the Rio Treaty to the United Nations. Article X of the Rio Treaty specifically provides that

> None of the provisions of this treaty shall be construed as impairing the rights and obligations of the high contracting parties under the the Charter of the United Nations.

The conclusion of the Rio Treaty of Reciprocal Assistance is an occasion for certain inescapable reflections and comparisons. It is above all, as stated by Senator Vandenberg, in accordance with traditional American ideals. It recalls the names of James Monroe, Simón Bolívar, James G. Blaine, Elihu Root and Cordell Hull. To them it adds the names of Harry S. Truman and George C. Marshall. When the latter affixed the signature of the United States to this treaty at Rio de Janeiro on August 30, 1947, the spirit of Elihu Root must have been hovering nearby for in the same city forty-one years ago, that is, on July 31, 1906, Mr. Root, then Secretary of State of the United States, at the opening of the Third Pan American Conference, declared on behalf of this country:

> We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire; and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong.

Upon his return from Rio de Janeiro, Secretary Marshall reported to the American people over the radio. He declared that the conference was "The most encouraging, the most stimulating international action since the close of hostilities." The results of the conference demonstrate, he stated, "that where nations are sincerely desirous of promoting the peace and well-being of the world it can be done," and, he added, "It can be done without frustrating delays and without much of the confusing and disturbing propaganda that has attended our efforts of the last two years."[3] Senator Vandenberg in the same broadcast declared the Treaty to be a milestone of incalculable importance, and "a tremendously significant and progressive pattern for others to follow." Verily, the Rio Treaty is, as he said, "sunlight in a dark world."

George A. Finch

Editor-in-Chief

SWITZERLAND AND THE INTERNATIONAL COURT OF JUSTICE*

The San Francisco Conference took a significant step when it decided that the World Court should be an organ of the United Nations. It

[3] Radio address of Sept. 4. Printed in *The New York Herald-Tribune*, Sept. 5.

* On October 1, 1947, after this Comment was in type, it was reported that the Federal Council of Switzerland was favorably disposed to accession to the Statute on the terms proposed.

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effected but slight changes in the text of the Statute of the Court as drawn up in 1920 and modified in 1936. Yet whereas force had been given to that Statute by a protocol separate and distinct from the Covenant of the League of Nations, the San Francisco Conference proposed that it should be annexed to the Charter of the United Nations as an integral part thereof.

What this meant, in effect, was that the existing World Court was taken away from one group of states and taken over by another group of states as a part of the United Nations Organization. This was possible because, for the most part, the membership of the two groups was the same.

If the new orientation of the Court has some distinct advantages, it also has some disadvantages.

One of the disadvantages lies in the fact that certain states which had theretofore faithfully supported the Court for more than twenty years, which had paid their part of its expenses and had conferred jurisdiction upon it, were not included among the Members of the United Nations. Hence they ceased to be parties to the Court's Statute. They were, so to speak, squeezed out. Among them were the neutral states of Ireland, Portugal, Spain, Sweden, and Switzerland.

To be sure, the door was not closed to these states' becoming Members of the United Nations. To do so, however, they must pass the "peace-loving" test as it may be applied by the Security Council and the General Assembly. Up to this time Sweden is the only one of the named states which has met the test.

Other doors were also left open to these states with respect to the Court. Without becoming Members of the United Nations, they could become parties to the Court's Statute on conditions to be determined in each case by the General Assembly on the recommendation of the Security Council. In each case, for the United Nations were not willing to take the chance that some renegade might crawl under the umbrella of general principles of law and justice! Still another door was held open also. Upon complying with the conditions laid down by the Security Council non-Member states may appear as litigants before the Court.

The most striking case is that of Switzerland. As she had stayed out of all but humanitarian action through two World Wars, she was not to be regarded in 1945 as a "peace-loving" state. Of course the scenes on the stage of 1945 have now shifted to some extent, and possibly Switzerland could today qualify for United Nations membership. She has made no application for such membership, however, and her centuries-old tradition of neutrality may keep her from shouldering the obligations of the Charter for many years to come.

However one may appraise that course, he cannot but admire the striking example of democracy which this small multi-racial and multi-lingual

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nation has set for the world. Nor can he fail to give her credit for the loyalty with which she has coöperated with other nations in the past. Not only have various international bureaus been located at Bern, but Switzerland continued to give hospitality to the League of Nations when potentially hostile armies were massed on all her frontiers.

The whole world expects Switzerland to hew the line of legal propriety, to chart her course with meticulous regard for her obligations under international law. Long among the leaders in promoting the judicial settlement of international disputes, her record in respect to the World Court was exemplary. She was among the first states to sign and ratify its Statute. From the very beginning she recognized its compulsory jurisdiction—and this without any crippling reservations of matters essentially within her domestic jurisdiction as determined by herself. When she became involved in a dispute with France about the Free Zones around Geneva, she promptly repaired to the Court—and she won her case.

Was it not, then, a bit tough for Switzerland to be forced to sit by and see herself relegated to the side-lines when the World Court was taken over by the Members of the United Nations in 1945? Thus relegated by states some of which, like the United States, had never raised a finger in support of the Court, had never become parties to its Statute, had never conferred on it compulsory jurisdiction, had never resorted to it as litigants, had never contributed a penny for its financial needs? One could hardly quarrel with them if the Swiss had shown some slight resentment at this turn of events.

The Swiss are not a sulking people, however. Hence they lost no time is seeking to repair their position. The Swiss Federal Council promptly made inquiry as to the conditions on which Switzerland might once more be a party to the Court's Statute. These conditions were set by a resolution adopted by the Security Council on November 15, 1946, and determined by the General Assembly on December 11, 1946.[1] As a considerable period of time has elapsed and the Swiss accession to the Statute has not yet been effected, one may surmise that these conditions may have given rise to some difficulties for Swiss public opinion. It may not be inappropriate, therefore, to review them from the Swiss point of view.

The conditions set for Switzerland's accession were three: (1) acceptance of the provisions of the Statute; (2) acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter; and (3) an undertaking to contribute to the Court's expenses such equitable amount as the General Assembly may assess from time to time after consultation with the Swiss Government. It is hardly to be imagined that the first and third of these conditions could have given rise to any difficulty.

[1] United Nations document A/64/Add. 1, p. 182.

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The second condition may not be so easily acceptable, however, to a people who are naturally sensitive about a tradition which in their eyes has so recently saved them from the ravages of war. If hesitance exists, therefore, it doubtless has to do with Switzerland's accepting "all the obligations of a Member of the United Nations under Article 94 of the Charter."

Article 94 creates for each Member State an obligation to comply with the decision of the International Court of Justice in any case to which it is a party. This obligation would have existed even if it had not been specifically formulated. Of course a judgment of the Court is binding on a state which is a party before the Court in the case in which the judgment was given. This is set out in Article 59 of the Statute, in its provision that "the decision of the Court has no binding force except between the parties and in respect of that particular case." It seems inconceivable that the formulation of this obligation in Article 94 could create a difficulty for the Swiss.

Article 94 of the Charter proceeds to create a sanction for the Court's judgments which hardly goes beyond that contained in the Covenant of the League of Nations. It provides that "if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." Thus if Switzerland failed to carry out a judgment of the Court given in a case to which she was a party, she would have to admit the other party's right of recourse to the Security Council, and she would be bound by any decision of the latter for giving effect to the judgment. Yet the matter is reciprocal, and if the other party to the case failed to perform its obligations under a judgment, Switzerland could go to the Security Council for relief. It seems hardly probable that this part of Article 94 would give pause to Swiss opinion.

Standing by itself, then, Article 94 would seem to create for Members of the United Nations no obligations which Switzerland is likely to balk at assuming. Yet the Article does not stand by itself. It is a part of the Charter, and its purport may be affected, for Members of the United Nations at least, by others of the 111 Articles thereof. Perhaps this is the feature of the situation which leads to Swiss hesitance, if it exists.

When the matter of the Swiss accession was being considered by the Security Council, it had before it a report by its Committee of Experts,[2] in which the latter said that "the obligations of a Member of the United Nations under Article 94 include the complementary obligations arising under Articles 25 and 103 of the Charter insofar as the provisions of those articles may relate to the provisions of Article 94." By Article 25 the Members "agree to accept and carry out the decisions of the Security

[2] United Nations document S/191, 11 November 1946.

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Council in accordance with the present Charter''; by Article 103, in the event of a conflict between the obligations of Members under the Charter and their obligations under any other international agreement, their obligations under the Charter are made to prevail.

It must be admitted that, for Members of the United Nations, the obligations under Articles 25 and 103 are complementary to those under Article 94. Yet it seems too much to say that the latter ''include'' the former. Though this conclusion by the Committee of Experts met with no demur either in the Security Council or in the General Assembly, it can hardly be taken to have become an established proposition, and the International Court of Justice itself would not be bound by the interpretation.

The Committee of Experts went even further in its report. It stated that ''non-Members of the United Nations which become parties to the Statute . . . become bound by these complementary obligations under Articles 25 and 103 in relation to the provisions of Article 94 (but not otherwise), when they accept 'all the obligations of a Member of the United Nations under Article 94.' '' Though the phrase in parentheses sharply limits its effects, this statement seems to go beyond anything which could have been intended in the drafting of the provisions in Article 93 looking toward non-Members becoming parties to the Statute.

For Switzerland the report of the Committee of Experts raises the following question. If Switzerland should become a party to the Statute, would she be bound, under Article 25 of the Charter, to carry out a decision of the Security Council upon measures to be taken to give effect to a judgment rendered by the Court in a case to which Switzerland was not a party?

Let us suppose that Switzerland could assume all of the obligations of a Member under Article 94 standing by itself—the obligation to comply with a decision of the Court in any case in which Switzerland was a party, and the obligation to carry out a decision of the Security Council upon measures to be taken to give effect to a judgment given in a case to which Switzerland was a party. It would be going much further to say that Switzerland, as a party to the Statute, would have an obligation under Article 25 of the Charter to carry out a decision of the Security Council for giving effect to a judgment rendered by the Court in a case to which Switzerland was not a party.

Switzerland may well say: ''Yes, in any case to which I am a party, I will comply with the Court's decision; and if I fail to do so, I will be bound to take the measures which the Security Council may decide upon to give effect to the judgment. In a case between my neighbors, France and Germany, or France and Italy, however, I am not willing to be bound to carry out a decision of the Security Council upon measures to give ef-

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fect to a judgment of the Court." The writer finds it impossible to believe that, as a party to the Statute on the conditions set, and so having all the obligations of a Member of the United Nations under Article 94 of the Charter, Switzerland would not be justified in saying this.

Fortunately, an attentive examination of the report of the Committee of Experts bears out this conclusion. For it assimilates the obligations of a non-Member which is a party to the Statute to those of a non-Member not a party to the Statute and possessing merely a right of access to the Court.

In a resolution adopted on October 15, 1946, the Security Council gave effect to a provision in Article 35 (2) of the Statute by fixing the conditions on which a state not a party to the Statute may have access to the Court. These conditions required that, by a previous declaration, such a state should have undertaken "to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter." The Committee of Experts' report indicates that, with regard to Article 94, non-Members which are parties to the Statute and "non-parties which have access to the Court" have the same "complementary obligations under Articles 25 and 103 in relation to the provisions of Article 94 (but not otherwise)."

Now it seems inconceivable that a state which is not a Member of the United Nations and not a party to the Statute, would be required, as a condition of its access to the Court, to make a declaration binding itself to carry out decisions taken by the Security Council under Article 94 in cases to which it was not a party, in circumstances in which it has not had actual access to the Court. Such a construction of the Security Council's resolution would so effectively discourage declarations that it would be inconsistent with any desire to open the Court for the widest possible usefulness, and every leaning must be against it.

Since, in the view of the Committee of Experts, such a state is on the same footing with regard to Article 94 as a non-Member which is a party to the Statute, one must interpret the Committee's phrase "in relation to the provisions of Article 94 (but not otherwise)" to mean that neither the state having mere access nor the non-Member party to the Statute is bound by the "complementary obligations" under Articles 25 and 103 with regard to decisions of the Security Council designed to give effect to judgments rendered by the Court in cases to which they were not parties before the Court.

If the Swiss feel some hesitation, and if the grounds for it are properly appreciated here, it would seem that their fears can be set at rest, and that even with their tradition of neutrality there can be no danger for Switzerland in acceding to the Statute on the conditions set by the Security Council and the General Assembly.

MANLEY O. HUDSON

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