

ference to be held in 1953, or possibly at an earlier Meeting of Consultation of Foreign Ministers.

In the meantime, however, it must be recognized that the Peace Committee is fulfilling a very useful function, and no one appears to find any difficulty in overlooking its peculiar position as an agency responsible only to the supreme authority of the Inter-American Conference or, under exceptional circumstances, to the Meeting of Consultation of Foreign Ministers.

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THE COMPETENCE OF THE COUNCIL OF THE ORGANIZATION OF AMERICAN STATES

Among the many interesting constitutional problems that have arisen since the Charter of the Organization of American States came into effective operation is the question of the competence of the Council of the Organization. The Council is a unique body, unlike any other in the history of political institutions, just as the Organization of American States itself is unlike any other system of regional relations between states. The Council is not to be compared with the General Assembly of the United Nations, although it is composed of one representative of each of the twenty-one members of the Organization. It is not to be compared with the Security Council of the United Nations, although its powers to act as a provisional organ of consultation may under certain circumstances appear to give it such a character. Its composition and functions are only to be explained by the historical development of the inter-American system, which, in seeking a constitutional structure at Bogotá in 1948, at the same time sought to prevent any undue encroachment upon the reserved "sovereignty and independence of the members of the Organization."

The Conference was made the "supreme organ" of the Organization, deciding the general action and policy of the Organization and the structure and functions of its organs. But the Conference convenes only once in five years, so that it was necessary to establish a second organ entitled "The Meeting of Consultation of Ministers of Foreign Affairs," to consider problems of an urgent nature which could not await the meeting of a Conference, and at the same time to serve as the Organ of Consultation provided for in the Rio de Janeiro Treaty of Reciprocal Assistance. Since any individual member state might request that a Meeting of Consultation should be called, the decision as to the need of a meeting under the circumstances alleged to justify it was entrusted to the Council of the Organization, successor to the former Governing Board of the Pan American Union. The Council, consisting of specially designated ambassadors of the members of the Organization, holding regular sessions in Washington, appeared to be the appropriate body to set in motion the machinery of the Meeting of Consultation which might have to be called on short no-

tice and which in any case would involve personal inconvenience for the foreign ministers of the different countries.

Under the Charter of the Organization the Meeting of Consultation is to be called "to consider problems of an urgent nature and of common interest to the American States." Meetings are to be held upon request of any member state; and when presented with such request the Council of the Organization shall decide by an absolute majority whether a meeting should be held. An exception is made in the case of an armed attack within the territory of an American State or within the region of security defined by the Rio Treaty, in which case the Meeting of Consultation is to be held without delay and is to be called by the Chairman of the Council without submitting the question to the vote of the Council itself.

Under the Rio Treaty the Organ of Consultation is to meet, under Article 3, in the case of an armed attack against an American State, and under Article 6, in the case of an act of aggression which is not an armed attack, an extra-continental or intra-continental conflict, or "any other fact or situation which might endanger the peace of America," provided that in each of these cases the inviolability or the integrity of the territory or the sovereignty or political independence of an American State is affected. While in both cases the Organ of Consultation is to meet without delay, the procedure must be followed of having the Governing Board of the Pan American Union, now the Council of the Organization of American States, call a Meeting of Consultation, upon request of a state which has ratified the Treaty, if an absolute majority of the Council believes that the situation presented comes within the terms of Article 3 or 6. It would appear that the provisions of the Charter with respect to the calling of a meeting in the case of an armed attack will, upon ratification of the Charter, amount to an amendment of the provisions of the Rio Treaty in respect to the calling of a Meeting of Consultation under the terms of Article 3.

Within these limitations a broad competence is given to the Council to discuss any question presented to it by a member state through its representative on the Council. No discussion would appear to be necessary in the case of an armed attack against an American State; and in consequence the Charter gives to the Chairman of the Council the right to call the Meeting of Consultation. But in the case of situations alleged to come within the terms of Article 6 of the Rio Treaty and in the case of situations alleged to come within the category of "problems of an urgent nature and of common interest to the American States," as described in Article 39 of the Charter, there would be ample room for discussion to determine whether the facts of the case warrant acceding to the request of the state presenting them as justification for the calling of a Meeting of Consultation. So far, therefore, as the powers of the Council to discuss a given situation are concerned, it would seem as if there were no limits to them,

provided the discussion is directed towards determining the character of the problem presented in relation to the provisions of the two treaties. It should be noted, however, that the Council cannot go on to act as a provisional Organ of Consultation until it has first determined that the situation warrants the calling of a Meeting of Consultation. The discussion by the Council of the character of a situation presented to it cannot, therefore, be made the occasion for the determination of the measures to be taken to meet the situation or the sanctions to be applied. That is a second step entirely distinct from the first.

The practical issue arose when it was sought to convert this delimited function of the Council into a general competence to decide all manner of controversies that arise between the American States. For example, negotiations between two states have failed to settle a controversy involving an alleged violation of international law. What then? There are, of course, procedures of pacific settlement. But these take time and require some degree of coöperation between the parties, whereas what is wanted is a prompt settlement of a pressing matter. Why not bring before the Council complaints involving the non-observance of treaty obligations and get a decision without further delay? Why not make the Council a court of summary jurisdiction? The Treaty on Pacific Settlement, signed at Bogotá, might have created such a procedure. But since it did not, here was one way of making good the obvious need of such a procedure.

The Council, however, was not to be diverted in this manner from its specifically assigned functions. When, in January, 1949, at the instance of the representatives of Chile and Guatemala, the question was presented whether Venezuela was obligated to give a safe-conduct to Rómulo Betancourt, who had taken refuge in the Colombian Embassy in Caracas, the Council felt it desirable to appoint a committee to report on its competence to deal with questions of this nature. Shortly after, on February 16, emphasis was given to the scope of the competence of the Council when the representative of Haiti brought before the Council the situation created by the activities of a Haitian refugee in the Dominican Republic, which was described as "a situation that might endanger the peace."

The committee appointed by the Council called attention in its report to the complicated nature of the problem and to the divergent interpretations to which it had given rise, and it suggested that it would be useful to have a technical study of the problem and that the Inter-American Council of Jurists should be requested to make such a study. The Council accepted the report, and it thus evaded a decision which, in spite of its embarrassing features, was one which should properly have been decided by the Council itself. The representative of the United States, while acquiescing in the decision to refer the matter to the Council of Jurists, submitted a series of observations to the effect that it would be undesirable to adopt rigid rules regarding the competence of the Council in matters

of the type which raised the issue, and that it would be better to consider each particular case in the light of the circumstances under which it was presented to the Council.

Attached to the report of the committee was a memorandum submitted by the representative of Mexico which argued that there was nothing in the Charter of the Organization to justify the assumption by the Council of competence in matters relating to the observance of treaties; and that the proper procedure for the parties in such cases was to have recourse to the established procedures of diplomatic negotiation and pacific settlement. The memorandum expresses clearly the attitude of the states which fear that the Council may gradually widen its activities and assume "political functions" which it was the express desire of the delegates to the Bogotá Conference to prevent, as indicated in a long series of excerpts from the *Diario* of the Conference.

What is to be the substitute for the apparent need of a public forum before which grievances can be brought by particular states when the ordinary procedures of pacific settlement appear to be too slow or too cumbrous to meet the situation? The Mexican memorandum attached to the report of the Council's committee pointed out the advantages of the Inter-American Peace Committee as an agency for bringing the parties together and getting them to agree upon an effective procedure for the settlement of the dispute. Whether the Peace Committee, which is without authority of any kind to bring pressure upon the parties, may nevertheless succeed in meeting a need which was overlooked at Bogotá in the drafting of the Treaty on Pacific Settlement, remains to be seen.

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