

turned over to the International Law Commission or, since its time is well taken, to an outside body of experts. It is such a group which should make the preliminary study; the representatives of governments who, of course have the final decision, would find their work eased and accelerated by such an objective study.

CLYDE EAGLETON

MEMBERSHIP AND REPRESENTATION IN THE UNITED NATIONS

The questions of membership and representation in the United Nations have been present in the minds of students and friends of that institution from the time of its inception onward, as is, or was, quite natural. The distinction between the two phases of the problem has not always been borne in mind, but has been raised to prominence and accentuated by the case of Communist China, without being entirely novel.

The distinction mentioned is in some ways nothing but the old distinction between the existence of a state and the existence of a government, or their recognition. This distinction was not mentioned in the United Nations Charter and the "Republic of China" was made a Member of the Organization and given permanent representation on the Security Council. At the moment this seemed sufficient for the purpose.

We are not considering here, it should be noted, membership or representation in the Specialized Agencies of the United Nations. Each of these has its special conditions of membership or representation and/or may modify these conditions at will. An attempt by the United Nations to control membership in one of the Specialized Agencies on political grounds did not enjoy great success. At all events the problem here is not nearly as serious as it is in the case of the United Nations itself.

There has arisen, as is well known, the problem of admitting or not admitting certain states, as states, to membership in the United Nations. On this issue Russia and the United States, to put the matter bluntly, have disagreed sharply. As a result fifteen or twenty states have been denied membership in the United Nations in spite of various efforts at compromise and agreement, mainly promoted by the United States. It hardly needs to be added that the crucial element in these cases has been and is the character (Communist or non-Communist) of the governments in those countries.

When we come to Communist China, however, the difficulties multiply, partly due to the attitudes of other countries, especially Russia and India. In the cases of most other countries eligible for membership, no great amount of propaganda or promotion has been undertaken, at least by the countries themselves. In the case of Red China, on the other hand, the issue has become a feud, if not a *casus belli*. And the issue has not yet been decided.

It will be remembered that a few years ago the International Court of Justice was asked for its opinion on the propriety of states Members of the United Nations taking into account factors other than those specifically mentioned in the Charter as qualifications for membership, qualifications

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-judicial 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.