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THE PEACEFUL SETTLEMENT OF DISPUTES THROUGH
THE ORGANIZATION OF AMERICAN STATES.

by
William L. Krieg



A Study Prepared for the
Department of State
under its
External Research Program

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FOREWORD

The 1969 war between El Salvador and Honduras, and the possibility of similar outbreaks in the 1970's between members of the Organization of American States (OAS), led the Department of State to examine the record and prospects of peaceful settlement of disputes through the OAS. The Department invited William L. Krieg, a retired Foreign Service officer with extensive Latin American and OAS experience, to undertake the study under the guidance of the Office of Research and Analysis for Africa and the American Republics, Bureau of Intelligence and Research (INR/RAA).

The study is one of a number done by scholars and research institutions for the Department of State under its External Research Program to supplement the Department's research capabilities with the findings and views of independent experts. The External Research Program is planned and coordinated by the Department of State Research Council and managed by INR's Office of External Research.

The attached paper summarizes Mr. Krieg's study. The full study is available on loan from the Foreign Affairs Research Documentation Center, Office of External Research, Room 4111, SA-15, Tel. No. 235-9422, under FAR No. 19667-S.

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SUMMARY

Latin American fears of US intervention have long prevented the realization of Bolivar's vision--dating back to the early 19th century--of an effective inter-American organization for settling disputes peacefully.

The Good Neighbor Policy in the 1930's, and US and Latin American fears of common enemies during and after World War II, brought the two together into an effective system of collective security under the Rio Treaty of 1947. Using practical and flexible methods, the treaty, supplemented by the Inter-American Peace Committee (IAPC), permitted the Organization of American States (OAS) to function with increasing effectiveness for about a decade.

Another attempt at a peaceful settlement mechanism, the 1948 Pact of Bogota, was too rigid and excluded disputes over property rights. It has been ratified by only 14 countries, not including the United States.

Starting in the mid-1950's, there were renewed Latin American fears of US intervention, illustrated by three cases in particular:

- US efforts in 1954 to have the OAS take a strong stand against international Communist activities in Guatemala, and the subsequent overthrow of the Guatemalan Government, which undermined Latin American confidence in US adherence to nonintervention.
- The rise of Castro in Cuba in 1959, and the subsequent pulling and tugging within the OAS between those who emphasized security against communism and those who feared US intervention.
- The Dominican civil war of 1965, where OAS involvement--although constructive and successful in many ways--appeared to many Latin countries to be a shield for US interventionist purposes.

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The efforts to deal with these problems overloaded the peacekeeping machinery and shattered inter-American consensus, thus detracting seriously from OAS effectiveness.

Two more recent developments, however, showed the continuing usefulness of the OAS--operating within a limited range--in peaceful settlement matters:

- In 1969, acting under the Rio Treaty, the OAS stopped the war between El Salvador and Honduras--the first armed conflict between American states since 1941.
- In 1972, interpreting its powers broadly, the OAS for the first time helped mediate a dispute involving a non-member state, the United Kingdom, over an issue with Guatemala (the Belize question).

In the future the OAS is likely to have to deal with problems more complex than boundary disputes. Arising from the struggle for development and touching on sensitive questions of sovereignty, such problems as law of the sea, foreign private investment, funds for development, and demographic questions may be included.

The outlook for the OAS to deal effectively with these and other issues is not bright. Its prestige is low; it is regarded as a tool of the US, and, somewhat contradictorily, as a do-nothing organization. Its scope for peaceful settlement is limited by continuing fear of US intervention.

OAS potential for peaceful settlement would be improved if the universality which marked its earlier years were strengthened. The exclusion of Cuba and failure to admit Guyana limit its ability to deal with controversies.

The OAS must offer advantages both to Latin members and to the United States. It cannot simply further US security objectives; Latin members must also gain. Nor should disputes of interest primarily to the United States be excluded from OAS purview, as in the Pact of Bogota which excluded disputes over property rights. To the extent that the

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concept of mutual interests can prevail, the Salvadoran-Honduran and Guatemalan-Belize cases illustrate that, despite new stresses and strains since the 1960's, the OAS can be a useful if limited forum for working out constructive solutions directly or behind the scenes.

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When Simon Bolivar first called for the establishment of an inter-American organization in 1822 and 1824, he envisioned that the organization would:

Serve as a council in great conflict, as a point of contact in common dangers, and as a faithful interpreter of public treaties when difficulties occur; as a conciliator, in short, of our differences.

Nineteenth-century rivalries among the youthful American Republics long prevented Bolivar's dream from being carried out. US intervention, starting in the last century, and resulting Latin American suspicions of US imperial ambitions, proved additional stumbling blocks to peacekeeping procedures. To the Latin Americans, inter-American organizations, initiated in 1890 with a commercial information office, could best be used to restrain the United States, not to cooperate with it.

Fear of US intervention was substantially allayed in 1933 when the United States enunciated the Good Neighbor Policy and pledged nonintervention in the internal or external affairs of the other American Republics. The threat of expansionist European totalitarianism in the 1930's and the common endeavors of World War II drew the American States together in the face of a common enemy.

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OAS Peacekeeping After World War II

Circumstances after World War II were favorable for restructuring the loose relationship among the American Republics which had grown out of the first commercial bureau into the "Pan American Union." Inter-American cooperation was high, and Soviet policies created an uneasy sense of potential menace.

This situation encouraged Western Hemisphere statesmen to attempt to create a system of collective security and work out procedures for peaceful settlement of disputes among members. Their efforts took form in the Rio Treaty, the OAS Charter, the Pact of Bogota, and the Inter-American Peace Committee.

The Rio Treaty. The Inter-American Treaty of Reciprocal Assistance signed in Rio de Janeiro in 1947, has been the most effective instrument ever devised for peaceful settlement of inter-American disputes. The signers of the treaty recognized that collective action against aggression should not be delayed until an armed attack actually took place, and that conflicts among American nations should be dealt with differently from aggressions arising outside the continent. The provisions of the treaty are broad and flexible; for example, when Foreign Ministers cannot meet or remain in session for long periods, the Permanent Council of the OAS can act provisionally for them.

The Rio Treaty was invoked 13 times between 1948 and 1964. Its most notable successes were in the Costa Rican-Nicaraguan disputes in 1948 and 1955, the Caribbean tensions in 1950, and the Honduran-Nicaraguan dispute in 1957. The OAS Council, which for 10 years was the sole body administering the treaty, had outstanding leaders who established sound, constructive, and imaginative procedures.

In 1969 the Rio Treaty again demonstrated its effectiveness by containing a direct threat to the peace. On July 14, 1969, Salvadoran troops crossed into Honduras, the first time since 1941 that the armed forces of one American country had openly resorted to force against a neighbor. Both El Salvador and Honduras immediately invoked the Rio Treaty. By this time the precedents were firmly established, the procedures

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well-known. The Council summoned a meeting of Foreign Ministers, converted itself into a provisional Organ of Consultation, and appointed a committee which negotiated a cease-fire agreement. Thereupon the Council ordered a suspension of hostilities, called on both sides to withdraw troops from each other's territory, and authorized the use of both military and civilian observers--all in clear, unequivocal language.

When El Salvador failed to withdraw from Honduran territory, the Council set a date for a meeting of Foreign Ministers--a sure indication that sanctions would be considered--and showed the Salvadorans draft resolutions declaring El Salvador the aggressor and calling for suspension of trade in petroleum products, machinery, spare parts, coffee, sugar, and cotton. Faced with measures which would quickly have brought their economic and military activities to a halt, the Salvadorans yielded. The troop withdrawal went smoothly, and by August 4, 1969, Honduran territory was free of invaders.

Despite this success, cracks had long since begun to appear in the foundations of the OAS peacekeeping structure. Ideological differences sharpened after the Castro regime emerged in Cuba in 1959, and both rightist and leftist dictatorships engaged in subversive activities aimed at other American states. Could clandestine intervention designed to subvert an established regime be checked? Could it be restrained without resorting to counter-intervention against the guilty states? On this point the broad consensus which had marked the first decade of the OAS shattered, and the organization's effectiveness was impaired.

The OAS Charter. Signed at Bogota in April 1948, the Charter added little to OAS capacity for peaceful settlement of disputes. It did recognize the Rio Treaty as an integral part of the system, but, out of fear of intervention, refrained from granting to the OAS Council any authority like that of the UN Security Council. Its call for a special treaty to establish procedures for peaceful settlement resulted in the Pact of Bogota.

The Pact of Bogota. The American Treaty on Pacific Settlement, also negotiated at Bogota in April 1948, has

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been ratified by only 14 countries, not including the United States. It is a classic example of how the best can be the enemy of the good: a monument to impractical perfectionism. It involves compulsory peaceful settlement and precise, detailed, and rigid procedures. It requires a surrender of sovereignty which few, if any, nations are willing to make. It fails to recognize that political leaders, who have to be responsive to the sensitive nationalism of their constituents, will not entrust delicate decisions to third parties, however honorable and well-intentioned.

The pact also eliminated diplomatic protection of private citizens and their property from peaceful settlement, thus reducing its value to the United States. It has been used but once--in a 1957 territorial dispute between Nicaragua and Honduras, and then under rather vigorous suasion and under Rio Treaty procedures.

The Inter-American Peace Committee. Created in July 1948, the Inter-American Peace Committee (IAPC), unlike the Pact of Bogota, was not bound to set procedures and was not required to carry each case to a definitive solution. Its employment was therefore less hazardous politically. It looked into its first dispute when only 2 weeks old. In 1949 there were five requests for its services. The IAPC's techniques were tailored to the individual situation. Although the IAPC had no enforcement authority and depended entirely on moral suasion,

- it could maintain secrecy during the sensitive stages of negotiations, and then skillfully marshal public opinion for peace and fair play;
- it enjoyed virtually a free hand during the most productive period of its existence; and
- it could take up a case at the request of a single state, not necessarily a party to the dispute.

The IAPC's wide and indefinite range of operations did not square with the general Latin desire to have all grants of authority carefully and precisely limited. Its

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permanent membership provoked opposition; nonmembers objected to a body which seemed on its way to becoming a five-member Security Council. In 1956 its rules were changed to rotate membership and confine its services to cases requested by the parties directly involved in a dispute. The effect of the change was immediate. Between 1956 and 1959, no case was submitted to the Committee.

In 1959, the IAPC was temporarily given broader authority to deal with tensions in the Caribbean between Cuba and other states of the region, especially the Dominican Republic. It was to study prevention of activities from abroad designed to overthrow established governments, violations of human rights, nonexercise of representative democracy, and the relationship between economic underdevelopment and political instability. It did not need the assent of both parties to act, except in case of an on-the-spot investigation, which required permission of the local government.

The IAPC's investigations from 1959 to 1962 culminated in its report to the 8th Meeting of Foreign Ministers at Punta del Este, Uruguay, in January 1962. The meeting excluded the Cuban Government from participation in the inter-American system and suspended trade in arms and implements of war with Cuba. The Committee's role in this meeting has been described as "decisive" and "fundamental" by close students of OAS affairs.

In the long run, the broader responsibilities given to the IAPC in 1959 may not have strengthened it. Its role as an investigative agency and its issuance of reports condemning governments caused uneasiness among American states sensitive to the threat of OAS intervention. Further, the public was led to expect results from the Committee which it was not equipped to produce, especially in dealing with Cuba. Countries disapproving OAS policy toward Cuba became increasingly unwilling to allow the IAPC to continue its free-wheeling activities for political objectives.

As the 1960's wore on there were fewer calls for the services of the Peace Committee. This lowered activity resulted largely from the absence of new issues and the passing of old ones--circumstances stemming from the death of Trujillo in the Dominican Republic, the declining level of

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political disturbances in Central America, and the end of the Committee's ability to be useful in Cuba. Some countries withheld support because of doubts about the legal status of the IAPC.

Limits of Peaceful Settlement

For 25 years after World War II, the OAS peacekeeping record varied from brilliant to adequate. The OAS was at its best when it operated flexibly within a limited range. When it was forced to take on too much, became involved in ideological problems, raised Latin suspicions of US intervention, or functioned within a rigid framework, it was less successful. Yet keeping the peace in the face of so many threats was no small accomplishment.

On the other hand, the ability of the OAS to solve disputes between its members was much more limited. Some disputes can be settled only by passage of time and gradual change of circumstances. The failures of peaceful settlement were not absolute; some useful purpose was almost always served. Yet overall the OAS machinery was too weak to serve the basic purpose of shielding the inter-American system from the shocks and stresses of disputes among members over collective security and similar basic issues, and the OAS itself was harmed or at least compromised by the attempt.

The most egregious failures involved:

Guatemala. In 1954 the successful resistance of Latin American countries to US efforts to have the OAS take a strong stand against international Communist activities in Guatemala:

--revealed the deep division among OAS members regarding the organization's role in the face of Communist penetration; and

--undermined the confidence of the other American republics in the sincerity of US adherence to nonintervention.

From that time on Latin Americans began to look more to the United Nations as a forum for handling disputes.

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Cuba. The existence of the Castro regime in Cuba since 1959 widened the divergency between those who, on the one hand, placed primary emphasis on defense against communism as a threat to the peace of the Western Hemisphere and, on the other hand, those who considered the internal social and economic system of any state of no concern to its neighbors. It has proven difficult to draw the dividing line between internal affairs and external subversion. Resulting cleavages have weakened the OAS. The schism became apparent at the 1962 meeting, which voted to suspend Cuba's participation in the OAS. The key resolution received only 14 votes in favor, the minimum required for passage; the opposition included Argentina, Brazil, Chile, and Mexico.

The missile crisis of October 1962 temporarily healed the breach. When confronted with an undeniable threat to hemispheric security, the OAS unanimously called for the dismantling and withdrawal of all offensive weapons from Cuba. Twelve Latin American countries offered military assistance. However, full confidence in the United States was not restored; fears persisted that "progressive" governments might be subject to disguised American intervention. Events in 1965 were to intensify this concern.

The Dominican Republic. OAS involvement in the events surrounding the April 1965 civil war in the Dominican Republic had profound repercussions on the organization.

After the US dispatched armed forces to the strife-torn country, a meeting of Foreign Ministers was convoked--under the OAS Charter, not the Rio Treaty--at which delegates orally condemned US intervention. The United States expressed the desire to remove its troops as soon as conditions permitted and urged OAS aid in bringing about such conditions.

After the landing, US military forces were converted into an Inter-American Peace Force (IAPF), in a hotly contested decision of the Foreign Ministers, and were joined by Brazilian and some smaller Latin American contingents. The other major countries stood aloof from the Peace Force, which was regarded as a cloak to disguise US intervention in the Dominican Republic. For the first time in OAS

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history, the meeting of the Foreign Ministers sent the Secretary General to the Dominican Republic to try to achieve an effective cease-fire, while an OAS committee engaged in complex political negotiations with Dominican political factions for creating an interim government, much to the displeasure of the strict noninterventionist minority.

From many points of view, the participation of the OAS in the Dominican affair was constructive and successful:

- it aided in stopping bloodshed and in creating an impartial caretaker government;
- it assisted in holding honest elections;
- it achieved its original objective of bringing the intervention to an end; and
- it converted a unilateral intervention into a multi-lateral peace force, insuring that the United States could not exercise unrestricted control.

But the OAS was to derive little or no credit for the successful aspects of its actions. Although the other American states would never have publicly agreed to the landing of US troops if asked in advance, after the event the OAS majority, including the United States, were in basic agreement on ending bloodshed, allowing the Dominicans freely to choose their own government, and withdrawing foreign military forces as soon as possible. Cooperation within the OAS was therefore based on coincidence of legitimate interests, but in the public eye the OAS appeared to be acting as a shield to protect the United States from the effects of its illegal intervention, or as a cat's-paw to achieve US purposes.

The Dominican involvement also put an end to any chance which may have existed for strengthening OAS authority in peaceful settlement of disputes. Dissension stemming from the Dominican affair contributed to the frustration of plans to make the OAS more effective in dealing with disputes among members.

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Peaceful Settlement in the Seventies

Traditional boundary disputes, long a major source of friction among the American states, are declining in number; settlements have ended some disputes and rendered others quiescent. A few, however, remain.

Belize. In 1972 the long-standing Guatemalan claim to Belize (also known as British Honduras) erupted into a mini-crisis which allowed the OAS to achieve a resounding success. Rumors, never substantiated, of a large buildup of Guatemalan forces near the Belize frontier caused the British to send larger than usual troop units to Belize for annual maneuvers in January and February. At the OAS General Assembly in Washington in mid-April, Guatemala raised the possibility of invoking the Rio Treaty against the British, a course which none of the other members wished to pursue.

The OAS saw an opportunity to use one of its proven peaceful settlement techniques. Behind-the-scenes discussions with the British Ambassador in Washington revealed that the British authorities would have no objection to the posting of an OAS observer in Belize to verify the size and composition of the British military. The resolution to send an observer brushed hastily over the legal authority of the General Assembly by simply asserting that it could take action. The OAS observer found that the British troops in Belize were small in number; they obviously constituted no threat that required invocation of the Rio Treaty.

The Belize incident constituted the first occasion on which the OAS had taken part in a dispute involving a nonmember state. Even though several members said it should not constitute a precedent, it may prove a key decision in the history of the organization. It showed that, when general agreement among the members on principles and procedures could be reached, the organization could rise above petty legalisms and act with the speed and determination required by the situation.

Increasingly, however, the major controversies facing OAS members are less amenable to OAS treatment. Unlike the

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boundary problems that preoccupied the OAS in earlier years, present differences arise from the struggle for economic and social development and touch on such sensitive concepts of sovereignty as law of the sea, foreign private investment, funds for development, and demographic questions.

Law of the Sea. In January 1971 the OAS became involved in the controversy over the width of the territorial sea when Ecuador charged that the United States had contravened the OAS Charter by suspending military assistance to Ecuador following the capture of US fishing vessels in claimed territorial waters. The Foreign Ministers' meeting which heard the charge was one of the shortest on record, completing its work in 1 day. It really had no purpose; the basic issue was beyond the jurisdiction of the OAS. Ecuador was not asking for sanctions against the United States; they could only have been taken under the Rio Treaty, which had not been invoked. The meeting called on the parties to avoid aggravating their differences, to negotiate, and to observe the principles of the charter.

When the organization is asked to deal with matters it is not competent to address, a resolution condemning sin and extolling virtue is its only recourse. No one was particularly happy with the outcome, nor was the reputation of the OAS enhanced as a channel for peaceful settlement of disputes.

Foreign Private Investment. The widely held principle that private foreign investment is required to supplement public funds for developing countries has recently been called into question. Many believe that if it is profitable to the investor, it must be harmful to the recipient country and hence an illegitimate form of exploitation. Taking over assets "for the benefit of the people" is seen as an act of sovereignty not to be questioned by the private investor or his government.

Before World War I a convention, ratified by 11 American states, existed for arbitration of pecuniary claims. The Pact of Bogota, however, prohibited diplomatic representations or referrals of such cases to international tribunals, thus providing a kind of moral justification for avoiding peaceful settlement of investment disputes. The

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United States has not ratified the Pact, and the Inter-American system is still inhibited from acting on a major cause of controversy.

Funds for Development. Is the United States required to provide development assistance funds, directly or through international lending institutions, to states which have expropriated the property of US nationals without compensation? Is refusal to do so at the level desired by the recipient country "economic aggression"? At what point does the exercise of sovereignty by one country become an affront to the sovereignty of the other? The OAS can provide a forum for discussion of these questions but not the formal machinery for settling them.

Demographic Problems. As the population of the Western Hemisphere grows, demographic problems loom larger. The Salvadoran-Honduran conflict of 1969, which can be traced largely to animosity engendered over the years by the migration of large numbers of Salvadorans to Honduras, provided a foretaste. Another such situation exists, happily in less acute form, in western Venezuela, where there are reportedly over a quarter of a million Colombians of all social and economic groups.

Outlook

The outlook for peaceful settlement of disputes through the Organization of American States is not bright. The OAS's prestige is low. Its members lack confidence in its ability to act impartially and promptly. It is frequently condemned as a tool of the United States and, somewhat contradictorily, as a do-nothing organization.

For such an international organization to work, there must be broad consensus among its members on objectives and procedures. A consensus, embodied in the Rio Treaty and the Charter, existed in 1947-48. Divergent views on the relative importance of security and nonintervention, as shown in the Cuban and Dominican cases, have undermined that consensus. When the consensus still obtains--as in the Salvadoran-Honduran conflict in 1969 or the Belize dispute in 1972--the organization can act effectively. But its scope for peaceful settlement is distinctly limited, mainly by fear of intervention, manifested in reluctance to

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give the OAS Permanent Council any real authority for peaceful settlement, and in reducing the once vigorous and effective Inter-American Peace Committee to a shadow of its former authority.

The OAS can move swiftly in emergency situations, but once the immediate crisis is over, it lacks follow-through. Legalistic fears and the nightmare of intervention begin to haunt statesmen and diplomats, action gives way to debate, and debate results in stalemate.

Certain features of the Rio Treaty have become outdated. The threat of extracontinental aggression no longer concerns most members. However, the treaty can still be useful if its flexibility and comprehensiveness are retained; efforts to define its provisions more precisely could convert it into the same useless mass of legal verbiage as the Pact of Bogota. The good judgment of foreign ministers and representatives on the Permanent Council must be relied on to reach decisions appropriate in each case. To try to provide for every contingency in advance is to ensure failure.

The potential of the OAS for peaceful settlement would be strengthened if the universality which marked its earlier years was restored. The exclusion of certain American states from membership or participation in the organization clearly limits its ability to deal with controversies, and the continuance of sanctions which are increasingly ignored further undermines its prestige.

Members must share both responsibilities and privileges. The OAS cannot be simply an organization to further US security objectives; the Latin members must also gain from the association. Conversely, the Latin members, by excluding from the Pact of Bogota disputes primarily of interest to the United States, helped make the system ineffective; the United States, too, must be allowed to derive certain advantages from the organization.

The OAS has potentially useful assets. It provides a forum for discussing problems common to the American states, and it has a tradition of working out constructive solutions behind the scenes after airing divergent opinions in public. If the concept of mutuality of interests in the Western Hemisphere can prevail, the OAS can be a useful instrument for promoting harmonious inter-American relations.

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