

and two, or the treaty with the Republic of Panama, ratified February twenty-sixth, nineteen hundred and four . . . to discriminate in favor of its vessels by exempting the vessels of the United States or its citizens from the payment of tolls . . . or as in any way waiving, impairing or affecting any right of the United States under said treaties or otherwise. . . ."⁸⁵

III

The foregoing would seem to show a fairly common practice of referring in statutes to the standard which is international law, and a much more common practice of integrating statute law with treaty law. The value of this type of evidence is, of course, limited, since it does not reflect instances in which statute-makers have directed their enactments to ends which are consistent with the law of nations and with treaties without making the latter the subject of specific references. Nor does it take into account the cases in which conflicts between, or harmonization of, municipal statutes and international obligations may have been worked out in the realm of diplomacy. In any case, the record seems to suggest that, so far as the United States is concerned, the principle of legality, interpreted broadly and not in a restricted, municipal sense, has figured importantly in certain parts of the law of the land. Without the concession of the reality of international law and of a degree of ascertainability for its provisions, many statutory provisions (including some provisions of the penal law) which incorporate it by reference would not be completely meaningful.

ROBERT R. WILSON

FOURTH MEETING OF CONSULTATION OF MINISTERS OF FOREIGN AFFAIRS OF AMERICAN STATES

The Fourth Meeting of Consultation of Ministers of Foreign Affairs of American States took place in Washington from March 26 to April 7, 1951. This meeting, reasonably successful, again reflected the general world situation, the status of development of the Pan American idea and the crucial problem of the relations, within Pan America, of this country toward Latin America.

The present Pan Americanism, founded in 1889 by the United States, was originally a modest venture on a pragmatist, primarily commercial, basis, whereas, as far as political relations are concerned, this country stood firm on the Monroe Doctrine, and on international isolationism. The United States emerged by 1900 as a great Power politically and economically and entered a period of imperialism *vis-à-vis* Latin America. The first World War interrupted the development and showed also Latin-American suspicions and objections. Practically all Latin-American States joined the

⁸⁵ 38 Stat. 385. Compare 50 Stat. 750, 751.

League of Nations, out of a true universalist feeling and also with the idea to find in Geneva a counterpart against Washington, against what they called the imperialism of the "*colosso del Norte*." Under the impact of our intervention in Nicaragua, which led Raúl Haya de la Torre to found his "*Aprismo*," directed originally against American imperialism, the Sixth Inter-American Conference at Havana in 1928 meant the crisis of the survival of Pan America. Latin-American objections found expression in the many bitter speeches against intervention. That there was no complete crumbling of Pan Americanism, is due only to the great legal and diplomatic gifts of Charles Evans Hughes, Secretary of State, leader of the United States Delegation.

But this country recognized in 1928 that Pan America can survive only as a partnership among equals. The "policy of good will" (1928-1932) under Herbert Hoover led to the present "policy of the good neighbor" under Franklin D. Roosevelt.

Since that time Pan America has developed into a really important regional system. Washington's acceptance of the principle of non-intervention in the internal and external affairs of any American Republic is the very cornerstone of this new policy with which it stands and falls. New organs of co-operation sprang up; a frank recognition of political activities and a full return to the Bolivarian idea of what nowadays is called collective security followed. It was fully recognized that a real and vital Pan Americanism must also be based on far-reaching economic co-operation. Finally, it was understood that such real Pan Americanism must be based, in the very first place, on a mutual knowledge and appreciation of the two great different cultures of the Americas, the Anglo-Saxon and the Hispanic, although much remains to be done in this field.

At the same time, as always, extracontinental dangers from Fascism and National Socialism, the presentiment of the coming second World War, fostered the growth of Pan America. At Buenos Aires the United States introduced the then new idea of Pan American consultation, which was institutionalized at Lima in 1938. After the outbreak of the second World War, there followed quickly the first three Meetings of Consultation: at Panama in 1939, at Havana in 1940, and at Rio de Janeiro in 1942. Then followed a period of retreat, caused by the differences between this country and Argentina, its eternal counterplayer within Pan America, and by this country's absorbing interest, first, to win the war and, then, to prepare the United Nations.

But at Mexico City in 1945 the foundations were laid for a complete re-organization of the inter-American system, making it at the same time a regional organization within the United Nations, and for collective security, by the Pact of Chapultepec. The latter initiative led to the Rio Treaty of

1947,¹ based on Article 51 of the United Nations Charter. The first initiative led to the Bogotá Charter of 1948,² which is now being implemented, and to the Pact of Bogotá³ of the same year.

In 1942 it looked as if the Meeting of Consultation would just become another Inter-American Conference, would lose its character as a special organ, and the Secretary General of the Pan American Union warned against this danger. But the Bogotá Charter, Article 39, made these meetings—apart from their function as the Organ of Consultation under the Rio Treaty—strictly emergency meetings. In accordance with Article 40, the United States in a note of December 18, 1950, to the Chairman of the Council of the Organization of American States asked for the convocation of a Meeting of Consultation and sounded the keynote: "The aggressive policy of International Communism, carried out through its satellites, has brought about a situation in which the entire free world is threatened."

The Council, at its meeting of December 20, 1950, decided to convoke this Meeting of Consultation for March 26, 1951, at Washington. The meeting was carefully prepared by the Pan American Union.⁴ The Council approved the regulations⁵ of the meeting, in accordance with Article 41 of the Bogotá Charter. The meeting was, in conformity with Article 83(a) of the Bogotá Charter, convoked by the Pan American Union and sat at Washington from March 26 to April 7, 1951. The agenda, proposed by the United States and approved by the Council of the Organization, consisted of three problems: (1) political and military co-operation for the defense of the Americas in accordance with . . . the United Nations; (2) strengthening of internal security, and (3) emergency economic co-operation. The meeting appointed three principal committees to consider these three problems, and adopted, without adverse vote, thirty-one resolutions.⁶

The second problem created the least difficulties. Even if democracy in practice leaves something to be desired in many states, there was unanimous agreement, as well as a precedent set, against another type of totalitarianism. Resolution VII deals with the strengthening and effective exercise of democ-

¹ Pan American Union, Cong. and Conf. Series, No. 53; this JOURNAL, Supp., Vol. 43 (1949), p. 53. For a complete analysis of this treaty see Jos. L. Kunz, in this JOURNAL, Vol. 42 (1948), pp. 111-120.

² Department of State Publication 3263 (Int. Org. and Conf. Series II, American Republics 3, November, 1948), p. 166. For an analysis see Jos. L. Kunz, *loc. cit.*, pp. 568-589.

³ Department of State Publication 3263 (cited *supra*), p. 186. For an analysis see Jos. L. Kunz, *Arbitration Journal* (New York), Vol. III (1948), pp. 147-155; and *Österreichische Zeitschrift für öffentliches Recht*, Vol. II (1950), pp. 414-436.

⁴ Handbook, Pan American Union (pp. 253, mim.).

⁵ Text in Handbook, pp. 10-16.

⁶ See Final Act, signed at Washington, April 7, 1951 (Pan American Union, Doc. 145, pp. 54, mim.; and Doc. C-d-164-E, June 6, 1951); also in Department of State Bulletin, Vol. XXIV, No. 615 (April 16, 1951), pp. 606-615. The major resolutions are also reprinted in the *New York Times*, April 8, 1951, p. 30.

racy, but, of course, "without prejudice to the principle of non-intervention." It states that the solidarity of the Americas is based on effective exercise of representative democracy, social justice, and respect for and observance of the rights and duties of man. In full harmony with the general trend of the international protection of human rights, it instructed the Inter-American Council of Jurists and the Inter-American Juridical Committee to study these problems and to prepare draft conventions; it also suggested that the Tenth Inter-American Conference take action in this field. Resolution VIII deals with the strengthening of internal security and is similar to the resolutions adopted against subversive activities since 1936. Great care is taken to avoid the abuse of such measures for the purpose of suppressing basic democratic institutions or rights of the individual; Resolution XXI emphasizes that emergency restrictions and control measures shall be considered as merely temporary measures because of the common defense effort.

Much more difficult was the work of Committee I. In his speech⁷ of March 26 before the opening session of the meeting, the President of the United States strongly attacked "the aggressive expansion of Soviet power" and underlined the necessity of help for the free men of Europe and measures against the threat in the Far East; he particularly emphasized that the heroic struggle in Korea has the survival of all the principles for which we stand as its basic issue. The address of Secretary of State Dean Acheson⁸ the next day dealt also primarily with the United Nations and Korea. True, the Council of the Organization of American States had adopted a resolution on June 28, 1950, on the North Korean aggression and had declared its "firm adherence to the decisions of the competent organs of the United Nations." In the Meeting of Foreign Ministers, Cuba, Colombia and Uruguay typically were co-sponsors of the American-introduced resolution which stood for firm integration with the United Nations. But representatives of other Latin-American Republics looked at the Organization of American States primarily as a regional organization; the hemispheric, not the global, aspect interested them; they were rather unhappy to see this regional system involved in United Nations affairs and the representatives of Guatemala, Mexico and Argentina said so openly.

This different attitude is quite natural. Notwithstanding all non-intervention and equality, it would be unrealistic to deny that the United States is the strongest and leading Power not only of this Hemisphere, but of the world. The United States' responsibility and, hence, her attitude are therefore by necessity global. It always has been and will be the foreign policy of the United States which shapes the political attitude of the Organization of American States. It was the United States which in 1939 proposed Pan American neutrality, in 1940 Pan American defense, and in 1942 Pan

⁷ Text in Department of State Bulletin, Vol. XXIV, No. 614 (April 9, 1951), pp. 566-568.

⁸ *Ibid.*, pp. 569-572.

American belligerency. Now, the United States stands in a global struggle with the Soviet Union. There is, as Ambassador John C. Dreier stated,⁹ "a powerful influence of world events on United States relations with Latin America." On the other hand, as the same speaker stated, Latin America "sees an overwhelming need of improvement of living conditions for their peoples; in the face of their own pressing tasks the problems of Asia and Europe seem remote indeed to many Latin Americans."

But these divergencies could be overcome. In Resolution I ("Declaration of Washington") all the American States express their firm determination to remain steadfastly united, both spiritually and materially, in the present emergency, to maintain not only peace and security and ensure respect for the fundamental freedoms of men in this Hemisphere, but also voice their conviction that strong support of the United Nations is the most effective means of maintaining the peace, security and well-being of the peoples of the world. Resolution II on preparation for defense states that the present world situation requires not only positive support for the collective defense of the Continent, but also co-operation within the United Nations to prevent and suppress aggression in other parts of the world, and that each of the American Republics, "in accordance with its constitutional norms, and to the full extent that . . . its capabilities permit," make available elements of its armed forces "for service as United Nations unit or units. . . ." This resolution was also accepted by Argentina, although its representative made a reservation to the effect "that any use of its national armed forces is conditioned by the National Constitution, which reserves the said authority exclusively and unassignably to the National Congress." Resolution III deals with inter-American military co-operation.

Perhaps still more arduous was the task of Committee III. Here again the quite natural divergency of views between the United States and Latin America was to be seen. The United States was, of course, primarily interested in emergency economic measures, in production of strategic raw materials and in priorities for the requirements of the defense program. The American proposals were introduced by the speech of Assistant Secretary of State Willard L. Thorp, made on March 27 in Committee III.¹⁰ According to him the emergency problems are: to increase the production of basic materials and use them best in the common defense; how to go about the allocation of goods in short supply; how to avoid giving strength to aggressors; how to keep down inflation and maintain our economic stability.

Latin America, on the other hand, wanted security against the peril that their economic requirements become a victim of our defense effort; they stood for guarantees, protecting accrued dollar balances against falling purchasing power in this country; they insisted that long-range economic projects for lifting the living standard of the masses in Latin America and

⁹ *Ibid.*, No. 617 (April 30, 1951), pp. 688-693.

¹⁰ Text *ibid.*, pp. 693-698.

industrialization must not be sacrificed; they rightly stated that these tasks are a pre-condition for political stability, a pre-condition against dangers threatening from Communism, which prospers under conditions of mass poverty, undernourishment and ignorance. Already the address, in response to President Truman's speech, by João Neves de Fontoura, Foreign Minister of Brazil,¹¹ dealt, to a great extent, with economic problems and warned that "we could not repeat past practice without ruining ourselves and with no benefit accruing to the world therefrom."

The great importance of economic problems is reflected in the great number of resolutions adopted. There are the resolutions dealing with emergency problems: increase of production of basic and strategic materials (XIII), production of scarce essential products (XIV), allocations and priorities (XVI), emphasizing the "principle of relative equality of sacrifice"; prices (XVII), destined to prevent inflation; study groups on scarce raw materials (XVIII); transportation (XIX). Resolution XXIII, concerning the shortage and distribution of newsprint, admonishing the states "that governmental measures for the distribution of newsprint must be applied with due regard for the social function of journalism, and without preference or limitation that would affect the freedom of the press," is as near as this meeting could come to the otherwise untouched problem of the Argentine suppression of the leading newspaper, *La Prensa*. On the other hand, Resolutions IX to XII emphasize the necessity of the improvement of the social, economic and cultural levels of the peoples of the Americas, of the economic and social betterment of the working classes, of fighting poverty and ignorance, of the betterment of the American worker and, in general, the necessity of economic development.

It may well be that, despite the resolutions of this meeting, there will not be ideal performances everywhere of a representative democracy; it may well be that, despite the resolutions of this meeting, not many Latin-American soldiers will be seen in Korea. It is certain that the economic resolutions of this meeting will need a strong degree of implementation. Yet, the meeting must be valued as a reasonable success. It has maintained and strengthened the unity of the Americas as a co-operative organization of partners, it has continued the good neighbor policy, it has reaffirmed continental solidarity, and all that in the light of the new world situation now prevailing. Pan America, like everything else, is set in the never-ending flux of history; if it wants to survive, it must adjust itself continuously to the ever-changing circumstances. It is utopian to believe that we are going toward the achievement of some ideal solution which, once reached, will stand forever. Every political work, every enactment of law is a transition; new developments demand new solutions. For, as Justice Oliver Wendell Holmes once remarked: "Repose is not the destiny of man."

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¹¹ Text in the *New York Times*, March 27, 1951, pp. 10-11.