

cise of the jurisdiction which international law accords it, tends to contribute to international tension or even hostilities, as did refusal of courts or other agencies of the injured countries to respect Iran's nationalization of the Anglo-Iranian Oil Company (1953), Egypt's nationalization of the International Suez Canal Company (1956), Indonesia's nationalization of Dutch properties (1958), and Cuba's nationalization of American properties (1960). The fact that refusal to respect foreign acts of state has contributed to international conflict nullifies the argument that acts of state are "mere acts of internal legislation not addressed to foreign powers" and so may safely be ignored by foreign courts.⁵⁰

Application of the act of state doctrine, within the limits stated, seems essential for the peaceful co-existence of states with different social and economic systems, deemed, on both sides of the Iron Curtain and by the United Nations Charter, to be the basic principle of contemporary international law.⁵¹ Until a code of "human rights" defining the property and other rights of individuals has been generally accepted, national courts should continue, as they usually have in the past, to follow the act of state doctrine, and to leave examination of denials of justice to diplomacy or international adjudication.

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THE ORGANIZATION OF AMERICAN STATES:
THE TRANSITION FROM AN UNWRITTEN TO A WRITTEN CONSTITUTION

The Organization of American States, celebrating this year its 75th anniversary, is a unique example of a political institution which, in all but a technical sense, antedates its constituent document. As a formal legal body, functioning in accordance with a Charter which defines its principles and the agencies by which it undertakes to pursue its objectives, it is actually but seventeen years old. But the signing of the Charter at the Conference at Bogotá in 1948 did not create the organization as a working body; rather it gave to the existing Union of American Republics a more precise juridical character; it defined in more specific form the powers and functions of an established institution; in a sense it amended the unwritten constitution of an organization that had been growing over the years and had now come of age.

The Act of Congress of 1888 authorizing the President to call a Conference of American States and the invitation issued by Secretary Bayard the following year contemplated nothing other than the development of commerce and the promotion of some plan of arbitration. The Conference was duly called, and on April 14, 1890, now known as Pan American Day, a committee report was signed creating a permanent association for "the

⁵⁰ Baade, *loc. cit.* 807, note 35 above. See also notes 4, 8, 9, above, and Reeves, *loc. cit.* 154 ff.

⁵¹ Falk (*loc. cit.* 948, 951, note 17 above) points out that in the decentralized state of international society, "vertical" controls of states are weak and consequently "horizontal" forces of international order must be recognized, implying "dependence of international society upon patterns of mutual respect for territorial law."

prompt collection and distribution of commercial information," bearing the impressive name of The International Union of American Republics.

The Plan of Arbitration recommended by the Conference set a standard for the multilateral treaties that were to mark the opening years of the twentieth century and might of itself have justified the Conference if unhappily the provision for ratification within a year had not defeated its adoption. Two other proposals of the agenda of the Conference in the field of commercial relations might in like manner have justified the Conference had it been found possible to put them into effect. But the plan of a customs union was found to be attended with "insuperable difficulties," and the uniform system of weights and measures calling for the adoption of the metric decimal system never got beyond the stage of a recommendation.

But in spite of the limited objective of the Union of American Republics it was impossible for successive conferences to meet without taking up the problems confronting the community: the status of aliens, pecuniary claims, the navigation of rivers, removal of obstacles to trade, and again and again the arbitration of disputes. By 1910 the Commercial Bureau established in 1890 came to be called the Pan American Union and was popularly taken to be the Union itself. Problems of international law soon became leading items on the agenda of conferences. At the Havana Conference of 1928 the codification of international law was in the forefront and seven separate conventions were adopted, together with a Code of Private International Law bearing the name of the distinguished Cuban jurist, Antonio Sánchez de Bustamante y Sirvén.

The time had now come to face the problem of non-intervention which had become more acute with each decade since the assumption by President Theodore Roosevelt of what he described as "an international police power." Obviously the decisions taken in pursuance of it were unilateral, not international; and the fact that the United States had insisted that nothing in the Covenant of the League of Nations was to be deemed to affect the validity of the Monroe Doctrine seemed to a number of Latin American States to be a claim to a privileged position which even the collective action of the League could not block. The opposition to intervention was forcibly pressed at Havana in 1928, but to no effect; and the condemnation of intervention at Montevideo in 1933 met with only a qualified acceptance by the United States. Finally the constructive decision was taken in 1936: the United States would abandon the assumption of an international police power if the American States as a body would accept collective responsibility in the event of a threat to the peace. The Buenos Aires treaty was phrased in the vaguest terms, and no obligation was imposed except that of consultation; but the principle of equality was there, and the treaty came to be described as a "continentalization" of the Monroe Doctrine.

Two years later, with the clouds of war gathering in Europe, the American States met again in conference at Lima, Peru, in 1938, and gave concrete form to the principle of consultation by specifying that it should

consist of meetings of the Foreign Ministers of the American States. This time there was no treaty, merely a declaration, but it reflected the need for an organization more responsive to the crisis ahead. Again two years later, in 1940, at Havana, with the war in progress and a threat to the peace of America actually confronting the American States, a resolution was adopted to the effect that an attack upon one would be considered as an attack upon all. Here was a definite commitment of collective security, not a mere agreement to consult, but a formal pledge of mutual defense.

As the war drew to a close and the defeat of the Axis Powers appeared to be assured, plans were being prepared in Washington to give effect to the Atlantic Charter and the Declaration of United Nations. The Pan American system was, so it appeared, being by-passed in favor of a new universal world order. Latin Americans took alarm; and a special conference was called which met at Mexico City two months in advance of the conference at San Francisco. The Dumbarton Oaks Proposals had recognized the existence of regional arrangements in the new order; but what if, in a case involving Latin America, the Security Council should fail to take action by reason of the veto to be given to the permanent members of the Council? As a result, Article 51 of the Charter justified the right of self-defense, individual and collective, until such time as the Security Council might be able to maintain the peace, thus protecting the action of the regional group and at the same time recognizing the dominant authority of the Security Council.

The stage was now set for putting into effect the decisions taken at Mexico City looking to the reorganization of the inter-American system. Obviously the first step was to reduce to treaty form the regional security resolutions. This was done by the adoption of the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947. The treaty distinguishes between armed attacks and acts of aggression short of an armed attack. In the case of the former the obligation of mutual assistance is immediate and definite, individual and collective; in the case of the latter the obligation is dependent upon consultation as to the danger to the peace involved and the measures that might appear to be adequate to meet it. Here an interesting development has taken place. Article 6 of the treaty calls for an immediate meeting of the Organ of Consultation if a case arises under the treaty. But in view of the time it would take to hold the meeting of Foreign Ministers, the Council of the Organization is authorized to act provisionally as Organ of Consultation. Suppose, then, that in so acting the Council is able to bring the parties together and find a solution for the situation. Well and good! The Meeting of Foreign Ministers may now be called off. Under these circumstances the Council has on a number of occasions called for a Meeting of Consultation, but without fixing place or date; and then called off the meeting when there was no longer need of it. Thus far no complaints have been heard from the Foreign Ministers for alerting them and then telling them they can stay home; and a new emergency committee has been created.

The effect of the Rio Treaty was to lay the cornerstone of the new edifice. A year later a conference met at Bogotá and adopted the Charter of the Organization of American States. Elaborate as are the provisions of the Charter, it may be looked upon not as an original document but rather as the embodiment in treaty form of the principles that had developed over the years, now given more specific definition, and accompanied by new organs of collaboration with new administrative functions. But if in a technical sense the Organization was the successor of the Union of American Republics, the succession was obviously not to the Union of 1890 but rather to the Union as it had developed over the years in what might be called unwritten constitutional form.

Foremost among the functions of the new organization in the field of regional law is the maintenance of the peace and security of the continent. To this end the Charter first provides for the adoption of a special treaty establishing procedures of pacific settlement, "so that no dispute between American States shall fail of definitive settlement within a reasonable period." But here there has been complete failure. The Pact of Bogotá, drafted in the high hope of covering all disputes of whatever kind, has been ratified by only nine states; and efforts made to revise it have been abandoned. Fortunately, alternative procedures under the Rio Treaty have to some extent filled the vacuum. The Inter-American Peace Committee, established in 1948 and functioning independently of the organs of the Charter, has been able on numerous occasions to find a solution of controversies, due partly to the prestige of the members of the Council who have served on it.

What now of collective security, the cornerstone of the new system? The provisions of Article 25 of the Charter parallel those of the Rio Treaty, distinguishing between armed attacks and acts of aggression short of an armed attack. No cases have as yet arisen under the first head; and those that have arisen under Article 6 of the treaty have been solved either by the Organ of Consultation itself or by the Council acting provisionally as Organ of Consultation. Outstanding as a threat to the peace have been the attempts at control of the political institutions of an American state by the international Communist movement. The issue was first presented at the Conference of Bogotá in 1948; again at the Meeting of Foreign Ministers in Washington in 1951; and more urgently at the Conference at Caracas in 1954, where a declaration was adopted to the effect that such domination or control "would constitute a threat to the sovereignty and independence of the American States." Not until 1962, however, after Fidel Castro had gone to the length of publicly proclaiming himself a Communist, did the Meeting of Foreign Ministers at Punta del Este resort to the sanction of excluding his government from participation in the inter-American system. On October 23rd of the same year, after the United States had unilaterally demanded the destruction of the missile bases in Cuba, the Organ of Consultation followed with a resolution calling upon the member states to co-operate in measures to prevent Cuba from receiving military material from the Sino-Soviet Powers.

Other cases of threats to the peace have involved boundary controversies, the alleged assistance given by a state to refugees from a neighboring state seeking to organize a movement to overthrow the government of their state, and the rare case of the complicity of the government of the Dominican Republic in the attempted assassination of the President of Venezuela, in which last case sanctions were imposed in the form of breaking relations and partial suspension of trade.

But where there is no threat to the peace, in the narrow sense of Article 6 of the Rio Treaty, the organization has no coercive authority. Corresponding to Article 2 (7) of the U.N. Charter is the rigid provision of Article 15 of the O.A.S. Charter prohibiting intervention, "directly or indirectly, for any reason whatever, in the internal or external affairs of any other state," the one exception in both cases being measures for the maintenance of peace and security. Of the problems that lie outside the area of technical threats to the peace doubtless the foremost is the protection of the fundamental rights of the individual. The Charter "proclaims" these rights and pledges respect for them, and the American Declaration of the Rights and Duties of Man reaffirms the Charter. But in spite of the grievous violations of fundamental rights, notably the right of freedom of speech, in a number of dictatorships, no sanctions of any kind have been adopted to give effect to the declarations and resolutions. Doubtless the solution must remain for some time a matter of exhortation rather than of law. The Inter-American Commission on Human Rights performs a most useful service in examining and reporting on conditions in the various states; but it can only act within that limited sphere.

What is the relation of the inter-American system to the universal system of the United Nations? The Charter of the O.A.S., in its opening chapter declares: "Within the United Nations, the Organization of American States is a regional agency." The name "agency" fits into the provisions of Chapter VIII of the United Nations Charter dealing with Regional Arrangements, but otherwise it is inappropriate; for, except in respect to the ultimate authority of the United Nations in relation to procedures of pacific settlement and the maintenance of peace and security, the Organization of American States is not in any degree an "agency" of the United Nations. All of its activities are carried on independently of the authority of the United Nations. The agreements between the specialized agencies of the United Nations and the corresponding agencies of the Organization of American States are freely negotiated and involve nothing more than the voluntary co-operation of institutions seeking the same general objective. Articles 57 and 63 of the United Nations Charter contain no element of subordination of the regional to the universal agencies; and Article 100 of the O.A.S. Charter enjoins the inter-American organizations to preserve their identity and their status as integral parts of the Organization.

The activities of the Organization carried on in the juridical, economic, social and cultural fields, while not differing in substance from activities begun under the Union of American Republics, have expanded so greatly

as to open up a new era beyond even the imagination of the delegates to the Conference of 1890. The codification and development of international law is now a regular function of the Inter-American Council of Jurists; the Alliance for Progress has made earlier measures of economic and social co-operation seem insignificant by comparison; the idea of promoting solidarity by basic educational programs and the exchange of teachers and students is creating a sense of inter-American unity in spite of temporary obstacles due to acceleration beyond material resources. There are tasks ahead; but it may fairly be said that this 75th anniversary finds us in an upper mountain valley, with heights yet to be reached, but with faith and courage to keep on climbing.

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