note 1, at 557.

81. See generally *id.*

82. This system was adopted in 1960 due to the great disparity in wealth between the various member states. At the present time the United States underwrites approximately 66 percent of the cost of the O.A.S., whereas Grenada and other miniscule new member states contribute only 0.03 percent each. See Wells, *supra* note 2, at 225.

This system is authorized by Article 54 of the O.A.S. Charter. See O.A.S. Charter, art. 54, reprinted in C. FENWICK, *supra* note 1, at 557.

83. Although there is a quota system for financial matters, see *supra* note 83, there is no necessity for such a quota system when it comes to manpower. Equal manning of this force would promote the ideal of national equality. But see Note, *supra* note 6, at 323, proposing that the actual membership of any such force be drawn almost exclusively from Latin American countries to avoid triggering anti-U.S. resentment. It is there posited that minimizing the profile of U.S. troops or advisors might enhance the perception of neutrality. *Id.*

84. This would be similar to the members of the Inter-American Commission on Human Rights, who represent the O.A.S. rather than their national governments. See Note, *supra* note 6, at 301. This proposal contemplates that seasoned troops already serving their national military services would be employed to make up the force. Such troops could be detached on a leave of absence type basis from their native service while they were serving with the O.A.S.. Of course, they would retain their rank and pay status, as well as receive promotion opportunities and credit for time in service as if they were still in their respective national services. This force should be set up as an elite unit, appointment to which would be on a competitive basis. Therefore, appointment to this force would be an honor; and service with it an important asset on a military service resume. Such a system would provide

The effectiveness of such a regional force when deployed for peace keeping or other purposes has recently been demonstrated in Chad, Africa.⁸⁵ Similarly, the O.A.S. demonstrated its ability to field an effective multinational force with its successful peace-keeping mission in the Dominican Republic in 1965.⁸⁶ In keeping with the underlying policies of the Inter-American system, however, the proposed force should not be used in an interventionary manner.⁸⁷ The force should only be deployed when its assistance is requested by a legitimate government,⁸⁸ or to investigate charges of

much incentive for appointment and thus theoretically, should attract the best of the respective national military organizations for the O.A.S. to screen.

Alternatively, raw recruits could be inducted from the member states and trained entirely by the O.A.S. for its specific purposes. This might avoid the danger of ingrained loyalties to any particular national organizations as a sense of "esprit de corps" could be instilled during training.

85. In Chad, a multi-national peacekeeping force was deployed with great effectiveness. The force was organized under the auspices of the Organization of African Unity, which similarly to the O.A.S., is a regional security organization within the framework of the United Nations. See N.Y. Times, Jan. 21, 1982, at A3, col. 4.

Article 52 of the U.N. Charter authorizes regional organizations to deal "with such matters relating to the maintenance of international peace and security as are appropriate for regional action." U.N. CHARTER art. 52, para. 1.

86. During the civil strife which occurred in the Dominican Republic in 1965, the O.A.S. deployed a force of approximately 13,000 troops to restore the peace, and ultimately, to supervise the holding of free elections. Even though the mission was hailed as a success, it unfortunately did not take place until after an initial, unilateral response on the part of the United States.

The mission did however set the precedent for actual deployment of troops under the command of the O.A.S. See generally Note, *supra* note 6.

The O.A.S. action was taken pursuant to the Rio Treaty, and is authorized under Articles 7 and 8 of that treaty. See Rio Treaty, *supra* note 54, arts. 7, 8.

87. See *supra* notes 41, 43.

88. The invitation of a lawful government has been recognized as legal justification under international law for a foreign nation to provide assistance, or to intervene in the inviting nation. See generally Leich, *Contemporary Practice of the United States relative to International Law*, 78 AM. J. INT'L L., 200, 203 (1984). However, the concept of a legitimate government is at best rather amorphous, and thus subject to manipulation. The rights of revolution and self-determination are recognized in international law, and are inimical to the American tradition. See generally Note, *supra* note 68, at 143-52. Therefore, "invitation" should not be relied upon as a legitimate justification for intervention on behalf of a "legal," but repressive regime.

Noted scholar, Farooq Hasson, has warned about allowing any permissive doctrines justifying intervention, except those explicitly provided for in the United Nations Charter or in a multilateral treaty of similar import. Hasson's reasoning is that interventions are invariably by the strong against the weak - an argument that must be taken seriously.

"To deny oppressed peoples the right to rebel openly against their governments by intervening on behalf of these governments is to deny them any right to participation and any hope for dignity." *Id.* at 429.

For the foregoing reasons, before the proposed force is deployed to intervene in a situation of internal civil strife at the request of the ruling regime, the O.A.S. must carefully

intervention by extra-national forces.⁸⁹

Additionally, this force could be deployed for such legitimate purposes as the supervision of free elections⁹⁰ or to investigate charges of violations of human rights.⁹¹

A major advantage of such a standing force is that it could be rapidly deployed when necessary, rather than being hastily thrown together on an "ad hoc" basis. Further, such a standing force could develop its own procedures and institutional structures. This would allow its component troops to operate in a more cohesive, homogenous manner, thus lessening the problems caused by nationalistic allegiances.⁹²

In addition to the leverage which this force would provide the O.A.S. in dealing with regional problems, the close collaboration of national military forces, which would be necessary for the establishment of such a force, should greatly enhance the practice of inter-american cooperation.⁹³

Apart from military uses, there are collateral benefits which could be realized by the creation of such a force. For example, this force could be quickly deployed to assist in the event of natural disasters, which have unfortunately been quite common in Latin

consider whether its intervention would be promotive of the principles espoused by the Inter-American System, or whether its actions would merely serve to perpetuate the status quo.

89. For example, in the present situation where there are charges of weapons flowing across the border from Nicaragua into El Salvador, *see supra* notes 66-69 and accompanying text, the O.A.S. forces could be deployed on the Salvadoran side of the border at the request of the Salvadoran Government. From this position, these forces could investigate the charges, and if necessary, take action to interdict the flow of weapons and troops from an extra-national source. In this way, the extra-national intervention could be halted without the necessity of intervening on the sovereign territory of the offending state. It should be noted that one of the main justifications relied on by the United States in support of its involvement in this specific situation is the interdiction of arms. *See* Lobel & Ratner, *supra* note 66, at 40. Therefore, the deployment of the proposed O.A.S. force in the manner envisioned above should put to rest this particular perceived need for U.S. action. Of course, inversely, the Nicaraguan government could request the aid of the O.A.S. force in the same manner.

90. Representative democracy is one of the founding principles of the Inter-American system. *See* O.A.S. Charter, arts. 1-6, *reprinted in* C. FENWICK, *supra* note 1, at 548-49. Therefore, deployment of the proposed O.A.S. force to insure the holding of free elections would seem to be a legitimate O.A.S. action. This was one of the functions of the temporary O.A.S. force deployed in the Dominican Republic in 1965. *See supra* note 87.

91. For an excellent and extensive discussion of a proposal for a standing O.A.S. force designed specifically to enforce human rights, *see* Note, *supra* note 6. As noted previously, however, the model proposed there is far more interventionary in nature than the force here envisioned. *See supra* note 79.

92. *See supra* note 85.

93. *See generally* Note, *supra* note 6, at 340.

America.

V. CONCLUSION

The Inter-American system has as its cornerstones the doctrines of non-intervention and self-determination. In addition, the O.A.S. is bound by its charter to the principles of representative democracy, and the doctrines espoused in international law.

However, laws enacted without an appropriate enforcement mechanism are generally ineffective, and tend to erode the credibility of the entire legal system. This is true on any level, be it local, national or international. This is reflected by the present situation in Central America, with national actors taking action in disregard both of treaties to which they are party, as well as the general tenets of international law.

Historically speaking, the United States has tended to act unilaterally in the Latin American Region. This has been due to perceived threats to national security interests, as well as to feelings that Latin America was properly within the U.S. sphere of influence. Such a policy of unilateral action runs counter to the principles of the Inter-American system. However, in the absence of any legitimate force to settle regional disputes and promote the ideological concepts espoused by both the United States and the O.A.S., it is likely that the United States will continue to take unilateral action, thus violating its own commitments to the doctrines of non-intervention and self-determination.

A likely solution to this problem would be the establishment of a standing multinational police force, made up of troops from member nations of the O.A.S.. Such a force could be used to enforce the principles of non-intervention, self-determination, and representative democracy. As the promotion of these principles should be ideologically compatible with the stated policies of the United States, the existence of such a force should preclude any perceived need for the United States to act unilaterally. Further, the implementation of such a force under the O.A.S., where all of the member states are considered equal, would be promotive of solidarity, equality and cooperation between the nations of the Western Hemisphere, thus advancing the very reasons for the existence of the Inter-American system.

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