distinction between genuine international law and international law by analogy, on the other—are by no means, as some would believe, a consequence of the theoretical construction known as the "dualistic doctrine." The latter is certainly untenable, because it is unable to construe positive international law as superior to national law. Only the monistic doctrine of the supremacy of international law is correct, for the sole reason that it alone is able to furnish a construction in conformity with the positive international law actually in force. But it is a theoretical construction of positive international law, not an *a priori* natural law hypothesis, out of which rules of positive international law could be gained by mere logical deduction. What the rules of positive international law at a given time are, can only be found by its analysis.

Such analysis clearly shows that present-day positive international law does not prescribe that the states must have a "part of the law of the land" norm—although such municipal norm is welcome, convenient and beneficial; on the other hand, international law is always, and regardless of the contents of municipal law, superior to the national legal orders. Such analysis further shows that, like every legal rule, the rules of international law have a certain temporal, personal, territorial and material sphere of validity; they are binding upon the sovereign states and superior to national law. The sovereign states may also apply international law rules beyond their spheres of validity. But this is a matter of municipal law. If the states do so, they do not apply genuine international law, but apply international law merely by analogy.

JOSEF L. KUNZ

THE FOURTH MEETING OF CONSULTATION OF MINISTERS OF FOREIGN AFFAIRS

The outstanding characteristic of the Union of American Republics, now provisionally designated as the Organization of American States, is that it has developed by slow stages, widening step by step the scope of its activities and adjusting its organization to the needs of the conditions presented. For more than a half-century the "International Union," established in 1890 along the lines of the Universal Postal Union and other similar groups created for a specific purpose, pursued its objectives on the basis of successive resolutions of inter-American conferences without the need of resorting to formal treaty obligations. An effort was made in 1928, at Habana, to establish the Union upon more strictly legal foundations, but the failure of the American States to ratify the convention did not in any way impede the functioning of the existing system. Only in 1948 were the relations of the American States reduced to the terms of a formal Charter, which is still only in effect provisionally by virtue of a resolution of the Bogotá Conference.[1]

[1] Ten states have now (March 16) deposited their ratifications of the Charter, four more being needed to meet the requirement of two-thirds.

What place does the Meeting of Consultation hold in the constitutional system of the Organization of American States, if so strong a word as "constitutional" can be used of the Charter adopted at Bogotá? Common consultation as a means of meeting imminent threats to the peace dates only as far back at 1936. Clouds of war had begun to hang over Europe, and the United States felt that it was urgent to extend the new "Good Neighbor" policy into the field of continental defense. The Monroe Doctrine was there, but it called for no coöperation on the part of the other American States; indeed, in the terms in which it had been stated by Secretary Hughes in 1923, it had the effect rather of deterring coöperation than promoting it. Could the American States be made partners, entrusted equally with the obligation to defend America in the event of a European war?

The convention adopted at Buenos Aires was loosely drafted, the terms being broad enough not to alienate the support of certain states whose traditional antipathy to the Monroe Doctrine was so strong that they could not bring themselves to use language that suggested the Doctrine too closely. The agreement merely provided that, in the event of a menace to the peace of America, the American Governments would consult with one another individually to decide whether there should be common consultation to find and adopt methods of pacific coöperation. The principle of regional collective security was thus recognized, but the steps to be taken were deliberately left undetermined.

When the Eighth International Conference of American States met at Lima in 1938 the clouds of war in Europe had become much darker, but it took the most untiring negotiations to clarify the principle proclaimed at Buenos Aires and to provide a procedure equal to the emergency that might arise. This was done by the famous Declaration of Lima, which provided that the consultations which were to take place in the event of a threat to the peace should be in the form of a meeting of the Ministers of Foreign Affairs of the American Republics, to meet in their several capitals and without protocolary character. Here was a body that might be summoned in an emergency and, under the circumstances of modern travel, might be brought together in as short a time as the situation might require.

The First Meeting of Consultation, held at Panama within a few weeks of the outbreak of war in 1939, was concerned with measures to maintain the neutrality of the American States, adopting for that purpose common standards of conduct and marking off a security zone to be kept free from hostile acts by the belligerents. The Second Meeting, held at Habana in 1940, renewed in more explicit terms the principle of collective security set forth in the Convention of Buenos Aires and in the Declaration of Lima, making at the same time more specific provision for resistance to any transfer of sovereignty over colonies of non-American countries from one

belligerent to the other. This took no little courage, seeing that in July, 1940, it looked as if Germany had practically won the war. The Third Meeting of Foreign Ministers, held in Rio de Janeiro in January, 1942, following the attack by Japan upon the United States at Pearl Harbor, affirmed the principle of regional collective security in even stronger terms than before and agreed upon specific political and economic measures of coöperation to be taken for the defense of the Western Hemisphere.

The Meeting of Consultation had now obtained a firm footing in the inter-American system. Three years later, at the Conference held at Mexico City in 1945, provision was made for annual meetings held upon special call by the Governing Board of the Pan American Union and charged with decisions upon urgent matters. Two years later, at Rio de Janeiro in 1947, the Treaty of Reciprocal Assistance, which now supplants all previous pledges of regional collective security, made provision for emergency meetings of what is called "the Organ of Consultation" and specified that the consultations to which the treaty referred were to be carried out "by means of Meetings of Ministers of Foreign Affairs of the American Republics which have ratified the Treaty," decisions being taken by a vote of two-thirds of the states which have ratified the treaty. This emergency character of the Meeting of Consultation is preserved in the Charter of the Organization of American States, now in force provisionally, Article 39 of which provides that the Meeting of Consultation shall be held "in order to consider problems of an urgent nature and of common interest to the American States," as well as to serve as the "Organ of Consultation" for which the Rio Treaty of Reciprocal Assistance provides.

On December 18, 1950, the representative of the United States on the Council of the Organization of American States, requested the Council to consider the calling of a Meeting of Consultation under the terms of Article 39 of the Charter. The circumstances set forth in the request, namely, "the aggressive policy of international Communism" which, carried out through its satellites, has brought about "a situation in which the entire free world is threatened," might, perhaps, have equally justified a meeting of the Organ of Consultation provided for in the Treaty of Reciprocal Assistance. But there were advantages in not raising the question of the degree to which, under the somewhat complex terms of Article 6 of the Rio Treaty, "the inviolability or the integrity of the territory or the sovereignty or political independence of any American State" might be affected by the circumstances referred to in the request of the representative of the United States on the Council. Hence the request was made on the basis of the broader terms of Article 39 of the Charter. Reference to the Charter has the further advantage of giving representation to Guatemala, whose ratification of the Rio Treaty is now pending. At the same time the voting procedure under the Charter is sufficiently elastic to permit the decision of

"procedural matters" by less than the two-thirds majority which the terms of the Rio Treaty might appear to require.

The program of the Fourth Meeting of Consultation has been fixed as follows, as approved by the Council of the Organization:

I. Political and military coöperation for the defense of the Americas, and to prevent and repel aggression, in accordance with inter-American agreements and with the Charter of the United Nations and the resolutions of that organization.
II. Strengthening of the internal security of the American Republics.
III. Emergency economic coöperation:
  (a) Production and distribution for defense purposes.
  (b) Production and distribution of products in short supply and utilization of necessary services to meet the requirements of the internal economies of the American Republics; and measures to facilitate insofar as possible the carrying out of programs of economic development.[2]

CHARLES G. FENWICK

JURISDICTION OVER THE SEA BED AND SUBSOIL BEYOND TERRITORIAL WATERS

A noteworthy *Memorandum on the Regime of the High Seas* prepared by the United Nations Secretariat for the International Law Commission[1] suggests that the problem of reconciling the freedom of the seas with disciplined exploitation of the resources of the high seas and its subsoil

> does not appear insoluble provided the extension of the jurisdiction of littoral States to the high seas in the vicinity of their coasts does not develop into a territorial jurisdiction, similar to the rights of sovereignty formerly claimed over the high seas, but is confined to a special jurisdiction over one or more of the natural elements distinguishable in the high seas: the stratosphere or atmospheric area, the surface of the sea, the sea depths, the bed and the marine sub-soil.[2]

Stressing the "essentially negative" nature of the doctrine of the freedom of the seas as a reaction against claims to sovereignty over the high seas, the *Memorandum* points out that, although the rule of non-interference with foreign-flag vessels on the high seas has assured freedom of navigation, it does not provide a regime for the utilization of the high seas as a source of wealth, since it fails to prescribe means for conserving the resources of the sea or to proscribe acts *contra bonos mores*. The inadequacy of the rule of non-interference is seen when it is used to justify acts imperiling the conservation of limited resources such as fisheries or the disciplined exploitation of submarine resources of untold value.

[2] For further details of the Meeting, see *Organization of American States, Fourth Meeting of Consultation of Ministers of Foreign Affairs, Washington, D. C. March 26, 1951: Handbook.*

[1] U.N. Doc. A/CN.4/32, July 14, 1950, pp. vi, 112.

[2] *Ibid.*, p. 15.