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THE ORGANIZATION OF AMERICAN STATES
AND COLLECTIVE SECURITY

by

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I. INTRODUCTION

THE Organization of American States (OAS),¹ to aid in the maintenance of the peace of the Western Hemisphere, has conferred upon it a police function which is repressive in nature aimed at preventing or removing actual or threatened breaches of the peace through the application of effective coercive measures. Actually, the police function of the Organization of American States is nothing more or less than organized collective security by which each member of the inter-American community pledges to take certain action against any nation which commits or threatens to commit a breach of the peace. If all member nations fulfill this pledge, it should mean protection for a victim of aggression and probable defeat of the aggressor.²

The inter-American system took a long time to evolve this police function. It was not until the Act of Chapultepec in 1945 that a system of collective security, similar to that now in being, was consummated. The Act of Chapultepec was binding only for the remaining months of World War II, and it contemplated its own replacement by means of a permanent inter-American treaty.³

In 1947 such a treaty was concluded with the signing of the Inter-American Treaty of Reciprocal Assistance—more commonly known as the Rio Treaty—at the end of the Inter-American Conference for

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¹ In 1948, the Ninth International Conference of American States met at Bogota and brought about a major reorganization of the procedures, agencies, and institutions which made up the inter-American system. The international association of American States was named the Organization of American States (hereinafter referred to as OAS) and became the successor in law of the Union of American Republics. Its members are the twenty-one American Republics voluntarily associated for the achievement of common purposes through joint action or cooperation. The two fundamental purposes of the OAS are the maintenance of peace and the promotion of human welfare in the Western Hemisphere.
³ Inter-American Conference on War and Peace, Mexico City, Feb. 21 - Mar. 8, 1945, Report Submitted to the Governing Board of the Pan American Union by the Director General 12 (1945).
the Maintenance of Continental Peace and Security. It is this treaty that is the heart of the Western Hemispheric system of collective security. The Charter of Bogota, which was adopted in 1948 and is the primary constitutional instrument of the inter-American system, incorporates the Rio Treaty by reference in article 25, and perhaps modifies it slightly but does not repeat its detailed provisions. The Rio Treaty has as its legal basis certain provisions of the United Nations Charter which grant a limited competence for the maintenance of peace and security to regional organizations such as the OAS. It is therefore subject to the regional arrangement stipulations of articles 52-54 of the Charter of the United Nations, and its provisions also fall within the scope of the right of individual and collective self-defense under article 51 of that Charter in the event of armed attack.

II. Action in the Event of Armed Attack

The Rio Treaty distinguishes the obligations to be undertaken and the procedures to be followed in the event of an armed attack and the obligations to be undertaken and the procedures to be followed in the event of other acts of aggression or potential threats to continental peace. Article 3 of the treaty is concerned with action in the event of an armed attack. After reiterating the principle that an armed attack against an American State constitutes an attack...
against all the American States, it declares that each of the contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations. If the attack occurs within a security zone outlined in article 4, or within the territory of an American State, each signatory is bound to take, at the specific request of the State attacked, such individual measures as it may deem appropriate to fulfill its obligation to help meet the attack until collective measures have been agreed upon. An Organ of Consultation is to meet as quickly as possible to determine the collective measures to be taken. The concluding paragraph of article 3 recognizes that the defensive measures to be employed in the case of an armed attack within the region or territory of an American State are limited by article 51 of the United Nations Charter, that is to say, they may be taken only until the Security Council has acted to maintain or re-establish peace, and all measures resorted to or contemplated by the Organization of American States under the Rio Treaty are to be reported to the Security Council by the Council of the OAS.

Even a cursory reading of article 3 reveals that it is deeply significant, and yet in certain of its aspects it is obscure and its meaning unclear.

A. The Right of Self-Defense

Article 3 builds upon the right of self-defense recognized by article 51 of the United Nations Charter. In an instance of an armed attack within the region described in article 4 or within the territory of an American State, the State subjected to the armed attack may exercise its inherent right of self-defense in accordance with article 51. Moreover, the other contracting parties of the Rio Treaty are to aid the victim through the use of their right of collective self-defense.

*The Organ of Consultation is a Meeting of Ministers of Foreign Affairs of the American Republics which have ratified the Rio Treaty (art. 11 of the Rio Treaty and art. 39 of the Charter of Bogota). It was recognized that some cases might not require a meeting of the Foreign Ministers or permit sufficient time to convocate them. Therefore, article 12 of the Rio Treaty empowers the Governing Board of the Pan American Union to act as Provisional Organ of Consultation until the meeting of the Organ takes place. The Governing Board was changed to the Council of the Organization of American States by the Charter of Bogota. Article 52 of that Charter empowers it to serve provisionally as Organ of Consultation. All member states are represented at a Meeting of Foreign Ministers and on the Council. Article 17 of the Rio Treaty requires decisions of the Organ of Consultation to be taken by a two-thirds vote of the ratifying States. Thus, unanimity is not required for action. The veto which has plagued the Security Council of the United Nations was wisely avoided.*
Neither the United Nations Charter nor the Rio Treaty clarifies what is meant by the "inherent right of self-defense." However, at general international law (as distinguished from treaty law known as particular international law), this right has never been seriously questioned; a State, like an individual, may protect itself against an illegitimate attack, commenced or impending.\(^9\)

Self-defense is a special form of self-help. It is self-help against a specific violation of the law, the illegal use of force, not against other violations of the law. It is the use of force by a person (in municipal law) or by a State (in international law) illegally attacked by another. The attack against which self-defense is permitted must have been made or must be intended to be made by force. As such, self-defense is that minimum of self-help which, even within a system of collective security based on a centralized force monopoly of the community, must be permitted. It is recognized by national law as applicable to individuals and by international law as applicable to nations. It is impossible for any system, national or international, to prevent all illegal attacks upon its subjects, and in case of such an attack if the attacked subject were in all instances forced to wait for the enforcement authorities to take action, he would be doomed. It is generally stated that the prerequisites for legitimate self-defense are that the armed attack, actual or impending, must be objectively illegal; the state exercising the right of self-defense must show a danger direct and immediate; the defensive act must not be excessive, going no farther than to avert or suppress the attack; and it must not be continued after the needs of defense have been met.\(^9\)

Although the United Nations Charter and the Rio Treaty both impose the obligation on their signatories to refrain from the use or threat of force in their international relations,\(^11\) both do permit the use of force in the event of an armed attack under the inherent right

\(^9\) On the right of self-defense at international law, see Brierly, The Law of Nations 253 (2d ed. 1938); Kelsen, Principles of International Law 60-61 (1932); Lawrence, The Principles of International Law 117-18, 121-22 (3d ed. 1909); I Oppenheim, International Law 272-73 (Lauterpacht 7th ed. 1948); Ross, A Textbook of International Law 244 (1947). See also, The Case of the Neptune (1797), IV Moore's International Adjudications 372, 441-43 (1931); and The International Military Tribunal Nuremberg, cmd 6964, p. 28 (1946).

\(^10\) Ibid. With reference to the German invasion of Norway, this Tribunal stated that preventive action in foreign countries was justified only in cases of "an instant and overwhelming necessity for self-defense, leaving no choice of means and no moment of deliberation."

\(^11\) Article 2, paragraph 3 of the U.N. Charter charges the members to settle their disputes by peaceful means, and paragraph 4 orders them to refrain from the use of force. Article 1 of the Rio Treaty condemns war and enjoins the American States not to resort to the threat or use of force. Article 2 requires such states to submit every controversy to peaceful settlement. Article 18 of the Bogota Charter binds the American States not to have recourse to the use of force, except in the case of self-defense.
of individual and collective self-defense. General international law permits the exercise of the right of self-defense not only in the face of actual armed attack, but also against a threatened armed attack when the danger is imminent. The Charter of the United Nations attempts to limit the right of self-defense to “armed attack,” but it speaks of the right as an “inherent” right. If self-defense is an inherent right, it implies that it is a natural right, inalienable and incapable of being surrendered. If it is incapable of being surrendered in whole, it can be reasoned that it is incapable of being surrendered in part; therefore, in spite of the limitation of the Charter, if it is truly inherent, the right of self-defense can still be applied where it is permitted under general international law, not only against actual attack, but also against a threatened aggression where the danger is imminent.

On the other hand, it can be argued that self-defense against an imminent threatened armed aggression under general international law is permissive, not inherent; that the only inherent, inalienable portion of self-defense is that action taken against armed attack, and that, therefore, article 51 of the Charter of the United Nations does not detract from “inherent” self-defense but merely, by implication, prohibits permissive self-defense.

Many jurists are of the opinion that the right of self-defense under the Charter is limited to action after an armed attack has occurred. It has been pointed out that the use of the word “inherent” is unfortunate for it equates self-defense with an unalterable natural right. The answer to this may be that the word “inherent” as used in the Charter is of little legal significance for, after using the word, the Charter, irreverent of its legal meaning, seeks to alter and change the significance of self-defense long established by general international law. Moreover, it is contended that in municipal law self-defense is also spoken of as a natural and thus unalterable right, but at the same time, positive law often does alter and change its meaning. Thus, these jurists conclude that the Charter does alter the right of self-defense as it existed at general international law by restricting it to instances where there has actually been an armed attack by an aggressor, and an imminent armed attack is thought

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19 U.N. Charter art. 51; Rio Treaty art. 3; Charter of Bogota art. 18.
19 See Thomas and Thomas, op. cit. supra note 4, at 123-28 for discussion of the right of individual self-defense under the U.N. Charter.
not sufficient to invoke the right under article 51 of the United Nations Charter.

Actually the best that can be said about the right of self-defense under article 51 is that it is susceptible of varying interpretations; its wording is both ambiguous and confusing. Armed self-defense is definitely permitted against an armed attack, but the picture is hazy as to whether self-defense is permitted against an imminently dangerous aggression.

The Rio Treaty does little to clarify what is meant by the "inherent" right of self-defense. It simply recognizes in article 3 that such a right exists. However, it is extremely doubtful if an American State bound by the Rio Treaty could legally justify action taken on the ground of self-defense in its broader meaning under general international law, i.e., taken to meet an impending or imminent attack. The Organization of American States has established a governing rule on this point in the Report of the Investigating Committee of the Organ of Consultation concerned with the Haiti-Dominican Republic Affair. It was stated in this report:

Furthermore, The Committee is convinced that the treaties and agreements in force among the American States, in assuring the integrity of these States and their defense in case of any aggression, have established the measures and the organs required to meet the needs of collective self-defense; and it is evident that the American States have formally condemned war and have undertaken to submit every controversy which may arise between them to methods of peaceful settlement. The Committee holds, therefore, that the attitude of any American Government resorting to the threat or use of force even on the grounds of self-defense, in any manner inconsistent with the provisions of the Charter of the United Nations, the Rio de Janeiro Treaty, and the Charter of the Organization of American States, and without having made every reasonable attempt at peaceful settlement, constitutes a violation of the essential norms of inter-American relationships.  

In an impending or imminent attack, there would in many instances be time for further attempts at peaceful settlement, and certainly the right of self-defense under this interpretation cannot be utilized as a provocation. Moreover, in cases where there is not an actual armed attack but only an impending one, even where the danger is direct and immediate, article 6 of the Rio Treaty permits a State to request the Organ of Consultation to meet to take action to assist it where the inviolability or integrity of its territory, its sovereignty,

or its political independence is affected by any act of aggression other than an armed attack, any extracontinental or intracontinental conflict, or any other fact or situation that might endanger the peace of America.

It can hardly be reasoned that an American State would be justified in taking matters into its own hands to precipitate conflict in the face of impending attack when it can request collective action by the Organization of American States to meet the threat. If this reasoning is correct, an American State can vindicate action under the authority of self-defense only in the presence of an actual armed attack.  

B. The Right of Collective Self-Defense

Article 3, paragraph 1 of the Rio Treaty then grants a right of individual self-defense to a State or States subjected to an armed attack. It also confers a right of collective self-defense upon the States which have ratified the treaty, and at the same time imposes upon such States an obligation under certain conditions to take measures to assist the injured party in the exercise of the inherent right of collective self-defense.

An obligation of collective self-defense comes into being in two stages under the Rio Treaty. When an armed attack is launched within the territory of an American State or within the security zone established by the treaty, the contracting parties have not only a right but also a duty to take measures to assist in meeting the attack upon request for aid by the victim. The requirement that aid must be requested by the injured party was included in the treaty to prevent possible simulated aggression which might occur under the guise of conferring aid upon a victim of a supposed attack.

In this preliminary stage following an armed attack and a request for aid, each State is free to determine the immediate measures which it will individually take, although the obligation to assist in some

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16 See Thomas and Thomas, op. cit. supra note 4, at 129-30.
17 It has been said that no duty of individual self-defense is imposed, probably on the ground that an obligation cannot be created which would force a person or a state to defend itself against attack. Kunz, for example, says that there is a right but no duty of individual self-defense, op. cit. supra note 4, at 115. But article 3 declares that each of the contracting parties (which would include any American State subjected to attack) "undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense. . . ." Quaere, do these words spell out an obligation? It is so stated in Report of the Delegation of the United States of America, op. cit. supra note 4, at 21. It can be argued that an attack on any State of the hemisphere creates such a danger to the peace that all States, including the attacked State, are obligated to meet it, such obligation not being for the protection of the victim alone, but for the protection of all.
18 Report on Results of Conference, op. cit. supra note 4, at 34.
way is entirely clear. In the selection of measures to be taken at this
time, the States are limited to those listed in article 8, that is, dip-
monic or economic measures or the use of armed force. The nature,
time, and extent of the immediate measures is left to the complete
discretion of each party.

The second stage of collective self-defense in the event of an
armed attack begins with the convening of the Organ of Consulta-
tion which is enjoined to meet without delay to examine the im-
mediate measures of assistance which have been taken by the in-
dividual States and to agree upon collective measures to be taken.
Under the Rio Treaty the consultation was originally to be initiated
at a request of a ratifying State to the Governing Board (now the
Council of the OAS). This procedure has been modified by the
Charter of Bogota which requires a meeting to be called immediate-
ly by the Chairman of the Council in the event of an armed attack
within the territory of an American State or within the delineated
security zone. In this more advanced stage, the obligation is placed
upon the member States to consult in case of an armed attack in
order to agree upon collective measures. Thus the Rio Treaty places
a double obligation upon its signatories, that of individual assistance
and that of consultation. After the Organ of Consultation agrees
upon collective measures, the parties are obligated to comply with its
decision although the measures which each State is required to take
need not be of the same type and nature for all the American States.
This decision on the collective measures ends the duty of the parties
to take individual measures, but it would not terminate the right of
the victim State or the member States to continue to take such meas-
ures in the exercise of the right of individual and collective self-de-
fense; the right to continuing collective self-defense actions, of
course, being dependent upon a continued request for assistance from
the victim. Such measures would be in addition to those measures
ordered by the consultative organ.

In this consultation on collective measures, decisions are to be
taken by a two-thirds vote which is binding on all parties including
those not concurring, except that no State is required to use armed
force without its own consent. In other words, a party to the Rio Treaty may be required to take part in a number of specific steps, such as complete interruption of economic relations with the aggressor, even though it did not originally favor such action. It may not, however, be required under the treaty to use armed force without its consent. Nevertheless, if the Organ of Consultation decides that the situation necessitates the use of armed force as a measure of collective self-defense against an armed attack, each member State has the legal right, although not the duty, to use armed force.

Collective self-defense as sanctioned by article 51 of the United Nations Charter is a new term to international law, for under general international law no right of self-defense exists with reference to an armed attack upon another state unless two or more nations are simultaneously attacked by the same aggressor. It has been argued that collective self-defense should be interpreted as collective defense; that is, that the United Nations Charter recognizes that a State attacked by armed force has a right of self-defense and that other states have a right to come to its assistance. But it can be reasoned that the Charter takes notice of the fact that there is a very close integration and solidarity between certain nations and establishes a new rule of particular international law, namely, that an attack on one nation is equivalent to an attack on other nations integrated with it. In that case any action aiding a State attacked by armed force is not in the nature of assisting the attacked state, but is action to protect the peace and safety of the assisting State. The Charter gives to such action the name of collective self-defense. Neither interpretation would automatically lead to the conclusion that the right of action is inherent; it can therefore be inherent only because the Charter bestows upon it the characteristics and requisites of being inherent.

Since article 51 of the United Nations Charter speaks of the right of individual and collective self-defense in the same context and without defining either, it could be assumed that the legal meaning of collective self-defense would be similar to the meaning of individual self-defense under general international law with, of course, the major differentiation that measures of collective self-defense are

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28 Rio Treaty art. 20.
27 Stone, Legal Controls of International Conflict 241 (1914) declares categorically that no right of self-defense exists by reason of an armed attack upon a third state.
28 Kunz, op. cit. supra note 14, at 872.
29 See Thomas and Thomas, op. cit. supra note 4, at 169.
30 On collective self-defense under the U.N. Charter, see Kelsen, op. cit. supra note 14, at 791-801; Kunz, op. cit. supra note 14; Thomas and Thomas, op. cit. supra note 13, at 169-76.
to be taken by a nation or nations not directly under armed attack. Is the extent of the right and limitations of collective self-defense then to be determined by the right of individual self-defense as it exists under general international law? In reality the new concept creates certain problems of its own, and the application of the rules established by general international law with reference to individual self-defense may not always follow.

As has been noted, collective self-defense is action taken by States not directly the victims of an armed attack. It is action taken on behalf of another State subjected to the attack. This in itself is a modification of the concept of self-defense as it exists at general international law. It is generally assumed that the exercise of the right of self-defense involves the use of physical force to repel an illegal attack. Does collective self-defense connote the use of armed force only? If so, measures taken against an armed attack which do not involve the use of armed force should not properly be labelled self-defense. If this is so, under the Rio Treaty it becomes erroneous to speak of an obligation of collective self-defense at either the preliminary stage when resort is to be had to individual measures or at the secondary stage when the Organ of Consultation decides on collective measures, for in neither stage are the American Republics bound to use armed force. The Rio Treaty would then only establish a right, as distinguished from a duty, of collective self-defense.

Such an interpretation equating collective self-defense only with the retaliatory use of armed force creates difficulties and confusion, for the possibility exists that such an interpretation would prevent the OAS and its members from using measures of a nature less than armed force, e.g., economic or diplomatic measures, inasmuch as the United Nations Charter declares that only measures of collective self-defense and no other collective enforcement measures may be taken by members of the United Nations and regional organizations without Security Council approval. The requirement of such prior approval might well rule out all unarmed collective measures in the face of an armed attack if those other measures are considered to be enforcement measures.

Although the meaning of collective self-defense is not clear under the United Nations Charter, under the Rio Treaty collective self-defense includes not only armed force but also other measures of an economic and diplomatic character as set forth in article 8 of that treaty. Article 3 declares that in the preliminary stage the parties

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31 Kelsen, op. cit. supra note 9, at 60; Kelsen, op. cit. supra note 14, at 792.
32 But see pp. 204-06 infra on the measures as “enforcement measures.”
may determine the immediate measures to be taken in fulfillment of the obligation of collective self-defense. Thereafter the Organ of Consultation shall meet to agree on measures of a collective character that should be taken. Article 8 lists the collective measures which the Organ of Consultation may use, including the recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; plus the use of armed force. Therefore, it is apparent that the measures other than the use of armed force are considered as measures of collective self-defense by the Rio Treaty.

When the prerequisite for the application of collective self-defense arises (the occurrence of an armed attack) all collective measures, whether by armed force or otherwise, must be considered measures of collective self-defense, and their use must be legitimate under article 51 of the Charter of the United Nations and under article 3 of the Rio Treaty until the Security Council acts by taking measures necessary to maintain or restore international peace and security. Thus, under the Rio Treaty, there is an obligatory duty of collective self-defense at both stages in case of armed attack, for the parties to the treaty are immediately obligated to take some individual measures, and thereafter the Organ of Consultation must agree upon the measures of a collective character to be taken, this decision being binding upon the parties with the sole exception that no State shall be required to use armed force without its consent.

Both the United Nations Charter and the Rio Treaty limit the exercise of the right of individual and collective self-defense to instances of an armed attack. General international law adds a further qualification by specifying that self-defense may only be exercised in the case of an illegal armed attack, that is, against the illegal use of armed force. This element of illegality of the armed attack, although not specifically stated in either the United Nations Charter or the Rio Treaty, must nevertheless be applied thereto in those documents. The right of individual or collective self-defense cannot be exercised against a legal use of force. From the very purpose of the United Nations, a right of self-defense cannot exist against a legal enforcement action by that organization. Should that body be forced to resort to armed force against a recalcitrant nation, such action is the action of the international community against which
self-defense is not allowed. The same is equally true of a legitimate use of force as a measure of collective self-defense or enforcement by the members of the Organization of American States upon a valid decision of the consultative organ or, in the first stage of collective self-defense, when one American State comes to the aid of another which is the victim of the armed attack.

Article 9 of the Rio Treaty declares that an unprovoked armed attack by a State against the territory, the people, or the land, sea, or air forces of another State may be characterized as aggression. The use of the term "unprovoked" is unfortunate, for by reading article 9 in conjunction with article 3, one might come to the conclusion that no right of self-defense exists if one State provokes another State to the point of armed attack, for in that case the provoked State would not be an aggressor. This is not the fact. The United Nations Charter prohibits the use of force in all instances except under article 51. Neither a provoked nor an unprovoked State has the right to use force unless the State is provoked to such use in the right of self-defense by an illegal armed attack against it. The use of force except in pursuance of a right of self-defense is illegal.\(^\text{35}\)

The element of an armed attack is essential for an exercise of the right of self-defense, individual or collective. There must be an armed attack against a victim State before it can resort to individual self-defense or before other States can come to the victim's aid. Article 9 of the Rio Treaty in setting out acts which, in addition to others, may be characterized as aggressions, declares that the following shall be considered as such:

a. Unprovoked armed attack by a State against the territory, the people, or the land, sea, or air forces of another State;

b. Invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State.

This language indicates that the armed attack must be made by a State directed against the territory, people, or armed forces of another State.\(^\text{36}\) This might raise a question of whether or not an at-

\(^{35}\) See Alfaro, Memorandum on the Question of Defining Aggression, Yearbook of the International Law Commission 1951, vol. II, U.N. Doc. No. A/CN.4/L.8 at p. 36 where he criticizes the use of the word "unprovoked" as introducing into the determination of the aggressor the "vague, imprecise, and uncertain element of provocation."

\(^{36}\) See id. at 37-38, where Alfaro defines "force" which would comprise "armed attack": The term force is used in a broad sense to signify any elements at the disposal of States which are capable of destroying life and property, or of inflicting serious damage. It comprises land, sea and air forces, regular armies as well as irregular bands and any and all kinds of weapons, contrivances, explosives, toxic or asphyxiating gases, employed
tack on a merchant vessel or a civil aircraft could be equated to aggression since article 9 mentions various branches of the armed services. But such attacks could clearly be armed attacks or aggression for article 9 does not claim to be exclusive as it states that these listed acts “in addition to other acts” may be characterized as aggression.17

Little argument can be mustered for the view that collective self-defense can be exercised against a threat of imminent armed attack. Collective self-defense must be limited to actual attack. As previously mentioned, perhaps the right of individual self-defense, if it is truly an inherent right, cannot be limited to armed attack by the United Nations Charter. If individual self-defense is inherent at general international law, all elements of the right, inclusive of its exercise against a threatened armed attack if imminent, must be acceptable under the Charter. But collective self-defense is a new term which was created and made inherent by the Charter itself. Since the right did not exist at general international law, no valid argument can be made that it cannot be restricted by the agency which created it. And that agency, the Charter, does restrict it to instances of armed attack.

Self-defense in municipal law, as well as in international law, is not designed to enforce the law. It is not meant to be a form of self-help to punish the aggressor or to obtain reparations. It serves only to repel an attack. As such is its purpose, general international law requires that it be not excessive, that it not go beyond the necessity to avert or suppress the attack, and that it must cease after the needs of defense have been met. There is no reason why these requirements of proportionality and the restrictions against unreasonableness and excessiveness should not apply also to the right of self-defense under the United Nations Charter and the Rio Treaty.18 But the wording of these instruments is obscure on this point.

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17 Kunz is of the opinion that the requirements of proportionality and reasonableness for the destruction of life and property in land, naval air, chemical or bacteriological warfare. He goes on to say in defining armed aggression against the territory and people of States or governments:

Aggression is bound to be conceived as perpetrated against the territory and against the people under the jurisdiction of the State victim, and aimed at the submission or destruction of any forces opposing resistance to the aggression. This aim implies the possibility of destroying life and property, a destruction of which the victim is the people of the State attacked. Aggression against the territory and the people of a State or government must comprise any acts of violence perpetrated against its land, sea or air forces, or against its vessels or aircraft, whatever their character; or against structures vital to public life and health, as for instance, water works and protective dams; or against the whole of the population, through the use of any weapons or the commission of any acts likely to endanger combatants and non-combatants.

18 See also id. at 36.
As self-defense is permitted against any illegal armed attack, the right could be claimed and exercised against a frontier incident of small import. Furthermore, since no limitation is presented in either treaty, the force used as a repellent in the exercise of the right of self-defense might well be excessive in relation to the armed attack which acted as the catalyst, and this excessiveness might of itself bring about serious hostilities. It may also be possible for self-defense to go beyond a mere repulse of the attack. Article 3 of the Rio Treaty not only permits but also requires measures to be taken upon the occasion of an armed attack until the Organ of Consultation agrees upon collective measures. These measures may, in each instance, include the use of armed force. Even after the consultative organ agrees to the collective measures, each State may continue taking measures of individual and collective self-defense including the use of armed force, for the right of self-defense is not terminated by the decision of the Organ of Consultation. Furthermore, the Organ of Consultation may decide that armed force is the collective measure that must be taken as a reaction against the armed attack. Then, each American State has a right, although not a duty, to use armed force until the Security Council of the United Nations has taken measures to maintain international peace and security. If the Security Council is paralyzed from acting, as by use of the veto power for example, then it would seem that measures of self-defense may continue indefinitely. If requirements of reasonableness, proportionality, and non-excessiveness are removed, the right of individual and collective self-defense may degenerate into a major war.

Despite these possible defects surrounding the exercise of the right of self-defense, some improvement has been made in relation to the right established by the United Nations Charter and the Rio Treaty over the right as it existed at general international law. At general international law, the final decision as to whether self-defense is exercised legally within principles surrounding its legitimate exercise often rests with the unilateral will of the individual State. Under the Charter and the Rio Treaty, a State resorting to self-defense does not possess the legal faculty of remaining the ultimate judge of the justification of its action. Individual States as well as fellow treaty signers have the right, upon request of the victim, to decide in the first instance as to whether they are in the presence of an armed attack calling for armed resistance, but this right is subject to some

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are lacking from the right of collective self-defense under article 51 of the U.N. Charter.
See Kunz, op. cit. supra note 14, at 877-78.

39 Id. at 876.
control and their actions are accountable to a higher authority. Without doubt the Organ of Consultation of the OAS may determine whether or not there has been a legitimate use of the right of self-defense, and if it decides in the negative, it could issue a call for cessation of hostilities. If this is disobeyed, the Organ of Consultation could order measures to be taken against the State or States acting illegally under the color of the right of self-defense. Even if the Organ of Consultation should find that there has been a legitimate use of the right of self-defense, the Security Council of the United Nations can also pass judgment on whether recourse to the right of self-defense was justified by the circumstances and whether the extent of the action was warranted. Nevertheless, its judgment, even if handed down by a majority of its members, could be valueless if one of the veto-bearing nations chose to overrule the decision of the majority. Under such circumstances, the regional organization and the member States thereof could continue to exercise the right of self-defense.

C. Geographical Limitations

Article 3 of the Rio Treaty makes no distinction in principle between an armed attack from inside the hemisphere and an armed attack from without the Western Hemisphere. Article 3 refers to all cases of armed attack against an American State without differentiating between an American or a non-American aggressor. Nevertheless, article 3 does require that when resort is to be had to its procedures and obligations the armed attack must occur within certain geographical limits no matter whether it originated from an American or a non-American source. The first paragraph of this article is generous in stating that an armed attack by any State against an American State shall be considered as an attack against all the American States which will bring into being the right of individual and collective self-defense. Paragraph three of this article declares that the provisions of article 3 are to be applied in case of any armed attack which takes place within the region described in article 4 or within the territory of an American State, but when the attack takes place outside of these areas, the provisions of article 6 shall be applied.

The language employed leads to the conclusion that the provisions

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It may be noted that there was some agitation at the Conference for the Maintenance of Continental Peace and Security that distinctions should be drawn between obligations and procedures in case of aggression by a non-American State against an American State and those in the event of aggressions between American States. See, e.g., proposals by the Argentine delegation, the Venezuelan and Peruvian Delegations, Report of the Delegation of the United States of America, op. cit. supra note 4, at 17.
of article 3 are applicable when an armed attack by any State occurs against the territory, the people, the armed forces, etc., of an American State within the region described in article 4. This region may be said to correspond to what the contracting parties believe to be the Western Hemisphere. However, an armed attack by any State against the territory of an American State outside the hemispheric security zone also brings into operation the procedures, the rights, and the duties of article 3. An armed attack against Hawaii, for example, which lies outside the security zone but which is the territory of an American State would come under the provisions of article 3. It should be stressed that under this latter type situation, where the attack takes place outside the described region, the armed attack must be directed against the territory of an American State. An armed attack of another nature outside the security zone will not come under article 3, but will fall under article 6.

When speaking of an armed attack against an American State, article 3 makes no distinction between American States which are members or which are not members of the Organization of American States. In all instances measures of collective self-defense are to be taken by the ratifying States. An American State such as Canada hereunder receives certain benefits even though it is not a member of the OAS and even though it has not signed the Rio Treaty. If Canada were subjected to armed attack against its territory or within the security zone, it could request the other American States as ratifiers of the Rio Treaty to come to its aid. And there is an obligation on the part of the other American States immediately to take measures to aid this non-member victim and to consult and agree on further collective measures to be taken against the aggressor.\footnote{See pp. 210-11 infra concerning the Rio Treaty and non-members. Kunz declares specifically that in case of armed attack within the region the Rio Treaty applies even though the attack is against a non-member such as Canada. Kunz, op. cit. supra note 4, at 116. See also in this respect, Radio Address by Senator Vandenberg, Sept. 4, 1947, 17 Dept. State Bull. 502, 504. For discussion, see Thomas and Thomas, op. cit. supra note 4, at 110, 157-60, 170-72, 178-79, 188.}

The region described in article 4 covers the territory of some non-American States and vast stretches of the seas surrounding the Western Hemisphere. As paragraph 3 of article 3 declares that the provisions of that article are to be applied in the case of any armed attack which takes place within the delineated security zone, there has arisen the question of whether the obligation of collective self-defense by the contracting parties to the Rio Treaty arises when a non-American State is subjected to an armed attack within this region, e.g., would an armed attack against a European colony in
the Western Hemisphere call article 3 of the Rio Treaty into play? There can be little dispute that an armed attack within the described region creates a special hazard to the peace and security of the continent and to all the American States which are members of the OAS, whether that armed attack occurs against an American or a non-American State. Consequently, the position has been taken that an armed attack within the region against a non-member, or non-American State brings into operation the obligations and procedures of article 3. Little difficulty is realized in reconciling this view with general international law or with article 51 of the United Nations Charter. Under general international law, it has long been recognized that parties to a treaty can confer benefits upon third states not signatory to the document. Moreover, under article 51, there is no requirement that collective self-defense be based upon a treaty arrangement. If collective self-defense is equated with collective defense, then under article 51 whenever a State is illegally attacked by an armed force it has a right of self-defense, and other states have a right to come to its assistance. Such an interpretation would obviously permit the contracting American States to come legally to the assistance of a non-American State under illegal armed attack. On the other hand, if collective self-defense means that there is a close integration between certain nations so that an attack on one amounts to an attack on others integrated with it, then, under article 51, the integrated nations can come to the assistance of the attacked State to preserve their own sovereignty or territorial integrity. Under this interpretation of collective self-defense, the American States could act to aid a non-American State attacked within the region even if they had not previously provided by treaty that an attack against all States, American or non-American, within the region would be equivalent to an attack against all of the contracting parties. All that would be required would be an integration between the nations, and the fact that a non-American State had territory within the designated security zone would seem to be sufficient proof of such integration permitting assistance by the American States in all cases of illegal armed attack within the area.

Although such a line of reasoning seems to remove any possible obstacle to American collective self-defense to aid a non-American victim of an illegal act of armed aggression within the region, diffi-
cultures still are encountered with the terminology of article 3 which in some respects fails to make clear the intention of the contracting parties.

In the first place, paragraph 1 of article 3 declares that an armed attack by any State against an American State is an attack against all the American States, and in such event the parties to the Rio Treaty agree to assist in meeting the attack in the exercise of the right of individual or collective self-defense. This language would seem to limit the right of self-defense insofar as the Rio Treaty is concerned to an attack against an American State. It can be argued that the broad language of paragraph 3 of article 3 which covers any armed attack which takes place within the region must be read in conjunction with paragraph 1; that is, that any armed attack refers only to an armed attack against the territory of an American State within the region or against the people, the land, sea or air forces of an American State. Such an interpretation would lead to a construction that article 3 is not applicable in case of an attack against a non-American State unless the attack took place against the people or the forces of an American State within the territory of a non-American State, e.g., if it were an attack against the United States forces in Greenland. Under this approach an attack against the territory of a non-American State within the region, or an attack against the people or forces of a non-American State within the region (e.g., upon a British battleship within the region) would not bring the provisions of article 3 into operation.

Another semantic difficulty here encountered is that paragraph 2 of article 3 requires that the preliminary measures of collective self-defense be subject to a request from the State or States directly attacked. If the words “State or States” relate back to paragraph 1, then it must mean only American State or States, and it is questionable if a non-American State could under such interpretation request and obligate American States to take immediate collective measures.

Of course the language of the treaty permits a meeting of the Organ of Consultation in the case of an armed attack against a non-American State within the region, for paragraph 2 calls for such a meeting without delay to agree upon measures of a collective character, and article 43 of the Charter of Bogota (the primary constitutional instrument of the OAS) specifically requires the chairman of the Council to call such a meeting immediately in the case of an armed attack within the territory of an American State or within the region of security. The calling of such a meeting is not contingent upon the request of an American State.
In view of these obstacles raised by the wording of the Rio Treaty, it would seem that for measures of collective self-defense to be taken on behalf of a non-American State under the treaty, one must conclude that paragraph 3 of article 3, referring to any armed attack within the region, materially modifies the first two paragraphs of the article to the extent that an armed attack against any State within the region, be it American or non-American, must be considered as an attack against all. This would support the conclusion that the phrase “on the request of the State or States directly attacked” signifies either an American or a non-American State.

Jurists have reached the conclusion that article 3 is applicable in the event of an attack against a non-American State within the region;44 nevertheless, it must be admitted that the intention of the parties was imperfectly expressed and argument can be made pro or con either view. The best that can be said is that article 3 is subject to varying interpretations in this respect and no definite answer can be forthcoming until the consultative organ clearly defines its powers upon presentation of an actual case.

Article 3 does create a limitation, geographical in nature, on its operation, for it does not apply to armed attack outside the security zone and outside the territory of an American State. This limitation was based upon the idea that an armed attack outside the region and not on the territory of an American State would not create such an immediate and direct danger to the hemisphere as to require individual assistance by all the American nations prior to consultation. As has been stated in this respect:

Outside the zone armed attack, which would necessarily be upon the land, air, or sea forces of an American State, would allow time for consultation, as would be true in cases that are not armed attack, but other types of aggression or threat of aggression, and consequently for agreement upon measures that should be taken to assist the victim of the aggression. There is a practical reason for this conclusion: the American States may have, and in fact some do have, international military obligations in zones far distant from their own mainland or island possessions, and may find themselves involved in incidents whose gravity cannot be determined at first, even by the State that has apparently suffered the aggression. There it could happen that a mistaken interpretation of the facts would lead the other American States to offer assistance that would be out of proportion to the gravity of the incident, and that might even be greater than the State directly attacked would expect. Or it might happen that an incident initially thought to be of minor importance, even by the State attacked, would

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44 Ibid.
become a much more serious threat, which could not be evaluated except by a formal explanation of the facts to the other States bound by solidarity. Prior consultation is obligatory in that case, and the Treaty made it so. Armed attack within the geographical security zone, on the other hand, does not present that uncertainty, in the first place; in the second place, it is so great a threat to collective security that, without prejudice to the procedures later outlined in consultation, it would be necessary to take individual measures immediately in defense of the victim. (Emphasis added.)

The geographical limitation is not of great moment. It does relieve the contracting parties of the obligation of collective self-defense in the preliminary stage, i.e., of the duty to take immediate individual measures to aid the victim of an armed attack upon the victim's request. The right of individual self-defense still exists for the State subjected to the armed attack outside the zone; the right of collective self-defense in the preliminary stage would still exist if other American nations chose to take action to aid the victim of armed aggression; and both a right and a duty of collective self-defense arise at the next stage of collective activity, for article 6 of the Rio Treaty requires an immediate meeting of the Organ of Consultation to agree on measures which must be taken to assist the victim of an aggression. These measures may legally include the use of armed force or measures of an economic or diplomatic nature and the signatory States are bound to take the measures so prescribed except that no State can be required to use armed force against its will.

III. ACTION IN THE EVENT OF OTHER SITUATIONS WHICH MAY ENDANGER THE PEACE

The second type of situation contemplated by the Rio Treaty is concerned with an act of aggression which is not an armed attack, an extracontinental or intracontinental conflict, or other fact or situation that might endanger the peace of America, provided that such aggression, conflict, fact, or situation affects the inviolability, or the integrity of the territory, or the sovereignty or political independence of any American State. When such situation arises, under article 6, the Organ of Consultation shall meet immediately in order to agree upon the measures which must be taken in the case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the continent.

43 Report on Results of Conference, op. cit. supra note 4, at 37.
Under the Charter of the United Nations, collective self-defense is not limited to regional arrangements for it stands by itself in article 51, which stipulates that "nothing . . . shall impair the inherent right of . . . collective self-defense if an armed attack occurs . . . ."

Although the Rio Treaty was drawn up mainly with reference to article 51, it must be remembered that it is also an integral part of a regional arrangement and must conform with provisions of articles 52-54 of the United Nations Charter. Article 51 permits collective and individual self-defense only in the case of armed attack, but the Rio Treaty also provides for measures against aggressions which are not armed attack. In case of aggression which is not an armed attack, the Organization of American States is not free to take those measures in the exercise of collective self-defense which it would be free to take in cases of aggression that constitute an armed attack. The use of force in the event of an aggression is a prerogative of the United Nations and not of the inter-American system except with respect to the right of self-defense against armed aggression.

Take the following hypothetical case as an example. American State A complains to the Council of the Organization of American States that American State B is in the process of committing an aggression against A which does not consist of an armed attack but which threatens the inviolability or the integrity of the territory or sovereignty or political independence of A. Under the Rio Treaty all signatories are duty-bound to meet in consultation in order to agree on the measures which must be taken to assist the victim. The Rio Treaty makes no reference to obtaining Security Council approval in this instance.

Article 52, paragraph 2 of the UN Charter commits the members of the United Nations to make every effort to achieve pacific settlement of local disputes through regional arrangements or agencies, but article 53 declares that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council."

If, in the hypothetical case set out above, after having explored all peaceful methods of settlement such as conciliation or arbitration and having failed, the consultative organ determines to take action against State B under article 8 of the Rio Treaty which sets forth the coercive measures such as economic and diplomatic measures and

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46 See p. 178 supra on regional arrangements.
the use of armed force, can the OAS take action under the Rio Treaty without violating the UN Charter?

If the Organ of Consultation orders only measures relating to economic or diplomatic relations, in other words "peaceful" measures, and if the term "enforcement action" mentioned in article 53 of the Charter refers only to the use of armed or physical force, then probably the OAS need not request authorization of the Security Council to take such measures, for article 52, paragraph 3 of the Charter permits "pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council." But should the Organ of Consultation of the OAS decide that the unarmed aggression of American State B against American State A can be stopped only by force of arms, it is then clear that authorization of the Security Council of the UN is required. Such authorization can come about only when all the permanent members of the Security Council refrain from using the veto. This means that a permanent member of the Security Council from outside the area where the regional arrangement applies, and one not party to the regional agreement, is able to prevent such action from being taken even though a two-thirds majority of the members of the OAS is in favor of such action and even though all other members of the Security Council may favor it.

Although the United Nations Charter is specific in saying that no regional arrangement or agency may take "enforcement action" without the authority of the Security Council, it would appear logical to assume that in the light of the Uniting for the Peace Resolutions passed in 1950, the General Assembly of the United Nations may call upon disputing States to settle their disagreements through the use of a regional agency or arrangement if the Security Council, because of the barrier of the veto, is unable to act when a threat to the peace or an act of aggression occurs. The Uniting for the Peace Resolutions are broad enough to permit the General Assembly to authorize the members of regional pacts or agencies to undertake "action" at its request. These resolutions stated that in the event of a threat to the peace, a breach of the peace, or an act of aggression which the Security Council, because of lack of unanimity among its permanent members, failed to stop by taking necessary action, the General Assembly would consider the matter immediately with a

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47 See pp. 204-06 infra.
48 See Thomas and Thomas, op. cit. supra note 4, at 173. See also McDougal and Gardner, The Veto and the Charter: An Interpretation for Survival, 60 Yale L.J. 258 (1951).
view to making appropriate recommendations to members for collective measures including measures of force. The issue of the legality of these resolutions was resolved with the reasoning that the whole United Nations organization, and not the Security Council alone, was responsible for the maintenance of the peace of the world; that the resolutions were legal under the provisions for collective self-defense; and that although the Charter does limit the powers of the General Assembly, it does not limit its competence, for it is given competence in the whole field which the Charter covers. The General Assembly is limited to discussion and recommendation, but it is not limited as to the extent of its discussion or as to the type of recommendation it may make.

Article 6 of the Rio Treaty also covers extracontinental or intracontinental conflicts or any other fact or situation that might endanger the peace of America and requires the signatories to meet in consultation in order to agree upon measures which should be taken for the common defense and for the maintenance of the peace and security of the continent when such situations arise. Here again, the Rio Treaty makes no reference to obtaining approval for the measures upon which it decides from the Security Council. But where in instances of aggression (either armed or unarmed) the Rio Treaty establishes a legal obligation to assist the victim, in the case of situations or conflicts which might endanger continental peace but are other than actual aggressions, only the duty to consult arises, and the taking of other measures appears to be optional with the Organ of Consultation of the OAS. Nevertheless, all signatory States are under the obligation to accept decisions of the Organ of Consultation49 with respect to the application of measures in cases of situations other than aggressions with two exceptions: the Organ of Consultation cannot require the use of armed force without authorization from the Security Council, except perhaps under the Uniting for the Peace Resolutions; and even with such authorization, no State is required to use armed force without its consent.50

In summation, the provisions of article 6 of the Rio Treaty become operative in the following hypothetical cases:

(1) Armed attack by any State against an American State outside the delineated Security zone and not within the territory of an American State;

(2) Aggression which is not an armed attack whether inside or

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49 Rio Treaty art. 20.
50 Ibid.
outside the hemispheric zone provided such aggression affects the "inviolability or the integrity of the territory or the sovereignty or political independence of any American State"; and

(3) An extracontinental or intracontinental conflict or any other fact or situation that might endanger the peace of the Americas, whether within or without the security zone and again provided that the inviolability or the territorial integrity or the sovereignty or political independence of any American State is affected.

Under hypothesis (1), an obligation to consult is placed upon the parties followed by an obligation to agree upon measures to aid the victim, for the Organ of Consultation is required to meet immediately and it must take collective measures if it finds an armed aggression affecting the sovereignty, etc., of any American State. Under hypothesis (2), there also arises the duty to consult immediately and to agree upon measures which must be taken to aid the victim. But under hypothesis (3), only a duty to consult arises, and the taking of other measures appears to be optional with the Organ of Consultation.

The meaning of the word "aggression" becomes a matter of prime importance in cases involving hypothesis (2). Although great controversy exists as to its meaning at international law, the Rio Treaty tries to avoid a dispute over this issue by article 9 which set forth two unquestionable examples of aggression and declares that the Organ of Consultation is empowered to characterize other acts as aggression. The two examples set forth by article 9 are unprovoked armed attack against the people, or the land, sea, or air forces of a State, as well as invasion of the territory of a State by the armed forces of another State. Even though there is confusion in international legal terminology as to the exact extent of "aggression," there is agreement that its definition would include at least the illegal use of or threat to use armed force by one State against another. It is evident from the terms of article 9 that the Rio Treaty recognizes that the actual illegal use of armed force is an aggression. Moreover, since the Rio Treaty condemns not only the actual use of but also the threat to use armed force, and since general international law recognizes that aggression includes the threat to use force, it reason-

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ably can be assumed that a threat of force is an aggression which is not an armed attack and falls under hypothesis (2).

To limit aggression only to these instances, however, is too narrow an approach. There have been great refinements in the techniques of aggression in the first half of the twentieth century, and the trend appears to be to wipe out the territorial integrity or political independence of a State by means far more subtle than armed force or even a threat of force. Thus, use of or threat of armed force cannot be said to exhaust acts which the consultative organ may characterize as aggression. Except for the examples contained in the Treaty, it provides no rules or criteria as to what constitutes aggression inasmuch as its drafters felt that the Organ should be left free to characterize acts as aggressions when confronted with the facts of a particular case. Hence there is nothing to prevent the Organ of Consultation from extending the concept to acts of States which are often called "indirect aggression" such as the fomenting of civil strife in other nations through the use of hostile propaganda, fifth columns, infiltration of the political parties of the nation sought to be destroyed, or the organization, encouragement, or toleration of armed bands operating against another state, as well as interventions by means of economic or political coercion in order to obtain advantages.

Indeed, it seems that the Organ of Consultation has equated aggression to intervention which has been vigorously condemned by inter-American treaties (see, for example, articles 15 and 16 of the Charter of Bogota), for in the second case involving a dispute between Haiti and the Dominican Republic, the Council of the OAS, acting as a provisional organ of consultation, faced with facts involving intervention by certain Caribbean States in domestic revolutionary situations in other States declared:

Even though the said facts fortunately did not result in the violation of international peace, they did very seriously weaken American solidarity; and if they were to persist or recur, they would give occasion for application of the procedures of the Inter-American Treaty of Reciprocal Assistance [the Rio Treaty] in order to protect the principle of non-intervention and to ensure the inviolability or the integrity of the territory or the sovereignty or the political independ-
ence of any American State against *aggression* on the part of any State or group of States. (Emphasis added.)

The Secretary General of the Organization of American States in his Annual Report for 1949-1950 stated in this connection:

Actually, this affirmation creates nothing more nor less than the teeth that were lacking in the inter-American treaties and conventions which, in the Committee's judgment, were violated in the cases it investigated. It is almost the same as saying that intervention, as condemned in those treaties and conventions, is one of the acts of aggression that give occasion for applying the measures contemplated by the Treaty of Reciprocal Assistance. No future meeting of the Organ of Consultation, in similar cases, could fail to be guided by this criterion if there should be any doubt as to the application of the Rio de Janeiro Treaty, or if it should be necessary to define the aggressor in the circumstances covered by Articles 6, 7, and 9 of that Treaty. Indeed, the Council was acting under the power of Article 9, which authorizes it to characterize acts other than armed attack and invasion as acts of aggression.

Situations which fall under the third type of hypothetical cases gives rise only to the duty to consult on the part of the signatories of the treaty. No duty is created by which the parties are required to take collective measures prior to consultation. As the consultative organ is required to meet and agree upon measures which should be taken for the common defense and for the maintenance of hemispheric peace, it can well be argued that if the Organ agrees that the situation warrants the taking of measures, the parties to the treaty are required to carry out the Organ's decisions, unless, of course, that decision involved the use of armed force. The Organ of Consultation could not legally request measures involving the use of armed force without United Nations authorization except in hypothesis (1) where the right of collective self-defense arises automatically. Hypotheses (2) and (3) would generally require the the application of measures not involving the use of armed force.

### IV. Specific Measures To Be Taken

Article 8 of the Rio Treaty enumerates measures which are to be taken by the member States individually or on which the Organ of Consultation may agree in cases of aggression or threats thereof. These measures are quite similar to those listed in article 41 of the Charter of the United Nations except that article 8 adds as a

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measure the use of armed force which under the United Nations Charter was dealt with separately in article 42. The measures applicable for purposes of the Rio Treaty are: the recall of chiefs of diplomatic missions; the breaking of diplomatic and consular relations; the partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and the use of armed force. When the Organ of Consultation decided by a two-thirds vote\textsuperscript{59} to employ any or all of these punitive measures, each of the contracting parties is required to carry out the decision even though it may have voted against the measure, with the exception that no state is required to use armed force without its consent.\textsuperscript{57} The Organ of Consultation is confined in all instances but one to agree upon these specified measures.\textsuperscript{58}

However, in the case of a conflict among American States, without prejudice to the right of self-defense in conformity with article 51 of the Charter of the United Nations, the consultative organ is required by article 7 of the Rio Treaty to call upon the contending States to suspend hostilities and restore matters to the \textit{statu quo ante bellum}. Although the Rio Treaty makes no fundamental distinction between an American or non-American aggression, a special procedure is provided in article 7 in case of such an inter-American conflict. The reason for this distinction is simple; in case of a non-American attack launched against a nation of this hemisphere, an order by the Organization of American States to suspend hostilities and restore matters to the \textit{statu quo ante bellum} would in all probability prove completely unsuccessful. There is little that can be done other than to meet the attack in the exercise of individual and collective self-defense. On the other hand, when conflict occurs between American States so closely bound together, it is within the realm of possibility that an order from the Organ of Consultation would induce a cessation of hostilities even after a resort to armed force.\textsuperscript{59}

This order to suspend hostilities and restore matters to their former position is called by article 7 a pacifying action. If it fails, the Organ of Consultation may, of course, apply collective measures. Moreover, the rejection of the pacifying action "will be considered in determining the aggressor and in the application of the measures which

\textsuperscript{58} Rio Treaty art. 17; see discussion contained in note 7 supra.
\textsuperscript{57} Rio Treaty art. 20.
\textsuperscript{59} Report on Results of Conference, op. cit. supra note 4, at 42; Report of Delegation of the United States of America, op. cit. supra note 4, at 27.
the consultative meeting may agree upon." This language of the article engenders some confusion. If, for example, hostilities occur between American State A and American State B and it is clear beyond all doubt that State A was the original aggressor, obviously a rejection of the pacifying action by A would bring about determination that A was the aggressor all along. But suppose B rejects the pacifying action, would it be branded as the aggressor? The language of article 7 in this respect only makes sense in a situation where there is doubt as to just which State, A or B, is the aggressor. In an equivocal situation the Organ in its consideration would, naturally, be influenced by a rejection of the pacifying action, and that rejection could well tip the scales toward consideration of the rejectee as the aggressor. Nevertheless, it cannot be conclusively presumed that in all instances an American State (engaged in hostilities with another American State) which rejects the order to suspend hostilities will automatically be named the aggressor.60

Article 7 also requires the consultative organ, after calling for a suspension of hostilities, to "take in addition all other necessary measures to re-establish or maintain inter-American peace and security and for the solution of the conflict by peaceful means." Hereunder wide authority is given to the organ as to the peaceful measures it may take. If the situation so warrants, particularly in the event both parties heed its orders to cease hostilities, the organ of consultation could seek to induce the parties to resort to methods of peaceful settlement such as negotiation, arbitration, or conciliation.

It is obvious that for purposes of the Rio Treaty, the measures listed in article 8 are enforcement in nature. They are collective coercive measures to be taken to maintain the peace of the Western Hemisphere. The measures involving the use of armed force, as well as those of diplomatic or economic nature, are measures necessary to make effective the decisions of the Organ and to repel an armed attack for purposes of article 3, or to repel aggression and to provide for the common defense and the peace and security of the continent for purposes of article 6.61 These are measures by which the Organ, through commands to the contracting parties, seeks to enforce its decisions upon States breaching or threatening to breach the peace of the Americas. In reality, these measures are nothing more or less than coercive measures of a system of hemispheric collective security.

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60 Garcia-Mora, op. cit. supra note 4, at 14, criticizes article 7 and declares that it seems to have been added as an afterthought.
61 See, e.g., Kelsen, op. cit. supra note 14, at 724, where he characterizes such measures under the U.N. Charter as enforcement measures.
Measures taken in pursuance of the right of collective self-defense in case of an armed attack are, practically speaking, regional collective enforcement action against a State committing the attack. No real difficulty as to the nature of these measures is here encountered, for article 51 of the United Nations Charter permits measures to be taken in the exercise of the right of collective self-defense until the Security Council takes the necessary steps to maintain peace and security.

Difficulty does exist, however, as to whether measures can ever be taken by the Organization of American States without approval of the Security Council in cases arising under article 6 where there is no armed attack. Here, no right of collective self-defense would exist under article 51 which speaks only of armed attack. Furthermore, article 53 of the United Nations Charter declares that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council." Clearly this would prohibit the use of armed force in the face of an aggression or situation which is not an armed attack, unless the Security Council authorized it. But could the OAS call on its members to use measures of diplomatic or economic coercion in this situation? This would depend, to a great extent, upon the exact definition given to "enforcement action" as used in article 53 of the UN Charter. In this connection, the Report of the Director General of the OAS on the Rio Conference stated:

In the Charter of the United Nations there are two types of measures, closely coordinated with the procedure to be followed in the Security Council when faced with threats of aggression, with the refusal of the States to comply with the recommendations of the Council, or with a breach of the peace. The first type is that of Article 41, according to which the Security Council is empowered to decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it is empowered to call upon the members of the United Nations to apply such measures. But if these measures are or have proved to be inadequate, coercive measures will next be applied, with the use of air, sea, or land forces. There is a clear distinction for the reader of the Charter between the measures of Article 41 (enforcement action) which are not coercive, in the sense that they lack the element of physical violence that is closely identified with military action, and those of Article 42. Enforcement action, with the use of physical force, is obviously the prerogative of the Security Council, with a single exception: individual or collective self-defense. But the

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62 Kelsen would apparently say that all such measures of a coercive nature are enforcement measures; hence, measures of a diplomatic or economic nature as well as of armed force would be forbidden by article 53. Kelsen op. cit. supra note 14, at 327, 724.
other measures, those of Article 41 are not; it may even be said that it is within the power of any State—without necessarily violating the purposes, principles, or provisions to the Charter—to break diplomatic, consular, and economic relations or to interrupt its communications with another State.\(^3\)

Therefore the Director General of the Organization of American States concluded that measures not involving physical violence can at any time be legally employed by the OAS without violating the provision of the United Nations Charter requiring that all “enforcement action” by a regional organization or agency be taken only under the authorization of the Security Council.\(^4\)

V. MEASURES AS SANCTIONS

Can the measures which are to be taken under article 6 of the Rio Treaty be regarded as sanctions—actions on the part of the inter-American community taken against a delinquent State which has violated the law? It is a generally accepted principle of general international law that sanctions are permitted only to uphold or enforce the law as a reaction against a State guilty of a breach of the law.\(^5\) This qualification must, of necessity, refer to the application of sanctions by a single nation as well as to collective sanctions by an organization under an international treaty. That being the case, any treaty providing for enforcement measures in the nature of sanctions, if it is to be interpreted as being in conformity with general international law, can only stipulate that the enforcement measures to be taken must be taken against conduct by a nation or nations which constitutes a breach of international law. Otherwise the treaty cannot be held to be in conformity with general international law.\(^6\) This does not mean to imply that only conduct which is prohibited or proscribed by general international law can be the object of legal sanctions, for a breach of international law may occur when a nation does not fulfill its obligations which are set forth in a treaty; that is, there may be a breach of particular international law (treaty law) as well as of general international law.

\(^{63}\) Report on Results of Conference, op. cit. supra note 4, at 41-42.
\(^{64}\) Such reasoning, of course, reaches a rather anomalous result in that measures meant to be of an enforcement and coercive character under the U.N. Charter when taken by the Security Council are not so considered when taken by a regional agency like the OAS.
\(^{65}\) See Hindmarsh, Self Help in Time of Peace, 26 Am. J. Int'l L. 315 (1932); Kelsen, op. cit. supra note 9, at 22-23.
\(^{66}\) Treaties are one method used to bring about a change in the general international legal relationships between the signatories. Our inquiry here is not related to the legality of the measures established by the treaty, but seeks merely to discover whether or not the measures in these particular treaties fall within the sphere of true sanctions.
Article 1, paragraph 1 of the United Nations Charter clearly stipulates that one of the purposes of the United Nations is to "take collective measures . . . in conformity with the principles . . . of international law." Consequently, any enforcement measures, whether by armed force or by other means, when taken by the United Nations must comply with the requirements set up for sanctions under general international law. The actions must be taken as measures to uphold the law, as a reaction against a State guilty of a breach of law. Yet it can be questioned if all the collective enforcement actions permitted under the Charter can fulfill the requirements of true sanctions, for the Charter makes no clear stipulation that enforcement action is permitted only against a State or States guilty of a breach of the law. Since the Charter appears to contain no rule that the Security Council must definitely take action against the nation which is legally wrong, it has been deduced that the Security Council is free to decide against whom the enforcement action shall be directed, and it may take into consideration all surrounding factors, e.g., the legal rights of the parties involved, the deeper substantial rights of those parties, and the most practical means of ending the situation speedily. It is conceivable that coercive measures may be directed against both contending parties at once. As a result it is often thought that the enforcement measures taken by the Security Council under the authority of the UN Charter may not fulfill the requirements of true sanctions.  

While this issue presents some problem under the UN Charter, it would seem that the measures of the inter-American community are sanctions, although of course they may not be taken against all violations of law, but only against certain violations of the law. It should be remembered that the particular treaty law of the Americas prohibits the use of sanctions (interventions) by individual states, but it does not prohibit their use by the OAS acting within the terms of the Rio Treaty.  

The Rio Treaty was drafted in such a manner that it qualifies both as a regional arrangement under chapter 8 of the UN Charter and as a part of collective self-defense under article 51. Measures taken under article 3 of the Rio Treaty hardly can be considered

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67 See Kelsen, op. cit. supra note 14, at 724.
66 See Thomas and Thomas, op. cit. supra note 4, at 140. But see criticism by Kunz of the authors' concept of measures of the OAS as having a limited character of sanctions. Kunz, Book Review, 50 Am. J. Int'l L. 974 (1956).
69 See note 5 supra. See also, Padilla, The American System and World Organizations, 24 Foreign Affairs 199 (1945); Reid, Regionalism under the United Nations Charter, 419 Int'l Council 123 (1946).
sanctions inasmuch as self-defense is self-help against the illegal use of force, not other violations of the law, and is exercised only to avert or suppress the attack. On the other hand, the object of sanctions is to obtain redress or reparation from the wrongdoing State, to force a return to legality, to avoid new offenses, and to uphold or vindicate international law.

Technically, the measures exercised in the right of collective self-defense seem similar to sanctions, particularly if they are considered as measures to uphold or vindicate the law. However, such a view does not appear to be the correct view of collective self-defense under either the UN Charter or the Rio Treaty. Collective self-defense is not a right to intervene to uphold or vindicate the law as such. It, like individual self-defense, may be exercised only against an illegal attack and not in instances of all violations of legally protected interests of a victim state. Too, the Rio Treaty declares that an attack against one American State is an attack against all, thus, those States coming to the aid of the attacked State apparently are to be considered as repelling an attack against themselves. Self-defense, whether individual or collective, must, as in municipal law, stand alone both under the Charter of the UN and under article 3 of the Rio Treaty. Self-defense cannot be termed a sanction to uphold the law, it is merely that minimum of self-help by a victim permitted by any legally organized community to repel an attack until the lawful authorities can take over; it is up to the lawful authorities to sanction the attacker.

Under the Rio Treaty, therefore, sanctions must relate to enforcement measures taken in pursuance of article 6, that is in situations not involving illegal armed attack. Moreover, since armed force may not be used in such situations by the Organization of American States without the consent of the United Nations, armed force as a sanction is for the most part ruled out.

Article 6 envisions certain types of situations—aggressions which are not armed attack, extracontinental or intracontinental conflicts, and other facts or situations that might endanger the peace of the Americas. In the case of aggressions which are not armed attack, the OAS is to take measures to assist the victim of aggression if that aggression affects the inviolability or the integrity of the territory or the sovereignty or political independence of an American State. Although, as has been pointed out, the term "aggression" has many disputed definitions in international law, whatever definition is chosen, an aggression is still an unlawful act under general inter-
national law, and consequently any measures taken by the OAS to assist the victim of aggression would automatically be measures against the nation breaching international law and would qualify as true sanctions.

Under the other types of situations foreseen by article 6, the Organ of Consultation shall meet in order to agree on measures which should be taken for the common defense and for the maintenance of the peace and security of the continent. In instances of this nature, the Organ of Consultation need not take action against the nation legally in the wrong. It might be claimed that whatever measures are employed here would not be sanctions, for they would not seem to be measures to uphold the law, but rather would seem to be measures of common defense and to maintain the peace and security of the continent. But under article 2 of the Rio Treaty, the signatories undertake to submit every controversy which may arise between them to methods of peaceful settlement. Hence, if a fact or situation arises between two American States, they are under a legal duty to settle the issue peacefully, and if they fail to do so with the result that their failure or refusal brings about a threat to the peace of the Americas, any measure which the Organ of Consultation decides upon, even though applicable to both nations, would be in the nature of true sanctions applied against nations violating the particular international law established in the Rio Treaty.

If one of the nations agrees to settle the dispute or controversy by peaceful means, and the other nation refuses, then the final portion of article 7 comes into play to the effect that the rejection of the pacifying action will be considered in the determination of the aggressor. And here too, any measures applied by the Organ of Consultation would then be in the nature of sanctions. Moreover, if both States refused the pacifying action, it would be possible to label both States as aggressors and to take collective action in the nature of sanctions against both.

If such an intra-American conflict occurs between an American State and a non-American State, or between two non-American States within the hemispheric zone, the matter is not so clear. It can well be argued that in a situation where it becomes necessary to utilize measures against non-members threatening to breach the peace within the region, such measures could not be called sanctions to enforce the law, but must be measures for the maintenance of hemispheric peace and security. On the other hand, the Charter of the United Nations definitely creates a legal duty for all its mem-
bers—which include most of the nations of the world—to settle their disputes by peaceful means in a manner which does not endanger international peace and security. If a member State of the UN violated this duty, then the whole international community has a right to act jointly against the State breaking the law, and it would seem that the whole international community could be represented by a smaller unit, such as a regional organization like the Organization of American States, permitting it to sanction the law-breaking nation.

As to an extracontinental conflict which is an aggression or other situation between two non-American States outside the security zone but disturbing the peace so as to affect the territorial integrity or political independence of an American State, it can be contended that measures taken by the consultative organ are simply measures to defend the continent and maintain its peace and security and not measures to enforce the law, for in the case of an aggression, the right to repel such an aggression would be within the exclusive jurisdiction of the United Nations. But again, the extracontinental aggression or threatened breach of the peace would be a violation of the treaty law laid down in the United Nations Charter, and here as well as in the situation above, the regional organization could represent the larger organization so its measures might be equated to sanctions against a violation of the law if that violation affected the members of the regional organization.

If the measures of the Rio Treaty can under the outlined situations be regarded as sanctions, it must be emphasized that they are sanctions of an extremely limited scope applicable against only certain violations of the law. They are to be applied only where there is involved an aggression or other situation bringing about a breach of the obligation to settle disputes peacefully or a breach of the obligation to refrain from breaking or threatening to break international peace.

VI. THE RIO TREATY AND NON-MEMBERS

The Rio Treaty was drafted in such a manner as to affect third states not parties to the agreement. As mentioned before, article 3 confers benefits or rights on all American States, whether such States ratified the treaty or not, whenever an armed attack occurs against

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70 U.N. Charter art. 2, para. 3.

71 See Thomas and Thomas, op. cit. supra note 4, at 119-60.

72 See, e.g., Garcia-Mora, op. cit. supra note 4, at 11 n.61.
an American State. Moreover, article 3 probably confers benefits on non-American, non-member States when an armed attack occurs against such states within the security zone, for the contracting parties felt that any armed attack within the region creates such a danger to all the American States that it warranted defensive action. Under article 6, if any American State is subjected to an aggression which is not an armed attack, the other American States are obligated to consult and agree on measures to aid the victim. No distinction is created between contracting or non-contracting parties. The sole requirement is that the victim be an American State.

A customary rule of general international law is found in the adage *pacta tertiis nec nocent nec prosunt*—treaties do neither harm nor good to third parties. According to this principle, a treaty concerns only the contracting parties, and, as a rule, imposes no rights or duties upon third States not parties thereto inasmuch as it would be incompatible with the equality of sovereign States that parties to a treaty should be able to bind third States in any manner without their consent. Nevertheless, international law has slowly come to the realization that many treaties do affect relations of third States, although courts and writers cautiously warn that the practice is so unusual that "such results cannot be lightly presumed."

Today, it is generally accepted that it is legally possible for contracting States to create rights in favor of third States if the intention of the contracting parties to do so is very clear. Controversy does exist, however, as to the exact nature of the right so conferred and the obligations of the contracting parties. Although Kelsen declares that a treaty cannot impose obligations upon a non-contracting or non-consenting State because this would do violence to the principle of sovereignty or equality of States, this rule would not apply to a treaty which only conferred rights upon a third State without exacting obligations from that State. Signatories of a treaty may by the terms thereof be legally bound to live up to the rights

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73 Supra pp. 192-95.
74 Ibid.
75 If the consultative organ took action in the case of an extra or intracontinental conflict or any other fact or situation endangering the peace of the Americas, it might be that such action would aid a non-member; the action would not in such an instance be taken to aid a victim, but to provide for the common defense and for the maintenance of the peace and security of the continent.
77 Schwarzenberger, International Law as Applied by International Courts and Tribunals 194 (2d ed. 1941). See also Kelsen, op. cit. supra note 9, at 345; Thomas and Thomas, International Treaties 64 (Monograph 1950).
78 Kelsen op. cit. supra note 9, at 349.
79 Ibid.
which the treaty conferred upon the third State, and such is the case as to articles 3 and 6 of the Rio Treaty where the contracting parties conferred stipulated benefits upon non-signatory States.

Nothing in the United Nations Charter prevents this, for measures of collective self-defense under article 51 need not be based upon a treaty arrangement, and the benefits of such collective self-defense may be bestowed upon a non-contracting American State subjected to an armed attack or to any non-contracting State subjected to an armed attack within the delineated security zone. Under article 6 of the Rio Treaty, if a non-ratifying American nation is subjected to an unarmed aggression, the measures of the Organ of Consultation are not taken under the collective self-defense provisions of article 51 of the UN Charter, but under the regional arrangement provisions which give the regional agency the power to act within the region and does not confine the grant of power to action only within the regional agency or arrangement. Of course, measures involving the use of armed force are not conferred hereunder without the consent of the United Nations.

In a certain sense, the Rio Treaty imposes obligations upon non-contracting parties, that is, a duty seems to be incumbent upon all States not to commit armed attack against any American State or in fact against any State within the security zone, nor to commit aggressions which are not armed attacks or other acts which endanger the peace of the Americas and which affect the territorial integrity, sovereignty, or political independence of an American State. If such situations occur, collective measures will be taken by the OAS under the right of collective self-defense to aid the victim of aggression and repel the aggressor or to provide for the common defense and for the maintenance of the peace and security of the continent. Under the Rio Treaty, no distinction is made as to whether the delinquent State, the disturber of the peace, against whom the measures may be taken is a ratifying or non-ratifying State. Even though benefits may be conferred upon third States, it can be questioned whether a treaty can impose obligations upon non-contracting parties, and it might well be questioned whether enforcement measures can be taken against non-ratifying parties.

If the Rio Treaty stood alone, difficulties might well be encountered when attempting to justify the legality of measures taken by the OAS under the fact situations it was designed to cover. But

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80 Thomas and Thomas, op. cit. supra note 4, at 170-71, 178-79.
81 See discussion pp. 183-191, supra, on self-defense under article 3, and for discussion falling under article 6, see pp. 195-201, supra.
these difficulties vanish in view of the fact that the Rio Treaty is buttressed by the United Nations Charter signed by most of the nations of the world. That Charter makes the use of force illegal and places a duty upon its signatories to settle their disputes peacefully and not to breach or threaten to breach the peace. As article 51 of the Charter establishes the right of collective self-defense in case of an armed attack, recognizing the principle that an attack against one State is an attack against all other States closely integrated with it, any action taken by a regional agency or arrangement against a non-contracting nation guilty of an armed attack in the described region is legal under the rules of the United Nations Charter. A nation which is a signatory of the UN Charter has bound itself to obey the injunctions of the Charter and consented to the right to be subjected to the exercise of collective self-defense on the part of other nations should the nation breach the treaty.

Under the Rio Treaty, the right to take measures against non-ratifying States does not stop with measures relating to collective self-defense, for measures can also be taken against non-contracting aggressor States or States disturbing the peace of the continent under article 6. The right to enforce this section of the Rio Treaty against non-signatories is derived directly from article 52 of the United Nations Charter:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations.

All ratifiers of the United Nations Charter thereby agree to the possibility that they may become subject to regional arrangements or agencies dealing with matters within the region relating to the maintenance of international peace. The United Nations Charter establishes no prerequisite that a nation within a particular region must be signatory to the pact establishing the regional arrangement or agency. The only prerequisites are that the matter must be appropriate for regional action, and the action taken must be consistent with the purposes and principles of the UN. By ratification of the United Nations Charter, a nation falling within a region in which there is a regional arrangement or agency has indirectly given its consent to intervention by that agency in matters in its region relating to the maintenance of peace.

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88 U.N. Charter art. 2, para. 3-4.