

Contadora aimed to fill a diplomatic vacuum. The Sandinistas preferred not to work with the Organization of American States (OAS) since they believe the United States still controls its members, despite considerable evidence to the contrary. They favor the United Nations, where the dominant Third World coalition is sure to favor Nicaragua over the United States. For this reason, the United Nations has been an unacceptable mediator for the United States, which strongly advocates hemispheric solutions to hemispheric problems.

By joining forces under the Contadora umbrella, the regional powers believed that they might be able to constrain the United States from its habitual unilateral actions and thereby enhance their own role. They also hoped to offer a different interpretation of events in Central America. They believed that the United States, as a global and non-Latin power, tended to impose an East-West perspective on conflicts that essentially involved such North-South issues as poverty, inequality and exploitation. Their de-emphasis of the Soviet Union was understandable, since the United States, not the Soviet Union, had traditionally been seen as the danger to the countries of the region. (53)

The government of France addressed a letter to the United Nations Security Council President. The letter requested that the UN be used as the forum to hear this dispute. This provoked several responses.

Several days later, the United States replied. In the US response, the US rejected the UN as the proper forum. The letter claimed that the OAS had already been seized of the matter, and cited Article 52 of the UN Charter stating that regional problems should be solved at the regional level. (54)

El Salvador submitted a letter similar to the US one. It argued that the regional authority should be the forum of preference with "no exclusions." (55) It too states that the OAS was already involved in the issue and therefore the UN should leave the matter to the regional authority.

Both the US and El Salvadorean positions seem to mistate the facts. The OAS had decided to take no action on the matter pending the results of the Contadora effort. By stating that the OAS was already involved, these governments mislead the Security Council, even if unintentionally and on a technicality. Further, the Honduran proposal under consideration by the OAS in the first place dealt with the problems of Central America, not the specific problems of Nicaragua. Therefore an argument could be made that the OAS had not even addressed the issue at all. Yet this too, may only be based on a technical reading of the proposals. Interestingly, the approach made by the US parallels earlier positions by that nation in Guatemala, in 1964, and in Cuba, in 1960 and 1961.

The Salvadorean view is more extreme than the US view. El Salvador stated that the OAS is the only forum suitable to hear the case in the first instance. As stated earlier, this does not coincide with the perspectives of the majority of the OAS member states themselves. Further, the Office of the Legal Council of the OAS General Secretariat has affirmed a differing view from that taken by El Salvador. According to that opinion, primacy should be given to Article 35 of the UN Charter, allowing nations to take their claims directly to the UN if they desire. This supports Nicaragua's long-held position of free choice.

### 3. The Grenada Invasion

Early in the morning of October 25, 1983, US forces along with the forces of five Carribean states invaded the island on

Grenada. The US forces fought for almost a week against Grenadean and Cuban forces on the Carribean island. The invasion met world-wide condemnation and appeared to contradict the Charters of both the UN and the OAS. According to the Manchester Guardian, "(The invasion)... could only be justified by the treaty of the Organization of East Carribean states only by a deliberate misreading of article eight, providing for 'collective defense.'" (56) The stated objective of the mission was to save innocent lives which were in danger, particularly those of the 1,000 US citizens on the island, to prevent further chaos on the island, and to help restore law and order and governmental institutions of the isle.(57)

This case is distinct from previous cases in one important point: the OAS did not attempt to deal with the situation. No member state called a Meeting of Consultation to discuss the matter. Thus the competence of the UN was left unchallenged.

The United Nations Security Council did however deal with the issue. The US vetoed a resolution deploring the invasion. The vote was 11 to 1.(58) A prolonged debate ensued over Article 2 paragraph 4 of the UN Charter over the legality of the act. In the following weeks, world opinion seemed to soften with the revelation of Soviet and Cuban participation in the internal affairs of the tiny state.(59)

Politically, the conflict drove a wedge between the English and non-English speaking countries of the OAS. Most of the English speaking nations had participated in the conflict. Yet the OAS Charter calls for non-intervention. Although no formal action was taken to censure those participants, as stated

earlier, there were numerous speeches in the OAS condemning the US initiated action. Indeed every democratic Latin American nation condemned the invasion. Only the governments of Chile, Uruguay and Guatemala supported the US. (60)

The competence of the OAS to deal with this issue seems more certain than in the prior Falklands War. First, only American nations were involved. As noted in The Economist, the US needed no outside support for their operation. (61) Further, the conflict occurred within the zone of jurisdiction according to the OAS Charter. In the Falklands War, this matter was at issue. More importantly, OAS member states were involved here, unlike the Falklands War in which one of the two major participants was not an OAS member state. Finally, as noted in the discussion on Nicaragua above, the US has always supported regional solutions to the hemisphere's conflicts as opposed to UN involvement. Thus it would appear that the argument over competence of the OAS would have been much stronger in the Grenada case than in the Falklands War.

### C. Conclusions

The jurisdictional question is a complex one, with no easy answer. Both the UN and the OAS Charters can be read to support an argument for either forum. Similarly, there has been little consistency in practice. The UN may accept a case after the OAS has already begun to resolve an issue (as occurred in the Dominican Republic conflict). Likewise, the OAS may do the same when the UN has already seized an issue (as did occur in the Falklands War). It is probable that this result was not intended by the founders of the UN or the OAS Charters, since it is confusing and inconsistent.

Given the ambiguity of jurisdiction, one of two things will occur. First, the Charters could be amended to provide for uniformity and consistency. Aesthetically, this would be ideal. Yet the more probable is the second option. The ambiguities may simply remain unaddressed. As in the Cuban Missile Crisis, it appears that politics dominates the Law in this area. Political giants may not wish to concede jurisdiction to one forum or another.

appendix one

<u>Nation</u>	<u>Result</u>
Guatemala(1954).....	problem withdrawn
Cuba (1960-61).....	referral to the OAS
Cuba (1962).....	joint jurisdiction of the OAS and the UN
Haiti(1963).....	problem withdrawn
Panama(1964).....	problem withdrawn
Dominican Republic(1965)....	UN involved after OAS; concurrent jurisdiction
Falklands War(1983).....	OAS involved after UN; concurrent jurisdiction
Nicaragua(1983-84).....	UN deferred to OAS. OAS referral to Contadora.
Grenada(1983).....	OAS silent. UN condemnation vetoed by USA.

\*\*\*\*\*this chart is included to help summarize the  
reading of the text.

### Footnotes

- 1 United Nations, Yearbook of the United Nations, 1954, (New York: Department of Public Information), p.97.
- 2 Ibid., p. 98.
- 3 Document s13266 Cablegram dated 9 July from Guatemala to the President of the UN Security Council.
- 4 United Nations, Yearbook of the United Nations, 1960, (New York: Department of Public Information), p. 154.
- 5 See Security Council Official Records (SCOR), Document S/4378, July 11, 1960.
- 6 Document S/4388
- 7 The Inter-American Peace Committee was established to look into tension in the Caribbean due to the activities of exiles who were creating political conflicts in the region. It had very little at all to do with charges of US aggression against Cuba.
- 8 See Inter-American Treaty of Reciprocal Assistance: Applications. Volume II. 1960-1972, p. 109.
- 9 Ibid.
- 10 Charter of the United Nations, Commentary and Documents. Third Edition. Leland M. Goodrich, Edward Hambro and Anne P. Simmonds. p. 359.
- 11 Central Office of Information, Britain and the United Nations, London, 1969, p. 16.
- 12 Security Council Official Records (SCOR), 18th year, 1036th Meeting, May 9, 1963.
- 13 Tenth Meeting of Consultation of Ministers of Foreign Affairs, Washington, DC, OAS Official Records. OAS/Ser. c. II. 10. Final Act, (May 1, 1965, March 6, 1970), p. 1 and p. 24.
- 14 SCOR 1208th Meeting (1965), p.1-2.
- 15 Organization of American States, "The UN-OAS Relations in the Peace and Security Field," Washington, DC, p. 68.
- 16 "The Dominican Situation, The Jurisdiction of the Regional Organization," Americas, no. 17 (July 1965), p. 3.
- 17 Document s/14944, April 1, 1982.
- 18 United Nations Security Council Document s/14947, April 2, 1982

19 United Nations Security Council Document S/RES/502 (1982), April 3, 1982.

20 D. Acevedo, "The US Measures against Argentina resulting from the Malvinas Conflict," 78 A.J.I.L. at 325, (1984)

21 Transcript of comments by Secretary of State Alexander Haig, Jr., made at the State Department on April 30, 1982 in The New York Times, Saturday, May 1, 1982.

22 See "America's Falkland's War," The Economist, March 3, 1984.

23 OAS Document CP/doc. 1253/82, April 19, 1982 and Document OAE/Ser.F/II.20. Document 6/82, April 23, 1982.

24 Twentieth Meeting of Consultation of Ministers of Foreign Affairs, minutes of the second plenary session, OEA/ Ser.F.II.20, Doc. 33/82, April 28, 1982, p. 6-7. See also Doc. 28/82.rev.3, corr.1.

25 Ibid., p. 29.

26 Ibid.

27 Ibid.

28 Document 33/82, op. cit., p.23.

29 Ibid. at 22 and Document 27/82, p. 5-7.

30 Ibid.

31 Ibid.

32 "The OAS and the Falklands Conflict," in The World Today (September, 1982), pp. 345.

33 Document 33/82, op. cit., p. 17.

34 Ibid., p. 15.

35 Document 24/82 at 13.

36 Ibid., p. 21.

37 Ibid.

38 Ibid.

39 John Norton Moore, "The Role of Regional Arrangements in the Maintenance of World Order," The Future of the International Legal Order (C. Block & R. Falk Eds. 1971) p. 148. Also "The Dominican Situation in the Americas," op. cit., p. 3.



40 This occurred in 1960 with the Cuban case, in 1963 in the Haitian case and in 1964 in the Panamanian case.

41 examples include the Cuban Missile Crisis and the Dominican Republic case.

42 see Resolution II, operative paragraph 1.

43 "The Inter-American System Snarls in the Falklands War," Editorial comment, A.J.I.L. (1982), p. 830-831.

44 Ibid.

45 see for example "US Support Bolsters Rebels' Confidence Inside Nicaragua," The Washington Post, April 3, 1983, p. A1.

46 Security Council Document S/15651, March 22, 1983.

47 Security Council Document S/PV. 2427, March 29, 1983, p. 37.

48 Ibid.

49 OAS Document CP/doc.1354/83, p. 1.

50 Ibid.

51 Minutes of the Special Meeting of the Permanent Council of the OAS, April 5, 1983.

52 Ibid.

53 Susan Kaufman Purcell, "Demystifying Contadora," Foreign Affairs, Fall 1985, vol. 64, no. 1 (New York: Council on Foreign Relations, Inc.) p. 75.

54 Security Council Document S/15694, April 8, 1983.

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56 "Grenada and Rule of Law," Manchester Guardian Weekly, Vol. 129, no. 19, Nov. 6, 1983, p. 1.

57 "Mr. Reagan's Reasons For Invasion Of Grenada," Manchester Guardian Weekly (The Washington Post section) Vol. 129, no. 19, Nov. 6, 1983, p. 15.

58 "Grenada and the Rule of Law," op. cit.

59 "International Law," Encyclopedia Britannica 1984 Book of the Year (Chicago: Encyclopedia Britannica, Inc.) 1984. see also "World Response" in The Americana Annual 1984 Yearbook, (Canada: Grolier Incorp.) 1984, p. 33.

60 Ibid. and also "Grenada and the Rule of Law" op. cit.

61 "Britain's Grenada Shut-out," The Economist, March 10, 1984, p. 31.

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- United Nations, Yearbook of the United Nations 1965 (New York: Columbia University Press) 1967, p. 140-158.