

EDITORIAL COMMENT

THE ISSUES AT PUNTA DEL ESTE: NON-INTERVENTION *o*. COLLECTIVE SECURITY

The cornerstone of the inter-American regional security system is the Treaty of Reciprocal Assistance, signed at Rio de Janeiro, September 2, 1947, known popularly as the Rio Treaty.¹ It was the final outcome of a succession of steps first taken in 1936, when the United States set aside its traditional claim under the Monroe Doctrine to intervene in Latin American affairs for the purpose of restoring order and taking from European Powers any justification for intervention on their part. That the claim should have been resented by the leading Latin American Powers was to be expected; and by 1936 the new policy was proposed of abandoning intervention, if the Latin American states would on their part accept a collective responsibility to maintain the peace.² The proposal was accepted; by 1940 it took the form of a declaration that an attack upon one was an attack upon all;³ and by 1947 it became a specific and detailed treaty obligation.

Could the Rio Treaty meet the challenge of the revolution in Cuba? The United States had doubtless recognized the new government of Fidel Castro too hastily, accepting his promises of economic and social reform at their face value. Then, as appropriation of property under eminent domain soon took the form of confiscation, it was clear that the new government had no intention of keeping within the bounds of international law. The denial of fundamental rights followed; opposition to the revolution became an offense against the law; within months a dictatorship of the most rigid character had been established; and the Soviet Union was invited to co-operate in the new regime. Sixty years earlier the United States would doubtless have moved in and put an end to it all. But there were the obligations of the Rio Treaty and other agreements prohibiting unilateral action. A new order of collective responsibility had come into being, and the United States, in good faith, looked to it for a solution.

But the Meeting of Foreign Ministers at San José, Costa Rica, in 1960 could get no further than a reprimand of Cuba for misbehavior, even the name of the culprit being suppressed. The collective group simply would not take effective action. The meeting held under the Rio Treaty was willing to apply sanctions to the Dominican Republic for complicity

¹ Pan American Union, *International Conferences of American States*, 2nd Supp. 1942-1954, p. 142 (1958); T.I.A.S., No. 1838; 43 A.J.I.L. Supp. 53 (1949).

² Convention for the Maintenance, Preservation and Reestablishment of Peace, Buenos Aires, Dec. 23, 1936. U. S. Treaty Series, No. 922; 31 A.J.I.L. Supp. 53 (1937).

³ Second Meeting of Ministers of Foreign Affairs, Havana, July 21-30, 1940, Final Act: Declaration XV on Reciprocal Assistance and Coöperation for the Defense of the Nations of the Americas. 3 Dept. of State Bulletin 127 at 136 (1940); 35 A.J.I.L. Supp. 15 (1941).

in the attempted assassination of the President of Venezuela, but the same Ministers, meeting the following week under the much less drastic Article 39 of the Charter, were unwilling to apply similar sanctions against the government of Fidel Castro.⁴ By October, 1961, the situation had taken on more serious aspects, and the Government of Peru requested a Meeting of Foreign Ministers, this time under the Rio Treaty, to take more positive action. But it appeared that there was not the two-thirds majority necessary for action under the Rio Treaty, so the Council of the Organization referred the Peruvian request to the Inter-American Peace Committee to conduct investigations that might later be made the basis for decision. A month later the Government of Colombia, finding the situation too urgent to be postponed, requested a meeting under the Rio Treaty; and this time, after sharp debate, the Council, by a close vote, convoked the meeting, to be held at Punta del Este on January 22, 1962.

In preparation for the meeting the Department of Legal Affairs of the Pan American Union prepared an elaborate "Background Memorandum on the Convocation of the Meeting," setting forth the separate items included in the Colombian request under the broad and somewhat vague heading of "the threats to the peace and to the political independence of the American States that might arise from the intervention of extracontinental powers directed toward breaking American solidarity." Was this sufficient to form an indictment of a sovereign state? Arguments were presented at the Council meeting that it was not. Yet more specific charges against Cuba might have defeated the necessary vote. The Background Memorandum did no more than recite and present in systematic form the earlier condemnations of subversive activities and the interpretations that had been given on previous occasions to the scope of the Rio Treaty in respect to the intervention of extracontinental Powers in American affairs, notably the resolution taken at the Caracas Conference in 1954 against the domination or control of an American state by the international Communist movement, and the condemnation of intervention by an extracontinental Power at San José in 1960.

⁴Seventh Meeting of Ministers of Foreign Affairs, San José, Costa Rica, August, 1960. The two opening paragraphs of the Declaration of San José, adopted Aug. 28, 1960, read as follows:

"The Seventh Meeting of Consultation of Ministers of Foreign Affairs

"1. Condemns emphatically the intervention or the threat of intervention, even when conditional, by an extracontinental power in the affairs of the American republics and declares that the acceptance of a threat of extracontinental intervention by any American state jeopardizes American solidarity and security, wherefor the Organization of American States is under obligation to disapprove it and reject it with equal vigor;

"2. Rejects, also, the attempt of the Sino-Soviet powers to make use of the political, economic, or social situation of any American state, inasmuch as that attempt is capable of destroying hemispheric unity and jeopardizing the peace and the security of the hemisphere;" (43 Dept. of State Bulletin 407 (1960).)

But strong as was the condemnation in general terms of the existing conditions in Cuba, none of the ten resolutions adopted at the Meeting mentioned the name of Cuba specifically.

Supplementing the Memorandum of the Department of Legal Affairs was a report of the Inter-American Peace Committee which had been prepared in response to the request presented by Peru after it had failed to obtain a vote of the Council in favor of a Meeting of Foreign Ministers under the Rio Treaty. The report was a head-on attack upon the Cuban Government, presenting in detail violations of fundamental human rights, the action of international Communism in Cuba and incorporation of the Cuban Government in the Sino-Soviet bloc, and the Communist infiltration by the Government of Cuba itself in the other countries of America. Each of these items raised questions of the application of Article 6 of the Rio Treaty.

In contrast with Article 3 of the treaty, which deals with armed attacks of one country against another and which has not as yet been at issue, Article 6 deals with acts of aggression short of an armed attack and with acts or situations that might endanger the peace;⁵ but it begins with a formidable "if" clause to the effect that the acts of aggression short of armed attack and the threats to the peace with which it deals must affect "the inviolability or the integrity of the territory or the sovereignty or political independence" of the American state. In other words, the framers of the treaty did not intend to put into effect the sanctions enumerated in it unless the circumstances were of a serious and urgent character pressing, in a sense, upon the very political existence of the state.

Conceding that there was denial of fundamental rights in Cuba, was there a ground here for intervention? The advocates of the principle of non-intervention appeared to find almost as much objection to collective intervention, or better, collective action under the Rio Treaty, as to individual intervention of the old type so rigorously denounced before the acceptance of the principle of collective responsibility. An ugly picture was presented by the report of the Peace Committee: denial of freedom of speech and freedom of the press, denial of the right of assembly; trial by military courts and execution by firing squads for open opposition to the revolution. But was not the Government of Cuba entitled to enforce the program of the revolution against those who were seeking to undermine and defeat it? While the methods might, perhaps, have been extreme, there was nothing novel about them, certainly nothing to justify the intervention of other American states, many of whose governments had resorted to such measures on occasion in the past. That the denial of fundamental rights in Cuba was contrary to the principles of the Charter could be conceded. But the Rio Treaty, it had been argued before the Council, did not undertake to enforce principles unless they came within

⁵ Art. 6: "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 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, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in 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."

the terms of Article 6; there was that "if" clause that could not be overlooked.

The second item in the indictment presented in the report of the Peace Committee dealt with the "Ties of the Government of Cuba with the Sino-Soviet bloc." Did this present a "fact or situation that might endanger the peace of America"? There was no doubt that the ties were close; the leader of the revolution had only recently described himself as "a Marxist-Leninist." But could he not be that of his own initiative? The Caracas Resolution of 1954 had described the "domination or control of the political institutions of any American State by the international Communist movement" in terms of the provisions of Article 6; but the obligations of a resolution were short of those of a treaty. As against these arguments the report of the Peace Committee made it clear that the ties with the Soviet Union were more than ideological; that they defined "the position of a country in the game of international politics"; and that the pledges given by the Soviet Prime Minister of armed aid to Cuba against aggression, together with the open repudiation by Cuba of the binding force of the Rio Treaty, clearly identified Cuba with the inherently aggressive policy of the Sino-Soviet bloc.

A final item in the indictment was based upon the subversive activities of the Cuban Government against legitimately constituted governments and the democratic institutions of America. It was found, among other activities, that there existed "a constant and systematic activity of radio propaganda through the government transmitters of Cuba," inciting public disorder and revolutionary movements. One government after another was cited as demanding the withdrawal of the Cuban Ambassador for intervening in the internal affairs of the country, some nine governments being indicated.

The debates at Punta del Este followed closely the points of view expressed by the members of the Council when the requests of Peru and of Colombia were before the Council for a convocation of the Organ of Consultation under the Rio Treaty. The conflict was between the principles of non-intervention and of "self-determination," deemed essential to the maintenance of inter-American solidarity even at the cost of the misdemeanors of the Cuban Government, and, on the other hand, the violations by the Cuban Government of fundamental human rights and the danger of the bridgehead obtained by international Communism in Cuba and the extension of the system to other American states. The opposing points of view were at all times in the background, although actual debate both in public sessions and in private groups centered on the concrete proposals of the United States Delegation, which called for breaking relations with the Cuban Government by the states that had not already done so and establishing an economic boycott of the country. Later the United States withdrew its two demands and accepted the alternative of excluding the existing Government of Cuba from participation in the inter-American system. This substitute proposal was debated as a direct mandate to the Council of the Organization of American

States, and alternatively as an instruction to the Council to find ways and means of doing so. The opponents of exclusion argued insistently that, in view of the absence of any provision in the Charter fixing the terms of exclusion, the exclusion of a member state from the Organization could not be effected without an amendment to the Charter, which would require the calling of a special conference and ratification by a two-thirds vote, after which another conference would be required to complete the exclusion. The alternative of reference of the exclusion to the Council under instructions to find ways and means of bringing it about would have involved far less delay, although apparently sufficient delay to satisfy a number of the opponents of strong action. Throughout the debates there appeared to be on the whole a safe vote of two-thirds for strong measures, but a willingness was manifested by the majority to moderate their demands up to a certain point in the hope of winning over the so-called "soft group" for a more commanding vote.

Once agreement was reached to proceed to a vote on the concrete issue of exclusion of the Cuban Government from participation in the inter-American system and upon the somewhat less controversial issue of an economic boycott, it was not difficult to obtain agreement upon the larger issue of principle, condemnation of the Cuban Government in general terms being unanimous. The Final Act⁶ containing nine separate resolutions was then voted as a whole, with reservations upon the two specific sanctions. The vote on the crucial issue of expulsion was 14 to 1, with six abstentions, and that on suspension of economic relations was 16 to 1, with four abstentions. The seven other resolutions were, with one exception, voted unanimously, namely: I, "Communist Offensive in America," calling for counter-measures to the subversive activities of Communism in America; II, "Special Consultative Committee on Security against the Subversive Action of International Communism," to advise member states requesting assistance; III, "Reiteration of the Principles of Non-Intervention and Self-Determination," reaffirming the abstract principles, but urging the organization of governments on the basis of free elections; IV, "Holding of Free Elections," repeating the principles of the Declaration of Santiago of 1959; V, "Alliance for Progress," commending the principles of the agreement of August 17, 1961; VII, "Inter-American Defense Board," excluding the present Government of Cuba from that body; IX, "Revision of the Statute of the Inter-American Commission on Human Rights," amplifying and strengthening the attributes of that body. Resolutions VI and VIII dealt with the two controversial issues, which, by a somewhat curious procedure, were described in the Final Act as "approved," and then qualified by the opposing signatories in statements at the close of the Act.

Apart from the light thrown by the Meeting of Ministers upon the interpretation of Article 6 of the Rio Treaty, an interesting question is presented for students as to whether a member of an organization can

⁶ Organization of American States, Doc. 68 (English) Rev., Jan. 31, 1962. OAS Official Records OEA/ Ser. F/11.8 (English). Reprinted below, p. 601.

be excluded from it when there is no provision for exclusion in the treaty. The Covenant of the League of Nations had an express provision (Article 16) to the effect that, by a prescribed vote, a Member might be excluded for any violation of a covenant of the League; and the Charter of the United Nations provides (Article 6) that a Member which has "persistently violated" its principles may be expelled by the General Assembly upon recommendation of the Security Council. The Charter of the Organization of American States, however, contains no provision for suspension of the rights of membership or for expulsion from the Organization for violations of the Charter. The draft prepared by the Governing Board of the Pan American Union contained a provision that, in order to enjoy the rights of membership, a state should "fulfill in good faith the obligations inherent in such membership," carrying the implication that failure to do so could result in loss of membership. But this provision did not appear in the final draft of the Charter.

Query: Does the rule of international law that the breach of the obligations of a bilateral treaty by one party releases the other party from the obligations of the treaty hold equally well for multilateral treaties? It would seem that it should do so, except that the issue would be presented as to the majority required to take the necessary decision. Where the treaty is, like the Charter of the O.A.S., in the nature of the statute of a corporate body, a larger majority would properly be required, and the seriousness of the violations of the treaty would be taken into consideration in the decision. Here the two-thirds vote required for decisions under the Rio Treaty, which forms Article 25 of the Charter, would seem to suggest the proper majority, confirmed by the necessity of a two-thirds vote for the adoption of amendments to the Charter. The resolution excluding the existing Government of Cuba from the inter-American system, in addition to offering as justification that its connections with the Sino-Soviet bloc were incompatible with the principles and standards governing the regional system, and that the acceptance of military assistance offered by Communist Powers broke down the effective defense of the inter-American system, took the position, believed to be proper to a multipartite treaty, that "no member state of the inter-American system can claim the rights and privileges pertaining thereto if it denies or fails to recognize the corresponding obligations." The right to exclude a member of an organization for violations of the provisions of its charter is thus held to be implied in the very statement of the rights and duties set forth as constituting the conditions of membership and the objectives of the organization. It should be noted that Resolution VI makes it clear in paragraph after paragraph that the decision to exclude is directed not against Cuba as a state but against "the present Government of Cuba," so that the action taken would appear to be more or less in the nature of the suspension of participation of Cuba in the organs of the Organization, leaving Cuba still a member of the Organization, to be readmitted to active participation when the reasons for its exclusion might no longer exist.

C. G. FENWICK