

## EDITORIAL COMMENT

### THE DOMINICAN REPUBLIC: INTERVENTION OR COLLECTIVE SELF-DEFENSE

In the good old days when it was the privilege of a country to govern itself as badly as it chose, and when constitutional restraints seemed an unreasonable burden upon elements of the people seeking more immediate reform, it was accepted that civil war was a purely domestic problem with which third states had no right to interfere.<sup>1</sup> Not only had third states no right to interfere, but they had a duty to see to it that their territory did not become a base for a military expedition in favor of the rebels or a source of supply for arms and munitions of war. Neither the Havana Convention on the Duties and Rights of States in the Event of Civil Strife of 1928 nor the Protocol of 1957 contained any provision looking to collective interference in the civil strife itself. Now and then the United States, acting unilaterally under the Monroe Doctrine, took sides; but that met with the general condemnation of "intervention." Treaties and conventions in favor of mediation and conciliation might apply to controversies between states, but they had no application to the factions engaged in a civil war. Let them fight it out, and whoever won and whatever his principles, third states recognized him as the *de jure* government as soon as his control of the situation appeared to be stable.

But the world of 1965 is not the world of 1928 when the Havana Convention was adopted. New principles of regional security have been adopted and new procedures established for putting them into effect. We have the Rio Treaty of Reciprocal Assistance; we have the Charter of the Organization of American States; we have the Declaration of the Rights and Duties of Man; we have the Caracas Resolution of 1954; and we have the Punta del Este Resolution of 1962. How far do the new principles and procedures challenge the old right of a state to fight out its own domestic situations that may arise between one faction and another from time to time?

Had the United States the right of self-defense in going to the rescue of American citizens when word came from the American Ambassador on April 24, 1965, that shots were being fired freely in the center of Santo Domingo and were endangering the lives of foreigners in that area? Assuming that the danger was as great as believed by the Ambassador, there is no question but that the right of self-defense was at issue, not under Article 51 of the United Nations Charter nor under Article 3 of the Rio Treaty, since the provisions of those treaties were not at issue, but under the old law of self-defense that is still the law. Were there other motives than the one alleged? That is of no consequence at the first stage of the intervention when the protection of citizens was the objective.

<sup>1</sup> Compare, "Can Civil Wars Be Brought under the Control of International Law?" 32 A.J.I.L. 538 (1938).

By April 28 a new phase of the intervention had developed. Evidence appeared to be mounting that Communist elements were involved in the rebel, pro-Bosch ranks; and the United States sent additional troops to the country. Assuming that Communists and Castroites were actually involved, with the possibility of their taking over the government later, using the restoration of Bosch as a front, had the United States any right to extend its intervention and send additional troops in excess of the number required to evacuate its citizens? Was the intervention justified without far greater evidence of Communist control, without waiting to see if Communists had actually obtained control of the situation? Should the intervention in self-defense have been taken by the United States unilaterally without awaiting the approval of the other American governments? The answer must be found in the neighboring state of Cuba, which in the course of six years has demonstrated what may be expected of a Communist-controlled government, every principle of inter-American law being defied, apart from the act of making itself a base of operations for the Soviet Union. Self-defense must be judged in the light of the experience of a country in a parallel situation. "One Cuba is enough." As the President put it, on May 2:

What began as a popular democratic revolution that was committed to democracy and social justice moved into the hands of a band of Communist conspirators.

What justification can be found for the intervention of the Organization of American States, acting through its Meeting of Consultation of Foreign Ministers? No objection can be taken to the meeting of April 30, at which the Council of the Organization did no more than adopt a resolution calling for a cease-fire and the establishment of an international neutral zone of refuge and summoning a Meeting of Consultation of Ministers of Foreign Affairs under Article 39 of the Charter. Nor can objection be taken to the resolution taken by the Organ of Consultation on May 1, which repeated the appeal for a cease-fire and the orderly evacuation of foreign citizens, and created a five-man committee to go to the Dominican Republic and carry out an investigation of all aspects of the situation, for this was clearly within the terms of the Rio Treaty and of the Charter. On May 5 the Act of Santo Domingo was signed by the so-called "Constitutional Government" (pro-Bosch) and the Military Junta, ratifying the informal cease-fire of April 30 and accepting the establishment of a safety zone and undertaking to provide measures of evacuation of the asylees in foreign embassies.

More difficult is it to find justification for the action taken by the Organization on May 6 when, after accepting collective responsibility for interpreting "the democratic will of its members," a resolution was adopted creating an Inter-American Armed Force<sup>2</sup> under a Unified Command, and incorporating in it the United States forces already in the Dominican Re-

<sup>2</sup> Reprinted in 59 A.J.I.L. 987 (1965).

public and such other forces as the member states might contribute. The Force was described as having "as its sole purpose" that of

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

Had the Meeting of Consultation been willing to justify its action on the ground of a possible take-over of the pro-Bosch rebels by Communist elements, there would have been no legal basis of criticism, assuming, as in the case of the United States, that there was reasonable evidence of the fact. For the resolution taken at Caracas in 1954 clearly covered such a situation. At the 10th Inter-American Conference of that year a resolution was adopted (XCIII) to the effect that the domination or control of the government of an American state by the "international Communist movement" would constitute a threat to the peace and call for the adoption of appropriate action in accordance with existing treaties.<sup>3</sup> The wide competence of the Organ of Consultation under Article 8 of the Rio Treaty would easily have justified the occupation of the island by an "Inter-American Armed Force," in spite of the strong terms of Article 17 of the Charter.

But the necessary two-thirds vote of the Meeting of Consultation was not available for a statement to that effect; and the terms of the resolution of May 6, described as being the "sole purpose" of the action taken, raise the question whether the occupation of Dominican territory can be justified on the grounds declared. To come under the Rio Treaty, Article 6, the justification offered by the resolution must come within the provision "any other fact or situation that might endanger the peace." The Meeting of Ministers might well think that there was a threat to the peace, and a grave threat at that, in the extreme measures taken by both sides, involving the destruction of public buildings and the indiscriminate arming of civilians. A dictatorship would in all probability have been established by the dominant faction, raising the question of the "inviolability of human rights." Some of the representatives of the governments were fearful that action by the Meeting of Consultation might form a precedent for intervention in other possible civil wars; but the majority felt that the case before them was of such an urgent character that it should be judged on its own merits and not as a possible precedent for future action.

Can civil wars, or "civil strife" as the Havana Convention of 1928 preferred to describe them, be brought under the control of inter-American regional law? Obviously only insofar as in one way or another the civil strife may involve a threat to the general peace, as determined by the circumstances of the particular case. A mere change of government contrary to constitutional procedures but without substantial violence would not constitute ground for intervention. Important as are the provisions

<sup>3</sup> 48 A.J.I.L. Supp. 123 (1954).

of inter-American law with respect to fundamental human rights, there is no specific sanction attached to their violation, and a sanction could only be inferred when the gravity of the situation constituted a threat to the general peace. Must the threat be physical or merely moral, such as the torture of prisoners or the vindictive prohibition of freedom of speech, of the press and of assembly, such as exists in Cuba today? Can the conception of "threat to the peace" grow with the growth of continental solidarity and take on new connotations as the economic and social relations between states become more and more dependent upon normal political relations?

Has the action of the Meeting of Consultation and the establishment of an Inter-American Armed Force set a precedent for future action? Undoubtedly it has done so, whatever disclaimers may have been made at the Inter-American Conference at Rio de Janeiro. Each resort to violence within the individual state weakens the fabric of international as well as of national law. Revolution may indeed be justified when fundamental human rights are systematically denied, not for the mere transfer of political power from one party to another—a decision that might properly be made by the collective action of the regional group and enforced by collective measures. The problem confronting us is to make justice move fast enough to anticipate revolution. Can the ideal of higher standards of living be made effective without undermining the basis of law and order upon which the stability and permanence of progress depend?

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