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The Rio de Janeiro Treaty: Genesis, Development, and Decline of a Regional System of Collective Security

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THE RIO DE JANEIRO TREATY: GENESIS, DEVELOPMENT, AND DECLINE OF A REGIONAL SYSTEM OF COLLECTIVE SECURITY*

FRANCISCO V. GARCIA-AMADOR**

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I. INTRODUCTION

The Inter-American Treaty of Reciprocal Assistance¹ (Rio Treaty) was signed on September 2, 1947 in Rio de Janeiro, but its roots date back to the early 19th Century. The Treaty strengthened and developed the regional system for collective security that was organized to stem the subversion of legitimate governments. This development also carried over into the area of self-defense. The United Nations Charter and the Rio Treaty sanction self-defense only where aggression, in the form of an armed attack, has occurred. Unfortunately, noncompliance by certain countries with a resolution prohibiting relations with Cuba has led to the progressive decline of the regional collective security system against subversion. The Treaty is thus in the midst of a grave crisis. This essay will first give a brief overview of the origins and development of the Treaty, and then objectively examine the manifestations of the crisis.

II. THE LATIN AMERICAN ROOTS OF THE RIO TREATY

Prior publications have examined the historical roots of the Rio Treaty. Their purpose was to show the means by which Latin America has contributed to the development of the modern systems of collective security such as the League of Nations, the United Nations, and regional systems like the Rio Treaty and the North Atlantic Treaty Organization (NATO). This essay will illus-

1. Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, 62 Stat. 1681, T.I.A.S. No. 1838, 21 U.N.T.S. 77 [hereinafter cited as Rio Treaty].

trate the historical constant that links Latin America's contribution to the development of the collective security system established by the Rio Treaty and by the other inter-American security mechanisms that preceded and complemented the Treaty.

The historical constant appeared in the early political and military treaties signed by Latin American countries during the 19th Century. The first of these treaties was the Treaty of Perpetual Union, League, and Confederation (Treaty of Perpetual Union), signed at the Panama Congress of 1826.² At the 1826 Congress, Simon Bolivar instructed the Peruvian plenipotentiaries to "make every effort to secure the great compact of union, league and perpetual confederation against Spain, and against foreign rule."³ The plenipotentiaries were also encouraged to vote for the adoption of a declaration, similar to the Monroe Doctrine, that called for "the European powers [to] abandon all ideas of further colonization of this continent, and in opposition to the principle of intervention in our domestic affairs."⁴

Bolivar's concerns were incorporated into the Treaty of Perpetual Union as illustrated by the content of articles 2 and 3 of the Treaty:

Article 2. The object of this perpetual compact will be to maintain in common, defensively and offensively, should occasion arise, the sovereignty and independence of all and each of the confederated powers of American against foreign subjection, and to secure to themselves from this time forward the enjoyment of unalterable peace, and to promote in this behalf better harmony and good understanding, as well, between the countries, citizens, and subjects, respectively, as with the other powers with which they should maintain or enter into friendly relations.

Article 3. The contracting parties obligate and bind themselves to mutually defend themselves against every attack which shall endanger their political existence, and to employ against the enemies of the independence of all or any of them all their influ-

2. Treaty of Perpetual Union, League, and Confederation, July 15, 1826, Colombia-Central America-Peru-Mexico [hereinafter cited as the Treaty of Perpetual Union]. INTERNATIONAL CONFERENCES OF AMERICAN STATES, 1889-1928, at xxiv (J.B. Scott ed. 1931) [hereinafter cited as CONFERENCES, 1889-1928]. At the time of the signing Colombia consisted of the present republics of Colombia, Ecuador, Panama, and Venezuela, and Central America consisted of the present five Central American republics. F.V. GARCIA-AMADOR, THE INTER-AMERICAN SYSTEM, PART 1, 8 (1983).

3. CONFERENCES, 1889-1928, *supra* note 2, at xxii.

4. *Id.* at xxiii.

ence, resources, and naval and land forces, in the proportion which, according to the separate convention of the same date, each is bound to contribute to the maintenance of the common cause.⁵

Other articles of the Treaty of Perpetual Union implemented the mandate set forth in articles 2 and 3 and regulated different aspects of the "collective security" system. Article 21, for example, imposed a broad obligation of mutual assistance in order to

uphold and defend the integrity of their respective territories, earnestly opposing any attempt of colonial settlement in them . . . and to employ to this end, in common their forces and resources if necessary.⁶

Article 10 of the Treaty of Perpetual Union expressly forbade the contracting state to

make peace with common enemies of their independence without including therein specifically all the other allies; in the intelligence that in no case and under no pretext whatever, shall any of the contracting parties accede in the name of the other to any propositions not having basis the full and absolute recognition of their independence.⁷

Other plans for confederation were formulated by subsequent congresses and embodied in other treaties. Subsequent treaties implemented other aspects of the security system conceived by Bolívar, such as the principle of solidarity against acts of aggression contained in the Treaty of Confederation of 1845. These treaties also reiterated the principle of solidarity in connection with the commitment for reciprocal assistance. It should be noted that the principle of solidarity, originally formulated in 1826, remains unchanged even today because an act of aggression committed against one member state is still considered an act of aggression against all member states.

The Continental Treaty of 1856⁸ and the Convention of League and Alliance⁹ adopted broader definitions of the term "ag-

5. Treaty of Perpetual Union, *supra* note 2, art. 2 and 3.

6. *Id.* at 21.

7. *Id.*, art. 10.

8. Continental Treaty of 1856, *reprinted in* F.V. GARCIA-AMADOR, *THE INTER-AMERICAN SYSTEM*, PART 1, 19 (1983).

9. Convention of League and Alliance, July 18, 1856, Guatemala-Honduras-El Salvador, 115 Parry's T.S. 297.

gression" that included acts of subversion. In the above agreements, the signatories promised to prevent any type of internal conspiracy or scheme against the established order of the state. In 1865, the Treaty of Union and Defensive Alliance¹⁰ extended this commitment for reciprocal assistance to acts of violence directed against the internal regime of the signatories that would "establish over it (the sovereign signatory) any superiority, right or preeminence that would diminish or offend the full and complete exercise of its sovereignty and independence."¹¹

It should be noted that even though the Latin American countries were concerned about acts of aggression originating from within the American continent, including acts perpetrated by their own expatriated nationals, the commitments to reciprocal assistance were primarily motivated by the threat of invasion by Spain and her European allies. In other words, the system of collective security conceived by Bolivar, initiated in 1826 by the Treaty of Perpetual Union and developed in subsequent treaties, arose mainly to counteract extra-continental threats.

III. A UNITED STATES INITIATIVE: THE CONSULTATION PROCEDURE

By the last quarter of the 19th Century, Europe no longer threatened Latin America. Thus, during the First International Conference of American States,¹² called by the United States and held in Washington, D.C. in 1889-90 the subject of the security of the American continent was absent. Discussions focused on commerce and the peaceful settlement of controversies between American nations but never addressed the security issue. This conference laid the foundation for the Inter-American System, the first regional international organization. In 1936, President Franklin D. Roosevelt convened the Inter-American Conference for the Maintenance of Peace in Buenos Aires, Argentina.¹³ The purpose of the Buenos Aires conference was to study "the joint responsibility" of the American states regarding matters related to the peace and security of the American continent.¹⁴ This initiative resulted in a

10. Treaty of Union and Defense Alliance, Jan. 23, 1865, 130 Parry's T.S. 401. This treaty was signed by Bolivia, Chile, Colombia, Ecuador, Peru, El Salvador, and Venezuela.

11. *Id.* at 402 (article IX of the Treaty).

12. See CONFERENCES, 1889-1928, *supra* note 2, at 3.

13. See INTERNATIONAL CONFERENCES OF AMERICAN STATES, 1933-1940, at 129 (Carnegie Endowment for International Peace 1940) [hereinafter cited as CONFERENCES, SUPP. I].

14. *Id.*

Declaration of Principles of Inter-American Solidarity and Cooperation¹⁵ and in the Convention to Maintain, to Strengthen, and to Re-establish Peace.¹⁶ The Convention specifically provided that the governments of the various American Republics were to consult with each other in case the peace of one of them was threatened. This consultation procedure rested on the principle of solidarity originally enunciated in the Latin American Congresses of the 19th Century. This principal was reformulated in the aforementioned instruments as follows:

[E]very act susceptible of disturbing the peace of America affects each and every one of them [the American republics], and justifies the initiation of the Procedure of Consultation as provided for in the [c]onvention¹⁷

Following the 1936 Buenos Aires Conference, the principle of solidarity and the consultation procedure were developed and strengthened. In 1938 at the Eighth International Conference of American States in Lima, Peru,¹⁸ both the principle of solidarity and the commitment to consultation were reaffirmed "[i]n case the peace, security or territorial integrity of any American Republic is thus threatened by acts of any nature that may impair them."¹⁹

The First, Second, and Third Meetings of Consultation of Ministers of Foreign Affairs were held in Panama in 1939, Havana in 1940, and Rio de Janeiro in 1942.²⁰ It should be noted that Resolution XV, entitled "Reciprocal Assistance and Cooperation for the Defense of the Nations of the Americas," passed in Havana in 1940, included in the principle of solidarity

any attempt on the part of the non-American State against the integrity or inviolability of the territory, the sovereignty or the political independence of an American State.²¹ [Any such attempt] shall be considered as an act of aggression against the

15. *Id.* at 160.

16. *Id.* at 188.

17. *Id.* at 160.

18. *Id.* at 215.

19. *Id.* at 309.

20. The final act of the First Meeting of Consultation is found in CONFERENCES, SUPP. I, *supra* note 13, at 315. The final act and convention of the Second Meeting of the Consultation is found in the same volume beginning at page 343. The final act of the Third Meeting of Consultation can be found in INTERNATIONAL CONFERENCES OF AMERICAN STATES, 1942-1954, at 3 (Pan American Union 1958) [hereinafter cited as CONFERENCES, SUPP. II].

21. CONFERENCES, SUPP. I, *supra* note 13, at 360.

States which sign this declaration.²²

Resolution I of the Third Meeting of Consultation, held in Rio de Janeiro, reaffirmed the principle of solidarity as it had been formulated in Havana.²³ The principle of solidarity was used in Rio de Janeiro as the basis for a resolution which called for severing financial and commercial relations with the Axis powers and the territories under their control,²⁴ for a resolution which condemned the Japanese aggression in Pearl Harbor,²⁵ and for Resolution XVII, entitled "Subversive Activities"²⁶ which was the most important resolution because it distinguished between

[a]cts of aggression of the nature contemplated in Resolution XV adopted by the Second Meeting [of Consultation] and acts of aggression of non-military character [which were] both preliminary to and an integral part of a program of military aggression.²⁷

This distinction was not intended to affect the applicability of either the principle of solidarity or the procedure for consultation. Both the principle and the procedure became the basic components of the political defense system used against the extra-continental powers.

IV. THE SYSTEM FOR THE "POLITICAL DEFENSE" OF THE AMERICAN CONTINENT: ITS APPLICATION TO NAZI-FASCIST ACTIVITIES

The system for political defense, in effect, introduced an important aspect into the development of the regional system of collective security. The system was founded upon a resolution passed at the Buenos Aires Conference of 1936²⁸ which declared the need for "the existence of a common democracy throughout America."²⁹ The system was designed to counteract the danger posed by the Nazi-Fascist ideologies and activities which threatened American democratic institutions. This goal was supposed to be accom-

22. *Id.*

23. *Id.* at 11.

24. *Id.* at 19.

25. *Id.* at 34.

26. *Id.* at 25.

27. *Id.* at 25, 26.

28. See *supra* note 13 and accompanying text.

29. CONFERENCES, SUPP. I, *supra* note 13, at 160.

plished through strengthening the internal security of the American countries. The system for political defense was actually instituted at the First Meeting of Consultation of 1939 and was further developed during the Second and Third Meetings.

The origin and development of the system rested on the notion that subversive activities which were incompatible with democracy were aided, directed, or instigated by extra-continental powers, inspired by totalitarian ideologies, and constituted either an "act of political aggression" or "aggression of a non-military character." Resolution XVII of the Third Meeting of Consultation and the Memorandum annexed to the Resolution so characterized these subversive activities.³⁰ Included in the description were activities such as the spread of propaganda, espionage, sabotage, public disorder, and any other activities designed to affect the political structure of a country.³¹

During the initial phase of the system, effective measures to counteract the subversive activities were adopted at both the national and regional levels. At the national level, these measures included domestic laws and decrees which regulated the traffic of persons across state borders.³² Several noteworthy resolutions were also adopted at the first three Meetings of Consultation with respect to collective regional security measures. These resolutions underscore the high level of solidarity and cooperation achieved by the American states in the area of continental security.³³ Also noteworthy was the mammoth task performed in Montevideo by the Emergency Advisory Committee for Political Defense during the war. This committee extensively studied and coordinated the measures to be taken pursuant to Resolution XVII.³⁴ The committee reported "on the necessary conditions to secure political defense," and concluded:

it is an indispensable condition to securing the best practical re-

30. CONFERENCES, SUPP. II, *supra* note 20, at 25.

31. *Id.*

32. See generally LEGISLACIÓN PARA LA DEFENSA POLITICA DEL CONTINENTE (Union Panamericana, Montevideo 1947).

33. For a review of the collective action taken pursuant to the resolutions adopted by the Meetings of Consultation, see the Report of the Department of Legal Affairs of the OAS's General Secretariat (prepared at the request of the Fourth Meeting); STRENGTHENING OF INTERNAL SECURITY (Panamerican Union, Washington, D.C. 1953).

34. For a description of the work performed by the Emergency Advisory Committee for Political Defense, see STRENGTHENING OF INTERNAL SECURITY (Panamerican Union, Washington, D.C. 1953).

sults from the measures it recommends, that in all the American countries there exists a genuine regime, free from faults and weaknesses which would lower their resistance to the infiltration and development of totalitarian regime.³⁵

The political defense system did not lose its *raison d'être* after the defeat of the Axis power. Rather, the system reemerged in response to the threat of subversive activities of international communism. Furthermore, the system was integrated into the regional system of collective security established by the Charter of the Organization of American States (OAS) and by the Rio Treaty.

V. IMMEDIATE ANTECEDENTS TO THE RIO TREATY: CHAPULTEPEC AND SAN FRANCISCO

The Rio Treaty's collective security system incorporated several important decisions made during the Inter-American Conference on the Problems of War and Peace, held in Chapultepec, Mexico in 1945 (Chapultepec Conference).³⁶ The Chapultepec Conference not only reaffirmed, but moreover, developed the principles and procedures of the regional collective security system as evidenced by a declaration contained in the Final Act of the Conference which expanded the principle of solidarity. The principle of solidarity established at Rio de Janeiro stated that any attack or assault on the integrity or inviolability of the territory, or the sovereignty or the political independence of an American state, would be considered an act of aggression against all other states. In Resolution VIII of the Final Act of the Chapultepec Conference, the definitions of attack and assault were broadened to include acts of aggression originating from within any of the American states. This extension expanded the principle of solidarity to include intra-continental activities.³⁷

The Rio Treaty also incorporated some Dunbarton Oaks Proposals (Proposals) which served as a basis for the United Nations Charter, as well as provisions of the United Nations Charter itself, adopted in 1945 at the San Francisco Conference. The Proposals provided that matters relating to the maintenance of international peace and security were dealt with either by state agencies or, where appropriate, regional organizations. The Proposals prohib-

35. *Id.* at 9.

36. CONFERENCES, SUPP. II, *supra* note 20, at 51.

37. *Id.* at 66. This resolution is entitled Reciprocal Assistance and American Solidarity.

ited the regional organization from undertaking any "enforcement action" without the prior approval of the Security Council.³⁸ Additionally, the United Nations Charter provides that the permanent members of the Security Council may veto any nation's use of armed force. At San Francisco the Latin American countries insisted on maintaining complete freedom of action within their own regional collective security system. The United States, one of the five permanent members of the Security Council, supported the position of the Latin American Countries. As a result of these events, the San Francisco Conference decided to include in the United Nations Charter a provision to the effect that regional agencies would be permitted to act, "in case of armed attack," without the prior authorization of the Security Council. These same provisions recognize the "inherent right of individual and collective self-defense."

The Rio Treaty, as well as the United Nations Charter, authorizes the exercise of the right of self-defense only in cases where an act of aggression constitutes an *armed attack*. Application of the Treaty by the regional Organ of Consultation has nevertheless extended the scope of self-defense to other forms of aggression. It should be emphasized that it was the firm stance of the Latin American countries, later supported by the United States, which prevented the drafters of the United Nations Charter from making the inter-American collective security system an ineffective regional system.

VI. SALIENT FEATURES OF THE REGIONAL COLLECTIVE SECURITY SYSTEM

The historical process described in the preceding sections culminated in the Inter-American Treaty for Reciprocal Assistance signed in Rio de Janeiro in 1947.³⁹ The Treaty incorporated the principle of solidarity and the consultation procedure which were essential to the development and strengthening of the regional collective security system, from the time the Congress of Panama convened in 1826, to the present. Some of these features are also present in the Charter of the Organization of American States

38. See U.N. CHARTER art. 53, ¶ 1, *infra* note 68. For more information on the Dumbarton Oaks Proposals, see L. GOODRICH, E. HAMBRO & A. SIMONS, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS (3rd ed. 1969).

39. See *supra*, note 1. See also CONFERENCES, SUPP. II, *supra* note 20, at 133.

(OAS)⁴⁰ signed in Bogota, Colombia in 1948.

The inter-American system provides for a competent regional organ to take any action required for the purpose of self-defense. In this instance, that organ is the Organ of Consultation. The Organ is also authorized to take any other necessary measure for the common defense or for the maintenance of peace and security on the American continent. Finally, the Organ of Consultation is given the authority to take the steps necessary for a peaceful resolution of intra-continental problems.

The scope of the institution of self-defense differs among the various inter-American instruments. Article 3 of the Rio Treaty and article 51 of the United Nations Charter permit self-defense measures only in cases of *armed attack*. The OAS Charter, however, allows measures of self-defense to be taken in response to other forms of aggression, "an act of aggression that is not an armed attack." It should again be pointed out that the Rio Treaty, as well as the United Nations Charter, acknowledges "the inherent right of *individual or collective* self-defense." Thus, the self-defense measures agreed upon by the Organ of Consultation are those taken collectively.

Individual self-defense consists of measures taken separately either by the state or states directly when attacked, or measures taken individually by one or more states when aiding another state. In all cases, defensive measures can presently be taken until the Organ of Consultation has rendered a decision on the matter. Self-defense is also subject to the condition imposed by article 51 of the United Nations Charter that the United Nations Security Council has not taken "the measures necessary to maintain international peace and security."⁴¹ Neither the Treaty nor the United Nations Charter, however, clearly define when such measures are considered to be "necessary."

Noteworthy is the juridical nature of the institution of self-defense. Self-defense is framed in different terms in the two instruments. While under the United Nations Charter self-defense is only a right, under article 3 of the Treaty self-defense is both a right and an obligation. The reason for the difference is that the

40. Charter of the Organization of American States, done Apr. 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 48, as amended by Protocol of Buenos Aires, done Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847, 721 U.N.T.S. 324 [hereinafter cited as the OAS Charter].

41. U.N. CHARTER art. 51.

Treaty is based on a commitment to reciprocal assistance. Reciprocal assistance is, in turn, based on the principle of solidarity. The principle of solidarity, set out in article 27 of the OAS Charter states:

[e]very act of aggression by a State against the territorial integrity or the inviolability of territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.⁴²

Self-defense, therefore, can not merely be a right, it must also be an obligation. Alternatively, the United Nations Charter, as well as traditional international law, considers self-defense to be only a right. The differing conceptions of self-defense exist because the inter-American collective security system, unlike the United Nations system, is based on the principle of solidarity.

The two regional instruments are different with respect to the authority that the Organ of Consultation has for taking measures for the common defense and peace on the American continent. The Rio Treaty specially provides for application of these measures

if the inviolability 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.⁴³

The OAS Charter not only includes all the above situations, but also includes "armed attack" in its list of actionable incursions. This difference reflects the fact that article 28 of the OAS Charter provides for the application of *collective* self-defense measures.

The Organ of Consultation is authorized to take the following measures:

[r]ecall of chiefs of diplomatic missions; breaking off diplomatic relations; breaking off consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic and radiotelephonic or radiotelegraphic communications; or use of armed force.

It should be noted that these measures may be agreed to by the Organ of Consultation but not necessarily pursuant to article 6 of

42. OAS Charter, *supra* note 40, art. 27.

43. Rio Treaty, *supra* note 1.

the Treaty. In addition, the Treaty provides that these measures shall be binding upon all the signatory states.

Article 7 of the Rio Treaty provides for peaceful solutions to intra-continental conflicts. Most regional and general collective security systems include similar provisions for such solutions. In the Inter-American system, the method and the procedure for the peaceful solution of conflicts are found in the OAS Charter and a special treaty called the Pact of Bogota on Pacific Settlement signed at the 1948 Conference in Bogota (Pact of Bogota).⁴⁴ The Rio Treaty itself applies only to the peaceful resolution of conflicts arising among the states party to the Treaty, because the decisions of the Organ of Consultation relating to the peaceful settlement of conflicts are binding only to the parties who signed the Treaty.

In cases of armed conflict, article 7 of the Rio Treaty provides that the Organ of Consultation must first call upon the contending states to suspend hostilities and restore matters to the *status quo ante-bellum*, or it may merely make a recommendation to the parties in conflict. The Organ of Consultation shall also take any measures it deems necessary for the peaceful settlement of controversies in order to restore inter-American peace and security. Article 7 concludes by stating that:

[t]he rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon.⁴⁵

This last statement evidences the binding character that the orders and any subsequent decisions rendered by the Organ of Consultation have on the states.

In view of the fact that the Rio Treaty is designed to maintain peace and security in the region, some of the applications of article 7 are noteworthy. Article 7 was first applied during the conflict between Costa Rica and Nicaragua in 1948-49, and then again in 1955-56. The first phase of the conflict, 1948-49, was resolved through the Pact of Amity signed by the two countries. The 1955-56 phase of the conflict was settled when the two countries agreed on the intervention of the Commission of Investigation and Conciliation as provided for in the Pact of Bogota. In both phases of the conflict, the settlement was negotiated through the initiative and

44. Pact of Bogota on Pacific Settlement, Apr. 30, 1948, 30 U.N.T.S. 55. This treaty was signed during the Ninth International Conference on American States. *Id.* at 161.

45. Rio Treaty. *supra* note 1, art. 7.

cooperation of the Council of the Organization, acting at the time as the provisional Organ of Consultation.

Article 7 of the Rio Treaty was also used to solve the border dispute between Honduras and Nicaragua, which concerned the validity of an arbitration award given by the King of Spain in 1906. Through the application of the Treaty, both countries agreed to take their dispute to the International Court of Justice and to abide by that court's decision.

More recently, article 7 has been applied to the conflict between Honduras and El Salvador (the "Football War"). After a long period of negotiation, the two countries agreed in a treaty to submit their dispute to arbitration in order to resolve certain differences which arose as a result of the armed conflict in 1969. These above instances demonstrate article 7's effectiveness.⁴⁶

VII. APPLICABILITY OF THE RIO TREATY TO THE SUBVERSIVE ACTIVITIES OF INTERNATIONAL COMMUNISM

The provisions of the Rio Treaty which define the acts, facts, or the situations which justify its application are the most significant features of the inter-American collective security system. The Treaty allows self-defense only in cases of armed attack. In those cases of collective action that do not involve self-defense, both article 6 of the Treaty and article 28 of the OAS Charter contemplate another form of aggression, "aggression which is not armed attack," as well as any other "fact or situation that might endanger the peace of America." Article 9 of the Treaty gives the Organ of Consultation the authority to characterize other "acts" as "aggression." These provisions evidence the broad scope of the applicability of the system. They also underscore the system's capability to include acts which do not constitute an armed attack by expanding the scope of the acts' definitional terms.

Applications of the Rio Treaty illustrate the Treaty's breadth, especially its ability to counteract the subversive activities of extra-continental origin. The subversive activities of international communism in the Western hemisphere began immediately after World War II. Therefore, during the 1948 conference in Bogota

46. Regarding the applications of the Treaty mentioned in this section, see INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE APPLICATIONS (General Secretariat, OAS 3rd ed. 1973). This three volume series covering the years 1948 to 1976 [hereinafter cited as APPLICATIONS I, II, and III, respectively].

that adopted the OAS Charter, the "interventionist character" of the "political activities of International Communism or any other totalitarian doctrines" were highlighted.⁴⁷ The Tenth Inter-American Conference, held in Caracas in 1954, emphatically condemned "[t]he activities of the international communist movement as constituting an intervention in American affairs."⁴⁸ In 1962, the Inter-American Peace Committee submitted a report to the Eighth Meeting of Consultation. This report characterized the subversive activities of the Sino-Soviet and Cuban Governments in Latin America as acts of "political aggression" or "aggression of non-military character."⁴⁹ The report added:

[s]uch acts represent attacks upon inter-American peace and security as well as on the sovereignty and political independence of the American states, and therefore a serious violation of fundamental principles of the Inter-American System.⁵⁰

For these reasons, the Organ of Consultation immediately suspended the commercial trafficking of weapons and military equipment to Cuba.⁵¹

The foregoing clearly illustrates that subversive action directed, aided, or abetted by extra-continental powers and, in the present day, the acts of American countries dominated by them, constitute a special category of "act, fact or situation" described in the OAS Charter and in the Rio Treaty as being "aggression which is not an armed attack."⁵² The above is corroborated by certain pronouncements found in the report of the Investigating Committee of the Organ of Consultation regarding Venezuela's claim against Cuba and the Resolution adopted in 1964 at the Ninth Meeting of Consultation. The Report pointed out that

[t]he "acts of intervention" carried out by Cuba and outlines therein "in particular, the shipment of arms, constitute a policy of aggression on the part of the present government of Cuba against the territorial integrity, the political sovereignty, and the stability of the democratic institutions of Venezuela. [T]he Resolution of the Organ of Consultation declared "that acts verified

47. APPLICATIONS I, *supra* note 46, at 270.

48. CONFERENCES, SUPP. II, *supra* note 20, at 433.

49. 67 INTER-AMERICAN SYSTEM 1, 114 (Inter-American Institute of International Legal Studies 1966).

50. *Id.* at 115.

51. *Id.*

52. *Id.*

by the Investigating Committee constitute an aggression and an intervention on the part of the government of Cuba in the internal affairs of Venezuela, which affects all of the member states." The second paragraph of the same resolution condemns the said government "for its acts of aggression and of intervention against the territorial inviolability, the sovereignty, and the political independence of Venezuela." Consequently, the Organ of Consultation, in unequivocal terms, has designated these subversive activities as acts of "aggression" covered by the pertinent provisions of the Rio Treaty.⁵³

The characterization of subversive activities of extra-continental origin as an act of aggression is only the beginning of the process which initiated the merger of the old system for "political defense" and the inter-American system for collective security. The adoption of mechanisms and procedures completed the merger of these two systems. In 1962, the Eighth Meeting of Consultation created the Special Consultative Committee on Security as an advisory organ to the member states that desired assistance or information on security matters. The Organ of Consultation met in Washington, D.C. in 1964, and agreed on the application of the measures enumerated in article 8 of the Rio Treaty⁵⁴ to Cuba for its intervention in Venezuela. The Special Committee which was charged with maintaining a vigil over the situation prepared a study for the Committee of the Council of Organization that declared:

[t]he degree of development attained by the political-military apparatus that has been established in Cuba is rendering the system of security against subversion increasingly inadequate and ineffective, based solely on the isolated measures that each country might adopt.⁵⁵

In the Committee's opinion, these events "constitute a situation of such gravity and urgency that it can be adequately and effectively dealt with only by adopting the measures provided for in the Treaty."⁵⁶

The importance of these developments cannot be underestimated. Certainly they evidence the different disguises that modern-day aggression frequently adopts.

53. *Id.*

54. Rio Treaty, *supra* note 1, art. 8.

55. THE INTER-AMERICAN SYSTEM, *supra* note 49, at 164.

56. *Id.*

VIII. SELF-DEFENSE AND THE SYSTEM FOR SECURITY AGAINST SUBVERSION

The system for security against subversion of extra-continental origin, described in the previous section, was also merged into the general collective security system in the area of self-defense. Article 28 of the OAS Charter permits *collective* self-defense, not only in cases of armed attack, but also in cases of "aggression that is not an armed attack."⁵⁷ This does not assume that the drafters of the OAS Charter intended to extend the scope of collective self-defense to *all* forms of aggression. Rather, the drafters intended to provide a basis for subsequent development of the institution of self-defense. Through successive applications of the Rio Treaty, the Organ of Consultation has not only broadened the scope of article 3, but also the scope of the responses to acts, facts, or situations that do not constitute an "armed attack."⁵⁸

The mere "threat" of aggression is excluded from the explicit language of the United Nations Charter and the Rio Treaty provisions dealing with self-defense. During the so-called "October Crisis" of 1962, the OAS Council, sitting as the Provisional Organ of Consultation, was motivated to act in the absence of an "armed attack", because the situation could, at any moment, have become "an effective threat to the peace and security of the Continent."⁵⁹ This "threat" was the Soviet Union's installation of intermediate and medium range nuclear missiles in Cuba. These missiles were effectively at the disposal of an extra-continental power, the Soviet Union. The situation for self-defense during the Cuban missile crisis was unique. The measures taken by the Organ of Consultation at this time, however, demonstrated that individual or collective self-defense can effectively counteract the threat of an armed attack.⁶⁰

The Organ of Consultation's various applications of the Treaty have extended the scope of individual and collective self-defense to cover instances of subversive activities that are directly or indirectly through intermediary countries in the region, orchestrated, aided or abetted by extra-continental powers. In Resolution II

57. See *Supra* p. 14.

58. See *supra* p. 13.

59. THE INTER-AMERICAN SYSTEM, *supra* note 49, at 164.

60. For a brief summary of the activities of the Organ of Consultation during the "October Crisis" see *id.* at 164.

passed at the Eighth Meeting of Consultation in 1962, the Organ of Consultation recommended that member states

[t]ake those steps that they may consider appropriate for their individual and collective self-defense, and to cooperate, as may be necessary or desirable, to strengthen their capacity to counteract 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, in accordance with the obligations established in treaties and agreements such as the Charter of the Organization of American States and the Inter-American Treaty of Reciprocal Assistance.⁶¹

This third paragraph of Resolution II served as the basis for the pronouncements made by the Foreign Ministers at the close of the informal meeting held in Washington, D.C., October 2, 1962. In Washington, the foreign ministers stated:

the Soviet Union's intervention in Cuba threatens the unity of the Americas and its democratic institutions, and that this intervention has special characteristics which, pursuant to paragraph 3 of Resolution II of the Eighth Meeting of Consultation of Ministers of Foreign Affairs, called for the adoption of special measures, both individual and collective.⁶²

This statement reflects the Foreign Ministers' view that the peculiarity of the Soviet's actions required and justified recourse to collective and individual self-defense measures described in paragraph 3 of Resolution II (1962). Self-defense was warranted even though the Cuban threat was not the type of aggression provided for in article 3 of the Rio Treaty.

During the Ninth Meeting of the Consultation in 1964, the expanded scope of self-defense was developed and perfected even further. In paragraph 5 of Resolution I it was resolved

[t]o warn the Government of Cuba that if it should persist in carrying out acts that possess characteristics of aggression and intervention against one or more of the member states of the Organization, 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 resort to armed force, until such time as the Organ of Consultation takes

61. *Id.* at 164.

62. *Id.*

measures to guarantee the peace and security of the hemisphere.⁶³

In comparison to Resolution II passed at the Eighth Meeting, the 1964 Resolution is more precise as to the issue of extending the scope of self-defense in certain cases. In addition, while Resolution II was specifically limited to "obligations established in treaties and agreements,"⁶⁴ Resolution I of 1964 contained only one limitation; that the exercise of self-defense be subordinated to any action taken by the Organ of Consultation to restore peace and security in the hemisphere.⁶⁵ Moreover, Resolution I explicitly referred to the use of "armed force" as a concrete measure to be taken in the exercise of self-defense.⁶⁶

The importance of the foregoing resolutions of the Organ of Consultation can hardly be emphasized. While measures contemplated in article 6 of the Rio Treaty⁶⁷ are subject to the limitations of article 53 of the United Nations Charter regarding the use of armed force, both individual and collective self-defense measures are not so limited because they do not require approval of the United Nations Security Council.⁶⁸ This is especially significant because the approval of the Security Council requires the unanimous vote of its permanent members.

IX. RECENT APPLICATIONS OF THE SYSTEM: THE RESOLUTIONS REGARDING THE TRI-CONTINENTAL CONFERENCE OF HAVANA

The Eighth Meeting of the Organ of Consultation (Eighth Meeting) was held in Punta del Este, Uruguay in 1962. The Council of the Organization asked the Eighth Meeting to closely watch over the region in order to prevent threats or acts of aggression, subversion, or other dangers to peace and security resulting from the continued intervention in this hemisphere by Sino-Soviet powers. The Council was also asked to make the appropriate recommendations to the governments of the member-states.⁶⁹ The Coun-

63. *Id.* at 169. *See also id.* for the entire text of Resolution I.

64. *Id.* at 164.

65. *Id.* at 169. *See* Resolution I.

66. *Id.*

67. Rio Treaty, *supra*, note 1, art. 6.

68. Article 53 states in part: "[N]o enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council." U.N. CHARTER, art. 53.

69. Resolution II of the Eighth Meeting of Consultation states in paragraph 2 that the

cil carried out this mandate on February 2, 1966, a few days after the conclusion of the Tri-Continental Conference held in Havana. This conference is formally known as the First Afro-Asian-Latin American Peoples Solidarity Conference (Peoples Conference). The Council appointed a special committee (Committee) to study the deliberations, conclusion and projections of the Tri-Continental Conference. The Committee submitted its report (Report) to the Council at the end of 1967.⁷⁰

On February 7, 1967, the United Nations Latin American Group addressed a letter to the President of the Security Council denouncing a General Declaration made at the Tri-Continental Conference. The letter stated that the Declaration constituted the "first deliberate violation"⁷¹ of a declaration made by the General Assembly of the United Nations. The declaration read:

[n]o State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime in another State, or interfere in civil strife in another State.⁷²

In effect, the Havana General Declaration proclaimed, *inter alia*:

the right and the duty of the countries of Asia, Africa, Latin America and of the States of Progressive Governments of the world to make available materials and moral support for those people who fight for their liberty or who suffer direct or indirect aggression by imperialist powers.⁷³

The Latin American Group asked the Security Council to circulate their letter as an official council document. The Council, however, refrained from taking any formal action on the substance of the matter.

The Committee thoroughly examined every aspect of the Tri-Continental Conference, as demonstrated by the vast amount of

Meeting resolves: "To direct the Council of the Organization to establish a Special Consultative Committee on Security composed of experts on security matters . . ." APPLICATIONS II, *supra* note 46, at 69.

70. *Report of the Special Committee to Study Resolution II.1 and VIII of the Eighth Meetings [sic] of Consultation of Ministers of Foreign Affairs on the First Afro-Asian-Latin American Peoples' Solidarity Conference and its Projections*, O.A.S./Ser.G./IV c-i-769/ Vols. I & II, (1966) [hereinafter cited as *Report I* or *Report II*].

71. *Report II*, *supra* note 70, at 280.

72. G.A. Res. 2131, 20 U.N. GAOR Supp. (No. 14) at 11, U.N. Doc. A/6014 (1965). This resolution is entitled: Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence.

73. *Report II*, *supra* note 70, at 280.

information gathered in the Report. The Committee also offered a series of important recommendations and conclusions. The Report stated that at the Tri-Continental Conference an agreement was reached "for providing aid to subversive and armed movements in the three continents."⁷⁴ The Report also stated that the Cuban Government

has officially assumed its responsibility in the activities carried on from the capital [Havana] by the new organizations of the international communist movement to overthrow independent governments of member States of the Organization of American States and the United Nations.⁷⁵

The Committee also made special note of "the gravity of this conclusion."⁷⁶

In a further reference to the responsibility of the Cuban Government, the Committee concluded that the Cuban Government

[c]ontinues to be the principal focus and agent in the subversive and interventionist campaign sponsored by the communist powers against member states of the Organization of American States. To carry out this mission Cuba enjoys not only the political support of the Tri-Continental Organization, but also the special protection and aid of the Soviet Union, which provides it with military and economic assistance.⁷⁷

These facts led the Committee to conclude that:

There is no doubt that subversion and communist revolutionary warfare, with their entire range of activities, has constituted and continues to be a real danger in the hemisphere. But now these operations can be conducted with greater effectiveness, in view of the establishment of the Tri-Continental Organization (AALAPSO), the Latin American Solidarity Organization (LASO) and their mechanisms for aid and coordination, serving together with the Government of Cuba as agents carrying out the will of the international communist powers.⁷⁸

Towards the end of 1966, the Council of the Organization considered the Committee's Report. On November 28, 1966, the Council resolved that the member-states adopt all measures that were nec-

74. *Report I, supra* note 70, at 91.

75. *Id.*

76. *Id.*

77. *Id.* at 92.

78. *Id.* at 93.

essary to counteract the interventionist politics and aggression which resulted from the Tri-Continental Conference. These measures were to be used against any permanent organization created by the Tri-Continental Conference. Additionally, the Committee was asked to inform the Council of these organizations' future activities, "with the firm purpose of maintaining strict vigilance over hemispheric security."⁷⁹

The constitution and projections of the Tri-Continental Conference were re-examined the following year at the Twelfth meeting of the Consultation of Ministers of Foreign Affairs. The meeting was requested by the Venezuelan Government because of

[t]he attitude of the present government of Cuba which is carrying out a policy of persistent intervention in their (member states') internal affairs with violation of their sovereignty and integrity, by fostering and organizing subversive and terrorist activities in their territory of various states, with the deliberate aim of destroying the principles of the inter-American system.⁸⁰

Rather than applying the Rio Treaty, the Council of the Organization convened the Meeting of Consultation pursuant to the Charter of the OAS. During the first stage of the session two committees were created. One committee (Venezuela Committee) was responsible for making the necessary investigations in Venezuela regarding that country's accusations and denunciations of Cuba. The other committee (Tri-Continental Committee) was charged with reporting the events of the Tri-Continental Conference that had occurred since the report of November 26, 1966.⁸¹

The Venezuela Committee's first report stated:

[I]t is clear that the present Government of Cuba continues to give moral and material support to the Venezuelan guerrilla and terrorist movement and that the recent series of aggressive acts against the government of Venezuela is part of the Cuban government's continuing policy of persistent intervention in the internal affairs of other American states by fostering and organizing subversive and terrorist activities in their territories.⁸²

The Tri-Continental Committee's report stated that the Tri-Conti-

79. *Id.* at viii.

80. *Twelfth Meeting of Consultation of Ministers of Foreign Affairs, Final Act* at 1, O.A.S./Ser. C./II.12 (1968) [hereinafter cited as *Twelfth Meeting*].

81. *Id.* at 7.

82. *Id.* at 7-8.

mental Conference held in Havana was

a further step in the efforts of communism and other subversive forces in the hemisphere to promote, support, and coordinate guerrilla, terrorist, and other subversive activities in our hemisphere.⁸³

When the Meeting resumed in September, it made several pronouncements based on the reports of the two committees. It resolved

[t]o condemn emphatically the present government of Cuba for its repeated acts of aggression and intervention against Venezuela and for its policy of intervention in the internal affairs of Bolivia and of other American states, through the incitement and active and admitted support of armed bands and other subversive activities directed against the governments of those states.⁸⁴

In addition, the Meeting urged those countries who were not members of the OAS to curb their commercial and financial dealings with Cuba, as well as to restrict their air and marine travel to that country. The Meeting recommended that the member-states, individually and collectively, repeat this recommendation to the non-member states. With respect to the Tri-Continental Conference, the Meeting urged member-states to strictly adhere to their recommended sanctions against Cuba as recorded in the Committee's Report. The member-states were also encouraged to prevent the entry or exit of men, arms or equipment from Cuba, that were intended for purposes of subversion or aggression, by adopting or intensifying measures of vigilance and control over their respective coastlines and borders. Neighboring member-states were asked to coordinate security and information systems to counteract these activities.⁸⁵

The Meeting also recommended

[t]o the member states of the Organization of American States that they bring to the attention of the competent organ of the United Nations the acts of the present Government of Cuba that contravene the provisions cited in resolution 2131 (XX) of the General Assembly.⁸⁶

83. *Id.* at 8.

84. *Id.* at 8-9.

85. *Id.* at 9.

86. *Id.* at 12.

X. DECLINE OF THE SYSTEM: NONCOMPLIANCE WITH THE DECISION OF THE ORGAN OF CONSULTATION PROHIBITING THE MAINTENANCE OF RELATIONS WITH CUBA

The previous two sections illustrate how the inter-American system for collective security was developed and strengthened through plans designed to counteract the action of international communism, especially those activities carried out by and through the Cuban government. After the above applications of the Rio Treaty by the Permanent Council, and the adoption of Resolution I at the Twelfth Meeting of Consultation, the Treaty went into a period of progressive decline. This decline ultimately led to the crisis in which the Treaty finds itself today.

The progressive decline of the system was initiated by Mexico's refusal to comply with the binding decision of the Organ of Consultation's 1964 decision prohibiting member-states from maintaining relations with Cuba. The reason Mexico gave for ignoring the decision was that the Rio Treaty "[did] not envisage in any part the application of such measures in situations of the kind and nature dealt with by this Meeting of Consultation."⁸⁷ Other member-states opposed the measures adopted by the Organ of Consultation. Nonetheless, these states declared that they would honor the obligations imposed by the Rio Treaty and, moreover, that they would abide and comply with the decisions of the Organ of Consultation.

Nevertheless, noncompliance by Mexico and by other member-states in the early 1970s is but one reason for the Treaty's declining effectiveness. Ultimately, noncompliance with the measures imposed against Cuba goes only to the individual state's responsibility with respect to the provisions of the Treaty. A graver problem arose with regard to the fact that the initial and subsequent acts of individual noncompliance were carried out with impunity. It is of no import that neither the Rio Treaty nor the OAS Charter explicitly stated what actions were to be taken by the organs of the OAS in this situation, given the fact that neither of these instruments explicitly authorized actions that have been made by the Organ of Consultation.⁸⁸

87. APPLICATIONS II, *supra* note 40, at 218-9.

88. Every international organization, as well as every state, enjoys "implicit" or "inherent" powers. In the opinion of the International Court of Justice: "Under international law, the Organization [of the United Nations] must be deemed to have those powers which,

The OAS's responsibility for member-states' noncompliance with the decisions of the Organ of Consultation and the resultant decline of the regional system for security against subversion has also been evidenced by the procedure for admitting new member-states. On the one hand, the OAS has accepted new member-states into the Organization without requiring them to ratify the Rio Treaty. Acceptance of the Treaty is implicitly required by both the text and the legislative history of article 6 of the OAS Charter.⁸⁹ On the other hand, Jamaica was recently admitted even though it maintained diplomatic and commercial relations with Cuba. This is especially significant in view of the fact that at the time that Jamaica was admitted the problem was formally raised and amply discussed by the competent organs.

The OAS assumed the same attitude in another closely related situation. On October 13, 1972, the Prime Ministers of the new member-states plus Guyana, which at that time was not a member-state, sent a note to the Secretary General of the OAS.⁹⁰ This note stated that because the English speaking Caribbean nations were not members of the OAS at the time the Meeting of Consultation was convened in 1964 they had not been represented by the Organization, they therefore were not bound to follow the organization's acts. Although the representatives of the member-states were made aware of the contents of the note and its attached declaration, no organ of the OAS undertook serious discussions regarding the impact of this note, even though the Prime Ministers of the new member-states seriously questioned the validity of the decision rendered by the Organ of Consultation.

The acts of noncompliance with the decisions of the Organ of

though not expressly provided in the Charter, are conferred upon it by necessary implications as being essential to the performance of its duties." *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174, 182.

89. Rio Treaty, *supra* note 1, art. 6.

90. The note was a letter from the Prime Ministers of Barbados, Guyana, Jamaica, and Trinidad and Tobago to His Excellency Dr. Galo Plaza, Secretary General of the Organization of American States (Oct. 13, 1972). The letter was accompanied by a declaration which stated in part:

The independent English-speaking Caribbean States, exercising their sovereign right to enter into relations with any other sovereign State, and pursuing their determination to seek regional solidarity and to achieve meaningful and comprehensive economic cooperation amongst all Caribbean countries, will seek the early establishment of relations with Cuba, whether economic or diplomatic or both . . .

Id.

Consultation culminated when the Organ itself rendered virtually ineffective the measures agreed upon in 1964. Given the close relationship between noncompliance and the amendments made to the Treaty just before the last act of noncompliance, the nature of the amendments should first be examined.

XI. FURTHER DECLINE OF THE SYSTEM: THE AMENDMENT TO THE RIO TREATY

During its third regular session, held in Washington, D.C. in 1973, the OAS General Assembly, finding that there was a "general dissatisfaction with the functioning and results of the inter-American system,"⁹¹ passed a resolution creating a Special Commission (CEESI), composed of representatives of the member-states. The CEESI was responsible for analyzing the structure and operation of the inter-American system and for recommending changes in the structure of the system. The CEESI was specifically instructed that the new system should adequately respond to "the new political, economic, social, and cultural situations in all the member states and to hemisphere and world conditions."⁹² To this end, the CEESI studied both the Rio Treaty and the OAS Charter. Later it submitted its report to the various governments. The report contained a project of amendments which followed the purposes implicit in the General Assembly's mandate.⁹³ The amendments were incorporated into the Protocol of Amendment to the Rio Treaty (Protocol), which was signed in San Jose, Costa Rica in 1975.⁹⁴

The purpose behind the General Assembly's mandate to the CEESI was reflected in the Protocol's language. The Preamble espoused the necessity for guaranteed peace and security among the American states, with the guarantee to be embodied in "an instrument that is in accordance with the history and principles of the inter-American system."⁹⁵ The Protocol specifically pointed out that these principles included "the principle of nonintervention as well as the right of all states to choose freely their political, eco-

91. *Final Report to the Governments of the Member States* Vol. XII OEA/Ser. P. CEESI/doc. 26/75 Rev. 1 (1975), p. 95. [hereinafter cited as *Final Report*].

92. *Id.* at 96.

93. *See generally Id.*

94. *Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance*, OEA/Ser. A/1.Add. (1975) [hereinafter cited as the *Protocol*].

95. *Id.* at 1.

monic, and social organization.”⁹⁶ The CEESI report stated that its objective was “to readjust that complex treaty, insofar as possible, to the realities of our times.”⁹⁷

The amendments suggested by the Protocol had the greatest impact on the nature of acts of aggression or other facts or situations which would justify recourse to the Treaty system. By virtue of one amendment, the phrase, “aggression which is not an armed attack,” was deleted from article 6 of the Treaty.⁹⁸ No similar phrase was inserted in its place. This eliminated any terminology that would explicitly and unequivocally characterize indirect aggression or subversion as being an act which would justify the application of the Rio Treaty. Moreover, the change made to article 9⁹⁹ of the Treaty prevented the Organ of Consultation from characterizing subversion as an act of aggression. As amended, article 9 identifies only acts involving the use of armed force as being acts of aggression. In addition, the power of the Organ of Consultation is constrained to merely

determine that other specific cases submitted to it for consideration, equivalent in nature and seriousness to those contemplated in this article, constitute aggression under the provisions of the Charter of the United Nations [and] the Charter of the Organization of the American States.¹⁰⁰

The Charter of the United Nations does not provide for a procedure to follow in cases of *indirect* aggression. As for the Charter of the OAS, the change made to article 9 of the Treaty presumed that a similar change would be made to article 28 of the Charter.¹⁰¹

The Reporter of the General Committee of the San Jose Conference was of the opinion that the general expression “aggression which is not an armed attack” was “subject to repeated criticism since it was a concept within the Rio Treaty that admitted a broad interpretation.”¹⁰² The argument was repeatedly made that because the aforementioned expression was vague, it could result in the application of the Rio Treaty for purely political or ideological

96. *Id.*

97. *Final Report*, *supra* note 91, at 4.

98. The *Protocol* renumbered article 6 of the Inter-American Treaty of Reciprocal System making it article 5. See *Protocol*, *supra* note 94, art. 1 at 5.

99. *Id.* at 5-7.

100. *Id.*

101. See *supra* p. 14.

102. F.V. GARCIA-AMADOR, *THE INTER-AMERICAN SYSTEM*, PART 2, 383 (1983).

reasons, to the detriment of some of the states. Actually, this view was echoed during the CEESI deliberations and during the Conference in which the Protocol was drafted. The principles of nonintervention and self-determination were also associated with this argument. These principles were expressed in a new article 12 to the Treaty which stated:

Nothing stipulated in this Treaty shall be interpreted as limiting or impairing in any way the principle of non-intervention and the right of all States to choose freely their political, economic, and social organization.¹⁰³

In addition, the San Jose Protocol contained other changes which indirectly affected the inter-American system for security against subversion. For example, an amendment to article 5 of the Treaty reduced the majority required to render ineffective any measures adopted pursuant to article 8 of the Treaty.¹⁰⁴ Another change affected the right of the states to resort to the United Nations in certain situations.¹⁰⁵

XII. ACTION OF THE ORGAN OF CONSULTATION IN SAN JOSE

The progressive decline of the inter-American system for security against communist subversion led to a crisis during the first half of the 1970s. In 1971 the Peruvian Government stated to the OAS Permanent Council that it wished that the organization would reconsider the policy of Cuban isolation which began in 1964 with the Organ of Consultation's decision to impose sanctions on that country. The Peruvian government wanted the Cuban issue re-evaluated in light of the positive East-West relations, the recognition of Communist China's representation in the United Nations, and President Nixon's projected trip to that country.¹⁰⁶ Peru's proposed resolution was discussed in a private session of the General Committee of the Permanent Council. This group later stated that "the American States [will be] free to renew their diplomatic, consular, and commercial relations with the Government of Cuba in exercise of their sovereignty and their respective national interests."¹⁰⁷ The Peruvian representative made it clear that it was not

103. *Protocol*, *supra* note 94, art. 1 at 8.

104. *See Protocol*, *supra* note 94, art. 1 at 7.

105. *See id.* at 5-7.

106. *See the Washington, D.C. United Press International Release of Dec. 7, 1971.*

107. *See the Washington, D.C. United Press International Release of Dec. 11, 1971.*

his country's intention to end the 1964 sanctions against Cuba. Rather, Peru wanted a new juridical procedure which would permit, but not require, the member-states to renew their relations with Cuba. Although the Peruvian initiative met with little success in 1971, Peru tried again in 1972 by requesting a special meeting of the Permanent Council. The 1972 Peruvian proposal did not differ from the 1971 proposal, as it called for the normalization of relations with Cuba to the extent that each member-state deemed appropriate. In addition, the proposal stated that it would not be considered a pronouncement on the validity of Resolution I adopted by the Organ of Consultation in 1964. The special representative from Peru insisted on the same arguments used the previous year. It was argued that the special circumstances in 1964 had changed; that the ideological and political pluralism were a necessity within the system; and that the security of the hemisphere would be strengthened if coercive measures were replaced by a policy of unification.¹⁰⁸

The majority of the member-states agreed to discuss the proposed resolution even though they did not share Peru's position. Although the fourth paragraph of Resolution I of the 1964 meeting gave the Council of the Organization the power to discontinue the measures adopted in Resolution I, it was obvious that the Peruvian proposal implicitly revoked the resolution.¹⁰⁹ The Council's power to revoke the Resolution was conditioned on the Cuban Government having "ceased to constitute a danger to the peace and security of the hemisphere."¹¹⁰ Under the terms of the resolution, revocation by the Council required the approval of two-thirds of the member-states. Extensive deliberations by the General Committee and the Permanent Council resulted in the rejection of the resolution: thirteen voted against adoption, seven voted for adoption, and three abstained.¹¹¹

In 1974, the Governments of Colombia, Costa Rica, and Venezuela renewed efforts to normalize diplomatic, consular, and commercial relations with Cuba. This time, the governments requested the convocation of the Fifteenth Meeting of Consultation of Minis-

108. See Act of the Extraordinary Session of the Permanent Council of May 31, 1972, OEA/Ser. G, CP/ACTA 73/72.

109. See *supra* p. 18.

110. APPLICATIONS II, *supra* note 46, at 216.

111. See generally Act of the Extraordinary Session of the Permanent Council of May 31, 1972 OEA/Ser. G, CP/ACTA 73/72 and Act of the Extraordinary Session of the Permanent Council of June 13, 1972 OEA/Ser. G, CP/ACTA 75/72.

ters of Foreign Affairs pursuant to the Rio Treaty. The reason for the meeting was "the change in circumstances that existed in 1964."¹¹² This was also the reason given by the Permanent Council on September 20, 1974, when it adopted a resolution calling for the Meeting of Consultation.¹¹³ The Fifteenth Meeting of Consultation was held in Quito, Ecuador in November 1974. Colombia's, Costa Rica's and Venezuela's calls for a blanket repeal of the 1964 Resolution I (the tripartite draft resolution) reflected a very different approach to the normalization of relations from that exemplified in Peru's 1971 and 1972 proposals. While the tripartite draft Resolution did not obtain the required majority of fourteen votes,¹¹⁴ the delegations from these three countries, as well as from nine other countries that had voted in favor of the draft resolution, formulated a declaration which was read at the close of the meeting. The declaration stated that the sanctions imposed on Cuba had become anachronistic, ineffective, and inadvisable, because they had been imposed "under political conditions totally different from those that prevail in the world today."¹¹⁵ The twelve delegations which signed this declaration also pressed their dissatisfaction with the "absurd" voting procedure established in the Rio Treaty not only because it permitted a minority of states to seriously compromise the authority of the Treaty, but also because the Organization of American States, "having as a result that other states may join, as will probably happen, those who have reestablished relations with Cuba, as they do not feel compelled to respect Resolution I as it lacks the backing of a majority of American states."¹¹⁶

The final act of the Fifteenth Meeting of Consultation also included declarations separately formulated by three of the nine delegations which opposed the revocation of Resolution I of 1964. The Brazilian delegation was of the opinion that the decision to discontinue the measures adopted should be based upon the conduct of the Cuban government. Brazil's delegation found significant the fact that the Cuban government had not indicated that it wished to have the sanctions lifted and was not disposed to stop its interventionist activities.¹¹⁷ In their declarations, the Chilean and

112. Note of Sept. 6, 1974, OEA/Ser. G, CP/doc. 350 (1974).

113. Resolution of the Council of Sept. 20, 1974, OEA/Ser. G, CP/doc. 350 (1974).

114. *Fifteenth meeting of Consultation of Ministers of Foreign Affairs* at 27, OEA/Ser. C/II.15 (1974) [hereinafter cited as *Fifteenth Meeting*].

115. *Id.* at 12.

116. *Id.*

117. *Id.* at 15-18.

Uruguayan delegations also noted the interventionist activities of the Cuban government. The Uruguayan Foreign Minister insisted on admission of this fact, and emphasized that his government had provided sufficient proof of these activities. Moreover, in his view, the only basis to contradict the accuracy of Uruguay's proof was to withstand the reports found in the United States newspapers which stated that the threat of Cuban interventions had all but disappeared. The Foreign Minister also pointed out that nobody at the Fifteenth Meeting explicitly stated that Cuba had ceased to be a threat to the peace and security of the American continent. He concluded by reiterating the Brazilian delegation's view that the Cuban government had not made any gesture or move that would indicate a substantial change in its conduct.¹¹⁸

The failure of the Fifteenth Meeting of Consultation to reach an agreement led to the convocation of a new Meeting of Consultation, held in San Jose, Costa Rica in July, 1975. This Meeting was also convened pursuant to the Rio Treaty at the request of ten states, in order to examine a matter which was "of an urgent nature and of the common interest" to the American states, namely, the "freedom of action of the states to the Inter-American Treaty of Reciprocal Assistance to restore to normal their relations with Cuba at the level and in the form deemed advisable by each."¹¹⁹ Interestingly, the manner in which these ten countries chose to normalize relations with Cuba was the same as the manner the government of Peru proposed in 1971 and 1972. It should be noted that this Meeting, because it was convened pursuant to the Rio Treaty, had the authority to revoke Resolution I of 1964, and to discontinue the measures adopted by the Organ of Consultation in 1964.

A few months before the Meeting of Consultation was to convene, the United States Assistant Secretary of State for Inter-American Affairs suggested that the problem of Cuban sanctions might be resolved through an interim accord which would give the countries the liberty to reestablish diplomatic relations with Cuba.¹²⁰ In accordance with the Council's convocation, the Meeting

118. *Id.* at 21-24.

119. APPLICATIONS III, *supra* note 46, at 81.

120. The Assistant Secretary was referring to the Conference on the proposed amendments to the Rio Treaty, which was to be held in San Jose. It was hoped that the Conference would result in an interim agreement dealing with the problems associated with the measures applied to Cuba in 1964. See the Washington, D.C. United Press International Release of May 21, 1977.

of Consultation examined the issue of normalization of relations with Cuba exactly as it had been conceived by the ten countries requesting the meeting.

During the deliberations of the Organ of Consultation, these ten countries were joined by Honduras in presenting the draft resolution that was later approved by the eleven countries, as well as El Salvador, the United States, and the Dominican Republic. Chile, Paraguay and Uruguay ultimately voted against the resolution, while Brazil and Nicaragua abstained. The pertinent provision of the resolution left

the stated parties to the Rio Treaty free to normalize or conduct, in accordance with the national policy and interest of each, their relations with the Republic of Cuba at the level and in the form that each State [deemed] advisable.¹²¹

It is not difficult to perceive the true scope of this resolution. From a legal standpoint, the measures agreed on by the Organ of Consultation in 1964 were not discontinued and Resolution I itself was not revoked. Instead, an altogether new resolution was adopted which would function on the fringes of Resolution I. This new resolution gave the parties to the Rio Treaty the freedom to normalize and conduct relations with Cuba. It is an understatement to note that the two resolutions are juridically inconsistent. While the San Jose resolution authorizes relations with Cuba, the 1964 Resolution prohibits any formal contact. Thus, the Organ of Consultation not only encouraged further noncompliance with Resolution I of 1964, but also ignored a decision of its own which was, and still is, in effect.

XIII. RECAPITULATION AND CONCLUDING COMMENTS

The origins of the Rio Treaty do not lie in its immediate antecedents, such as the 1936 Buenos Aires Conference where the consultation procedure was created at the initiative of Franklin D. Roosevelt and was put to use during the Second World War. Rather, the Treaty's roots are found in the treaty signed at the Congress of Panama in 1826, as well as other 19th century treaties which reflected Simon Bolivar's concern over European domination.¹²² The mechanisms are valuable antecedents of the modern-

121. APPLICATIONS III, *supra* note 46, at 85.

122. *See supra* p. 3.

day systems for collective security. These 19th Century treaties are among the most important Latin American contributions to the development of international law and organizations. The central point, however, is that the first collective security systems arose in order to counteract extracontinental threats.

The Second World War instilled new fears that extracontinental powers would endanger the peace and security of the entire continent. President Roosevelt's initiative, and the subsequent agreements reached in Buenos Aires, reflected this renewed concern.¹²³ The consultation procedure created in Buenos Aires was the first step towards a "multilateralization" of the Monroe Doctrine. The Monroe Doctrine was first espoused in 1823 via a unilateral declaration, and since that time it has been interpreted and applied unilaterally by various Presidents of the United States. Even before the Panama Congress created its collective security system, the Monroe Doctrine referred to threats of invasion and other dangers arising from outside the continent.

The system for the "political defense" of the continent was established at the first three Meetings of Consultation in order to counteract Nazi-Fascist subversive activities. An essential part of this system was its characterization of subversion as an "act of political aggression" or "aggression of non-military character." Great efforts were made, both by the League of Nations and later by the United Nations, to define the term "aggression" and its different manifestations. Nevertheless, the above concepts of subversion and indirect aggression were not formally recognized until the United Nations General Assembly approved Resolution 2131 (XX) in 1965.¹²⁴

A comprehensive definition of aggression is one of the most outstanding features of the inter-American system for collective security as embodied in both the 1947 Rio Treaty and in the 1948 OAS Charter. Both instruments contemplate "aggression which is not an armed attack."¹²⁵ This separates them from the United Nations Charter, which is silent on the subject. In addition, because of intense and persistent subversive activities of international communism, activities usually channeled through Cuba, the regional system grew and strengthened appreciably in order to counter this

123. See *supra* note 13 and accompanying text.

124. See *supra* note 86 and accompanying text.

125. See OAS Charter, *supra* note 40, art. 28; Rio Treaty, *supra* note 1, art. 6.

new extracontinental threat. In view of collective measures to be taken pursuant to the Rio Treaty, the definition of acts constituting indirect aggression were refined by the Treaty. Principles of individual and collective self-defense were extended to cover instances of indirect aggression. Even though the United Nation's Charter and the Rio Treaty permit self-defense in "cases of armed attack," the Organ of Consultation, through various applications of the Treaty in response to Cuban subversive activities, authorized both collective and individual self-defense by any means, including armed force, in cases of aggression *not* constituting an armed attack.

In the areas of aggression and self-defense two significant developments have taken place in the inter-American collective security system. In the area of aggression, the definitions of the forms and modalities that modern-day aggression can adopt have been perfected. The importance of this development is underscored by the fact that even the United Nations had to include subversion among those acts provided for in Resolution 2131 (XX) of the General Assembly in order to fill the inexcusable gap in the Charter.¹²⁶ The significant development in the area of self-defense is that now the competent regional organ may not only take defensive measures against armed attack, but also against subversive activities. The experience of the last twenty years demonstrates the ineffectiveness of other measures, such as the sanctions imposed on Cuba in 1964. It will be remembered that under the Treaty's system, and its commitment to reciprocal assistance, self-defense is not only a right, but also an obligation. Thus, given its juridical nature, self-defense should become the appropriate vehicle for counteracting the subversive activities of international communism at a regional level.

Recent events have led to a further discussion of the new developments in the institution of self-defense. The recent subversive activities of Castro-communism have revealed a new modality of aggression. This new form of aggression consists of using the territories of friendly American states as warehouses for logistical resources destined for subversion in neighboring countries. The recent experience in Grenada is an eloquent illustration. In slightly different terms, the experience of Nicaragua is also noteworthy. Most of the logistical resources that Castro-communism furnishes

126. See *supra* note 124 and accompanying notes.

to the Salvadoran guerrillas originates from this republic. It is illogical and naive to believe that this new modality of aggression can be effectively checked if the Organ of Consultation can take only those measures which the Treaty authorizes in cases in which aggression does not constitute an armed attack. Moreover, given the volume of assistance originating from the outside, it is evident that now, more than ever before, subversive activities warrant recourse to measures of individual and collective self-defense, including the use of armed force, as provided for in the aforementioned applications of the Rio Treaty.

Some of the more recent applications of the inter-American system for collective security against subversion should be briefly recounted. In 1966, the Council of the Organization appointed a special committee to study the deliberations, conclusions, and projections of the Tri-Continental Conference.¹²⁷ The committee's report to the Council contained conclusions and recommendations to the effect that measures should be adopted to counteract the politics of intervention and aggression which had been agreed upon at the Tri-Continental Conference. The Council of the Organization also ordered the Special Committee to inform the Council of any future activities of the organizations created at the Tri-Continental Conference. This was done in order to maintain strict surveillance over the security of the continent. The constitutions of the Tri-Continental Conference and of the organizations which emerged from it, as well as their projections and activities, were also examined at the 1967 Meeting of Consultation. This Meeting was convened at the request of the government of Venezuela because of the Cuban Government's interventionist policies in the internal affairs of the member-states.

The above applications did not lead to the adoption of any measures and apparently did not result in anything positive. With respect to the Tri-Continental Conference, the Meeting of Consultation limited itself merely to making nonbinding recommendations to the governments of the member-states, even though the Special Committee's report contained a number of serious denunciations. The Meeting suggested that the member-states apply the recommendations contained in the Special Committee's report. With respect to Venezuela's allegations concerning Cuban intervention, the Meeting merely resolved "[t]o condemn emphatically

127. See *supra* pp. 19-21 and accompanying notes.

the present government of Cuba for its repeated acts of aggression and intervention against Venezuela and for its persistent policy of intervention in the internal affairs of Bolivia and of other American states."¹²⁸

It is true that the 1967 Meeting was convened pursuant to the OAS Charter and not by invoking the Treaty. Thus, the Meeting lacked the requisite competence to take collective measures to maintain peace and security on the continent. Nonetheless, the Meeting had the power to establish a regional surveillance mechanism to observe any subversive activities arising from the Tri-Continental Conference. In this regard, the Meeting of Consultation left an inexcusable gap in the system for security against subversion. This gap has never been filled. The Meeting's recommendations to the non-member states to curb their financial and commercial operations with Cuba and to restrict air and marine transportation to that country have met with no success. Also, the recommendation that member-states notify the competent organ of the United Nations about any Cuban violation of General Assembly Resolution 2131 (XX) has met with little success.¹²⁹

The applications of the inter-American system for security against subversion are symptoms evidencing the process of its progressive decline. This process originally began in 1964 with the unilateral non-compliance of the decision of the Organ of Consultation to impose diplomatic and commercial sanctions on Cuba.

As previously noted, the first such noncompliance came from the government of Mexico which refused to comply with the Organ of Consultation's decision, because in its view, the Rio Treaty "[did] not envisage in any part the application of such measures in situations of the kind and nature dealt with by this Meeting of Consultation."¹³⁰ Subsequently, other states also offered similar reasons for noncompliance. These reasons rested upon unilateral interpretations of the Treaty. Such interpretations obviously cannot authorize or justify a refusal to comply with the obligations resulting from the application of the Treaty. Thus, the OAS incurred a grave responsibility because it permitted these first individual acts of noncompliance to go unpunished. The fact that neither the Treaty nor the OAS Charter explicitly provide for a

128. *Twelfth Meeting*, *supra* note 80, at 8-9.

129. *See supra* note 86 and accompanying text.

130. APPLICATIONS III, *supra* note 46, at 218-19.

procedure to be taken by the organs of the OAS in these situations is no excuse. The "inherent" or "implicit" powers of international organizations that have been recognized by the International Court of Justice, and that have been used by the OAS in other circumstances, can well be used to cure this defect in the OAS Charter.

In addition to permitting acts of noncompliance by the member-states, the OAS is also responsible for allowing new member-states into the organization without first requiring them to sign and ratify the Rio Treaty. Article 6 of the OAS's Charter and the legislative history of the article implicitly mandate this action.¹³¹ Moreover, given the institutional integration of the Rio Treaty and the Charter, failure to precondition membership on ratification creates a political and judicial anomaly, where the new member-states do not have the same rights and obligations as the old member-states. This anomaly has manifested itself in several events. For example, a new member-state was admitted into the OAS while it was still carrying on diplomatic and consular relations with Cuba. The prime ministers of the new member-states formally declared that they were not bound by decisions prior to their admittance into the OAS. These prime ministers also formally declared that they would seek the re-establishment of relations with Cuba by "exercising their sovereign right to enter into relations with any other sovereign state."¹³²

Acquiescence to such statements by other member-states illustrates the passive attitude adopted when confronted with a point of view which is incompatible with the inter-American system for collective security. Noncompliance with the decisions of the Organ of Consultation culminated when the Organ of Consultation itself did not follow its own 1964 decision. The Peruvian initiatives in 1971 and 1972 to normalize relations with Cuba were unsuccessful, as were the similar efforts of the governments of Colombia, Costa Rica and Venezuela in Quito in 1974.¹³³ Finally, in 1975, in San

131. The text of article 6 of the Charter of the Organization of American States states: Any other independent American State that desires to become a Member of the Organization should so indicate by means of a note addressed to the Secretary General, in which it declares that it is willing to accept all the obligations inherent in membership, especially those relating to collective security expressly set forth in articles 27 and 28 of the Charter.

Rio Treaty, *supra* note 7, art. 6.

132. Letter from the Prime Ministers of Barbados, Guyana, Jamaica, and Trinidad and Tobago to His Excellency Dr. Galo Plaza, Secretary General of the Organization of American States (Oct. 13, 1972).

133. *See supra* p. 28-31.

Jose, the countries urging normalization of relations with Cuba obtained a majority to carry out this objective. Part of this majority was made up of countries which merely did not object to normalization of relations. This majority was obtained through a resolution which, in a pure juridical sense, did not revoke the 1964 decision. The 1975 Resolution did, however, expressly authorize the member-states to "normalize or conduct, in accordance with the national policy and interest of each, their relations with the Republic of Cuba at the level and in the form that each state deems advisable."¹³⁴ In this manner, not only did the Organ of Consultation encourage new individual acts of noncompliance, but it also failed to comply with its own decision which remained, and still remains, in effect. Resolution I of 1964 lost its effectiveness through a series of successive acts of individual noncompliance. The final blow came due to actions of the Organ of Consultation. The 1964 Resolution was not invalidated; instead, it was emasculated.

The responsibility incurred by the Organ of Consultation in San Jose is graver in light of the circumstances surrounding the adoption of the 1975 Resolution. This resolution was adopted somewhat precipitously, thus bypassing the condition stated in paragraph 4 of the 1964 Resolution, which required that the sanctions against Cuba be lifted when and if the Cuban government "ceased to constitute a danger to the peace and security of the hemisphere."¹³⁵ In this regard, it should be recalled that the 1975 Meeting of Consultation paid no attention to the denunciations of continued Cuban intervention and subversion. The proof presented by the Uruguayan Chancellor on this point was largely ignored. At the meeting the majority assumed the same attitude, passing over a Chilean proposal to have one of the entities of the inter-American collective security system investigate the denunciations prior to any decision making. None of the delegations forming this majority claimed that Cuba had ceased to be a danger to the peace and security of the continent. These delegations merely reiterated the arguments that Peru had made to the Permanent Council in 1971 and 1972 that the measures imposed on Cuba had become anachronistic, inefficient, and inconvenient given the fact that they were imposed during "political conditions totally differ-

134. APPLICATIONS III, *supra* note 46, at 81.

135. APPLICATIONS II, *supra* note 46, at 216.

ent from those that prevail in the world today.”¹³⁶ The twelve-country declaration made in Quito espoused this sentiment. These considerations — apparently also shared by the other countries which voted in favor of the San Jose Resolution — were invoked to justify the adoption of the Resolution. Thus, the responsibility incurred by the Organ of Consultation is inexcusable: the so-called East-West *detente* was only a political phenomenon, more apparent than real. In any event, *detente* was a stage in contemporary international relations in which subversive activities originating from outside the continent intensified considerably and visibly.

Noncompliance with decisions of the Organ of Consultation is the most visible manifestation of the crisis of the Rio Treaty. Another manifestation of the crisis occurred during the process of amending the Treaty. The amendments were incorporated in the San Jose Protocol. As previously noted, the Treaty reform, as well as the general restructuring of the inter-American collective security system, were undertaken in order to ensure that the system would adequately respond to “the new political, economic, social, and cultural [conditions] in all the member-states and to hemisphere and world conditions.”¹³⁷

The noteworthy similarity between these considerations and the considerations that led to the 1975 Resolution on Cuba, which was adopted only days later in San Jose, translated into a substantial reform of article 6 that refers to acts, facts, or situations not constituting an armed attack. The amendments contained in article 6 consisted of eliminating the phrase “aggression which is not an armed attack” without replacing it with another phrase to cover indirect aggression or subversion. Amendments to article 9 were consistent with the reform to article 6. Thus, when the Protocol is in effect the Organ of Consultation can no longer characterize acts of aggression other than those which involve the “use of armed force” pursuant to the Treaty.¹³⁸

Expounding further on the close similarity between the considerations and motives which led to the 1975 Resolution on Cuba and those which inspired the amendments to the Treaty, it should be noted that at the San Jose Conference the argument was repeatedly made that the expression “aggression which is not an

136. *Fifteenth Meeting*, *supra* note 114, at 12.

137. *Final Report*, *supra* note 91, at 96.

138. See *supra* pp. 12-15 and accompanying notes.

armed attack" was too vague. Thus, to the detriment of some of the states, this vague expression could cause the application of the Treaty to occur for purely political or ideological reasons.

The crisis within the Treaty has also manifested itself through *non-application* of the Treaty in certain situations, as well as through unjustified application in other areas. The Central American subregion exemplifies both of these propositions. With regard to unjustified applications of the Treaty, the intervention of the Organ of Consultation leaves much to be desired, especially in view of its duty to maintain peace and security in the countries of the area. From the point of view of peace and security, one important fact in particular was ignored which was of fundamental importance. Because of its long and strategic border with Nicaragua, the territory of Costa Rica was used to penetrate Nicaragua with heavily armed and equipped combatants of several nationalities. Costa Rica was also used to furnish the combatants with logistical support and served as a refuge. What explanation is there for the fact that the Organ of Consultation did not perceive this notorious and well-planned act of aggression by international communist forces that was carried out with the direct and open help from Cuba? The reason this constitutes an unjustified application of the Rio Treaty is that the Treaty was applied for a different purpose than that provided for in the Treaty itself. In addition, this application indirectly contributed to the installation of international communism within the American continental territory.

Such unjustified application of the Treaty could have been overcome when the character of the new Nicaraguan regime and its close ties with Cuba were completely exposed. The Seventeenth Meeting of Consultation of the Ministers of Foreign Affairs in 1979 should have required the new regime to abide by its formal obligation.¹³⁹ These obligations included the installation of a democratic government to be composed of the principal groups which had opposed the previous regime and the guarantee to respect the human rights of *all* Nicaraguans, without exception. The requirements imposed by the Meeting were not unexpected, especially in view of the Resolution of June 23, 1979 which proposed the "[i]mmediate and definitive replacement of the Somoza regime" in order to resolve the situation in Nicaragua.

139. See the complete text of Resolution II of the Seventeenth Meeting of Consultation in AMARIO JURIDICO INTER-AMERICANO 1979 (Organización de Estados Americanos 1979).

Non-application of the Treaty is also unjustifiable. Should not the Treaty mechanisms be set in motion in order to counteract the intense subversive activities carried out by Castro-communism in El Salvador, and channeled through the territory of Nicaragua? As provided in article 6 of the Treaty, facts or situations of the type prescribed there require that "the Organ of Consultation . . . meet immediately in order to agree on . . . measures" ¹⁴⁰ Does this mean that the conditions which justify and require the application of the Treaty to the face of new extra-continental threats have not yet been met? In circumstances of far less seriousness, such as the acts of aggression and intervention into Venezuela's internal affairs, did not the Organ of Consultation meet in 1964 to impose sanctions on Cuba?

Still another manifestation of the crisis within the Treaty is the present inclination of certain American states to seek recourse from the competent organs of the United Nations. In the United Nations Charter, the Treaty, and other inter-American documents, recourse to the United Nations is a right retained by the states that are members of a regional organism. This right has never been disputed. One of the amendments to the Treaty, however, clearly evidences the trend to strengthen the liberty of action that such member-states enjoy. This trend would weaken the obligation imposed by the United Nations Charter on the member-states to make "every effort to achieve specific settlement of local disputes" ¹⁴¹ via regional organizations. This trend has not yet developed in the area of self-defense. Nonetheless, it is conceivable that this trend could one day affect the rights and obligations of the member-states in the exercise of self-defense pursuant to the Treaty, the OAS Charter, and even the Charter of the United Nations.

There is a remarkable contrast between this new position and the position maintained by the Latin American countries in order to secure autonomy for the regional security system. Autonomy with respect to measures implying the use of armed force was obtained through the institution of self-defense. Previous reforms to the Treaty do not affect the exercise of self-defense in its form or in its reach. Undoubtedly, the present visible inclination in favor of global mechanisms may at any moment have an unfavorable ef-

140. See also *supra* p. 12.

141. U.N. CHARTER art. 52, para. 2.

fect in the adoption of individual or collective self-defense deemed necessary to repel an act of aggression regardless of whether it is of extra or intra-continental origin.

It becomes clear from the preceding statements that the Rio Treaty is facing a genuine and serious crisis. However deplorable, it must be recognized that noncompliance with the decisions of the Regional Organ of Consultation has undermined the political and juridical authority of the Treaty. The unjustified application of the Treaty to the Nicaraguan situation in 1979 and its inexcusable *non*-application to the case of El Salvador also augment the crisis. These facts taken together reveal that the Rio Treaty, because of the political inclinations of some countries and the political apathy of many others, has ceased to respond to the primordial purpose of the inter-American collective security system, namely, to counter-act extra-continental threats. In this respect, it appears that the historical constant which began with Bolivar has come to an end.