DISSENTING OPINION OF JUDGE READ

I am unable to concur in the answer given by the Court to Question III, or with the reasons by which it is justified, and feel bound, with regret, to state the reasons for my dissent. As I am of the opinion that an affirmative answer should be given to Question III, it is also necessary for me to state the reasons which have led me to the conclusion that an affirmative answer should be given to Question IV.

Circumstances have now arisen in which it is necessary to deal with Questions III and IV. The Court is not called upon to pronounce upon the substance of the disputes which have arisen, but, in appreciating the juridical scope of the Disputes Articles, I cannot disregard the Articles in the Treaties in respect of which the disputes arose, or the attitudes which have been maintained by the parties to the disputes.

The importance of the maintenance of human rights and fundamental freedoms is emphasized by their inclusion in the purposes of the United Nations as set forth in Article 1 of the Charter, and by the central position taken by the Human Rights Articles of the Treaties of Peace.

It is inconceivable to me that the Allied and Associated Powers would have consented to the setting up of machinery for the settlement of disputes arising out of such important matters which could be rendered ineffective by the sole will of any one of the three Governments concerned, Bulgaria, Hungary and Romania. I am, therefore, inclined at the outset to the view that the Disputes Articles must be interpreted in a manner which will ensure their real effectiveness rather than a manner which would deprive them of all effectiveness.

The Questions which have been put to the Court have arisen out of a complicated network of disputes between certain of the Allied and Associated Powers and Bulgaria, Hungary and Romania. It is unnecessary to examine these disputes in detail. It is sufficient to note certain common factors.

They all involve specific charges of violations of the undertakings given in the Human Rights Articles of the Treaties of Peace to secure human rights and fundamental freedoms. They all involve denials of the charges and justification of the conduct complained of.

Throughout the controversy, the Powers which have made the charges have maintained a consistent attitude. They have stood for the defence and maintenance of the fundamental freedoms;

and they have been unremitting in their efforts to have the charges reviewed and decided by a judicial tribunal, the Treaty Commissions provided for in the Disputes Articles of the Peace Treaties.

The accused Governments have maintained an equally consistent attitude. They have denied the charges; they have denied the existence of the disputes; they have objected to the competence of this Court; they have refrained from appointing national representatives on the Treaty Commissions; they have been unremitting in their efforts to prevent the charges from being reviewed and decided by the judicial tribunals; but they have not at any time questioned the competence of Treaty Commissions, to which they have not appointed representatives, to review the charges and to make binding decisions in settlement of the disputes.

The legal issues which have been put to the Court must be considered in the light of these attitudes. The central issue is whether the provisions of the Peace Treaties should be construed as authorizing Bulgaria, Hungary and Romania to frustrate the operation of the Disputes Articles and to prevent judicial review of the charges and decision of the disputes, by the simple device of defaulting on their obligations under the Treaties in the matter of appointing their national representatives on the Treaty Commissions.

* * *

It will be convenient, before answering the Questions, to consider the special problem of the competence of a Treaty Commission composed of a representative of the government which has made the charges and a third member appointed by the Secretary-General, a problem which depends, not upon general rules of law, but upon the meaning which should be given to the Disputes Article.

The Disputes Article is an arbitration clause. It is not contained in a special agreement providing for arbitration of a particular case, but in a general treaty, the Treaty of Peace. It is designed to provide for the judicial settlement of any disputes arising under the Treaty (apart, of course, from special types of disputes for which a different procedure is provided). Accordingly, it is not open to the Court to give a narrow or restrictive interpretation of the Disputes Article.

The provisions of Article 92 of the Charter disclose the intention of the United Nations that continuity should be maintained between the Permanent Court of International Justice and this

Court. There can be no doubt that the United Nations intended continuity in jurisprudence, as well as in less important matters. While this does not make the decisions of the Permanent Court binding, in the sense in which decisions may be binding in common-law countries, it does make it necessary to treat them with the utmost respect, and to follow them unless there are compelling reasons for rejecting their authority. This is doubly true in matters of treaty interpretation, because draftsmen, in deciding upon the language to be used in a treaty provision, e.g., the Disputes Article, have constantly in mind the principles of interpretation as formulated and applied by the Permanent Court and by this Court. Failure to follow established precedents in the matter of treaty interpretation inevitably leads to the frustration of the intention of the parties.

The Permanent Court, when called upon to interpret arbitration clauses of widely varying types, with provisions for the settlement of international disputes, did not hesitate to adopt and apply broad and liberal interpretations, designed to make them workable and to give practical effect to the evident intention of the parties as shown by the provisions of the treaties in which the clauses were included. To ascertain their intention, the Permanent Court examined each treaty as a whole in order to learn its general purpose and object.

Series A No. 2, August 30th, 1924. Judgment. The Mavrommatis Palestine Concessions

Series B No. 12. November 21st, 1925. Advisory Opinion. Article 3, paragraph 2, of the Treaty of Lausanne (Mosul Boundary Case)

Series A No. 9. July 26th, 1927. Judgment. The Factory at Chorzów (Claim for Indemnity) (Jurisdiction)

Series B No. 16. August 28th, 1928. Advisory Opinion. Interpretation of the Greco-Turkish Agreement of December 1st, 1926 (Final Protocol, Article IV)

The precise point of interpretation, with which the Court is now concerned, did not arise in these cases, but the fundamental rules of construction, adopted and applied by the Permanent Court, can and should be adopted and applied by this Court in ascertaining the true meaning of the Disputes Article in the Treaty of Peace.

In addition to the cases in which the Permanent Court dealt with the interpretation of arbitration clauses, there were other important instances in which it adopted and applied the principle of effectiveness, and the same principle has been recognized and applied by this Court.

Series B Nos. 2 and 3. August 12th, 1922. Advisory Opinions. Competence of the International Labour Organization with respect to Agricultural Labour

Series B No. 6. September 10th, 1923. Advisory Opinion. German Settlers in Poland

Series B No. 7. September 15th, 1923. Advisory Opinion. Acquisition of Polish Nationality

Series B Nos. 8 and 9. December 6th, 1923, and September 4th, 1924. Advisory Opinions. (These Opinions, dealing with boundary questions on the Czechoslovak-Polish and on the Albanian frontiers, might, perhaps, have been included in the list of authorities which dealt with arbitration clauses.)

Series B No. 13. July 23rd, 1926. Advisory Opinion. Competence of the International Labour Organization to regulate, incidentally, the personal work of the Employer

Series A No. 22. August 19th, 1929. Order. Free Zones. (Cited, with approval, by this Court in the Corfu Channel Case (Merits), I.C.J. Reports 1949, at p. 24.)

The Corfu Channel Case (Merits), I.C.J. Reports 1949, p. 4

Reparations for injuries suffered in the Service of the United Nations. Advisory Opinion. I.C.J. Reports 1949, p. 174

The principle of international law applicable to the interpretation of treaties, which has been established by the series of authorities cited in this and in the preceding paragraph, was concisely and accurately stated by the Permanent Court in its Advisory Opinion, Series B, No. 7. The Court was dealing with the Polish Minorities Treaty. In considering an objection to the competence of the League of Nations, the Court refused to accept the Polish argument for a restrictive interpretation of the Treaty and stated, at page 16 :

> "If this were not the case, the value and sphere of application of the Treaty would be greatly diminished. But in the Advisory Opinion given with regard to the questions put concerning German Colonists in Poland, the Court has already expressed the view that *an interpretation which would deprive the Minorities Treaty of a great part of its value is inadmissible.* In the present case, it would be still less admissible, since it would be contrary to the actual terms of the Treaty, which lays down in Article 12 that the clauses preceding this Article, including therefore those contained in Article 4, are placed under the guarantee of the League of Nations." (Italics added.)

Professor Lauterpacht, in *The Development of International Law by the Permanent Court of International Justice*, made an exhaustive examination of the authorities as they stood at the date of publication, 1934, including most of those which are cited above, and a number of other relevant Judgments and Opinions of the Permanent Court. He records the result of this study at pages 69-70 :

> " .... The work of the Permanent Court has shown that alongside the fundamental principle of interpretation, namely, that effect is to be given to the intention of the parties, full use can be made of another hardly less important principle, namely, that the treaty must remain effective rather than ineffective. *Res magis valeat quam pereat.* It is a major principle, in the light of which the intention of the parties must always be interpreted, even to the extent of disregarding the letter of the instrument and of reading into it something which, on the face of it, it does not contain."

The principles established by these judgments and advisory opinions may be stated as follows :

(1) That "the treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense". (Series B, Nos. 2 and 3, p. 23.)

(2) "An interpretation which would deprive the .... Treaty of a great part of its value is inadmissible." (Series B, No. 7—the word omitted is "minorities".)

(3) Particular provisions should be interpreted in such a manner as to give effect to the general purposes and objects of the Treaty provided that "it does not involve doing violence to their terms". (I.C.J. Reports 1949, p. 24.)

* * *

The adoption and application of these principles or rules of construction make it necessary to undertake a three-fold task.

1st task

The examination of the provisions of the Peace Treaty as a whole with a view to ascertaining whether there is a general purpose or object disclosed by this examination which should influence or even control the interpretation of the Disputes Article.

2nd task

Consideration of a possible negative answer to Question IV with a view to ascertaining whether it would conflict with the general

purposes and objects of the Treaty, and whether it would deprive the Treaty of a great part of its value so as to be *inadmissible* in accordance with the second rule of construction.

3rd task

Consideration of a possible affirmative answer to Question IV with a view to ascertaining whether it would further the general purposes and objects of the Treaty, and whether it would *involve doing violence to the terms* of the Disputes Article so as to be excluded in accordance with the third rule of construction.

*

The first task involves an examination of the provisions of the Peace Treaty considered as a whole.

The Treaty with Hungary contains 37 Articles with substantive provisions:

Part	I	Frontiers of Hungary.
,,	II	Political Clauses.
,,	III	Military and Air Clauses.
,,	IV	Withdrawal of Allied Forces.
,,	V	Reparation and Restitution.
,,	VI	Economic Clauses.
,,	VII	Clause relating to the Danube.

Within these Parts, I to VII, there is a special procedure for settlement of disputes in Article 5 (2), applicable only to disputes arising under Article 5 (1); and a special procedure (in Article 35) for disputes arising in connexion with Articles 24, 25 and 26 and Annexes IV, V and VI.

Part VIII of the Treaty, "Final Clauses", contains Article 40, which is applicable to Articles 1 to 38 inclusive, excepting Articles 5, 24, 25, 26, 35 and 36. It is a clause providing for compulsory arbitration of all disputes "concerning the interpretation or execution of the present Treaty", other than those which arise under specifically excepted Articles referred to above.

This survey of the Peace Treaty discloses the close integration between the Disputes Article and the substantive provisions of the Treaty. It leads inescapably to two conclusions. In the first place, the text of the Disputes Article considered by itself shows a firm intention of the Parties to provide a workable compulsory jurisdiction to deal with disputes arising out of the substantive provisions of the Treaty. In the second place, that firm intention is re-inforced when Article 40 is read in relation to the Treaty as a whole.

*

This brings me to *the second task.* Would an interpretation leading to a negative answer to Question IV deprive the Treaty of a great part of its value—would it conflict with the general purposes and objects of the Treaty ?

The purposes and objects of the Treaty are disclosed by the action of the Parties. This is indeed a case in which actions speak louder than words. The Parties were not content to leave "freedom" to depend on legal obligation alone. They provided a regime of arbitration, the Disputes Article. The Disputes Article was, in form, reciprocal. However, the obligations of the Allied and Associated Powers were executed, whilst the undertakings of the Governments of Bulgaria, Hungary and Romania were largely executory ; so that in substance, if not in form, this Article was obviously included as a guarantee or sanction to ensure performance by them of their undertakings and other obligations arising under provisions of the Treaty. It is unthinkable that the Parties, when they drafted this Article and included it in the Treaty, intended to forge a *brutum fulmen,* a provision for judicial review and decision dependent for its effect upon the momentary whim or interest of a defaulting party.

Above all, when the Parties used the expression—*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, etc.—they meant *shall* and not *may.* They meant *at the request of either party ;* and not *at the request of either party provided that the other party was willing to cooperate in the reference.*

In the entire history of the Permanent Court, there is no instance in which an argument was advanced that went so far in depriving a treaty of a great part of its value, or in frustrating its general purposes and objects, as the contention necessarily involved in a negative answer to Question IV. A negative answer would destroy the Disputes Article as an effective guarantee of the substantive provisions of the Treaty : it would render largely nugatory the undertakings given to secure the enjoyment of human rights and fundamental freedoms. It would not merely prevent judicial review of the specific charges. It would give rise to a position in which the three Governments would no longer be subject to effective control under the provisions of the Disputes Articles.

A possible objection might be raised to the establishment of a Treaty Commission consisting of the third member and a national representative, in the case of default by the other party to the

dispute. It might be suggested that the Commission would be unable to perform its task if the defaulting government refused to co-operate. There is no reason for assuming that governments now in default would continue to default if faced with appointments by the Secretary-General. There is certainly no reason for assuming that any of the governments would refrain from exercising its duty and privilege of naming a national representative in that event. However, even in the event of continued default, there is no justification for assuming that the governments which have made the charges will not be able to present sufficient evidence to the Commission to justify decision.

In these circumstances I am compelled to conclude that an interpretation leading to a negative answer to Question IV would deprive the Treaties of Peace of a great part of their value, and that it would conflict with their general purposes and objects. In accordance with the principles of international law established in the cases cited above, I am bound to reject this interpretation as inadmissible.

* * *

This brings me to *the third task*—the consideration of a possible affirmative answer to Question IV with a view to ascertaining whether it would further the general purposes and objects of the Treaty, and whether it would involve doing violence to the terms of the Disputes Article so as to be excluded in accordance with the third rule of construction referred to above.

The first aspect of this task presents no problem. In view of the considerations set forth above it is obvious that an affirmative answer to Question IV would further the general purposes and objects of the Treaty.

In the cases which have been cited above the Permanent Court went a very long distance by way of interpretation to give effect to the principle of effectiveness. It is impossible to apply the rules which govern resort to preparatory work in the interpretation of treaties to the present problem. The Permanent Court has always recognized that the application of the principle of effectiveness is subject to different considerations. It is, however, necessary to admit that there is no instance in which the Permanent Court intimated that it would apply the principle of effectiveness if application involved doing violence to the terms of the treaty provisions under consideration.

Accordingly, it is necessary to give close consideration to the text of the Disputes Article which reads as follows :

"1. .... 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."

I have omitted the first sentence in paragraph 1 because it refers to conditions which have already been satisfied, and which are not directly relevant to the present phase of this Question.

In construing this Article, it will be observed at the outset that it bears the hall-marks of a compulsory arbitration clause. When it provides that any such dispute *shall be referred at the request of either party to the dispute to a Commission,* it plainly indicates an intention of the Parties to the Treaty to establish a regime of compulsory arbitration. The dispute is to be referred 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. In using the expression "a third member" it seems to be clear that the parties had in mind not the chronological order of appointment, but a third member in the sense that that member was to be "additional to and distinct from two others already known or mentioned" (Shorter Oxford English Dictionary, Volume II, p. 2174), or in other words, additional to the provision for party representation. The last sentence of the first paragraph provides for the contingency which might arise in the event of failure of the parties to agree upon the "third member", and gives authority to the Secretary-General at the request of either party to make an appointment.

The second paragraph made special provision for the situation which might arise if both parties to the dispute exercised the right under the Treaty to have representatives on the Treaty Commission. In such a contingency it was necessary to provide for a majority decision. There was no need to make provision for the situation which would arise if one or both parties to the dispute waived the privilege of representation on the Commission.

It is necessary to make special reference to the expression in the text "a Commission composed of one representative of each party and a third member, etc." The Parties to the Treaty did not state that the Commission was to be a three-member tribunal, but it is possible to construe this expression as indicating by implication the intention of the parties that the Commission should be a three-member tribunal. It is also possible to construe this expression as indicating the intention of the Parties to create a Commission on which each of the parties to a dispute should have the right or privilege, or even duty, to appoint a representative ; but as not requiring that the Commission should necessarily consist of three members, in the case of waiver by a party of the exercice of the right or privilege thus conferred or its failure to do its duty. The problem of interpretation with which the Court is confronted is a choice between two possible constructions, neither of which does violence to the language of the Treaty and both of which are based upon inferences drawn from the expressions actually used in the text.

In these circumstances, it seems to be clear that the Court is not precluded from adopting either of the foregoing interpretations by the third rule of construction which is set forth above.

This view is strongly supported by another consideration. It is noteworthy that the Parties to the Treaty made express provision to prevent the general purposes and objects of the Disputes Clause from being frustrated by failure of the parties to the dispute to agree upon the selection of the third member. They provided for appointment by the Secretary-General. On the other hand, they made no express provision for the contingency which has actually arisen, of attempted frustration of the purposes and objects of the Treaty by failure of one party to the dispute to appoint its representative on the Treaty Commission. There is a gap or *lacuna* in the Disputes Article. I am not suggesting that this was due to oversight on the part of those who were responsible for the drafting of the Treaty of Peace. They were undoubtedly familiar with the principles of international law as developed and applied by the Permanent Court, and were justified in assuming that the Disputes Article would be interpreted and applied in accordance with those principles. In the present proceedings the Court is faced with the problem of dealing with this gap or *lacuna* in the Treaty. It is the problem of dealing with a contingency for which the Parties have made no express provision, and which can be solved only by judicial interpretation with a view to giving effect to the intention of the Parties as disclosed by legal implication based upon the terms and expressions actually used.

Two possible solutions need to be considered in turn.

The first possible solution is based upon a reasonable construction of the text of the Disputes Article in conformity with the principles of international law, and with the clearly indicated intention and purpose of the Parties to the Treaty. Following this construction the provisions for representation of the parties to the dispute would be construed as intended to confer on each party a right or privilege which it could exercise or waive. In the present instance, the government in default, by failing to appoint its representative, has clearly waived its right or privilege under the Treaty and defaulted in the performance of its duty——although, of course, it would be open to that Government at any time to withdraw its waiver to comply with its obligations under the Treaty and to make an appointment—but no party to a treaty can destroy the effect of the treaty itself by its own default or by its failure to exercise a right or a privilege. In the present instance, that government could not by such an omission prevent the Treaty Commission from performing its allotted task.

The second possible solution presents much more difficulty. It involves the filling of the gap by a process of judicial interpretation in such a manner as to establish by implication an "escape" or "escalator" clause whereby a party to a dispute can, by failure to exercise its right and by disregarding its Treaty obligation, find an easy way out from the regime of compulsory arbitration. There have been many instances in Treaties, especially in those dealing with the limitation of armaments, in which express provision has been made for "escape" or "escalator" clauses. They have always been devised to protect a party acting in good faith from being prejudiced by the default of a party in bad faith. There is none in modern treaty practice in which an escape clause has been established, based on implication; and there is certainly no instance of either an implied or express escape clause made available only to those Parties to the Treaty which have defaulted in their Treaty obligations.

The considerations which I have disclosed above in dealing with the first and second tasks lead me to reject the second solution.

* * *

There is a further consideration. There have been a great many arbitration clauses included in treaties in the course of the last century and a half, and no recorded instance has been drawn to the attention of the Court in which a party to a dispute has sought to evade arbitration by the comparatively simple device

of refraining from appointing its national representative. International practice has treated these provisions as conferring rights or privileges upon the parties to the dispute which they would refrain from exercising at their peril—the peril of being confronted with an arbitral decision by a tribunal on which they had no representative. The adoption of the second solution referred to above would not merely frustrate the intentions of the Parties as clearly indicated in the Treaty of Peace, it would go directly contrary to international usage in the matter of arbitration as it has been developed since the Jay Treaty of 1794. It is noteworthy that neither the Members of the United Nations, nor the three non-member States concerned have placed before the Court the contention that it is open to a party to the dispute to prevent its arbitration by the expedient of refraining from appointing a representative on the Commission. There are 61 States "entitled to appear before the Court", all of which have the right to present written statements or observations under Article 66 of the Statute. Eight of these States have availed themselves of this right: but not one of them has stood for this position. The Governments of Bulgaria, Hungary and Romania have presented observations, and have not made this contention. The fact that no State has adopted this position is the strongest possible confirmation of the international usage or practice in matters of arbitration which is set forth above.

In the Written Observations submitted by the United Kingdom Government, in the Written Statement of the United States Government, and in the course of the very able and helpful arguments presented to the Court by Mr. Cohen and Mr. Fitzmaurice, the attention of the Court has been directed to a long line of precedents in which it has been established that a party to a dispute, under an arbitration clause, cannot prevent the completion of the arbitration and the rendering of a binding decision by the device of withdrawing its national representative from the tribunal.

I am of the opinion that the principle established by these precedents is equally applicable to the case where a party to a dispute acts in bad faith from the outset, and attempts to use the device of defaulting on its treaty obligation to appoint its national representative on the tribunal in order to prevent the provisions of the arbitration clause from taking effect.

There are three phases in the life of an arbitral tribunal. The first phase may be referred to as the constitution of the tribunal. At this stage the tribunal may deal with matters of some import, such as procedure. However, it consists largely of administrative and protocol matters: emoluments; forum; enrolment on the local diplomatic list; exchange of calling cards; and even less weighty matters. The second phase is that in which

the tribunal hears the evidence and arguments. The third phase includes deliberation and judgment. I do not need to emphasize the relative importance of the second and third phases, as compared with the first. I have suggested that the principle is equally applicable to default at the outset. As a matter of fact, the case for applying the principle to default at the outset is much stronger. It is much more difficult to construe an arbitration clause as indicating the intention of the parties that a tribunal consisting of the third member and the representative of one party can hear the evidence and give a decision, than it is to construe it as indicating their intention that a decision to invite the local mayor to give an address of welcome at the opening session could be made in the absence of a national representative.

If a Treaty Commission—which, as the result of the withdrawal of a national representative, consists of the third member and the representative of the party which is not in default—is competent to hear the evidence and render a decision, it means that a Commission of two members is a "commission" within the meaning of paragraph 2 of the Disputes Article. It follows that such a Treaty Commission consisting of two members must also be a "commission" within the meaning of paragraph 1 of the Disputes Article. The whole foundation of the contention that only a so-called three-member Commission can be a "commission" within the meaning of the Disputes Article falls to the ground.

*

Another consideration supports an affirmative answer. The Court has not been asked for its Opinion on an academic question. The recitals, in the preamble of the General Assembly's Resolution of October 22nd, 1949, clearly indicate that the answers to the Questions must be directly related to the actual disputes. The answers must be applied to the complicated network of disputes to which I have referred. It is necessary to deal with the question in the same way as if it arose in contested proceedings between these two parties. The General Assembly is not interested in the academic question of the competence of a Treaty Commission composed of members appointed by the United States Government and by the Secretary-General in circumstances which do not exist. It wants the same answer as would be given if the same question had been included in special agreements concluded between the parties to the disputes.

Accordingly, I think that I am bound to take into account the fact that, in the existing circumstances and under existing international law, a defaulting government could not object to the competence of such a tribunal. If it raised the objection before such a Treaty Commission, it would be bound to apply existing international law and refuse to let such a government profit from its own wrong. If it raised the objection in proceedings before this Court, it would be necessary for the International Court of Justice, which is not a law-making organ, to apply existing legal principles and recognize that it was estopped from alleging its own treaty violation in support of its own contention. It is impossible for me, acting as a judge in advisory procedure, to raise this objection, which the defaulting government itself would be prevented from raising in any proceedings which recognized the principles of justice.

There can be no doubt as to the law on this point. It was settled by the Permanent Court in Judgment No. 8 : Series A, No. 9. The Factory at Chorzów (Claim for Indemnity) (Jurisdiction), at page 31. No reasons have been submitted, in the Written Statements or Observations or during the oral argument, on which any distinction in principle between the two cases could be based or which would justify the rejection of the legal principles adopted and applied in that case.

*

Still another consideration can be advanced, in support of an affirmative answer to Question IV, or as a compelling reason for rejecting a negative answer. In 1758, Vattel formulated a rule or principle of interpretation in the following words :

> "*Any interpretation that leads to an absurdity should be rejected :* or, in other words, we cannot give to a deed a sense that leads to an absurdity, but we must interpret it so as to avoid the absurdity...." (*The Law of Nations or the Principles of Natural Law.* Text of 1758 : Book II : s. 282.)

This rule has been regarded as authoritative by the foreign offices of the world and by international lawyers and tribunals for one hundred and ninety-two years.

The authority of the principle, which is embodied in Vattel's formula, has been recognized as recently as March 3rd, 1950, by this Court. In the case, Competence of the Assembly regarding admission to the United Nations, Advisory Opinion : I.C.J. Reports 1950, at page 8, it is stated :

> " .... The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the

provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words. As the Permanent Court said in the case concerning the *Polish Postal Service in Danzig* (P.C.I.J., Series B, No. 11, p. 39):

> '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.' "

It has been established above that a negative answer to Question IV would lead to the establishment, by the process of judicial interpretation, of an escape clause, available only to treaty violators, which would enable a defaulting Party to the Treaty of Peace to destroy the effectiveness of the Disputes Article and to disregard with impunity most of its undertakings under the substantive provisions, and, in particular, to render largely nugatory the guarantees for securing human rights and fundamental freedoms.

I am firmly of the opinion that I am bound, by the terms of Article 38 of the Statute and in accordance with the views of this Court, as set forth in the case cited above, to reject a negative answer which would "lead to an unreasonable result", and to give an affirmative answer to Question IV.

* * *

In the light of the foregoing considerations, it is necessary to deal with Question III, which reads as follows:

"III. *If one party fails to appoint a representative to a Treaty Commission under the Treaties of Peace with Bulgaria, Hungary and Romania 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?*"

The Disputes Article (cited above) uses the expression "third member". I have already referred to my reasons for thinking that the Parties did not mean "third" in the order of chronological appointment. They meant "third" in the sense in which lawyers speak of "third parties" or "third party procedure", or in the sense in which international lawyers use the expressions "third member" or "third State" in international matters, including arbitration practice. This view is confirmed by the use of the expression "third country". It would be impossible to attribute numerical significance to "third" in the latter expression. In a dispute, another Party to the Treaty would be a "third country" if the word "third" is construed as having its numerical and primary meaning. I have no doubt that the Parties intended to restrict the Secretary-General's authority to the appointment of nationals of countries which were not Parties to the Treaty and which would therefore be disinterested. Accordingly, I am of the opinion that the expressions "third member" and "third country" are a concise and convenient way of referring to members of countries which are neutral or disinterested in the disputes.

The Court cannot overlook the significance of the fact that the provisions of the Disputes Article prescribe only one condition to be satisfied before the Secretary-General has authority to appoint the third member. That condition is stated in the following words: "Should the two parties fail to agree within a period of one month upon the appointment of the third member...." When the Parties have, in plain language, set forth the condition, the happening of which must precede the exercise of an authority, only the strongest and most compelling reasons would justify the establishment of an additional condition by the process of judicial interpretation. There are no strong and compelling reasons. On the contrary, I have set forth above the strongest and most compelling reasons for rejecting such a judicial interpretation.

Accordingly, I am of the opinion that an affirmative answer must be given to the third question.

* * *

Question IV reads as follows:

"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 ?"*

I have already given sufficient reasons for my conclusion that an affirmative answer must be given to the fourth question.

(Signed) J. E. READ.
