of a very general or even vague character.[1] The Court quite naturally returned a negative reply to such a query, although every judge must have known that such a reply meant little or nothing and that states or governments would in fact have in mind political considerations in all cases.

This is obviously no place in which to discuss the purely political aspects of the problem of the recognition of the present government in Peiping as the representative of "the Republic of China"—to state the matter with painful precision and in terms of the Charter. There might be advantages and disadvantages to be anticipated along that line, but weighing the considerations for and against such action would require more time and space than are available here. The question inevitably arises in connection with approval of credentials of delegates to United Nations organs.[2] The answer obviously turns in part on the value of having in the United Nations, rather than outside it, a country believed to be hostile to United Nations principles. The case is made all the more difficult by the activities of the Peiping government in Korea, not to mention the Formosa area.

The conclusion to such an analysis appears to be fairly simple, at least from a juridical viewpoint. The Members of the United Nations are entirely free to decide upon recognition of the Communist government of China as the representative thereof in accordance with the terms of the Charter, the facts as they see them, and their own policies. The international community and the United Nations might benefit or suffer more or less from such action. The Members of the United Nations are also entirely free to refuse to admit "Red China" to the United Nations—so to speak—with possible similar results.

PITMAN B. POTTER

THE MEETING OF CONSULTATION OF FOREIGN MINISTERS AS A PROCEDURE OF INTER-AMERICAN COLLECTIVE SECURITY

Important as was the progress made in the inter-American procedure of arbitration from the time of the proposed "Plan of Arbitration" of 1890, it was not until the establishment of the inter-American regional security system that it was possible to contemplate a treaty of pacific settlement which would be all-inclusive in its scope. The well-known inter-American treaties of 1929, dealing respectively with conciliation and arbitration, both had their loopholes of escape, the conciliation convention carrying the usual provision that the report of the commission was not to be binding upon the parties and the arbitration treaty making exception of non-juridical questions, more specifically, questions "which are within the domestic jurisdiction of any of the Parties to the dispute and are not controlled by international law."

With the adoption of the Treaty of Reciprocal Assistance at Rio de Janeiro in 1947 it appeared possible to formulate an all-inclusive treaty of

[1] International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, 1948, p. 57; this JOURNAL, Vol. 42 (1948), p. 927.

[2] Rules of Procedure of the Security Council, Rule 15.

pacific settlement; and, on the basis of a draft presented by the Inter-American Juridical Committee, the American Treaty on Pacific Settlement was signed at the Conference at Bogotá in 1948, dealing successively with good offices and mediation, investigation and conciliation, judicial procedure before the International Court of Justice, and arbitration. But what of disputes involving a threat to the peace, in which prompt action is needed to avert hostilities? These obviously were outside the scope of the Pact of Bogotá, simply because they represented a breakdown of the provisions of pacific settlement.

For disputes of this latter character provision was made in the Treaty of Reciprocal Assistance that a Meeting of Consultation of Foreign Ministers should be held. But this is a difficult procedure, in the sense that it involves bringing together the Ministers of State from the four quarters of the Hemisphere, as well as travel by air if the meeting is to be held promptly. In consequence the Rio Treaty made provision that the Council of the Organization, consisting of twenty-one representatives permanently in Washington, should be able to act provisionally as the Organ of Consultation. Thus, instead of conferring upon the Council of the Organization a jurisdiction in such cases corresponding to that of the Security Council of the United Nations, the Rio Treaty makes it necessary to summon a meeting of the Foreign Ministers and gives to the Council only a provisional competence pending the meeting of the Foreign Ministers.

In this case as in others the line of least resistance has been followed. On December 14, 1948, the Council, at the request of the Government of Costa Rica, called a Meeting of Consultation to hear the complaint of that state that it was being invaded by troops from Nicaragua. But the Council failed to fix a date for the Meeting of Consultation; so that after it had acted provisionally as Organ of Consultation for some two months and had made, through its own committee, the necessary investigations, a Pact of Amity was signed between the two states the following February 21, and the Meeting of Consultation was called off. Again, on January 6, 1950, the Council, at the request of the two governments involved, Haiti and the Dominican Republic, called a Meeting of Foreign Ministers but, as in the Costa Rican case, failed to fix a date for the meeting, with the result that the Council, acting in its provisional capacity, was able to settle the controversy and then cancel the Meeting of Consultation.

In the more recent case of the request of Costa Rica, under date of January 8, 1955, for the call of a Meeting of Consultation on the ground that its independence was seriously threatened by acts of the Government of Nicaragua, the Council deferred its decision for twenty-four hours, and then, upon receipt of news of a *de facto* invasion of the country, called an earlier session and decided to summon the Meeting of Consultation without further delay. As in previous cases, the Council failed to fix a date for the Meeting of Consultation; and, in the exercise of its competence to act provisionally as the Organ of Consultation, it proceeded to appoint a Committee of Investigation to proceed to the two countries and

report upon the facts. The resolution of the Council further requested the two governments to pledge themselves to refrain from the commission of any act which might aggravate the situation.

The following day, January 12, the Council, meeting at the urgent request of the representative of Costa Rica and hearing from him that the capital, San José, and other cities had been bombed by the insurgents, took a step which, although ostensibly no more than a measure to make the work of the Investigating Committee more effective, actually had the character of an exercise of police power. The Council requested the governments, who were in a position to do so, to place at the disposal of the Investigating Committee aircraft which, in the name of the Committee and under its supervision, might make pacific observation flights over the regions affected, after receiving the consent of the governments whose territories were traversed. The fact that the flights were described as "pacific" could not prevent them from becoming *in fact* a deterrent to the invading forces; but at the same time it prevented any criticism of the measure as being "enforcement action" which would have required the consent of the Security Council of the United Nations under Article 53 of the Charter.

On January 16, 1955, at the request of the Council directed to the governments of the member states, the United States sold four airplanes to the Government of Costa Rica. This might have been done by the United States upon its own initiative without violation of the Havana Convention of 1928, inasmuch as the belligerency of the rebels had not been recognized. But the United States preferred to act in accordance with a request of the Council, lest its act be interpreted as intervention in the case. Subsequently, in view of the complaint of the Government of Nicaragua that its territory was being violated by Costa Rican planes in pursuit of the rebels, the Investigating Committee established security zones on either side of the boundary, and at the same time appointed military observers to keep in touch with the points along the boundary at which supplies might be furnished to the insurgents.

The Investigating Committee presented its report to the Council on February 18, surveying its activities both in Costa Rica and Nicaragua and the sources from which the conclusions reached in the report were drawn. The Committee found that there had been foreign intervention in respect to equipment and transportation of the invading forces, that a substantial number of them had entered Costa Rica across the Nicaraguan frontier, that aircraft "proceeding from abroad" had dropped arms and ammunition at predetermined points and had made flights in which they bombed and machine-gunned Costa Rican towns, including the capital, San José, that in consequence there had been violation of the territorial integrity, sovereignty, and political independence of Costa Rica, and that while a large majority of the attacking forces were of Costa Rican nationality, that nevertheless did not in any way alter the character of the acts of intervention of which Costa Rica had been the victim.

These facts found, the Investigating Committee recommended that the Pact of Amity signed by Costa Rica and Nicaragua in 1949 be improved

and strengthened; that a special bilateral treaty be signed looking to the more effective application of the Habana Convention on the Duties and Rights of States in the Event of Civil Strife; and that a bilateral Commission of Investigation and Conciliation under the terms of the Pact of Bogotá be appointed to serve as a permanent guarantee of the settlement of any future difficulties. The Ecuadoran member of the Committee entered a reservation stating that, while in general agreement with the report, he considered that it was incomplete in that it failed to identify the author or authors of the "foreign intervention," and stating further that there should be an early Meeting of Ministers of Foreign Affairs to consider the possibility of establishing an Inter-American Police Force and the improvement of the system for the control of the traffic in arms and ammunition and for the limitation of armaments within the requirements of hemisphere defense.

On February 24, the Council of the Organization of American States, still acting provisionally as Organ of Consultation, met to discuss the report of its Committee and at the close of a long session adopted four separate resolutions: the first declaring that its resolution of January 14 had condemned the acts of intervention of which Costa Rica had been the victim and that the favorable outcome of the situation had rendered unnecessary the additional measures provided in the Treaty of Reciprocal Assistance, and further expressing its deep concern over the acts in question and its earnest desire that they should not be repeated and at the same time its satisfaction that the sovereignty and independence of Costa Rica had been preserved in consequence of the measures taken by the Organization; the second resolution calling upon the Governments of Costa Rica and Nicaragua to implement the provisions of the Pact of Bogotá of 1948 by creating the Commission of Investigation and Conciliation provided for in the treaty and at the same time to enter into the bilateral agreement contemplated in their Pact of Amity of 1949 for the better supervision and control of their respective frontiers in respect to the illegal activities of exiles and the traffic in arms; and the third resolution proclaiming the termination of the activities of the Investigating Committee, but at the same time creating a Special Commission of the Council to co-operate with the representatives of Costa Rica and Nicaragua in carrying out the provisions of the second resolution and to continue the functions of the military observers as long as would appear to be necessary; and a last resolution of thanks for services rendered.

The successful conclusion of the case would seem to suggest that the provisional powers of the Council of the Organization of American States are adequate to serve as a procedure of summary jurisdiction in specific situations not admitting of delay, reserving perhaps to the Meeting of Consultation of Foreign Ministers questions of principle in respect to which decisions can be taken of a constructive character looking to the avoidance of future difficulties, in line more or less with the proposal made by the Ecuadoran member of the Investigating Committee in his dissenting opinion.

C. G. FENWICK