Enforcement of International Obligations through Regional Arrangements: Structures and Experience of the OAS

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I. The Legal Framework of the Inter-American System and its Contemporary Significance

Following the reviews and analyses of the African and the European regional organisations, this report addresses the relevant issues as they are treated on the American continent. Outside of the Americas, reference is mostly made in this context only to the Organization of American States (OAS). However, the Inter-American System (IAS) has a broader basis than the OAS. While it is true that the OAS is the key organisation within the IAS, the latter has been founded upon three treaty-based agreements which are closely interrelated and interdependent in their functions[1].

When the OAS was founded in 1948[2], the Inter-American Treaty of

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[1] The most comprehensive legal study of this system has been prepared by F.V. García-Amador in two volumes, published in 1983 by the Secretariat for Legal Affairs of the General Secretariat of the OAS under the title "The Inter-American System"; basic policy issues rather than legal questions have been in the forefront of frank and important contributions in "The Future of the Inter-American System", edited by T.J. Farer (1979).

[2] Generally with regard to the OAS, see C. Fenwick, The Organization of American States (1963); M. Ball, The OAS in Transition (1969); García-Amador (note 1), vol.1, pp.67–202. In German language the two major relevant studies have been published by R. Gerold, Die Sicherung des Friedens durch die Organisation der Amerikanischen Staaten (OAS) (1971), and C. Honegger, Friedliche Streitbeilegung durch regionale Organisationen. Theorie und Praxis der Friedenssicherungs-Systeme der OAS, der Liga der Arabischen Staaten und der OAU im Vergleich (1983), pp.5–71.

Reciprocal Assistance, generally known as the Rio Treaty, had already been in existence for a year[3]; the main purpose of the Rio Treaty is to establish a system of sanctions against States which violate international rules in a grave manner and threaten peace in the Americas. In addition to building upon the Rio Treaty, the OAS Charter depended on another special treaty for the peaceful settlement of disputes. As a corollary to the prohibition of the use of force, an exceptionally ambitious system of third-party dispute settlement was created in the American Treaty of Pacific Settlement, generally known as the Bogotá Treaty of 1948[4]. If applied and implemented in the manner foreseen by those who drafted them, these three treaties would form in their combined effect the most elaborate and the most effective regional system of international law enforcement which has so far been created anywhere.

The OAS, the Rio Treaty and the Bogotá Treaty have since 1948 formed in theory the three pillars of the IAS. The relationship between these three instruments is complex. Even though the three documents were designed with the goal to form one coherent system of co-operation among the American States, no State belonging to the OAS is legally committed to ratify either the Rio Treaty or the Treaty of Bogotá, and the membership indeed varies with regard to the three treaties. This fact explains why the three agreements have developed in a manner which leads to a certain overlapping of functions. In addition to the complexities introduced by certain parallel functions among the three treaties, the legal situation has over the time acquired several layers, so to speak, due to certain amendments to the OAS Charter and the Rio Treaty. Such amendments were

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[3] Generally with regard to the Rio Treaty, see F.V. García-Amador, The Rio de Janeiro Treaty: Genesis, Development, and Decline of a Regional System of Collective Security, The University of Miami Inter-American Law Review, vol.17 (1985), p.1; see also the same author's study referred to in note 1, vol.2, pp.261–398; T.B. de Maekelt, Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro (1947), in: R. Bernhardt (ed.), Encyclopedia of Public International Law (EPIL), Instalment 6 (1983), p.217, with further references.

[4] Generally with regard to the Bogotá Treaty, see García-Amador (note 1), vol.2, pp.197–260; G. Leoro, La reforma del Tratado Americano de Soluciones Pacificas o Pacto de Bogotá, Anuario Jurídico Interamericano 1981, pp.30–79; T.B. de Maekelt, Bogotá Pact (1948), in: EPIL Instalment 6 (1983), p.42; M.E. Jiménez de Aréchaga, La coordination des systèmes de l'ONU et des OEA pour le règlement pacifique des différends et de la sécurité collective, RdC vol.111 (1964 I), p.419.

adopted for the OAS in 1967[5] and in 1985[6], and for the Rio Treaty in 1975[7]. Not all of these amendments so far have been ratified by the number of States required for entry into force, and none of the amendments has been ratified by all States.

With regard to the scope of the following remarks, it shall be noted that they do not exhaust the full spectrum of legal co-operation in the Americas. The Inter-American System encompasses areas other than those regulated in the three main treaties which will here be addressed. More importantly, the work of the Inter-American Commission on Human Rights and of the Inter-American Court of Human Rights will not be covered[8]. Both organs were established under the auspices of the OAS, but they operate in an independent manner. The major contributions which the Commission and the Court have been able to make to the observation and enforcement of human rights in a short period have rightly received wide attention, and it is appropriate to point out explicitly here at the outset that co-operation in this particular area has so far been well-organised and consistent, and that, in the cases reviewed by the Commission and the Court, appropriate measures of implementation have been taken on the national level. The reasons for not presenting the work done and the results achieved lies in the attempt to focus on the broader efforts of co-operation and law enforcement which are reflected and embodied in the IAS.

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[5] This amendment has generally been referred to as the Protocol of Buenos Aires; see for details García-Amador (note 1), vol.1, p.142ff.; C. Sepúlveda, La Organización de Estados Americanos desde la reforma de Buenos Aires (1967). Transición y ajuste, Revista Española de Derecho Internacional, vol.24 (1971), pp.271–280.

[6] The amendment is reprinted in International Legal Materials, vol.25 (1986), p.529.

[7] For details, see García-Amador (note 1), vol.2, pp.358–396; A. Gomez Robledo, El Protocolo de Reformas al Tratado Interamericano de Asistencia Reciproca, Foro Internacional, vol.17 (1977), pp.338–357.

[8] See for details the publications of T. Buergenthal, The American Convention on Human Rights: Illusions and Hopes, Buffalo Law Review, vol.21 (1971), pp.121–136; *idem*, The Revised OAS Charter and the Protection of Human Rights, AJIL vol.69 (1975), pp.828–836; *idem*, The Inter-American System for the Protection of Human Rights, Anuario Jurídico Interamericano 1981, pp.80–120; *idem*, The American Convention on Human Rights, in: EPIL Instalment 8 (1985), pp.23–27; *idem*, Inter-American Court of Human Rights, in: EPIL Instalment 8 (1985), pp.324–326; T. Buergenthal/R.E. Norris, Human Rights, The Inter-American System (1982/83); T. Buergenthal/R.E. Norris/D. Shelton, Protecting Human Rights in the Americas. Selected Problems (1982); H. Gros Espiell, Le système interaméricain comme régime régional de protection internationale des droits de l'homme, RdC vol.145 (1975 II), pp.1–55; J. Kokott, Das interamerikanische System zum Schutz der Menschenrechte (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, vol.92) (1986).

Several weighty reasons indicate that the experience of the IAS concerning the enforcement of international obligations deserves special attention. The IAS may be considered as the prototype of a regional organisation within the meaning of Arts.52–55 of the UN Charter. Its foundations were laid before those of the United Nations in 1945, and at that time it could already draw upon decades of experience gathered on the American continent. Moreover, Latin American States in particular had insisted in San Francisco in 1945 to grant special powers to regional organisations within the UN system, and due to their demands a compromise between the concepts of regionalism and universalism was reached in the negotiations and finally enshrined in the UN Charter[9]. The Latin American vantage point in the San Francisco negotiations was tacitly based upon the assumptions that regional organisations are better suited and capable to supervise and enforce rules for an international order than a global organisation; familiarity with the local circumstances and stronger homogeneity were frequently cited in favour of this position[10].

Initially, it must also be underlined that the list of principles upon which the OAS is based and which are spelled out in Art.3 of its Charter are remarkably broad and reflect rules of international law which are globally accepted[11]; whereas certain rules of regional customary law may have been developed[12] and certain rules of general law have periodically been questioned and attacked by Latin American States[13], it holds nevertheless true that the basic scepticism against traditional international law has in general not been as deeply rooted and distinct in this region as in Africa.

A paradigmatic trait in the IAS order exists, in principle, in its contributions to an orderly form of co-operation between large States with military and economic power and smaller and weaker States. Historically, it cannot be overlooked that the great powers bear a special measure of responsibility for the maintenance of international order and that a corresponding degree of control by these powers will have to be assumed[14]. In the UN

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[9] See P. Vellas, Le régionalisme international et l'Organisation des Nations Unies (1948).

[10] See generally R. Dolzer, Universalism and Regionalism, in: The Spirit of Uppsala, ed. by A. Grahl-Madsen/J. Toman (1984), pp.513, 518ff.

[11] Art.3a states that "International law is the standard of conduct of States in their reciprocal relations". This basic concept is further elaborated in Arts.3b–3l.

[12] See J. Barberis, International Law, American, in: EPIL Instalment 6 (1983), p.222.

[13] This are mainly the rules governing foreign investment; see for details D. Shea, The Calvo Clause (1955).

[14] See generally A. Randelzhofer, Great Powers, in: EPIL Instalment 9 (1986), p.142.

Charter, the composition of the Security Council and the veto power of its permanent members reflect these pre-requisites of an international order as perceived in 1945.

Of course, the antinomy between this manifestation of the inequality of States on the one hand and the emphasis on the universal prohibition of the use of force and the principle of sovereign equality on the other hand lies at the heart of post-war international developments which directly bear upon the question of enforcement of international obligations. Origin and structure of the IAS are remarkable in this context as well; the American organisations have historically grown out of two parallel, in part overlapping and in part potentially conflicting vantage points. Whereas the United States have long emphasised that the essential element of co-operation in the Americas lies in the fundamental objective to keep non-American States out of the Americas, the Central and Latin American States have also, and continuously, emphasised their position that the principle of non-intervention must be scrupulously observed not only across the oceans but also within the IAS[15]. Thus, the OAS represents at the same time an effort to establish a regional order based upon geopolitical objectives of a great power, and an attempt to limit the potential role of that power on the basis of a treaty-based system of co-operation. In this respect, as well, the experience within the IAS reflects important elements of the current global order, even though only one major power is a member of the IAS, and confrontations between major powers have surfaced on the American continent only in an indirect manner.

Finally, the structure and the role of the OAS in the maintenance of international order and the respect for the rules of international law deserve to be examined also in terms of the failure and the success of its efforts to strengthen the rule of law. The record of the IAS has been remarkably positive within the first two or three decades of its existence. A variety of disputes, including border problems, issues of intervention, real or alleged

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[15] This ambivalence in the purposes and the structure of the IAS has often been described; see, more recently, for example G. Meek, US Influence in the Organization of American States, Journal of Interamerican Studies and World Affairs, vol.17 (1975), pp.311–325; T. Farer, The United States and the Inter-American System: Are there Functions for the Forms? (1978); R. Bloomfield, The Inter-American System: Does it Have a Future?, in: Farer (note 1), p.3; W. Rogers, A Note on the Future of the Inter-American System, ibid., p.20; J.P. Rowles, The United States, the OAS, and the Dilemma of the Undesirable Regime, Georgia Journal of International and Comparative Law, vol.13 (1983) Supp., pp.385–410; L.M. Diaz, El sistema interamericano: entre el unilateralismo y la inoperancia, in: Contemporary Issues in International Law, Essays in Honor of Louis B. Sohn (1984), pp.407–426.

cases of aggression have threatened peace, stability and the observation of international obligations during that period, and the contributions of the IAS to the preservation of peace and the rule of law have then in most instances been positive if not outstanding. One recent study lists 23 instances of disputes between IAS member States in the period between 1948 and 1978 in which disruptions of orderly international relations were imminent or had occurred[16]. Thus, it would certainly not be justified to assume that the relatively high degree of homogeneity within the IAS had obviated the need to enforce international law during that period. In most or virtually all of these disputes, the IAS was called upon to deal with the relevant problem and to find a solution based upon its principles; as far as can be seen, the IAS and the Rio Treaty organisation contributed in a significant manner to the solutions upon which the States in question agreed in resolving their disputes. From this perspective, the OAS may well be said to have lived up to the expectations which the Latin American States had created in 1945 and to have kept its house clear of major disruptions and infringements of international obligations.

It must immediately be added, however, that this period of close cooperation within the IAS seems to have come to an end in the late 1970s and that thereafter the roles of the OAS and the Rio Treaty have lost much of their successful profile[17]; according to the viewpoints of well-informed observers, the OAS and the Rio Treaty have in the most recent years been in a state of disarray and have therefore not been in a position to make major contributions to the respect for and the compliance with rules of international law. Already in 1977, the then United States Secretary of State stated at the OAS General Assembly that "the United States favors a thoroughly reformed OAS structure"[18]. In 1979, a former United States Assistant Secretary of State for Inter-American Affairs and Undersecretary for Economic Affairs stated in unusually undiplomatic words that "... there is now a broad agreement in the United States and Latin America that the OAS is entitled to low esteem"[19].

Several developments within the last few years have since further eroded the role of the IAS[20]. The United States support for the United Kingdom during the Falkland conflict has raised doubts in Latin America with regard

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16 Honegger (note 2), p.30ff.
17 See the various contributions in: Farer (note 1).
18 The position of the United States is described by Bloomfield (note 15), p.13f.
19 Rogers (note 15), p.23.
20 Ibid., p.21ff.

to the priority which the United States places upon co-operation within the IAS[21]. Also, the United States intervention in Grenada and the military operations against Nicaragua have not been co-ordinated within the IAS. The fact, for instance, that Latin American regional efforts to stabilise peace in Central America have been organised within a more informal arrangement, i.e. the Contadora group, rather than the OAS corresponds to increasing signs of divergence of positions and interests among the OAS member States. More broadly, questions concerning the respect for and the enforcement of accepted international law and issues of dispute settlement have not been the only ones which have tended to divide rather than to strengthen the role of the OAS. The Latin American States have placed issues of economic co-operation high on their list of priorities to be dealt with in the IAS[22], and have even made a corresponding effort to revise the OAS Charter in order to establish a concept of "collective economic security"; a new version of the OAS Charter which was adopted in December 1985 reflects certain elements of this new approach.

II. Law Enforcement through the Peaceful Settlement of Disputes in the IAS

Within the Inter-American System as it developed after 1899, a number of major efforts towards the establishment of procedures for the peaceful settlement of disputes were made before 1945. The creation of the famous Central American Court in 1907 did not take place within the framework of this system, but it was indicative of the generally positive attitude towards peaceful settlement in the Americas in the earlier part of the century[23]. The OAS Charter does not contain elaborate provisions in this respect. It states in Art.23 the general principle of peaceful settlement of disputes, subsequently spells out in a general manner the catalogue of peaceful procedures in Art.24, and goes on to add in Art.25 that in case a

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[21] See G. Connell-Smith, The OAS and the Falklands Conflict, The World Today, vol.38 (1982), pp.340–347; L.C. Wilson, The Impact of the Falkland/Malvinas Conflict upon the Inter-American System, OAS and Rio Treaty: A Selected and Annotated Bibliography, Anuario Jurídico Interamericano 1983, pp.295–343; C. Holguin Holguin, El TIAR y la solución pacífica de las controversias en el sistema interamericano, ibid., pp.103–122.

[22] See the contributions by W. Baer/D.V. Coes, Changes in the Inter-American Economic System (p.35), Rogers (p.54), T.J. Farer, Toward Regional Accommodation: Is there Anything to Negotiate? (p.66), and Bloomfield (p.73), all in: Farer (note 1).

[23] See H.M. Hill, Central American Court of Justice, in: EPIL Instalment 1 (1981), p.41.

settlement cannot be reached through diplomatic channels, the parties shall agree on some other peaceful procedure. The brevity and generality of these basic articles must be explained in the light of plans, existing at the time of the drafting of the OAS Charter, to establish an ambitious and encompassing treaty for the peaceful settlement of disputes; a special treaty for this purpose is explicitly envisaged in Art.26 of the OAS Charter. According to this provision, the objective of this treaty was nothing less than to ensure "that no dispute between American States shall fail of definitive settlement within a reasonable period". The Treaty of Bogotá was negotiated and adopted in 1948. This Treaty was built upon the experience gathered previously in the Americas, but it also contained completely novel features. Generally, it is agreed that the Treaty of Bogotá must be considered as the most ambitious effort so far made in order to ensure a peaceful settlement of disputes, thus creating a powerful mechanism to ensure the respect and the enforcement of international obligations.

No effort can be made here to present the various forms of dispute settlement offered to the parties in the Bogotá Treaty; in its complexity, the Treaty is in part reminiscent of the system of dispute settlement contained in the 1982 Law of the Sea Convention. Its central element is contained in Art.XXXI[24]. Remarkably, this clause provides (different from the Law of the Sea Convention) that the parties recognise the jurisdiction of the International Court of Justice (ICJ) as compulsory *ipso facto*, without the necessity of any special agreement; this special emphasis upon the role of the ICJ distinguishes the IAS from the Organization of African Unity (OAU) and the European system. The categories of cases to be settled under the Bogotá Treaty comprise not only the interpretation of treaties and any question of international law, but also the existence of relevant facts and aspects of reparation.

As to the fate of the Treaty, it has so far been ratified by 14 States, the last one being Chile in 1974. El Salvador has meanwhile withdrawn.

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[24] Art.XXXI reads: "In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning: a) The interpretation of a treaty; b) Any question of international law; c) The existence of any fact which, if established, would constitute the breach of an international obligation; d) The nature or extent of the reparation to be made for the breach of an international obligation".

The question may be raised as to whether the parties have undertaken an imperfect obligation or whether the provision establishes the jurisdiction of the ICJ without any further agreement among the parties to a dispute.

To repeat, the procedures contained in the Bogotá Treaty can be applied unilaterally at the request of one party, but no organ of the OAS is empowered to initiate such proceedings. In practice, the Bogotá Treaty has so far been largely ill-fated. In summer 1986, Nicaragua has based two suits against Costa Rica and Honduras upon the jurisdictional clauses of the Bogotá Treaty. Previously, the Treaty had not been relied upon only in two cases in which OAS organs had recommended its application[25].

Against this background, it is not surprising that efforts have been made in the past to find new solutions within the OAS framework. So far, however, progress towards reaching a new consensus was limited. A modest step in this direction was made in 1967 when the OAS Charter was amended by the Protocol of Buenos Aires[26]. At that time, the OAS member States drew upon the experience gathered by the activities of the Inter-American Peace Committee[27]. This Committee had been established by the forerunner of the OAS, the Pan American Union, in 1940 in order to keep a constant vigilance over the process of peaceful settlement in the Americas. With regard to the substantive solution of disputes, it could only offer its good services; however, it had the right to suggest methods of dispute settlement. Between 1950 and 1956, this Committee enjoyed the right to become active at the unilateral request of one affected party and at the request of any American State in circumstances when it appeared that the parties among themselves were not able to reach a solution. However, the States felt uncomfortable even with this modest element of a collective enforcement system, and the OAS Council decided in 1956 to limit the activities of the Committee to those cases in which one affected party requested its activity and the other party agreed. To a very limited degree, the competences of the Committee were broadened again in 1959. Although acting outside the formal framework of the OAS, the Committee maintained close connections with individual OAS organs by way of submitting reports of its activities. In the post-war period, the Committee's activities on the whole turned out to be successful. Apparently, the informality and the flexibility of its procedures as well as the lack of publicity were mainly responsible for its success.

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[25] See García-Amador (note 1), vol.2, p.236.

[26] Supra note 5; also E. Lagos, Los nuevos mecanismos procesales para la eficacia de la solución pacífica de las controversias, con particular referencia a la prática de la O.E.A. en los últimos anos, in: Perspectivas del Derecho Internacional Contemporaneo. Experiencias y visión de America Latina, ed. by F. Orrego Vicuña/J. Irigoin Barrenne, vol.2 (1981), pp.81–93; H. Gros Espiell, Perfeccionamiento del régimen jurisdiccional internacional en el sistema interamericano, ibid., pp.167–186.

[27] See for details García-Amador (note 1), vol.2, p.238ff.

In the light of the failure of the Treaty of Bogotá and the relative success of the Committee's work, it was decided in the 1967 Protocol to the OAS Charter to build within the OAS upon the experience of the Committee. The Permanent Council of the OAS was then entrusted with the same task of keeping vigilance over the maintenance of friendly relations and assisting the member States in the peaceful settlement of disputes. In view of the large number of members of the Permanent Council and the objective of flexible, informal and discretionary procedures, a new committee was established as a subsidiary organ of the Permanent Council, now called the Inter-American Committee on Peaceful Settlement, composed of five members only.

The version of the Charter adopted in 1985 eliminates the Inter-American Committee, and replaces it with *ad hoc* committees the composition of which to be decided in each individual case in the light of existing circumstances. Such a committee is empowered (as was the Inter-American Committee) with a limited, but considerable degree of autonomous powers (see Art.87 as amended in 1985). Upon the request of one party, the Council will refer the issue to the committee, and the latter will offer its good offices. The main point is that the refusal of such an offer by one of the parties does not terminate the committee's powers; rather, the committee retains the right to take steps "to restore relations between the parties, if they were interrupted, or to re-establish harmony between them". At the same time, the committee is bound to issue a report to the Permanent Council; the latter may also attempt to bring the parties together. If this renewed effort remains without success as well, the Council will submit a report to the highest organ, the General Assembly; the latter has the power "to consider any matter relating to friendly relations among the American States" (Art.52). Thus, it is clear, on the one hand, that the organs of the OAS today enjoy the autonomous power to become active with a view to find a solution to the dispute; on the other hand, these collective powers are of a hortatory and not of a binding nature, and the revised OAS Charter therefore, in spite of the progress made, is a far cry from the original ambitions embodied in the Bogotá Charter. The OAS may thus contribute to bring about a peaceful solution by which rights are enforced, but it cannot itself take measures to identify existing obligations in a binding manner.

Suffice it here to say that the discrepancy between the objectives aimed at in Art.26 of the OAS Charter and the actual development of the law has

been intensely discussed in the OAS in the 1970s[28]. It is remarkable that the major thrust of the efforts to establish a more effective system was not so much aimed at the bilateral process of settling a dispute, but at strengthening the role of the organs of the OAS in assisting, guiding and perhaps even committing the parties to a dispute with respect to the settlement of their problems. Conspicuously enough, these efforts did not meet with widespread support, and their spirit and purpose have found only a weak echo in the adopted revisions of the Charter.

In retrospect, it is of course remarkable how little direct effect the Treaty of Bogotá has had even though it has been ratified by a number of States. It is difficult to assess whether the existence of the Treaty has had a preventive effect in the sense of facilitating the settlement of disputes at the level of diplomatic negotiations. It is clear, however, that the discussions within the OAS seem to express a widespread sense of dissatisfaction and frustration about the role of the Treaty. A review of the OAS experience in the post-war period indicates that it may not be sufficient for effective dispute settlement to create mechanisms for the bilateral process of dispute settlement; the power of collective organs to become active in the settlement of disputes and to contribute directly to their solution may in practice be indispensable for an effective system to settle disputes and to enforce international obligations. Even though the actual success of the OAS in settling disputes has long been satisfactory, the progress in reforming the institutional structures with a view to create a more collective-oriented system of dispute settlement has remained rather limited. Disputes were in practice settled within the OAS on the basis of informal multilateral procedures rather than of its elaborate formal system of dispute settlement.

Since 1936, consultation among the member States has been emphasised as the main form of dispute settlement. Historically, the consultation procedure was established as a means to respond to threats of the collective security[29]. Ever since, it served as the chief method of peaceful settlement. In ordinary situations, the Meeting of Foreign Ministers serves as the organ of consultation, whereas in urgent cases the OAS Council may assume that function. It may not be without broader significance that in spite of the existence of various other procedures for peaceful settlements specifically designed for application by other organs of the IAS, it was the so-called organ of consultation provided for in the Rio Treaty which in practice made the most significant contributions in this area; one may well specu-

[28] Ibid., vol.2, p.252ff.
[29] Ibid., vol.2, p.264ff.

late whether or not it was a coincidence that it was the organ with the power to apply sanctions which became the most prominent one.

Thus, the experience in the IAS is that the homogeneity of the States has led to a preference for informal as opposed to judicial methods of dispute settlements. Political compromise or postponement seem to be more attractive than the uncertainty and rigidity of formal third party settlement. Speaking in an exaggerating manner, the crux of designs for formal dispute settlement currently seems to consist in the inclination of States to avoid them in relation to friendly States and in the aversion of States to utilise them (or comply with them) in relation to hostile members of the region; at least the experience within the IAS can be explained and expressed along these lines. There is a certain paradoxical element in this, but of course, as we have heard, this experience is not limited to the American continent.

The preference for informal negotiations as the main form of dispute settlement has become the dominant trend in all regions, the existence of elaborate and sophisticated formal mechanisms notwithstanding. The fact that the Treaty of Bogotá has for the first time been unilaterally invoked by Nicaragua under circumstances in which the differences with her neighbours appear to be momentarily irreconcilable may be taken to illustrate that, at least on the level of State practice, the negative effects of formal processes of dispute settlement have been considered as outweighing the advantages foreseen by those who drafted the Bogotá Treaty. As long as the political will of co-operation in the settlement of disputes exists within the informal structures, the system produces respectable positive results. The experience within the past years has shown that the existing OAS system to settle disputes is insufficient in the absence of a general climate of political co-operation.

III. Law Enforcement through the Application of Sanctions in the IAS

To understand the mechanism for sanctions within the IAS, it is again important to view the OAS Charter and the Rio Treaty in their common context. The OAS Charter deals with issues of collective security both from a substantive and a procedural point of view. In Art.27, it is spelled out that every act of aggression against any American State shall be considered an act of aggression against the other American States as well. Again, parallel to the Charter's structure concerning dispute settlement, the Charter itself does not spell out in any detail which legal consequences should arise from the fundamental principle enunciated in Art.27; in Art.28, refer-

ence is made to the special treaties on the subject. Procedurally, Art.59 does not specifically relate to matters of collective security, but to all problems "of an urgent nature and of common interest to the American States"; in such situations, an organ called the Meeting of Consultation of Ministers of Foreign Affairs shall meet at the request of any member (Arts.59, 60). In case of an armed attack, a meeting shall be held without delay (Art.63). Interestingly, according to Art.116 para.2 of the version adopted in 1985, the Secretary General has the power to bring to the attention of the General Assembly or the Permanent Council any matter which "in his opinion might threaten peace or security of the hemisphere or the development of the Member States". Art.59 indicates that the Meeting of Consultation of Foreign Ministers will have a dual function, inasmuch as it will also serve as the organ of consultation; in the Act of Chapultapec[30], upon which the current system of collective security is historically based, it had been stipulated that consultations would take place under certain circumstances (Part I, Point 4). Also, it is remarkable that unanimity is not required. All collective sanctions which are provided for in the Treaty require the consent of two thirds of the member States.

As to the question of the rights which may be collectively enforced and the type of violations which trigger the collective mechanisms, the relevant provisions are found in Art.3 and in Art.6 of the Rio Treaty. According to these clauses, the following circumstances permit the member States to take action:

(a) an armed attack by any State against an American State (Art.3),
(b) an aggression which is not an armed attack but which affects the inviolability or the integrity of the territory or the sovereignty or the political independence of any American State (Art.6),
(c) an extra-continental or an intra-continental conflict (Art.6), and
(d) any other fact or situation that might endanger the peace of America (Art.6).

Whereas most of these terms are familiar and used in other international documents, the concept of an "aggression which is not an armed attack" has acquired a special meaning in the Rio Treaty and in the OAS Charter. Apparently, it is not meant in the sense of an indirect attack as that concept has been defined in the UN definition of aggression; rather, this notion is meant to denominate acts of political aggression which are of a subversive nature[31].

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[30] See on this Act ibid., vol.2, p.270ff.
[31] Ibid., vol.2, p.315ff.

The Rio Treaty has a distinct feature inasmuch as it states in specific terms, the sanctions which the competent organ may introduce in order to enforce those international obligations which have been violated. The list of these sanctions is spelled out in Art.8, and it comprises, similar to the powers of the UN Security Council,

(a) the recall of chiefs of diplomatic missions,
(b) the breaking of diplomatic or consular relations,
(c) the partial or complete interruption of economic relations,
(d) the partial or complete interruption of all forms of communication, and
(e) the use of armed force.

The importance of these articles is underlined by Art.20 of the Rio Treaty; this clause provides that a decision of the competent organ to introduce one or several of these sanctions is binding upon all member States, with the sole exception that no State shall be required to use armed force without its consent.

As to the period between the beginning of an armed attack and the decision of the competent OAS organ on the required sanctions, each one of the member States may determine individually which immediate measures it may take upon the request of the State directly attacked.

Should a conflict arise between American States, the competent organ has the special power to call upon the contending States to suspend hostilities, to restore matters to the *status quo ante bellum*, and to take all other necessary measures to re-establish peace and to solve the conflict by peaceful means (Art.7).

As mentioned briefly above, Art.7 of the Rio Treaty also contains a general clause concerning the peaceful settlement of disputes. Thus, the Treaty is not only a pact for the collective security of the member States, but is also addressed to the settlement of conflicts; such a combination of powers may be atypical in modern instruments, but it is consistent with a comprehensive approach to the resolution of conflicts. In fact, Art.7 of the Rio Treaty has in practice been much more often invoked than its provisions on sanctions, and it has in part filled the gap to which the failure of the Treaty of Bogotá has led. The historical reason for the dual function of the Rio Treaty related to the feeling that sanctions should be postponed among American States as long as other measures could possibly contribute to solve the conflict[32].

With regard to the contributions of the IAS towards the maintenance of

[32] Ibid., vol.2, p.264ff.

peace, it shall be noted here that the OAS has taken the position in the Dominican crisis in 1965 that the IAS confers the right to establish a peace-keeping force[33]. The legal basis for the peace force then established was not seen in the Rio Treaty, but in Art.59 of the OAS Charter according to which the Meeting of Consultation of Foreign Ministers has the power "to consider problems of an urgent nature and of common interest to the American States". The task of the force was not to intervene in the then on-going civil war in the Dominican Republic, but to contribute to create peaceful conditions. According to the OAS Secretary General, this action was lawful because it did not impose the will of a third party upon the people of the Dominican Republic, but rather helped to create conditions which would finally permit the free exercise of the political will of the Dominican people[34]. It is not of interest here to examine all legal aspects of the force; what is important is that the establishment of the force was permitted under the OAS Charter and under Art.53 of the UN Charter.

A special legal issue has arisen within the framework of the Rio Treaty concerning the binding or non-binding nature of sanctions and related decisions agreed upon by the competent organ under provisions other than Art.8. Since Art.20 specifically addresses the matter of the binding nature of sanctions and provides only for the binding nature of measures under Art.8, the argument may be made that sanctions other than those under Art.8 do not bind the member States. Nevertheless, the Department of Legal Affairs of the General Secretariat of the organisation has expressed the view that the obligatory character of sanction-related decisions should in general be presumed[35].

It would be noted that the Rio Treaty has occasionally been critically reviewed by member States. As a result of various initiatives, a Protocol of Amendment was adopted in 1975[36], but the number of ratifications required for its entry into force has not yet been reached. Still, a brief survey shall be given at this point of those changes which relate directly to the issue of enforcement of international obligations:

1. The principle of solidarity in case of an armed attack has been lim-

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[33] See J.R. Jose, An Inter-American Peace Force within the Framework of the Organization of American States: Advantages, Impediments, Implications (1970); C.G. Fenwick, International Law, the OAS and the Dominican Crisis, International Law Documents, vol.62 (1980), pp.9–15.

[34] UN Doc. S/6381.

[35] Doc. OEA/Ser.G/VI, C/INF.1230, December 18, 1969.

[36] See García-Amador (note 1), vol.2, pp.358–396; supra note 7.

ited to the States parties and shall no longer apply in all cases of attacks against an American State (amended Art.3).

2. The concept of an aggression which is not an armed attack shall be deleted (amended Art.5).

3. The amended Art.9 generally adapts the notion of aggression to the version adopted in 1974 by the United Nations; however, it does not consider attack on the aircraft or merchant vessels of a State as a form of an aggression.

4. According to the amended Art.20, a vote of two-thirds is necessary to introduce a sanction, as before; but in order to rescind such measures, an absolute majority of votes shall now suffice.

5. With regard to the sanctions provided for in Art.8, the new Art.23 envisages recommendations in addition to the obligatory measures which so far have only been possible under the wording of Art.20. Also, the new Art.23 adds that any State confronted with special economic problems arising from the carrying out of sanctions shall have the right to consult the competent organ.

6. The principle of non-intervention among the member States has been stressed (new Art.12).

7. The organ of consultation has so far been limited to decide about sanctions, whereas it shall now be granted the right to contribute to the peaceful solution of the conflict (amended Art.8); this is important in the light of the political weight generally attached to that organ.

IV. The Relationship between the OAS and the UN in the Process of Law Enforcement

It is not necessary to deal in any detail in this report with the general issues concerning the rights of regional arrangements as stipulated in Chapter VIII (Arts.52–54) of the UN Charter. However, some observations in this context with regard to specific practices and developments within the Inter-American System are in order[37]. Concerning the role of the IAS in the peaceful settlement of disputes, the interpretation of Art.53 sect.2 of

[37] See generally J. Wolf, Regional Arrangements and the UN Charter, in: EPIL Instalment 6 (1983), p.289, with further references; specifically with reference to the OAS L. Wilson, The Settlements of Conflicts within the Framework of Regulations between Organizations and the United Nations: The Case of Cuba, 1962–1964, Netherlands International Law Review, vol.22 (1975), pp.282–318; R. Diaz Albónico, Las relaciones institucionales entre la Organización de Naciones Unidas y la Organización de Estados Americanos, ibid., pp.222–243.

the UN Charter has given rise to considerable problems within the IAS; Art.53 sect.2 reads: "The members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council".

Both the OAS Charter (Art.23) and the Treaty of Bogotá (Arts.II and L) essentially correspond to Art.53 sect.2, but they also go beyond this provision by stipulating an o b l i g a t i o n of the member States to submit their disputes to the regional process of peaceful settlement instead of requiring, as does Art.53 sect.2 "to make every effort" in this direction. The Rio Treaty, drafted in 1947, is built upon the same pattern as the OAS Charter and the Treaty of Bogotá (1948), but it also contains another remarkable feature inasmuch as it precludes not only access to the Security Council during the period of efforts at the regional level, but also to the General Assembly (Art.2). However, this distinctly regionalist approach of the Latin American States was gradually modified and reconsidered, and Art.2 of the amended Rio Treaty indeed no longer precludes early access to the General Assembly. Moreover, the amended Treaty adds that the provision concerning dispute settlement in the IAS "shall not be interpreted as an impairment of the rights and obligations of the States Parties under Articles 34 and 35 of the Charter of the UN"; also, it does not require that a dispute shall be submitted to the settlement procedure of the IAS, but, in accordance with Art.52 sect.2 of the UN Charter, only requires that "every effort" be made in this direction. Finally, it is spelled out explicitly in Art.2 of the amended Rio Treaty that the States parties retain all their rights under Arts.34 and 35 of the UN Charter; thus, the right of access of the parties to the UN Security Council and the General Assembly is placed beyond doubt in the amended version of the Treaty. The result of these modifications of the Rio Treaty, once they enter into force, would be that the OAS Charter and the Rio Treaty are no longer identical in this important aspect. An effort was made, therefore, to revise the OAS Charter along the lines of the amended Rio Treaty, and the version of Art.23 as adopted in 1985 follows the approach chosen in the Rio Treaty.

Another point concerning the relationship between the IAS and the UN Charter shall be addressed here. According to Art.53 sect.2 of the UN Charter, "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council ...". The interpretation of this clause was never entirely beyond doubt concerning the question as to whether only measures involving the

use of force or all types of sanctions are subject to the authorisation by the Security Council[38]. The point of view which prevailed within the IAS preferred the more narrow role of the Security Council, thus leaving it up to the regional organs to introduce sanctions not involving the use of force. Apparently, the reasoning for this position is mainly based upon the fact that the UN Charter itself makes a distinction between enforcement actions which are not coercive in Art.41 and military actions in Art.42.

Some general remarks may be added here which summarise the major developments concerning the preference for regionalism or for universalism in the Americas. The described amendment of the Rio Treaty was introduced at the request of Latin American States. Thus, it will be observed that while the Latin American States favoured the strengthening of regional arrangements in 1945, the majority of them has since shifted position and now tends to modify its preference for regionalism by introducing stronger elements of a universalist approach. The special nature of this development becomes apparent against the background of the reduced role of the United Nations as reviewed in other reports of this colloquium. The Latin American position represents a cross current which is, to a certain extent, indicative for the attitude of States from the third world in general. It would appear that the positive and/or negative implications of this fact have not received adequate attention in the context of law enforcement through international organisations. It would well be worth considering the significance of this development in its broader implications at another occasion.

V. Concluding Remarks

The IAS as conceived in 1947/48 aimed at establishing a network of organisations the combined competences of which came close to an ideal regional organisation in terms of its powers to enforce international legal obligations. The system was to allow the identification of an existing obligation through compulsory third party settlement, and it permitted the introduction of credible and effective sanctions against a State which did not comply with its duties under international law. From an ideal point of view, the only element which was lacking was the power of the collective organs to initiate an effective procedure of third party settlement.

When it became apparent that a major element of the inter-connected

[38] For a discussion of the practice of the OAS organs, see García-Amador (note 1), p.408ff.

system, the Treaty of Bogotá, would not, for the time being, operate as expected in practice, certain general clauses in the two other Treaties were increasingly relied upon, mainly Art.7 of the Treaty of Rio. Due to the relatively high degree of homogeneity among the member States and the general willingness to co-operate, the applicable informal procedures were usually applied in practice with the consent of the States concerned, and it turned out for a longer period that this basis of co-operation was generally acceptable and often produced positive results.

As to the sanction mechanisms, the IAS has worked upon the basis which was originally foreseen, the Rio Treaty. Certain elements which are parallel for global post-war developments and for the sphere of the IAS are discernible inasmuch as the States have in practice been more successful in applying schemes and mechanisms to repel direct attacks upon the existing order than in applying formally agreed procedures which would allow the binding identification of existing obligations. Along the same lines, it will have to be observed that procedures permitting peaceful change have received even less attention than those concerning the settlement of existing legal disputes. However, experience within national legal orders seems to establish a close inter-relationship between successful law enforcement, the identification of legal obligations by neutral institutions and the general functioning of the process of peaceful change.

Returning specifically to the IAS, serious tensions among the member States have become apparent within the Rio Treaty as well, some of which have been expressed in efforts to amend the Treaty. The underlying reasons for the threats to the functioning of the Rio Treaty are of a political rather than a legal nature. It appears that the foundation of the IAS which existed in common political, military, economic and moral perspectives and judgments continues to exist only to a limited extent. Today, the diverse economic and military priorities, different geopolitical orientations, and diverse social and moral judgments threaten the basis upon which the IAS had been built, and correspondingly, the signs for the effectiveness of the IAS as an organisation to enforce a common order have not been auspicious in the past years. Outside the area of human rights, the OAS today is in search of its identity and of values common to all of its member States. The regionalist dimension has often appeared less attractive to the States than the orientation towards more globally based objectives and/or the aim to pursue the national interest by way of the unilateral formulation and enforcement of policies. Against this background, the potential of the IAS to function as an organisation promoting the respect for international obligations has generally vanished. The lesson which can

be drawn from this development is by no means novel; it consists in the fact that an effective system of law enforcement presupposes not only legal structures and institutions, but also the active will of those subject to the law to co-operate within this system. This becomes apparent within the OAS and on the global level. In fact, most current issues of law enforcement on the international level are of a political rather than a legal nature.

Even though the prospects for the functioning of the IAS and its capacity to establish and enforce an orderly development of international relations have vanished for the reasons alluded to, it would appear premature, as some have done, to assume that the IAS has to be declared as defunct. During this century, the levels of legal and political co-operation within the Americas have oscillated in various periods. In times of genuine and serious international crisis, the American States have co-operated in a remarkably close manner. The institutional and the legal instruments which are necessary for the regional enforcement of law still exist, and the American States may use them again, and more effectively in the future.

At the outset of this report, reference has been made to the significant progress achieved in recent years in the Americas with regard to the enforcement of human rights[39]. While it is difficult to assess the reasons why the major contributions made on the regional level in the Americas have concerned the sensitive area of human rights, this development underlines in any case that regional law enforcement in the Americas has not in the past decade become obsolete on the basis of structural changes of a general nature. General experience would indicate that co-operation in the sphere of human rights is by no means less complex or places stronger demands upon the will of States to co-operate than the identification and implementation of common programs in other areas. In this sense, the results achieved by the human rights organs of San José deserve to be examined and analysed not only within the confines of human rights studies, but also in the search for models and objectives for broader based forms of integration which could, *inter alia*, contribute to improve the processes by which international obligations are enforced.

The Preamble of the Rio Treaty proclaims that "juridical organization is a necessary prerequisite of security and peace". It seems that a most important element in the application of this historical lesson lies in the area of law enforcement. In comparison to unilateral approaches to the establishment of an international order and to law enforcement, a collective process of making and implementing decisions for the maintenance of peace and order

[39] Supra p.115.

offers distinct advantages. In the years immediately after the catastrophic experience of the Second World War, this basic lesson of history was apparently more evident and more appealing than today. Again, however, this seems to apply not only to the IAS, but is characteristic for the more recent development of the global order in general.