EDITORIAL COMMENT

THE ATLANTIC PACT

Those who fought with such determination at San Francisco in 1945 for the amplification of the Dumbarton Oaks Proposals so as to recognize the right of individual and collective self-defense in case the Security Council should be unable to maintain international peace and security could scarcely have foreseen a regional arrangement including states on both sides of the Atlantic. But happily no geographical limitations were placed upon the application of the provisions of Article 51 of the Charter, and the United States is now free to do in collaboration with the states of western Europe what it did in collaboration with the American Republics at Rio de Janeiro in 1947.

It is doubtless not too much to say that the Treaty of Reciprocal Assistance, signed at Rio de Janeiro on September 2, 1947,[1] was the most significant agreement yet adopted in the history of inter-American relations. The Convention for the Maintenance, Preservation and Reëstablishment of Peace, signed at Buenos Aires in 1936,[2] by which the American States agreed to consult together in the event of a threat to the peace, was perhaps of equal historical importance in marking the "continentalization," as it has been called, of the Monroe Doctrine. But the Buenos Aires Convention was formulated in general terms, whereas the Rio Treaty created specific obligations from which there could be no escape when the occasion arose for their application. An armed attack against any American State is, under Article 3 of the Rio Treaty, to be considered as an attack against all the American States, and each one of them undertakes to assist in meeting it in the exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations. The Organ of Consultation is to meet without delay for the purpose of examining measures taken by any state individually and of agreeing upon the measures of a collective character that should be taken by the whole regional group.

The decisions of the Organ of Consultation are to be taken by a vote of two thirds of the states which have ratified the treaty. This article of the treaty, taken by itself, would constitute a significant innovation in the relations of the American States, an innovation which would be of even greater significance if it were not for the fact that decisions with respect to the measures to be taken to assist the victim of an aggression, as distinct from the determination of the fact of aggression, are qualified in Article

[1] Supplement to this JOURNAL, p. 53.

[2] This JOURNAL, Supp., Vol. 31 (1937), p. 53.

20 by the condition that no state shall be required to use armed force without its consent. What we have, therefore, in the Rio Treaty is an absolute obligation upon the contracting parties to consider an armed attack upon one as an attack upon all, attended by a qualification in respect to the use of armed force in assisting the victim of the attack.

How is the qualification in Article 20 to be reconciled with the obligation in Article 3, since the one appears to be in open contradiction with the other? How could the United States undertake to assist another American State in meeting an armed attack against it and yet, being physically capable of rendering military assistance, not give its consent to the use of armed force? It would seem that the primary obligation to assist in meeting the attack would undoubtedly create a secondary obligation, sometimes described as a "moral obligation," to use the necessary and proper means for its fulfillment, assuming of course that measures short of force were inadequate to assist the state attacked. Hence the exception announced in Article 20 of the Rio Treaty must be regarded as nothing more than a technical limitation of the obligation of Article 3, introduced so as to avoid the appearance of submitting to the decision of a two-thirds majority the constitutional right of the United States Congress to declare war.

The terms of the "North Atlantic Treaty," as the definitive text calls it,[3] contain many provisions taken almost literally from the Rio Treaty. The opening article contains a pledge of the pacific settlement of international disputes along the lines of the opening articles of the Rio Treaty. Both the Preamble and Article 2 put stress, as is done in the Preamble of the Rio Treaty, upon the development of democratic ideals, with an additional pledge to seek to eliminate conflict in the international economic policies of the contracting parties. Article 4 contains an agreement to consult in the event of a threat to the territorial integrity, political independence or security of any of the parties to the treaty. This is comparable to the provisions of the inter-American treaty of 1936; and a later article, 9, goes on to organize the procedure of consultation by the creation of a "council" so constituted as to be able "to meet promptly at any time." The provisions of Article 9 appear to contemplate a body analogous to that of the inter-American Meeting of Consultation of Foreign Ministers; while the subsidiary "defense committee" is closely similar to the Advisory Defense Committee for which provision was made in Article 44 of the Charter of the Organization of American States.

The specific commitments of the North Atlantic Treaty are contained in Article 5, which corresponds to Article 3 of the Rio Treaty, with minor changes introduced to meet more adequately the necessity of respecting the constitutional power of the Congress of the United States to declare war. An armed attack against any of the contracting parties is to be

[3] The text here used is that released by the Department of State March 18, 1949, Department of State Publication 3464 (General Foreign Policy Series 8).

considered as an attack against them all; and, if it should occur, each of them, in the exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the party or parties so attacked by taking forthwith, individually and in concert with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

The phrase, "such action as it deems necessary," appears to leave to each of the parties to the treaty the decision whether or not the situation calls for the use of armed force, and it thus protects the right of Congress to take the definitive decision which will permit the President to use the military forces of the United States in a case where the United States is not directly attacked. With respect to this much-discussed problem, it need only be said that the constitutional power given to the Congress of the United States to declare war has never involved a right to control the conduct of the Executive Department in respect to the adoption and execution of policies which might lead to war. The President of the United States, as Commander-in-Chief of the Army and Navy, has always had it in his power to use the armed forces of the United States in a manner which might lead to an attack upon the United States. The power of Congress to declare war has, therefore, always been a technical one, a power of final decision under circumstances which, it may be, practically admit of no other decision. Once the United States accepted the obligations of the Charter of the United Nations, the power of Congress to declare war became practically subordinated to the vote of the United States member of the Security Council that armed forces are needed to maintain international peace and security.

Will the obligations assumed by the United States under the North Atlantic Treaty have the effect of creating additional obligations for the other American States under the Rio Treaty in case a situation should arise in which the United States would be called upon to take action under the North Atlantic Treaty? The question would appear to be similar to that asked at Rio de Janeiro in 1947 in respect to the relation of the obligations of the Treaty of Reciprocal Assistance to those of the Charter of the United Nations. In answer it is necessary to make a distinction between the obligations of a treaty and the machinery created by the treaty to make the obligations effective. The Charter of the United Nations clearly creates an obligation of mutual assistance against attack. It does not specifically state, as did Article 10 of the Covenant of the League of Nations, that the Members of the United Nations undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of the Members of the United Nations, but that is implied in the Purposes set forth in Article 1 and in the Principles set forth in Article 2.

The difference in this respect between the North Atlantic Treaty and the Charter of the United Nations is rather in the measures by which the obligations of the two treaties are to be carried out. The Charter confers upon the Security Council "primary responsibility" for the maintenance of international peace and security. If the Security Council should fail to live up to its responsibility, then the Members of the United Nations are free to resort to such measures of individual or collective self-defense as may seem to them expedient until such time as the Security Council has acted. If then, by the Rio Treaty or by the North Atlantic Treaty, a group of Members of the United Nations undertake to set up a regional system of collective self-defense, they are merely creating new machinery to do what they have already pledged themselves to do under the Charter of the United Nations. In both cases the parties are merely anticipating the possible, indeed it might be said in view of the use by the Soviet Union of the veto power, the probable failure of the Security Council to act promptly and efficiently in fulfillment of its primary responsibility for the maintenance of peace and security.

The only new obligation assumed by the contracting parties under the Rio Treaty or the North Atlantic Treaty is the obligation to act individually in coming to the assistance of one of their group when attacked, without waiting until the Security Council arrives at a decision with respect to the measures to be taken and then accepting and carrying out the decision. This obligation, however, relates to the enforcement of the principle of collective security rather than to its substance. There would be no need for either the Rio Treaty or the North Atlantic Treaty if the Security Council of the United Nations were functioning, or rather gave assurance of functioning, in accordance with the Purposes and Principles of the Charter and the more specific provisions of Chapter VII dealing with acts of aggression.

It would seem, therefore, that the North Atlantic Treaty does not impose any additional commitments upon the American States parties to the Rio Treaty in case a situation should arise in which the United States would be obliged to take action under the North Atlantic Treaty. The situation would be one in which their own obligations under the Charter of the United Nations would be involved, obligations which the American States expressly carried over into the Rio Treaty. The Rio Treaty expressly recognized, indeed was based upon, the right of individual as well as collective self-defense provided for in Article 51 of the Charter. The fact that the United States now specifically defines in the North Atlantic Treaty what it will consider as an occasion for the exercise of the right of individual self-defense, as well as the right of collective self-defense in union with other states, does not in itself create any new obligations for the other American States. It merely emphasizes the new responsibilities which the United States feels itself called upon to assume; and it expresses

a realization by the United States that failure on its part to live up to those responsibilities might well have the effect of making it impossible for the United States to fulfill its obligations already assumed under the Rio Treaty.

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THE UNITED NATIONS DECLARATION OF HUMAN RIGHTS

At midnight of December 10, 1948, the General Assembly of the United Nations adopted at its Paris Session the Declaration of Human Rights.[1] Now that the first achievement in this field has been reached, it is time to consider the legal situation theoretically, historically, critically, and to look at the more important and more difficult task that remains to be done.

The struggle for the "rights of man" was first waged within the states. The democratic Greek city-state, which was at the same time the Church, knew no rights even of the full citizens as against the state. Even less were there rights for all men. Even Aristotle speaks of men who are by nature slaves. True, the Stoics opposed slavery, and Roman jurists later took over the Stoic natural law; but they never doubted that the positive law of slavery prevailed.

In the "age of reason" the struggle for the rights of man was based on a natural law of revolutionary character. To say that the "rights of man" are inherent, inalienable, preëxisting to the state which the state has to protect, but cannot bestow, was a formidable weapon in the political battle against tyranny. There is no doubt that many formulations of the "Bill of Rights" are drawn in the ideological language of the eighteenth century.

But however great the influence of the "age of reason" was in this respect, it would be a mistake to believe that the idea of "rights of man" was unknown to the Middle Ages. Two more sources must not be forgotten. First, Christianity which brought this idea. The Catholic natural law as expressed by St. Thomas of Aquinas and by the Spaniards, Francisco de Vitoria [2] and Suárez, teaches the equality of all men. It is the Catholic natural law which emphasizes the dignity of man as a rational creature, participating in the *lex aeterna,* made to the image of God and having an eternal destiny. It is the Catholic natural law which knows no discrimina-

[1] Universal Declaration of Human Rights, U.N. Doc. A/811, Dec. 16, 1948; Department of State Publication No. 3381 (International Organization and Conference Series III, 20).

[2] In his *Relecciones de Indis* (1539), Vitoria states that the rights of the Indians are based on the fact that they are human beings and as such they have all the rights which are inherent in the human person and its dignity. Being natural rights, they precede the state and stand above the power of the state. Man is one, without any distinction of race, color, religion or culture. Every man is a brother, because he is a child of God.