APPLICATION OF THE TREATY OF RIO DE JANEIRO TO THE CONTROVERSY BETWEEN COSTA RICA AND NICARAGUA

It was a singular coincidence that the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro on September 2, 1947,[1] should scarcely have entered into effect before it was given practical application in the complaint brought by the Government of Costa Rica against the Government of Nicaragua. On December 3, 1948, Costa Rica deposited with the Pan American Union the fourteenth ratification of the treaty, bringing the number of ratifications up to the necessary two thirds provided for in Article 22 of the treaty. Eight days later, on December 11, it was Costa Rica itself which addressed to the Council of the Organization of American States a request that a meeting of the Organ of Consultation provided for in the treaty should take place in accordance with the terms of Article 6.

The Inter-American Treaty of Reciprocal Assistance contemplates two distinct situations under which the contracting parties may be called upon to act. Article 3 deals with an armed attack by any state against an American state, while Article 6 deals with the less tangible case presented "if the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America." In the case of an armed attack under Article 3, the attack is to be considered as an attack against all the American states, and each of one of them agrees to assist in meeting it in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations. Each of the contracting parties is free to determine the immediate measures which it may individually take in fulfillment of its obligations, while the Organ of Consultation is to meet without delay to agree upon the measures of a collective character that should be taken. In the case of an act of aggression which is not an armed attack and in the other situations contemplated under Article 6, the obligation of the contracting parties is limited to carrying out the measures agreed upon by the Organ of Consultation.

Article 8 of the treaty sets forth the measures which may be taken by the Organ of Consultation, ranging from the recall of ambassadors and the interruption of economic relations to the use of armed force. Agreement upon the measures to be taken may be reached by a vote of two thirds of the parties, with the sole exception that no state shall be required to use armed force without its consent.

The note presented on December 11 by the Ambassador of Costa Rica to the Chairman of the Council of the Organization of American States stated that on the night of December 10 "the territory of Costa Rica was invaded

[1] Supplement to this JOURNAL, p. 53.

by armed forces proceeding from Nicaragua," and that, in accordance with the provisions of Article 6 of the treaty, the Government of Costa Rica requested that the Council of the Organization be convened so that it might be informed of the situation and act provisionally as Organ of Consultation. By the terms of the treaty the consultations contemplated in Articles 3 and 6 were to be carried out by means of Meetings of Ministers of Foreign Affairs, but until such time as a meeting might be held, the Governing Board of the Pan American Union, known since Bogotá as "The Council of the Organization of American States," might "act provisionally as an organ of consultation."

Thereupon a number of interesting problems were presented which perhaps might have been anticipated if the treaty had been more carefully drafted. It was decided that the Council must first convoke a Meeting of the Ministers before it could itself act as a provisional organ of consultation. This was done; but the Council refrained from fixing a definite date for the Meeting of Foreign Ministers, so that the convocation was for the time being no more than a technical justification for the assumption by the Council of the power to act as a provisional organ.

What was the scope of the competence of the Council acting in the capacity of a provisional organ of consultation? Apparently the Council could take the initial steps to determine the facts of the controversy and the responsibility of the parties and it could suggest ways and means of restoring friendly relations between them.

The Council thereupon, at its meeting on December 14, after hearing the complaint brought by Costa Rica and the defense made and countercomplaint brought by Nicaragua, decided to appoint a committee to go to the scene of the controversy and report its findings. It is of interest to note that in the discussions of the Council as a provisional organ of consultation all of the members of the Council took part, irrespective of the fact that six of them represented states which had not as yet ratified the treaty. When, however, the consultations of the Council had taken shape in a series of conclusions for formal adoption, only the members representing states which had ratified the treaty were permitted to vote.

On December 24, within ten days of the appointment of the Committee of Information, the Council met again to take action upon its report. A resolution was thereupon adopted calling upon the two governments to abstain at once from all hostilities, and stating, that, in the light of the information submitted by the Committee of Information, the Council thought that on the one hand the Government of Nicaragua should have taken more adequate measures to prevent the development in its territory of a movement intended to overthrow the Government of Costa Rica, and that on the other hand the Government of Costa Rica should have taken the measures necessary to prevent the existence in its territory of groups whose purpose was to conspire against the security of Nicaragua and other

American Republics. The reference in this second case was to the so-called "Caribbean Legion," composed of various elements seeking to overthrow governments alleged to be dictatorships.

The resolution further called upon both governments to observe faithfully the principles of non-intervention and of continental solidarity proclaimed in earlier agreements; and it announced the intention of the Council to continue in consultation until assurances were received that the terms of the resolution were being duly observed. At the same time a second resolution was adopted providing for the despatch of a Commission of Military Experts to observe and report upon the fulfillment by the parties of their obligations.

The controversy was brought to a close on February 21, 1949, when a formal session of the Council was held at which a Treaty of Friendship was signed between plenipotentiary delegates of the two governments, by the terms of which they declared that: (1) the events which had been brought to the attention of the Council should not break the friendship between the two countries; (2) they would prevent repetition of similar events in the future; (3) they recognized their obligation to submit controversies between them to peaceful settlement, and to this end they agreed to give validity to the American Treaty on Pacific Settlement known as the Pact of Bogotá; and (4) they agreed to reach an understanding upon the application of the Convention on the Rights and Duties of States in the Event of Civil Strife.[2] Accompanying the signing of the treaty was a resolution of the Council thanking the Governments of Costa Rica and Nicaragua for their coöperation in the task of the Council, announcing that the functions of the Commission of Military Experts were at an end, informing the American governments that the reasons for the convocation of a Meeting of Foreign Ministers no longer existed, and stating that, in consequence of the settlement of the controversy, the functions of the Council as a provisional organ of consultation had now terminated.

Is the Council of the Organization of American States now to become a sort of "court of summary jurisdiction" for the settlement of disputes between two or more governments? It would be going too far to draw that conclusion from the activities of the Council in the present instance. The Council itself was soon made aware of the danger that it might be called upon to settle any number of disputes which might appear to one or other of the parties of sufficient urgency to justify an appeal to the Rio Treaty. Article 13 of the treaty gave to any member the right to initiate a consultative Meeting of Foreign Ministers by addressing a request to the Council of the Organization. Did this mean that the Council must forthwith call a meeting? The answer was that it did not. By Article 16 of the treaty the decisions of the Council in reference to Article 13 were to

[2] Signed at the Sixth International Conference of American States, Havana, Feb. 20, 1928. This JOURNAL, Supp., Vol. 22 (1928), p. 159.

be taken by an absolute majority of the members entitled to vote. This implied that the action of the Council in answer to a request for the convocation of a Meeting of Foreign Ministers should not be merely automatic, but that it should be subject to the decision of the Council as to whether the facts alleged by the state requesting the consultations came within the terms of Articles 3 and 6 which fixed the conditions under which the Organ of Consultation was to meet.

The question was given specific application when, on February 15, 1949, the Ambassador of Haiti addressed to the President of the Council a note from his government referring to certain facts in the relations between Haiti and the Dominican Republic which created "a situation that might endanger the peace." The facts in question related to the activities of a former colonel in the Haitian army, Astrel Roland, who was alleged to be engaged, on the territory of the Dominican Republic, in a plot to overthrow the Government of Haiti, and to be receiving the active support of certain officials of the Dominican Government in carrying out his plan. Specific mention was made of broadcasts made by Roland from a radio station in the Dominican Republic attacking the Government of Haiti in violent language. The acts were said to constitute "aggression of a moral order," and their repetition was evidence of the agreement of the Dominican Government. Request was made for the convocation of the Organ of Consultation of the Organization of American States, so that measures might be considered looking to the maintenance of peace.

The Council met duly, and in the discussion of the case the point was made that Article 6 of the Treaty of Rio de Janeiro did not authorize a meeting of the Organ of Consultation unless the three situations referred to—an aggression which was not an armed attack, an extra-continental or intra-continental conflict, or "any other fact or situation that might endanger the peace of America"—should affect "the inviolability or the integrity of the territory or the sovereignty or political independence of any American State." With this self-imposed limitation upon its competence, the Council succeeded in persuading the parties that there were other procedures available to them for the settlement of the dispute. A resolution was thereupon drawn up in which the Council, after noting that the declarations made by the two parties gave it reason to believe that they could arrive at a friendly settlement, decided "to abstain, under these circumstances, from convoking the Organ of Consultation," while at the same time it expressed the hope that good relations between Haiti and the Dominican Republic might be strengthened and the friendship between them consolidated.

It is of interest to note that, when confronted with the necessity of meeting practical cases presented to them, the members of the Council have not been troubled by the fears expressed at the Bogotá Conference that the Council might be led to assume "political functions." Doubtless

the delegates themselves who expressed those fears did so more as a warning against the undue extension of the powers of the Council than as an absolute prohibition. For it is obvious that the decisions which the Council is called upon to make when requests are presented by particular states for the convocation of a Meeting of Foreign Ministers are obviously "political" ones, in the sense that they involve the judgment of the Council upon certain facts alleged by the complainant state to come within the terms of Articles 3 and 6 of the Rio Treaty. Reference was made at Bogotá to the resolution of the Havana Conference of 1928 prohibiting the Governing Board and the Pan American Union from exercising "functions of a political character." But that resolution lost much of its force with the creation at Buenos Aires in 1936 of the procedure of consultation and with the more specific organization of the procedure at Lima in 1938.

After all, the members of the Council speak in the name of their governments and are directly responsible to them. The danger lest the members of the Council, sitting in Washington, might be too much under the influence of the Government of the United States, if such danger still existed after the system of consultation was adopted, was practically eliminated by the resolution of the Mexico City Conference in 1945, when it was agreed that the Governing Board should be composed of *ad hoc* delegates, having the rank of ambassadors but not part of the diplomatic missions accredited to the United States. As a matter of fact, the members of the Council, although limited by the instructions of their governments, discuss problems with the greatest freedom; and it would seem fair to say that the experience of recent years has shown that the influence of the individual members of the Council is not based upon the power of the state which the particular member represents, but upon the intrinsic merits of the principles which he defends and upon the constructive character of the measures which he proposes for their application.

C. G. FENWICK

UNITED STATES FOREIGN POLICY

This will probably be the last editorial that I shall write for the AMERICAN JOURNAL OF INTERNATIONAL LAW. It is my valedictory, so to speak.

That I am not in sympathy with the aims and procedure adopted by this Government is apparent to all readers. It will be more novel to learn that John Bassett Moore in at least three places of his forthcoming memoirs characterizes the policy of this Government—if it can be called a policy—as "insane." That means more for the reader than an ordinary invective. The ordinary reader must know that John Bassett Moore was a man of great moderation who used strong words but rarely. His opinion on a question of international law or policy is rated among the highest in this country. No one was more familiar with our history than he was.