

INTERNATIONAL COURT OF JUSTICEInterpretation of Peace Treaties with Bulgaria,
Hungary and Romania.

Statement by Mr. Benjamin V. Cohen (U.S.)

The Hague, 1st March, 1950.

On the second day of the public sitting in the advisory case concerning the interpretation of Peace Treaties with Bulgaria, Hungary and Romania, the Court heard a statement delivered on behalf of the United States of America by Mr. Benjamin V. COHEN.

In his statement, Mr. Cohen, - the first U.S. representative to appear before the Court - strongly upheld the right of the United Nations to concern itself with the observance of human rights in the three countries concerned, both under the provisions of the Charter and the Peace Treaties. The deep indignation, he said, that had been aroused throughout the world by reports of the suppression of human rights and fundamental freedoms in certain Balkan countries clearly showed a situation that was likely to impair the general welfare and friendly relations among nations. The future of the United Nations, he continued, may well depend upon its ability to promote respect for human rights and to develop effective procedures of peaceful settlement.

Mr. Cohen said that deliberately and not by accident had the States formerly allied with Germany been required to undertake, as an international obligation, to protect and safeguard the fundamental freedoms and human rights of their peoples. These States had solemnly and knowingly undertaken this obligation in Peace Treaties. In support of this Mr. Cohen quoted a statement by the former U.S. Secretary of State Byrnes, who testifying before the United States Senate Committee on Foreign Relations had said with respect to the ratification of the Peace Treaties:

"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."

Mr. Cohen revealed that diplomatic exchanges concerning human rights had taken place between The United States and the three States concerned long before the effective date of the Treaties of Peace. Already when the Bulgarian, Hungarian and Rumanian Governments were subject to the armistice regimes, the United States had 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, stating, inter alia:

"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."

and again:

"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."

Since ...

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 Romania to conform their policies to their newly assumed international obligations.

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 Romania 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 Governments of Bulgaria, Hungary and Romania 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.

The diplomatic efforts having proved a failure, the United States on 31 May, 1949 invoked the Treaty Articles providing for the settlement of such disputes by the Heads of Diplomatic Missions of the United Kingdom, Soviet Union and United States in Sofia, Budapest and Bucharest.

The United Kingdom expressed 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 fulfillment 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 USSR 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 fulfillment 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 a 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 Romania 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 Romania 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

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 disputed 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.

Jurisdiction of the Court.

Mr. Cohen then stated that in the view of the United States there was no doubt of the jurisdiction of the Court or of the propriety of the Court to exercise its jurisdiction in this matter.

The Charter (in Article 96) and the Statute of the Court (in Article 65) were explicit, he said, in conferring jurisdiction on the Court to give an advisory opinion at the request of the General Assembly on any legal question. For the making of such request by the Assembly the Charter and the Statute require neither unanimity nor the consent of States which may be specially concerned.

He pointed out that the Statute of the present Court clearly recognises the Charter 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, Mr. Cohen said. It is the constitution of the international community.

Mr. Cohen then quoted precedents to prove that the obligations respecting human rights which the Governments of Bulgaria, Hungary and Romania assumed under the Peace Treaties are not matters essentially within the domestic jurisdiction of those States. On the contrary, he said, 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 principle of international law which would deprive the 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.

Mr. ...

Mr. Cohen then continued to give evidence to show why in the opinion of the United States there are no reasons which should deter the Court from exercising its jurisdiction by answering the questions submitted by the General Assembly. He dealt particularly with the first and second question before the Court, and in conclusion urged the Court to give in its advisory opinion, an affirmative answer to both questions, namely that a dispute exists and that the Governments of Bulgaria, Hungary and Romania are under an obligation to carry out the Peace Treaty provisions for the settlement of such disputes; including the appointment of their representatives to the Treaty Commissions.
