

EDITORIAL COMMENT

THE INTER-AMERICAN DEFENSE TREATY

On August 30 the representatives of nineteen American Republics signed at Rio de Janeiro a Treaty of Reciprocal Assistance continental peace and security. The Rio conference was held in accordance with the recommendation contained in the Act of Chapultepec signed at Mexico City on March 3, 1945, where the American nations gathered in advance of the United Nations Conference at San Francisco of April 25–June 26, 1945, to agree upon their position within the general international organization about to be formed. However, at the San Francisco Conference regional organizations, of which the Inter-American System with more than fifty years of successful operation is the most outstanding, experienced rough sailing. They were not favored because it was feared that they might detract from the authority of the United Nations. The timely promise of President Truman that after the war he proposed to carry out the recommendation of the Act of Chapultepec saved the Inter-American System at San Francisco. The inability of the United Nations to prevent aggression in Europe during the two years which have elapsed since the Charter was signed demonstrates the wisdom of President Truman's safeguard intervention in May, 1945.

Unlike the Charter of the United Nations, the Treaty of Rio de Janeiro does not leave flagrant acts of aggression to be determined *ex post facto* by a political body. Confirming similar provisions of the Act of Chapultepec, Article IX of the Rio Treaty provides that, in addition to other acts which may be characterized as aggression, the following shall be considered as such:

A.—Unprovoked armed attack by a state against the territory, the people, or the land, sea or air forces of another state;

B.—Invasion by the armed forces of a state, of the territory of an American state, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another state.

Article I of the Rio Treaty formally condemns war, and the signatories undertake not to resort to the threat or use of force in any manner not consistent with the provisions of the Charter of the United Nations or of the Rio Treaty. They further agree in Article II to submit every controversy which may arise between them to methods of peaceful settlement by "means of the procedures in force in the inter-American system before referring it to the General Assembly or the Security Council of the United Nations."

Article III specifies that an armed attack by any state against an American State shall be considered as an attack against all the American States, and each one of them undertakes to assist in meeting such an attack "in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations."

In case of a conflict between two American States, the Rio Treaty first recognizes the right of self-defense in conformity with Article 51 of the United Nations Charter. It then provides that the signatories shall meet in consultation and call upon the contending states to suspend hostilities and restore the *status quo ante bellum*. The consultative organ shall, moreover, take all other necessary measures to reestablish inter-American peace and security and for the solution of the conflict by peaceful means. Article VII then provides that "The rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon."

In the case of a direct attack by any state upon an American State, each of the contracting parties upon the request of the state attacked "may determine the immediate measures which it may individually take" in fulfillment of its obligation. It is further provided that "The organ of consultation shall meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be adopted" (Article III).

Defense against aggression taking place within the Inter-American sphere is slightly differentiated from defense against aggression taking place without. The Treaty accordingly delimits the defensive zone for the Americas by lines specifically laid down in degrees of longitude and latitude. This region may be generally described as running irregularly from the North Pole to the South Pole in the Atlantic and Pacific Oceans, including Greenland within its eastern limits and Hawaii within its western limits. Should the armed attack upon an American State take place outside of this area, the American States are not required to take individual action but it is provided that the organ of consultation shall meet immediately in order to agree on the measures which must be taken to assist the victim of the aggression. The same Article (VI) stipulates also for an immediate meeting of the organ of consultation "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 extracontinental or intercontinental conflict, or by any other fact or situation that might endanger the peace of America," in order to agree upon measures to be taken for the common defense and for the maintenance of the peace and security of the continent. According to Senator Vandenberg, a delegate of the United States to the Rio Conference,

The delegation of the United States was particularly earnest in urging this idea that crimes against peace and justice cannot be confined within latitudes and longitudes. We were anxious that the creation of our "region" should imply no lack of interest in world peace outside that "region" nor condone war crimes against humanity wherever they occur.¹

The organ of consultation is to be the meeting of the Ministers of Foreign Affairs of the signatory states until otherwise provided. Until the Ministers can meet, the Governing Board of the Pan American Union may act provisionally as an organ of consultation. The consultation may be initiated on a request addressed to the Governing Board of the Pan American Union by any of the signatories of the treaty. Decisions of the organ of consultation are to be taken by a vote of two-thirds of the signatories. Decisions of the Governing Board of the Pan American Union concerning the initiation of consultation and as an organ of liaison among the signatory states are to be taken by an absolute majority of the members entitled to vote. In the case of a situation or dispute between American States, the parties directly interested are excluded from voting in the consultative organ whether it be meetings of the Ministers of Foreign Affairs or the Governing Board of the Pan American Union. The veto power which has prevented effective action by the Security Council of the United Nations has thus been outlawed in the Inter-American System.

The sanctions which may be imposed by the organ of consultation to assure the fulfilment of the obligations of the treaty are those specified in the Act of Chapultepec, which include the recall of diplomatic officers, the breaking of diplomatic and consular relations, the discontinuance of communications in every form, and the interruption of economic, commercial and financial relations. The use of armed force is also authorized, but no state may be required to use armed force without its consent. Mr. Warren R. Austin, Chief Delegate of the United States to the United Nations and one of the United States delegates to the Rio Conference, explained that

This reservation conforms to constitutional requirements of various countries concerning the mobilization of their armed forces. No doubt such countries, including our own, will find a way of giving such consent in time to be effective.

The authority of the United Nations is upheld throughout the Rio Treaty whenever the general organization is ready and able to maintain international peace and security in accordance with the Charter; and the American States are required to make prompt report of their actions under

¹ Radio address of Sept. 4, 1947. Printed in *The New York Herald-Tribune* for Sept. 5.

² Statement to the press Sept. 3, 1947. *The New York Herald-Tribune*, Sept. 4, 1947.

the Rio Treaty to the United Nations. Article X of the Rio Treaty specifically provides that

None of the provisions of this treaty shall be construed as impairing the rights and obligations of the high contracting parties under the Charter of the United Nations.

The conclusion of the Rio Treaty of Reciprocal Assistance is an occasion for certain inescapable reflections and comparisons. It is above all, as stated by Senator Vandenberg, in accordance with traditional American ideals. It recalls the names of James Monroe, Simón Bolívar, James G. Blaine, Elihu Root and Cordell Hull. To them it adds the names of Harry S. Truman and George C. Marshall. When the latter affixed the signature of the United States to this treaty at Rio de Janeiro on August 30, 1947, the spirit of Elihu Root must have been hovering nearby for in the same city forty-one years ago, that is, on July 31, 1906, Mr. Root, then Secretary of State of the United States, at the opening of the Third Pan American Conference, declared on behalf of this country:

We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire; and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong.

Upon his return from Rio de Janeiro, Secretary Marshall reported to the American people over the radio. He declared that the conference was "The most encouraging, the most stimulating international action since the close of hostilities." The results of the conference demonstrate, he stated, "that where nations are sincerely desirous of promoting the peace and well-being of the world it can be done," and, he added, "It can be done without frustrating delays and without much of the confusing and disturbing propaganda that has attended our efforts of the last two years."³ Senator Vandenberg in the same broadcast declared the Treaty to be a milestone of incalculable importance, and "a tremendously significant and progressive pattern for others to follow." Verily, the Rio Treaty is, as he said, "sunlight in a dark world."

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SWITZERLAND AND THE INTERNATIONAL COURT OF JUSTICE*

The San Francisco Conference took a significant step when it decided that the World Court should be an organ of the United Nations. It

³ Radio address of Sept. 4. Printed in *The New York Herald-Tribune*, Sept. 5.

* On October 1, 1947, after this Comment was in type, it was reported that the Federal Council of Switzerland was favorably disposed to accession to the Statute on the terms proposed.