DEUXIÈME PARTIE

SÉANCES PUBLIQUES

tenues au Palais de la Paix, La Haye,
les 28 février, 1er, 2 et 30 mars, 27 et 28 juin et 18 juillet 1950,
sous la présidence de M. Basdevant, Président

EXPOSÉS ORAUX

PART II

PUBLIC SITTINGS

held at the Peace Palace, The Hague,
on February 28th, March 1st, 2nd and 30th, June 27th and 28th,
and July 18th, 1950, the President, M. Basdevant, presiding

ORAL STATEMENTS

A. — PROCÈS-VERBAUX DES SÉANCES TENUES LES 28 FÉVRIER, 1er, 2 ET 30 MARS 1950

(PREMIÈRE PHASE)

ANNÉE 1950

DEUXIÈME SÉANCE PUBLIQUE [1] (28 II 50, 11 *h.*)

Présents : MM. BASDEVANT, *Président ;* GUERRERO, *Vice-Président ;* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir ARNOLD MCNAIR, M. KLAESTAD, BADAWI PACHA, MM. KRYLOV, READ, HSU MO, AZEVEDO, *Juges ;* M. HAMBRO, *Greffier.*

Présents également :

M. Ivan KERNO, Secrétaire général adjoint, représentant du Secrétaire général des Nations Unies, assisté de

M. HSUAN-TSUI-LIU, membre de la Division des questions juridiques générales au Secrétariat des Nations Unies.

Les représentants des Gouvernements suivants :

Royaume-Uni : M. G. G. FITZMAURICE, C. M. G., deuxième conseiller juridique au Foreign Office.

États-Unis d'Amérique : l'honorable Benjamin V. COHEN, assisté de

M. Eric STEIN, du Département d'État des États-Unis, conseiller.

Le PRÉSIDENT, ouvrant l'audience, annonce que la Cour se réunit pour entendre les exposés oraux qui seront présentés dans l'affaire visant certaines questions de procédure relatives à l'interprétation des traités de paix qui ont été conclus avec la Bulgarie, la Hongrie et la Roumanie.

Par une résolution, datée du 22 octobre 1949, l'Assemblée générale des Nations Unies a décidé de demander à la Cour un avis consultatif à ce sujet. Le Président prie le GREFFIER de donner lecture de cette résolution.

A la suite de cette lecture, le PRÉSIDENT rappelle que la requête pour avis a fait l'objet des notifications d'usage.

Étant donné qu'elle touchait à l'interprétation de certains traités, elle a été, conformément à l'article 66 du Statut, communiquée à tous les Gouvernements des États admis à ester devant la Cour, signataires desdits traités, qui étaient jugés susceptibles, par la Cour, de donner des renseignements sur la question.

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[1] Neuvième séance de la Cour.

A.—MINUTES OF THE SITTINGS HELD ON FEBRUARY 28th, MARCH 1st, 2nd AND 30th, 1950

(FIRST PHASE)

YEAR 1950

SECOND PUBLIC SITTING [1] (28 II 50, 11 *a.m.*)

Present : *President* BASDEVANT ; *Vice-President* GUERRERO ; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir ARNOLD MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO ; *Registrar* HAMBRO.

Also present :

Mr. Ivan KERNO, Assistant Secretary-General, representing the Secretary-General of the United Nations, assisted by

Mr. HSUAN-TSUI-LIU, Member of the General Legal Division at the Secretariat of the United Nations.

The representatives of the following Governments :

United Kingdom : Mr. G. G. FITZMAURICE, C.M.G., Second Legal Adviser of the Foreign Office.

United States of America : the Honourable Benjamin V. COHEN, assisted by

Mr. Eric STEIN, of the United States Department of State, Adviser.

The PRESIDENT declared the sitting open, and said that the Court had met to hear the oral statements that would be submitted in the case which raised certain procedural questions relating to the interpretation of Peace Treaties with Bulgaria, Hungary and Romania.

By a Resolution dated October 22nd, 1949, the General Assembly of the United Nations had decided to request the Court to give an advisory opinion on this subject. He asked the REGISTRAR to read the resolution in question.

After the text had been read, the PRESIDENT observed that the request for an advisory opinion had been notified in the customary manner.

As it was concerned with the interpretation of certain treaties, it had been communicated, as prescribed in Article 66 of the Statute, to all the Governments of States entitled to appear before the Court, signatories of the said treaties, which were considered by the Court as likely to be able to furnish information on the question.

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[1] Ninth meeting of the Court.

En outre, par application de l'article 63, paragraphe premier, et de l'article 68 du Statut de la Cour, les Gouvernements de la Bulgarie, de la Hongrie et de la Roumanie, signataires des traités dont il s'agit, ont reçu communication de la requête de l'Assemblée générale ; ils ont été avisés que la Cour serait disposée à recevoir de leur part un exposé écrit sur les questions à elle soumises pour avis.

Le délai de la procédure écrite a été, par une ordonnance datée du 7 novembre 1949, fixé au 16 janvier 1950.

La Cour a reçu, du Secrétaire général des Nations Unies, une documentation très complète.

Elle a reçu, en outre, par ordre de dates, des observations écrites émanant des Gouvernements suivants : États-Unis d'Amérique, Royaume-Uni, République populaire de Bulgarie, République soviétique socialiste d'Ukraine, Union des Républiques socialistes soviétiques, République socialiste soviétique de Biélorussie, République populaire roumaine, République tchécoslovaque, Australie, République populaire hongroise.

La Cour a décidé de tenir, à partir du 28 février, c'est-à-dire aujourd'hui, des audiences au cours desquelles seraient entendus des exposés oraux.

Le Secrétaire général des Nations Unies s'est fait représenter par M. Ivan Kerno, Secrétaire général adjoint chargé du Département juridique, qui présente un exposé oral.

Les États-Unis d'Amérique et le Royaume-Uni ont fait savoir qu'un exposé oral serait présenté en leur nom. Les représentants désignés dans cette affaire ont été :

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, M. G. G. Fitzmaurice, C. M. G., deuxième conseiller juridique au Foreign Office ; pour les États-Unis d'Amérique, l'honorable Benjamin V. Cohen.

Le Président constate la présence devant la Cour du représentant du Secrétaire général des Nations Unies et de ceux des États susmentionnés.

Il annonce qu'il donnera en premier lieu la parole à M. Kerno, représentant du Secrétaire général des Nations Unies, et ensuite aux représentants des États-Unis d'Amérique et du Royaume-Uni.

M. Ivan KERNO, Secrétaire général adjoint, prononce l'exposé reproduit en annexe [1].

Il termine cet exposé.

Le PRÉSIDENT annonce que la Cour entendra l'exposé de M. le Représentant des États-Unis, le mercredi 1er mars, à 10 h. 30.

L'audience est levée à 12 h. 45.

Le Président de la Cour,
(Signé) BASDEVANT.

Le Greffier de la Cour,
(Signé) E. HAMBRO.

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[1] Voir pp. 246-256.

Moreover, as prescribed by the first paragraph of Article 63, and by Article 68 of the Court's Statute, the Governments of Bulgaria, Hungary and Romania, signatories of the said treaties, had received notification of the request of the General Assembly. They had been informed that the Court would be willing to receive written statements from them on the questions referred to it for opinion.

January 16th, 1950, was appointed for the expiry of the time-limit by an Order dated November 7th, 1949.

The Court had received a complete set of documents on the matter from the Secretary-General of the United Nations.

It had also received written statements from the Governments of the following States in order of dates : United States of America, United Kingdom, People's Republic of Bulgaria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Byeloussian Soviet Socialist Republic, People's Republic of Romania, Czechoslovak Republic, Australia, People's Republic of Hungary.

The Court had decided to hold public sittings for the hearing of oral statements beginning on that day, February 28th.

The Secretary-General of the United Nations was being represented by Mr. Ivan Kerno, Assistant Secretary-General in charge of the Legal Department of the United Nations, who would present an oral statement.

The United States of America and the United Kingdom had given notice of their intention to submit oral statements. The representatives designated to present them were :

For the United Kingdom of Great Britain and Northern Ireland : Mr. G. G. Fitzmaurice, C. M. G., Second Legal Adviser of the Foreign Office ; for the United States of America : the Honourable Benjamin V. Cohen.

The President noted that the representatives of the aforesaid States were present in Court, as well as the representative of the Secretary-General of the United Nations.

He said that he would first call on Mr. Kerno, representing the Secretary-General of the United Nations, and then on the representatives of the United Kingdom and the United States.

Mr. Ivan KERNO, Assistant Secretary-General, then made the statement reproduced in the Annex [1].

He concluded his statement.

The PRESIDENT said that the Court would hear the statement of the United States representative on Wednesday, March 1st, at 10.30 a.m.

The Court rose at 12.45 p. m.

(*Signed*) BASDEVANT,
President.

(*Signed*) E. HAMBRO,
Registrar.

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[1] See pp. 246-256.

TROISIÈME SÉANCE PUBLIQUE [1] (1 III 50, 10 *h.* 30)

Présents : [Voir deuxième séance.]

Le PRÉSIDENT, en ouvrant la séance, donne la parole au représentant des États-Unis d'Amérique.

L'honorable Benjamin V. COHEN présente l'exposé reproduit en annexe [2].

(L'audience, interrompue à 13 heures, est reprise à 16 heures.)

Le PRÉSIDENT donne la parole à M. Benjamin V. COHEN, qui poursuit et termine son exposé [3].

Le PRÉSIDENT annonce que la Cour se réunira le 2 mars, à 10 h. 30, pour entendre l'exposé de M. le Représentant du Royaume-Uni.

L'audience est levée à 18 h. 15.

(Signatures.)

QUATRIÈME SÉANCE PUBLIQUE [4] (2 III 50, 10 *h.* 30)

Présents : [Voir deuxième séance.]

Le PRÉSIDENT, ouvrant l'audience, donne la parole au représentant du Royaume-Uni.

M. G. G. FITZMAURICE présente l'exposé reproduit en annexe [5].

(L'audience, interrompue à 13 heures, est reprise à 16 heures.)

Le PRÉSIDENT donne la parole à M. G. G. FITZMAURICE, qui reprend et termine son exposé [6].

Le PRÉSIDENT remercie le représentant du Secrétaire général des Nations Unies, les représentants des États-Unis d'Amérique et du Royaume-Uni des exposés oraux faits par eux devant la Cour.

Le Président prononce la clôture des débats oraux.

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L'audience est levée à 18 h. 45.

(Signatures.)

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[1] Treizième séance de la Cour.
[2] Voir pp. 257-276.
[3] » » 276-295.
[4] Quatorzième séance de la Cour.
[5] Voir pp. 296-312.
[6] » » 312-330.

THIRD PUBLIC SITTING [1] (1 III 50, 10.30 *a.m.*)

Present : [See second sitting.]

The PRESIDENT opened the hearing and called upon the representative of the United States of America.

The Honourable Benjamin V. COHEN began the statement reproduced in the Annex [2].

(The hearing was adjourned from 1 p.m. until 4 p.m.)

The PRESIDENT called upon Mr. V. COHEN, who continued and concluded his statement [3].

The PRESIDENT announced that the Court would meet on March 2nd, 1950, at 10.30 a.m., to hear the statement of the representative of the United Kingdom.

The Court rose at 6.15 p.m.

(Signatures.)

FOURTH PUBLIC SITTING [4] (2 III 50, 10.30 *a.m.*)

Present: [See second sitting.]

The PRESIDENT opened the hearing and called upon the representative of the United Kingdom.

Mr. G. G. FITZMAURICE began the statement reproduced in the Annex [5].

(The hearing was adjourned from 1 p.m. to 4 p.m.)

The PRESIDENT called upon Mr. G. G. FITZMAURICE, who continued and concluded his statement [6].

The PRESIDENT thanked the representative of the Secretary-General of the United Nations and the representatives of the United States of America and of the United Kingdom for having presented their oral statements.

The president declared the oral proceedings closed.

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The Court rose at 6.45 p.m.

(Signatures.)

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[1] Thirteenth meeting of the Court.
[2] See pp. 257-276.
[3] ,, ,, 276-295.
[4] Fourteenth Meeting of the Court.
[5] See pp. 296-312.
[6] ,, ,, 312-330.

SIXIÈME SÉANCE PUBLIQUE[1] (30 III 50, 16 *h.*)

Présents : les membres de la Cour mentionnés au procès-verbal de la deuxième séance ; le Greffier ; les représentants des Gouvernements suivants : *Canada :* S. Exc. M. P. DUPUY, ambassadeur à La Haye ; *États-Unis d'Amérique :* S. Exc. M. S. CHAPIN, ambassadeur à La Haye ; *Royaume-Uni :* M. I. P. GARRAN, conseiller d'ambassade à La Haye.

Le PRÉSIDENT, ouvrant l'audience, annonce que la Cour se réunit pour prononcer l'avis qui lui a été demandé, par l'Assemblée générale des Nations Unies, sur certaines questions de procédure relatives à l'interprétation des traités de paix qui ont été conclus avec la Bulgarie, la Hongrie et la Roumanie.

Il prie le GREFFIER de donner lecture de la partie de la résolution du 22 octobre 1949 où est formulée la demande d'avis.

Cette lecture faite, le PRÉSIDENT rappelle que, conformément à l'article 67 du Statut, le Secrétaire général des Nations Unies et les représentants des États qui ont pris part aux débats oraux dans la présente affaire, savoir : le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et les États-Unis d'Amérique, ainsi que les représentants des Membres des Nations Unies et des autres États intéressés ont été dûment prévenus.

La Cour a décidé, conformément à l'article 39 de son Statut, que c'est le texte français de l'avis qui fera foi.

Le Président donne lecture de ce texte[2].

Après lui, Le GREFFIER donne lecture en anglais du dispositif de l'avis.

Le PRÉSIDENT signale que M. Azevedo, juge, tout en souscrivant à l'avis de la Cour, s'est prévalu du droit que lui confère l'article 57 du Statut et a joint audit avis l'exposé de son opinion individuelle[3]. MM. Winiarski, Zoričić et Krylov, juges, considérant que la Cour aurait dû s'abstenir d'émettre un avis en l'espèce et se prévalant du droit que leur confère l'article 57 du Statut, ont joint audit avis les exposés de leur opinion dissidente[4].

Le Président annonce que MM. Azevedo, Winiarski, Zoričić et Krylov lui ont fait savoir qu'ils ne désiraient pas donner lecture à l'audience de leurs opinions dissidentes.

Il prononce la clôture de l'audience.

L'audience est levée à 16 h. 35.

(Signatures.)

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[1] Vingt-septième séance de la Cour.

[2] Voir publications de la Cour, *Recueil des Arrêts, Avis consultatifs et Ordonnances* 1950, pp. 65-78.

[3] *Idem*, pp. 79-88.

[4] » , » 89-97, 98-104 et 105-113.

SIXTH PUBLIC SITTING [1] (30 III 50, 4 *p.m.*)

Present : the members of the Court mentioned in the minutes of the second sitting ; the Registrar ; the representatives of the following Governments : *Canada :* H. E. Mr. P. DUPUY, Ambassador at The Hague ; *United Kingdom :* Mr. I. P. GARRAN, Counsellor of the British Embassy at The Hague ; *United States of America :* H. E. Mr. S. CHAPIN, Ambassador at The Hague.

The PRESIDENT declared the sitting open and announced that the Court had assembled to deliver the opinion which it had been requested to give by the General Assembly of the United Nations on certain procedural matters concerning the interpretation of Peace Treaties signed with Bulgaria, Hungary and Romania.

He requested the REGISTRAR to read the part of the Resolution of October 22nd, 1949, containing the request for an opinion.

When the text had been read, the PRESIDENT observed that, under Article 67 of the Statute, the Secretary-General of the United Nations and the representatives of the States which took part in the oral proceedings in this case, namely the United Kingdom of Great Britain and Northern Ireland and the United States of America, as also the representatives of the Members of the United Nations and of the other States concerned, had been duly notified of the sitting.

The Court had decided that the French text of the opinion should be authoritative.

The President proceeded to read that text [2].

After he had read the text, the REGISTRAR read the operative clause of the opinion in English.

The PRESIDENT stated that Judge Azevedo, although in agreement with the opinion of the Court, had availed himself of the right conferred on him by Article 57 of the Statute and had appended his separate opinion [3]. Judges Winiarski, Zoričić and Krylov, who considered that the Court should have abstained from giving an opinion in this case, availing themselves of the right conferred on them by Article 57 of the Statute, had appended their dissenting opinions [4] to the Court's Opinion.

The President added that Judges Azevedo, Winiarski, Zoričić and Krylov had informed him that they did not wish to read their dissenting opinions at the sitting.

The President declared the sitting closed.

The Court rose at 4.35 p.m.

(Signatures.)

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[1] Twenty-seventh meeting of the Court.

[2] See Court's publications, *Reports of Judgments, Advisory Opinions and Orders* 1950, pp. 65-78.

[3] *Idem*, pp. 79-88.

[4] „ „ 89-97, 98-104 and 105-113.

ANNEXES AU PROCÈS-VERBAUX

EXPOSÉS ORAUX DE FÉVRIER-MARS 1950
(PREMIÈRE PHASE)

ANNEXES TO THE MINUTES

ORAL STATEMENTS OF FEBRUARY-MARCH 1950
(FIRST PHASE)

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1. EXPOSÉ DE M. IVAN S. KERNO

(REPRÉSENTANT DU SECRÉTAIRE GÉNÉRAL DES NATIONS UNIES)

A LA SÉANCE PUBLIQUE DU 28 FÉVRIER 1950, MATIN

Monsieur le Président, Messieurs les Membres de la Cour,

Une fois de plus, j'ai le grand honneur de pouvoir représenter le Secrétaire général des Nations Unies devant le plus haut tribunal du monde. Mes sentiments sont d'autant plus profonds que je puis le faire à la suite d'une Assemblée générale des Nations Unies qui a éprouvé le besoin de demander à la Cour trois avis consultatifs et à un moment où, en outre, plusieurs affaires contentieuses se trouvent devant la Cour. Ainsi, les dispositions de la Charte des Nations Unies qui prévoyaient que la Cour serait l'organe judiciaire principal de la nouvelle Organisation, et que l'Assemblée générale pouvait lui demander des avis consultatifs sur toutes questions juridiques, sont devenues une réalité actuelle et vivante. Je crois qu'on peut se réjouir sincèrement et profondément de cette évolution tendant à une large utilisation de la branche judiciaire de l'Organisation créée à San-Francisco.

Avec votre approbation, Monsieur le Président, je me permets de présenter cet exposé oral en conformité de l'article 66 du Statut de la Cour.

Les discussions qui ont eu lieu au cours du printemps et de l'automne de l'année 1949, à l'Assemblée générale, et qui ont abouti à cette demande d'avis consultatif, se sont concentrées dans la Commission politique spéciale de l'Assemblée générale et, en outre, dans quelques séances du Bureau et de l'Assemblée plénière elle-même. Les procès-verbaux de toutes ces séances figurent dans le dossier que le Secrétaire général a fait parvenir à la Cour.

A propos des procès-verbaux, je voudrais, en passant, faire une remarque, que je me suis déjà permis de présenter à la Cour dans des affaires précédentes. Le Bureau et la Commission politique spéciale de l'Assemblée générale ont seulement des comptes rendus analytiques. Ceux-ci se trouvent dans le dossier présenté à la Cour. Le Secrétariat possède, en outre, des procès-verbaux soit sténographiés, soit sur

disques ; ces procès-verbaux ne sont pas officiels, en ce sens qu'ils n'ont été ni revus ni corrigés par les délégations respectives. Ils donnent cependant un tableau exact de ce qui a été effectivement dit au cours des séances. Si la Cour le désire, ces procès-verbaux sténographiques ou sur disques sont à sa disposition.

Je viens donc de mentionner que les procès-verbaux des discussions, devant la Commission politique spéciale, le Bureau et l'Assemblée plénière, sont relativement peu nombreux et peuvent être consultés sans trop de difficultés. Il ne me semble donc pas nécessaire de procéder à une analyse détaillée de tous les débats. Cependant, il pourra être de quelque utilité de présenter un court résumé objectif ayant trait à certains aspects saillants de la discussion. Un tel résumé pourra, au moins je l'espère, aider quelque peu la Cour à comprendre pleinement les intentions et les désirs de l'Assemblée générale.

Les questions qui nous occupent ont été transmises à la Cour conformément aux dispositions d'une Résolution adoptée par l'Assemblée générale le 22 octobre 1949 (dossier, chemise 13, texte de la résolution). L'Assemblée générale a adopté cette résolution après avoir examiné à sa Quatrième Session ordinaire un point de l'ordre du jour intitulé : « Respect des droits de l'homme et des libertés fondamentales en Bulgarie, en Hongrie et en Roumanie. » On se rappellera cependant que l'examen de cette question faisait suite à l'examen par l'Assemblée générale, lors de la deuxième partie de sa Troisième Session, d'une question analogue concernant la Bulgarie et la Hongrie.

Trois semaines avant l'ouverture de la deuxième partie de la Troisième Session de l'Assemblée générale, ce fut la délégation de la Bolivie qui, la première, avait proposé, le 16 mars 1949, d'inscrire à l'ordre du jour une question intitulée : « Étude du procès contre le cardinal hongrois Mindszenty, en relation avec les articles premier, paragraphe 3, et 55, alinéa *c*, de la Charte. » Le 19 mars 1949, la délégation de l'Australie, de son côté, avait proposé d'inscrire à l'ordre du jour une question analogue intitulée : « Respect des libertés et droits fondamentaux de l'homme en Bulgarie et en Hongrie, et notamment question des libertés religieuses et civiques, telle qu'elle s'est posée, en particulier, à l'occasion des procès qui ont eu lieu récemment contre des dignitaires de l'Église » (dossier, chemise 2, documents A/820 et A/821).

Après avoir examiné, les 6 et 7 avril 1949, le point de savoir si les questions précitées devaient être inscrites à l'ordre du jour de l'Assemblée générale, le Bureau de l'Assemblée a décidé de recommander à l'Assemblée générale de combiner, en une seule, les deux questions et d'inscrire à son ordre du jour un point intitulé : « Question du respect, en Bulgarie et en Hongrie, des droits de l'homme et des libertés fondamentales eu égard aux dispositions de la Charte et des Traités de paix, et, notamment, question des libertés religieuses et civiques, telle qu'elle s'est posée, en particulier, à l'occasion des procès qui ont eu lieu récemment contre des dignitaires ecclésiastiques. » Le Bureau a également recommandé de renvoyer la question ainsi libellée à la Commission politique spéciale (dossier, chemise 1, comptes rendus du Bureau, 58me et 59me séances ; chemise 2, rapport du Bureau, document A/829). L'Assemblée générale a examiné les recommandations de son Bureau et, le 12 avril 1949, elle les a adoptées par 30 voix contre 7 et 20 abstentions (dossier, chemise 1, comptes rendus des 189me et 190me séances plénières).

La Commission politique spéciale, ainsi saisie de la question, l'a débattue au cours de ses trente-quatrième à quarante et unième séances qui se sont tenues du 19 au 22 avril 1949 (dossier, chemise 3, comptes rendus de la Commission politique spéciale). Avant d'entamer les débats sur le fond du problème, la Commission politique spéciale a adopté une résolution présentée par la délégation australienne, invitant les Gouvernements de la Bulgarie et de la Hongrie à envoyer un représentant qui participerait, sans droit de vote, aux discussions (dossier, chemise 4, document A/AC. 24/50 ; chemise 3, comptes rendus de la Commission politique spéciale, 34me séance). Le Gouvernement de la Bulgarie et celui de la Hongrie ont répondu qu'ils ne pouvaient accepter cette invitation, disant que les Nations Unies n'avaient pas compétence en cette matière (dossier, chemise 4, documents A/AC. 24/58 et A/AC. 24/57).

Ayant terminé l'examen de la question, la Commission politique spéciale a décidé, le 22 avril 1949, de recommander à l'Assemblée générale d'adopter un projet de résolution qui avait été primitivement présenté par la Bolivie. Le vote de la Commission politique spéciale a donné les résultats suivants : 34 voix contre 6 et 11 abstentions (dossier, chemise 3, comptes rendus de la Commission, 41me séance).

L'affaire est venue ensuite à l'Assemblée plénière, les 29 et 30 avril 1949. Celle-ci a adopté le projet de résolution présenté par la Commission politique spéciale par 34 voix contre 6 et 9 abstentions (dossier, chemise 5, comptes rendus des 201me, 202me et 203me séances plénières ; chemise 6, texte de la résolution).

Il y a deux aspects de cette discussion du printemps de 1949, à propos desquels je voudrais présenter quelques commentaires.

1) Dans la Commission politique spéciale, une partie considérable, sinon prépondérante, des délibérations, touchait au fond même des problèmes soulevés. Les accusations suivant lesquelles la Bulgarie et la Hongrie auraient commis certains actes en violation de la Charte et des Traités de paix ont été soutenues et amplifiées avec beaucoup de vigueur par certaines délégations. Ces accusations ont été catégoriquement niées par la Bulgarie dans son télégramme du 9 avril 1949 adressé au Secrétaire général des Nations Unies, et par la Hongrie dans son télégramme du 4 avril 1949 adressé au Président de l'Assemblée générale (dossier, chemise 4, documents A/832 et Corr. 1, A/831). Elles ont été aussi réfutées avec une égale vigueur par certaines délégations. Dans sa Résolution adoptée le 30 avril 1949, l'Assemblée générale a exprimé « le profond souci que lui inspirent les graves accusations portées contre le Gouvernement de la Bulgarie et celui de la Hongrie touchant la suppression des droits de l'homme et des libertés fondamentales dans ces pays ». Mais l'Assemblée s'est abstenue de passer un jugement quelconque ou d'entrer d'une manière quelconque dans le fond même de la controverse. Tous les projets de résolution présentés dans cet ordre d'idées furent retirés par leurs auteurs, faute de soutien suffisant, ou rejetés par la Commission politique spéciale. Il en fut ainsi, notamment :

a) du premier et du deuxième projets de résolution de Cuba, qui tendaient à condamner l'attitude de la Bulgarie et de la Hongrie et à instituer une commission d'enquête (dossier, chemise 4, documents A/AC. 24/48 et Corr. 1, A/AC. 24/48/Rev. 2) ;

b) du projet de résolution de l'Australie estimant que, « à première vue, il est établi que des restrictions ont été apportées aux droits de

l'homme et aux libertés fondamentales en Bulgarie et en Hongrie » et tendant à créer une commission d'étude (*ibid.*, document A/AC. 24/52) ;

c) de l'amendement du Chili, tendant à condamner les actes commis par la Bulgarie et la Hongrie (*ibid.*, document A/AC. 24/53) ;

d) de l'amendement de la Colombie et du Costa-Rica, tendant à décider de surseoir à toute procédure d'admission, au sein des Nations Unies, de la Bulgarie et de la Hongrie (*ibid.*, document A/AC. 24/54) ; et

e) enfin, de l'amendement de l'Australie et de Cuba ne maintenant des projets antérieurs de ces délégations que l'idée d'une commission d'étude (*ibid.*, document A/AC. 24/56).

Je répète donc que l'Assemblée générale, à la seconde partie de sa Troisième Session, n'a passé aucun jugement sur la substance des accusations. Elle s'est limitée à prendre note, « avec satisfaction, que des mesures ont été prises par plusieurs États signataires des Traités de paix avec la Bulgarie et la Hongrie », a exprimé « l'espoir que des mesures seront diligemment appliquées, selon les traités, en vue d'assurer le respect des droits de l'homme et des libertés fondamentales » et a attiré « de toute urgence l'attention du Gouvernement de la Bulgarie et de celui de la Hongrie, sur leurs obligations prévues par les Traités de paix, et notamment sur celle de coopérer au règlement de toutes ces questions ».

La fin de la Troisième Session de l'Assemblée est donc marquée uniquement, mais expressément, par un appel urgent aux États intéressés d'appliquer les procédures prévues par les Traités de paix.

2) Il y a une autre partie de la discussion du printemps de 1949 qu'il est intéressant de passer en revue. La Cour pourra noter que l'inscription même de la question à l'ordre du jour de l'Assemblée a donné lieu à un débat, devant le Bureau et devant l'Assemblée plénière, d'une ampleur et d'une ardeur considérables. En effet, certaines délégations ont refusé d'admettre, dès le début et tout au long des délibérations, une compétence quelconque de l'Assemblée générale de s'occuper du problème. Cette même thèse fut à la base de la réponse négative de la Bulgarie et de la Hongrie à l'invitation de l'Assemblée de venir prendre part aux discussions de la Commission politique spéciale. Les principaux arguments prononcés en faveur de ce point de vue peuvent se résumer brièvement de la façon suivante :

Par le paragraphe 7 de l'article 2 de la Charte, les auteurs de la Charte ont voulu interdire toute intervention dans des affaires qui relèvent essentiellement de la compétence nationale d'un État. Les dispositions générales de la Charte concernant les droits de l'homme et les libertés fondamentales ne peuvent pas prévaloir contre l'interdiction expresse du paragraphe 7 de l'article 2. Le caractère obligatoire de ces dispositions générales, concernant les droits de l'homme et les libertés fondamentales, est d'ailleurs extrêmement douteux, même abstraction faite de leur relation avec l'article 2. En outre, pour les États non membres aucune obligation ne saurait découler des dispositions de la Charte relatives à ce domaine. La seule stipulation de la Charte que l'on pût interpréter comme imposant une certaine obligation à un État non membre de l'Organisation des Nations Unies était l'article 2, paragraphe 6, aux termes duquel l'Organisation « fait en sorte que les États qui ne sont pas membres des Nations Unies agissent conformément à ces principes dans la mesure nécessaire au maintien de la paix et de la sécurité internationales ». Puisque ce

prétendu différend ne mettait pas en cause le maintien de la paix et de la sécurité internationales, cette disposition du paragraphe 6 de l'article 2 ne s'appliquait pas. Enfin, d'après l'article 107 de la Charte, toutes les questions concernant les Traités de paix sont en dehors de la compétence des Nations Unies. *Même s'il y avait violation des Traités* de paix, c'est la procédure prévue par ces traités concernant leur interprétation et leur exécution qui devrait être appliquée exclusivement.

Par contre, les délégations qui se sont prononcées en faveur de la compétence de l'Assemblée générale ont fait ressortir tout d'abord que l'Assemblée générale avait la compétence de déterminer sa propre compétence. Or, l'article 10 de la Charte est extrêmement général ; il confère à l'Assemblée générale le droit de discuter toutes questions ou affaires « rentrant dans le cadre de la Charte ». Le problème soulevé met en jeu les droits de l'homme et les libertés fondamentales ; les articles et les dispositions de la Charte qui mentionnent le respect des droits de l'homme et des libertés fondamentales sont si nombreux et si explicites que l'on ne saurait nier que toute question mettant en jeu ces grands principes rentre dans le cadre de la Charte. De toute évidence, les Nations Unies devraient être en mesure d'intervenir en cas de violation des droits de l'homme ; sinon les dispositions précitées seraient sans portée. En dehors de la Charte elle-même, le respect des droits de l'homme et des libertés fondamentales est prévu spécialement et expressément dans les Traités de paix. De ce fait, toute la question a certainement revêtu un caractère international et a cessé d'appartenir essentiellement à la compétence nationale. En ce qui concerne les Traités de paix, il faut en outre faire ressortir qu'on ne saurait en aucun cas les invoquer contre la compétence des Nations Unies si et en tant quece tte compétence existait déjà. En effet, conformément à l'article 103 de la Charte : « En cas de conflit entre les obligations des Membres des Nations Unies en vertu de la présente Charte et leurs obligations en vertu de tout autre accord international, les premières prévaudront. » Enfin, pour réfuter l'argument que des États non membres ne sauraient être liés par les obligations de la Charte, l'attention a été attirée sur le texte de l'article 55 *c*) de la Charte, d'après lequel il était du devoir des Nations Unies de favoriser « le respect universel et effectif des droits de l'homme et des libertés fondamentales pour tous, sans distinction de race, de sexe, de langue ou de religion ». Ainsi les Nations Unies avaient l'obligation d'assurer le respect universel et effectif des droits de l'homme et des libertés fondamentales tant par les États Membres que par les États non membres.

La Cour connaît le résultat de toutes ces discussions. Je rappelle que la question fut inscrite à l'ordre du jour de l'Assemblée générale par 30 voix contre 7 et 20 abstentions et que la résolution recommandée par la Commission politique spéciale a reçu l'approbation de l'Assemblée générale par 34 voix contre 6 avec 9 abstentions.

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Je viens maintenant aux délibérations de la Quatrième Session ordinaire de l'Assemblée générale. Notons comme introduction que, quand la question fut reprise au mois de septembre 1949, l'Assemblée avait devant

elle le volumineux échange de notes entre les États-Unis d'Amérique et le Royaume Uni d'une part, la Bulgarie, la Hongrie et la Roumanie d'autre part. La Cour trouvera le texte de cette correspondance dans la chemise 7 du dossier et dans ses addenda. La Cour tiendra certainement à étudier minutieusement toute cette correspondance, car les points de vues très divergents qu'elle relève sont à la base même de la décision de l'Assemblée de demander un avis consultatif.

L'ordre du jour provisoire de la Quatrième Session de l'Assemblée contenait, conformément à la Résolution du 30 avril 1949, un point intitulé : « Respect des droits de l'homme et des libertés fondamentales en Bulgarie et en Hongrie. » Un mois avant l'ouverture de cette Quatrième Session, le Gouvernement de l'Australie a proposé d'examiner la même question en ce qui concerne la Roumanie (dossier, chemise 9, document A/948). Sur la recommandation du Bureau, l'Assemblée générale a décidé, le 22 septembre 1949, d'inscrire à son ordre du jour un seul point combiné : « Respect des droits de l'homme et des libertés fondamentales en Bulgarie, en Hongrie et en Roumanie », et de le renvoyer à nouveau, pour examen et rapport, à la Commission politique spéciale (dossier, chemise 9, document A/989 ; chemise 8, compte rendu de la 224me séance plénière). Cette Commission a examiné la question au cours de neuf séances du 4 au 13 octobre 1949 (dossier, chemise 10, comptes rendus de la Commission politique spéciale, 7me à 14me séances). Au début de ses délibérations, la Commission a décidé d'inviter le Gouvernement de la Roumanie à envoyer un représentant pour participer, sans droit de vote, à la discussion. Le Gouvernement de la Roumanie a rejeté cette invitation, estimant que la discussion de la question par l'Assemblée constituait « une ingérence dans ses affaires intérieures » (dossier, chemise 10, compte rendu de la 7me séance de la Commission ; chemise 11, document A/AC. 31/L.4).

La discussion au sein de la Commission politique spéciale de la Quatrième Session de l'Assemblée touchait de nouveau, mais avec moins d'intensité et moins d'ampleur, au fond des accusations dirigées cette fois-ci non seulement contre la Bulgarie et la Hongrie, mais encore contre la Roumanie. La question de la compétence des Nations Unies a été également soulevée. Mais dans ces deux domaines les arguments avancés d'un côté et de l'autre furent dans les grandes lignes de la même nature que ceux employés au cours de la Troisième Session. Aussi ne crois-je pas nécessaire d'y revenir.

Cependant, la plus grande partie de la discussion de la Quatrième Session avait trait aux difficultés qui se sont manifestées dans la correspondance diplomatique des États intéressés concernant la procédure prévue dans les Traités de paix et son applicabilité. Contrairement à la Troisième Session, au cours de laquelle les délégations ont présenté un assez grand nombre de projets de résolution de tendance et de contenu variés, la Quatrième Session n'a vu surgir qu'un seul projet de base, et cela dès les premiers jours de la discussion devant la Commission politique spéciale. Ce fut le projet commun des délégations de la Bolivie, du Canada et des États-Unis d'Amérique. Il tendait, on le sait, à s'adresser à la Cour pour un avis consultatif sur les quatre questions qui sont maintenant devant vous (dossier, chemise 11, document A/AC. 31/L.1 Rev. 1).

Ceux des membres de la Commission politique spéciale qui étaient favorables à ce projet de résolution ont affirmé qu'en application de

la résolution adoptée par l'Assemblée générale au printemps de 1949, certaines Puissances alliées et associées avaient pris des mesures pour mettre en œuvre la procédure prévue par les Traités de paix pour le règlement des différends. Le refus des Gouvernements de la Bulgarie, de la Hongrie et de la Roumanie de participer à cette procédure constituait une nouvelle violation des traités ainsi que de la résolution de l'Assemblée générale. En déclarant qu'ils considéraient avoir rempli les obligations que leur imposaient les traités et en niant l'existence de tout différend qu'exige l'application des dispositions de ces traités, ils cherchaient à éluder toute accusation de violation. Le refus des trois Gouvernements soulevait des problèmes juridiques d'une importance extrême. Dans l'intérêt du droit international, il était indispensable de trancher ces problèmes. L'Assemblée générale devait, en conséquence, demander un avis consultatif à la Cour internationale de Justice sur les questions juridiques relatives à l'applicabilité et à la mise en œuvre des procédures prévues dans les traités.

Par contre, d'autres représentants ont déclaré que la Bulgarie, la Hongrie et la Roumanie n'étaient pas coupables de violation des Traités de paix. En effet, d'après ces délégations il n'existait aucun « différend », puisqu'il n'y avait pas de « parties ». De l'avis de ces représentants, les Traités de paix prévoyaient qu'une des parties au différend serait la Bulgarie, la Hongrie ou la Roumanie, c'est-à-dire la partie vaincue, et que l'autre partie serait formée par les trois Gouvernements des États-Unis d'Amérique, du Royaume-Uni et de l'Union soviétique. Or, dans le cas présent, il n'existe pas de situation de ce genre. En effet, il n'existe qu'une partie — la Bulgarie, la Hongrie et la Roumanie — celle-ci n'est pas convaincue qu'il y ait différend. De l'autre côté, il n'y a pas partie au sens des traités, car il ne s'agit que du Royaume-Uni et des États-Unis ; il ne s'agit donc que de deux gouvernements et non pas de trois. La question est tout à fait claire et il n'y a pas lieu de s'adresser à la Cour.

En réponse à ce dernier argument, on a affirmé qu'il n'était pas nécessaire que les trois Puissances parviennent à un accord préalable sur l'existence d'un différend avant de pouvoir appliquer les procédures prévues par les traités. Si un accord préalable était nécessaire, il n'y aurait aucune raison de stipuler dans les traités que les questions doivent être soumises aux trois chefs de mission, puisque ces chefs de mission seraient déjà saisis de l'affaire. Il n'était pas douteux que les procédures prévues par les traités étaient applicables à tout différend s'élevant entre l'une quelconque des Puissances alliées et associées et les États ex-ennemis.

Alors que la plupart des délégations étaient disposées, en principe, à soumettre à la Cour internationale de Justice, en la priant de donner un avis consultatif, certaines questions juridiques, plusieurs délégations ont élevé des objections en ce qui concerne les questions III et IV.

La délégation australienne a présenté un amendement au projet commun de résolution, proposant de supprimer ces deux questions et de prévoir la création d'une commission spéciale qui serait nommée par l'Assemblée générale et que le Secrétaire général convoquerait immédiatement si la Cour répondait par la négative à l'une des deux premières questions, ou si, dans le cas d'une réponse affirmative aux deux questions, les trois Gouvernements intéressés n'avaient pas désigné leurs représentants aux commissions prévues par les traités

dans les trente jours de la date où la Cour aurait rendu son avis. L'amendement australien proposait en outre de donner pour instructions à la commission spéciale à former de faire rapport à l'Assemblée générale lors de sa Cinquième Session, sur la question du respect des droits de l'homme et des libertés fondamentales. La Commission spéciale a cependant repoussé l'amendement australien (dossier, chemise 11, document A/AC. 31/L.2). Le projet de résolution présenté en commun par la Bolivie, le Canada et les États-Unis et incorporant un amendement proposé par le Brésil, le Liban et les Pays-Bas, a été adopté par la Commission par 41 voix contre 5 et 9 abstentions (dossier, chemise 11, document A/AC. 31/L.3 ; chemise 10, compte rendu de la 15me séance). L'Assemblée générale de son côté a adopté le projet de résolution de la Commission politique spéciale par 47 voix contre 5 et 7 abstentions (dossier, chemise 12, comptes rendus des 234me et 235me séances plénières).

Cette Résolution du 22 octobre 1949 s'abstient de nouveau de passer un jugement quelconque ou de toucher d'une autre manière au fond même du problème. En dehors de la requête pour un avis consultatif, elle se borne à maintenir la question à l'ordre du jour de la Cinquième Session ordinaire. Elle affirme « à nouveau l'intérêt que l'Assemblée porte aux graves accusations portées contre la Bulgarie, la Hongrie et la Roumanie et le souci croissant que ces accusations lui inspirent » et « déclare formellement que le refus, de la part des Gouvernements de la Bulgarie, de la Hongrie et de la Roumanie, de coopérer aux efforts que l'Assemblée générale déploie pour étudier ces graves accusations relatives au respect des droits de l'homme et des libertés fondamentales, justifie le souci qu'inspire à l'Assemblée générale la situation qui règne à cet égard en Bulgarie, en Hongrie et en Roumanie ».

Avant de décider quoi que ce soit sur son attitude et son action éventuelles ultérieures, l'Assemblée générale désire connaître l'avis consultatif de la Cour. C'est à vous maintenant de vous pencher sur les difficultés rencontrées et de dire votre opinion. Les problèmes dont vous êtes saisis sont loin d'être simples, mais c'est précisément en prévision des cas les plus difficiles que la Charte et le Statut ont créé une Cour composée de magistrats possédant une science et une expérience exceptionnelles.

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Ayant passé en revue les délibérations de l'Assemblée générale, je voudrais maintenant faire quelques commentaires au sujet de l'enregistrement au Secrétariat des Nations Unies des Traités de paix dont nous nous occupons.

On sait que l'enregistrement des traités et accords internationaux est régi par les dispositions de l'article 102 de la Charte. Par sa Résolution n° 97 (I), en date du 14 décembre 1946, l'Assemblée générale a adopté un « Règlement destiné à mettre en application l'article 102 de la Charte des Nations Unies ». La Cour trouvera le texte complet de ce Règlement dans le *Recueil des Traités* publié par le Secrétariat, volume 1, pages XXI et suivantes. Je crois utile de citer en ce moment les articles suivants de ce Règlement :

« *Article premier.* — 1. Tout traité ou accord international, quelle qu'en soit sa forme et sous quelque appellation qu'il soit désigné,

conclu par un ou plusieurs Membres des Nations Unies postérieurement au 24 octobre 1945, date de l'entrée en vigueur de la Charte, sera, *le plus tôt possible*, enregistré au Secrétariat conformément au présent Règlement.

2. L'enregistrement ne sera effectué que lorsque le traité ou l'accord international est entré en vigueur entre deux ou plus de deux parties contractantes.

3. Cet enregistrement peut être effectué par l'une quelconque des parties, ou conformément aux dispositions de l'article 4 du présent Règlement.

4. Le Secrétariat inscrira les traités ou les accords internationaux ainsi enregistrés dans un registre établi à cet effet.

Article 5. — 1. La partie ou l'institution spécialisée qui présentera à l'enregistrement un traité ou accord international conformément à l'article 1 ou à l'article 4 du présent Règlement, certifiera que le texte soumis en est une copie exacte et intégrale et qu'il comprend toutes les réserves faites par les parties contractantes.

2. La copie certifiée conforme reproduira le texte dans toutes les langues dans lesquelles le traité ou l'accord a été conclu et sera accompagné de deux exemplaires supplémentaires et d'une déclaration indiquant, pour chacune des parties :

a) la date à laquelle le traité ou accord est entré en vigueur ;

b) le mode d'entrée en vigueur (par exemple : par signature, par ratification, par acceptation, par adhésion, etc.).

Article 6. — La date à laquelle le Secrétariat de l'Organisation des Nations Unies aura reçu le traité ou accord international à enregistrer sera considérée comme date d'enregistrement. Toutefois, la date de l'enregistrement d'un traité ou accord enregistré d'office par l'Organisation sera la première date à laquelle celui-ci est entré en vigueur entre deux ou plus de deux parties contractantes.

Article 7. — Un certificat d'enregistrement signé par le Secrétaire général ou par son représentant sera délivré à la partie ou à l'institution qui procédera à l'enregistrement ainsi qu'à tous les signataires et à toutes les parties contractantes du traité ou de l'accord international enregistré. »

Dans l'exercice de ces fonctions dans le domaine de l'enregistrement des traités, le Secrétaire général doit naturellement se conformer aux instructions de l'Assemblée générale contenues dans le Règlement.

Les Traités de paix avec la Bulgarie, la Hongrie et la Roumanie contiennent des clauses finales identiques prévoyant qu'ils entraient en vigueur immédiatement après le dépôt des ratifications par les États-Unis d'Amérique, le Royaume-Uni et l'Union soviétique. Les instruments de ratification devaient être déposés près le Gouvernement de l'Union soviétique. En ce qui concerne chacune des Puissances alliées ou associées, dont l'instrument de ratification serait déposé ultérieurement, le traité entrerait en vigueur à la date du dépôt. Il a été également prévu que tout Membre de l'Organisation des Nations Unies, en guerre avec la Bulgarie, la Hongrie ou la Roumanie, respectivement, et qui n'était pas signataire des traités en question, pourrait accéder aux traités et

serait considéré, dès son accession, comme Puissance associée pour l'application des traités.

L'enregistrement des trois Traités de paix au Secrétariat des Nations Unies s'est effectué dans les conditions suivantes.

Par une lettre en date du 7 septembre 1948, adressée au Secrétaire général des Nations Unies, le Gouvernement de l'Union soviétique a transmis pour enregistrement 14 traités, et parmi ces traités, les Traités de paix avec la Bulgarie, la Hongrie et la Roumanie. Cette lettre est arrivée au Secrétariat à Paris le 1er octobre 1948. (On sait en effet qu'à cette époque l'Assemblée générale tenait sa session dans la capitale française.) Par une lettre datée du 8 décembre 1948, le Secrétaire général a attiré l'attention du Gouvernement de l'Union soviétique sur l'article 5 du Règlement et a demandé certains documents et informations additionnels qui n'étaient pas contenus dans la communication soviétique du 7 septembre 1948. Il s'agissait surtout d'une déclaration : 1) certifiant que les textes transmis comprenaient toutes les réserves faites par les Parties contractantes ; 2) indiquant la date à laquelle les traités sont entrés en vigueur et le mode de leur entrée en vigueur.

Le 21 septembre 1949, le représentant des États-Unis d'Amérique aux Nations Unies a transmis des copies des Traités de paix avec la Bulgarie, la Hongrie et la Roumanie, pour enregistrement au Secrétariat. Le Gouvernement des États-Unis a annexé à sa communication des déclarations en date du 19 septembre 1949, certifiant que les textes soumis étaient exacts et intégraux en toutes les langues comme certifiés par le ministre des Affaires étrangères de l'Union soviétique, et que les photocopies annexées des protocoles de dépôt en date du 15 septembre 1947 des instruments de ratification des traités par le Royaume-Uni, les États-Unis d'Amérique et l'Union soviétique étaient des copies exactes et intégrales des textes russes comme certifiées conformes par le Gouvernement de l'Union soviétique. La communication ajoutait que, conformément à ces protocoles de dépôt, les Traités de paix sont entrés en vigueur le 15 septembre 1947, suivant l'article 38 du Traité avec la Bulgarie, 42 du Traité avec la Hongrie, et 40 du Traité avec la Roumanie. La communication du Gouvernement des États-Unis certifiait aussi que ces protocoles de dépôt ne contenaient aucune mention d'aucune réserve par le Royaume-Uni, les États-Unis d'Amérique ou l'Union soviétique. Enfin, la communication du Gouvernement des États-Unis indiquait que les trois traités entraient en vigueur pour l'Inde le 19 septembre 1947, pour la Nouvelle-Zélande le 31 décembre 1947 et pour l'Australie le 10 juillet 1948 ; que les Traités avec la Hongrie et la Bulgarie entraient en vigueur, en ce qui concerne la Yougoslavie, le 19 septembre 1947 ; que les Traités de paix avec la Hongrie et la Roumanie entraient en vigueur, en ce qui concerne le Canada, le 19 septembre 1947, et que tous ces instruments de ratification ne contenaient aucune mention d'aucune réserve.

Le Secrétariat a inscrit les trois traités dans le registre à la date du 21 septembre 1949 (sous le numéro 643 pour le Traité avec la Bulgarie, numéro 644 pour le Traité avec la Hongrie et numéro 645 pour le Traité avec la Roumanie). Des certificats d'enregistrement ont été établis par le Secrétariat ultérieurement, conformément au Règlement, et délivrés aux Parties.

* * *

Pour conclure, Monsieur le Président, je voudrais faire l'observation que voici :

La Cour reconnaîtra que dans cette question le Secrétaire général des Nations Unies occupe une position très spéciale. Aux termes des Traités de paix, il peut être invité à désigner le troisième membre d'une commission. L'essence même de cette procédure est d'assurer que la désignation du troisième membre soit faite sans que le moindre soupçon de partialité soit possible. Le Secrétaire général ne peut donc prendre position ni sur le fond de l'affaire ni sur les questions soumises à la Cour. En exprimant un avis quelconque, il risquerait d'influencer l'opinion des Parties concernant son impartialité.

On sait naturellement que, d'après la Charte, le Secrétaire général est à la tête de l'un des organes principaux des Nations Unies. Or, l'Assemblée générale des Nations Unies a décidé d'inscrire cette question à son ordre du jour et de l'y maintenir. De longues discussions ont eu lieu pendant les deux dernières sessions. Pour clarifier certains aspects juridiques du problème, l'Assemblée générale demande maintenant l'avis de l'organe judiciaire principal de l'Organisation. Cet avis est sollicité pour la raison, entre autres, que l'Assemblée a estimé qu'il importait « que le Secrétaire général dispose d'un avis autorisé concernant l'étendue des pouvoirs que lui confèrent les Traités de paix ». Dans ces conditions, il est évident que le Secrétaire général ne pourra définir son attitude qu'à la lumière de l'avis de la Cour, et en connaissant pleinement les vues de l'Assemblée.

Telles sont les raisons, Monsieur le Président, qui ont conduit le Secrétaire général à me demander de limiter l'exposé que je fais en son nom à une présentation des faits. Je voudrais ajouter que je me tiens à la disposition de la Cour pour tous renseignements supplémentaires dont elle pourrait avoir besoin.

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2. STATEMENT BY Mr. BENJAMIN V. COHEN

(REPRESENTATIVE OF THE UNITED STATES OF AMERICA)

AT THE PUBLIC SITTING OF MARCH 1st, 1950

[*Public sitting of March 1st, 1950, morning*]

May it please the Court :

The United States has on several occasions submitted written statements to this Court. But this is the first time that the United States has made an oral statement. It is a great honour and privilege for me to be the first representative of my country to address this distinguished international tribunal, the principal judicial organ of the United Nations.

A. *Introductory*

In the matter now before the Court, the General Assembly of the United Nations, by its Resolution of October 22, 1949, has requested an advisory opinion from this Court on four questions arising under the recent Peace Treaties with Bulgaria, Hungary and Rumania. Only two of these questions are to be considered at the present hearing.

Before submitting to you the views of the United States of America on the two questions, I shall deal with some preliminary matters of importance. I shall first review briefly the relevant proceedings in the second part of the Third Session and in the Fourth Session of the General Assembly, so that it will be clear just why the Assembly considered it necessary to request the Court's advice on these questions. I shall then review briefly the proceedings which have been instituted under the Treaties by the United States and certain other parties to the Treaties, as these proceedings also have an important bearing on the Assembly's questions. Then I shall deal with the preliminary question of jurisdiction and the propriety of this Court exercising its jurisdiction in the present matter.

I. *Proceedings of the General Assembly*

Shortly before the opening of the second part of the Third Session of the General Assembly in New York in April, 1949, Bolivia requested that the following item be placed on the agenda : "Study of the legal proceedings against Cardinal Mindszenty of Hungary in relation to Article 1, paragraph 3, and Article 55, paragraph (*c*), of the Charter." (A/820.)

A few days later Australia proposed that an additional item should be put on the agenda reading as follows : "Observance of fundamental freedoms and human rights in Bulgaria and Hungary, including the question of religious and civil liberty in special relation to recent trials of Church leaders." (A/821.)

The General Committee recommended the consolidation of the two proposed items into one agenda item reading : "Having regard to the

provisions of the Charter and of the Peace Treaties, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms including questions of religious and civil liberties with special reference to recent trials of Church leaders." The Assembly accepted this recommendation and referred the item in the form suggested to the *Ad hoc* Political Committee. (*Official Records of the Third Session of the General Assembly*, Part II, Plenary Meetings, p. 29.)

I shall not review in detail the debates in the General Committee, the *Ad hoc* Political Committee and the plenary sessions of the Assembly. I shall not discuss here the basis in fact for the profound concern and indignation expressed in those debates concerning the trials of Cardinal Mindszenty and Bishop Ordass and the suppression of human rights and freedoms in the former enemy countries concerned. But I shall try to summarize, as fairly as an interested advocate may, the principal positions which were expressed in the course of the debate as to the competence and authority of the Assembly to deal with this subject. As intense political feelings and reactions were involved legal and political arguments were not always clearly differentiated by the participants.

The *Ad hoc* Political Committee invited Bulgaria and Hungary to participate in the discussions without the right to vote but they did not accept the invitation. (*Official Records of the Third Session of the General Assembly*, Part II, *Ad hoc* Political Committee, p. 65; A/AC.24/57; A/AC.24/58.) Their communications to the Assembly indicated that they considered the matters included in the agenda item as exclusively within their own internal jurisdiction and that they viewed the inclusion of the item on the agenda as an illegal intervention in their internal affairs. Their communications further pointed out that they were not Members of the United Nations. The Hungarian communication drew attention to the fact that the Peace Treaty provided a special procedure for settling disputes relating to its application. Bulgaria specifically alleged that religious freedom in Bulgaria is fully guaranteed. (A/832.)

The Soviet Union and other Eastern European countries defended the position taken by Bulgaria and Hungary. They contended that the matters complained of were exclusively within the domestic jurisdiction of Bulgaria and Hungary and were beyond the competence of the Assembly by reason of Article 2, paragraph 7. They maintained that there was in fact no basis for the charges that human rights and fundamental freedoms were being suppressed in these countries and they asserted that the charges were politically motivated. They further contended that if there were any violations of the human rights clauses of the Peace Treaties, they should be dealt with in accordance with the procedures laid down in the Peace Treaties themselves. (For example, statements of the Representatives of the U.S.S.R., *Official Records of the Third Session of the General Assembly*, Part II, Plenary Meetings, pp. 22-24; statements of the Representative of Poland, *ibid.*, General Committee, pp. 10-15.)

The great majority of States which expressed their views in the debate were of the opinion that the agenda item was clearly within the competence of the Assembly under Article 10 and Article 14 of the Charter.

In their view the matters to be discussed were within the scope of the Charter, and the charges which had been made reflected a situation likely to *impair the general welfare* and friendly relations among nations. Human rights were not only expressly mentioned in the Preamble but the promotion and encouragement of human rights and fundamental freedoms were included among the *Purposes of the United Nations* in Article 1, paragraph 3, of the Charter. Under Article 55 it became the duty of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. Article 55 did not limit the interest of the United Nations to the promotion of these rights in Member countries. Article 55 envisaged the promotion of *universal* respect for and observance of these rights and freedoms for *all*. Article 56 pledged all Members to take joint and separate action in co-operation with the organization for the achievement of the purposes of Article 55. Article 60 expressly placed the responsibility for the discharge of the functions of the United Nations under Articles 55 and 56 in the General Assembly.

Article 10 expressly authorized the General Assembly to discuss any questions or any matters within the scope of the Charter. Article 14 expressly authorized the Assembly to recommend measures for the peaceful adjustment of any situation regardless of origin which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the Charter setting forth the *Purposes and Principles of the United Nations*. Article 14 was not limited to situations affecting Member States. The deep indignation aroused throughout the world by reports of the suppression of human rights and fundamental freedoms in Bulgaria and Hungary clearly showed that the situation was one which was likely to impair the general welfare and friendly relations among nations.

The States which supported the competence of the Assembly took the position that Article 2, paragraph 7, which provides that nothing contained in the Charter should authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State, did not, for various reasons, preclude consideration of the agenda item. Article 2, paragraph 7, was not intended to nullify the human rights clauses of the Charter. The matters to be considered were not essentially within the domestic jurisdiction of States because they involved international obligations. Certainly as between the parties matters which had become the subject of express Peace Treaty obligations could not be considered as essentially of domestic concern. The view was expressed that the Charter provisions themselves regarding human rights and fundamental freedoms made it impossible to consider deliberate, persistent, systematic and flagrant violations of human rights and freedoms essentially within the domestic jurisdiction of States. The view was also advanced that it was not in any event an intervention, within the meaning of Article 2, paragraph 7, for the Assembly to discuss a situation regarding the observance of basic human rights affecting friendly relations among nations. Nor was it an intervention for the Assembly to express a wish or hope that a certain procedure might be followed which might be helpful to compose differences and bring about agreement and constructive settlement. Intervention was considered

something more than a mere suggestion without threat of sanction or coercion. I may refer, for example, to the statements by the Representatives of Australia (*Official Records of the Third Session of the General Assembly*, Part II, General Committee, pp. 15-17), Chile (*ibid.*, pp. 17-19), Panama (*ibid.*, pp. 20-21), Bolivia (*ibid.*, pp. 23-26), China (*ibid.*, pp. 32-34), Cuba (*Official Records of the Third Session of the General* Assembly, Part II, *Ad hoc* Political Committee, pp. 76-79), Belgium (*ibid.*, pp. 96-97), United Kingdom (*ibid.*, p. 98), New Zealand (*ibid.*, pp. 101-103), Canada (*ibid.*, p. 103), El Salvador (*ibid.*, pp. 124-125), Lebanon (*ibid.*, pp. 136-139), Uruguay (*ibid.*, Plenary Meetings, pp. 23-27) and of the United States (*Official Records of the Third Session of the General Assembly*, Part II, Plenary Meetings, pp. 11-13, 230-232 and *ibid.*, in *Ad hoc* Political Committee, pp. 88-96).

The scope of Article 2, paragraph 7, was debated in the same session of the General Assembly in connexion with the question of the treatment of Indians in South Africa and the Court may also find it helpful to consider some of the statements made in the course of that debate. I may refer, for example, to the statement by the Representative of the United States (*Official Records of the Third Session of the General Assembly*, Part II, First Committee, pp. 293-295). I should also refer to the statement of the Representative of India who attached great importance to Professor Lauterpacht's carefully-reasoned interpretation (The International Law Association, *Report of the Forty-Second Conference at Prague*, September 1-5, 1947, pp. 13-22, at p. 15) of what constitutes "intervention within the meaning of paragraph 7 of Article 2". The Indian Representative quoted the following statement made by Prof. Lauterpacht at the forty-second Conference of the International Law Association at Prague in September, 1947:

> "The view has been widely expressed that the effect of that clause is to reduce to a minimum or to render altogether nugatory the protection of human rights on the part of the United Nations. There is no warrant for such a pessimistic interpretation of the Charter. The Charter does not authorize intervention. This means that it does not authorize compulsive legal processes on the part of the Organization. It does not authorize peremptory demands, accompanied by enforcement or threat of enforcement, in case of non-compliance, for this is the accepted meaning of 'intervention'. But Article 2, paragraph 7, does not prevent the General Assembly or the Economic and Social Council from discussing and investigating situations arising from complaints of violations of human rights. It does not preclude a general recommendation addressed to Members of the United Nations at large and covering the subject matter of the complaint. Neither does it rule out a specific recommendation addressed to the State directly concerned and drawing its attention to the propriety of bringing about a situation in conformity with the obligations of the Charter. None of these measures constitute intervention. None of them amounts to legal compulsion." (*Official Records of the Third Session of the General Assembly*, Part II, Plenary Meetings, p. 453.)

Professor Lauterpacht in his recent Seventh Edition of Oppenheim, International Law, Vol. I (Longman, Green and Co., Ltd. London, 1948), gives consideration to the problems raised by Article 2, para-

graph 7 (*ibid.*, pp. 376-381) and by the human rights provisions of the Charter (*ibid.*, p. 264, pp. 286-8, p. 585, pp. 667-672), and supports his conclusions which I have just read by reference both to principle and precedent.

Among the Member States supporting the competence of the Assembly to consider the agenda item there was some difference of opinion as to the action the Assembly should take. Australia proposed that the Assembly should set up a committee to inquire into the facts and to report to the next session of the Assembly. Bolivia proposed that the Assembly should not at this stage take action independently of the procedures under the Peace Treaties.

It was urged that the Bolivian proposal was in the spirit of Article 33 of the Charter that parties to the dispute should first of all seek a solution by peaceful means of their own choice. After prolonged debate the Bolivian proposal became the basis of the *Ad hoc* Committee's recommendation and the Assembly's resolution, which was adopted by 34 votes in favour, 6 against, and 9 abstentions. This resolution, carefully and conservatively drawn, reads:

"*The General Assembly*,

Considering that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Governments of Bulgaria and Hungary have been accused, before the General Assembly, of acts contrary to the purposes of the United Nations and to their obligations under the Peace Treaties to ensure to all persons within their respective jurisdictions the enjoyment of human rights and fundamental freedoms,

1. *Expresses* its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary regarding the suppression of human rights and fundamental freedoms in those countries;

2. *Notes* with satisfaction that steps have been taken by several States signatories to the Peace Treaties with Bulgaria and Hungary regarding these accusations, and expresses the hope that measures will be diligently applied, in accordance with the Treaties, in order to ensure respect for human rights and fundamental freedoms;

3. *Most urgently draws* the attention of the Governments of Bulgaria and Hungary to their obligations under the Peace Treaties, including the obligation to co-operate in the settlement of all these questions;

4. *Decides* to retain the question on the agenda of the Fourth Regular Session of the General Assembly of the United Nations." (*Official Records of the Third Session of the General Assembly*, Part II, Resolution 272 (III).)

The United States and other signatories to the Peace Treaties, in accordance with the Assembly's resolution, continued diligently their efforts to apply the Treaty procedures. Bulgaria and Hungary continued

to deny the applicability of the Treaty provisions and refused to co-operate in the settlement of the charges in accordance with the procedures provided in the Treaties.

The question again came before the Assembly when it reconvened in September 1949. Australia requested that the observance of fundamental freedoms and human rights in Rumania also be included in the consideration of this question. The General Committee recommended, and the Assembly voted, to include Rumania with Bulgaria and Hungary in the item on the agenda and the item was again referred to the *Ad hoc* Political Committee. Rumania was invited to participate in the discussion without the right to vote but failed to do so for reasons similar to those previously given by Bulgaria and Hungary. (A/AC. 31/SR. 7, p. 6; A/AC. 31/L. 4.)

Australia again urged that the Assembly should appoint a committee to inquire into the facts and report to the Assembly. But the great majority of the States still felt that the charges should more appropriately be considered in accordance with the procedures laid down in the Peace Treaties. Since the Governments of Bulgaria, Hungary and Rumania took the position that there were no disputes which they were obligated to settle under the Peace Treaties, Bolivia, the United States and Canada joined in a proposal that an advisory opinion should be obtained from the International Court of Justice on the legal questions involved. This joint proposal formed the basis of the *Ad hoc* Committee's recommendation to the Assembly which was adopted by the Assembly by a vote of 47 to 5 with 7 abstentions. (Res. A/1043.)

The wording of the resolution is important and I shall read it:

> "*Whereas* the United Nations, pursuant to Article 55 of the Charter, shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,
>
> *Whereas* the General Assembly, at the second part of its third regular session, considered the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms,
>
> *Whereas* the General Assembly, on 30 April 1949, adopted Resolution 272 (III) concerning this question in which it expressed its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary regarding the suppression of human rights and fundamental freedoms in those countries; noted with satisfaction that steps had been taken by several States signatories to the Treaties of Peace with Bulgaria and Hungary regarding these accusations; expressed the hope that measures would be diligently applied, in accordance with the Treaties, in order to ensure respect for human rights and fundamental freedoms; and most urgently drew the attention of the Governments of Bulgaria and Hungary to their obligations under the Peace Treaties, including the obligation to co-operate in the settlement of the question,
>
> *Whereas* the General Assembly has resolved to consider also at the Fourth Regular Session the question of the observance in Rumania of human rights and fundamental freedoms,

Whereas certain of the Allied and Associated Powers signatories to the Treaties of Peace with Bulgaria, Hungary and Rumania have charged the Governments of those countries with violations of the Treaties of Peace and have called upon those Governments to take remedial measures,

Whereas the Governments of Bulgaria, Hungary and Rumania have rejected the charges of Treaty violations,

Whereas the Governments of the Allied and Associated Powers concerned have sought unsuccessfully to refer the question of Treaty violations to the Heads of Mission in Sofia, Budapest and Bucharest, in pursuance of certain provisions in the Treaties of Peace,

Whereas the Governments of these Allied and Associated Powers have called upon the Governments of Bulgaria, Hungary and Rumania to join in appointing Commissions pursuant to the provisions of the respective Treaties of Peace for the settlement of disputes concerning the interpretation or execution of these Treaties,

Whereas the Governments of Bulgaria, Hungary and Rumania have refused to appoint their representatives to the Treaty Commissions, maintaining that they were under no legal obligation to do so,

Whereas the Secretary-General of the United Nations is authorized by the Treaties of Peace, upon request by either party to a dispute, to appoint the third member of a Treaty Commission if the parties fail to agree upon the appointment of the third member,

Whereas it is important for the Secretary-General to be advised authoritatively concerning the scope of his authority under the Treaties of Peace,

The General Assembly,

1. *Expresses* its continuing interest in, and its increased concern at, the grave accusations made against Bulgaria, Hungary and Rumania;

2. *Records* its opinion that the refusal of the Governments of Bulgaria, Hungary and Rumania to co-operate in its efforts to examine the grave charges with regard to the observance of human rights and fundamental freedoms justifies this concern of the General Assembly about the state of affairs prevailing in Bulgaria, Hungary and Rumania in this respect;

3. *Decides* to submit the following questions to the International Court of Justice for an advisory opinion:

'I. Do the diplomatic exchanges between Bulgaria, Hungary and Rumania, on the one hand, and certain Allied and Associated Powers signatories to the Treaties of Peace, on the other, concerning the implementation of Article 2 of the Treaties with Bulgaria and Hungary and Article 3 of the Treaty with Rumania, disclose disputes subject to the provisions for the settlement of disputes contained in Article 36 of the Treaty of Peace with

Bulgaria, Article 40 of the Treaty of Peace with Hungary, and Article 38 of the Treaty of Peace with Rumania ?'

In the event of an affirmative reply to question I

II. Are the Governments of Bulgaria, Hungary and Rumania obligated to carry out the provisions of the articles referred to in question I, including the provisions for the appointment of their representatives to the Treaty Commissions ?

In the event of an affirmative reply to question II and if within thirty days from the date when the Court delivers its opinion, the Governments concerned have not notified the Secretary-General that they have appointed their representatives to the Treaty Commissions, and the Secretary-General has so advised the International Court of Justice :

III. If one party fails to appoint a representative to a Treaty Commission under the Treaties of Peace with Bulgaria, Hungary and Rumania where that party is obligated to appoint a representative to the Treaty Commission, is the Secretary-General of the United Nations authorized to appoint the third member of the Commission upon the request of the other party to a dispute according to the provisions of the respective Treaties ?

In the event of an affirmative reply to question III :

IV. Would a Treaty Commission composed of a representative of one party and a third member appointed by the Secretary-General of the United Nations constitute a Commission, within the meaning of the relevant Treaty articles, competent to make a definitive and binding decision in settlement of a dispute ?'

4. *Requests* the Secretary-General to make available to the International Court of Justice the relevant exchanges of diplomatic correspondence communicated to the Secretary-General for circulation to the Members of the United Nations and the records of the General Assembly proceedings on this question ;

5. *Decides* to retain on the agenda of the Fifth Regular Session of the General Assembly the question of the observance of human rights and fundamental freedoms in Bulgaria, Hungary and Rumania, with a view to ensuring that the charges are appropriately examined and dealt with."

I have reviewed at considerable length the proceedings in the Assembly which gave rise to the Assembly's request for an advisory opinion. I have done this so as to make it clear to the Court that answers to the questions submitted are urgently needed by the Assembly to guide it in the performance of its functions under the Charter.

If the Court advises that the diplomatic exchanges regarding the execution of the human rights clauses of the Treaties, disclose disputes which Bulgaria, Hungary and Rumania are obligated to settle in accordance with the Treaty Articles for the settlement of disputes, the Assembly may be able to continue its efforts to bring about a settlement of these charges under the Treaties. If the Court advises the Assembly

to the contrary, the Assembly may wish to explore other avenues to facilitate a just settlement.

The Assembly is further much interested in the proper interpretation and application of the provisions of the Peace Treaties for the settlement of disputes including the scope of the authority of the Secretary General of the United Nations under these provisions. Similar provisions may be included in proposed conventions which may come before the Assembly for its approval. It is not likely that the Assembly or individual States would wish to favor the use of such provisions if they are deemed inadequate and ineffective to carry out their obvious purpose.

This review of the proceedings in the Assembly shows that the Assembly is intensely and legitimately interested in the questions upon which it has requested an advisory opinion. The Assembly is, first, much interested in the steps that may be taken by treaties or otherwise to encourage and promote universal respect for, and observance of, human rights and fundamental freedoms ; second, the Assembly is very much interested in what may be done to make possible the effective application of peaceful settlement procedures previously agreed upon by the parties. The future of the United Nations may well depend upon its ability to promote respect for human rights and to develop effective procedures of peaceful settlement.

II. *Proceedings under the Peace Treaties*

I turn now to the pertinent provisions of the Peace Treaties. I shall first consider the human rights Articles.

1. *Human rights Articles of the Peace Treaties*

As the United States representative stated in the *Ad hoc* Political Committee of the General Assembly on October 6, 1949 :

> "The human rights clauses in these Treaties were intended to fulfil the war-time promises of the Allies at Yalta. There, the three war leaders of the United Nations gave a solemn pledge to the peoples of Europe, then on the threshold of liberation, that freedom would be restored, not to their former rulers and not to a new set of rulers, but to those peoples themselves."

The Charter adopted at San Francisco in 1945 committed all Members of the United Nations to take joint and separate action to promote universal respect for, and observance of, human rights and fundamental freedoms for all.

A year later, on June 21, 1946, the Economic and Social Council of the United Nations adopted the following resolution :

> "Pending the adoption of an international bill of rights, the general principle shall be accepted that international treaties involving basic human rights, including to the fullest extent practicable treaties of peace, shall conform to the fundamental standards relative to such rights set forth in the Charter." (Resolutions adopted by the Second Session of the Economic and Social Council, *Journal*, No. 29, July 13, 1946, p. 521.)

Deliberately and not by accident the States formerly allied with Germany were required to undertake, as an international obligation, to protect and safeguard the fundamental freedoms and human rights

of their peoples. They solemnly and knowingly undertook this obligation in the Peace Treaties signed at Paris on February 10, 1947.

Article 2 of the Treaty with Bulgaria reads:

"Bulgaria shall take all measures necessary to secure to all persons under Bulgarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, *of Press and publication, of religious worship, of political opinion* and of public meeting."

Aricle 2 of the Treaty with Hungary reads:

"1. Hungary shall take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of Press and publication, of religious worship, of political opinion and of public meeting.

2. Hungary further undertakes that the laws in force in Hungary shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Hungarian nationality on the ground of their race, sex, language or religion, whether in reference to their persons, property, business, professional or financial interests, status, political or civil rights or any other matter."

Article 3 of the Treaty with Rumania contains provisions identical with those of Article 2 in the Treaty with Hungary.

During the negotiating stage some of the former enemy States (Italy and Rumania) suggested that they should not be required to accept further or other obligations than those accepted by the Members of the United Nations in the Charter. (See Doc. No. 28(G) in Paris Peace Conference, *Department of State Publication 2868*, pp. 200-201; Doc. CP(Gen.) 3, *ibid.*, p. 706.) But this suggestion was not accepted. All the former Axis satellite States signed the Treaties with the human rights clauses I have quoted. The Treaties came into effect on September 15, 1947.

2. *Disputes Articles of the Treaties*

I turn now to the disputes Articles. The Treaties of Peace provide clear and definite procedures for the settlement of disputes arising under the Treaties: Article 36 of the Treaty of Peace with Bulgaria, which is the same as Article 40 of the Treaty of Peace with Hungary and Article 38 of the Treaty of Peace with Rumania, reads:

"1. Except where another procedure is specifically provided under any article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the three Heads of Mission acting under Article 35 [39 of the Treaty of Peace with Hungary, 37 of the Treaty of Peace with Rumania], except that in this case the Heads of Mission will not be restricted by the time-limit provided in that article. Any such dispute not resolved by them within a period of two months shall, unless the parties

to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding."

The Court will note that the articles which I have just quoted refer to other articles regarding the general supervision of the execution of the Treaties by the Heads of Diplomatic Missions of the United Kingdom, Soviet Union and United States in Sofia, Budapest and Bucharest. These articles ceased to be applicable on March 15, 1949, except as provided in the disputes articles just quoted. I shall discuss the scope of this exception later in my statement.

Former Secretary of State Byrnes, who had been the chief United States delegate in the negotiations of the Treaties, in testifying before the United States Senate Committee on Foreign Relations in the hearings on the ratification of the Peace Treaties, stated regarding these disputes clauses:

"It seemed to us desirable that treaties constitute as far as possible a settlement of all questions arising out of the war and that methods be provided which would enable disputes arising in regard to the interpretation or execution of the treaty provisions to be speedily resolved. We encountered some difficulty—I would say we encountered great difficulty—in reaching agreement on a procedure for settling disputes, but a formula was ultimately found which I believe will furnish a satisfactory basis for the ultimate resolution of those questions which cannot be resolved by bilateral negotiation." (Hearings before the Committee on Foreign Relations, U.S. Senate, 80th Congress, March-May, 1947, p. 9.)

The language of the disputes articles is clear. They were not intended to be optional provisions; they were deliberately formulated to provide an effective and obligatory procedure for the definitive settlement of disputes arising under the Treaties.

3. *Brief outline of proceedings under the Peace Treaties*

(*a*) Events preceding ratification by the United States

Long before the effective date of the Treaties of Peace, when the Bulgarian, Hungarian and Rumanian Governments were subject to the armistice régimes, the United States found it necessary on the basis of the Yalta decisions to make diplomatic representations with regard to the actions of these Governments in curtailing the freedoms of their people.

When these Treaties came before the United States Senate, there was some question whether they should be ratified because of the continuing failure of these Governments to respect the human rights

of their peoples. Former Secretary of State Byrnes urged ratification on the ground that the Treaties would render these countries fully responsible for their actions, would impose an international obligation on them to assure the maintenance of human rights, and would give other States the right to see that this international obligation was observed. Before the Senate Committee on Foreign Relations he declared :

> "Only through the conclusion of a definitive peace can the ex-enemy States resume their sovereign rights and thereby accept full responsibility for their own acts in the future, another important step toward the restoration of stable conditions. (Hearings before the Committee on Foreign Relations, U.S. Senate, March-May, 1947, p. 4.)
>
> . . . .
>
> Other benefits granted to the people of the ex-enemy States assure the maintenance of their basic human rights and fundamental freedoms. These clauses constitute an international obligation and assure other States the right to see to it that they are maintained. In the preparation of these guarantees we also took precautions to prevent the reemergence of identifiable prewar and wartime antidemocratic elements and the reemergence of prewar Fascism. No limitations upon the democratic freedom and development of the people are contained in the treaties." (*Ibid.*, p. 6.)

On the basis of this declaration the following exchange took place in the Committee on Foreign Relations of the United States between Senator Smith and Secretary Byrnes :

> Senator SMITH. "Mr. Secretary, from my study of the Balkan situation over the years I have come to the conclusion that we all have, that many of our world wars have been originated in those areas. That has been due, as I see it, to two things. One is the denial of basic human rights and fundamental freedoms in those competing countries, to the arbitrary types of dictatorships we have seen there, and that sort of difficulty.
>
> I was interested to see in your report, on page 6, this expression : 'Other benefits granted to the people of the ex-enemy States assure'—and I emphasize the word 'assure'—'the maintenance of their basic human rights and fundamental freedoms. These clauses constitute an international obligation, and assure other States the right to see to it that they are maintained.'
>
> I think that is so profoundly important in the light of the area with which we are dealing that I would be interested in just a little further elaboration from you as to just how that assurance is to be brought about."
>
> Mr. BYRNES. "It has the same assurance that every other provision in these Treaties has. You will recall that we placed great importance upon it, and as far back as Yalta we undertook to have the three Powers agree as to these freedoms. This is different. The ex-enemy State itself has solemnly obligated itself in this agreement to assure the fundamental freedoms. It is

endorsed by the United Nations signing these Treaties. It is the strongest assurance that I can think of."

Senator SMITH. "I am entirely in accord with it. I am glad to hear your emphasis upon the importance of that feature, because there we are going to have our future trouble, if we have any, from the disaffections among those peoples themselves."

Mr. BYRNES. "I agree." (*Ibid.*, p. 14.)

(*b*) Events since the coming into effect of the Peace Treaties

Since the coming into effect of the Peace Treaties, the United States has been impelled to point out repeatedly the continued failure of the Governments of Bulgaria, Hungary and Rumania to conform their policies to their newly-assumed international obligations. Since these efforts proved unsuccessful the United States has invoked the formal procedures provided by the Peace Treaties to obtain redress.

As a first step, in its notes of April 2, 1949, the Government of the United States proceeded formally to charge the Governments of Bulgaria, Hungary and Rumania with systematic and deliberate violations of the respective clauses of the Peace Treaties obligating them to secure to their peoples the enjoyment of human rights and fundamental freedoms. The United States Government set forth by way of illustration specific charges of such violations and requested that remedial measures be taken by the three Governments.

The United States affirmed that peoples in the three countries were deprived of their basic human rights including the right to life and liberty, freedom of political opinion, expression, Press and publication, public meeting and religious worship. The United States alleged that the peoples of these countries had been deprived of these rights through governmental action such as arbitrary arrests, perversion of judicial process (e.g. trial of Maniu in Rumania), destruction of opposition parties (as in the case of the liquidation of the National Agrarian Union and Socialist Party in Bulgaria), arbitrary use of police power and control of private opinion, misuse of the control of printing establishments and distribution of newsprint, denial of right of public meeting to all except Communist groups, obstruction of religious meetings, and coercive measures against Churches and Church leaders (as, for example, the measures directed against Protestant denominations in Bulgaria, trials of Cardinal Mindszenty and Bishop Ordass in Hungary).

The Governments of Bulgaria, Hungary and Rumania in their replies delivered in April 1949 rejected the United States charges. They affirmed that they had fully complied with the Peace Treaties, asserting that under the Peace Treaties they were obligated to take measures against Fascist activities and suggesting that it was against such measures that the United States was protesting. They also indicated that they considered the action of the United States in making the charges to constitute an unwarranted interference in their domestic affairs.

On 31 May, 1949, the United States took note of the denial of the three Governments that they had violated the Treaties and of their failure to furnish the requested information as to remedial measures which they were prepared to adopt. At the same time the United States informed them that in its view a dispute had arisen concerning the interpretation

and execution of the respective Treaties of Peace which the three Governments had shown no disposition to join in settling by direct diplomatic negotiations. Consequently, the United States invoked the Treaty Articles providing for the settlement of such disputes by the Heads of Diplomatic Mission of the United Kingdom, Soviet Union and United States in Sofia, Budapest and Bucharest.

The United States Chiefs of Mission in the three capitals requested their Soviet and British colleagues to meet with them to consider the disputes. The Ministers of the United Kingdom expressed their willingness to comply with this request. The Soviet Government, however, declined, in a note of 11 June, 1949, to authorize its representatives to discuss the matter. It expressed the view that the three former enemy countries were strictly fulfilling their obligations under the Peace Treaties and that the measures complained of not only did not violate, but were directed toward the fulfilment of, the Peace Treaties. Moreover, the Soviet Government claimed, these measures were within the domestic competence of these countries as sovereign States.

In an effort to persuade the Soviet Union to reconsider its refusal the United States pointed out, in a further note to the U.S.S.R. dated June 30, 1949, that the existence of disputes between the United States and the three former enemy Governments cannot be questioned since the United States has charged them with violations of Peace Treaties and they have replied asserting that their actions do not constitute such violations. The United States further pointed out that the fulfilment of international treaty obligations cannot be considered a purely domestic affair. In a reply dated July 19, 1949, the Soviet Union refused to modify its position.

On 27 July, 1949, Bulgaria addressed a note to the United States setting forth the provisions in the Bulgarian Constitution designed to guarantee the observance of the obligations arising out of the human rights clause of the Peace Treaty. The Bulgarian Government restated its view that the measures complained of in the United States notes were taken in execution of other Peace Treaty provisions. It asserted that the proceedings in the Bulgarian courts and administrative agencies could not be made subject of the Peace Treaty procedures and denied that any dispute existed.

When more than two months had elapsed and the disputes remained unresolved by the Heads of Mission, the United States found it necessary to invoke the additional Peace Treaty procedure for the establishment of Treaty Commissions to settle the disputes. On 1 August, 1949, the United States requested Bulgaria, Hungary and Rumania to join with it in naming these Commissions. The three Governments rejected this request in their notes dated 26 August, 1 September and 2 September, 1949, respectively, in which they reaffirmed their previous positions.

On 19 September, 1949, the United States addressed further notes to the Governments of Hungary, Bulgaria and Rumania in which it restated its views on the disputed issues emphasizing that the Treaty provisions regarding the elimination of Fascist activities cannot be utilized as a cloak for the denial of fundamental freedoms specified in the human rights clauses of the Treaties. The United States Government further announced that it would have recourse to all appropriate measures for securing the compliance by the three Governments with

their obligations under the human rights clauses and under the disputes Articles of the Treaties.

In a further note to the United States dated October 27, 1949, the Hungarian Government reaffirmed its prior position and repeated that it had acted in compliance with the Treaty provisions requiring the elimination of Fascist activities.

On 5 January, 1950, the United States advised the three Governments that Mr. Edwin D. Dickinson was designated as the United States representative on the proposed Treaty Commissions. At the same time the United States requested the three Governments to designate their representatives forthwith and enter into consultations immediately with the United States Government through the American Ministers accredited to them with a view to the appointment of the third members of the Commissions.

On January 17, 1950, the Hungarian Government replied commenting on the failure of the United States to appoint its representative on the Treaty Commissions earlier. But the Hungarian Government reasserted that no dispute concerning the interpretation or execution of the Peace Treaty existed and declared again that it would not take part in the Treaty Commission the establishment of which it considered unnecessary.

I have confined my remarks on the proceedings under the Peace Treaties to the diplomatic exchanges between the United States and the Governments of Bulgaria, Hungary and Rumania. Similar exchanges have taken place between the United Kingdom acting in association with Australia, Canada and New Zealand, on the one hand, and the three former enemy Governments, on the other. The views which I express here with reference to the disputes to which the United States is a party also apply, in the opinion of the United States, to the disputes involving the United Kingdom and the three Dominions.

Having reviewed the proceedings before the General Assembly and under the Peace Treaties I now propose to discuss briefly some preliminary matters regarding the jurisdiction of this Court to answer the questions submitted to it and the propriety of the exercise of the Court's advisory jurisdiction in this matter.

B. *Jurisdiction of the International Court of Justice, the propriety of its exercise and limited scope of the issues before the Court*

The Governments of Bulgaria, Hungary and Rumania have informed this Court that they consider the Court without jurisdiction to render the requested advisory opinion because the three Governments have not consented to the submission of these questions and because the questions involve matters exclusively within their internal jurisdiction as sovereign States.

In the view of the United States there is no doubt of the jurisdiction of this Court or of the propriety of the Court exercising its jurisdiction.

I. *Jurisdiction of the Court*

Article 96 of the Charter provides:

> "1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."

Article 36 of the Statute of the International Court of Justice provides:

> "The jurisdiction of the Court comprises all cases which the parties refer to it *and all matters specially provided for in the Charter of the United Nations* or in treaties and conventions in force."

Article 65 of the Statute of the International Court states:

> "1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

The Charter and the Statute of the Court are thus explicit in conferring jurisdiction on the Court to give an advisory opinion at the request of the General Assembly on any legal question. The provisions of the Charter and Statute contain no limitations on the Court's jurisdiction to render an advisory opinion on any legal question at the request of the Assembly.

For the making of such request by the Assembly the Charter and the Statute of this Court require neither unanimity nor the consent of States which may be specially concerned. The request of the Assembly for an advisory opinion in this case was made in a resolution supported by more than two thirds of the Members present and voting.

Under the Covenant of the League the question was never authoritatively determined whether a unanimous vote was necessary to request an advisory opinion or whether the votes of States parties to a dispute should be counted. But under the Charter it is clear that a unanimous vote is not required in the Assembly. No Member State, and certainly no non-member State, has the right to veto the request of the Assembly for an advisory opinion.

An advisory opinion does not have the binding force of a judgment and should not be confused with a decision of the Court in a contentious proceeding which binds the parties. An advisory opinion is what it purports to be, advice and guidance which the Court is authorized to give under the Charter and the Statute. Even the parties to a dispute concerning which the Court gives an advisory opinion are not bound by the opinion given and there is no inherent reason in principle why their consent to the giving of the opinion should be required. (Hudson, *Permanent Court of Justice*, 1943, §§ 475, 479.)

In this instance the Advisory Opinion is sought to assist the Assembly in the performance of its Charter functions. Of course the Opinion may, and we hope it will, be of use and value to the States specially concerned as well as to the Assembly but it can only persuade and cannot coerce their judgment.

(*a*) Effect of lack of consent by an interested State to Court's jurisdiction

It is the view of my Government, accordingly, that the consent of the Governments of Bulgaria, Hungary and Rumania is not required to enable the Court to give an advisory opinion in response to the request of the General Assembly in these proceedings. It is true that in the case of *The Status of Eastern Carelia* (Advisory Opinion, July 23, 1923, Series B, No. 5, pp. 7-29) the Permanent Court of Justice refused to give an advisory opinion at the request of the Council of the League giving among other reasons for its refusal the unwillingness of one

of the States principally concerned to consent to its jurisdiction. But in that case the Council requested the opinion of the Permanent Court on the merits of a dispute between Finland and Russia, the latter not then a member of the League, as to the effect on the autonomy of Eastern Carelia of a Declaration annexed to the Treaty, signed October 14, 1920. The principal issue was whether the Declaration was intended by the parties to be a treaty obligation or only a declaration on the part of Russia declaratory of an existing situation, an issue which the Court stated could not be determined by an examination of the Treaty and Declaration but required an investigation into facts which would have been extremely difficult to ascertain without the consent and co-operation of Russia.

There were, moreover, cogent reasons, as the Permanent Court stated, which rendered it very inexpedient for the Court, in that case, to exercise its jurisdiction. The Permanent Court, however, seems to have suggested that a dispute between a Member and a non-member could not be submitted to the Council for solution under Article 17 of the Covenant without the consent of the non-member State. In the words of the Court :

> "According to this article, in the event of a dispute between a Member of the League and a State which is not a member of the League, the State not a member of the League shall be invited to accept the obligations of membership in the League for the purpose of such dispute, and, if this invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be necessary by the Council." (*Ibid.*, p. 27.)

The authority of the Council to request an advisory opinion from the Court was contained in Article 14 of the Covenant. The Court apparently concluded that Article 14 therefore could not be invoked in a case involving the merits of a factual dispute between a Member and non-member without the latter's consent. As Russia had not given its consent, the Court stated that it found it impossible to give its opinion in a dispute of this character. Judges Weiss, Nyholm, de Bustamante and Altamira declared that they were "unable to share the views of the majority of the Court as to the impossibility of giving an advisory opinion on the Eastern Carelian question". (*Ibid.*, p. 29.)

After the Court had acted, the League Council in noting the views of the Court entered the following *caveat* in the minutes of its proceedings, indicating its unwillingness to accept without qualification the views of the Court in so far as they were based on lack of jurisdiction :

> "The Council feels sure that the opinion expressed by the Court in connexion with the procedure described by Article 17 of the Covenant could not exclude the possibility of resort by the Council to any action, including a request for an advisory opinion from the Court, in a matter in which a State non-member of the League and, unwilling to give information, is involved, if the circumstances should make such action necessary to enable the Council to fulfil its functions under the Covenant of the League in the interests of peace." (*League of Nations Journal*, 1923, pp. 1337, 1502.)

A considerable amount of juristic writing has been critical of the *Eastern Carelian* case in so far as the refusal of the Court was based on

any lack of jurisdiction. (De Bustamante, *The World Court*, (1925), New York, pp. 254, 278-279; Hudson, *The Permanent Court of International Justice*, (1934 ed.), p. 447; Strupp, *La question carélienne et le droit des gens*, Helsinki (1924), pp. 31-36; Erich, "*Quelques observations sur le caractère juridique des avis consultatifs et les conditions requises pour une demande d'avis*", *Revue de Droit international et de Législation comparée*, IX (1928), pp. 864-881, e.g. at p. 878; Ténékidès, "*La Compétence de la Cour permanente de Justice internationale en matière de procédure consultative*", *Revue générale de Droit international public*, XXXIII (1926), pp. 120-129, at p. 124. Cf. also discussion in the League Council upon receipt of the Court's views in the *League of Nations Official Journal*, November 1923, pp. 1335-1337; *Memorandum submitted by the Finnish Government*, *ibid.*, Annex 576, pp. 1497-1501.)

Two years after the *Eastern Carelian* case, the Council asked the Permanent Court for an advisory opinion on the meaning of Article 3, paragraph 2, of the Treaty of Lausanne requiring the reference to the League Council of any unsettled dispute between Turkey and Great Britain in regard to the Iraq-Turkey frontier. Although Turkey was not then a member of the League, it had not objected to the Council seizing itself of the dispute. But Turkey had not given its consent to the request for an advisory opinion and contended that the questions were of a political character not susceptible of juridical interpretation. The Permanent Court fully answered the questions submitted to it regarding the Council's authority to resolve the dispute and did not even find it necessary to discuss its jurisdiction. But before answering the questions regarding the Council's authority under the Treaty, the Permanent Court observed that "it intends strictly to confine itself to consideration of these questions, without in any way prejudging the merits of the problem before the Council". (Advisory Opinion No. 12, November 21, 1925, *Article 3, paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq)*, Series B, No. 12, pp. 6-35, at p. 18.)

The instant case is essentially similar to the case of the *Turkey-Iraq Frontier* and is quite different from the *Eastern Carelian* case. In the instant case, unlike in the *Eastern Carelian* case, the Court is not asked to decide a dispute or even to advise on the merits of a dispute but is only asked to advise whether a dispute exists and whether a Treaty between the parties provides means for its settlement. In this respect the instant case is significantly like the *Mosul* case in which the Court was asked to advise, not on the merits of the dispute, but as to the authority conferred by treaty on the Council to decide the dispute.

But it is not necessary to consider here whether and to what extent the doctrine of the *Mosul* case or that of the *Eastern Carelian* case would apply to the present case if it had arisen under the Covenant. For it is not necessary to inquire here what was or was not the authority under the Covenant, of the League Council, the League Assembly or the Permanent Court in an advisory opinion, to consider disputes or situations affecting non-members without their consent.

With respect to cases before the Security Council or the General Assembly of the United Nations involving non-members, the Charter contains no provisions such as those in Article 17 of the League Covenant. Under the Charter there is, therefore, no limitation on this Court comparable to that which the Permanent Court found in Article 17 of the Covenant in the *Eastern Carelian* case. In fact there is nothing whatso-

ever in the Charter of the United Nations which can be construed to limit the authority of the Security Council, the Assembly, or the Court in an advisory opinion, to consider disputes or situations affecting non-members or to make such consideration dependent upon the consent of non-members. (See Articles 32-37 of the Charter regarding the Council's authority; Articles 10, 11 and 14 regarding the Assembly's authority, and Article 96 regarding the Court's authority.)

The provisions of the Charter define the conditions under which a non-member State, party to a dispute, may bring a dispute before the Security Council or the General Assembly and under which a non-member may participate in discussion of the Security Council relating to a dispute to which it is a party (Article 32 and Article 35). But the acceptance or non-acceptance of such conditions does not affect the right of the Council to deal with the dispute. Indeed the situation here, while involving a dispute between certain States, was not brought to the Assembly as a dispute but as a situation concerning the human rights provisions of the Charter and Peace Treaties and affecting friendly relations between nations. The situation was first brought to the Assembly's attention by Bolivia which did not claim to be a party to any dispute.

Moreover there is a significant difference in the wording of the Statute of the Permanent Court and the wording of the Statute of this Court as regards their respective jurisdictions. The difference in the Statutes of the two Courts is even more important than the difference between the Charter and the Covenant. This difference itself would lead to a different conclusion in this case from that reached in the *Eastern Carelian* case. Article 36 of the Statute of the Permanent Court provided:

> "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force."

Article 36 of the Statute of this Court provides:

> "The jurisdiction of the Court comprises all cases which the parties refer to it and all *matters specially provided for in the Charter of the United Nations* or in treaties and conventions in force."

There was no article in the original Statute of the Permanent Court which specifically authorized the Permanent Court to give advisory opinions. It is true that Article 14 of the Covenant provided that the Permanent Court may give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly. But Article 14 of the Covenant required the Council to submit plans for the establishment of the Permanent Court, and the Statute of the Permanent Court was subject to separate ratification; the jurisdiction of the Permanent Court had therefore to be derived from its own Statute. Article 36 of the Permanent Court's Statute did not refer to the Covenant as such as a source of jurisdiction. Article 36 of the Permanent Court's Statute therefore incorporated Article 14 of the Covenant only in so far as it could be regarded as a matter "specially provided for in treaties and conventions in force". Consequently the Permanent Court recognized the Covenant only as it would recognize any other treaty and convention in force *between the parties*.

But under Article 92 of the Charter, this Court is the principal judicial organ of the United Nations and its Statute "forms an integral part of the Charter". Article 96 of the Charter authorizing the General Assembly and the Security Council to request the Court to give an advisory opinion on any legal question constitutes a matter "specially provided for in the Charter of the United Nations" within the meaning of Article 36 of the Statute of this Court. Moreover, the first paragraph of Article 65 of the Statute of the present Court specifically provides that *"the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request"*. No comparable paragraph was in the Statute of the Permanent Court.

The Statute of the present Court clearly recognizes the Charter as such as an independent source of jurisdiction in addition to the jurisdiction conferred by ordinary treaties and conventions which are binding only on the parties thereto.

The Charter is something more than a mere treaty or convention between the parties thereto. It is the constitution of the international community. As this Court stated in its Advisory Opinion of April 11, 1949, concerning Reparations for Injuries suffered in the Service of the United Nations: "Fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone." (P. 185.)

The Charter of the United Nations, of which this Court is the principal judicial organ, confers jurisdiction upon this Court to give an advisory opinion on any legal question at the request of the General Assembly. That jurisdiction is not conditioned upon the consent of States specially concerned, be they Members or non-members of the United Nations.

[*Public sitting of March 1st, 1950, afternoon*]

Mr. President and Members of the Court,

In this morning's session I showed that, under the Charter of the United Nations and the Statute of this Court, the jurisdiction of this Court to give an advisory opinion at the request of the General Assembly is not conditioned on the consent of States specially concerned, be they Members or non-members of the United Nations.

(*b*) The exception of domestic jurisdiction.

I shall now show that there is no lack of jurisdiction in this Court, as alleged by Bulgaria, Hungary and Rumania on the ground that the consideration of the questions submitted would constitute an intervention in matters which are essentially within the domestic jurisdiction, contrary to Article 2, paragraph 7, of the Charter.

In reviewing the proceedings in the Assembly, I indicated the various grounds relied upon to sustain the competence of the General Assembly to consider the agenda item relating to the observance of human rights in Bulgaria, Hungary and Rumania having regard to the provisions of the Charter, and the Peace Treaties. (*Supra*, pp. 3-6.) But I also pointed out that in taking action the Assembly confined itself to expressing the

hope that the parties to the Peace Treaties will take measures in accordance with these Treaties in order to ensure respect for human rights and fundamental freedoms. The Assembly carefully refrained at this stage from taking action independently of the procedures under the Peace Treaties. It is difficult to understand how it possibly can be maintained that encouraging the parties to a treaty to exercise their rights or to fulfil their obligations under the treaty can be deemed an intervention in matters which are essentially within domestic jurisdiction.

But the Assembly has not requested the Court to advise it as to its, the Assembly's, own competence in the field of human rights. The Assembly has only requested the Court's opinion as to the rights and obligations of parties to the Peace Treaties to apply the procedures provided by the Treaties for the settlement of differences regarding the observance of the terms of the Treaties. Observing the spirit of Article 95 of the Charter the Assembly has not sought to transfer to this Court the adjustment of differences which the parties have agreed under the Peace Treaties to entrust to other tribunals, that is, the Treaty Commissions.

It is important to note that the questions submitted by the Assembly do not require the Court to decide any dispute or to consider the merits, validity or sufficiency of the claims which form the basis of any dispute. The Court is asked only to advise whether disputes do exist under the Peace Treaties and whether the disputes Articles of those Peace Treaties obligate the parties to settle such disputes in accordance with the provisions of the Treaties. In no event can an opinion of this Court advising as to the mere existence of disputes concerning the Treaties and the applicability of the disputes Articles to the disputes be regarded as an intervention in matters solely or essentially within the domestic jurisdiction of sovereign States. The argument, valid or invalid, that claims which form the basis of the disputes cannot be recognized because their recognition would constitute an intervention in matters solely or essentially within the domestic jurisdiction of sovereign States has nothing to do with the questions addressed to this Court. That argument, if it has merit, becomes relevant only at a stage when the validity of the claims forming the basis of the disputes is to be determined. The determination of the validity of such claims, including their disposition on jurisdictional grounds or on the merits, is for the Treaty Commissions.

The principle that an international tribunal such as a Treaty Commission has, in the absence of contrary agreement, authority to determine its own jurisdiction, at least in the *first instance*, has long been recognized in international law and practice.

The Permanent Court of International Justice in its Advisory Opinion of August 28, 1928, on the *Interpretation of the Greco-Turkish Agreement of December 1, 1926* (Advisory Opinion No. 16, August 28, 1928, Series B, No. 16, pp. 4-29, at p. 20), stated:

> ".... it is clear—having regard amongst other things to the principle that, as a general rule, any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction—that questions affecting the extent of the jurisdiction of the Mixed Commission must be settled by the Commission itself without action by any other body being necessary".

By *Administrative Decision II*, the Mixed Claims Commission, United States and Germany, established under the Agreement of August 10, 1922, ruled:

".... At the threshold of the consideration of each claim is presented the question of jurisdiction, which obviously the Commission must determine, preliminarily to fixing the amount of Germany's financial obligations, if any, in each case.

When the allegations in a petition or memorial presented by the United States bring a claim within the terms of the Treaty, the jurisdiction of the Commission attaches. If these allegations are controverted in whole or in part by Germany, the issue thus made must be decided by the Commission. Should the Commission so decide such issue that the claim does not fall within the terms of the Treaty, it will be dismissed for lack of jurisdiction.... The Commission's task is to apply the terms of the Treaty of Berlin to each case presented, decide those which it holds are within its jurisdiction, and dismiss all others." (Mixed Claims Commission, United States and Germany, *Administrative Decisions and Opinions of General Nature*, etc., to October 1, 1926, (1928), United States Government Printing Office, *Decisions and Opinions* (1925-26), pp. 6-7. See also Ralston, *The Law and Procedure of International Tribunals*, Stanford University Press (1926), Secs. 53-54.)

As the Permanent Court stated in the case of the *Exchange of Greek and Turkish Populations* (Advisory Opinion No. 10, February 21, 1925, Series B, No. 10, at p. 22):

"The Turkish Delegation had maintained, again basing its arguments on sovereign rights, that it should be for the municipal courts to decide, if need be, whether a person is established or not within the meaning of Article 2. But as has been said, national sovereignty is not affected by the Convention in question. Now this Convention, in Article 12, confers upon the Mixed Commission 'full power to take the measures necessitated by the execution of the present Convention and to decide all questions to which this Convention may give rise'...."

Even if the Peace Treaties expressly provided that their provisions should not be construed to affect matters which are solely or essentially within the domestic jurisdiction of any State, these States could not by unilateral declaration determine for themselves what matters were solely within their domestic jurisdiction. In event of dispute the issue whether a matter was or was not essentially of domestic jurisdiction would be subject to settlement by the Treaty Commissions.

But it should be remembered that there are no provisions in the Peace Treaties and no principles of international law which qualify or limit the character of the human rights clauses as international obligations and exempt them from the jurisdiction of the Treaty Commissions. There are no principles of international law and no provisions of the Charter which would prevent international adjudication under appropriate circumstances, whether by this Court or any other international tribunal, of the substantive rights and duties of parties under a treaty in regard to matters covered by a treaty simply because, in the absence of a treaty, such matters could be deemed within the domestic jurisdiction of sovereign States.

Article 2, paragraph 7, of the Charter places no limitation on the treaty-making power of sovereign States. Certainly as between the

parties matters expressly covered by international treaties cannot be considered matters essentially of domestic jurisdiction and concern. States in the exercise of their sovereign rights may enter into international engagements. States are bound to carry out their international engagements. By becoming parties to treaties States usually undertake international obligations which limit their otherwise sovereign right to decide for themselves what they will or will not do. That is the normal purpose and effect of a treaty. States which enter into solemn international treaties to secure human rights and fundamental freedoms to persons within their jurisdiction cannot escape their obligations on the ground that such matters are essentially of domestic concern.

These principles have been consistently maintained by the Permanent Court of International Justice.

In *The S.S. "Wimbledon"* case (Series A, No. 1, August 17, 1923, pp. 6-47) Germany had sought to limit its obligations under the Treaty of Versailles to keep the Kiel Canal open to vessels of commerce and war of all nations at peace with Germany. Under a neutrality order Germany had closed the canal to a British ship under French charter carrying munitions to Danzig for transhipment to Poland when Poland and Russia were at war. Germany contended that it had the sovereign right to do this in order to protect its neutrality in times of war. The Court in rejecting this contention of Germany stated :

> "The Court declines to seek in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty" (*ibid.*, p. 25).

In its Advisory Opinion of February 7, 1923, on the *Nationality Decrees issued in Tunis and Morocco (French Zone) on November 8, 1921*, (Series B, No. 4, February 7, 1923, pp. 7-32), the Court considered the question whether the dispute between France and Great Britain, as to the application of these decrees to British subjects, involved under international law matters solely of domestic jurisdiction. Great Britain contended that the application of the decrees to British subjects involved questions of treaty obligations. The Court's answer was that the dispute did not involve matters solely of domestic jurisdiction. In its Opinion, the Court stated :

> "For the purpose of the present opinion, it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is, nevertheless, restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law. Article 15, paragraph 8, then ceases to apply as regards those States which are entitled to invoke such rules, and the dispute as to the question whether a State has or has not the right to take certain measures becomes in these circumstances a dispute of an international character and

falls outside the scope of the exception contained in this paragraph...." (*ibid.*, p. 24).

In its Advisory Opinion No. 10 on the *Exchange of Greek and Turkish Populations* (*Lausanne Convention VI, January 30th, 1923, Article 2*) (Series B, No. 10, February 21, 1925, pp. 6-28), the Court had to consider a dispute between Turkey and Greece on the meaning and scope to be attributed to the word "established" in Article 2 of the Convention of Lausanne of January 30, 1923. The Convention after having laid down in Article 1 the general principle of the exchange of Turkish nationals of Greek Orthodox religion established in Turkey and Greek nationals of Moslem religion established in Greece, proceeded in Article 2 to withdraw from this exchange, on the one hand, Greek inhabitants of Constantinople and, on the other, Moslem inhabitants of Western Thrace. Turkey, basing her argument on "sovereign rights", maintained that the determination of what were "established" persons was a domestic matter for the municipal courts to decide under domestic law and legislation. The Permanent Court rejected the contention, stating, *inter alia* :

"In the first place the Court is satisfied that the difference of opinion which has arisen regarding the meaning and scope of the word 'established', is a dispute regarding the interpretation of a treaty and as such involves a question of international law. It is not a question of domestic concern between the administration and the inhabitants ; the difference affects two States which have concluded a Convention with a view to exchanging certain portions of their populations, and the criterion afforded by the word 'established' used in Article 2 of this Convention is precisely intended to enable the contracting States to distinguish the part of their respective populations liable to exchange from the part exempt from it" (*ibid.*, pp. 17-18).

. . . .

"The principal reason why the Turkish Delegation has maintained the theory of an implicit reference to local legislation appears to be that, in their opinion, a contrary solution would involve consequences affecting Turkey's sovereign rights. But, as the Court has already had occasion to point out in its judgment in the case of the *Wimbledon*, 'the right of entering into international engagements is an attribute of State sovereignty' " (*ibid.*, p. 21).

It is clear, therefore, under these precedents that the *obligations respecting human rights which the Governments of Bulgaria, Hungary and Rumania assumed under the Peace Treaties* are not matters essentially within the domestic jurisdiction of those States. On the contrary, as between the parties to the Treaties, those obligations have deliberately been made obligations essentially of international concern. There is no provision in the Charter and no principle of international law which limits the treaty-making power of sovereign States or relieves them of responsibility for the fulfilment of their treaty obligation. Nor is there any provision in the Charter or any principle of international law which would deprive this Court or any other appropriate international tribunal of its jurisdiction on the ground that an alleged exception

of domestic jurisdiction prevails over treaty obligations between the parties. In no event can a mere advisory opinion by the Court on the questions submitted regarding the Peace Treaties be deemed in any way an intervention in matters essentially within the domestic jurisdiction of the States concerned. The Court's advice on these questions will not even involve a determination whether any of the matters complained of is or is not essentially within the domestic jurisdiction of the States concerned or a determination of what would be the effect of such a finding on the disposition of any claim. Such determinations under the Treaties are left to the Treaty Commissions.

If the Governments of Bulgaria, Hungary and Rumania seriously question the jurisdiction of the Court, it is unfortunate that they have not appeared to present their views. For this Court obviously cannot be ousted of jurisdiction by a unilateral declaration of a State denying its jurisdiction. Article 36, paragraph 6, of the Court's Statute provides that in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the Court.

II. *The propriety of the Court exercising its jurisdiction*

I turn now to the question of the propriety of the Court exercising its jurisdiction. If the Court has jurisdiction it seems clear that there are no reasons which should deter the Court from exercising its jurisdiction.

The Assembly had to deal with a concrete situation concerning human rights and the peaceful adjustment of disputes under the Peace Treaties. The concrete situation raises important legal questions of limited but well-defined scope including the question of the right of the Secretary General to exercise an authority conferred upon him under the Peace Treaties to facilitate the adjustment of disputes. Important legal issues are involved upon which the advice of this Court is urgently needed by the Assembly to guide it in the discharge of its functions under the Charter.

In the *Eastern Carelian* case, which I discussed from the standpoint of jurisdiction this morning, the Court did refrain from exercising its jurisdiction, but, while the Court spoke about jurisdiction, it seems to me that the Court was much more concerned about the expediency of its exercising its jurisdiction than it was about the mere question of jurisdiction. The Court in that case had reason to feel that it could not give helpful advice without a thorough inquiry into the facts which would have been very difficult, if at all possible, to ascertain without the active assistance of Russia. As the Court stated in that case:

> "It appears to the Court that there are other cogent reasons which render it very inexpedient that the Court should attempt to deal with the present question. The question whether Finland and Russia contracted on the terms of the Declaration as to the nature of the autonomy of Eastern Carelia is really one of fact. To answer it would involve the duty of ascertaining what evidence might throw light upon the contentions which have been put forward on this subject by Finland and Russia respectively, and of securing the attendance of such witnesses as might be necessary. The Court would, of course, be at a very great disadvantage in such an enquiry, owing to the fact that Russia refuses to take part in it. It appears now to be very doubtful whether there would be available to the

Court materials sufficient to enable it to arrive at any judicial conclusion upon the question of fact : What did the parties agree to ? The Court does not say that there is an absolute rule that the request for an advisory opinion may not involve some enquiry as to facts, but, under ordinary circumstances, it is certainly expedient that the facts upon which the opinion of the Court is desired should not be in controversy, and it should not be left to the Court itself to ascertain what they are." (Series B. No. 5, *supra*, p. 28.)

None of the cogent reasons which the Court felt rendered it inexpedient for it in the *Eastern Carelian* case to exercise its jurisdiction is present in the instant case. The Court's task in answering the questions submitted in the present proceeding is a very limited one. It does not require any weighing or determination of the merits of the disputes or any investigation into the facts. The essential facts upon which the opinion of the Court is desired are not in controversy. The questions can readily be answered by the Court on the basis of the Peace Treaties and the undisputed diplomatic exchanges submitted to the Court.

The Court is called upon only to advise whether, in simple and practical understanding, the undisputed diplomatic exchanges disclose *bona fide* disputes about the interpretation and execution of the Peace Treaties and whether the disputes Articles of the Peace Treaties obligate the parties to settle these disputes according to the procedures set forth in the disputes Articles. It was not the intention of the Assembly at this time to impose upon the Court the burden of considering the merits of particular claims, defenses, or counter-claims. The jurisdiction of the Court to reply to the questions submitted to it is clear and there is no reason which makes the exercise of the Court's unquestioned jurisdiction inexpedient or improper.

C. The United States position on questions before the Court

I now invite the attention of the Court to the specific questions submitted by the Assembly. Under the General Assembly Resolution of October 22, 1949, the Court is requested at this time to answer only questions I and II. The resolution contemplates that questions III and IV set forth therein shall be answered later by the Court if replies to questions I and II are in the affirmative and if the Governments concerned, notwithstanding the Court's opinion, continue to fail to appoint their representatives to the Treaty Commissions. Under the circumstances the Government of the United States limits its oral statement at this hearing to questions I and II.

QUESTION I

DO THE DIPLOMATIC EXCHANGES BETWEEN BULGARIA, HUNGARY AND RUMANIA, ON THE ONE HAND, AND CERTAIN ALLIED AND ASSOCIATED POWERS SIGNATORIES TO THE TREATIES OF PEACE, ON THE OTHER, CONCERNING THE IMPLEMENTATION OF ARTICLE 2 OF THE TREATIES WITH BULGARIA AND HUNGARY AND ARTICLE 3 OF THE TREATY WITH RUMANIA, DISCLOSE DISPUTES SUBJECT TO THE PROVISIONS FOR THE SETTLEMENT OF DISPUTES CONTAINED IN ARTICLE 36 OF THE TREATY OF PEACE WITH BULGARIA, ARTICLE 40 OF THE TREATY OF PEACE WITH HUNGARY, AND ARTICLE 38 OF THE TREATY OF PEACE WITH RUMANIA?

This question may, for convenience, be considered in three parts: (*a*) What is a dispute? (*b*) What is a dispute "concerning the interpretation or execution of the Treaty" within the meaning of the disputes Articles of the Peace Treaties? (*c*) Do the diplomatic exchanges disclose a dispute concerning the interpretation or execution of the Peace Treaties?

(a) *What is a dispute?*

The word "dispute" is not a technical word. It has no occult meaning. There is a dispute whenever people differ as to their rights or duties. If parties cannot agree on what they may do or may not do or on what they must do or must not do, they are in dispute. The merits of the dispute have nothing to do with the existence of a dispute.

When States in their treaties provided procedures for the settlement of disputes, the Permanent Court of International Justice rightly assumed that they intended that those procedures should be used to settle their disputes. The Permanent Court wisely refrained from interpreting the conditions to the employment of such procedures in a manner which would unnecessarily delay or obstruct their employment. It wisely eschewed the schoolman's question: When does a dispute whether there is a dispute become a dispute? It has consistently treated a dispute as to whether there is a dispute as a dispute.

In the *Mavrommatis Palestine Concessions* case (Judgment No. 2 (Jurisdiction), August 30, 1924, Series A, No. 2, pp. 6-93) the Mandate for Palestine provided that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of Justice. The Greek Government supported the Mavrommatis concession and contended that the British Government had failed to give it full and proper recognition. There had been negotiations between the British Government and Mavrommatis but no settlement had been reached. The Greek Government supported Mavrommatis claims for the purpose of securing a submission to the Permanent Court but did not attempt to negotiate a settlement with the British Government. The Court gave no significance to the argument that the Greek Government had supported the Mavrommatis case only to secure a judgment from the Permanent Court and that there was no real dispute between the two States. Nor did the Permanent Court give any significance to the fact that the Greek Government did not on its own responsibility attempt to enter into detailed negotiations with the British

Government to narrow the issues or to seek a compromise. The Court stated :

> "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. The present suit between Britain and Greece possesses these characteristics.... (P. 11.)
>
> Negotiations do not of necessity always presuppose a more or less *lengthy series of notes or despatches* ; it may suffice that a discussion should have been commenced, and the discussion may have been short ; this will be the case if a deadlock is reached or if finally a point is reached at which one of the parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that the dispute cannot be settled by diplomatic negotiation.... (P. 13.)
>
> Nevertheless, in applying this rule [that only disputes which cannot be settled by negotiation should be brought before the Court], the Court cannot disregard, amongst other considerations, the views of the States concerned, who are in the best position to judge as to political reasons which may prevent the settlement of a given dispute by diplomatic negotiation." (P. 15.)

In the *Case concerning Certain German Interests in Polish Upper Silesia* (Judgment No. 6 (Jurisdiction), August 25, 1925, Series A, No. 6, pp. 4-41), the Permanent Court had to consider whether it had jurisdiction under the Geneva Convention of 1922 between Poland and Germany which provided that "should *differences of opinion* respecting the construction and application of Articles 6 to 22 arise between the German and Polish Governments, they shall be submitted to the Permanent Court of International Justice" (*ibid.*, p. 6).

The Permanent Court might readily have said that there was a clear "difference of opinion" between the parties giving it jurisdiction and that it was not necessary to determine whether that difference amounted to a dispute. But the Court was apparently anxious to avoid inferences being drawn that it would be more exacting in a dispute case. It obviously wished to avoid having finespun arguments brought to it as to the distinction between a dispute and a difference of opinion. It plainly stated that either a difference of opinion or a dispute could be created by the unilateral action of a party and that the Court could not "allow itself to be hampered by a mere defect of form, the removal of which depends solely on the party concerned" (*ibid.*, p. 14). In its judgment, the Court said :

> "Now a difference of opinion does exist as soon as one of the Governments concerned points out that the attitude adopted by the other conflicts with its own views. Even if under Article 23, the existence of a definite dispute were necessary, this condition could *at any time be fulfilled* by unilateral action on the part of the applicant party. And the Court cannot allow itself to be hampered by a mere defect in form, the removal of which depends solely on the party concerned." (*Ibid.*, p. 14.)

At a later stage in the same matter (Judgment No. 11, Interpretation of Judgments Nos. 7 and 8 (The Chorzów Factory), December 16, 1927,

Series A, No. 13, pp. 4-27), the question arose whether a request by Germany for an interpretation of the Court's Judgments Nos. 7 and 8. could be granted under Article 60 of the Statute of the Court, which provided that "in the event of dispute as to the meaning or scope of the judgment, the Court shall construe it on the request of any party". The Court stated that "in view of the wording of the article, the Court considers that it cannot require that the dispute should have manifested itself in a formal way; according to the Court's view, it should be sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court" (p. 11).

Certainly even the Bulgarian, Hungarian and Rumanian Governments, were they represented here, would find it difficult to deny that their views of their treaty obligations are quite sharply opposed to those of the United States and other signatories.

(b) *What is a dispute "concerning the interpretation or execution of the Treaty" within the meaning of the disputes Articles of the Peace Treaties?*

The disputes Articles of the Peace Treaties were intended to provide the procedure for the settlement of "any dispute concerning the interpretation or execution of the Treaty", except where another procedure is specifically provided under any article of the Treaty. There is nothing in the disputes Articles which indicates an intent to exclude from them the settlement of any dispute of any type or character arising under the Treaties except disputes as to certain economic clauses for which a somewhat different procedure was specifically provided. There was no intention to leave any gaps in the disputes procedures provided in the Treaties.

In dealing with the disputes Articles involved in the *Chorzów* case, to which I have already referred, the Permanent Court stated (Judgment No. 8, *Case Concerning the Factory at Chorzów* (Claim for Indemnity) (Jurisdiction), July 26, 1927, Series A, No. 9, pp. 4-44, at pp. 24-25):

> "For the interpretation of Article 23, account must be taken not only of historical development of arbitration treaties, as well as the terminology of such treaties, and of the grammatical and logical meaning of the words used, but also and more especially of the function which, in the intention of the contracting parties, is to be attributed to this provision. The Geneva Convention provides numerous means of redress to secure the observation of its clauses and it does so in ways varying according to the subjects dealt with under different heads, parts or subdivisions of the Convention. Article 23 contains provisions of this kind in so far as concerns Articles 6 to 22 which form the greater portion of Head III of the First Part.
>
> The object of these methods of redress– and that of Article 23 in particular—seems to be to avert the possibility that, in consequence of the existence of a persistent difference of opinion between the contracting parties as to the interpretation or application of the Convention, the interests, respect for which it is designed to ensure, may be compromised."

In this same case the Permanent Court also said (pp. 20-21):

"The Court, by Judgments Nos. 6 and 7, has recognized that differences relating to the application of Articles 6 to 22 include not only those relating to the question whether the application of a particular clause has or has not been correct, but also those bearing upon the applicability of these articles, that is to say, upon any act or omission creating a situation contrary to those articles."

At an earlier stage in the same case (Judgment No. 6, *supra*, August 25, 1925, Series A, pp. 4-41) the Permanent Court also refused to make any technical distinction between the use of the expression "interpretation and application" and the expression "interpretation *or* application". The Court stated that the word *and* (*et*) "in both ordinary and legal language, may, according to circumstances, equally have an alternative and cumulative meaning" (p. 14). In our opinion the same may equally be said of the word "or" which is used in the disputes Articles of the Peace Treaties.

In *The Mavrommatis Jerusalem Concessions* case (Judgment No. 5 (Merits), March 26, 1925, Series A, pp. 6-15), the Permanent Court suggested that "application" is a wider, more elastic and less rigid term than "execution" (p. 48) although it also stated that execution was a form of application (p. 47). It may be doubted, however, whether ordinarily any material or hard-and-fast distinction can be drawn between the word "application" and the word "execution".

It has been said that: "Interpretation, the process of determining the meaning of a text, may be distinguished from application, the process of determining the consequences of a text with reference to a given situation" and that "a dispute as to the application of a provision will almost invariably involve some question as to its interpretation" (Hudson, *Permanent Court of International Justice*, 1920-1942, (1943) pp. 640-641).

In its literal as well as its ordinary meaning the word "execution" refers to the carrying out, fulfilment or performance of a treaty, contract or obligation. Therefore, any dispute as to the meaning of a treaty provision or action required to be taken or not to be taken under a treaty would clearly be a dispute concerning the interpretation or execution of the treaty.

(c) *Do the diplomatic exchanges disclose a "dispute concerning the interpretation or execution of the Peace Treaty" within the meaning of the disputes Article?*

It requires only a superficial reading of the diplomatic exchanges to see that the views, attitudes and positions taken by the United States and other signatories to the Peace Treaties are different, opposed and in direct conflict with those of the ex-enemy States and that these opposed and clashing views, attitudes and positions concern the interpretation and execution of the Treaty provisions, that is, the meaning of those provisions and the performance of those provisions. The exchanges plainly bristle with conflict. There is scarcely a point on which they show any meeting of the minds. The exchanges clearly reveal numerous conflicts on issues of fact and law.

It is difficult rationally to answer the completely irrational assertion of the three Governments that no dispute exists. If that really is their position, the unqualified denial of that position by the United

States and other signatories would create a dispute. If the three Governments mean to say that they consider the claims of the United States and other signatories wholly without merit, that only indicates how far-reaching the differences are.

Even if we assume that the Court could properly refuse to regard as disputes completely frivolous claims put forward in bad faith for purposes having no legitimate relation to the Treaties, the claims here advanced by the United States and other signatories cannot be so regarded. Indeed the General Assembly has expressed the hope that the parties to the Treaties would invoke the disputes provisions to secure compliance with the human rights clauses. Obviously claims of deep concern to the whole international community, a concern expressed by 47 Member States which supported the Assembly resolution, cannot be waved aside as frivolous or lacking in good faith.

As I indicated earlier, this Court is not called to pass upon the merits of any dispute but only to determine whether a dispute exists. It is not necessary here to recast the diplomatic exchanges into technical pleadings and to expatiate on each and every issue. But concentrating on the principal conflicts revealed in the diplomatic exchanges it is obvious that substantial disputes exist.

In its notes, the United States

(1) charged that the Governments of Bulgaria, Hungary and Rumania have denied to their peoples the exercise of human rights and fundamental freedoms guaranteed in the human rights Articles of the Peace Treaties in violation of their obligations under those articles;

(2) charged specifically the denial of the rights of life, liberty, freedom of expression, Press and publication, religious worship, political opinion and public meeting which rights are included in the human rights Articles;

(3) set forth by way of illustration specific acts violating the human rights and fundamental freedoms guaranteed by the Treaties and charged that the three Governments were responsible for these acts;

(4) further called upon the three Governments to take remedial measures to carry out their obligations under the Treaties.

In reply the Governments of Bulgaria, Hungary and Rumania

(1) denied that they had deprived their peoples of the exercise of human rights and fundamental freedoms guaranteed in the human rights Articles of the Treaties in violation of their obligations under those Treaties and asserted that human rights and fundamental freedoms are fully observed in their countries;

(2) denied that there was any infringement in their countries of the rights of life, liberty, political opinion, freedom of expression, Press and publication, religious worship, political opinion and public meeting, as guaranteed in the human rights Articles;

(3) denied that the acts complained of were in violation of the Peace Treaties and asserted that many of them were taken in execution of other Peace Treaty Articles obligating the three Governments not to permit the existence of organizations having as their aim the denial to the people of their democratic rights;

(4) denied that they were obligated to take remedial measures to carry out their obligations under the Treaties ;

(5) asserted that the charges of the United States related to matters essentially within their domestic jurisdiction under international law and paragraph 7 of Article 2 of the Charter, and that the charges constituted an unwarranted interference with their rights as sovereign States.

To these replies the United States rejoined that it maintained its charges and stated by way of replication :

(1) that the acts complained of were not required and could not be justified under any of the Treaty provisions ;

(2) that the charges made by the United States did not relate to matters essentially within their domestic jurisdiction under international law and Article 2, paragraph 7, of the Charter, and did not constitute an unwarranted interference with their rights as sovereign States and that, on the contrary, the charges relating as they did to treaty obligations were matters not essentially of domestic concern.

It is clear from this abbreviated statement of the principal issues drawn from the diplomatic exchanges that the exchanges disclose disputes concerning the interpretation or execution of the Treaties subject to the provisions for settlement contained in the disputes Articles.

QUESTION II

ARE THE GOVERNMENTS OF BULGARIA, HUNGARY AND RUMANIA OBLIGATED TO CARRY OUT THE PROVISIONS OF THE ARTICLES REFERRED TO IN QUESTION I, INCLUDING THE PROVISIONS FOR THE APPOINTMENT OF THEIR REPRESENTATIVES TO THE TREATY COMMISSIONS ?

In informing the Court of our views on the first question submitted by the General Assembly I have already endeavoured to show that disputes concerning the interpretation or execution of the Peace Treaties exist which are generally subject to the provisions for the settlement of disputes contained in the disputes Articles.

The second question is whether the Governments of Bulgaria, Hungary and Rumania are obligated to carry out the provisions of the articles referred to in the first question, including the provisions for the appointment of their representatives to the Treaty Commissions. The first question refers not only to the disputes Articles but also to the human rights Articles.

The human rights Articles are clearly and expressly formulated as obligations upon the three States concerned. The articles provide that the three States *shall* take all necessary measures to secure to all persons under their jurisdiction the enjoyment of human rights and fundamental freedoms. In the case of the Treaties with Hungary and Rumania, the human rights Articles also provide that each of these States "*further undertakes* that the laws in force .... *shall* not, either in their content or in their application, discriminate or entail discrimination" between their nationals on grounds specifically and generally enumerated.

There is no question that the parties to a treaty are obligated to carry out the provisions of a treaty that they have agreed either expressly or by clear implication to carry out. That is a fundamental principle on which the structure of international law is based: *pacta servanda sunt.*

In fact the three Governments do not appear to deny that they are obligated to carry out the human rights Articles. They claim that they have carried them out and are carrying them out.

The disputes Articles in no way differ from other articles in binding the parties to carry out the obligations arising therefrom. These disputes Articles outline the procedures which the parties have agreed to follow for the settlement of disputes concerning the interpretation or execution of treaty provisions. Among the obligations arising from the disputes Articles is the obligation of a party to such a dispute to appoint a representative to a Treaty Commission and to take such other steps as may be required to permit the Commission to function.

The disputes Articles, it will be recalled, provide that, except where another procedure is specifically provided for under the Treaty, any dispute concerning the interpretation or execution of the Treaty which is not settled by direct diplomatic negotiations shall be referred to the three Heads of Mission acting in concert. Any such dispute not resolved by them within two months shall, unless the parties mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Treaty Commission. The decision of the Commission shall be accepted by the parties as definitive and binding.

Obviously, as I have already explained, the disputes Articles were intended to provide the parties with an obligatory procedure for the settlement of their disputes. When the disputes Articles gave a party the right to refer a dispute to a Treaty Commission, it necessarily imposed on the other party the duty to do those things necessary to enable the Commission to function.

The disputes Articles state the conditions under which a dispute shall be referred to a Treaty Commission at the request of either party. It is the contention of the United States that the conditions required to give the United States the right as a party to a dispute to request its reference to a Treaty Commission have all been met. Let us examine these conditions.

1. The first condition is that there is no other procedure for the settlement of the dispute specifically provided under the Treaty for such dispute. The Peace Treaties provide special settlement procedures for differences over certain economic matters. Article 31 of the Bulgarian Treaty, Article 35 of the Hungarian Treaty and Articles 32 and 33 of the Rumanian Treaty provide that disputes arising out of specified articles and annexes of the Treaties shall be subject to specified settlement procedures. The human rights Articles are not covered by these special procedures.

Under Article 35 of the Bulgarian Treaty, Article 39 of the Hungarian Treaty and Article 37 of the Rumanian Treaty the Heads of the three diplomatic Missions "acting in concert" were to represent the Allied and Associated Powers in dealing with the former enemy governments "in all matters concerning the execution and interpretation" of the Treaties for a period not to exceed eighteen months from the effective date of the Treaties. The Treaties came into effect on September 15, 1947; the eighteen-month period lapsed on March 15, 1949. Consequently, it is

not necessary to consider whether or not the procedure under these articles was a "specifically-provided" procedure excluding the application of the disputes Articles.

2. The second condition is that the dispute "is not settled by direct diplomatic negotiations".

In the *Mavrommatis Palestine Concessions* case (Judgment No. 2, August 30, 1924, Series A, No. 2, pp. 6-93), to which I referred earlier in my statement, the Palestine Mandate provided for the reference of any dispute relating to the interpretation or application of the Mandate between the Mandatory and another Member of the League to the Permanent Court "if it *cannot* be settled by negotiation". The language used in the disputes Articles of the present Peace Treaties is much less exacting ; it merely refers to a dispute "which *is not* settled by direct diplomatic negotiations".

I have already read to the Court pertinent extracts from the opinion of the Permanent Court in the *Mavrommatis Palestine Concessions* case indicating that once a deadlock is reached regardless of the brevity of the negotiations, the Court will not question the conclusion of one of the parties that the dispute cannot be settled by diplomatic negotiation. As the Court stated :

> "Negotiations do not of necessity always presuppose a more or less lengthy series of notes or despatches. It may suffice that a discussion should have been commenced, and this discussion may have been very short ; this will be the case if a deadlock is reached, or if finally a point is reached at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that the dispute cannot be settled by negotiation (p. 13) .... Nevertheless in applying this rule [that only disputes which cannot be settled by negotiation should be brought before the Court], the Court cannot disregard, amongst other considerations, the views of the States concerned, who are in the best position to judge as to the political reasons which may prevent the settlement of a given dispute by diplomatic negotiations." (P. 15.)

Certainly the diplomatic exchanges here show not only that the disputes were not, but could not be, settled by diplomatic negotiations. The three Governments have definitely rejected the charges of Treaty violation and have definitely failed and refused to consider remedial measures requested.

3. The third condition is that the disputes be referred to the three Heads of Mission and be not resolved by them within a period of two months. The disputes Articles specify that the three Heads of Mission are to act under the articles providing for their general supervision of the execution of the Treaties. (Article 35 of the Bulgarian Treaty, Article 39 of the Hungarian Treaty, Article 37 of the Rumanian Treaty.) These articles are continued in effect for this particular purpose beyond the eighteen-month limitation.

The diplomatic exchange shows that the United States did refer the disputes to the Heads of Mission.

The disputes were not resolved by the three Heads of Mission within the two-month period as the record before the Court discloses. The Soviet Government not only failed to authorize its Heads of Mission to

meet, but categorically rejected the charges made by the United States and other signatories. It is obviously immaterial why the Heads of Mission failed to resolve the disputes, whether because they were unable to do so or because they failed to act altogether. The determining fact is that the disputes were not resolved by the Heads of Mission within two months after referral to them.

4. The fourth condition precedent to a referral of the disputes to the Treaty Commissions is that the parties do not mutually agree upon another means of settlement. The record before the Court shows that no proposal was made or consideration given by the parties to other means of settlement.

5. Finally, it is a necessary condition that one of the parties request the referral of the disputes to the Commissions. The Court will observe that in its notes of 1 August 1949 to the three Governments the United States Government expressly requested that the disputes be referred to the Treaty Commissions.

Under the disputes Articles the Commissions are composed of one representative of each party and a third member selected by mutual agreement of the two parties, and should the two parties fail to agree within a period of one month the Secretary General of the United Nations may be requested by either party to make the appointment. The United States Government has advised the three Governments that it has designated Professor Edwin D. Dickinson to serve as its representative on each of the Commissions, and requested them to designate their representatives and to enter into consultations through the United States Ministers in the respective capitals with a view to the appointment of the third member.

All the conditions required by the disputes Articles to give a party to a dispute the right to request its reference to a Treaty Commission, have been met.

It has accordingly become the duty and obligation of each of the three Governments to appoint their representatives on the Commissions and to take such other steps as may be necessary to enable the Commissions to be constituted and to function as contemplated under the disputes Articles.

The wording of the disputes Articles is clear. The wording evidences the intention that the mechanism provided in the Treaties for the solution of disputes should be obligatory, not optional, and should ensure the final and definitive settlement of differences. The Paris Peace Conference in the summer of 1946 recommended that disputes not settled by the Heads of Mission should be referred to the International Court of Justice. The Paris Peace Conference rejected a Soviet proposal merely to leave the settlement of disputes to the Heads of Mission acting in concert. (Paris Peace Conference, 1946, *Selected Documents, Department of State Publication* 2868 : *Rumanian Treaty*, Draft Article 36, United Kingdom-United States proposal, at p. 677, U.S.S.R. proposal at p. 678, Report of the Political and Territorial Commission for Rumania, C.P. (Plen.) Doc. 15 at p. 733, Vote in Plenary Session at p. 819 ; *Bulgarian Treaty*, Draft Article 34, United Kingdom-United States proposal at p. 863, U.S.S.R. proposal at p. 864, Report of the Political and Territorial Commission for Bulgaria, C.P. (Plen.) Doc. 22 at pp. 907-910, vote in Plenary Session at p. 996 ; *Hungarian Treaty*, Draft Article 35, United Kingdom-

United States proposal at p. 1041, U.S.S.R. proposal at p. 1042, Report of the Political and Territorial Commission for Hungary, C.P. (PLEN) Doc. 27 at pp. 1116-1117, Vote in Plenary Session at p. 1195.) The Council of Foreign Ministers accepted the Peace Conference recommendation except that the Commission was substituted for the Court.

The language of the disputes Articles declaring *not* that *a* dispute *may be* referred to a Commission but that *any* dispute *shall be* referred to a Commission clearly imposes a binding obligation on the parties to the Treaties. The disputes Articles provide and were intended to provide the means by which disputes between the parties shall be resolved "unless", in the language of the articles "the parties to the dispute mutually agree upon another means of settlement". Thus by the language of the Treaties the consent by both parties is required in order to utilize other means of settlement. In absence of that common consent the parties are obligated to employ the Treaty Commission.

Since the disputes Articles were designed to provide a workable, effective and obligatory procedure for the settlement of the disputes, the failure of a party to take the steps necessary to enable the Commission to function would delay and make more difficult the carrying out of the clear purposes of the Treaty in this respect. If such failure were not regarded as a breach of obligation, it would enable one party *by its own arbitrary and unilateral action to hinder if not defeat the* carrying out of the disputes Articles. If such an interpretation of these articles were accepted, it would go far to render these disputes Articles purposeless and illusory. If the procedure provided for the settlement of disputes were to be only optional and subject to nullification by the unilateral whim of a State violating the Treaty, there would have been no point in including it in the Treaty.

When the Court comes to consider the third and fourth questions submitted by the Assembly it will have to consider whether a party has in fact the *power* to block and defeat the application of these Treaty provisions; what we now maintain is that certainly a party does not have the *legal* right to do so.

In the view of the United States, these Treaties of Peace are to be construed in such a way as to be meaningful and workable. In this light, each contracting Power has an obligation in good faith to do that which is necessary to make the disputes machinery work. Each State party to a Treaty of Peace is equally bound to give a reasonable interpretation and a reasonable effect to the disputes Articles as to any other article of the Treaty.

In the words of the Swiss arbitrator (Charles Édouard Lardy in the *Island of Timor Case*), "Conventions between States, like those between individuals, ought to be interpreted 'rather in the sense in which they can have some effect than in the sense in which they can produce none.' " (Arbitral Award, June 25, 1914, under the Convention of April 3, 1913, between the Netherlands and Portugal, Scott, Hague Court Reports (1916), p. 355, at p. 384.)

As was stated by the American and British Claims Tribunal established under the Convention of August 18, 1910, in the *Cayuga Indians Case*,

> "Nothing is better settled, as a canon of interpretation in all systems of law, than that a clause must be interpreted so as to give it *meaning rather than so as to deprive it of meaning*. We are not asked

to choose between possible meanings. We are asked to reject the apparent meaning and to hold that the provision has no meaning. This we cannot do." (*American and British Arbitration, Report of Fred K. Nielsen*, Agent and Counsel for the United States, Washington, Government Printing Office (1926), p. 322.)

Similar principles of treaty construction have been stated by the Permanent Court of International Justice. In *The S.S. "Wimbledon"* case (Judgment No. 1, August 17, 1923, Series A, No. 1, pp. 24-25) the Permanent Court stated that even where a restrictive interpretation of a treaty was admissible, the Court must "stop at the point where the so-called restrictive interpretation would be contrary to the plain terms of the article and would destroy what has been clearly granted".

In its Advisory Opinion in regard to the *Polish Postal Service in Danzig*, (Advisory Opinion No. 11, May 16, 1925, Series B, No. 11, pp. 6-45, at pp. 39-40), the Permanent Court said:

"It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd. In the present case, the construction which the Court has placed on the various treaty stipulations is not only reasonable, but is also supported by reference to the various articles taken by themselves and in their relation one to another."

In connexion with the *Case of the Free Zones of Upper Savoy and the District of Gex* (Order, August 19, 1929, Series A, No. 22, pp. 5-51, at p. 13) the Permanent Court stated:

".... in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects".

In its Advisory Opinion No. 12, November 21, 1925, involving the interpretation of *Article 3, paragraph 2, of the Treaty of Lausanne* in relation to the *Frontier between Turkey and Iraq* (Series B, No. 12, pp. 6-35) the Permanent Court refused to construe a disputes article in a way which would render it relatively ineffective even though the language of the article was much less clear than the language of the disputes Articles here involved. The Lausanne Treaty provided that in event of no agreement being reached within nine months between Turkey and Iraq on the frontier separating those two countries, "the dispute shall be referred to the Council of the League of Nations". The Court was asked to say whether the decision to be taken by the Council was to be "an arbitral award, a recommendation or a simple mediation" (*ibid.* at p. 7). Turkey had maintained in the Council that a definitive settlement of the frontier could not be made without its consent. The Court found "both from a grammatical and logical point of view as well as from that of the role assigned to that article in the Paece Treaty" (*ibid.* p. 23) that "the intention of the parties was, by means of recourse to the Council, to insure definitive and binding solution of the dispute

which might arise between them" (*ibid.*, p. 19). In that case the Court had to infer from the general context of the disputes Article that it was the intention of the parties that the Council was to have the authority to make a definitive and binding decision. In the disputes Articles of the Peace Treaties it is expressly provided that the decisions of the Treaty Commissions shall be definitive and binding.

Treaty provisions for the settlement of disputes among States are not unlike arbitration agreements among individuals. Although some countries including the United States have found difficulty in the absence of legislation to give full effect to, or adequate redress for, the breach of an agreement to arbitrate, judicial decisions of national courts as well as national legislation reveal a definite trend not only towards more complete legal recognition of an agreement to arbitrate but towards more effective legal redress for the breach of such agreement. In *Red Cross Line* v. *Atlantic Fruit Co.* ((1923) 264 U.S. 109, at p. 123), Justice Brandeis, speaking for the United States Supreme Court, declared that "the substantive right created by an agreement to submit disputes to arbitration is recognized as a perfect obligation." (See *Berkovitz* v. *Arbib and Houlberg* (1921), 230 N.Y. 261, 130 N.E. 288, opinion by Cardozo recognizing that a Statute which provided for specific enforcement of arbitration may be applied to an arbitration agreement concluded prior to the Statute; *McCullough* v. *Clinch-Mitchell Construction Co.* (C.C.A8—1934) 71 F (2) 17 denying relief on a contract to a party refusing to arbitrate. See also *Gilbert* v. *Burnstine et al*, (1931) 255 N.Y. 348, 174 N.E. 706.)

The great majority of countries now recognize by statute or judicial decision as binding an agreement to arbitrate and most of these including Hungary, Rumania and the Soviet Union provide some form of specific relief (relief *in natura*) for the breach of such agreement. (See *Commercial Arbitration and the Law throughout the World*, summary of the commercial arbitration law of 43 States issued by the International Headquarters of the International Chamber of Commerce (1949), Verlag fuer Recht und Gesellschaft AG., Basel. See also *Protocol on Arbitration Clauses*, signed at Geneva, September 24, 1923, *League of Nations Treaty Series*, Vol. 27 (1924), pp. 158-160.)

The recognition of the obligation to carry out agreed procedures for the settlement of disputes in the international field is even more important than such recognition in the domestic field. For in the international field there is not, as there is in the domestic field, recourse to any court of *general* jurisdiction for the legal and definitive settlements of disputes.

When the parties to a treaty have provided means for the definitive and binding settlement of their disputes it is the function of the law to give legal effect to their agreement by recognizing their obligation to settle their disputes in accordance with their agreement. Treaty provisions, and particularly provisions for the definitive settlement of disputes, should not be construed to allow the parties unsuspected avenues of escape and evasion. Smoldering and unresolved disputes among States are too likely to create serious and chronic disturbances of international relations and eventually endanger peace.

D. *Conclusion*

In conclusion the United States respectfully submits that this Court should answer the first and second questions submitted to it for an advisory opinion in the affirmative. This Court's affirmative response to these questions submitted to the General Assembly will give meaning to the determination expressed in the Preamble of the Charter by the peoples of the United Nations "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".

3. STATEMENT BY MR. FITZMAURICE

(REPRESENTATIVE OF THE UNITED KINGDOM)

AT THE PUBLIC SITTING OF MARCH 2nd, 1950

[Public sitting of March 2nd, 1950, morning]

Mr. President and Members of the Court,

My Government had hoped on the present occasion to be represented by one of the Law Officers of the Crown, on account of the importance which we attach to the matters now before the Court. Unfortunately, recent political events in my country, so near in date, have rendered this impossible. All the more, therefore, have we been glad of the presence here of the distinguished Representative of the United States, my learned friend Mr. Benjamin Cohen. The case of his Government and of my Government is fundamentally the same, both as to the facts and as to the law, but he has been able to present that case with an authority to which I could not pretend.

His presence here also marks the first occasion on which the United States has been represented at one of the public sittings of the Court, and I think I am right in saying that the same applies to the public sittings of the Permanent Court of International Justice. This, we know, has been due to circumstances and never to any lack of sympathy with the work of the Court. It is easy for us, whose capitals are near the seat of the Court, to attend the public sittings ; it is another matter to take an aeroplane across the Atlantic in mid-winter, as Mr. Cohen has had to do. Nevertheless, the Court is a world Court, and it is very important that its public sittings should be attended by representatives from overseas. For these reasons my Government welcomes the presence of the United States Representative, and we hope that this will be only the first of many occasions when his country will be represented in this way.

Now, Mr. President, in the written statement which the United Kingdom Government has already had the honour to submit to the Court, the views of my Government on each of the four questions addressed to the Court by the General Assembly of the United Nations have been set forth, and I shall not take up the time of the Court with repetition. The factual details were also given in so far as they concerned my Government, and all the remaining facts have been fully dealt with in the able statements made on the present occasion by the Representative of the Secretary-General and by the Representative of the United States. In the present oral statement, therefore, I shall deal with certain more general aspects of the subject, with some legal considerations and with the objections to the jurisdiction of the Court which have been advanced by or on behalf of the Governments of Bulgaria, Hungary and Roumania. As I shall not, in my present statement, attempt any systematic exposition of the facts, or of the procedural steps which

have been taken in the course of this affair, the Court will, I am sure, be good enough to regard my present remarks as supplementary to and not as in any way superseding the written statement presented on behalf of my Government. If I am compelled to travel over somewhat the same ground as has been so admirably covered by the distinguished Representative of the United States, I shall at any rate try to do so in, as it were, a different vehicle, and perhaps sometimes from a different direction.

The objections on jurisdictional grounds put forward by the three ex-enemy Governments find support in the communications to the Court made on behalf of the Governments of the Soviet Union, The Ukrainian and Byelorussian Republics, and Czechoslovakia. The general character of the statements made is such, Mr. President, as to make it desirable for me to recall the nature of the present proceedings, and to define the position of the United Kingdom Government in relation to them. Part of the case put forward on behalf of the three Governments consists in what seems to be an attempt to create a certain prejudice against my Government and the Government of the United States (if I may venture on this point to speak for that Government) by pretending that it was principally our two Governments which caused this matter to be referred to the General Assembly of the United Nations, and that the present proceedings consist of a sort of litigation between the Government of the United Kingdom and the Government of the United States on the one hand, and the three former enemy Governments on the other. I would refer in particular to the observations made on behalf of the Government of Hungary, which are recorded towards the end of page 92 of the volume Distribution 50/13 containing the written statements submitted in the present proceedings.

Now, Mr. President, it is not necessary for me to tell the Court that the present proceedings do not consist of a litigation between the Government of the United Kingdom or any other government, and the three ex-enemy Governments. These proceedings do not consist of litigation at all. They consist of a request to the Court, not from the United Kingdom Government, or from any other government, but from the General Assembly of the United Nations, for an advisory opinion to be rendered to the Assembly itself. Now, it is quite true that one of the questions which the Assembly is asking the Court is whether a dispute exists between the Government of the United Kingdom (amongst other governments) and the three former enemy Governments ; and it is quite true that the Government of the United Kingdom itself maintains that there is such a dispute, whereas the three Governments deny it. But, in the present proceedings, the Government of the United Kingdom is not appearing in its capacity as one of the protagonists in the dispute which it alleges to exist. It is appearing simply as one of the Members of the United Nations, and in accordance with the provisions of Article 66 of the Statute of the Court, which exists in order to enable States to give the Court their views when an advisory opinion from it is requested. I shall explain in a moment the reasons which have decided my Government to avail itself of the facilities afforded by Article 66.

The proceedings before the Assembly were initiated by the Governments of Australia and Bolivia as a substantive matter of human rights

interesting all Members of the United Nations in view of certain recent and notorious events which had taken place in the ex-enemy countries concerned. As the representative of the United States so rightly said, yesterday, the question was not even brought before the Assembly as a dispute, but as a situation. The action of the Government of the United Kingdom and of the Government of the United States, so far from promoting the consideration of this question by the Assembly, delayed it, because, when our two Governments informed the Assembly that these questions of human rights formed the subject of clauses in the Peace Treaties, and that we had invoked the Peace Treaty procedure for the settlement of disputes about such questions, the Assembly decided to suspend its own consideration of the matter until this procedure had been duly gone through. The subsequent history is well known and is set out in detail in paragraphs 5 and 6 and 17-19 of the United Kingdom written statement.

From this history it is abundantly clear that the United Kingdom and the United States Governments made every effort and took every step open to them to set the Peace Treaty machinery in motion, which endeavour, had they been successful in it, would have resulted in a complete suspension or even, for the time being, cessation of any proceedings before the United Nations. It is also quite clear that the endeavours of the United States and the United Kindgom Governments were at every turn frustrated by the refusal of the ex-enemy Governments to apply the Peace Treaty machinery, and not only by their refusal, but—I regret to say, but must respectfully do so—by that of the Soviet Union, whose co-operation as one of the major Allied treaty Powers was essential for the completion of one stage of the Peace Treaty procedure. It has hitherto proved impossible to apply this procedure, and if, in consequence, the General Assembly has retained the matter on its agenda, and if the Assembly, for its own information and in order to determine its own future procedure and course of action in regard to this matter, has been obliged to request the Court for an advisory opinion as to the obligations of the ex-enemy Governments to implement the Peace Treaty procedure for the settlement of disputes, this has resulted from one thing and one thing only, namely the categorical refusal of the ex-enemy Governments to carry out this procedure, their persistence in maintaining that it was not applicable in the circumstances, and their consequent refusal to nominate their commissioners on the arbitral commissions contemplated by the relevant Treaty articles. Even if one assumes that all this results from a genuine belief that the Treaty articles are inapplicable, and not from a calculated attempt to evade them, it still remains a quite inadmissible suggestion that the present proceedings here before the Court arise from anything else than the desire of the Assembly to obtain an authoritative legal opinion for its own requirements and for its own purposes.

Having, so to speak, stated the reasons for which we are not here on the present occasion, I should now like to tell the Court why we are here. There are two reasons, special and general. There is sometimes a tendency, when a request for an advisory opinion relates, as it often does, to something which is the subject of a dispute between two or more States, to regard those States as being in some sense "parties"

to the proceedings before the Court. A recent writer, Schwarzenberger, (*International Law*, Vol. 1, p. 484), has pointed out that "such a description would be very misleading" and has pointed out that it is "more correct to describe such States as governments concerned" or "interested governments", as was done by the Permanent Court of International Justice in its advisory opinion on the *Treatment of Polish Nationals in Danzig* (Series A/B, N° 44, pp. 27, 35). Schwarzenberger, whom I quote on account of the aptitude of his statements in many of these connexions, goes on to give what is unquestionably the correct view of the position of such States before the Court for purposes of an advisory opinion. Such States, he says :

> "are eminently within the category of those who are likely to be able to furnish information on the question forming the object of the advisory opinion".

This principle has received express recognition from the Permanent Court of International Justice; for instance in the *Turkish-Iraq Frontier case* (Series B, N° 12, p. 8), the Court stated that the notifications made to certain Governments were :

> "based on the principle laid down in the Rules of Court, in accordance with which a question referred to the Court for advisory opinion is communicated to governments likely to be able to supply information in regard to it".

It is therefore clear that, however interested my Government may be, and is, in the outcome of the present proceedings before the Court, because of its bearing on the dispute between it and the three ex-enemy Governments, it is not as a litigant or party that we are now appearing, but simply as an "interested" Government, and one which is able to furnish the Court with certain necessary information. Indeed, as the only Government which can furnish authoritative information about the steps which we ourselves have taken to try to cause the Peace Treaty procedure to be implemented, the United Kingdom Government would be failing in its duty as a Member of the United Nations, and in courtesy and respect to the Court, if it did not appear in order to give the Court all possible information and the benefit of any arguments which might assist the Court. These observations have a certain bearing on the application to the present case of the principle of the *Eastern Carelia* case, to which I shall come later.

In addition to these considerations, the United Kingdom Government is interested from another and more general standpoint. We consider that this request for an advisory opinion raises two or three issues of considerable significance for the future of international law and of the legal relations between States, issues transcending in importance the particular points relating to the application of the Peace Treaties. The attitude taken up by the former enemy Governments, and in particular their contention that because, according to their assertion, no dispute exists at all, there is nothing to arbitrate about, this attitude and contention go to the root of the utility of ever including arbitration clauses, or clauses for the judicial settlement of disputes, in treaties and other international agreements. As the Court will be aware, there are dozens, it might not be too much to say hundreds, of treaties and other international agreements which provide that disputes

concerning their interpretation or execution shall be referred to some form of arbitration or judicial settlement. These provisions have always been intended to have obligatory force, and to lead to a definite and final settlement, by arbitration or judicial decision, in the event of a dispute arising which could not be resolved by any other means. If, however, it is possible, and nothing less results from the arguments of the ex-enemy Governments, to defeat this plain intention by the simple process of denying that any dispute at all exists, however manifest it may be that it does, these clauses cease to have any obligatory force and will not be worth the paper they are written on, considered as binding obligations. This theme I shall develop further at a later stage in my argument.

Allied to this question of general importance for the future of international relations, is the perhaps subsidiary, but none the less important, question of how far a government bound by an arbitral clause in a treaty can, even if it does not go so far as to deny the existence of a dispute, nevertheless frustrate the whole intention of the arbitral provision by refusing to carry out some essential step in the procedure, such as the nomination of its member on the arbitral commission or tribunal; and whether, in such an event, it is nevertheless possible for the other party or parties to the treaty, by such unilateral action as is open to them and otherwise in general conformity with the contemplated procedure, to set up a tribunal from which a decision on the points in dispute can be obtained.

A further general question raised by this case, of the utmost importance in the field of international relations, is that of the scope of the doctrines of domestic jurisdiction and national sovereignty as excluding international settlement or adjudication. The issue here involved is whether these principles have any application in the case of matters which, however much they might otherwise be matters of domestic jurisdiction or internal sovereignty, are the subject of some clause in a treaty or international agreement: for if the argument of the three ex-enemy Governments is correct, it will follow, as I shall hope to show, that it would henceforth be useless to insert in any treaty a provision on anything which would otherwise belong to the realm of domestic jurisdiction or internal sovereignty. I shall also hope to show the rather startling consequences in the normal treaty relations between States which would result from an acceptance of that doctrine.

Having thus explained the motives which have led my Government to intervene in this case, I will now defer further consideration of those points until I have dealt with the preliminary objections to the Court's jurisdiction raised in the written statements of the three ex-enemy Governments and also in the statements of the Soviet Union, Byelo-Russia, the Ukraine and Czechoslovakia. Of the various objections to the competence of the Court to give an advisory opinion in this case which have been made, some merit serious consideration and will receive it so far as my Government is able to give it; but others, I must observe, appear to verge on the frivolous. Nevertheless, I feel obliged to say something about them, and I think the Court would probably wish me to do so.

There is, for instance, the astonishing argument advanced in the written statement of the Bulgarian Government that, since the Peace Treaties provide their own procedure for the settlement of disputes, this necessarily excludes the competence of the General Assembly of the United Nations and of the Court. If this is the Bulgarian view, then why has the Bulgarian Government persistently refused to put the Peace Treaty procedure into operation? Having refused to do this, despite long and earnest soliciting on the part of the other interested Governments, I submit, Mr. President, that the Bulgarian Government cannot be heard to advance the contention that the Assembly and the Court are incompetent because the Peace Treaties provide a procedure for settling disputes—a procedure which, however, the Bulgarian Government have refused to operate. Alternatively, if they deny the applicability of the Treaty procedure, they cannot object to the Assembly obtaining the opinion of the Court as to the correctness of this view. The Assembly has fully recognized the relevance and priority of the Peace Treaties and the Peace Treaty procedure; but because the three ex-enemy Governments refused to operate this procedure, and contended that it was not applicable because no dispute existed, the Assembly was obliged for its own purposes to refer the matter to the Court for a legal opinion on the point. I do not think I need linger any longer on this particular contention advanced by the Bulgarian Government.

Allied to the foregoing contention is one advanced by the Hungarian Government, that neither the United Nations nor the Court was entrusted by the Peace Treaties with any powers of control respecting the implementation of the Peace Treaties. This is quite true, but also, I submit, quite irrelevant, because it should be clear, and I feel sure it will be clear to the Court, that the United Nations is not purporting or attempting directly to enforce the Peace Treaties as such. The United Nations has not had referred to it any question concerning the actual implementation of the Peace Treaties themselves. It has, in its general capacity as an international organization concerned with peace and security, and with the good relations between States on which peace and security often depend, and as being concerned generally with the observance of those human rights, respect for which is often a condition of good international relations—the Assembly has, in these capacities, had referred to it the situation created by certain alleged departures from the basic principles of human rights said to have taken place in the three ex-enemy countries. So far from trying to enforce the Peace Treaties, the Assembly, as I pointed out, suspended its own action, in order that the Peace Treaty machinery might be put into operation *by the parties to the Peace Treaties themselves.* The Assembly eventually decided to refer the matter to the Court because, until it could become possessed of an authoritative opinion as to whether the Peace Treaty procedure was applicable or not, in the face of the denials of the ex-enemy Governments that it was applicable, the Assembly was unable to determine its own future course of action. At the risk of some repetition, I have emphasized these facts once more because of their relevance to another and much more serious objection to the Court's jurisdiction, based on the principle of the *Eastern Carelia* case, which I shall deal with later. Thus, even admitting for present purposes the correctness of the Hungarian argument that neither the United Nations nor the

Court has any direct power to enforce the provisions of the Peace Treaties as such, it still remains the position that this is not in the least what the United Nations or the Court is trying to do, and therefore it can form no valid objection to the jurisdiction of the Court.

Equally irrelevant is the further Hungarian suggestion that certain of the Great Powers having, in supposed defiance of their obligations under the Peace Treaties, frustrated Hungary's admission to membership of the United Nations, it follows that the United Nations are not entitled to deal with any matter in dispute regarding these Treaties. In parenthesis we may pause here, Mr. President, to note that, for the purposes of this particular argument, the Hungarian Government is prepared to admit that there does exist a dispute in connexion with the Peace Treaties, although elsewhere and at other times it has strenuously denied that any such dispute exists. I venture to draw attention to this fact, because the inconsistency involved appears repeatedly throughout the arguments of the former enemy Governments and their supporters, who are only too ready to invoke the Peace Treaties when it suits them to do so in order to deny the status and competence of the United Nations and its organs, but who are at the same time quite unwilling to co-operate in the procedure laid down by the very Treaties whose primacy they invoke. Reverting to the Hungarian argument under discussion, it is not, of course, the case that any of the Great Powers have violated an obligation under the Peace Treaties to vote in favour of the admission of the ex-enemy countries to the United Nations, for the simple reason that no such obligation exists or is contained in the Peace Treaties. The question of admission to the United Nations is not even referred to in any operative clause of the Peace Treaties, but merely in the Preamble, and even there only for the purpose of making it clear that the prior conclusion of a treaty of peace, and the cessation of a state of war between the former enemy countries and the rest of the world, was an obvious and indispensable precondition of admission to the United Nations. But, as the Court will know, the establishment of conditions in which an application can be supported, is obviously quite a different thing from an undertaking that it will be supported, and no such undertaking was ever given, nor could it be, since the conditions of membership of the United Nations are laid down in the Charter and *must be fulfilled* before any new members can be admitted.

I will now turn to certain other objections to the Court's jurisdiction put forward by or on behalf of the ex-enemies, which are of a more solid character. Without specifying them all in detail or quoting from particular statements, it seems that these objections can broadly be grouped into two main categories. There is one category of objection which says (chiefly on the ground that the matters involved are matters of domestic jurisdiction falling under Article 2, paragraph 7, of the Charter) that the United Nations is not competent to deal with this subject; that the Assembly was accordingly not competent to consider it; that the Assembly was accordingly not competent to request an advisory opinion from the Court; and that the Court is in consequence not competent to give an opinion. This objection also attributes a *direct* incompetence to the Court as such, as being itself an organ of

the United Nations, and therefore itself bound by Article 2, paragraph 7, of the Charter. Thus, the alleged objections to the competence of the Court founded on Article 2, paragraph 7, are both direct and derivative : there is a direct objection based on the fact that the Court is one of the organs of the United Nations itself, and there are objections derived from the supposed incompetence of the Assembly which requested the advisory opinion. All these objections I hope to refute in due course.

There also seems to be a suggestion—on which I shall not linger, however—that the Assembly is incompetent on another ground, apart from the question of Article 2, paragraph 7. It seems to be suggested that the Assembly is incompetent on the sole ground that the three ex-enemy States are not members of the United Nations. To this it seems to me that there is a very short and complete answer. The Assembly is certainly competent to consider any question, otherwise within the scope of the Charter, affecting its *own* Members, and a great number of other States are both parties to the Peace Treaties and Members of the United Nations. Equally there can be no question —and I shall come to that later—of the competence of the Assembly to consider in a general way questions of human rights.

This brings me to the other main category of objections to the competence of the Court, namely that based, in one form or another, on the fact that the three ex-enemy countries are not parties to the Statute of the Court, and have not consented, either generally or *ad hoc*, to the exercise by the Court of any jurisdiction in the present case. These latter objections purport partly to be based on certain provisions of the Statute and of the Court's Rules of Procedure ; but they are mainly founded on, and indeed I think they draw their chief interest and sustenance from, the view taken by the Permanent Court of International Justice in the *Eastern Carelia* case, where the Court declined to give an advisory opinion to the League of Nations on grounds which had a partial similarity to those now advanced by, or on behalf of, the ex-enemy Governments.

Of these two main categories of objections to the exercise of the Court's jurisdiction—namely, on the one hand, those founded on the view that the United Nations itself is incompetent, because the matter is alleged to be essentially one of domestic jurisdiction, and, on the other, the objections founded on what I will for convenience call the "*Eastern Carelia* principle"—I propose to deal first with the latter, because they seem to me to be not only the most important of the arguments put forward by, or on behalf of, the three ex-enemy Governments, but perhaps the only ones worthy of the name of argument, which they have put forward in this case. The doctrine of the Eastern Carelia case, however, is one which I think the Court would have been bound to take into consideration in the present case, even if it had not been referred to by any of the countries participating in these proceedings.

Now, the Court will recollect that in the *Eastern Carelia* case—if I may just go quickly over the facts the Finnish Government brought before the Council of the League of Nations certain questions in dispute between itself and Russia concerning the interpretation and application of the Treaty of Dorpat, and an ancillary Declaration, relative to the status of Eastern Carelia as an autonomous territory of the Russian Federation bordering on Finland. Russia contended that the matters concerned were questions belonging to the internal jurisdiction of the

Russian Federation. Finland, on the other hand, contended that they were regulated by the Treaty of Dorpat, and the ancillary Declaration. Russia was not a member of the League at that date, and declined the invitation extended to her under Article 17 of the Covenant to be represented before the Council. The Council nevertheless decided to ask the Permanent Court for an advisory opinion as to whether or not the provisions of the Treaty and Declaration regarding Eastern Carelia constituted engagements of an international character which placed Russia under an obligation to Finland as to the carrying out of the provisions contained therein. The Russian Government, by the express terms of a telegram sent to the Court, refused to participate in the proceedings before the Court or to recognize its jurisdiction.

Superficially, therefore, the circumstance of that case had a certain resemblance to those of the present case, although I shall submit that on examination they prove to be very different. However, in the *Eastern Carelia* case the Court, viewing the position as a whole, came to the conclusion that it ought not to give, or as I think more strictly could not give, any advisory opinion, and it declined to do so. Underlying the attitude of the Permanent Court was a consideration formulated by it in the following passage, which I take from page 27 of the record (Series B, No. 5):

> "It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement. Such consent can be given once and for all in the form of an obligation freely undertaken, but it can, on the contrary, also be given in a special case apart from any existing obligation."

The Court went on to point out that, in the case before it, Russia had given no consent, either general or particular, and the Court concluded: "The Court therefore finds it impossible to give its opinion on a dispute of this kind." Now it is obvious, Mr. President, that the process of giving an advisory opinion is not in itself one which, technically, involves compelling a State to submit its disputes to judicial settlement without its consent. The opinion, however great its persuasive authority, does not *formally* settle the dispute at all. It is an opinion, not a decision: it is given not to the States concerned, but to the international Organization requesting it. We should expect to find therefore, that in the *Eastern Carelia* case the Permanent Court had certain other and more specific reasons for declining jurisdiction, in addition to the mere fact that Russia was not a consenting party to the jurisdiction; and that is exactly what we do find, for the Court went on to state in detail the reasons why the Court considered that, *in the circumstances of that case*, Russia's non-consent prevented the Court from giving an opinion. It is important to appreciate exactly what these reasons were, in order to see in what way that case differed from the present one and why, in the view of my Government, the doctrine enunciated in it is not applicable here.

Before I go into the distinctions between the present case and the *Eastern Carelia* case, however, I feel that I ought to express the views of my Government on something more fundamental and of great import-

ance in the present case, and that is the question whether, even if the Permanent Court was right in what it did in the *Eastern Carelia* case, it would be correct for the present Court to do the same thing now—in brief, whether the present Court is in the same position *constitutionally* and *organically* as the Permanent Court. In other words, there is involved here not only the question of the applicability of the *Eastern Carelia* principle in the circumstances of the present case, but also the question of the constitution and status of the present Court as compared with the former Permanent Court.

Now, the United Kingdom Government would not wish to maintain that there may never be cases in which it would be proper for the Court to decline to give an advisory opinion requested of it. We have ourselves maintained in the past that such cases exist or may occur. But, seeing that advisory opinions are, of their very nature, rendered to the Organization requesting them, for the purposes of that Organization, and presumably because it needs the opinion for the carrying out of its functions—and further that the opinion, however persuasive its legal authority, is not itself a judgment in a dispute between two States—it seems to my Government that the Court would normally only refuse to render an opinion in circumstances of an exceptional character: either where it actually could not do so (for lack of adequate facts for instance) or where manifest considerations of justice, equity or good order required it, after entertaining and considering the request, to decline to accede to it. In brief, no absolute rule can be laid down, and the point must be one to be determined by the Court, in the light of the circumstances of each particular case. But, having said this, what does seem to my Government more than doubtful is whether an advisory opinion should *ever* be refused on the mere ground, standing by itself, that it relates to an issue between States one of whom is not a member of the United Nations and not a party to the Statute of the Court and not a consenting party to the reference to the Court, given again that the advisory opinion is rendered to the Organization and that the State concerned has, of course, every chance of appearing before the Court and expressing its views to the Court.

I submit that the status and constitutional position of the Court vis-à-vis the other organs of the United Nations, such as the Assembly or the Security Council, is different from the position of the former Permanent Court in relation to the League of Nations. In so far, therefore, as anything in the *Eastern Carelia* case might otherwise imply that non-membership of the United Nations and non-consent to the reference to the Court, on the part of one of the States concerned, is a ground for refusal to give an advisory opinion, I submit that, whether or not the Permanent Court might have been justified in applying such a principle, the present Court would not be, because of this difference between its position and that of the former Court. I do not propose to state the details of this difference in all their particularity because that was most fully and admirably done by the Representative of the United States yesterday, and if the Court refers to his statement, it will there find all the necessary material. But, very briefly, the position was that the Permanent Court, while in close relations with the League of Nations, was not technically a part of the League—at least, it was not an organ of the League. The present Court, on the contrary, is the creation of the Charter. The Court is specifically stated by Article 92 of the Charter to

be "the principal judicial organ of the United Nations", while Article 1 of the Court's own Statute says that the Court is "established by the Charter of the United Nations as the principal judicial organ of the United Nations". Thus, the Court is the entity to which the United Nations and its constituent organs are entitled to look for legal advice. In the exercise of its functions, the United Nations has to deal with disputes between, or situations affecting, States not all of them necessarily or always Members of the United Nations. That is recognized expressly or by implication in several provisions of the Charter, such as Article 2, paragraph 6, and Articles 11, 13, 14, 32, 35, and 55, and others. In order to do this, and—using the language of the very first operative paragraph of the Charter (Article 1, paragraph 1) —in order to do it "in conformity with the principles of justice and international law", the United Nations and its various organs must be able to turn to the Court for advisory opinions. Subject, therefore, to the inherent right of the Court as a court, and therefore as independent, and as the highest international tribunal in the world, to decline to give an opinion in a case where the Court itself considered that it would be wrong for it to do so, I respectfully submit, subject to those reservations, that the Court has unquestionably a right, and (within the same limits) an obligation, to give an opinion if it possibly can.

I have made these remarks about the status and position of the Court, because this is a matter of cardinal importance on the question of the Court's competence. In the present case, as it happens, I do not need to rely on this point in the formal sense, because, as I hope to demonstrate, the circumstances of this case can be distinguished from those of the *Eastern Carelia* case in several respects which I shall presently indicate. But I must make it clear that, in pointing to these distinctions, I am not for a moment admitting that, even if they did not exist, the Court would have grounds, in the circumstances which now regulate its status and position, for declining to give an advisory opinion in this case. Whatever it was right for the Permanent Court to do, the position of the present Court to-day is, I submit, different.

In actual fact, the Permanent Court itself has, in a subsequent case, that of the *Frontier between Iraq and Turkey* (Series B, No. 12), limited the scope of the *Eastern Carelia* principle, and although the circumstances were considered to be otherwise analogous to those of the *Eastern Carelia* case, the Permanent Court nevertheless decided to give an opinion, because the question was one affecting the competence of the League Council itself (Series E, No. 2, p. 164). As I shall show presently, this is also true of the present case in relation to the competence of the Assembly, a point which is indeed specifically raised by the three former enemy Governments themselves. In the *Turkish-Iraq Frontier* case, Turkey was not at that date a member of the League. She was not represented before the Court and, while not actually contesting the Court's jurisdiction, sent a telegram, which is reproduced in the opinion of the Court, indicating in the clearest terms her view that the Court ought not to exercise jurisdiction. Nevertheless, the Court did so.

Bearing in mind the foregoing general considerations as to the status of the Court and its competence to give an advisory opinion, I shall now attempt some analysis of the reasons for the Permanent Court's views in the *Eastern Carelia* case. The Court gave what seemed to me to have been its real reasons in the following passage. When I say "real reasons", I mean the actual grounds on which the Court considered that Russia's non-consent and non-participation prevented the Court in the circumstances from giving an opinion. The passage in question, which is taken from pages 28-29 of the record, is as follows :

> "The Court is aware of the fact that it is not requested to decide a dispute, but to give an advisory opinion. This circumstance, however, does not essentially modify the above considerations. The question put to the Court is not one of abstract law, *but concerns directly the main point of the controversy between Finland and Russia*, and can only be decided by *an investigation into the facts underlying the case*. Answering the question would be *substantially equivalent to deciding the dispute between the parties*. The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from *the essential rules guiding their activity as a Court*."

In reading the foregoing passage, I have emphasized certain phrases (italicized) which seem to me to indicate the essential grounds on which the Court considered that, in the particular circumstances of the *Eastern Carelia* case, the Russian non-consent and non-participation should prevent it from delivering an opinion. The first of these was that, if the Court gave an opinion, it would in effect be deciding the substance of the issue between Finland and Russia. Now, Mr. President, I am particularly anxious, in what I am saying now, not to imply that this would in fact have been, or rather, would now be a sufficient ground in itself for declining to give an opinion. That can be left for future consideration if and when it arises. The point is, it does not arise now. It does not arise in the present proceedings at all, because the questions referred to the Court in these particular proceedings do not in any way concern the substantive questions at issue between the parties, i.e. the alleged violations of human rights by Bulgaria, Hungary and Roumania, contrary to certain provisions of the Peace Treaties. The Court is not called upon to pronounce on those issues, but to give an opinion on another point, namely, whether those issues themselves should be referred to the Peace Treaty Arbitral Commissions, this opinion being required by the General Assembly of the United Nations in order to enable it to determine its own competence and future action and procedure. The giving of an opinion on this preliminary question will not in any way settle or prejudge the main issues. It will not therefore in any sense—to use the language employed in the *Eastern Carelia* case—"be substantially equivalent to deciding the dispute between the parties". On the contrary, that dispute will still remain to be decided by whatever means are hereafter found to be legitimate, appropriate and possible. All that the Court will be doing, by giving its opinion in the present proceedings, will be not to settle the main issue, but to indicate whether or not the parties are under an obligation to resort to a specified procedure for settling that issue.

A point which should be emphasized in this connexion is that the mere fact that a request for an advisory opinion relates to something which is in dispute between two States is not in itself a ground for declining jurisdiction. The Permanent Court gave advisory opinions in, to use a figure of speech, literally dozens of such cases. One eminent authority on the work of the Permanent Court, and a former judge of the Court, well known I think to members of the Court, Judge Hudson, goes so far as to say (*The Permanent Court of International Justice*, 1920-1942, p. 495) that, in a broad sense,

> "each of the requests for an advisory opinion .... has related to a dispute .... in a number of instances the questions had arisen as differences between States, so that there was a dispute in the narrower sense of the term as it is used in Article 83 of the 1936 Rules".

In fact, as the Court will know, Articles 82 and 83 of the Rules of Procedure of the Court clearly recognize the competence of the Court to give an advisory opinion, even though the issue relates to a dispute between two States. These rules make actual provision for the case, and, although, for some reason I have not been able to fathom, they are cited by the ex-enemy Governments as supporting their contention that the Court lacks jurisdiction, their language is, in fact, difficult to reconcile with the view that non-membership of the United Nations and non-consent to the reference to the Court in any way precludes the Court from giving the desired opinion. If anything, these Rules imply the contrary. They expressly contemplate the case where (I quote from Rule 82) "the request for an advisory opinion relates to a legal question *actually pending* between two or more States". You could hardly have it put more strongly than that. But these Rules (82 and 83) do not in any way preclude the Court from giving an advisory opinion in such a case. All that they do is to suggest that, in this type of case, the Court would "be guided by the .... rules which apply in contentious cases, to the extent to which it recognizes them to be applicable". They also provide (Rule 83) that, in such cases, Article 31 of the Statute shall apply, i.e. interested governments not having a judge of their own nationality on the Court may be permitted to choose one ; but in the present case the ex-enemy Governments have not elected to apply for this facility, and on the contrary deny the jurisdiction of the Court entirely. For the rest, the Court under its rules only has to be guided by the rules applicable in contentious cases "*to the extent to which it recognizes them to be applicable*". So the Court is not obliged, in the case of advisory opinions, to apply the rule which prevails in contentious cases that the parties must, either *ad hoc* or by some general declaration, have accepted the jurisdiction of the Court, which is apparently what the ex-enemy Governments are contending. On the contrary, the Court is entitled to hold that it is quite sufficient for the States which might be interested to be given an opportunity of intervening under Article 66 of the Statute. It will be seen therefore that the whole argument of the ex-enemies based on the analogy of contentious procedure breaks down and is erroneous. The Permanent Court gave the League Council many advisory opinions in cases relating to questions at issue between two States, one or both of which had not accepted the compulsory jurisdiction of the Court, and which only appeared before the Court, if they appeared

at all, by virtue of Article 66 of the Statute. In some cases, for instance, the case of the *German Settlers in Territory ceded to Poland* (Series B, No. 6) and in the *Turkish Iraq Frontier case* (Series B, No. 12) one of the interested States (Germany in the one case and Turkey in the other) was not at the time a member of the League at all. In short, it is always the same principle that we see at work, namely, that advisory opinions are essentially given not to the interested State or States, but to international organizations which require the opinions for their own purposes.

Another, if incidental, point which should be borne in mind in considering the applicability of the *Eastern Carelia* principle to the present case is that the very issue in the present proceedings before the Court *is* whether the three ex-enemy Governments are in fact correct in maintaining that they have never accepted any obligation to submit to arbitration or its equivalent. Now, an objection to the jurisdiction cannot be based on a plea, the correctness of which cannot be established until that jurisdiction is in fact exercised. In so far as the *ratio decidendi* in the *Eastern Carelia* case was Russia's non-acceptance of any obligation to submit to judicial settlement (which was admitted in that case), then the position in the present case is that as regards the main substantive issue of human rights, the alleged absence of any obligation on the part of the three ex-enemy Governments to arbitrate is questioned, and is precisely what is in issue in the present proceedings. I suggest that the Court cannot reject jurisdiction on the basis of a plea, the correctness of which can only be established if the Court assumes jurisdiction and advises on the point at issue. Of course, I am aware that the three Governments plead not only their non-acceptance of any obligation to arbitrate the issue of human rights under the Peace Treaties, but also their non-acceptance of the jurisdiction of the Court, but I hope I have said enough to indicate that mere non-acceptance of the Court's jurisdiction by the ex-enemies cannot by itself be a ground for the Court declining to give the Assembly an opinion on a preliminary issue, an opinion which the Assembly needs for its own purposes.

The next and perhaps the most important point which distinguishes the present case from the *Eastern Carelia* case, is the fact that the Court *could* not give an opinion in that case without a further investigation into the facts, which Russia's non-participation rendered impossible. The Court laid great stress on this point, and I will re-read, on account of its importance, the relevant passage from the record (p. 28) :

> "The question whether Finland and Russia contracted on the terms of the Declaration as to the nature of the autonomy of Eastern Carelia is really one of fact. To answer it would involve the duty of ascertaining what evidence might throw light upon the contentions which have been put forward on this subject by Finland and Russia respectively, and of securing the attendance of such witnesses as might be necessary. The Court would, of course, be at a very great disadvantage in such an enquiry, owing to the fact that Russia refuses to take part in it. It appears now to be very doubtful whether there would be available to the Court materials sufficient to enable it to arrive at any judicial conclusion upon the question of fact : What did the parties agree to ?"

For that reason the Court concluded in a further passage (p. 29) as follows :

"It is with regret that the Court, the Russian Government having refused their concurrence, finds itself unable to pursue the investigation which, as the terms of the Council's Resolution had foreshadowed, would require the consent and co-operation of both parties."

This suggests that the position in the *Eastern Carelia* case was not merely that the Court *would* not give an opinion, but that it actually *could* not do so. (It may even be wrong to talk of the Permanent Court having "declined" to give an opinion, or having concluded that it had no jurisdiction. Its conclusion, I suggest, was rather that it was materially impossible for it to give an opinion in the circumstances.) Now it is clear that no such difficulty exists in the present case. The Court already has all the relevant information. No further facts or investigations are necessary. Still less is the examination of witnesses required. The questions put to the Court are purely legal : in order to answer them the Court only needs the texts of the relevant instruments and the documents. The views and arguments of the three ex-enemy Governments are fully exposed in the correspondence with which the Court has already been furnished, and in their own communications to the Court. Although, as the Permanent Court pointed out in the *Eastern Carelia* case, the Court, being a Court of Justice, must, even in giving what is technically only an opinion, act in a judicial manner, the Court in the present case has all the data and has gone through all the processes necessary to fulfil this requirement. Here again, I am merely distinguishing the present case from the *Eastern Carelia* case, and I must not be taken to imply that the non-appearance of an interested party before the Court, even if this gives rise to certain difficulties of a practical order, is in itself a ground for declining to give an advisory opinion. Even in contentious cases, we find in Article 53 of the Court's Statute that if one of the parties fails to appear or to defend its case, the other may call on the Court to decide in favour of the claim. The Court must, of course, in accordance with paragraph 2 of that Article, satisfy itself that the claim is well founded in fact and in law. Still, this Article does show that non-appearance is not any *formal* bar to adjudication, still less, of course, to the giving of an advisory opinion on the part of the Court.

Finally, Mr. President, so far as the *Eastern Carelia* case is concerned, there was a further consideration which seems to me to have had much to do with the Court's attitude, even if it was perhaps not expressed in actual terms. In the *Eastern Carelia* case, the Court seems to have felt that the advisory opinion was being requested not so much for the purposes of the Council of the League, as such, as for the express purpose of procuring or trying to procure a settlement of a direct dispute between Finland and Russia. The impression which I myself get from reading the decision in the *Eastern Carelia* case is this, that the Court felt the Council of the League had, in effect, as it were, delegated to the Court the doing of something which the Council would not or could not do for itself, in other words, the settling of a dispute between two States ; and that the opinion was requested mainly for that purpose, rather than for the purposes of the Council itself. It seems to me that the Court, though it said nothing about it in express terms, implied that such was the position, because at

the very end of the Court's observations, in, I think, the final paragraph (p. 29), we find that the Court, after saying that it could not give an opinion, went on to say:

> "The Court cannot regret that the question has been put, *as all must now realize* that the Council has spared no pains in exploring every avenue which might possibly lead to some solution *with a view to settling a dispute between two nations.*"

The words I have emphasized (italicized) show, I think, that the Court felt that it was, by means of the procedure of an advisory opinion, really being asked to decide a substantive dispute between two countries, in much the same way as if the case had been one of a direct litigation in a contentious issue. Now, whether that view was correct or not, and whether, even if it was correct, it would have justified the Court in declining to give an opinion, in the absence of the other factors we have noticed, need not be gone into here, because in this case that point does not arise. Whatever the circumstances of the *Eastern Carelia* case, and whether or not the Permanent Court correctly appreciated them or drew the correct conclusion, the position in the present case admits of no doubt. If I may trespass on the patience of the Court, I think for the last time on this particular matter, let me briefly recall the facts once more. The Assembly becomes seized of the question of certain alleged violations of human rights in Bulgaria, Hungary and Roumania. It suspends consideration of the question on being informed that the matter fell under the Peace Treaties and that the Peace Treaty procedure is being invoked. Later it is informed that the Treaty procedure has proved abortive because the three ex-enemy Governments refuse to co-operate in it, and moreover deny that it is applicable. What is the Assembly to do? Before it can decide on its own future procedure and what action (if any) is open to it, it must know whether the contention that the Treaty procedure is inapplicable is legally correct or not, and, if this contention is not correct, what further steps (if any) are open to the parties under the Treaty to procure a decision; for as long as some action under the Treaties is possible, the position is that the Assembly may prefer to suspend its own action, and may possibly never have to take any action; but until that point is determined, the Assembly does not know what its position is. All this, of course, is entirely without prejudice to the question of what further action the Assembly can take, or whether it can properly take *any* further action. The point is that until the preliminary questions as to the applicability of the Treaty procedure are authoritatively determined by the Court, as we hope, the Assembly lacks the necessary foundation for even considering the matter further in any practical or useful way.

There is also the position of the Secretary-General of the United Nations. Under the disputes Articles of the Peace Treaties, he is liable to be asked at any moment to appoint one of the Commissioners. He naturally wants to know what his position is in view of the peculiar circumstances which have arisen, and whether he may properly comply with such a request, if made.

Let me stress once more, on account of its cardinal importance, the fact that advisory opinions are given to the Organization requesting them and not to States. There was a striking application of that principle

by the Permanent Court in the *Caphandaris-Molloff Agreement* case (Series A/B, No. 45, p. 87), where the Court took the view that States interested in a request for an advisory opinion may not, by entering into an agreement for the purpose, procure an extension of the advisory procedure beyond the limits of the request as framed by the requesting Organization. It was decided, in other words, that the Court must adhere to the actual terms of the request, and that even if all the interested States were agreed in wanting some extension of the request, and for the Court to go into additional matters, the Court must not accede to such a request. In other words, the Court stressed the position that the opinion is requested by and given to the Organization, and not given to any individual States.

Stress must also be laid on the primary object and function of advisory opinions, namely of facilitating the work of the requesting Organization. In speaking of the part played by the advisory opinions of the Permanent Court in promoting the work of the League, Judge Hudson (*op. cit.*, p. 523), said this:

> "This is not merely because a request for an advisory opinion may be a means of gaining time or of shifting the theatre of discussion in an acute situation; the Court's opinion may clarify difficult questions as to the Council's competence or it may dispose of legal questions which condition progress on the settlement of political issues."

I earnestly submit to the Court that this last phrase exactly applies to the circumstances of the present case and affords the strongest grounds for the exercise of the jurisdiction to give an advisory opinion, bearing in mind also the status and position of the Court as an organ of the United Nations, and its principal judicial organ at that, a position which the Permanent Court was never in vis-à-vis the League. Just as it could never be contended that the Court should decline jurisdiction in a contentious litigation between two States merely because the eventual judgment given by the Court might involve the interpretation of a clause in the organic instrument of an international Organization, thus indirectly affecting the Organization, so equally, in principle, should an advisory opinion not be refused to an international Organization merely because the opinion relates to an issue between States not all of them members of the Organization, thus indirectly affecting those States. As we in England say, what is sauce for the goose, is sauce for the gander!

[*Public sitting of March 2nd, 1950, afternoon*]

Mr. President, I dealt this morning with the principle of the *Eastern Carelia* case and its various implications. I now turn to the other main category of objection, to the Court's jurisdiction advanced by the former enemy Governments and their supporters. This objection is stated in different ways, but in essence it is that the United Nations itself is incompetent to consider this matter, largely on account of Article 2, paragraph 7, of the Charter, which precludes intervention in matters essentially of domestic jurisdiction, and it is alleged that the substantive questions here involved fall within that category. Consequently, it is said that no organ of the United Nations is competent. The Court,

itself an organ of the United Nations, is incompetent, and so is the Assembly. Even if the Court were not *directly* incompetent as an organ of the United Nations, it would be incompetent, as it were, by *derivation* from the Assembly's incompetence. Such is the argument.

One answer to it would be to point to the relevant provisions of the Charter and of the Statute which are quite clear. Article 96 of the Charter says that "the General Assembly .... may request the International Court of Justice to give an advisory opinion on any legal question". Equally and correspondingly, Article 65 of the Statute says that "the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request". *Prima facie*, therefore, the Assembly is entitled to ask the Court for an advisory opinion on any legal question on which it considers it needs or wishes for advice, without stating the reasons for wanting it, and the Court is entitled to give this advice without enquiring into the reasons. According to this view, the whole matter is one between the Assembly and the Court rather than between any State and the Court, so that no question of competence can arise. On this, my submission would be that the Assembly has the right to ask for legal opinions and the Court has the right to give legal opinions requested of it by the Assembly. The whole issue is simply a matter between the Assembly and the Court, and not one in which any individual State has, strictly speaking, any right to intervene, or to suggest that the Assembly is not competent to request an opinion or the Court not competent to give it. That is, perhaps, a somewhat extreme view, but I suggest it for the consideration of the Court, and I shall of course in a moment come to the substantive question of whether these matters *are* really matters of domestic jurisdiction at all.

There is a further consideration which very much strengthens the point of view I am suggesting. International organizations often address questions to an international tribunal precisely in order to put themselves in a position to determine their *own* competence, and I suggest that this is, indirectly, what is happening in the present case, even though the Assembly has not actually raised any question of competence. I need not recapitulate the facts again, but the position is that the Assembly has not yet reached the point of finally determining *any* question relative to this matter, including any question of its own competence. It has not yet reached any definite point at all; it has suspended action or even substantive consideration of the matter until the Peace Treaty position is ascertained. For the Court to refuse to give an advisory opinion in these circumstances, and on grounds relating to the alleged incompetence of the Assembly, would not only be premature, as prejudging an issue that cannot really arise until the Assembly engages in a substantive consideration of the questions of human rights involved· which it has not yet done or attempted to do but would also involve refusing to the Assembly an essential part of the means whereby it can determine its own future proper sphere of action.

If I am right so far, it is, strictly, unnecessary for me to go into the substance of the question of the applicability of Article 2, paragraph 7, of the Charter, that is to say, to discuss whether these questions

of human rights arising under the Peace Treaties are in fact essentially matters of domestic jurisdiction; but, of course, I will say something about that. Article 2, paragraph 7, of the Charter says that the United Nations is not authorized "to intervene in matters which are essentially within the domestic jurisdiction of any State". The Court is not on the present occasion being asked to give any general interpretation of this provision, and I shall not attempt to do so myself. I shall not, for instance, go into such questions as the meaning of the word "intervene", or ask whether the consideration of a matter by the Assembly, or an expression of an opinion by the Court, would amount to "intervention" by the United Nations or any organ of the United Nations. On the present occasion I express no views on these points. Equally I shall only refer to, without seeking to draw any final conclusion from, the fact that questions of human rights, apart from affecting good relations between States, and ultimately, therefore, international peace and security, are to-day the subject of detailed provisions in important international instruments. There are, however, two points that I want to make. In the first place, it seems to me impossible to contend that the United Nations has not a legitimate interest in questions of human rights or that these questions are in any way foreign to its functions as the guardian of international peace and security. Indeed, the contrary is specifically recognized by Article 55 of the Charter, which provides that the United Nations is, amongst other things, to promote "universal respect for, and observance of, human rights", and is to do this "with a view to the creation of conditions of stability and well-being, *which are necessary for peaceful and friendly relations among nations*". The words italicized seem to me directly to relate the question of human rights to the functions of the United Nations in the preservation and promotion of international peace and security, and therefore, I submit that questions of that order cannot possibly be outside the scope of the United Nations, whether or not they relate to matters ordinarily of domestic jurisdiction.

Secondly, since in the present case these questions of human rights arise under a specific clause in a treaty—that is to say under the Peace Treaties—there is involved a much narrower but also a much more definite question, namely what is meant by the word "matters" (in the French text "*affaires*") in Article 2, paragraph 7, of the Charter. If I may read the provision again, it says: "The United Nations is not authorized to intervene in matters which are essentially within the domestic jurisdiction of any State." What does this word "matters" mean? I submit that when the "matter" involved is a question of treaty observance—that is, where the immediate issue or subject-matter of the proceedings is a point of treaty interpretation or a question whether or not there has been a breach of a treaty—then *that* "matter" is the treaty itself and cannot, *ex naturæ*, be a matter "essentially within the domestic jurisdiction of any State". Such questions are, on the contrary, essentially and inherently matters of international jurisdiction, because of the very nature of a treaty, which is an international instrument. A treaty can never be a matter essentially of the domestic jurisdiction or internal sovereignty of one of the parties alone.

It is important that this point should be appreciated in its relation to the meaning of the term "matters" (in the French text "*affaires*") in Article 2, paragraph 7, of the Charter, because it has been suggested that the fact that a particular matter is the subject of a provision in a treaty or international agreement, is not *per se* sufficient to take it out of the operation of Article 2, paragraph 7, of the Charter. In this connexion, those who advocate that point of view maintain that the word "essentially", as used in the Charter, should be contrasted with the word "wholly", as used in the analogous provision of the Covenant of the League of Nations. The Court will remember that in the corresponding provision in the Covenant of the League of Nations the reference was to "matters which by international law are wholly within the domestic jurisdiction of States", whereas in the Charter of the United Nations the word used is "essentially". It is suggested that whereas a matter, which would otherwise be wholly one of domestic jurisdiction, ceases to be "wholly" so if it becomes the subject of a clause in a treaty, it may well remain "essentially" a matter of domestic jurisdiction even though it is the subject of a treaty clause. This reasoning is, I suggest, based on a misapprehension of the bearing and purpose of the word "matters" or "*affaires*" in Article 2, paragraph 7, of the Charter, and involves a failure to recognize that once something becomes the subject of a clause in a treaty, it is the treaty and the treaty clause itself, and the observance or otherwise of that clause as such, and not the substantive content of the clause, which is the "matter" at issue, and this cannot be a matter either wholly or even essentially of domestic jurisdiction. Indeed, it is essentially, even if not wholly, of international jurisdiction and concern. I shall have a little more to say on this point later, when I shall point to the extraordinary consequences which a failure to recognize this position would lead to in the international sphere. I have, however, I hope, said enough to show that the questions before the Assembly in this case, and particularly those immediately before the Court now, cannot possibly be questions essentially of domestic jurisdiction such as might be excluded from the competence of the Assembly or of the Court by Article 2, paragraph 7, of the Charter, because the "matter" we are dealing with here is the observance or non-observance of a treaty provision. That is the matter ; the content of the clause is only indirectly the matter. This content has to be dealt with as part of dealing with the treaty clause, but the immediate matter which has to be dealt with is whether or not a treaty clause is being observed, and that, I suggest, means that the matter cannot be a matter either wholly or essentially of the domestic jurisdiction of one of the parties, unless one is going to say that provisions in treaties do not concern both parties, but concern only one party.

That concludes, Mr. President, all that I have to say on the objections offered to the Court's jurisdiction. On the whole subject of jurisdiction I want to submit this, that the Court *has* jurisdiction, and that there are the strongest reasons for the Court exercising its jurisdiction. I can think of no real reasons against the exercise of the Court's jurisdiction. I believe that in the long run the interests of all States, great and small, will best be served, and that their rights, including their sovereign rights, will best be preserved, by the utmost facility of reference to the Court ; and I cannot think that the non-consent of a State which may be affected by the giving of an opinion should be regarded by the Court as being in

itself a ground for refusing a request from the Assembly of the United Nations for an advisory opinion.

I now come to the actual questions which have been put to the Court. The two main arguments used by the ex-enemy Governments throughout this affair have been, first, that there is no dispute at all and therefore nothing about which to arbitrate under the Peace Treaties ; and secondly, that even if there is a dispute, it is about something which falls exclusively within the domestic jurisdiction or internal sovereignty of the States concerned and is therefore not justiciable under the disputes Article of the Treaties. In trying to bring these questions before the Peace Treaty Arbitral Commissions, my Government and the other Governments involved are accused of seeking to intervene in the internal affairs of the ex-enemy countries and to subject them to some supposed form of international subservience. Now, I have already drawn attention to the extraordinary inconsistency and contradictoriness of some of the arguments employed by these countries on the question of whether there is a dispute or not, and I want to submit that, whatever they may now purport to say, they have in fact long since admitted the existence of a dispute and are juridically bound by this admission, and, as we say in England, estopped or precluded from contradicting it. I am not going to take up the time of the Court by going through the correspondence, with which the Court is doubtless familiar, but it was pointed out in the written statement of the United Kingdom (I refer in particular to paragraph 9 on pages 52 and 53 of document Distribution 50/13 and to the first footnote on page 53) that in certain of their notes the Governments concerned had actually put forward arguments regarding the substance of the charges made against them of violating the human rights provisions of the Peace Treaties. I would draw attention to the fact that one of these Governments, namely the Hungarian, did this not only in the original correspondence, but again in its later note of October 27th last, which is reproduced in Annex II A of the United Kingdom written statement. The Hungarian Government there embarked on a substantive discussion of Articles 2 and 4 (i.e. the human rights and anti-fascist articles) of the Hungarian Peace Treaty. Similar allusions to the substantive questions involved are contained in the opening part of the Hungarian Government's own communication to the Court dated January 13th, 1950, which will be found on page 92 of document Distribution 50/13.

Again, the Roumanian Government in its very latest note, that of February 10th, 1950, which has, I think, just been communicated to the Court, says (in the second paragraph) that it rejects the United Kingdom démarche "as contrary to the Treaty of Peace and to the rules of international law". In other words, the Roumanian Government itself says there is a dispute. If you reject other peoples' démarches and say these are contrary to a treaty, you are disputing the correctness of their views or statements, are you not, and there is a dispute about the treaty.

In fact, throughout the correspondence it will be seen that, interlarded between the denials that any dispute exists, there are passages in which the three Governments address themselves to the substance of the charges made against them, either denying the facts alleged,

or else saying that they were justified in what they did because of another article or articles of the Peace Treaties. In other words, side by side with denying the existence of a dispute, these Governments also put forward a legal defence to the charges made. This, of course, they are perfectly entitled to do. They are quite entitled to deny the correctness of the facts. They are quite entitled to say, if they think it is the case, that what they did was justified by, or is in execution of, another clause of the Peace Treaties. But what I submit they are not entitled to do, is *both* to put forward these legal defences and simultaneously to deny that there is a dispute; because if there is no dispute then there is nothing to put forward a defence about.

To such lengths are the ex-enemy Governments driven in trying to sustain their point of view that we find such arguments as that put forward by the Hungarian Government in the passage quoted on page 175 of the United Kingdom written statement, and which is repeated in one form or another in the communications which the other Governments have sent to the Court, and also in the Hungarian Government's own most recent note to the United Kingdom, that of January 16th last, which has lately been communicated to the Court. This argument simply amounts to saying that, as it is obvious and manifest that the ex-enemies have scrupulously fulfilled the Treaties, therefore there cannot be and there is not any dispute on the subject which could go to arbitration. But, Mr. President, the issue is precisely whether these Governments *have* scrupulously fulfilled the Treaties or not. If this argument were valid, no dispute could ever arise on any international question because it would only be necessary for one of the parties to say: "As it is manifest that we have scrupulously fulfilled our obligations, there is nothing to discuss."

At this point I ought perhaps to say a word about the curious argument advanced during some of the Assembly debates that there is no dispute because the *parties* are incomplete. The gist of this argument is that on the allied side, so it is suggested, the party must always consist of the three major allied Governments acting jointly, which they are naturally not doing in the present case, as the Soviet Government is not participating. It is not necessary, I think, to dwell on this argument, which is manifestly erroneous. It is true that the Treaties do all contain a separate provision (I refer to Article 35 of the Bulgarian Treaty, Article 39 of the Hungarian, and Article 37 of the Roumanian), according to which, for a period not exceeding 18 months from the coming into force of the Treaty, the three major allied Powers are to act jointly in their actual dealings with the ex-enemy Governments in the interpretation and execution of the Treaties. But even if this meant that there could be no dispute between any one of them individually and the ex-enemy State concerned, or between any other allied country a party to the Treaty and the ex-enemy State—which I submit it does not—the point would be irrelevant now, since the period of 18 months expired in February or March 1949, before ever the Assembly began its consideration of this question.

Next, the argument we are now discussing, if correct, would give each of the three major allied Governments a sort of perpetual veto on the existence or even the possibility of a dispute with the ex-enemy countries, and I submit that this cannot have been the intention of the Treaties. Nor is there anything in their language to suggest it.

The settlement of disputes is provided for in an article which places no limitation on the nature or character of the parties to the dispute beyond the obvious general limitation of law that they must be parties to the relevant Treaties. Members of the United Nations all over the world are parties to these Treaties. Each one of them has an individual right to require the observance of the Treaty clauses. All are severally interested, for instance, in the due observance by the ex-enemy Governments of the military clauses of the Treaties. Again, every party to the Treaties has separate economic and financial rights and obligations in regard to the ex-enemies under the Treaties. Any disputes on these or other subjects would be individual disputes. The Treaties recognize the special position of the three major allied Governments in that any disputes are to be referred to their Heads of Mission in the first place. But this presupposes that these three Governments cannot jointly constitute the party to the dispute, because a party to a dipute cannot resolve it by referring it to himself. But an *individual* dispute between a given allied State and one of the ex-enemies is to be referred to the allied Heads of Mission, and if not resolved by them within two months, is, at the request of either party to the dispute, to be referred to a commission composed as provided in the Treaty.

I referred earlier to the far-reaching consequences in the international sphere which the attitude of the ex-enemy Governments on the question of the existence of a dispute would be liable to have unless, as my Government hoped, the Court declares it to be without any justification or validity. Nothing less is at stake than the whole future of arbitration, because of the grounds on which these Governments have chosen to base their objections It would be understandable if they argued that some step in the procedure had been omitted or not properly carried out, and that they were consequently not obliged to agree to a reference to the Peace Treaty Commissions Such an argument would, in our view, not be correct in the present case. But if the facts could be established, it would be a perfectly proper ground on which a country otherwise obliged to go to arbitration could legitimately refuse to do so But, except for the extraordinary contention of the Hungarian Government, to which I shall come later, that the United Kingdom was at fault in not appointing its commissioner last August (although the Hungarian Government then and at all times failed or refused to appoint its own commissioner), except for contentions of the kind which it is difficult to take seriously, the three Governments do not say that any essential step in the procedure has been omitted. They do not, for instance, contend that there have been no diplomatic negotiations as contemplated by the disputes Articles of the Peace Treaties. They do not contend that such negotiations have been insufficiently tried. They do not deny that the matter was referred, as stipulated by the relevant provisions, to the Heads of Mission of the major allied Powers in the ex-enemy capitals (although the Heads of Mission could not deal with it because of the refusal of the Soviet representative to participate). They simply say that there is nothing to arbitrate about. It is obvious that, on this basis, arbitral clauses in treaties are useless, considered as binding obligations, since they can be evaded at any time by a party which, even in the face of the plainest facts, is prepared blandly to

deny that any dispute exists. Yet, as was pointed out in the United Kingdom written statement, unless arbitral clauses are intended to ensure compulsory arbitration when a case for it arises, there is really no object in including them in treaties at all. It is always open to parties to a treaty to go to arbitration *voluntarily* over a disputed point concerning a treaty, even if the treaty contains no arbitral provision, and this, of course, often occurs. The only object of arbitral provisions in treaties is precisely to secure that the parties commit themselves in advance to go to arbitration over any disputed point which cannot be settled by other means, and that the matter is not left to their free choice at the time when it arises. As Schwarzenberger (*op. cit.*, p. 399) says, with reference to the finding of the Permanent Court of Arbitration in the case of the *Norwegian Claims against the United States*:

> "Compulsory jurisdiction means that two States have not merely established the *ad hoc* jurisdiction of a Court in one isolated case, but have done so with regard to an unspecified number of cases which may arise between them in the future."

But if the argument of the three ex-enemy Governments is a valid one, then all attempts to make these clauses binding and compulsory must fail, because it is sufficient to say that no dispute exists, and therefore there is nothing for the arbitral tribunal to consider.

Now, if one asserts, as does my Government, that there is a dispute, it is incumbent on one to try and indicate what one means by a dispute and in what way the circumstances of the case constitute one. Unfortunately, it is as difficult to give a satisfactory definition of a dispute as it is to prove a negative. It is never easy to define the obvious, just as, in mathematics, axioms by their very nature are not definable except in terms which themselves require definition. The question is also partly one of fact as the Permanent Court recognized in the second *Chorzów Factory* case (Series A, No. 13, p. 10), where it held that a dispute was shown by the circumstance that "the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of" the instrument concerned. In the written statements of my Government and of the Government of the United States, the attention of the Court has been drawn to such authority as exists on this point, and the Representative of the United States yesterday drew attention to further authorities, so that I need not and shall not repeat them again. The impression left with me is that, fundamentally, few of the attempts to define a dispute have been satisfying, or go much beyond reiterating that a dispute is a dispute. In our written statement we did attempt ourselves to supply a definition, which will be found on page 52 of the volume containing the written statements ; and perhaps, because of the difficulty of definition on this matter, I may venture to read it on the present occasion. The passage reads as follows :

> "a dispute may be said to arise whenever one government charges another government with violation of a treaty or general rule of international law, and the other government either denies the charge or the facts or the correctness of the legal rule or treaty interpretation on which it is based ; or else, while not in

> terms denying the charge, persists in the course complained of, or fails to take any remedial measures".

Perhaps that is more in the nature of a description than a definition. At any rate, we suggest that it does fit the circumstances of the present case very aptly, because the United Kingdom says that it has certain rights under the Peace Treaties, rights to the observance of the provisions regarding human rights, and that the ex-enemy Governments have corresponding obligations. The United Kingdom alleges wrongful conduct on their part with reference to those obligations. They deny both the obligation and the wrongful conduct, but their denial is not accepted by the United Kingdom, which holds to its original allegations. That is the position, and if it does not constitute a dispute, then, Mr. President, I hardly know what does.

The Peace Treaties require that the dispute should be above either the interpretation or the execution of the relevant treaties. In our view there is a dispute about *both*, but I shall not linger on that point, because it is adequately dealt with in paragraphs 12 and 13 of the United Kingdom written statement. Moreover, the point is one which was very fully dealt with yesterday by the Representative of the Government of the United States, and the position of the United States in this matter is really precisely the same as ours, and the nature of the charges which they make and the points of interpretation and execution which arise are fundamentally the same in the case of both our Governments. I believe that if the Court finds that a dispute exists in this matter, it will not have much difficulty in holding that it is a dispute about either the interpretation or execution of the Peace Treaties, or both. There is, indeed, in the circumstances, nothing else it could really be about.

Once it is established that there is a dispute about the interpretation or execution of the relevant treaty, the only remaining requirements before the position is reached in which the parties are under an obligation to appoint their commissioners, and otherwise to co-operate in setting up the treaty commissions, are that the dispute should not have been settled by diplomatic negotiations and should not have been resolved by reference to the United States, United Kingdom, and Soviet Heads of Mission in the ex-enemy capital concerned. In paragraphs 17 to 19 of the United Kingdom written statement, there are carefully detailed the steps and processes which have been gone through in these respects, and the reasons why we think they have now led to a position in which the three former enemy Governments are legally bound under the Treaty to appoint their commissioner. I shall not say more about those matters here. Nor do I need to do more than refer to paragraph 14 of the United Kingdom written statement in order to demonstrate that this is not a case for which the Peace Treaties provide any means of settlement other than that specified in the general disputes Article of the Treaties.

There is one observation in paragraph 19 of our written statement, however, to which I must refer here. As amended by a subsequent corrigendum, it was stated in paragraph 19 of our written statement that, in notes dated 5th January last, the United Kingdom Government

had informed the three former enemy Governments of the appointment of Mr. F. Elwin Jones, K.C., M.P., as the United Kingdom commissioner, and it was added that these Governments had been formally requested in the same note to appoint their own commissioners and to consult with the United Kingdom Government as to the appointment of the third commissioner, but that no reply had been received to this communication. The Court will be aware that, since this was written, and since the written statement of the United Kingdom was deposited with the Court, replies have been received from two of the Governments concerned, namely the Hungarian and Roumanian Governments, the texts of which have been communicated to the Secretary-General of the United Nations, and, so I understand, by him to the Court, and form part of the dossier before the Court. It will be observed that the Hungarian reply, dated 16th January last, repeats the familiar arguments about there being no dispute because it is manifest that the Hungarian Government has scrupulously observed the Treaty, and about the present proceedings being an attempt to interfere in Hungarian internal affairs. But it also contains a new feature to which I should like to draw the attention of the Court, since it constitutes a very good example of the attitude and nature of the arguments adopted by the former enemies in this case. The feature to which I refer is the attempt to accuse the United Kingdom Government of some default or impropriety, first in not having nominated its commissioner *before* this matter was referred to the Court by the Assembly, and secondly in *now* nominating its commissioner *after* the matter has been referred to the Court. It is not difficult to see that both these accusations cannot simultaneously be well founded, which may suggest very strongly that neither of them is.

As regards the first, the Hungarian Government apparently charges the United Kingdom Government with some attempt to mislead the Assembly and, through it, the Court, by having complained that the Hungarian Government had failed to appoint its commissioner, when the United Kingdom Government had similarly failed to do so. I feel sure that the Court will regard the Hungarian objections on this point as being completely unfounded. It will be seen from the correspondence that, as far back as last August, the United Kingdom Government formally requested the three ex-enemies to join with it in setting up the Treaty commissions, to which request they received a categorical refusal in notes which arrived at about the end of August and beginning of September, a refusal which was coupled with a repetition of all the usual arguments about the non-existence of a dispute, and the manifest correctness of the ex-enemy Governments' actions. My Government could then have appointed its commissioner, but it saw little use at that stage in going to the trouble and possible expense of taking this step in the face of the complete and definite refusal of the three Governments to take any corresponding step, or otherwise to co-operate in setting up the Treaty commissions. Indeed, it could be maintained that this refusal on the part of the former enemies would have released my Government from any further obligation to try and implement the Peace Treaty procedure for the settlement of disputes, had we wished to be released, and that it left us free to seek redress by any other means available to us. The suggestion that the United Kingdom was not sincere in its contentions as to the juridical position and was only interested in

the political or propaganda aspects is, therefore, demonstrably false. On subsequent reflection, however, Mr. President, we felt that it would be better, even if it proved only to be a formality, to nominate our commissioner in order that, when this matter came before the Court we could show that, for our part, we had done everything possible to operate the Treaty procedure and to carry out our own obligations. I am unable to see how any of this can possibly have misled the Assembly, which had all the facts and correspondence before it; or how the nomination of our commissioner now can be incompatible with the Assembly's decision to request the Court to advise whether the Treaty procedure is applicable or not, although that is what seems to be contended by the Hungarian Government. The appointment of our commissioner, which was effected last January, in no way prejudges the issue before the Court, nor does it affect or worsen the position of the three ex-enemy Governments. If the Court should decide that the Treaty procedure is not applicable in the present case, no harm whatever will have been done by the appointment of the United Kingdom commissioner except in so far as that gentleman himself or the United Kingdom Government may have been put to unnecessary trouble or expense, which will be entirely a United Kingdom affair. The nomination of the United Kingdom commissioner is wholly consistent with the view that my Government has always taken of the Treaty position (subject of course to correction by the Court), and it is abundantly clear that, had we not made this nomination last January, we should now be accused *of having ourselves failed to take a step required by the Peace Treaties*, although the ex-enemy Governments simultaneously contend that these Treaties are inapplicable. Now that we have taken this step, despite the fact that the ex-enemy attitude really released us from any obligation to do so, it is merely complained by the Hungarian Government that we should have done it six months ago, and that it is incorrect to do it now, in view of the reference of the matter to the Court, although, again, the jurisdiction of the Court to deal with the matter at all is, simultaneously, challenged by the ex-enemy Governments. I have seldom, Mr. President, come across such a tangle of inconsistent and contradictory arguments, and I can only suggest that these Governments must be very hard put to it to find even a plausible explanation for their attitude.

I should now like to come back to the subject of domestic jurisdiction, because, as the Court will realise, that matter arises not only with reference to Article 2, paragraph 7, of the Charter, as a point of competence; it also arises on the substantive issue of whether the present dispute falls within the scope of the disputes Articles of the Peace Treaties. The former enemy Governments say that it does not, because it is a matter affecting their internal sovereignty and jurisdiction, therefore not justiciable at all, and therefore, not a matter for arbitration under the Peace Treaties. Pausing there, Mr. President, surely the correct view is that, as the Representative of the United States said yesterday, a contention such as this is essentially in the nature of an objection to the jurisdiction of the contemplated arbitral tribunal or commission, and therefore, *prima facie*, a matter to be decided as a preliminary issue by that very tribunal or commission itself. Such is the usual international procedure where objections to the jurisdiction are raised. I submit that

one of the best short statements of the principle involved was given by the arbitrator, Mr. Pinkney, one of the American arbitrators in the Anglo-American arbitration in the case of the *Betsey* (Moore's *International Arbitrations*, p. 2278). The arbitrator, Mr. Pinkney, said this :

> "If a reference to arbitrators takes place, the arbitrators are always in the first instance the judges of the scope of the submission"—that is, in effect, the judges of their jurisdiction "without any specific provision to that effect in the instrument of reference."

That seems to me to enunciate the principle that, as a matter of office, arbitrators are the judges of their own jurisdiction, and that, at any rate in the first place, any objection to the jurisdiction of an arbitral tribunal or commission should be referred to the tribunal or commission itself for decision.

Now, the cardinal point here involved on this question of domestic jurisdiction is that the present questions are questions about treaty clauses. It was pointed out in paragraph 11 of the United Kingdom written statement that, however much the dealings of a government with its own subjects might normally be matters exclusively of internal concern, the moment a treaty clause relevant to the matter comes into existence, duly signed and ratified on both sides, these matters *ipso facto* cease to be matters of purely domestic concern and become *pro tanto*, matters of international concern. We cited in this connexion the well-known dictum of the Permanent Court in the case of the *Tunis and Morocco Nationality Decrees* (Series B, No. 4, p. 24). I would also like to read again, on account of its great aptness to the present circumstances, the passage which was quoted by the Representative of the United States from the advisory opinion of the Permanent Court in the case of the *Exchange of Greek and Turkish Populations* (Series B, No. 10, pp. 17-18), because that quotation seems to me almost exactly to fit the circumstances and principles of the present case. What the Court said was this :

> ".... the Court is satisfied that the difference of opinion which has arisen regarding the meaning and scope of the word 'established' [as used in Article 2 of the Convention of Lausanne], is a dispute regarding the interpretation of a treaty and as such involves a question of international law. It is not a question of domestic concern between the administration and the inhabitants; the difference affects two States which have concluded a convention...."

Similarly, though in relation to different facts, the Permanent Court said in the case of the *German Interests in Polish Upper Silesia* (Series A, No. 7, p. 19) :

> "The Court is certainly not called upon to interpret Polish law as such, but there is nothing to prevent the Court giving judgment on the question whether or not, in applying that law, Poland is acting in conformity with its obligations towards Germany under the Geneva Convention."

An extremely apt statement of the principle involved was also given by the arbitrator in the case of the *Mosquito Indians* (Moore, *op. cit.*, p. 4965; *Pasicrisie*, p. 385), where he said in relation to the claim of Great Britain by virtue of a treaty with Nicaragua to intervene on behalf of the Mosquito Indians :

"The Government of Nicaragua is wrong in calling this an inadmissible 'intervention', inasmuch as pressing for the fulfilment of engagements undertaken by treaty on the part of a foreign State is not to be classified as intermeddling with the internal affairs of that State...."

The same point is summed up by Schwarzenberger (*op. cit.*, p. 56) in his discussion of this matter as follows:

"Thus, even a matter which, in principle, is in the domestic sphere, becomes a question of international law if, by treaty or otherwise, a State has limited its freedom of action with regard to other States."

That is precisely what we contend the former enemy countries have done by the human rights clauses of the Peace Treaties which they have entered into.

But now, Mr. President, I think that, as I said in connexion with Article 2, paragraph 7, of the Charter, the point here involved is really of an even deeper character. It goes beyond the perhaps rather obvious fact that what might normally be a matter of purely domestic concern, ceases to be a matter of purely domestic concern when it becomes the subject of a treaty provision. The issue, as I said, is really one which affects the very conception of the term "matter". As I said earlier, when you speak of a "matter" being one of domestic jurisdiction, you have to ask yourself, what matter? What is the "matter" involved? Clearly, if what is in issue is a treaty provision, and the question is one of the interpretation or application of that provision, and there is a dispute concerning that provision, the "matter", or at any rate the immediate matter, is that treaty provision, its applicability or non-applicability and so forth, and this is something which can never be a matter of domestic jurisdiction in the sense of not being justiciable, since treaty provisions are, of their very nature, justiciable, being international in character; and clauses in a treaty, whatever they may be about, and even if they concern something which, but for its inclusion in the treaty, would otherwise be one purely of the domestic jurisdiction of the parties, become *ipso facto* something which concerns the States parties to the treaty, and therefore *ipso facto* of international concern and jurisdiction. In brief, it is not merely that what was of purely domestic concern ceases so to be: you are really dealing with an altogether different *category* of "matter". You are dealing with a treaty clause, and it is that clause as such which is the "matter" for this purpose, irrespective, I suggest, of the nature or content of the clause.

Equally lacking in any juridical validity is the parallel argument of the ex-enemy Governments that the attempt to bring these questions of human rights before the Peace Treaty commissions constitutes a violation of their sovereignty and an attempt to interfere in their internal affairs. The position here is just the same as in that of the question of domestic jurisdiction. These issues of human rights are the subject of clauses in the Peace Treaties by which the ex-enemy Governments undertake, according to the usual formula, to secure *to all persons under their jurisdiction, without distinction as to race,* sex, language or religion, the enjoyment of human rights and of the

fundamental freedoms. The position is, therefore, that the ex-enemy Governments have voluntarily restricted or placed certain limitations on the free exercise of their sovereignty in regard to these questions of human rights, by entering into treaty provisions on the subject, according to which they undertake certain definite obligations about securing human rights to all persons under their jurisdiction. Having done this, they cannot then contend that because these are questions which would *otherwise* lie primarily between them and their own subjects, therefore the submission of them to arbitration under the Peace Treaties is inadmissible on the ground that an infringement of national sovereignty would be involved. Such a plea would be wholly untenable, and the simple answer to it is that if any infringement of sovereignty is involved, it is one which the Governments concerned have themselves accepted in advance, by entering into treaties containing these obligations about human rights, and containing clauses for the reference to a commission of any dispute concerning the interpretation and application of these same clauses. For this view of the relationship of sovereignty to treaty obligations there is plenty of international authority. Schwarzenberger states the point quite perfectly (*op. cit.*, p. 188), and I quote him again on account of the aptitude of his language:

> "The capacity of States to conclude international treaties is an attribute of sovereignty. For this reason no limitation of the exercise of sovereignty by an international treaty can be regarded as being incompatible with the principle of State sovereignty. In concluding international treaties, States display their sovereignty, though, in doing so, they may limit its exercise."

Elsewhere (p. 59), he states categorically, citing the decision of the Permanent Court of Arbitration in the *Muscat Dhows* case, that:

> "Once a State has limited its independence by treaty, the State is only free to exercise its sovereignty subject to its treaty obligations."

In the case of *Costa Rica* v. *Nicaragua* (*American Journal of International Law*, Vol. XI, p. 211), the Central American Court of Justice, created by treaty between the Central American States, said that it was:

> ".... obvious that no Central American nation can exempt itself from the obligation to answer before this Court all actions brought by the other signatories .... on the pretext that the injuries complained of are based upon acts performed in the exercise of sovereignty".

In the *Mosquito Indians* case, which I have already referred to, the arbitrator said that:

> " .... the sovereignty of the Republic of Nicaragua .... is not full and unlimited with regard to the territory assigned to the Mosquito Indians, but is limited by .... the Treaty of January 28th, 1860".

It is in the light of the foregoing authorities that I would like the Court to consider so egregious a remark as that contained in the

Hungarian note to the United Kingdom of October 27th last, that my Government had sought to contend that "by assuming certain obligations through the signature of the Treaty of Peace, Hungary has become a State with limited sovereignty". Of course, we do not contend that, but only that Hungary, by entering into the Treaty, restricted her freedom of action to the extent provided in the Treaty, as does every country, including my own, which enters into a treaty. You cannot both enter into a treaty and yet remain completely free of its obligations. Thus, it is abundantly clear, Mr. President, that a plea of national sovereignty is not an answer to a charge of breaking a treaty obligation, and that correspondingly the assertion of a treaty right does not constitute an interference with sovereignty, even though it relates to the territory or nationals of the defendant State.

This brings me to a further aspect of the matter, on which I ought to touch for the sake of completeness. It is not directly raised by the ex-enemy Governments, but it is I think implicit in their attitude. I refer to the fact that in taking up these questions of human rights under the Peace Treaties, my Government may appear to be taking up a case on behalf of—or to be extending diplomatic protection to—subjects of the ex-enemy Government concerned. Broadly speaking, it is undoubtedly a general rule of international law that a government which intervenes on behalf of an individual as such, may do so only if the individual has the nationality of the intervening government, and is not a national of the government against whom the complaint is made. Even to this rule there is a number of exceptions, as the Court itself observed, and indeed established last year in its advisory opinion respecting *Injuries to United Nations servants*. But in any event, this rule has no application to the circumstances of the present case. The Government of the United Kingdom is not intervening on behalf of any Bulgarian, Hungarian or Roumanian national as such, or even specifically on behalf of any individual. It is intervening, or seeking to intervene, primarily in order to assert its own rights, and it is established that a government always has international competence to intervene in the assertion of its own legal rights, whether arising under general international law or by reason of a treaty provision, even if the issue is one which affects or relates to persons or classes of persons having the nationality of the defendant government. In the present case the Government of the United Kingdom seeks the fulfilment towards itself of obligations expressly undertaken by a clause in a treaty to which both the United Kingdom and the ex-enemies are parties, and the observance of which the United Kingdom as a party is individually entitled to require from the ex-enemies. It is not even the case that the complaints of the United Kingdom are all directed against the actual treatment of particular individuals or classes of individuals of ex-enemy nationality. Many of the complaints relate to measures of a quite general character which appear to my Government to be contrary to the human rights clauses of the Peace Treaties. In all this, there is nothing new, nor is there anything new in the idea of complaints made under a treaty on behalf of persons in another country not nationals of the intervening State. The minorities clauses of the Peace Treaties of the 1914 war, to which the human rights clauses of the present Peace Treaties are in some sense successors, gave rise to numerous examples of such complaints, and were the subject of constant international adjudication

before the Permanent Court and other tribunals, such as the Mixed Arbitral Tribunals established by the Peace Treaties of the 1914 war.

It is obvious, Mr. President, that the position I am contending for in regard to the assertion of treaty rights is not only juridically inevitable, but is also a necessity of international life, unless treaties are to lose all obligatory character and compulsive effect. I want to illustrate this by reference to some concrete examples. It is well known, Mr. President, that not only do matters which would otherwise be matters of internal sovereignty or domestic jurisdiction often form the subject of treaty provisions, but that a great many treaties are made for this express purpose, i.e. for the express purpose of regulating between States matters which are not covered by any provision of general international law, and in regard to which those States could otherwise do exactly as they pleased. There are not only scores, even hundreds, of treaties of this kind, but it would not be overstepping the mark to say that the great bulk of international agreements, particularly bilateral ones, are of this character. Yet, if the argument of the ex-enemy Governments is correct, these treaties are in practice wholly devoid of any real binding force. Take, for instance, the almost universal "establishment clauses" in commercial treaties. It is well known that, apart from treaty and so far as general international law is concerned, States are entitled to admit or refuse admission to foreigners as they please, and, if they do admit them, to permit or not permit them to work, carry on businesses, etc. Subject perhaps to some kind of general obligation not to discriminate between different countries, States are, apart from treaty, entitled to do what they please about these matters. It is precisely to regulate the way in which different States will exercise their rights regarding these matters that establishment clauses in commercial treaties are included, and of course the obvious intention of such inclusion is that the parties should sacrifice some of their liberty of action, and should henceforth be bound towards each other to conduct themselves in accordance with the treaty provisions. Again, take the important subject of civil aviation. According to general international law, every State has sovereignty over the air space above its territory. Apart from treaty, it is completely free to allow or not allow flights by foreign aircraft, to permit or not permit foreign air lines to operate to or via its territory. On the other hand, there exist literally scores of civil aviation agreements between States or groups of States, by which they grant to each other in their respective territories rights of entry, transit and flight, and the operation of civil air lines. These treaties are entered into for no other purpose than to create international rights on the one side, and international obligations on the other, in regard to matters which would otherwise be wholly within the internal competence and domestic jurisdiction and will of each of the individual States. Yet, if the argument of the ex-enemy countries is correct, these rights and obligations have no more than a paper existence; for, as soon as the question arises whether the treaty provisions have been duly carried out, any of the parties can say that, since civil aviation is inherently a matter of internal sovereignty and domestic jurisdiction, no question concerning the interpretation or application of the treaty can be internationally justiciable, and therefore in practice the parties can really do exactly as they like about it.

I have given these two examples of establishment clauses in commercial treaties, and of treaties concerning civil aviation, because they are striking and universal. One could multiply examples, but it is unnecessary to take up the time of the Court in doing so. If the argument of the three ex-enemy Governments is generalized, it seems to come to this, that no treaty provision can, in the last resort, have any binding effect, or at any rate be enforceable by any method of international settlement which, apart from its inclusion in the treaty, would be a matter of internal sovereignty or domestic jurisdiction according to international law, and would not be covered by any general rule of international law. But, of course, if something is already covered by a general rule of international law, it is not usually necessary *to make a treaty about it. It is precisely those things which are not* so covered, those things which international law leaves to the will of individual States, that have to form the subject of a treaty if they are to become the subject of definite international rights and obligations. This is the whole, indeed one might say the sole, object of these treaties. It is therefore a contradiction in terms to say that something which has to be embodied in a treaty because it cannot otherwise become the subject of international rights and obligations, and is embodied in the treaty for that very purpose, is nevertheless something which is not actually binding, because it concerns internal sovereignty or domestic jurisdiction, and which cannot therefore be the subject of international settlement or adjudication except by the express or tacit consent of the States concerned. Such an argument reduces the great majority of bilateral treaties to mere gentlemen's agreements, hardly even that : it really reduces them to mere unilateral expressions of intention which the parties will adhere to as a working arrangement so long as it suits them both to do so, but which either can depart from at any time without the other having any right to complain, or any means of procuring a settlement of the matter on the international plane. As the Permanent Court said in the very first advisory opinion it ever gave, the *Nomination of the Netherlands Workers' Delegate* (Series B, No. 1, p. 20), a treaty engagement is not "a mere moral obligation". It "constitutes an obligation by which, in law, the parties to the Treaty are bound to one another". I find that again Schwarzenberger (*op. cit.*, p. 58) puts the essential point most aptly:

> "International relations", he says, "in a relatively high integrated world society would be at a standstill if the sovereign States of the world had no means of arriving at understandings *regarding matters within their exclusive domestic control.* Apart from rules of customary law, growing only imperceptibly over prolonged periods, *international conventions are the means by which such adjustments are achieved.*"

Again he says (p. 188) :

> "International treaties are the means by which States *undertake* obligations...."

The examples I have given illustrate these principles very effectively and show the chaos to which international relations would be reduced if the views put forward by the ex-enemy Governments were to prevail.

Before I come to my conclusion, I want to say a word on a subject which arises directly out of what I was saying a few moments ago. I am of course aware, and my Government is aware, that underlying the ex-enemy attitude there is probably a feeling, hinted at if not overtly expressed, that because the human rights clauses of the Peace Treaties are not reciprocal in character, this justifies the ex-enemy Governments (if not in actually studying to evade them) at any rate in representing the efforts of my Government and of other governments to secure their observance, as an attempt to interfere in the internal affairs of these countries and to keep them in some form of permanent subjection. Now, in fact, that would be nonsense, but nevertheless there may be something here that needs comment, because it is on some such lines that an attempt may be made to differentiate the case of the human rights clauses of the Peace Treaties from the reciprocal or mutual rights and obligations arising under ordinary bilateral and multilateral treaties. It will be evident to the Court, I think, that if this argument were to be admitted as valid, the result would be destructive of the whole force and obligatory character of treaties of peace, and it would become useless to try and put any formal end to a state of war by means of such treaties- and it is the usual procedure to put an end to a state of war by a peace treaty, wherever possible—since no finality would in fact have been reached, and everything could be reopened at any time of the plea of non-reciprocity. Of course, theoretically it might happen that a war which ended in the victory of neither side—in a sort of stalemate—might lead to a fully reciprocal treaty. In practice, such a thing seldom or never occurs. By their very nature and the circumstances in which they are made, treaties of peace usually contain a number of clauses of a unilateral or non-reciprocal character. But such treaties and clauses are not thereby juridically invalidated. On the contrary, the treaty remains the basis on which the state of war as a whole has been brought to an end, and it is binding and so is every clause in it. In this connexion, I am sure the Court took due note of the statements made yesterday by the Representative of the United States saying that the United States Senate might have had great difficulty in ratifying the Peace Treaties if they had not contained any human rights clauses. If in the case of the present Peace Treaties the allied Powers introduced these human rights clauses, it was presumably because they considered conditions in the countries concerned rendered this necessary as a basis for a true and lasting peace, and as part of the terms on which alone the Allies would be willing to enter into a treaty of peace. I regret to say events have shown that in taking this view the Allies were not far wrong.

That, Mr. President and Members of the Court, concludes my argument on the first two questions put to the Court, and I will now make my formal submissions. It is my understanding that the Court does not wish to hear any arguments on the third and fourth questions now, but that should circumstances arise in which these questions have to be answered there will be a further oral hearing for the purpose. On this assumption I shall say nothing about the third or fourth questions, but should the occasion arise, my Government will wish to make some observations on the subject in addition to those contained in our written statement.

I shall now conclude by presenting my formal submissions regarding the first two questions. They are as follows:

1. The Court is competent to give an advisory opinion in this case and should do so. The *Eastern Carelia* principle is inapplicable and the objections based on the alleged incompetence of the United Nations and its organs either do not arise or are unfounded.

2. There is a manifest dispute between the Government of the United Kingdom and each of the three ex-enemy Governments concerned, disclosed by the exchanges of diplomatic correspondence which are on record.

3. This dispute relates principally to the question whether the three Governments are or are not in breach of the human rights provisions of the relevant Peace Treaties. It also relates to a number of other matters arising on the Treaties, such as the relevance of the Treaty clauses for the suppression of Fascist organizations, the applicability of the exception of domestic jurisdiction, and the obligation to set up a commission under the Peace Treaty provisions for the settlement of disputes. On all these matters the United Kingdom Government and the ex-enemy Governments have taken up, and have evidenced in writing, totally opposed attitudes. There is therefore a dispute about both the interpretation and the execution of the Treaties.

4. The dispute is not one for which the Peace Treaties provide any other mode of settlement than that set out in the general disputes Article as quoted in paragraph 12 of the United Kingdom's written statement. It therefore falls to be settled under that article.

5. The dispute is not excluded from the scope of the disputes Article by any principle of domestic jurisdiction or of national sovereignty. These principles have no application to treaty obligations unless the Treaty itself so provides. The United Kingdom is asserting its own rights under the Peace Treaties and claiming the fulfilment towards itself of the Treaty Articles. This cannot constitute an interference with the domestic affairs or internal sovereignty of the ex-enemy countries.

6. There being a dispute which is subject to the provisions for settlement contained in the relevant disputes Article, and all the necessary preliminary conditions having been fulfilled as required by the article, and the necessary preliminary steps having been taken as detailed in the written and oral statements of the United Kingdom, and it being open to either party in these circumstances to request (as of right) a reference to a commission of the kind contemplated by the disputes Article, and the Government of the United Kingdom having formally requested such a reference, the three ex-enemy Governments are under a legal obligation to appoint their representatives to the appropriate commission.

Mr. President, it only remains for me to thank the Court for the great patience and consideration with which they have heard me.