COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

INTERPRÉTATION DES TRAITÉS DE PAIX CONCLUS AVEC LA BULGARIE, LA HONGRIE ET LA ROUMANIE

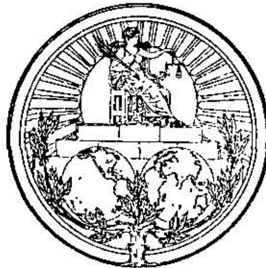
AVIS CONSULTATIFS DES 30 MARS ET 18 JUILLET 1950

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

INTERPRETATION OF PEACE TREATIES WITH BULGARIA, HUNGARY AND ROMANIA

ADVISORY OPINIONS OF MARCH 30th AND JULY 18th, 1950



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SECTION C.—WRITTEN STATEMENTS

PREMIÈRE PHASE
FIRST PHASE

1. WRITTEN STATEMENT SUBMITTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA UNDER ARTICLE 66 OF THE STATUTE OF THE COURT AND THE ORDER OF THE COURT DATED DECEMBER[1] 7, 1949

I. PRELIMINARY

A. *Initial Resolution of the General Assembly*

The General Assembly of the United Nations, by its Resolution approved April 30, 1949, referred to the fact that one of the purposes of the United Nations is the promotion and encouragement of respect for human rights and fundamental freedoms for all, and to the fact that the Governments of Bulgaria and Hungary had been accused, before the General Assembly, of acts contrary to the purposes of the United Nations and to their obligations under the Treaties of Peace to ensure to all persons within their respective jurisdictions the enjoyment of human rights and fundamental freedoms, and expressed deep concern at these "grave accusations". It was noted therein, "with satisfaction", that steps had been taken by several States signatories to the Treaties of Peace with Bulgaria and Hungary regarding these accusations and 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. The General Assembly by the Resolution further most urgently drew the attention of the Governments of Bulgaria and Hungary to their obligations under the Treaties of Peace, including their obligation to co-operate in the settlement of these questions ; and decided to retain the question on the agenda of the Fourth Session of the General Assembly. (Resolution 272 (III), April 30, 1949.)

B. *The "human-rights" Articles of the Treaties of Peace*

Article 2 of the Treaty of Peace with Bulgaria reads :

"Bulgaria shall take all measures necessary to secure to all persons under Bulgarian jurisdiction, without distinction as to

[1] *Should be November. [Note by the Registrar.]*

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."

Article 2 of the Treaty of Peace 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 of Peace with Rumania contains provisions identical with those of Article 2 of the Treaty with Hungary [1].

C. *The "disputes" Articles of the Treaties of Peace*

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) 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 in the Treaty of Peace with Hungary, 37 in the Treaty of Peace with Rumania [2]],

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[1] On June 21, 1946, the Economic and Social Council of the United Nations had adopted a Resolution containing the following paragraph:

"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.)

[2] Article 35 of the Treaty of Peace with Bulgaria (Article 39 of the Treaty of Peace with Hungary, Article 37 of the Treaty of Peace with Rumania) reads:

"1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Heads of the Diplomatic Missions in Sofia [Budapest, Bucharest] of the Soviet Union, the United Kingdom and the United States of America, acting in concert, will represent the Allied and Associated Powers in dealing with the Bulgarian Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Three Heads of Mission will give the Bulgarian [Hungarian, Rumanian] Government such guidance, technical advice and clarification as

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."

II. Questions before the Court

A. *Resolution of the General Assembly requesting advisory opinion*

By a Resolution approved October 22, 1949, the General Assembly, at its Fourth Session, referred to its Resolution of April 30, 1949, discussed *ante*, wherein the attention of the Governments of Bulgaria and Hungary were drawn to their obligations under the Treaties of Peace, including the obligation to co-operate in the settlement of the question ; pointed out that certain Allied and Associated Powers Parties to the Treaties of Peace had charged Bulgaria, Hungary and Rumania with violations thereof and had called upon the Governments of those countries to take remedial measures ; stated that those Governments had rejected the charges made ; stated that the Governments of the Allied and Associated Powers concerned had sought unsuccessfully to refer the question of Treaty violations to the Heads of Missions in Sofia, Budapest and Bucharest, in pursuance of provisions of the Treaties ; and stated that those Governments had called upon the Governments of Bulgaria, Hungary and Rumania to join in appointing Commissions pursuant to the provisions of the Treaties but that they refused to appoint their representatives.

Finally, the General Assembly by its Resolution of October 22 expressed continuing interest in, and increased concern at, the grave accusations made against Bulgaria, Hungary and Rumania ; recorded its opinion that the refusal of those Governments to co-operate in its efforts to examine the grave charges with regard to the observance of human rights and fundamental freedoms justified the concern of the General Assembly about the state of affairs prevailing in Bulgaria, Hungary and Rumania, and stated that

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may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Bulgarian [Hungarian, Rumanian] Government shall afford the said Three Heads of Mission all necessary information and any assistance which they may require in the fulfilment of the tasks devolving on them under the present Treaty."

it had decided to submit the following questions to the International Court of Justice for advisory opinion :

" 'I. Do the diplomatic exchanges between Bulgaria, Hungary and Romania 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 Romania, disclose disputes subject to the provisions for the settlement of disputes contained in Articles 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 Romania ?'

In the event of an affirmative reply to question I :

'II. Are the Governments of Bulgaria, Hungary and Romania 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 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 ?'

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 ?' " (Resolution, October 22, 1949, doc. A/1043.)

B. *Initial questions to be answered*

Question I is the first question to be answered by the Court, and in "the event of an affirmative reply to question I", question II is to be answered.

The Government of the United States does not submit a statement on questions III and IV because the General Assembly Resolution of October 22, 1949, contemplates that these latter questions shall be answered only if replies to questions I and II are in the affirmative and the Governments concerned do not appoint their representatives to the Treaty Commissions.

It is not to be presumed that in the event the Court gives an opinion in the affirmative on question II, the Parties to the Treaties

of Peace with Bulgaria, Hungary, and Rumania will fail, within the stipulated period, to name their representatives to the Treaty Commissions.

Accordingly, the Government of the United States of America limits this statement to a consideration of its position with respect to questions I and II of the General Assembly's Resolution.

C. *Merits of dispute or sufficiency of charges not before the Court*

It is the view of the Government of the United States that the substantive aspects of any dispute as to the interpretation and execution of the Treaties of Peace, between the Parties thereto, are by the express terms of those Treaties within the jurisdiction of, and to be decided by, the respective Commissions envisaged by the Treaties. The Parties to the Treaties have agreed to use the procedures expressly provided in the Treaties for the settlement of disputes "concerning the interpretation or execution" of the Treaties. The Resolution of the General Assembly of October 22, 1949, does not call upon the Court to pass upon the merits of the dispute or the sufficiency of the complaints or answers. Rather, by the Resolution the Court is requested to give an advisory opinion on (1) whether 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 human-rights provisions of the respective Treaties "disclose disputes subject to the provisions for settlement of disputes" contained in the respective Treaties; and, in the event the answer to question (1) is in the affirmative, (2) whether the Governments of Bulgaria, Hungary, and Rumania are obligated to carry out those articles of the respective Treaties, including the provisions for the appointment of their representatives to the Treaty Commissions.

Inasmuch as the Court's replies to the questions before it under the Resolution do not include the merits or any investigation into the facts, the difficulties which deterred the Court from giving an advisory opinion on the *Status of Eastern Carelia* are not here present. (Advisory Opinion, July 23, 1923, Series B., No. 5.) In that instance the Council of the League of Nations had, on April 21, 1923, by Resolution, requested the Permanent Court of International Justice to give an advisory opinion on a question involving the merits of a dispute between Finland and Russia (not then a member of the League of Nations) as to the effect on the autonomy of Eastern Carelia of a Declaration annexed to the Treaty of Dorpat, signed October 14th, 1920. In declining to pass upon this substantive question, the Court stated:

> " .... 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 inquiry, 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 inquiry 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.

.... 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." (*Ibid.* 28-29.)

Not only is the Court not asked to pass on the merits of the dispute or the truth of the charges made, but it is also not asked to determine whether the charges made, if established, would be sufficient to justify a Treaty Commission in finding a violation of the Treaty. All the Court is asked to determine is whether the diplomatic negotiations disclose a dispute which may properly be brought before a Treaty Commission. It is for the Commission to determine the sufficiency of the charges made and what, if any, further consideration they merit.

D. *Diplomatic exchanges between the Government of the United States and the Governments of Bulgaria, Hungary and Rumania disclose important and substantial disputes*

On September 20, 1949, the United States Representative to the United Nations transmitted to the Secretary-General of the United Nations copies of the notes transmitted through the diplomatic channel between the Government of the United States, as one of the Allied and Associated Powers party to the Treaties of Peace with Bulgaria, Hungary and Rumania, and the Governments of those countries. In its notes, the Government of the United States charged those Governments with violations of the "human-rights" Articles of the respective Treaties of Peace and invoked the "disputes" Articles of these Treaties. (U.N. Doc. A/985, September 23, 1949: Doc. A/985/Corr. 1, September 27, 1949.) The Secretary-General was requested by the General Assembly in its Resolution of October 22, 1949, referred to above, to make available to the International Court of Justice the relevant exchanges of diplomatic correspondence and the records of the General Assembly proceedings on this question.

On April 2, 1949, the Legation of the United States in Sofia, acting under instruction of the Government of the United States, as a Party to the Treaty of Peace, presented a note to the Bulgarian Foreign Office [3] formally charging the Government of Bulgaria with having repeatedly violated Article 2 of the Treaty of Peace, quoted *ante*, by "privative measures and oppressive acts" (Doc. A/985, Annex 1, p. 24*); called upon the Bulgarian Government to adopt prompt remedial measures in respect of the violations; and requested that Government to specify the steps it was prepared to take in implementing fully the terms of Article 2. As illustrative of the violations by the Bulgarian Government of the rights assured under Article 2 of the Treaty, there was pointed out in the note of the United States the fact that—

[1.] "Through the exercise of police power the Bulgarian Government has deprived large numbers of its citizens of their basic human rights, assured to them under the Treaty of Peace. These deprivations have been manifested by arbitrary arrests, systematic perversion of the judicial process, and the prolonged detention in prisons and camps, without public trial, of persons whose views are opposed to those of the régime."

[2.] "Similarly, the Bulgarian Government has denied to persons living under its jurisdiction, as individuals and as organized groups including democratic political parties, the fundamental freedoms of political opinion and of public meeting. It has dissolved the National Agrarian Union, the Bulgarian Socialist Party and other groups, and has imprisoned many of their leaders. With the Treaty of Peace barely in effect and in the face of world opinion, the Bulgarian Government ordered the execution of Nikola Petkov, National Agrarian Union leader, who dared to express democratic political opinion which did not correspond to those of the Bulgarian Government. Proceedings were instituted against those deputies who did not agree with its policies, with the result that no vestige of parliamentary opposition now remains, an illustration of the effective denial of freedom of political opinion in Bulgaria."

[3.] "By restrictions on the press and on other publications, the Bulgarian Government has denied to persons under its jurisdiction the freedom of expression guaranteed to them under the Treaty of Peace. By laws, administrative acts, and the use of force and intimidation on the part of its officials, the Bulgarian Government has made it impossible for individual citizens openly to express views not in conformity to those officially prescribed. Freedom of the press does not exist in Bulgaria."

[4.] "By legislation, by the acts of its officials, and by 'trials' of religious leaders, the Bulgarian Government has acted in contravention of the express provisions of the Treaty of Peace in

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[3] At the time of the delivery of the note of April 2, 1949, the Bulgarian Government was informed in writing that the Canadian Government, while not in a position to make representations based on the Treaty of Peace, had requested that the Bulgarian Government be informed of the identity of Canadian views with those of the United States. (Canada is not a party to the Treaty.)

* These pages refer to the present volume.

respect of freedom of worship. Recent measures directed against the Protestant denominations in Bulgaria, for example, are clearly incompatible with the Bulgarian Government's obligation to secure freedom of religious worship to all persons under its jurisdiction."

In the note the United States charged Bulgaria not only with full responsibility for acts committed "since the effective date of the Treaty of Peace which are in contravention of Article 2" of the Treaty, but also with "failure to redress the consequences of acts committed prior to that date which have continued to prejudice the enjoyment of human rights and of the fundamental freedoms".

It was pointed out in the note that the United States had previously drawn the attention of the Bulgarian authorities on appropriate occasions to its flagrant conduct in violation of Article 2 of the Treaty, but that the Bulgarian Government had failed to modify its conduct.

On April 2, 1949, the Legation of the United States in Budapest, acting under instructions of the Government of the United States, as a Party to the Treaty of Peace, presented a note to the Hungarian Foreign Office [4] formally charging the Government of Hungary with having "deliberately and systematically" violated Article 2 of the Treaty of Peace, quoted *ante*, by denying to the Hungarian people by "privative measures and oppressive acts" the rights and freedoms assured under the Article. (Doc. A/985, Annex 2, p. 26.) The Government of the United States, in the note, called upon the Hungarian Government to adopt prompt remedial measures in respect of the violations and requested the Hungarian Government to specify the steps which it was prepared to take in implementing fully the terms of Article 2. In illustration of the violations by the Hungarian Government of the rights assured under Article 2 of the Treaty, there was pointed out in the note of the United States the fact that—

[1.] ".... Through arbitrary exercise of police power and perversion of judicial process, the Hungarian Government and its agencies have violated the rights of citizens, as free men, to life and liberty."

[2.] ".... Denial of freedom of political opinion is complete in Hungary. Democratic political parties which held substantial mandates from the people have been through the Government's initiative successively purged, silenced in Parliament, fragmentized and dissolved. To enforce rigid political conformity the Hungarian Government and the Communist Party which controls it have established a vast and insidious network of police and other

[4] At the time of the delivery of the note of April 2, 1949, because of the absence of direct diplomatic relations between Canada and Hungary, the Hungarian Government was informed in writing that the Canadian Government had requested the Government of the United States to inform the Hungarian Government that it associated itself with the contents of the United States note.

agents who observe, report on, and seek to control the private opinions, associations and activities of its citizens."

[3.] "The Hungarian Government, despite the provisions of the Treaty of Peace, has circumscribed freedom of expression. Freedom of press and publication does not exist. Basic decrees pertaining to the press are restrictive in character and are so interpreted in practice. No substantive criticism of the Government of the Communist Party is permitted. Government control of printing establishments and of the distribution of newsprint has been exercised to deny freedom of expression to individuals or groups whose political opinions are at variance with those of the Government. In the field of reporting, absence of formal censorship has not obscured the record of the Hungarian Government in excluding or expelling foreign correspondents who have written despatches critical of the regime or in intimidating local correspondents into writing only what is acceptable or favorable to the régime."

[4.] "Freedom of public meeting on political matters has been regularly denied to all except Communist groups and their collaborators. In the case of religious meetings, on various occasions attendance at such gatherings has been obstructed and the principals subjected to harassment. The Hungarian Government, moreover, has pursued policies detrimental to freedom of religious worship."

[5]" .... It has sought by coercive measures to undermine the influence of the Churches and of religious leaders and to restrict their legitimate functions. By arbitrary and unjustified proceedings against religious leaders on fabricated grounds, as in the cases of Cardinal Mindszenty and Lutheran Bishop Ordass, the Hungarian Government has attempted to force the submission of independent Church leaders and to bring about their replacement with collaborators subservient to the Communist Party and its program. Such measures constitute violations of the freedom of religious worship guaranteed by the Treaty of Peace."

In the note the United States charged Hungary not only with full responsibility for acts committed "since the effective date of the Treaty of Peace which are in contravention of Article 2", but also with failure to redress the consequences of acts committed prior to that date "which have continued to prejudice" the enjoyment of human rights and fundamental freedoms.

It was pointed out in the note that previously the United States had drawn the attention of the Hungarian authorities on appropriate occasions to Hungary's flagrant conduct in violation of Article 2 of the Treaty but that the Hungarian Government had failed to modify its conduct.

Article 3 of the Treaty of Peace between the Allied and Associated Powers and Rumania, which entered into force on September 15, 1947, contains provisions applicable to Rumania identical with those contained in Article 2 of the Treaty of Peace between the Allied and Associated Powers and Bulgaria, and quoted *ante*.

On April 2, 1949, the Legation of the United States in Bucharest, acting under instruction of the Government of the United States, as a Party to the Treaty of Peace, presented a note to the Rumanian Foreign Office [5] formally charging the Government of Rumania with having repeatedly violated Article 3 of the Treaty of Peace by "deliberately and systematically" denying to the Rumanian people, "by means of privative measures and oppressive acts", the rights and freedoms assured to them under Article 3. (Doc. A/985, Annex 3, p. 28.) As illustrative of Rumanian violations of Article 3, it was pointed out in the note that—

> [1.] "In violation of freedom of political opinion assured by the Treaty of Peace, the Rumanian Government and the minority Communist Party which controls it disrupted, silenced and outlawed democratic political parties and deprived democratic leaders of their liberty. To this end, the Rumanian Government employed methods of intimidation and perversions of the judicial process. The inequities of these actions, as exemplified by the 'trial' and condemnation to life imprisonment of Iuliu Maniu, President of the National Peasant Party, and other leaders were recited by the United States Government in the Legation's note No. 61 of 2 February 1948. Moreover, large numbers of Rumanian citizens have been seized and held for long periods without public trial."

> [2.] "By laws, decrees and administrative measures as well as by extra-legal acts of organizations affiliated with the Government and the Communist Party, the Rumanian Government has stifled all expression of political opinion at variance with its own. Freedom of press and publication, guaranteed by the Treaty of Peace, does not exist in Rumania. No substantive criticism of the Government is permitted. The Rumanian Government has taken control of printing establishments and has suppressed all publications which are not responsive to its direction or which do not serve the purposes of the Communist Party."

> [3.] "Despite the express provision of the Treaty of Peace, only Communist and Communist-approved organizations are able in practice to hold public meetings. In view of the threat of forcible intervention and reprisals by the Government or by the Communist Party, other groups have not attempted to hold such meetings."

> [4.] "The Rumanian Government has likewise abridged freedom of religious worship, guaranteed under Article 3 of the Treaty of Peace, by legislation and by other measures which effectively deny such freedom. It has assumed extensive control over the practice of religion, including the application of political tests, which is incompatible with freedom of worship. These powers have been used in at least one instance to destroy by Government decree a major religious body and to transfer its property to the State."

[5] At the time of the delivery of the note of April 2, 1949, because of the absence of direct diplomatic relations between Canada and Rumania, the Rumanian Government was informed in writing that the Canadian Government had requested the Government of the United States to inform the Rumanian Government that it associated itself with the contents of the United States note.

Here again the Government of the United States charged Rumania not only with full responsibility for acts committed "since the effective date of the Treaty of Peace which are in contravention of Article 3, but also for its failure to redress the consequences of acts committed prior to that date which have continued to prejudice the enjoyment of human rights and fundamental freedoms". It was added that the United States, "mindful of its responsibilities under the Treaty of Peace, has drawn attention on appropriate occasions to the flagrant conduct of the Rumanian authorities in this regard" but that the Rumanian Government had failed to modify its conduct in conformity with the Treaty stipulations.

Finally, as in the other notes referred to above, the Government of the United States called upon the Rumanian Government to adopt prompt remedial measures in respect of the violations referred to, and requested that Government to specify the steps which it was prepared to take in implementing fully the terms of Article 3.

The reply of the Bulgarian Government, of April 21, 1949, stated that "The Government of the People's Republic of Bulgaria has always carried out and will carry out in a most conscientious manner the clauses of the Peace Treaty." (Doc. A/985, Annex 5, p. 32.) It was stated in the communication that even before the entry of the Treaty of Peace into force, the Bulgarian Government had undertaken "all measures dependent on it (its will) for the guaranteeing of the fundamental civil liberties as well as the political rights of Bulgarian citizens, without distinction of race, nationality, sex or creed". Reference was made in the Bulgarian note (*a*) to the Government's convocation on the basis of universal, secret, equal and direct suffrage, of a Grand National Assembly which elaborated a Constitution consecrating and guaranteeing the rights and freedoms referred to in Article 2 of the Treaty of Peace ; as also (*b*) to the measures taken by the Government of Bulgaria for the liquidation of the Fascist régime. In the reply surprise was expressed that the Government of the United States had evoked facts "going back to the Armistice period". As to the facts and acts of the Bulgarian Government, "such as trials, etc.", which took place after the entry into force of the Treaty of Peace, the Bulgarian reply stated :

> ".... The Bulgarian Government having taken all measures to ensure compliance with all the political clauses of the Peace Treaty, and notably after Bulgaria had been granted the most democratic Constitution in the world, and the people had been guaranteed legal power to exercise and defend its rights and freedom, the Bulgarian Government, as government of a sovereign State, cannot agree to permit to other States the appreciation of its acts, for which it is solely responsible to the National Assem-

bly. This Government can even less agree to suffer the criticism of foreign Powers, in so far as the activities of Bulgarian courts are concerned, being in existence by virtue of the Constitution and functioning in public in accordance with the most modern and most democratic laws.

The Bulgarian Government will repel every attempt at interference in the domestic affairs of Bulgaria and will consider as an unfriendly act any attempt to force it to accept treatment as a State whose internal acts would be subject to judgment by foreign Powers."

The reply of the Bulgarian Government referred to the note of the Government of the United States as "unfounded", and as regards the "essence of the accusations", stated that it "rejects them energetically". It was added :

" .... Under the regime of people's democracy in Bulgaria, the toiling masses of towns and villages, which constitute the immense majority of the nation, enjoy not only on paper but also in fact all fundamental political rights and freedoms of man. Restrictions on the exercise of the freedom of meeting or of association, of the freedom of speech or of press, do not exist and are not applied in Bulgaria excepting in the cases provided by the law against infringers and in the interest itself of public security, maintenance of order and public morals of the people."

The reply, dated April 8, 1949, of the Hungarian Government to the note of April 2 from the Government of the United States, stated :

" .... It is well known that concerning the free enjoyment of human rights the Republic of Hungary, well before the conclusion of the Treaty of Peace, abolished all discriminations as to race, sex, language and religion which existed under the Horthy régime. Thus, the Government of Hungary has fully complied with the provisions of the Treaty of Peace." (Doc. A/985, Annex 4, p. 30.)

The Government of Hungary called attention to Article 4 of the Treaty of Peace concerning the dissolution of organizations, not only Fascist but others "which have as their aim denial to the people of their democratic rights", and stated that it was proceeding in the sense of these provisions of the Treaty of Peace "when dissolving the organizations and parties aiming at the restoration of the old Fascist régime and when summoning to Court those who pursue an activity to overthrow the democratic Republic".

Besides stating that Hungary "emphatically rejects" the note of the United States, the reply stated :

"The Government of Hungary declares once more that Hungary has fulfilled, fulfills and will fulfill all obligations embodied in the Treaty of Peace. At the same time, the Government of Hungary emphatically protests the tendency of the Government of the United States to use the stipulations of the Treaty of Peace

as a pretext for illegitimate interference in the domestic affairs of the sovereign Hungarian State and for supporting the reactionary and Fascist forces opposed to the Government of Hungary."

The reply of the Rumanian Government of April 18, 1949, to the note of April 2 from the Government of the United States, stated that the April 2 note was similar to "former notes" in which "certain affirmations were made by the Government of the United States with reference to violation by the Rumanian Government of the provisions of Article 3 of the Peace Treaty". (Doc. A/985, Annex 6, p. 34.) The reply of Rumania stated that the note of April 2 "does not correspond to reality and .... repeats the inventions of the slanderous press of the imperialist monopolists". In an effort to demonstrate that the laws of Rumania "in fact guarantee the application of the provisions of Article 3 of the Peace Treaty", it was stated in the reply :

> "In the Rumanian People's Republic the exercise of the fundamental freedoms, freedom of assembly, of demonstrations, of the press and of speech are guaranteed by the Constitution, and these are assured by making available to those who work printing facilities, supplies of paper and meeting places.
>
> Discrimination because of nationality or race is punishable by law.
>
> Religious organizations enjoy freedom of worship and are given the places and means necessary for the exercise of their religion."

The Rumanian Government declared in the note that the United States was transgressing the Treaty of Peace by trying to prevent the application of Article 5 which, as described in the reply, "provides that the Rumanian Government will not permit the existence and activities of any organizations of a Fascist type and which have as their aim denial to the people of their democratic rights".

Finally, it was stated in the reply that—

> "In consequence, the Government of the Rumanian People's Republic declares that it cannot accept the attempt of the United States Government to interfere in the internal affairs of Rumania and it rejects the note of the Government of the United States."

In view of the fact that the Bulgarian, Hungarian and Rumanian Governments denied that they had violated the provisions of the Treaties of Peace, and indicated their unwillingness to adopt the requested remedial measures in execution of the Treaties, the Government of the United States informed each of the three Governments (by notes delivered by the American Legations in Sofia, Budapest and Bucharest on May 31, 1949), that in its view that Government had "not given a satisfactory reply to the specific charges set forth in the Legation's note" [of April 2, 1949]. In the notes, the Government of the United States alluded to the fact that the replies contained allegations against the United

States "which are demonstrably false and irrelevant to the matter at hand", and informed the Governments addressed that—

> "The United States Government accordingly considers that a dispute has arisen concerning the interpretation and execution of the Treaty of Peace which the .... Government has shown no disposition to join in settling by direct diplomatic negotiations." (Doc. A/985, Annexes 7, 8 and 9, pp. 36, 37 and 38.)

Further, in the notes of May 31, the Government of the United States invoked the relevant Articles of the Treaties of Peace providing for the settlement of disputes by the Heads of Diplomatic Missions of the United Kingdom, the Soviet Union and the United States in the three capitals (Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary, and Article 38 of the Treaty with Rumania).

On May 31, 1949, the Chiefs of Mission of the United States in Sofia, Budapest and Bucharest, informed their Soviet and British colleagues in those capitals that "a dispute exists" between the United States and the country to which they were accredited, and inquired when the particular Head of Mission would be prepared to meet with his colleagues to "consider the dispute in question". (Doc. A/985, Annexes 10, 11, 12, 13, 14 and 15, pp. 39-49.) The Ministers of the United Kingdom in the three capitals expressed their willingness to meet at any time mutually agreeable. (Doc. A/985, Annexes 16, 17 and 18, pp. 50-51.) A note of the U.S.S.R., dated June 11, 1949, referred to a note of the Acting Secretary of State to the Soviet Ambassador in Washington dated May 31, 1949, as "well as .... the notes of the missions of the U.S.A. in Bulgaria, Hungary, and Rumania, delivered on the same day to the Ambassadors of the U.S.S.R., in the aforementioned countries", and stated that the U.S.S.R. considered that it was evident from the replies of the Governments of Bulgaria, Hungary and Rumania that those Governments were "strictly fulfilling the obligations undertaken by them under the peace treaties, including the obligations having to do with the security of human rights and the fundamental freedoms" ; that the measures of those Governments concerning which the Government of the United States expressed dissatisfaction in the notes of April 2, 1949, "not only are not a violation of the Peace Treaties, but on the contrary, are directed toward the fulfilment of the Peace Treaties which obligate the said countries to combat organizations of the Fascist type and other organizations 'which have as their aim denial to the people of their democratic rights' " ; and that it was "self-evident that such measures .... are fully within the domestic competence of these countries as sovereign States". It was concluded in the note of June 11 that the Soviet Government "does not see any ground *for convening the Three Heads of the Diplomatic Missions*". (Doc. A/985, Annex 19, p. 53.)

By a note of June 30, 1949, the Government of the United States requested the Soviet Government to reconsider its decision, pointing out that: "The Soviet Government .... has associated itself with the position of the Governments of Bulgaria, Hungary and Rumania in denying that the Treaties have been violated. This interpretation is disputed by the United States and by other signatories of the Treaties of Peace." (Doc. A/985, Annex 20, p. 54.) The reply of the U.S.S.R. of July 19, 1949, to the request for reconsideration of the matter, stated that that Government did not see any basis for a review of its position. (Doc. A/985, Annex 21, p. 55-56.)

On July 27, 1949, the Government of Bulgaria addressed a note to the Government of the United States setting forth its view that the settlement procedures provided for in Article 36 of the Treaty of Peace with Bulgaria were not applicable, and citing certain Bulgarian constitutional provisions as being "in full accordance with the Treaty of Peace", referring to Article 4 of the Treaty regarding the dissolution of "all organizations of a Fascist type on Bulgarian territory". The note further stated that "the various proceedings before Bulgarian courts, the acts of administrative agencies and others in various cases cannot be made a subject of discussion in connection with the execution of the Peace Treaty since, from the point of view of international law, the text and spirit of the Treaty as well as the exact provisions of Article 2 of the United Nations Charter, such a discussion would constitute an inadmissible interference in the internal affairs of our country and would be an infringement of its sovereignty". (Doc. A/985, Annex 22, p. 58.)

Two months having elapsed since the Heads of Mission in the three capitals were requested to meet for the purpose, and no meeting having taken place and the dispute remaining unresolved, the Government of the United States found it necessary to invoke the additional Peace Treaty procedure for the settlement of disputes. This procedure envisages the establishment (under each Treaty of Peace) of Commissions composed in each case of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. It provides that 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. It further provides that the decision of the Commission is to be accepted as "definitive and binding".

In notes delivered on August 1, 1949, to the Governments of Hungary, Bulgaria, and Rumania, the Government of the United States requested that the disputes be referred to Commissions constituted in accordance with the respective Articles of the Treaties of Peace and asked the several Governments to join in naming the Commissions. (Doc. A/985, Annexes 23, 24 and 25,

pp. 58-61.) The Governments of Bulgaria, Hungary and Rumania rejected the request in their notes dated September 1, August 26, and September 2, 1949, respectively. (Doc. A/985, Annexes 26, 27 and 28, pp. 61-64.)

On September 19, 1949, the Government of the United States addressed further notes to the Governments of Bulgaria, Hungary and Rumania, stating that the Government of the United States considered that the Government addressed had no grounds for declaring unilaterally that a dispute over the execution of the "human-rights" Article "does not exist". The position was taken that the fact of the existence of a dispute as to each of the several Treaties was self-evident; that refusal to comply with the "disputes" Articles constituted a serious new breach of Treaty obligations; that the defense put forward with respect to obligations to suppress Fascist organizations was a "flimsy pretext that will not stand examination in the light of the systematic suppression of human rights and freedoms"; that those Governments were not the sole arbiters of their execution of their obligations under the Treaties; that as to the defense that the sovereignty of the State addressed was impugned, "it is manifest that .... sovereignty is limited by .... clear international obligations"; and that the invocation by the United States of specific treaty procedures for the settlement of a dispute "can in no sense be regarded as unwarranted intervention in the internal affairs" of the Government addressed. It was concluded in the notes that the recalcitrant attitude of the Governments in the matter could in no way affect the determination of the Government of the United States to have recourse to all appropriate measures for securing compliance with the obligations of the human-rights provisions of the Treaties of Peace, as also of the "disputes" provisions. (Doc. A/985, Annexes 29, 30 and 31, pp. 65-69)

Subsequently, on October 27, the Government of Hungary, in a further communication to the Government of the United States, took the position that it "was minutely observing the stipulations contained in Article 2 of the Peace Treaty"; that "compliance with the stipulations of Article 4 is a condition *sine qua non* of guaranteeing to all peoples and to the Hungarian people among them, the rights defined by Article 2 of the Treaty"; that the Governments of the United States and the United Kingdom had on several occasions infringed the stipulations of the Treaties of Peace; that Hungary was astonished that the Government of the United States expressed the opinion that by assuming certain obligations through the signature of the Treaty of Peace, Hungary had become "a State with limited sovereignty"; and finally that the note of September 19 was to be construed as a new attempt of "unlawful interference with the internal affairs of Hungary". (A copy of the communication is attached.)

On January 5, 1949, the Government of the United States, by notes delivered to the Governments of Bulgaria, Hungary and

Rumania, announced that it had named Professor Edwin D. Dickinson as the Representative of the Government of the United States on each of the three Commissions to be established under the Treaties of Peace, and requested the Governments addressed to designate their representatives forthwith and to enter into consultation immediately with the Government of the United States with a view to the appointment of the third members of the Commissions as stipulated in the "disputes" Articles of the Treaties of Peace. The Secretary-General of the United Nations was so informed. (Copies of the communications are attached.)

E. *Specific disputes concerning the "interpretation or execution" of the Treaties of Peace are disclosed in the diplomatic exchanges*

It is obvious that the diplomatic exchanges between the Government of the United States, on the one hand, and the Governments of Bulgaria, Hungary and Rumania, on the other, disclose that disputes exist between the Government of the United States and the Governments of Bulgaria, Hungary and Rumania as to the interpretation and execution of the respective Treaties of Peace. Included among these disputes regarding the interpretation or execution of the Treaties, not settled by direct negotiation, are disputes as to—

1. Whether the Governments of Bulgaria, Hungary and Rumania are, or are not, complying with the human-rights provisions of the respective Treaties of Peace :

(*a*) Specifically, and as illustrative only, has the Government of Bulgaria, or has it not, violated the human-rights provisions of the Treaty of Peace between that Government and the Allied and Associated Powers by making arbitrary arrests ; systematically perverting the judicial processes ; detaining in prisons and camps, without public trials and for prolonged periods, persons opposed to the existing regime in Bulgaria ; denying freedom of political opinion and of public meeting ; dissolving the National Agrarian Union, the Bulgarian Socialist Party and other groups, and imprisonment of many of their leaders ; executing Nikola Petkov, National Agrarian Union leader, for expressing democratic political opinions which did not correspond to those of the Bulgarian Government ; proceeding against deputies disagreeing with Governmental policies ; denying freedom of expression by restrictions on the press and other publications, by laws, administrative acts, and the use of force and intimidation on the part of officials of the Government ; proscribing freedom of the press ; preventing freedom of worship, by legislation, by acts of officials, by so-called trials of religious leaders, and by measures directed against Protestant denominations in Bulgaria.

(*b*) Further, and as illustrative only, has the Government of Hungary, or has it not, violated the Treaty of Peace between that

Government and the Allied and Associated Powers by violating the rights of citizens to life and liberty through the arbitrary exercise of police power and perversion of the judicial processes ; denying freedom of opinion through suppressing, dissolving and purging democratic political parties ; suppressing freedom of opinion, expression and of association through an insidious network of police and other agents who observe, report on, and seek to control private opinion, association and activity of citizens ; eliminating freedom of the press, publication and expression through restrictive decrees, control of printing establishments and distribution of newsprint ; denying freedom of assembly on political matters to all except Communist groups and their collaborators ; denying freedom of religious worship and practice, including the harassment and obstruction of religious gatherings ; proceeding in an arbitrary and unjustified manner against religious leaders on fabricated grounds, as in the cases of Cardinal Mindzenty and Lutheran Bishop Ordass ; and replacing religious leaders with subservient collaborators.

(*c*) And further, and as illustrative only, has the Government of Rumania, or has it not, violated the Treaty of Peace between that Government and the Allied and Associated Powers by denying freedom of opinion in disrupting, silencing and outlawing other than Communist-controlled political parties and depriving democratic leaders of their liberty ; to this end, employing methods of intimidation and perversions of the judicial process as in the case of the so-called "trial" and condemnation to life imprisonment of Iuliu Maniu, President of the National Peasant Party, and other leaders ; seizing and holding Rumanian citizens for long periods of time without public trial ; stifling freedom of expression of political opinion at variance with that of the Government, by laws, decrees and administrative measures, as well as by extra-legal acts or organizations affiliated with the Government and the Communist Party ; eliminating freedom of the press and of publication, including the taking of control of all printing establishments and the suppression of all publications not responsible to the direction of, or which do not serve the purposes of, the Communist Party ; eliminating freedom of assembly and of association, save for Communist and Communist-approved organizations, by forcible interventions or threat thereof ; abridging freedom of religious worship, by legislation and other measures, by assuming extensive control over the practice of religion, including the application of political tests, incompatible with freedom of worship, and, in at least one instance, by destroying by Government decree a major religious body and transferring its property to the State.

2. Whether some of the violations complained of took place only prior to the effective date of the Peace Treaties, or whether they have occurred subsequently to that date.

3. Whether the allegations of the Governments of Bulgaria, Hungary and Rumania in defense that what is complained of by the United States is, or is not, in fact a duty of the accused Governments under a proper interpretation of other provisions of the Treaties of Peace relating, *inter alia*, to the suppression of Fascist organizations.

4. Whether the States accused of violating the Peace Treaties can determine unilaterally the nature and extent of their obligations under the human-rights provisions of the several Treaties of Peace, or whether this question is properly to be resolved by the Treaty procedures.

5. Whether the States accused of violating the Peace Treaties can determine unilaterally the nature and extent of their obligations under the provisions referred to in paragraph 3, *supra*, relating generally to the suppression of Fascist organizations, or whether this question is properly to be resolved by the Treaty procedures.

6. Whether, as alleged by Bulgaria, Hungary and Rumania in defense, the matters of which they are accused are domestic matters solely of concern to them, or whether these matters have become by reason of the stipulations of the Treaties of Peace matters appropriate for determination under the "disputes" provisions of the several Treaties of Peace and have ceased to be solely of domestic concern.

F. *Pronouncements by the Permanent Court on the subject of "disputes"*

The "disputes" referred to in the respective Articles of the Treaties of Peace, and as to which provision is made for their resolution, are described in the several Treaties as "any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations". This language is exceedingly broad in scope.

The Permanent Court of International Justice dealt with the question of what constitutes a dispute on a number of occasions.

In 1924 the Government of Greece filed an application submitting to the Permanent Court of International Justice a case arising out of the alleged refusal on the part of the Government of Palestine, and also on the part of the British Government as Mandatory, to recognize to their full extent certain rights acquired by M. Mavrommatis, a Greek subject, under contracts and agreements concluded by him with Ottoman authorities in regard to concessions for certain public works to be constructed in Palestine.

Article 26 of the British Mandate for Palestine contained the following provision :

> "The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations."

The British Government filed objection to the Court's jurisdiction and requested the dismissal of the proceedings.

In its Judgment on the jurisdiction, the Court considered, *inter alia,* two questions: "Does the matter before the Court constitute a dispute between the Mandatory and another Member of the League of Nations ?" and "Is it a dispute which cannot be settled by negotiation ?" (*The Mavrommatis Palestine Concessions*, Judgment No. 2, Series A., No. 2, August 30, 1924, p. 11.) In so doing, the Court defined a "dispute" in the following manner :

> "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons." *Ibid.*

It concluded that "The present suit between Great Britain and Greece certainly possesses these characteristics." *Ibid.*

Article 26 of the Mandate Agreement, it will be noted, referred to "any dispute whatever .... relating to the interpretation or the application of the provisions of the Mandate .... if it cannot be settled by negotiation", and thus set up a stricter test for determining the Court's jurisdiction, as it was necessary to show that the dispute *could not be settled* by negotiation, than the pertinent Articles of the Treaties of Peace for determining the jurisdiction of the Treaty Commissions which refer to "any dispute concerning the interpretation or execution of the Treaty, *which is not settled* by direct diplomatic negotiations".

The Court, in holding that the dispute could not be settled by negotiation, however, significantly stated :

> "The second condition by which this Article defines and limits the jurisdiction of the Permanent Court in questions arising out of the interpretation and application of the Mandate, *is that the dispute cannot be settled by negotiation.* It has been contended that this condition is not fulfilled in the present case ; and leaving out of account the correspondence previous to 1924 between Mavrommatis or his solicitors and the British Government, emphasis has been laid on the very small number and brevity of the subsequent communications exchanged between the two Governments, which communications appear to be irreconcilable with the idea of negotiations properly so called. The true value of this objection will readily be seen if it be remembered that the question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations do not of necessity always presuppose a more or less lengthy series of notes and 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 diplomatic negotiation....*" (*Ibid.* 13.)

In 1925 the German Government filed an application with the Permanent Court of International Justice submitting a suit against Poland concerning certain German interests in Polish Upper Silesia and relating particularly to the expropriation of a nitrate factory at Chorzów and to the announced intention of the Polish Government to expropriate certain large agricultural estates. Poland raised an objection to the Court's jurisdiction. Article 23 of the German-Polish Convention concerning Upper Silesia, concluded at Geneva in 1922, on which the Court's jurisdiction was alleged by Germany to be based, provided:

"1. 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."

In sustaining the jurisdiction of the Court, the Court differentiated between a "difference of opinion" and a "dispute", as follows:

"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 means of unilateral action on the part of the applicant Party. And the Court cannot allow itself to be hampered by a mere defect of form, the removal of which depends solely on the Party concerned." (*German Interests in Polish Upper Silesia* and *The Factory at Chorzów*, Judgment No. 6 (Jurisdiction), August 25, 1925, Series A., No. 6, p. 14.)

Note that the Court felt that the requirement of the existence of a dispute would be met even by means of unilateral action on the part of one Party.

The Court next considered the importance, if any, to be attached to the conjunctive "and" between the words "construction" and "application" in Article 23, and concluded that this was immaterial in this case as both construction and application of the Convention were involved. The Government of the United States calls attention to the fact that the instant "disputes" Articles describe the dispute to be resolved by the Treaty procedures as "any dispute concerning the interpretation *or* execution" of the Treaties. Here, as in the *Chorzów Factory case*, the dispute involves differences with regard to both the "interpretation" and the "execution" of the several Treaties.

Poland contended that differences with regard to reparations did not fall within the scope of Article 23, paragraph 1, of the Geneva Convention just quoted. In rejecting this contention in ensuing proceedings in this case in 1927, the Court said:

> "The Court, by Judgments Nos. 6 and 7 [(Merits), May 25, 1926, Series A., No. 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 the said articles...." (*German Interests in Polish Upper Silesia* and *The Factory at Chorzów*, Judgment No. 8 (Jurisdiction), July 26, 1927, Series A., No. 9, pp. 20-21.)

The Court added:

> ".... Article 23, paragraph 1, which constitutes a typical arbitration clause .... contemplates all differences of opinion resulting from the interpretation and application of a certain number of articles of a convention. In using the expression 'differences of opinion resulting from the interpretation and application', the contracting Parties seem to have had in mind not so much the subject of such differences as their source, and this would justify the inclusion of differences relating to reparations amongst those concerning the application, even if the notion of the application of a convention did not cover reparations for possible violation." (*Ibid.* 24.)

Still later the German Government filed a request for an interpretation of the Court's Judgments Nos. 7 and 8 in the *Chorzów case.* Article 60 of the Statute of the Court provided:

> "The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any Party."

The Court accordingly had occasion to determine whether or not there existed a "dispute" as to the meaning or scope of the judgments within the meaning of Article 60. In holding that a dispute need not be manifested in a formal way so long as the Governments had in fact shown that they held opposite views and that a dispute existed as to each of the judgments, the Court said:

> "Before examining the question which has thus been raised, the Court thinks it advisable to define the meaning which should be given to the terms 'dispute' and 'meaning or scope of the judgment', as employed in Article 60 of the Statute.
>
> In so far as concerns the word 'dispute', the Court observes that, according to the tenor of Article 60 of the Statute, the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required. It would no doubt be desirable that a State should not proceed to

take as serious a step as summoning another State to appear before the Court without having previously, within reasonable limits, endeavoured to make it quite clear that a difference of views is in question which has not been capable of being otherwise overcome. But 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. The Court in this respect recalls the fact that in its Judgment No. 6 (relating to the objection to the jurisdiction raised by Poland in regard to the application made by the German Government under Article 23 of the Geneva Convention concerning Upper Silesia), it expressed the opinion that, the article in question not requiring preliminary diplomatic negotiations as a condition precedent, recourse could be had to the Court as soon as one of the Parties considered that there was a difference of opinion arising out of the interpretation and application of Articles 6 to 22 of the Convention." (*German Interests in Polish Upper Silesia* and *The Factory at Chorzów*, Judgment No. 11 (Interpretation), December 16, 1927, Series A., No. 13, pp. 10-11.)

G. *Once a dispute is disclosed to exist between the Parties concerning the interpretation or execution of the Treaties of Peace, it is for the Treaty Commission to determine its jurisdiction and authority to deal with it, including the sufficiency of the charges made to warrant the assumption of jurisdiction and the effect of matters alleged in defense upon its jurisdiction*

In harmony with the view taken at the outset (par. II C *ante*) of this Written Statement, that the merits of the dispute or the sufficiency of the charges or answers are not before the Court, the Government of the United States is of the further view that it is for the Treaty Commission to be established to determine, at least in the first instance, its jurisdiction and authority to deal with the dispute, including the sufficiency of the charges made to warrant the assumption of jurisdiction and the effect of matters alleged in defense upon its jurisdiction.

Whether the dispute, for example, relates to matters solely within the competence, domestic jurisdiction, or sovereign control of Bulgaria, Hungary or Rumania, is a question properly to be decided by the Commissions under the Treaties of Peace.

It will be for the countries making the allegation to make it before the appropriate tribunal—a Commission envisaged under the Treaties of Peace. Such Commissions, as other international tribunals, will possess the inherent power to pass upon their own jurisdiction. This is in conformity with well-accepted international law and practice. (See, for example, Ralston, *Law and Procedure of International Tribunals* (1926), Secs. 53 and 54.)

The principle that an international tribunal is vested with authority to determine its own jurisdiction is recognized by Article 36, paragraph 6, of the Statute of the Court, which provides:

> "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The Permanent Court of International Justice, in its advisory opinion in the *Interpretation of the Greco-Turkish Agreement of December 1, 1926*, 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". (Advisory Opinion No. 16, August 28, 1928, Series B., No. 16, p. 20.)

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." (*Decisions and Opinions* (1925-1926), 6-7.)

The Anglo-American Tribunal established under the Special Agreement of August 18, 1910, between the United States and Great Britain, had before it the *Rio Grande Irrigation and Land Company, Limited, case* submitted by Great Britain. The American Agent filed a motion for dismissal on the ground of lack of British interest in the claim, and of several alleged breaches of the rules of procedure in the presentation of the case. The British Agent argued in reply that a preliminary motion of this character was not contemplated or provided for by the rules or any of the instruments controlling the Tribunal, and that if such a motion were provided for in the rules the prescribed procedure had not been followed. The Tribunal held on this point:

"To these arguments there is, in the opinion of the Tribunal, one conclusive answer. Whatever be the proper construction of the instruments controlling the Tribunal or of the Rules of Procedure, there is inherent in this and every legal Tribunal a power, and indeed a duty, to entertain, and, in proper cases to raise for themselves, preliminary points going to their jurisdiction to entertain the claim. Such a power is inseparable from and indispensable to the proper conduct of business. This principle has been laid down and approved as applicable to international Arbitral Tribunals. (See Ralston's *International Arbitral Law and Procedure*, pp. 21 *et seq.*) In our opinion, this power can only be taken away by a provision framed for that express purpose. There is no such provision here. On the contrary, by Article 73 of Chapter III of the Hague Convention, 1907, which, by virtue of Article 4 of the Treaty creating this Commission, is applicable to the proceedings of this Commission, it is declared:

'The Tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other acts and documents which may be invoked, and in applying the principles of law.' " (*Agent's Report* (1926), 332, 342.)

Although the defense that the dispute relates to a matter solely within the sovereign control of Bulgaria, Hungary or Rumania, is a question to be decided by the Commissions under the Treaties of Peace, the Government of the United States desires to make it clear that by becoming Party to the Treaties of Peace, the Governments of Bulgaria, Hungary and Rumania accepted restrictions on their sovereign rights to the extent indicated in the Treaties.

It should be perfectly clear to the Governments of Bulgaria, Hungary and Rumania that by becoming party to a treaty under which a State undertakes obligations to another State or States, the sovereign rights of the State are altered precisely to the degree that it, by its own sovereign act in becoming party to the treaty, has undertaken to do or not to do what it otherwise would have the sovereign right not to do or to do, as the case may be. Surely, the Governments of Bulgaria, Hungary and Rumania are not so naive as to believe that the Court will take seriously the contention that, although a State may have undertaken treaty obligations with respect to the assurance of human rights and fundamental freedoms in that country, it cannot be expected or required to perform the obligations specified for the reason that to do so would result in the impairment of its sovereign right otherwise to do as it pleased regarding the matters now covered by treaty. By becoming party to a treaty a State frequently undertakes obligations which impair its otherwise sovereign right to decide for itself what it will or will not do in certain situations covered by the treaty. This is well settled treaty law.

On several occasions the Permanent Court of International Justice spoke forth on the subject.

Article 380 of the Treaty of Versailles, June 28, 1919, provided:

> "The Kiel canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality."

The Permanent Court of International Justice, in its initial Judgment on the merits, August 17, 1923, held that Article 380 forbade Germany's applying to the Kiel canal a neutrality order which would close the canal to a British vessel under French charter carrying munitions to Danzig for trans-shipment to Poland, during a war between Poland and Russia. In so doing the Court held that in becoming party to the Treaty of Versailles, Germany had to the extent provided in Article 380, at least, circumscribed her rights of sovereignty. The Court, in its opinion, stated:

> "The Court considers that the terms of Article 380 are categorical and give rise to no doubt. It follows that the canal has ceased to be an internal and national navigable waterway, the use of which by the vessels of States other than the riparian State is left entirely to the discretion of that State, and that it has become an international waterway intended to provide under treaty guarantee easier access to the Baltic for the benefit of all nations of the world. Under its new régime, the Kiel canal must be open, on a footing of equality, to all vessels, without making any distinction between war vessels and vessels of commerce, but on one express condition, namely, that these vessels must belong to nations at peace with Germany.
>
> . . . .
>
> .... The Court declines to see 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." (*The S.S. Wimbledon*, Judgment No. 1 (Merits), August 17, 1923, Series A., No. 1, pp. 22, 25.)

In 1921 decrees were issued by the Bey of Tunis, by His Shereefian Majesty, and by the President of the French Republic, which had the effect of converting certain British subjects in Tunis and Morocco (French zone) into French citizens, with the consequence that the French Government began to enforce against them a liability for service in the French army. The British Government protested to the French Government against the application of the decrees to British nationals, and suggested that the matter be referred to the Permanent Court of International Justice or to arbitration. Neither suggestion was accepted by the French Government. When the British Government announced its intention to place the matter on the agenda of the Council of the League of

Nations, the French Government contended that under Article 15 (8) of the Covenant of the League of Nations, dealing with matters "which by international law .... [are] solely within the domestic jurisdiction" of a party to the dispute, the Council was incompetent to deal with it. When the matter came before the Council, October 2, 1922, the British Representative explained that friendly conversations had taken place, as a result of which it was proposed that the Permanent Court be asked for an advisory opinion as to the nature of the dispute. Accordingly, the following question was put to the Court:

> "Whether the dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco (French zone) on November 8th, 1921, and their application to British subjects, is or is not, by international law, solely a matter of domestic jurisdiction (Article 15, paragraph 8, of the Covenant)."

On February 7, 1923, the Permanent Court gave the opinion that the dispute was not by international law solely a matter of domestic jurisdiction. (*Nationality Decrees issued in Tunis and Morocco (French Zone) on November 8, 1921*, Advisory Opinion, Series B., No. 4.) In giving 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.*, 24.)

In 1924, the Council of the League of Nations, at the instance of the Mixed Commission for the exchange of Greek and Turkish populations, requested an advisory opinion from the Permanent Court of International Justice on the question of the meaning and scope to be attributed to the word "established" in Article 2 of the Convention of Lausanne of January 30, 1923, regarding the exchange of Greek and Turkish populations. 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 "established" persons was a domestic matter for the municipal courts to decide. The Permanent Court rejected the contention, stating, *inter alia :*

> "The Court has not to define the meaning and scope of the word 'established' in the abstract, but only to determine the meaning and scope of that word as used in Article 2 of the Convention of Lausanne. 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.
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> . . . .
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> The Turkish delegation however maintains that the Convention contains a reference to national legislation and in support of this contention invokes amongst other things Article 18, according to which :
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> 'The High Contracting Parties undertake to introduce in their respective laws such modifications as may be necessary with a view to ensuring the execution of the present Convention.'
>
> This clause, however, merely lays stress on a principle which is self-evident, according to which a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken. The special nature of the Convention for the Exchange of Greek and Turkish populations, which closely affects matters regulated by national legislation and lays down principles which conflict with certain rights generally recognized as belonging to individuals, sufficiently explains the express inclusion of a clause such as that contained in Article 18. But it does not in the least follow because the contracting parties are obliged to bring their legislation into harmony with the Convention, that that instrument must be construed as implicitly referring to national legislation in so far as that is not contrary to the Convention.
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> . . . .
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> 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'. In the present case, moreover, the obligations of the contracting States are absolutely equal and reciprocal. It is therefore impossible to admit that a convention which creates obligations of this kind, construed according to its natural meaning, infringes the sovereign rights of the High Contracting Parties.

Having thus made it clear that the Convention does not refer to national laws, the Court does not feel it to be necessary to consider whether any particular provisions of the Turkish laws of 1902 and 1914 are or are not contrary to the Convention.

The Turkish delegation has 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' ...." (*Exchange of Greek and Turkish populations*, Advisory Opinions, No. 10, February 21, 1925, Series B., No. 10, pp. 17-18, 20-21, 21-22.)

III. Obligation to appoint representatives to commissions

The second question before the Court concerns the obligation of the Parties to the Treaties to carry out the provisions of the Treaty articles referred to in the first question before the Court, including the provisions for the appointment of their representatives to the Treaty Commissions.

The "disputes" Articles, as previously stated, provide that, except where another procedure is specifically provided 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". It is further provided by the Articles that "Any such dispute not resolved by them within a period of two months shall", unless another means of settlement is agreed upon, 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. Provision is then made for requesting the Secretary-General of the United Nations to make the appointment of the third member, in the event that the two Parties fail within a period of one month to agree upon the third member.

Generally speaking, there can be no doubt as to the duty of the Parties thereto to comply with their treaty obligations. The legal duty to observe the provisions of a treaty freely entered into has been recognized in international law from time immemorial.

The "disputes" Articles of the Treaties in no way differ from other articles of the Treaties of Peace in binding the Parties

thereto to carry out the obligations arising therefrom. These Articles outline the procedures which the Parties have agreed to employ for the settlement of disputes concerning the interpretation or execution of Treaty provisions. They provide that if a dispute cannot be resolved by certain stated procedures it shall be referred to a Treaty Commission whose decision shall be accepted by the Parties as definitive and binding. Each of the conditions required by the "disputes" Articles as a condition for the mandatory reference of a dispute to a Treaty Commission is present in the instant situation, as is disclosed by the diplomatic exchanges between the Parties (discussed *ante*). The conditions are:

(*a*) That there is no other procedure for the settlement of the dispute specifically provided under the Treaty. Clearly no other procedure is provided in the Treaty for the type of a dispute here under consideration.

(*b*) That there exists a dispute. It has been established *ante* that a dispute or disputes exist. The words "any dispute", which appear in the Articles, are of the broadest sort.

(*c*) That the "dispute" concerns the "interpretation or execution of the Treaty". It has been shown *ante* that the dispute or disputes do concern the interpretation or execution of the Treaty.

(*d*) That the dispute has not been settled by direct diplomatic negotiations. As the diplomatic exchanges disclose, although an effort has been made by the United States and other Allied Governments to obtain a solution of the disputes through diplomatic channels, the Governments of Hungary, Bulgaria and Rumania unfortunately have rejected such efforts.

(*e*) That the dispute was referred to the Three Heads of Mission and was not settled by them within a period of two months. As has been shown *ante*, the dispute was referred to the Three Heads of Missions, but the Soviet Government refused to authorize its Ambassadors to act.

(*f*) That the Parties did not mutually agree upon another means of settlement. The diplomatic exchanges reveal that no proposal was made or consideration given by the Parties to other means of settlement.

(*g*) That a request be made by either Party to the dispute for a referral to a Treaty Commission. As pointed out *ante*, such requests were made by the United States and other Allied Governments.

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 under stated conditions clearly imposes a binding obligation on the Parties to the Treaties.

The "disputes" Articles clearly 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. Without that common consent the Parties are obligated to employ the Treaty Commission.

Since it was contemplated by the Treaties that disputes should be resolved by Commissions, the failure of a Party to co-operate in setting up a Commission would result in the unilateral defeat and frustration of the clear purposes of the Treaty in this respect. Inasmuch as the Parties to the Treaties have agreed to deal with their disputes in accordance with the "disputes" Articles, there is a solemn obligation on the Parties to take the necessary steps to make possible the solution of the disputes by the Commissions contemplated. The appointment of representatives is clearly a necessary and indispensable step to the carrying out of the "disputes" Articles.

The background of the negotiations as well as the express language of the "disputes" Articles reveal that the mechanism for the solution of disputes was intended to be obligatory and not optional. 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. The Council of Foreign Ministers after prolonged discussion accepted the Peace Conference recommendation except that Commissions were substituted for the Court. But the means of settlement was made and intended to be mandatory, not optional.

It is the view of the Government of the United States that the framers of the several Treaties of Peace intended to provide a workable settlement of disputes machinery by the inclusion of the "disputes" Articles. It was certainly not intended to describe a wholly illusory machinery, and if what was provided as the machinery for the resolution of disputes was to be only optional and as might suit the whim of a State accused of violating the Treaty, there was no point to including such provisions.

The Treaties of Peace are accordingly to be construed, in the view of the Government of the United States, in such a way as to be meaningful and workable. In this light, each contracting Party 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 reasonable effect to the "disputes" Articles as to any other article of the Treaty.

The Permanent Court of International Justice, from time to time, took a practical view of the interpretation of treaties. In practice, it avoided unreasonable or absurd results.

In the *Wimbledon* case, the Permanent Court of International Justice 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". (Judgment No. 1 (Merits), August 17, 1923, Series A., No. 1, pp. 24-25.)

In its advisory opinion in regard to the *Polish Postal Service in Danzig*, the Permanent Court of International Justice took the position that—

> "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." (Advisory Opinion No. 11, May 16, 1925, Series B., No. 11, pp. 39-40.)

In connection with the *Case of the Free Zones of Upper Savoy and the District of Gex*, 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". (Order, August 19, 1929, Series A., No. 22, p. 13.)

In determining the extent of the jurisdiction conferred upon the Oder River Commission by the Treaty of Versailles, the Permanent Court of International Justice stated that it must go back to the principles governing international fluvial law in general and consider what position was adopted by the Treaty of Versailles in regard to those principles. It concluded that the Treaty of Versailles adopted the principle of internationalization, "that is to say, the free use of the river for all States, riparian or not". In taking a reasonable interpretation of the treaty, the Court concluded:

> "Article 332 grants freedom of navigation on waterways declared international in the previous article to all Powers on a footing of perfect equality. This provision would be inappropriate, if not arbitrary, if the freedom stopped short at the last political frontier." (*Territorial jurisdiction of the International Commission of the River Oder*, Judgment No. 16, September 10, 1929, Series A., No. 23, pp. 26, 28.)

In a concurring opinion concerning the *Austro-German Customs Régime*, Judge Anzilotti, in considering Article 88 of the Treaty of Saint-Germain, said:

"(*b*) It is a fundamental rule of interpretation that words must be given the ordinary meaning which they bear in their context unless such an interpretation leads to unreasonable or absurd results." (Advisory Opinion No. 20, September 5, 1931, Series A./B., No. 41, p. 60.)

The Swiss Arbitrator (Charles Edouard Lardy), in his decision in the dispute between the Netherlands and Portugal in the *Island of Timor case*, involving the interpretation of treaties, stated :

"…. 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.' " (Decision, June 25, 1914, under the Convention of April 3, 1913, Scott, *Hague Court Reports* (1916) 355, 384.)

And the American and British Claims Tribunal established under the Convention of August 18, 1910, to cite yet another example, held in the *Cayuga Indians case* that—

"…. Nothing is better settled, as a canon of interpretation in all systems of law, than that a clause must be so interpreted 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." (*Agent's Report* (1926) 203, 307, 322.)

IV. Conclusion

(I) The Government of the United States is of the view that the diplomatic exchanges between the United States, on the one hand, and the Governments of Bulgaria, Hungary and Rumania, on the other, concerning the implementation of Article 2 of the Treaties of Peace with Bulgaria and Hungary and Article 3 of the Treaty of Peace with Rumania, disclose disputes subject to the provisions for the settlement of disputes contained in Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary, and Article 38 of the Treaty with Rumania.

(II) The Government of the United States is of the further view that the Governments of Bulgaria, Hungary and Rumania are obligated to proceed under the provisions for the settlement of disputes contained in the respective Treaties of Peace, including the obligation to appoint representatives to the Commissions envisaged in the Treaties.

Attachments :

Note from United States Representative to the United Nations to the Secretary-General of the United Nations, January 6, 1950, enclosing—

1.—Hungarian note of October 27, 1949, to United States;

2.—United States note of January 5, 1950, to Bulgaria;

3.—United States note of January 5, 1950, to Hungary;

4.—United States note of January 5, 1950, to Rumania.

ATTACHMENTS

January 6, 1950.

Excellency:

I have the honor to refer to my note UN-2748 of September 20, 1949, forwarding to you copies of certain diplomatic correspondence relevant to the question of observance of human rights in Bulgaria, Hungary and Rumania. (General Assembly Resolutions of April 30, 1949 (272 (III)), and October 22, 1949 (A/1043).)

On October 27, 1949, subsequent to the date of my letter, the Government of Hungary addressed a further note to the Government of the United States (Annex 1). On January 5, 1950, the Government of the United States directed notes to the Governments of Bulgaria, Hungary and Rumania (Annexes 2, 3 and 4).

I am enclosing copies of these notes with a request that you be kind enough to transmit copies of the notes to all Members of the United Nations and also to the International Court of Justice in connection with the General Assembly Resolution of October 22, 1949 (A/1043).

Accept, Excellency, the renewed assurances of my highest consideration.

(*Signed*) WARREN R. AUSTIN,
United States Representative to the United Nations.

Enclosures:

Annex 1.—Hungarian note of October 27, 1949, to U.S.
Annex 2.—U.S. note of January 5, 1950, to Bulgaria.
Annex 3.—U.S. note of January 5, 1950, to Hungary.
Annex 4.—U.S. note of January 5, 1950, to Rumania.

His Excellency Trygve Lie,
Secretary-General of the United Nations,
Lake Success, New York.

UN—2748/C.

Annex 1

HUNGARIAN NOTE TO THE UNITED STATES (27 OCTOBER 1949)

(Original text in English.)

The Hungarian Ministry for Foreign Affairs presents its compliments to the Legation of the United States of America and, with reference to the Legation's note No. 592, dated September 19, 1949, has the honor to impart as follows:

The Hungarian Government regrets to state that the Government of the United States deemed it opportune to renew the accusations, deprived of all real basis whatsoever, and rejected most emphatically by the Hungarian Government on several occasions—notwithstanding that the Hungarian Government had clearly explicated and undoubtfully proved in its notes Nos. 2672 and 7796/1949 that it was minutely observing the stipulations contained in Article 2 of the Peace Treaty.

The Hungarian Government once again rejects most categorically that tendentious and false interpretation of the Peace Treaty by which the Government of the United States tries to contrast the stipulations of Articles 2 and 4 of the Treaty. The Hungarian Government does not see any contradiction between the observing of the stipulations contained in Article 2 of the Peace Treaty and the fight against Fascist and pro-Fascist elements prescribed by Article 4 of the same Treaty. On the contrary, a consequent compliance with the stipulations of Article 4 is a condition *sine qua non* of guaranteeing to all peoples and to the Hungarian people among them, the rights defined by Article 2 of the Treaty.

It has resulted clearly from the documents of the trials against Mindszenty and his accomplices and, recently, against Laszlo Rajk and his accomplices, that the persons convicted for their antidemocratic activity were guilty of a conspiracy aiming at the reverse of the present democratic regime, and to annihilate the liberties acquired by the people, and to establish a Fascist regime of oppression, worse than any other previous regime of the kind. Accordingly, the Hungarian Government, far from infringing the Peace Treaty, acts explicitly in compliance with its stipulations when inflicting a blow upon the vile enemies of liberty and democracy, who have degenerated to espionage and murderous attempts. If the Governments of the United States and the United Kingdom accuse the Hungarian Government, this can have but one reason, i.e., the ruling circles of these countries are hostile to the independence and development of the people's democracies and, as it was proved by the aforementioned trials, support, in Hungary too, the most desperate enemies of democracy, directing them by their own network of spies, as well as by Tito and his clique, attached to their service.

As a matter of fact, the Hungarian Government has repeatedly stated that precisely these Governments have on several occasions infringed the stipulations of the Peace Treaty relating to Hungary, when unlawfully denying the restitution of Hungarian property found in their respective zones of occupation, when refusing the extradition of the Hungarian war-criminals escaped into their territory, when supporting these war-criminals in their antidemocratic activity and when even rendering possible the organization and equipment of military formations of Hungarian Fascists on the territory occupied by them.

Furthermore, the Hungarian Government states with astonishment that, in addition to the accusations already known and repeatedly refuted, the Government of the United States expresses the opinion—which is quite new and in no way compatible with the rules and spirit of international law—that, by assuming certain obligations through the signature of the Treaty of Peace, Hungary has become a State with limited sovereignty.

When signing the Peace Treaty, Hungary was not, nor is she at present, inclined to surrender her sovereignty—on the contrary, she

will defend her independence and unhampered democratic development against any imperialist interference. The Hungarian Government considers the arbitrary interpretation of the Peace Treaty by the Government of the United States an attempt to claim a right to constantly interfere with Hungary's internal affairs, ignoring the independence of the Hungarian State.

The Hungarian Government categorically rejects, moreover, the wholly fictitious calumny of the Government of the United States, alleging that the present Hungarian regime be merely "the totalitarian rule of a minority". It is a notorious fact that at the general elections on the 15th of May of 1949 the Hungarian people manifested their will in the most democratic way—by general and secret ballot—and decided to support by 95.5 percent of their votes the policy carried on by the present Hungarian Government. In view of this, the fact that the Government of the United States alleges in a diplomatic note the present Hungarian Government as being "the rule of a minority", cannot be regarded by the Hungarian Government but as an evil-minded propagandistic manoeuvre, based upon the denial of true facts.

In consideration of the above said, the Hungarian Government rejects most categorically the note No. 592 of the Legation of the United States, as a new attempt of unlawful interference with the internal affairs of Hungary.

The Hungarian Ministry for Foreign Affairs avails itself of this opportunity to renew to the Legation of the United States of America the expression of its high consideration.

Annex 2

UNITED STATES NOTE TO BULGARIA (5 JANUARY 1950)

[Original text in English]

The Legation of the United States of America presents its compliments to the Ministry of Foreign Affairs of Bulgaria and has the honor to refer to the Legation's note of August 1, 1949, asking the Bulgarian Government to join the United States Government in naming a Commission, in accordance with Article 36 of the Treaty of Peace, to settle the dispute which has arisen over the interpretation and execution of Article 2 of the Treaty. Reference is also made to the Ministry's note of September 1, 1949, and to the Legation's note of September 19, 1949, on the same subject.

The Legation has the honor to inform the Ministry that the United States Government has designated Mr. Edwin D. Dickinson as its representative on the proposed Commission. It is requested that the Bulgarian Government designate its representative forthwith and enter into consultation immediately with the United States Government through the American Minister in Sofia, with a view to the appointment of the third member of the Commission as stipulated in Article 36 of the Peace Treaty.

Annex 3

UNITED STATES NOTE TO HUNGARY (5 JANUARY 1950)

[Original text in English]

The Legation of the United States of America presents its compliments to the Ministry of Foreign Affairs of Hungary and has the honor to refer to the Legation's note of August 1, 1949, asking the Hungarian Government to join the United States Government in naming a Commission, in accordance with Article 40 of the Treaty of Peace, to settle the dispute which has arisen over the interpretation and execution of Article 2 of the Treaty. Reference is also made to the Ministry's note of August 26, 1949, to the Legation's note of September 19, 1949, and the Ministry's note of October 27, 1949, on the same subject.

The Legation has the honor to inform the Ministry that the United States Government has designated Mr. Edwin D. Dickinson as its representative on the proposed Commission. It is requested that the Hungarian Government designate its representative forthwith and enter into consultation immediately with the United States Government through the American Minister in Budapest, with a view to the appointment of the third member of the Commission as stipulated in Article 40 of the Peace Treaty.

Annex 4

UNITED STATES NOTE TO RUMANIA (5 JANUARY 1950)

[Original text in English]

The Legation of the United States of America presents its compliments to the Ministry of Foreign Affairs of Rumania and has the honor to refer to the Legation's note of August 1, 1949, asking the Rumanian Government to join the United States Government in naming a Commission, in accordance with Article 38 of the Treaty of Peace, to settle the dispute which has arisen over the interpretation and execution of Article 3 of the Treaty. Reference is also made to the Ministry's note of September 2, 1949, and to the Legation's note of September 19, 1949, on the same subject.

The Legation has the honor to inform the Ministry that the United States Government has designated Mr. Edwin D. Dickinson as its representative on the proposed Commission. It is requested that the Rumanian Government designate its representative forthwith and enter into consultation immediately with the United States Government through the American Minister in Bucharest, with a view to the appointment of the third member of the Commission as stipulated in Article 38 of the Peace Treaty.

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2. WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED KINGDOM

I

1. The Peace Treaties with Bulgaria, Hungary and Roumania all contain certain provisions which have come to be known (and will herein be called) the Human Rights articles of the Treaties. These are, in the first place Article 2 of the Treaties with Bulgaria and Hungary, and Article 3 of the Treaty with Roumania, which have the following common text :—

> "Bulgaria/Hungary/Roumania shall take all measures necessary to secure to all persons under Bulgarian/Hungarian/Roumanian 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."

Secondly, the Hungarian and Roumanian Treaties contain in addition the following clause (Article 2 of the Hungarian Treaty and Article 3 of the Roumanian Treaty) :—

> "Hungary/Roumania further undertakes that the laws in force in Hungary/Roumania shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Hungarian/Roumanian 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."

In the opinion of the Government of the United Kingdom, a dispute concerning the interpretation and execution of the above quoted provisions has arisen between it and the Governments of Bulgaria, Hungary and Roumania respectively (hereinafter referred to as "the three Governments"), which should be settled by means of the procedure specified in the relevant disputes articles of the Peace Treaties. For reasons of convenience, these articles are cited, and their common text is quoted, at a later stage of the present written Statement, the five following paragraphs of which set out the history of the matter up to the present date.

2. Before the beginning of the second part of the Third Session of the General Assembly of the United Nations in April, 1949, requests were made by the Governments of Australia and Bolivia for the inclusion in the agenda of the Assembly of items concerning

the trials of Church leaders in Bulgaria and Hungary which had recently taken place in those countries. When these requests came before the General Committee of the Assembly, it was decided to amalgamate them in a single item to read as follows:—

> "Having regard to the provisions of the Charter and of the Peace Treaties, the question of 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 inclusion of this item in the agenda was opposed by the representative of the Soviet Union, mainly on the ground that the trials were the domestic concern of the countries concerned, and that the General Assembly was not competent to discuss them in view of Article 2, paragraph 7, of the Charter, which provides that nothing in the Charter "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State". It should be noted, however, in view of what subsequently occurred, that the Soviet opposition was also based on the ground that, if there was a dispute concerning any alleged violations of the Peace Treaties, the procedure laid down in those Treaties for the settlement of disputes should be followed, and that the Assembly was not the proper authority for securing the execution of the Peace Treaties. Thus at this stage, and in order to oppose the inclusion of the item in the Assembly's agenda, the Government of the Soviet Union was ready and anxious to make appeal to the provisions of the Treaties for the settlement of disputes: yet when, at a later stage, it was asked to co-operate in the application of this same procedure, it refused to do so.

3. In point of fact, the Governments of the United Kingdom and the United States had already taken the opening steps towards setting the Treaty procedure in motion by addressing notes dated April 2nd, 1949, to the Governments of Bulgaria, Hungary and Roumania, alleging a number of violations of the Human Rights articles of the Peace Treaties, and calling upon those Governments to adopt prompt remedial measures. It is not necessary for present purposes to detail these charges: suffice it to say that they related to a number of measures and actions, legislative, judicial and administrative, taken in the countries concerned, which the Governments of the United Kingdom and United States considered to be contrary to the Human Rights provisions of the Peace Treaties. In their replies of April 7th, 19th, and 21st, respectively, the three Governments contested the correctness and validity of these charges, and also the legal grounds on which they were based.

4. The General Committee of the Assembly duly decided to include the Australian/Bolivian item in the agenda, and it was

subsequently discussed in the *ad hoc* Political Committee of the Assembly, where it was again argued by the representative of the Soviet Union (the Governments of Bulgaria and Hungary (as non-Member States) having been invited to attend and having refused) that the Assembly was not competent to go into the matter. The ultimate result was that upon being informed that the Governments of the United Kingdom and the United States had already invoked the Peace Treaties, the Assembly decided, by its Resolution No. 272 (III) of April 30th, 1949 (the text of which is given in Annex I to the present Statement), to await the result of this action, in the meantime retaining the matter on the agenda for further consideration at the next (Fourth) Session of the Assembly.

5. Following on this, the Governments of the United Kingdom and United States engaged in an exchange of diplomatic correspondence with the three Governments concerned, and also with the Government of the Soviet Union, with a view to procuring the settlement of the dispute in the manner provided by the Peace Treaties. This correspondence has already been communicated to the Court, but, for convenience of reference, that relating to the United Kingdom (General Assembly document A/990 of September 27th, 1949) is attached as Annex II to the present Statement [1]. For the moment, it is sufficient to say, generally, that the three Governments, and also the Government of the Soviet Union, while disputing the charges, refused to co-operate in the application of those articles of the Peace Treaties which provided for the settlement of disputes, denying that there was, in fact, any dispute, and also reiterating that the matter was one of purely domestic concern, and could not therefore be the subject of international settlement.

6. The Governments of the United Kingdom and United States accordingly informed the Secretary-General of the United Nations of the abortive result of their efforts to set in motion the procedure contemplated by the Peace Treaties, and this information was duly communicated to the General Assembly in the course of its recent (Fourth) Session. In consequence, and having regard to the position maintained by the Governments of Bulgaria, Hungary and Roumania, and by the Government of the Soviet Union, that there was no dispute, and that the provisions of the Peace Treaties for the settlement of disputes were not applicable, the Assembly decided by its Resolution dated October 22nd, 1949 (the full text of which is given in Annex III hereto), to request an advisory opinion from the Court on the following questions :

[1] This document did not include the Hungarian note of October 27th, 1949, which was not received until later, and which was the only reply made by any of the three Governments to the United Kingdom notes of September 19th (see paragraph 19 below). This Hungarian note is accordingly attached as Annex II A.

"I. Do the diplomatic exchanges between Bulgaria, Hungary and Romania 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 Romania, 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 Romania?

In the event of an affirmative reply to question I:

II. Are the Governments of Bulgaria, Hungary and Romania 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 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?

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 definite and binding decision in settlement of a dispute?"

7. It will be observed that these questions are directed solely to establishing whether the three Governments concerned are under an obligation to take the necessary steps to enable the provisions of the Peace Treaties concerning the settlement of disputes to function, and what unilateral measures, if any, the other parties to the Treaties can take to this end if such co-operation is not forthcoming. The questions put to the Court are not, therefore, in any way concerned with the merits or demerits of the substantive allegations made against the three Governments of violations of the Peace Treaty provisions concerning Human Rights [1]. Consequently, in the present written Statement, no

[1] In this connexion, it should be noted that the second of the questions put to the Court has, by a drafting oversight, been framed too widely. It asks whether the Governments of Bulgaria, Hungary and Roumania are under an obligation to carry out "the provisions of the articles referred to in question I". It so happens that in question I reference is made not only to the articles of the Peace

reference will be made to these alleged violations except in so far as may be necessary for purposes of clarification.

II

8. The first question addressed to the Court is whether the diplomatic exchanges which have taken place concerning the implementation of the Human Rights articles of the Peace Treaties disclose disputes (i.e. international disputes) which are subject to the provisions of the Peace Treaties for the settlement of disputes. This question has therefore two elements, namely, is there an international dispute, and, if there is one, is it a dispute to which the provisions of the Peace Treaties providing for the settlement of disputes apply?

9. The three Governments, and the Government of the Soviet Union, deny that there is any dispute, on grounds which, in so far as they are disclosed in the diplomatic exchange of correspondence, are inadmissible and, indeed, almost frivolous. In the opinion of the United Kingdom Government, it is manifest on the face of the correspondence and of the discussions which have taken place in the General Assembly, that a dispute exists. Indeed, the very fact that one party denies that there is a dispute, while the other asserts there is, shows the existence of a difference of opinion—and hence of a dispute—as to the meaning and effect of the Treaty. While it may be difficult to give a precise legal definition of a dispute, the existence of which is really more a question of fact than of law, the Government of the United Kingdom considers that for present purposes 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. In the present case all these elements seem to be present. The Government of the United Kingdom has alleged specific violations of the Human Rights articles of the Peace Treaties by which the countries concerned are bound, and the observance of which the Government of the United Kingdom is entitled under the Peace Treaties to require. It will be seen that in the opening part of the diplomatic exchanges (see, for instance, the Hungarian note of

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Treaties concerning the settlement of disputes, but also, incidentally, to the Peace Treaty articles concerning Human Rights, though solely by way of description of the subject on which the diplomatic exchanges had taken place. In the opinion of the United Kingdom Government, the substance of question II is intended to relate only to the settlement of disputes articles, and the Court is not called upon to go into the question of the alleged violations of human rights.

April, 7th, the Roumanian note of April 19th, and the Bulgarian note of April 21st, 1949), the three Governments discussed the actual substance of the charges made against them, either denying them, or justifying the measures or actions concerned, and making countercharges [1]. It was only at a later stage that it occurred to these Governments to deny that there was any dispute at all (see for instance the Bulgarian note of July 27th, and the Hungarian note of August 26th). They therefore tacitly admitted that a dispute on a substantive issue under the Peace Treaties had arisen. In addition to denying the substantive correctness of the charges made against them, they also denied the correctness of the United Kingdom's interpretation of the Peace Treaties, on the basis of which the charges were made. Furthermore, by their very invocation of the exception of domestic jurisdiction as being applicable in the present case, when the Government of the United Kingdom denies that it has any application in view of the existence of a specific provision in an international agreement, these Governments have admitted, have indeed themselves created a dispute. They have further (although this point is not at the moment actually in issue) failed to discontinue the actions complained of, or to take any steps of a remedial character [2].

10. For all these reasons, it seems clear to the Government of the United Kingdom that a dispute must exist, and, so far as the Government of the United Kingdom is concerned, a dispute undoubtedly does exist. It is obvious that if it were open to parties to a treaty, in reply to alleged violations of the treaty, to cause a dispute not to exist by the simple process of denying its existence, means would never be wanting to defeat the intention of the treaty ; and it would be useless to include in treaties

[1] The Hungarian Government again took up the substance of the matter in their note of October 27th, 1949 (see Annex IIA), in which they once more denied or sought to justify the acts of which they were accused, and made countercharges.

[2] Some assistance as to the circumstances in which a dispute can be said to exist is to be derived from pronouncements of the Permanent Court of International Justice. In the *Mavrommatis case* (Series A., No. 2, pp. 11, 13), a dispute was said to be "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons", and the Court refused to lay down any rule as to the extent of the previous diplomatic exchanges to be required between the parties—a point of some importance on the question (if it should be raised) of whether the previous diplomatic exchanges in the present case were adequate to establish the existence of a dispute. In the case of the *German Interests in Upper Silesia* (Series A., No. 6, pp. 14 and 22), in discussing when a "difference of opinion" could be said to have been established, the Court held that "even if .... the existence of a definite dispute were necessary, this condition could at any time be fulfilled by means of unilateral action on the part of the applicant party", and a difference of opinion was said to exist "as soon as one of the Governments concerned points out that the attitude adopted by the other conflicts with its own views". In the *Chorzów Factory case* (Series A., No. 13, p. 10), the Court said that "the manifestation of the existence of a dispute in a special manner, as for instance by diplomatic negotiations, is not required".

provisions for the settlement of disputes, for in these circumstances such provisions could never have any binding character, since they could only be operated with the consent of the very party against whom the charges of violation were made. In fact, the mere process of denying that a dispute exists is itself constitutive of one, if the other party alleges that there is a dispute arising out of charges of treaty violations, which are either denied, persisted in, or left unremedied. It is only by begging the question at issue that the conclusion can be arrived at that no dispute exists. It is, moreover, precisely by these means that the three Governments concerned reach this position. This is well exemplified in the Hungarian note to the United Kingdom of August 26th, 1949, which contains the following passage referring to the setting up of a Commission (as is required by the Peace Treaties for the final settlement of disputes) :

> "Further .... paragraph (sc. article) 40 stipulates that the Commission be delegated (sc. appointed) only in case of a 'dispute' concerning the interpretation and carrying out of the Peace Treaty. *There can be no question however about such a 'dispute'* because—as it can clearly be seen in the enumerated notes of the Hungarian Ministry of Foreign Affairs—the Hungarian Government has *exactly fulfilled its obligations* assumed in the Peace Treaty."

The above argument amounts to this, that because the Hungarian Government, in reply to charges of violating the Peace Treaty, denies that it has violated the Treaty and says that it has, in fact, exactly complied with it, therefore there is no dispute as to whether it has violated the Treaty or not. The palpable absurdity of this argument is manifest, seeing that the very question at issue is whether the Treaty is being carried out or not, and that it obviously cannot be disposed of by the simple process of denying the charge. The moment that the Hungarian Government and the other Governments concerned, in reply to charges of Treaty violation, state that in fact they are complying with the Treaty, a dispute necessarily arises, because the respective parties are taking up opposed attitudes on one and the same issue. That which causes a dispute to come into existence cannot simultaneously cause it to go out of existence ; yet this is what the Hungarian Government is suggesting. By saying that they are fulfilling the Treaty when the Government of the United Kingdom says they are not, they are themselves either admitting the existence of a dispute or bringing one into existence. It is not possible, therefore, that this dispute should fail to have any existence because the Hungarian Government say they are complying with the Treaty. The process is, again, one which (if it were valid) would necessarily make nonsense of all provisions in treaties for the settlement of disputes. These provisions are included on purpose to deal with cases in which one party says that the other party is not carrying out the treaty, but the other

party says that it is. If, therefore, the other party could cause a dispute not to exist merely by saying that the treaty was in fact being carried out, the articles for the settlement of disputes would be useless, since no dispute could ever arise.

III

11. Nor is there any greater substance in the argument (put forward in almost all of the notes of the three Governments, and by the Soviet Union) that the dispute, if it exists, is not international in character, i.e., that the matter does not come under the Peace Treaties because it is essentially one of domestic concern and jurisdiction. This again is an argument in a circle. The question whether such a matter falls within the terms of the relevant treaty is a mixed question of fact and of the legal interpretation of the treaty itself. A matter which would otherwise be, or in certain of its aspects is, one of domestic jurisdiction and concern, nevertheless (if, in fact, it is the subject of a treaty provision) necessarily, and in consequence of that alone, becomes a subject of international rights and obligations. The moment anything is a subject of international rights and obligations, it ceases to be of purely domestic concern : it becomes a matter of international concern because it concerns the other party or parties to the treaty. To say that a matter does not fall under a treaty *because* it is one of domestic concern or jurisdiction, is to reverse the correct order of reasoning, for the initial question is not whether the matter is of domestic concern, but whether, on the language and wording of the treaty, it falls under or is dealt with by, or is a subject of the treaty. If it is, then *ipso facto* it ceases to be of purely domestic concern. In other words, it is not because something is of domestic concern that it does not fall under the treaty, it is because it falls under the treaty that it is not of domestic concern, or no longer purely so. This position was clearly established by the advisory opinion of the Permanent Court of International Justice in the case of *The Tunis and Morocco Nationality Decrees* (Publications of the Court, Series B., No. 4), in which the Court stated (at p. 24 of the opinion) with reference to questions of nationality, that, although these were in principle matters solely within the domestic jurisdiction of the State concerned, that State might have restricted its freedom of action in the matter by treaty obligations, in which case, so far as the compatibility of the State's nationality law with its treaty obligations was concerned, the matter was no longer solely within its domestic jurisdiction, and the dispute became one of the interpretation of treaty provisions, in respect of which the exception in favour of matters of domestic jurisdiction did not apply. In the opinion of the United Kingdom

Government, this reasoning is exactly applicable to the present case. It may be admitted that, normally, the dealings of a government with its own nationals in its own territory, and the trial of its own nationals in its own courts for offences committed locally, are matters essentially or solely of domestic concern and jurisdiction. The Human Rights provisions of the Peace Treaties were, however, quite obviously and on the face of them, inserted for the express purpose of creating certain exceptions to this position in the case of these countries. They were expressly worded so as to cover nationals of the countries concerned and the dealings of these Governments with their own nationals. These provisions create *international* obligations in regard to matters which would or might otherwise be of purely domestic concern and jurisdiction. They have the effect (and must have it, since otherwise they could have no effect at all) of giving the other parties to the Treaty international legal rights in regard to the matters in question, for the purpose of securing the observance of these articles by the Governments concerned in their dealings with their own nationals in their own territory. To say that these matters do not come under the Peace Treaties because they are of purely domestic concern would make nonsense of provisions which, manifestly and on the face of them, must have been inserted for no other purpose than to cause the matters concerned to cease to be of purely domestic jurisdiction. The Hungarian, Bulgarian and Roumanian argument, and that of the Soviet Union, therefore begs the question from the start. To say that because the matters are of purely domestic concern, therefore they do not come under the Treaties, is to assume that they are in fact of purely domestic concern, but that is the very question at issue. The assumption is negatived by the manifest language of the Treaties. The fact that these matters are the subject of express provisions in the Peace Treaties alone suffices to take them out of the category of matters of purely domestic concern. The question becomes one of the compatibility of the local law, and of the measures locally taken, with the relevant provisions of the Treaties.

IV

12. On the basis of the above argument, it is submitted that the first element in the first question put to the Court must be answered in the affirmative, namely, that the diplomatic exchanges do disclose the existence of a dispute, and one of an international character. The second element is whether that dispute is 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 with Hungary, and Article 38 of the Treaty with Roumania.

All these articles are similar in their form and substance, and they read as follows:

> "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 37, 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 the 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."

It will be seen from the opening phrases of this provision that any dispute *ipso facto* falls under it provided (*a*) that it is a dispute "concerning the interpretation or execution of the Treaty", and (*b*) that it is not a dispute the settlement of which is specifically made subject to a different procedure under any other article of the Treaty. The present dispute, which relates to charges of violating the Human Rights provisions of the Treaties, as quoted in paragraph 1 of the present written Statement, is necessarily a dispute "concerning the interpretation or execution" of the Treaty. The Government of the United Kingdom is alleging a series of actions in violation of these provisions, on the part of the three Governments concerned. If the three Governments are, in fact, committing these actions, or have committed them, then they are not, in the United Kingdom view, executing the Treaty, or have broken it, because they are not respecting or have already failed to respect the human rights provided for. To use the language of these provisions, far from taking "all measures necessary to secure to all persons under their jurisdiction the enjoyment of human rights and of the fundamental freedoms", the Governments concerned are in fact denying these rights to the persons who should receive them. In so far as the three Governments do not admit that they have committed or are committing these actions or, alternatively, say that they have executed or are duly executing the clauses concerned, then there is necessarily a dispute as to whether the Treaty has been in this respect or is being executed. There is in fact a dispute concerning the execution of the Treaty.

13. There is also a dispute concerning the interpretation of the Treaty. This would necessarily arise from the fact alone that the three Governments have pleaded the principle of domestic jurisdiction as taking the matter out of the scope of the Treaty, whereas the Government of the United Kingdom argues the converse, that on its correct interpretation the Treaty is clearly applicable, and takes the matters concerned out of the sphere of domestic jurisdiction. It will be seen also that the argument of the three Governments to the effect that the Human Rights provisions are being fulfilled is based on a different conception of the meaning of those provisions from that held by the United Kingdom Government. The three Governments (see for instance the Hungarian and Roumanian notes of April 7th and 19th, the Bulgarian notes of July 27th and September 1st, and the Roumanian note of September 2nd) consider that these provisions must be read subject to another provision of the Peace Treaties, namely, Article 4 of the Treaties with Hungary and Bulgaria, and Article 5 of the Treaty with Roumania. These have a common text reading as follows :

> "Hungary/Bulgaria/Roumania, which in accordance with the Armistice Agreement has taken measures for dissolving all organizations of a Fascist type on Roumanian territory whether political, military or para-military, as well as other organizations conducting propaganda hostile to the Soviet Union or to any of the other United Nations, shall not permit in future the existence and activity of organizations of that nature which have as their aim denial to the people of their democratic rights."

It will be seen from the correspondence that the three Governments argue, either that they are only obliged to carry out the Human Rights articles in respect of non-Fascist persons and organizations, or alternatively, that they were justified in the actions which are the subject of the charges now made against them, because these actions were for the purpose of carrying out the provision quoted immediately above, i.e., for the purpose of carrying out their treaty obligation not to permit the existence or activities of organizations of a Fascist type or other similar organizations having as their aim denial to the people of their democratic rights. There is here involved a clear difference of opinion between the respective parties as to the meaning, effect and interrelation of these different provisions, as well as of such specific terms as "Fascist" and "denial of democratic rights". Manifestly, therefore, there is a dispute about the interpretation as well as about the execution of the Treaties.

14. It is equally clear that this dispute is not one for which some other method of settlement is provided by another article of the Treaties. In each of the three Treaties another mode of settlement is provided in connexion with certain of the economic

clauses (see Article 31 of the Treaty with Bulgaria, Article 35 of the Treaty with Hungary, and Article 32 of the Treaty with Roumania) ; but these articles specifically enumerate the clauses to which they apply. Thus, Article 31 of the Bulgarian Treaty says: "Any disputes which may arise in connexion with Articles 22 and 23 and Annexes IV, V and VI of the present Treaty, shall be referred to a Conciliation Commission, composed", etc., and it is the same *mutatis mutandis* in the other Treaties. The Roumanian Treaty in addition contains a special article (Article 33) providing for the settlement of disputes "which may arise in connexion with the prices paid by the Roumanian Government for goods delivered by this Government on account of reparation....". These are the only other Articles of the Peace Treaties concerned which provide a method for the settlement of disputes different from that contemplated by the general disputes provisions quoted in paragraph 12 above. It is clear that the present dispute does not fall under any of these other Articles. It arises in regard to provisions (Articles 2-5 of the Treaties) which are not amongst those listed or contemplated by these other Articles, provisions which figure in that part of the respective Treaties headed "Political Clauses", whereas the other Articles for the settlement of disputes relate wholly to provisions figuring in that part of the Treaties headed "Reparation and Restitution" or "Economic Clauses". Indeed, these other Articles for the settlement of disputes are themselves part of the economic clauses and are clearly applicable only to the provisions of that nature enumerated in them.

15. For all these reasons, it is submitted that the second element of the first question must also be answered in the affirmative, i.e., that the dispute disclosed by the diplomatic exchange is one which is subject to the general provision for the settlement of disputes quoted in paragraph 12 above.

V

16. The next question put to the Court, i.e., that numbered II, is whether the Governments of Bulgaria, Hungary and Roumania are legally bound to carry out the provisions of the general disputes Article of the Treaties, "including the provision for the appointment of their representatives to the Treaty Commissions". The United Kingdom Government submits that once it is established that a dispute falling under the Article concerned exists, there can be no doubt that the Governments of Bulgaria, Hungary and Roumania are legally bound to carry out the provisions of that Article. It was inserted in the Peace Treaties for the express purpose of enabling disputes of the present kind to be settled. It has no other purpose, and if the Governments concerned are

not bound to carry out its provisions when a dispute of the character contemplated by it arises, the Article would have no meaning or object. It must be assumed that the parties, by inserting this Article, and by subsequently signing and ratifying the Treaty containing it, intended that any disputes contemplated by it should be settled by the procedure provided in it. Unless this assumption is made, the Article has no purpose since it is always open to parties to go to arbitration *voluntarily* and a treaty clause is only required where arbitration is to be compulsory. Therefore the legal obligation of the Governments concerned to carry out this provision follows as an inescapable conclusion from the mere fact that the Article figures in the relevant Treaty.

17. The answer to the specific question whether these Governments are legally bound to carry out the provisions of the general disputes Article for the appointment of their representatives to the Treaty Commissions, naturally depends on whether the procedure contemplated by the Article has duly been gone through, and has reached a stage at which the appointment of Commissioners is requisite. The Government of the United Kingdom submits that this stage has been reached. In this connexion, it has itself endeavoured to carry out with the utmost exactitude the procedure provided for in the Article. This contemplates that when a dispute arises, an attempt should first be made to settle it by direct diplomatic negotiations. As the exchange of correspondence shows, this is what the Government of the United Kingdom did. It addressed the three notes dated April 2nd, 1949, to the three Governments concerned, setting out the general nature of the charges made, the facts on which they were based, and citing the relevant Articles of the Treaties. The three Governments, in their notes of April 7th, 19th and 21st, 1949, all denied these charges and also the legal basis on which they were put forward. Thus the dispute was not settled by direct diplomatic negotiations (and the citations contained in the footnote to paragraph 9 above, show that the Government of the United Kingdom was in no way bound to engage in prolonged or further diplomatic exchanges). Next, the disputes Article provides that, in the event of such non-settlement, the dispute is to be referred to the Three Heads of Mission in the capital concerned, i.e., the United Kingdom, United States and Soviet Diplomatic Representatives. Accordingly, the Government of the United Kingdom effected such a reference by notes dated the 31st May, 1949, addressed to the Representatives in the capitals concerned of the Governments of the United States and U.S.S.R., asking them to state at an early date when they would be prepared to meet with the United Kingdom Representative in order to take cognizance of the dispute in the manner prescribed by the Peace Treaty. (On the same date, the Government of the United Kingdom informed the three ex-enemy Governments that, in the United

Kingdom view, a dispute had arisen which was being referred to the Heads of Mission.) The United States Representative in each case expressed willingness to attend the meeting. The Soviet Representative did not reply, but a reply was sent through the Soviet Embassy in London by the note dated June 12th, 1949. This note rejected the idea of consideration by the Heads of Mission, advancing arguments similar to those put forward on behalf of the three ex-enemy Governments, namely in effect, that there was nothing to discuss, because it was obvious that the three Governments were carrying out their Treaty obligations and that, in any case, the matter fell completely within the domestic jurisdiction of those Governments. The United Kingdom reply to this communication, contesting these arguments, is contained in the note dated 30th June, 1949. Of the three ex-enemy Governments, only the Bulgarian Government replied to the United Kingdom note of 31st May. In this reply, dated 27th July, they again justified their actions, denied that there was any dispute or any ground for invoking the disputes Articles.

18. Accordingly, by 30th July, 1949 (i.e., two months after the date of the notes referring the matter to the Heads of Mission), a situation had arisen which was precisely that contemplated by the second sentence of the general disputes Article quoted in paragraph 12 above, i.e., the dispute had not been resolved by the Three Heads of Mission within the prescribed period of two months. The dispute had not been resolved by them for the simple reason that it had never been considered by them jointly, because the Soviet Representative refused to do so. The Government of the United Kingdom does not read the relevant provision as relating solely to cases in which the Heads of Mission have made some attempt to resolve the dispute, but have failed to do so within the period specified. The provision in question relates to a simple situation of fact; it says: "Any such dispute not resolved by them within a period of two months...." The only question is therefore—was the dispute in fact resolved by the Heads of Mission? If not, then it is irrelevant why, and it does not matter whether, it was because they were unable to do so, or because, owing to the refusal of one of them to participate, they were never able jointly to consider the matter at all. The same reasoning applies to the phrase in the preceding sentence to the effect that a dispute not settled by direct diplomatic negotiations "shall be referred to the Heads of Mission", and to any contention that the dispute was never in fact "referred" to them. The United Kingdom Government considers that this reference was definitively effected by means of the note which their Representative in each of the three capitals concerned addressed for the purpose to his United States and Soviet colleagues. It is immaterial that the Three Heads of Mission did

not, as a body, *consider* the dispute, or go into it. It was certainly referred to them. They did not consider it because one of them refused to do so. It accordingly became a dispute not resolved by them within the specified period.

19. This situation having been reached, the relevant provisions of the disputes Article are quite clear. They say that, in these events, the dispute "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....". The parties did not, in fact, mutually agree upon any other means of settlement. It is again simply a question of the existence of a fact, i.e., non-agreement on any other means of settlement. The reasons for such non-agreement do not affect the fact, and it is immaterial that they sprang, on the one side, from a denial there was any dispute to be settled [1]. Accordingly, the matter became automatically referable to the contemplated Commission on the sole request of the Government of the United Kingdom as the other party concerned. This request the Government of the United Kingdom duly and in terms made in the notes to the three Governments each dated 1st August, 1949. These Governments all replied (notes of 26th August and 1st and 2nd September) reiterating their previous arguments and specifically refusing to participate in the setting-up of any Commission. To this the Government of the United Kingdom replied by identical notes dated 19th September, 1949, stating that it was unable to accept the reasons advanced by the three Governments for refusing to comply with the Treaty provisions and procedure, and reserving all its rights. Subsequently, the Government of the United Kingdom appointed Mr. F. Elwyn Jones, K.C., M.P., as their Commissioner on each of the three Commissions concerned. The three Governments were informed of this in identical notes delivered on January 5th, 1950, in which they were also formally requested to appoint their own Commissioners and to consult with the United Kingdom Government as to the appointment of the third Commissioner. The text of these notes is given in Annex IV hereto. No reply to them has been received. It will thus be seen that the Government of the United Kingdom has taken all the steps open to it under the Treaties.

20. As regards the obligation of the parties to appoint their Commissioner (when this stage has been reached), the Treaty position is that the Commission contemplated by the relevant Article is to be composed of "one representative of each party

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[1] The more particularly of course if the Court holds, in answer to question I (and it is only on that assumption that question II arises at all), that the existence of a dispute is established.

and a third member selected by mutual agreement of the two parties from nationals of a third country". It is submitted that a provision to the effect that, upon the request of one of the parties, a dispute is to be referred to a Commission composed in this way, must automatically entail an obligation on each of the parties to appoint or be ready to appoint its representative on the Commission: otherwise the provision in question has no force or meaning. It would be idle to provide that a dispute shall, at the request of either party, be referred to a Commission of this character if there were no obligation upon the parties to appoint their Commissioners, for in that case there could not come into being any Commission to which to refer the dispute. An inherent and absolute contradiction would be involved between an obligation to refer a matter to a Commission composed of Commissioners appointed by each party and a third neutral Commissioner, and the absence of any obligation on the parties to appoint their Commissioners. It is submitted therefore that, from the moment at which there arises under this Article a right for one party to have the matter referred to a Commission, there simultaneously arises, as a necessary complement, an obligation on the other party to co-operate in the setting-up of the Commission, and, when called upon, to appoint its representative on the Commission.

VI

21. Whereas the first and second questions put to the Court relate to the past, and to the obligations of the Governments of Bulgaria, Hungary and Roumania under the general disputes Article of the Peace Treaties, the third and fourth questions have reference to the position which will arise in future if these three Governments persist in their present course of refusing to co-operate in operating the Treaty procedure (assuming the Court holds that they are under a legal obligation to do so); and these questions raise the issue of what steps, if any, can be taken by the other parties to the Treaty to put the Treaty procedure into effect in the absence of such co-operation. These questions arise from the fact that the Treaty makes no provision for what is to happen in the event of such a default. In this there is nothing unusual, since most treaties containing provisions for arbitration tacitly assume that, should a dispute arise, the arbitral procedure will duly be resorted to. The Government of the United Kingdom is, however, so far as its own standpoint goes, less concerned than in the case of the first two questions to urge any particular conclusion as to the third and fourth questions, because it considers that the object of these latter questions is mainly to put the General Assembly in a position to determine its own future procedure in this matter. If these questions are both answered in the

affirmative, the Assembly may consider that it ought to defer any further action or consideration, at least until the processes contemplated by these questions have been gone through : should, however, the answer to both or either be in the negative, it will be clear that no further steps are open to the complainant parties under the Peace Treaties as such.

22. On the assumption that the Court advises, in answer to the first two questions, that the three ex-enemy Governments are under an obligation to appoint representatives to the Treaty Commissions ; and if they have still failed to do so within thirty days after the delivery of this opinion, the third question asks whether the Secretary-General of the United Nations would be competent to appoint the third member of each Commission upon the request of the other party to the dispute. The Government of the United Kingdom considers that this question should be answered in the affirmative. The only element of doubt arises on a purely literal construction of the wording of the general disputes Article. The difficulty arises because the Article, after providing for a Commission composed of one representative of each party, then goes on to provide for a "third" member who is to be appointed by the Secretary-General upon the request of either party, if the two parties are themselves unable mutually to agree upon this third member. It may be argued, therefore, that the mention of a third member implies the previous existence of the other two members. But the term can equally be regarded as being merely a convenient way of describing a particular member of the Commission whose appointment is to be effected by a different procedure from that provided for the appointment of the other two members, i.e., as meaning neutral or additional rather than "third" in the temporal sense. Admittedly, the fact that the third member is to be selected in the first place "by mutual agreement of the two parties from nationals of a third country" seems primarily to contemplate a situation in which the two parties have already appointed their national Commissioners. Thus it can be argued that the question of the appointment of a third Commissioner by means of this mutual agreement can only arise after the two national Commissioners have been appointed, and that the same must therefore apply to any appointment by the Secretary-General of the United Nations, in the event of failure to agree. This argument would be much stronger if the appointment of the third member had to be made in the first instance by mutual agreement between the two national Commissioners as individuals, but the Article does not say this ; it says the appointment is to be effected by mutual agreement of the two *parties*, i.e., of the two Governments. Now it is obvious that if one of the parties has refused even to appoint its own national Commissioner, there can be no question of its agreeing on the designation of the neutral member of the Commission. In brief, there is a situation in which the

party concerned has refused or failed to appoint its own national Commissioner, and has equally in effect refused, or at any rate failed to agree upon, the appointment of the neutral Commissioner. Consequently, the situation contemplated by the final sentence of the paragraph (i.e., "should the two parties fail to agree within a period of one month upon the appointment of the third member") would be literally that which would then exist, that is to say the two parties would not in fact have agreed upon the appointment of the third member, using the term "third member" in the sense indicated above as a convenient form of description of the contemplated neutral member of the Commission.

23. It should be noticed in the foregoing connexion that although the natural thing, if the Treaty machinery were being operated properly, would doubtless be for the parties to begin by appointing their own Commissioners, and then to go on to appoint the neutral Commissioner, there is nothing in the Article which positively requires that the national Commissioners should be designated first in point of time. On the wording of the Article, it would theoretically be open to the parties to begin by agreeing upon the contemplated third member of the Commission, and only after such agreement to proceed to the designation of their national Commissioners: one can indeed imagine circumstances in which they might prefer to do this. Similarly, there is nothing in the wording of the Article (and should the parties fail to agree upon the appointment of the neutral Commissioner) to prevent the Secretary-General from being at once requested to make the appointment, and for the national Commissioners only to be appointed at a later stage; and again, circumstances are conceivable in which this might be done of set purpose. If therefore this process could be carried out even though *no* national Commissioners had as yet been appointed, then *a fortiori* it could be carried out if one such Commissioner had been appointed but not the other. These considerations seem to support the view that the term "third Commissioner" is a piece of description, and does not have the result of making it a condition precedent of his appointment that the two national Commissioners should already have been designated.

24. Unless the provision concerned is read in the above sense, it would always be open to any party to a dispute under the Treaty to stultify the Treaty procedure by his own action. In other words, although the relevant Article clearly contemplates an appointment by the Secretary-General, upon the request of either party, if the parties cannot agree upon a third Commissioner within a period of one month from the date of the request for reference to a Commission, it would always be open to one of the parties to prolong the contemplated period of one month indefinitely by simply delaying (even without absolutely refusing)

the appointment of its own national Commissioner. This could easily occur ; i.e., one of the parties, without refusing, might delay his appointment. If such appointment is a condition precedent of the appointment of the third member, but is delayed beyond the month, the intention of the Article, namely that the appointment should be made by the Secretary-General if the parties cannot agree within that period, would be defeated.

VII

25. There remains the fourth question put to the Court, assuming that the third question is answered in the affirmative, i.e., would a Commission composed of the representative of one party only, together with a member appointed by the Secretary-General, constitute a Commission within the meaning of the Treaty, competent to give a final and binding decision ? It does not, of course, follow from the fact that the Secretary-General can properly be requested to nominate, and could validly nominate, the third member of the Commission before one or both of the national Commissioners have been appointed, that a competent Commission can exist in the total absence of one of the national Commissioners. Ordinarily, if the third member were appointed first, either by agreement between the parties or upon request by the Secretary-General and in advance of the appointment of either or both of the national Commissioners, in the manner and for the reasons which have been suggested above, this would only be anticipatory of these other appointments, and the Commission would not come into existence and would not function until these other appointments had been made. The question now at issue, however, is whether this still remains the case where one of the parties has appointed its Commissioner, and the absence of the other Commissioner is due to the wilful refusal or default of the other party to appoint him. It must be recognized that *prima facie* the Treaty contemplates a Commission composed of three members, and although failure or refusal to appoint its Commissioner would constitute a violation of the Treaty on the part of the Government concerned, it would not follow from that alone that the other two members could constitute by themselves a competent Commission and could give a valid and binding decision. The essence of a Commission of this kind is that the third or neutral member holds the balance between the two national Commissioners. It may be said that the third Commissioner can scarcely carry out properly the functions which he is intended to perform if he is not assisted by the national Commissioners of *both* sides. Not only, in the circumstances now postulated, would the national Commissioner of one of the parties be absent, but in addition it must be assumed that, having refused

or failed to appoint its Commissioner, the Government concerned would equally be unwilling to submit any evidence to a Commission composed of the other two members. Thus the Commission would have difficulty in functioning in the manner presumably contemplated by the Treaty. There is also the consideration that the second paragraph of the relevant Article on the settlement of disputes, as quoted in paragraph 12 above, says : "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 very idea of a majority, however, contemplates a Commission consisting of not less than three members. If there is a two-member Commission, they either disagree or they are unanimous : the question of a majority in the strict sense cannot arise. Further, if the two members disagree, there can be no decision at all ; yet the Treaty procedure seems to have been intended to ensure that a final decision would be reached in all circumstances.

26. *The United Kingdom Government have thought it preferable* to state explicitly the difficulties which may exist in the way of giving an affirmative answer to the fourth question put to the Court. But a different point of view can also be maintained. For instance, the primary object of the provision about majority decisions being binding was to make it clear that the three Commissioners did not have to be unanimous and that the views of any two of them would suffice. This provision was not, as such, directed against the possibility of a Commission of less than two members functioning. It is suggested, moreover, that had a Commission of three members been duly constituted, but one of the parties had subsequently withdrawn its Commissioner, the other two could nevertheless have continued to function and render any decision upon which they were able to agree. It is true that in that case there would have been an initially valid constitution of the Commission, by the appointment of the contemplated three members. Nevertheless, if such a Commission can go on *functioning* and render *valid* decisions despite the withdrawal of one of its members by his Government, this suggests that a party cannot, by its own unilateral action, defeat the clear intention of the Treaty, and prevent the Treaty procedure for the settlement of disputes from functioning, so far as such functioning remains a material possibility in the absence of the co-operation of the party concerned. If this is true of a position in which one of the parties withdraws its Commissioner, it would seem to apply equally to the case where that party refuses or persistently fails to appoint its Commissioner [1].

[1] On the question of the right of a government to withdraw its consent to a matter being dealt with by arbitration or judicial decision (in a case where it was not obliged to give such consent, but had in fact done so), it has been stated,

27. Nor, in the last resort, is the fact that the two remaining members may not be able to agree, an insuperable objection. This merely means that it may be materially impossible, with only two Commissioners, to reach a final decision : it does not necessarily mean that, if they *can* agree, their decision is not in the circumstances a valid one. A "majority" decision might well be regarded as covering any decision upon which any two members of the Commission are in fact agreed, regardless of the circumstances in which the third, or putative third, member fails to agree : whether because he is present but disagrees, or because he is not even present, or because he was (wrongfully) never nominated, provided always that the Treaty procedure has otherwise been correctly followed.

28. As regards the difficulty that the Commission and, in particular, the third Commissioner, ought to be in possession of the views of both sides, the same principle seems to apply. A Commission cannot in any case do more than call upon both parties to make known their views and produce their evidence. If they fail or refuse to do so, the Commission has not only the right, but actually the duty to render a decision, so far as it can, on the basis of such evidence or information as it can obtain from other sources. A Commission composed of two members can, equally as well as a three-member Commission, call upon both sides to submit their views and evidence, and the failure or refusal of one side to do this cannot of itself incapacitate the Commission from rendering a decision [1].

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with reference to the jurisdiction of the Permanent Court of International Justice, that : "Once consent has been given, it cannot be withdrawn during the Court's exercise of the jurisdiction consented to" (cf. Hudson, *The Permanent Court of International Justice, 1920-1942*, p. 411, citing *the case of the Minorities in Upper Silesia*) (Series A., No. 15, p. 25). Cases have certainly occurred in which, despite the withdrawal of one of the Commissioners or his refusal or failure to participate, the Commission has gone on functioning and has given decisions or awards : e.g. the Franco-Mexican Claims Commission of 1929, in the absence of the Mexican Commissioner ; the United States-German Mixed Claims Commission of 1939, after the retirement of the German Commissioner ; and the Lena Goldfields Arbitral Tribunal after the withdrawal of the Soviet arbitrator (see generally Hudson's *International Tribunals*, 1944, pp. 53-54 ; Feller's *Mexican Claims Commissions*, 1935, pp. 70-76 ; and the *Annual Digest of Public International Law Cases*, 1929-1930, p. 426).

[1] Such was the view taken by the two remaining Arbitrators, Scott and Stutzer, in the Lena Goldfields case, after the withdrawal of the Soviet Government and Arbitrator. By a clause in the arbitration article, each party had undertaken "To present to the Court in manner and period in accordance with its instructions, all the information necessary respecting the matters in dispute, which it is able and which it is in a position to produce, bearing in mind considerations of State importance." On this the Court of Arbitration pronounced as follows (the citation is from the *Annual Digest*, 1929-1931, p. 427) :—

> "This information, by reason of the premises [i.e., the non-participation of the Soviet Government], the Court was not able to obtain direct from the [Soviet] Government, and, in order to ascertain the truth upon the issues

29. The point may be clearer on the basis of an application of the principle of estoppel. If a Commission composed of only two members—a national member of one party and the third member appointed by the Secretary-General—meets and gives a decision, *it is the function of the party which considers that decision to* be invalid to put forward the necessary challenge. In the present case, the only party which would have the necessary *locus standi* to do this would be the other party to the dispute. But in fact the other party to the dispute could only make this challenge by pleading its own wrongful action in not appointing its national Commissioner.

In fact, the basis of its challenge would be its own failure to appoint its Commissioner. It is submitted, however, that a plea of invalidity based solely on the default of the party making the plea cannot be good or effective. In brief, the party concerned is estopped or incapacitated from challenging the validity of the decision, because it cannot do so except by pleading its own wrong. In that case the decision would remain unchallenged in law and therefore binding. This argument would have especial force in the circumstances now contemplated, i.e., that the Court has advised that the three Governments are under a legal obligation to appoint their Commissioners, but that they have still failed or refused to do so. Can they then be heard to say (or can anyone be heard to say on their behalf) that *because* they have (wrongfully) not appointed their Commissioner, *therefore* the Commission is incompetent, or non-existent as such, and cannot properly function ? If not, there is no basis on which the validity of the decision can be challenged, and it stands.

30. The principle of estoppel has found application in certain of the pronouncements of the Permanent Court of International Justice delivered on questions bearing a close analogy to those here at issue. For instance, in the *Chorzów Factory case* (Series A., No. 9, p. 31), it was held that one of the parties was estopped from pleading the Court's lack of jurisdiction on the ground that "it is .... a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal Courts, that one party cannot avail himself of the fact that the other has not

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before it, the Court was thus compelled to admit the best evidence available of various facts and documents, upon which Lena [i.e. the Lena Goldfields Company] was unable to produce primary evidence by reason of the documents or witnesses being in Russia and not available at the trial. The Court finds as a fact upon the evidence, that this was rendered necessary by the difficulty in which the Company found itself of getting either documents or persons out of Russia for the purposes of the trial."

It is submitted that this passage is of particular interest and significance in the *present connexion, where the circumstances and the difficulties as to evidence* are of a precisely similar order, and spring from just the same kind of causes as in the Lena case.

fulfilled some obligation, or has not had recourse to some means of redress, if the former party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open to him". This suggests that if, in the present case, the Governments of Bulgaria, Hungary and Roumania have, by refusing to co-operate in the setting-up of the appropriate Treaty Commission, severally prevented the other Parties concerned from having recourse to the tribunal which would otherwise have been open to them (i.e., a Commission constituted as contemplated by the relevant provision of the Treaty), they are estopped from complaining if those Parties have recourse to such process as is available to them for obtaining a finding on the merits of the dispute, and cannot question the competence of a tribunal necessarily constituted without the co-operation of the three ex-enemy Governments, though otherwise, in accordance with the procedure laid down by the Treaty. Equally in point is the well-known principle that a government cannot plead failure to adopt the necessary internal measures of implementation, as a justification for not carrying out an international treaty obligation—a principle given full effect to by the Permanent Court in the case of the *Danzig Railway Officials* (Series B., No. 15, pp. 26-27). By analogy, it would seem that a party to a treaty cannot plead (or put forward arguments involving a plea of) its own failure to operate the treaty procedure for the settlement of disputes, as a ground for contesting the validity of action by the other parties to the treaty, taken with a view to operating that procedure to such extent as is practicable in the circumstances, and being in all other respects in accordance with the relevant treaty provisions.

31. The argument of the United Kingdom under this head can, in fact, be reduced to an application of the well-known principle of treaty interpretation—*ut res magis valeat quam pereat*, i.e., that treaty provisions must be deemed to have been intended to possess force and content, and must, therefore, in general, be so interpreted and applied as to give them adequate meaning and effect, and avoid their purpose being nullified. It has several times been pointed out in the course of the present written Statement, that if the contentions of the three ex-enemy Governments were accepted, it would mean that the Peace Treaty provisions for the settlement of disputes would be operable only at the option of each of the Parties concerned, instead of constituting, as they were clearly intended to do, an obligatory process for the settlement of disputes. If a Party to the Treaty, charged with breaches of it giving rise to a dispute which has not been settled by diplomatic negotiations, or through the Three Heads of Mission, can, by refusing to appoint his representative on the Treaty Commission, or to participate in the appointment of the third Commissioner, prevent the Commission from functioning,

and thus prevent the dispute from being settled, then it is clear that the Treaty procedure for the settlement of disputes, obviously intended to be binding and compulsory on the Parties, can, in fact, in the last resort, only be operated with the consent, express or tacit, and given *ad hoc* in each case, of the very Party against whom the charges of breach of treaty are made. Such a result would fail to give the relevant provision its intended meaning and effect, or, indeed, any real meaning or effect at all, because it is in any case always open to parties to a treaty to have *voluntary* recourse to arbitration in order to settle disputes arising under it : and unless a provision for arbitration or judicial settlement is compulsory, there is no object in including it. Consequently, on the basis of the principle *ut res magis valeat quam pereat*, the above-mentioned result ought to be avoided if it is possible to do so by any fair and reasonable interpretation of the provision concerned which does not do violence to its clear wording. In paragraphs 26-28 above, reasons have been given for thinking that an affirmative answer to the fourth question put to the Court would not be inconsistent with the language of the general disputes Article of the Peace Treaties. Therefore, in the application of the principles just discussed, the Government of the United Kingdom submits that the fourth question put to the Court should also be answered in the affirmative [1]. In making this submission, the Government of the United Kingdom is not suggesting anything which the practice of the United Kingdom itself does not recognize. Section 6 of the United Kingdom Arbitration Act, 1889, expressly provides that where there is an agreement to arbitrate, and one party makes default in appointing his arbitrator, the other party may, after serving a prescribed notice, appoint his own arbitrator to act as sole arbitrator, and that such arbitrator's award shall thereupon be binding on both parties as if the arbitrator had been appointed by consent. A similar rule applies where the agreement provides for a reference to three arbitrators (see Halsbury's *Laws of England*, Vol. 1, pp. 646 and 647).

(Signed) G. G. FITZMAURICE,
Agent for the Government
of the United Kingdom.

January 11th, 1950.

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[1] The doctrine of *ut res magis valeat quam pereat*, as applied in decisions and opinions of the Permanent Court of International Justice, was exhaustively discussed in the course of the oral argument presented by the Government of the United Kingdom during the hearing of the preliminary point of jurisdiction in the *Corfu case*, February-March, 1948, and will be found on pp. 90-97 of the Record (Distr. 241), to which the Government of the United Kingdom begs leave to refer for the purposes of the present case also.

Annex I

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS AT ITS 203rd PLENARY MEETING ON APRIL 30th, 1949

272 (III). Observance in Bulgaria and Hungary of human rights and fundamental freedoms

[*Not reproduced.*]

Annex II

LETTER FROM THE UNITED KINGDOM REPRESENTATIVE TO THE UNITED NATIONS (19 SEPTEMBER 1949)

UNITED NATIONS	GENERAL ASSEMBLY	General.
Fourth Session.		A/990.
Item 27 of the agenda.		27 September, 1949.

[*Not reproduced.*]

Annex II A

HUNGARIAN "NOTE VERBALE" TO THE UNITED KINGDOM (OCTOBER 27th, 1949)

The Hungarian Ministry for Foreign Affairs presents its compliments to the British Legation and, with reference to the Legation's note No. 475 of the 19th September, 1949, has the honour to impart as follows:

The Hungarian Government regrets to state that the Government of the United Kingdom deemed it opportune to renew the accusations, deprived of all real basis whatsoever, and rejected most categorically by the Hungarian Government—notwithstanding that the Hungarian Government on several occasions had clearly explicated in its notes Nos. 2671 and 7795/1949, and undoubtfully proved that they were minutely observing the stipulations contained in Article 2 of the Peace Treaty.

The Hungarian Government once again rejects most categorically that tendentious and false interpretation of the Peace Treaty, by which the British Government try to contrast the stipulations contained respectively in Articles 2 and 4 of the Treaty. The Hungarian Government does not see any contradiction between the observing of the stipul-

ations of Article 2 of the Treaty and the fight against Fascist and pro-Fascist elements prescribed by Article 4 of the same Treaty. On the contrary, a consequent compliance with the stipulations of Article 4 is a condition *sine qua non* of guaranteeing to all peoples, and to the Hungarian people among them, the rights defined by Article 2 of the Treaty.

It has resulted clearly from the documents of the trials against Mindszenty and his accomplices and, recently, against Laszlo Rajk and his accomplices, that the persons convicted for their antidemocratic activity were guilty of a conspiracy aiming at the reverse of the present democratic regime, and to annihilate the liberties acquired by the people, and to establish a Fascist régime of oppression, worse than any other previous regime of the kind. Accordingly, the Hungarian Government, far from infringing the Peace Treaty, acts explicitly in compliance with its stipulations when inflicting a blow upon the vile enemies of liberty and democracy who have degenerated to espionage and murderous attempts. If the Governments of the United Kingdom and of the United States accuse the Hungarian Government, this can have but one reason, i.e., the ruling circles of these countries are hostile to the independence and development of the people's democracies and, as it was proved by the aforementioned trials, support, in Hungary too, the most desperate enemies of democracy, directing them by their own network of spies, as well as by Tito and his clique, attached to their service.

As a matter of fact, the Hungarian Government has repeatedly stated that precisely these Governments have, on several occasions, infringed the stipulations of the Peace Treaty relating to Hungary, when unlawfully denying the restitution of Hungarian property found in their respective zones of occupation, when refusing the extradition of the Hungarian war-criminals escaped into their territory, when supporting these war-criminals in their antidemocratic activity and when even rendering possible the organization and equipment of military formations of Hungarian Fascists on the territory occupied by them.

Furthermore, the Hungarian Government states with astonishment that, in addition to the accusations already known and repeatedly refuted, the Government of the United Kingdom expresses the opinion—which is quite new and in no way compatible with the rules and spirit of international law—that, by assuming certain obligations through the signature of the Treaty of Peace, Hungary has become a State with limited sovereignty.

When signing the Peace Treaty, Hungary was not, nor is she at present, inclined to surrender her sovereignty—on the contrary, she will defend her independence and unhampered democratic development against any imperialist interference. The Hungarian Government considers the arbitrary interpretation of the Peace Treaty by the British Government an attempt to claim a right to constantly interfere with Hungary's internal affairs, ignoring the independence of the Hungarian State.

The Hungarian Government categorically rejects, moreover, the wholly fictitious calumny of the British Government, alleging that the present Hungarian regime be merely "the rule of a minority". It is a notorious fact that at the general elections on the 15th May of 1949 the Hungarian people manifested their will in the most democratic way—by general and secret ballot—and decided to support by 95.5% of

their votes the policy carried on by the present Hungarian Government. In view of this, the fact that the British Government alleges in a diplomatic note the present Hungarian Government as being "the rule of a minority", cannot be regarded by the Hungarian Government but an evil-minded propagandistic manoeuvre, based upon the denial of true facts.

In consideration of the above said, the Hungarian Government rejects most categorically the note No. 475 of the British Legation, as a new attempt of unlawful interference with the internal affairs of Hungary.

The Hungarian Ministry for Foreign Affairs avails itself of this opportunity to renew to the British Legation the expression of its high consideration.

Annex III

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS AT ITS 235th PLENARY MEETING ON OCTOBER 22nd, 1949

[*Not reproduced.*]

Annex IV

TEXT OF IDENTICAL NOTES FROM THE GOVERNMENT OF THE UNITED KINGDOM TO THE GOVERNMENTS OF BULGARIA, HUNGARY AND ROMANIA DELIVERED ON JANUARY 5th, 1950

His Britannic Majesty's Legation present their compliments to the Bulgarian [1] Ministry of Foreign Affairs and with reference to their note No. 410 of 1st August, 1949, regarding reference to a Commission as laid down in Article 36 [1] of the Peace Treaty with Bulgaria of their dispute with the Bulgarian Government over the interpretation of Article 2 of the Treaty have the honour to inform the Ministry of Foreign Affairs that His Majesty's Government in the United Kingdom have appointed Mr. F. Elwyn Jones, K.C., M.P., as their representative on the proposed Commission. It is accordingly requested that the Bulgarian Government may appoint their representative forthwith and at the same time enter into consultation with His Majesty's Government in the United Kingdom with a view to the appointment of a third member as stipulated in the Peace Treaty.

2. His Britannic Majesty's Legation take this opportunity to renew to the Bulgarian Ministry of Foreign Affairs the assurance of their high consideration.

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[1] Texts of notes to Hungarian and Romanian Governments *mutatis mutandis*.

3. TÉLÉGRAMME ÉMANANT DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE POPULAIRE DE BULGARIE ET ADRESSÉ AU PRÉSIDENT DE LA COUR

Reçu le 14 janvier 1950

Monsieur le Président,

Me référant à lettre numéro 9019 que Greffier de la Cour m'adressa en date sept novembre 1949 au sujet Résolution vingt-deux octobre 1949 par laquelle Assemblée générale Nations Unies demanda à la Cour avis consultatif sur interprétation certains articles Traité de paix avec Bulgarie, ai honneur vous faire savoir que Gouvernement bulgare, considérant que cette procédure est dénuée tout fondement juridique et estimant par conséquent inutile aborder le fond des questions posées devant Cour, désire porter à sa connaissance à titre information ce qui suit au sujet régularité cette procédure.

Assemblée générale Nations Unies en violation stipulations expresses article deux paragraphe sept et article cinquante-cinq de Charte s'occupa questions qui relèvent essentiellement de compétence nationale de l'État bulgare. De même, et toujours en violation de Charte et du Traité paix avec Bulgarie, elle aborda examen de l'article trente-six susdit traité en décidant demander à Cour internationale Justice avis consultatif sur ces questions, bien que ledit article Traité paix prévoit sa propre procédure et exclut par là compétence tant de l'Assemblée générale Nations Unies que de Cour internationale Justice.

Cela ne constitue que nouvelle phase de tentative certains pays de s'immiscer dans affaires intérieures de Bulgarie — plus spécialement dans ses fonctions législatives judiciaires et administratives — immixtion à laquelle Gouvernement de République populaire Bulgarie s'oppose de manière la plus énergique.

Incompétence de l'Assemblée générale Nations Unies dans toute cette tentative d'immixtion entraîne incompétence de Cour internationale Justice de s'occuper problème qui lui est posé, bien que ce dernier soit déguisé sous forme demande avis consultatif.

En second lieu Gouvernement bulgare estime que Cour ne saurait émettre avis consultatif demandé sans porter grave atteinte au principe bien établi en droit international, proclamé par Statut de la Cour et observé par jurisprudence constante, à savoir principe selon lequel toute procédure judiciaire dans un cas déterminé, portant sur question juridique pendante entre deux parties, exige application règles du contentieux (article soixante-huit Statut et

articles quatre-vingt-deux et quatre-vingt-trois Règlement) et par conséquent n'est opérante qu'à condition que consentement préalable de toutes les parties en cause soit acquis.

Bulgarie n'est pas membre Nations Unies. Elle n'est pas soumise obligations découlant de Charte et Statut en ce qui concerne avis consultatifs. Elle n'a pas accepté et n'accepte pas juridiction de Cour. Celle-ci est donc incompétente émettre avis consultatif demandé par Assemblée générale Nations Unies.

Veuillez agréer, etc.

(Signé) VLADIMIR POPOTOMOV,
Ministre Affaires étrangères
République populaire Bulgarie.

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4. TÉLÉGRAMME DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE SOVIÉTIQUE SOCIALISTE D'UKRAINE A LA COUR INTERNATIONALE DE JUSTICE, LA HAYE

15 janvier 1950 (reçu le 16 janvier).

[*Traduction faite par le Greffe*]

Kiev.

En réponse à vos lettres n°s 9021 et 9022 du 7 novembre 1949, au nom du Gouvernement de la République soviétique socialiste d'Ukraine, j'ai l'honneur de porter à votre connaissance ce qui suit : comme l'a déclaré la délégation de la République soviétique socialiste d'Ukraine au cours de la 4me Session de l'Assemblée générale, celle-ci n'a pas le droit d'examiner la question relative au respect des droits de l'homme et des libertés fondamentales en Hongrie, en Bulgarie et en Roumanie, car ceci est contraire au paragraphe 7 de l'article 2 de la Charte de l'Organisation des Nations Unies, et il semble qu'il y ait là une ingérence grossière dans les affaires intérieures d'États souverains ; en conséquence, l'Assemblée générale n'est pas fondée à demander un avis consultatif à la Cour internationale sur cette question, qui relève exclusivement de la compétence nationale desdits États. Pour ces motifs, le Gouvernement de la République soviétique socialiste d'Ukraine estime que la Cour internationale n'a pas le droit et ne possède pas de base lui permettant d'examiner cette question sans le consentement effectif à un tel examen des Gouvernements hongrois, bulgare et roumain.

(Signé) MANUILSKI.

4. TELEGRAM FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC TO THE INTERNATIONAL COURT OF JUSTICE, THE HAGUE

January 15th, 1950 (received January 16th).

[*Translation by the Registry*]

Kiev.

In reply to your letters Nos. 9021 and 9022 of November 7th, 1949, on behalf of the Government of the Ukrainian Soviet Socialist Republic, I have the honour to inform you of the following : as the delegation of the Ukrainian Soviet Socialist Republic stated during the IVth Session of the General Assembly, the Assembly does not have the right to examine the question relating to human rights and fundamental freedoms in Hungary, Bulgaria and Rumania, for this is contrary to Article 2, paragraph 7, of the Charter of the United Nations, and it seems that this constitutes gross interference in the domestic matters of sovereign States ; consequently, the General Assembly is not entitled to request of the International Court an advisory opinion on this question, which is exclusively within the domestic jurisdiction of the said States. For these reasons the Government of the Ukrainian Soviet Socialist Republic considers the International Court does not have the right and possesses no basis allowing it to deal with this question without the effective consent of the Hungarian, Bulgarian and Rumanian Governments to such examination.

(*Signed*) MANUILSKI.

5. LETTER FROM THE CHARGÉ D'AFFAIRES A.I. OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN THE NETHERLANDS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

Unofficial translation. The Hague, January 14, 1950.

Dear Mr. E. Hambro,

Being charged by the Ministry of Foreign Affairs of the U.S.S.R., I have the honour, in reply to the letters Nos. 9021, 9022, of November 7th, 1949, to communicate that, as it had already been declared by the Soviet Delegation at the Fourth Session of the General Assembly of the United Nations, the General Assembly, in virtue of the p. 7, Article 2 of the Charter of the Organization, is not competent to examine the question of "Maintenance of human rights and fundamental freedoms in Bulgaria, Hungary and Romania", as concerning solely to the intern competence of these States, and, consequently, the General Assembly is not competent to request the International Court of Justice for an advisory opinion on this question. On the same grounds the International Court of Justice equally is not competent to examine this question without accordance of the Governments of the directly interested States.

With respect,

(Signed) M. VETROV,
Chargé d'affaires a.i. of the U.S.S.R.
in the Netherlands.

6. TÉLÉGRAMME DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE SOCIALISTE SOVIÉTIQUE DE BIÉLORUSSIE A LA COUR INTERNATIONALE DE JUSTICE, LA HAYE

[*Traduction faite par le Greffe*]

15 janvier 1950 (reçu le 16 janvier).

Minsk.

En réponse à vos lettres 9021-9022 du 7 novembre 1949 par délégation du Gouvernement de la République socialiste soviétique de Biélorussie, j'ai l'honneur de porter à votre connaissance que, comme l'a déjà déclaré la délégation de la République socialiste soviétique de Biélorussie, lors de la 4me Session de l'Assemblée générale des Nations Unies, la question relative au respect des droits de l'homme et des libertés essentielles en Bulgarie, en Hongrie et en Roumanie relève exclusivement de la compétence intérieure de ces États et partant l'Assemblée générale, en vertu du paragraphe 7 de l'article 2 de la Charte des Nations Unies, n'est pas compétente pour examiner cette question ; en conséquence, elle n'a pas compétence pour demander un avis consultatif à la Cour internationale de Justice sur ce point pour les mêmes motifs, et en outre, en l'absence du consentement à l'examen de cette question des Gouvernements des États directement intéressés, la Cour internationale n'est pas non plus compétente pour en connaître.

(Signé) KISELEV.

6. TELEGRAM FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC TO THE INTERNATIONAL COURT OF JUSTICE, THE HAGUE

[*Translation by the Registry*]

January 15th, 1950 (received January 16th).

Minsk.

In reply to your letters Nos. 9021-9022 of November 7th, 1949, on behalf of the Government of the Byelorussian Soviet Socialist Republic, I have the honour to inform you that, as the delegation of the Byelorussian Soviet Socialist Republic already stated during the IVth Session of the General Assembly of the United Nations, the question relating to the observance in Bulgaria, Hungary and Rumania of human rights and fundamental freedoms is exclusively within the domestic jurisdiction of these States and therefore the General Assembly, under Article 2, paragraph 7, of the Charter, is not competent to consider this question; consequently, the Assembly is not competent to request an advisory opinion of the International Court of Justice on this question for the same reasons, and furthermore, in the absence of consent, by the Governments of the States which are directly interested, that this question be examined, the International Court is not competent to consider it.

(*Signed*) KISELEV.

7. LETTRE DU CHARGÉ D'AFFAIRES A. I. DE LA RÉPUBLIQUE POPULAIRE ROUMAINE AUX PAYS-BAS AU PRÉSIDENT DE LA COUR INTERNATIONALE DE JUSTICE

LÉGATION DE LA RÉPUBLIQUE POPULAIRE
DE ROUMANIE AUX PAYS-BAS

N° 12. La Haye, le 16 janvier 1950.

Monsieur le Président,

En réponse à l'adresse n° 9019 du 7 novembre 1949 de la Cour internationale de Justice, j'ai l'honneur de vous transmettre de la part du Gouvernement de la République populaire roumaine ce qui suit :

Par sa communication faite le 7 octobre 1949 au Secrétaire général des Nations Unies, le Gouvernement roumain a montré qu'il considère que la discussion au sein de la commission politique spéciale d'un point appelé « observations des droits de l'homme et des droits et libertés fondamentales dans la République populaire roumaine » est entièrement dépourvue de fondement et constitue une immixtion dans les affaires intérieures de la Roumanie.

Le Gouvernement de la République populaire roumaine a repoussé cette tentative d'immixtion et a protesté contre le fait que l'Assemblée générale des Nations Unies s'est laissée entraîner dans des actions contraires aux stipulations catégoriques de la Charte.

Le Gouvernement roumain considère que la Résolution de l'Assemblée des Nations Unies du 22 octobre 1949, par laquelle est demandé un avis consultatif à la Cour internationale de Justice, ainsi que la procédure engagée devant cette Cour représentent une continuation de ces ingérences dans les affaires intérieures de la République populaire roumaine, ingérences contre lesquelles le Gouvernement de la République populaire roumaine proteste et les repousse catégoriquement.

Le Gouvernement roumain considère que la Cour internationale de Justice n'est pas compétente dans la question de l'Assemblée générale que l'Organisation des Nations Unies lui a soumise par sa Résolution du 22 octobre 1949, celle-ci étant une affaire intérieure de la République populaire roumaine et, par conséquent, de la compétence exclusive de la République populaire roumaine.

Le Gouvernement roumain considère que la Cour internationale de Justice ne peut être compétente dans la question qu'on lui a

soumise, la République populaire roumaine n'étant pas partie au Statut de la Cour internationale de Justice.

Le Gouvernement roumain attire l'attention qu'en aucun cas, la Cour internationale de Justice ne peut être compétente dans une question concernant la Roumanie sans que le Gouvernement roumain y eût donné son consentement.

Veuillez agréer, etc.

(Signé) T. ANDREESCO.

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8. LETTRE DE L'ENVOYÉ EXTRAORDINAIRE ET MINISTRE PLÉNIPOTENTIAIRE DE LA RÉPUBLIQUE TCHÉCOSLOVAQUE AU GREFFIER DE LA COUR

N° 478/50. La Haye, le 16 janvier 1950.

Monsieur le Greffier,

J'ai l'honneur d'accuser réception de vos lettres en date du 7 novembre 1949, nos 9021 et 9022, au sujet de la Résolution de l'Assemblée générale de l'O. N. U. du 22 octobre 1949, concernant le « respect des droits de l'homme et des libertés fondamentales en Bulgarie, Hongrie et Roumanie », et, faisant suite à votre invitation, j'ai l'honneur, au nom du Gouvernement tchécoslovaque, de communiquer à la Cour ce qui suit :

Les questions soumises à la Cour concernent des matières qui ont fait l'objet d'amples discussions à la IIIme et IVme Assemblée générale des Nations Unies, discussions qui se sont déroulées en l'absence complète et en dépit des protestations des Gouvernements bulgare, hongrois et roumain. À cette occasion, la délégation tchécoslovaque a objecté à plusieurs reprises que le traitement de ces questions était contraire à la loi et en opposition avec les dispositions du paragraphe 7 de l'article 2 de la Charte des Nations Unies, étant donné qu'il s'agit d'intervention dans des affaires relevant de la compétence nationale d'un État.

Le Gouvernement tchécoslovaque objecte en outre :

Dans le sens de l'article 82 du Règlement et de l'article 68, la Cour doit appliquer, à la requête pour l'avis consultatif, les dispositions prévues en matière contentieuse. Dans cette procédure, la Cour est en premier lieu tenue d'examiner sa compétence et d'en décider au terme de l'article 36, paragraphe 6, et de l'article 53, paragraphe 2, du Statut.

Des faits que la Bulgarie, la Hongrie et la Roumanie ne sont pas membres de l'Organisation des Nations Unies, et ne sont pas parties du Statut de la Cour, ainsi que du fait que chacun de ces États a expressément rejeté le procédé de l'Assemblée générale des Nations Unies en cette matière, y compris l'appel à la Cour, celle-ci devra — analogiquement d'après l'avis consultatif de la Cour permanente de Justice internationale du 23 juin 1923, n° 5 — inévitablement constater qu'elle n'est pas compétente.

Veuillez agréer, etc.

(Signé) Dr J. MARTINIC.

9. WRITTEN STATEMENT PRESENTED BY THE AUSTRALIAN GOVERNMENT UNDER ARTICLE 66 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE AND THE ORDER OF THE COURT DATED 7 NOVEMBER, 1949

By Resolution adopted 22 October, 1949, the General Assembly of the United Nations requested the International Court of Justice for an advisory opinion on certain procedural questions relating to the interpretation of the peace treaties with Bulgaria, Hungary and Roumania. These questions were four in number, answers being requested to questions 3 and 4 only in the event of certain conditions not being fulfilled. The Australian Government submits the following statement in connection with the first two questions.

It may be useful to consider briefly as a preliminary question the argument advanced at the Fourth Session of the General Assembly that the International Court of Justice was not competent to give the advisory opinion suggested on the ground that interpretation of the treaties was exclusively within the competence of the contracting parties. Under Article 96 (1) of the Charter of the United Nations and Article 65 of the Statute of the I.C.J., the General Assembly may request the International Court of Justice to give an advisory opinion on any legal question. In its opinion on the Conditions of admission of a State to Membership of the United Nations, the Court itself has stated that the determination of the meaning of a treaty provision is a legal question (I.C.J. Reports 1947-1948, p. 61). The I.C.J. is therefore clearly competent to give the interpretations requested by the General Assembly.

> Question 1. "Do the diplomatic exchanges between Bulgaria, Hungary and Romania 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 Romania, 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 Romania ?"

. . . .

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 Roumania (hereinafter referred to as the Common Article) provide :

"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 36 (40, 38), 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.

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 definite and binding."

Disputes "subject to the provisions for the settlement of disputes" contained in the Common Article are disputes "concerning the interpretation or execution of the Treaty". The circumstances of the diplomatic exchanges between certain Allied and Associated Powers on the one hand and Bulgaria, Hungary and Roumania on the other, as understood by the Australian Government, clearly constitute disputes concerning the execution of the Treaties.

On 2 April, 1949, *notes verbales* on behalf of Australia, New Zealand and the United Kingdom, which States are Allied and Associated Powers signatories to the Treaties of Peace, were delivered to the Bulgarian, Hungarian and Roumanian Governments by His Majesty's Ministers in Sofia, Budapest and Bucharest. Canada associated itself with the notes to the Hungarian and Roumanian Governments. These notes set forth the grounds on which it was alleged that those Governments had denied to their peoples the exercise of the human rights and fundamental freedoms which they were pledged to secure to them under Article 2 of the Treaties with Bulgaria and Hungary, and Article 3 of the Treaty with Roumania (hereinafter referred to as the Human Rights Article). Notes couched in similar terms were addressed on 2 April, 1949, to the same three Governments by the Government of the United States of America, another Allied and Associated Power signatory to the Treaties of Peace.

By their *notes verbales* of 8 and 22 April, 10 April and 20 April, addressed to His Majesty's Ministers in their respective capitals, the Governments of Bulgaria, Hungary and Roumania rebutted these allegations and claimed that their obligations under the Treaties of Peace had been and were continuing to be honoured. The allegations of the Government of the United States of America

were likewise rebutted in notes of (21 April, 1949) Bulgaria, (8 April, 1949) Hungary, and (18 April, 1949) Roumania.

The Australian Government consider that these allegations and rebuttals amount to disputes. In the case of the Mavrommatis Palestine Concessions, reported in the Court's Publication Series A., No. 2, of 30 August, 1924, page 11, the Permanent Court of International Justice defined a dispute as "a disagreement on a point of law or fact, a conflict of legal views or of interest between two persons". There are clearly disagreements on points both of law and of fact in the present cases.

Disputes "subject to the provisions for the settlement of disputes" contained in the Common Article are, in the language of the Common Article itself, "disputes concerning the interpretation or execution of the Treaty". The disputes in question are disputes regarding the execution of the Treaties. One party to each dispute alleges that the Human Rights Article of the Treaty is not being executed. The other party maintains that the Article is being executed. Subsequent diplomatic exchanges concerning the establishment of Commissions disclose in addition disputes concerning the interpretation of the Treaties. (See General Assembly Document A/990, Annexes 13-17 *b*.)

The Australian Government, therefore, is of the opinion that the disputes in question relate both to the execution and the interpretation of the Treaties and are therefore properly subject to the provisions for the settlement of disputes contained in Article 36 of the Treaty of Peace with Bulgaria, Article 46 of the Treaty of Peace with Hungary, and Article 38 of the Treaty of Peace with Roumania.

. . . .

"In the event of an affirmative reply to question 1:

> Question II. Are the Governments of Bulgaria, Hungary and Romania obligated to carry out the provisions of the Articles referred to in question 1, including the provisions for the appointment of their representatives to the Treaty Commissions?"

The Treaties of Peace with Bulgaria, Hungary and Roumania entered into force on 15th September, 1947. The Governments of Bulgaria, Hungary and Roumania are hence under a legal obligation to carry out the provisions of all the articles of the Treaties, including the provisions relating to the settlement of disputes.

Careful reading of the Common Article and analysis of the sequence of events since the inception of the dispute lead inescapably to the conclusion that it is now mandatory for Bulgaria, Hungary and Roumania to appoint representatives and so help to constitute the commissions provided for in the Common Article:

1. No other procedure is specifically provided elsewhere in the Peace Treaties for the settlement of disputes concerning the interpretation or execution of the Human Rights Article.
2. The disputes have not been settled by direct diplomatic negotiations.
3. The disputes have been referred to the Three Heads of Missions. By their notes of 31 May, 1949, the United Kingdom and the United States Heads of Mission at Sofia, Budapest and Bucharest asked the U.S.S.R. Heads of Mission whether they would be prepared to meet them in order that the Three Heads of Mission in each case might take cognizance of the disputes in the manner prescribed in the Treaties. In a note of 12 June, 1949, addressed to the U.K. Government, the Embassy in London of the U.S.S.R. said that it was authorized to declare that the Soviet Government saw no cause for the summoning of a conference of the Three Heads of the Diplomatic Missions in Bulgaria, Hungary and Roumania.
4. The disputes were not resolved by the Heads of Mission within a period of two months.
5. The parties have not yet mutually agreed upon another means of settlement.
6. On 1 August, 1949, the parties to the disputes alleging non-execution of the Treaty in notes addressed to the Governments of Bulgaria, Hungary and Roumania, requested the reference of the disputes to commissions.

The stage has now been reached when it is mandatory for Commissions to consider the disputes.

The Common Article provides that the Commission is to be composed of one representative of each party and a third member selected by mutual agreement of the parties. There is a clearly expressed obligation imposed on the parties to the dispute that the dispute shall be referred to the Commission ; the question now to be determined is whether the Governments of Bulgaria, Hungary and Roumania are under an obligation to appoint representatives to the Commission.

The nature and purpose of the Common Article is to settle disputes arising out of the interpretation or execution of the Treaties of Peace, and it is submitted that the interpretation to be favoured is that which will make the Common Article effective to serve this purpose. The compulsory reference of a dispute to the Commission presupposes that the Commission has been constituted, and this can only be done by the appointment of a representative of each party and a third member selected by mutual agreement of the two parties, or, failing agreement, by the Secret-

ary-General. It is necessarily implied that the parties to the dispute appoint representatives. They are consequently under a definite legal obligation to appoint. To contend otherwise would frustrate the whole method of adjustment of disputes as laid down in the Peace Treaties and defeat the very purpose of the Common Article.

For these reasons, it is the opinion of the Australian Government that the word "shall" appearing in the second sentence of the Common Article applies by necessary implication to the appointment of a representative by each party to the dispute, and that the Governments of Bulgaria, Hungary and Roumania have an inescapable legal obligation to appoint representatives to the Commissions.

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10. LETTRE DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE POPULAIRE HONGROISE AU GREFFIER DE LA COUR

Monsieur le Greffier,

En réponse à votre communication n° 9019 en date du 7 novembre 1949, au nom du Gouvernement de la République populaire hongroise, j'ai l'honneur de porter à votre connaissance ce qui suit :

Le Gouvernement de la République populaire hongroise, dans les notes qu'il a adressées aux Gouvernements du Royaume-Uni et des États-Unis en réponse aux notes de ces derniers, a maintes fois développé et prouvé :

1° qu'il a exécuté et il exécute d'une manière conséquente les stipulations du Traité de paix et qu'il a procédé et il procède dans une stricte conformité aux stipulations de ce Traité, en ordonnant la dissolution des organisations et partis ayant eu pour but la restauration de l'ancien régime fasciste et lorsqu'il a poursuivi et continue de poursuivre en justice ceux qui déploient une activité visant à renverser la République populaire hongroise démocratique ;

2° que, du moment que le Traité de paix a expressément reconnu la souveraineté de la Hongrie et lui a imposé, en même temps, le devoir de prendre des mesures appropriées contre tout mouvement fasciste, il est évident que les mesures prises en ce sens par le Gouvernement hongrois, qui, d'ailleurs, appartiennent au domaine de ses affaires intérieures et découlent d'une stricte application des stipulations du Traité de paix, ne peuvent faire l'objet d'aucune contestation ; d'où il résulte que l'accusation d'avoir violé les « droits humains » et les stipulations du Traité de paix, n'est en réalité qu'un prétexte pour les Gouvernements du Royaume-Uni et des États-Unis pour s'ingérer dans les affaires intérieures de la République populaire hongroise et pour exercer une pression sur son Gouvernement afin que celui-ci subordonne sa politique à celle de certains États et gouvernements étrangers.

Il résulte de tout ce qui précède que les Gouvernements du Royaume-Uni et des États-Unis n'ont eu aucun droit de s'adresser à l'Organisation des Nations Unies sous prétexte d'un différend artificiellement construit, et que l'Assemblée des Nations Unies a procédé également sans aucune base légale et contrairement au droit, lorsqu'elle s'est adressée à la Cour pour demander son avis au sujet de plusieurs questions en connexité avec cette affaire.

Eu égard à tout ce qui vient d'être développé, le Gouvernement de la République populaire hongroise n'est pas à même de prendre

part à la procédure engagée devant la Cour sur l'initiative de l'Assemblée des Nations Unies, procédure que le Gouvernement hongrois considère et quant au fond et quant à la forme comme illégale et comme dépourvue de tout effet juridique. Le Gouvernement hongrois ne désire donc présenter aucun exposé concernant les questions posées à la Cour par l'Assemblée des Nations Unies et il ne fait connaître son point de vue concernant l'illégalité de la procédure qu'à titre de simple information.

Le principe de l'égalité, de l'indépendance et de la souveraineté des États est du nombre des règles les plus *universellement* reconnues du droit international. Ce principe comporte, entre autres, une interdiction expresse pour les États et pour les organisations formées par eux de s'ingérer — sans titre suffisant — dans les affaires intérieures des autres États. Or, il ne peut y avoir aucun doute que le Traité de paix avec la Hongrie, signé à Paris le 10 février 1947, loin de rétrécir sa souveraineté, a réintégré la Hongrie dans l'exercice de ses droits souverains. Il est notoire, en outre, que ce même Traité n'a attribué à l'Organisation des Nations Unies aucun droit de contrôle concernant l'exécution de ses clauses. Il est notoire, enfin, qu'à la suite de l'attitude que certaines Grandes Puissances ont adoptée contrairement à leurs engagements solennellement pris, la Hongrie, jusqu'ici, n'a pas été admise au sein de l'Organisation des Nations Unies et qu'ainsi les stipulations de la Charte visant les devoirs des États Membres, ne peuvent non plus être invoquées à son égard. Dans ces conditions, il est évident qu'aucun organe des Nations Unies n'est qualifié de s'occuper du prétendu différend relatif à l'exécution du Traité de paix, ni d'intervenir, à ce titre, aux affaires de la Hongrie. Par conséquent, l'Organisation des Nations Unies, en adoptant des résolutions et en prenant l'initiative d'autres procédures en cette matière, est sortie des cadres de ses propres attributions déterminées par la Charte.

Le Gouvernement hongrois croit devoir attirer l'attention également sur le fait que les stipulations de la Charte visant les États *non-membres, ne peuvent non* plus être invoquées pour justifier le procédé illégal des Nations Unies. Il est vrai que l'article 2, paragraphe 6, de la Charte prévoit que « l'Organisation fait de la 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 ». Le Gouvernement hongrois cependant — ainsi que j'en ai fait mention plus haut —, dans ses notes adressées aux Gouvernements du Royaume-Uni et des États-Unis, a suffisamment démontré que les mesures légalement prises pour la sauvegarde efficace des institutions démocratiques et contre les ennemis de la démocratie, loin de menacer la sécurité et la paix internationales, contribuent, au contraire, à leur raffermissement. Du reste, pour autant que le Gouvernement hongrois le sache, personne n'a

jusqu'ici hasardé l'affirmation que les lois de la République populaire hongroise ou les mesures prises par son Gouvernement pussent signifier une menace quelconque pour la paix et la sécurité internationales. En réalité, les dangers pour cette paix et cette sécurité proviennent de toutes autres sources.

Le Gouvernement hongrois croit superflu d'illustrer de plus près, ni la situation juridique intenable, ni l'ébranlement de la confiance dans la justice internationale, qui pourraient résulter de l'inauguration d'une jurisprudence qui admettrait que, dans les cas où la souveraineté des États s'oppose à toute intervention de la part de Puissances étrangères ou d'organes internationaux, le principe de la souveraineté des États indépendants soit rendu illusoire par la voie détournée d'une demande d'avis consultatif de la Cour internationale de Justice.

Pour tous ces motifs, le Gouvernement hongrois n'est pas en état d'attribuer des effets juridiques quelconques à la procédure illégale initiée par l'Assemblée des Nations Unies, et pour cette raison il n'est pas à même de présenter des observations concernant les questions que l'Assemblée des Nations Unies a posées à la Cour.

Veuillez agréer, etc.

Budapest, le 13 janvier 1950.

(Signé) KÁLLAI,
Ministre des Affaires étrangères
de la République populaire hongroise.

SECTION C. — EXPOSÉS ÉCRITS
SECTION C.—WRITTEN STATEMENTS

PREMIÈRE PHASE
FIRST PHASE

1. WRITTEN STATEMENT SUBMITTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA UNDER ARTICLE 66 OF THE STATUTE OF THE COURT AND THE ORDER OF THE COURT DATED DECEMBER[1] 7, 1949

I. PRELIMINARY

A. Initial Resolution of the General Assembly

The General Assembly of the United Nations, by its Resolution approved April 30, 1949, referred to the fact that one of the purposes of the United Nations is the promotion and encouragement of respect for human rights and fundamental freedoms for all, and to the fact that the Governments of Bulgaria and Hungary had been accused, before the General Assembly, of acts contrary to the purposes of the United Nations and to their obligations under the Treaties of Peace to ensure to all persons within their respective jurisdictions the enjoyment of human rights and fundamental freedoms, and expressed deep concern at these "grave accusations". It was noted therein, "with satisfaction", that steps had been taken by several States signatories to the Treaties of Peace with Bulgaria and Hungary regarding these accusations and 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. The General Assembly by the Resolution further most urgently drew the attention of the Governments of Bulgaria and Hungary to their obligations under the Treaties of Peace, including their obligation to co-operate in the settlement of these questions; and decided to retain the question on the agenda of the Fourth Session of the General Assembly. (Resolution 272 (III), April 30, 1949.)

B. The "human-rights" Articles of the Treaties of Peace

Article 2 of the Treaty of Peace with Bulgaria reads:

"Bulgaria shall take all measures necessary to secure to all persons under Bulgarian jurisdiction, without distinction as to

[1] Should be November. [*Note by the Registrar.*]

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."

Article 2 of the Treaty of Peace 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 of Peace with Rumania contains provisions identical with those of Article 2 of the Treaty with Hungary [1].

C. *The "disputes" Articles of the Treaties of Peace*

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) 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 in the Treaty of Peace with Hungary, 37 in the Treaty of Peace with Rumania [2]],

[1] On June 21, 1946, the Economic and Social Council of the United Nations had adopted a Resolution containing the following paragraph:

"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.)

[2] Article 35 of the Treaty of Peace with Bulgaria (Article 39 of the Treaty of Peace with Hungary, Article 37 of the Treaty of Peace with Rumania) reads:

"1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Heads of the Diplomatic Missions in Sofia [Budapest, Bucharest] of the Soviet Union, the United Kingdom and the United States of America, acting in concert, will represent the Allied and Associated Powers in dealing with the Bulgarian Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Three Heads of Mission will give the Bulgarian [Hungarian, Rumanian] Government such guidance, technical advice and clarification as

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."

II. Questions before the Court

A. *Resolution of the General Assembly requesting advisory opinion*

By a Resolution approved October 22, 1949, the General Assembly, at its Fourth Session, referred to its Resolution of April 30, 1949, discussed *ante*, wherein the attention of the Governments of Bulgaria and Hungary were drawn to their obligations under the Treaties of Peace, including the obligation to co-operate in the settlement of the question; pointed out that certain Allied and Associated Powers Parties to the Treaties of Peace had charged Bulgaria, Hungary and Rumania with violations thereof and had called upon the Governments of those countries to take remedial measures; stated that those Governments had rejected the charges made; stated that the Governments of the Allied and Associated Powers concerned had sought unsuccessfully to refer the question of Treaty violations to the Heads of Missions in Sofia, Budapest and Bucharest, in pursuance of provisions of the Treaties; and stated that those Governments had called upon the Governments of Bulgaria, Hungary and Rumania to join in appointing Commissions pursuant to the provisions of the Treaties but that they refused to appoint their representatives.

Finally, the General Assembly by its Resolution of October 22 expressed continuing interest in, and increased concern at, the grave accusations made against Bulgaria, Hungary and Rumania; recorded its opinion that the refusal of those Governments to co-operate in its efforts to examine the grave charges with regard to the observance of human rights and fundamental freedoms justified the concern of the General Assembly about the state of affairs prevailing in Bulgaria, Hungary and Rumania, and stated that

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may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Bulgarian [Hungarian, Rumanian] Government shall afford the said Three Heads of Mission all necessary information and any assistance which they may require in the fulfilment of the tasks devolving on them under the present Treaty."

it had decided to submit the following questions to the International Court of Justice for advisory opinion:

> " 'I. Do the diplomatic exchanges between Bulgaria, Hungary and Romania 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 Romania, disclose disputes subject to the provisions for the settlement of disputes contained in Articles 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 Romania?'
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> In the event of an affirmative reply to question I:
>
> 'II. Are the Governments of Bulgaria, Hungary and Romania 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:
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> '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?'
>
> 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?' " (Resolution, October 22, 1949, doc. A/1043.)

B. *Initial questions to be answered*

Question I is the first question to be answered by the Court, and in "the event of an affirmative reply to question I", question II is to be answered.

The Government of the United States does not submit a statement on questions III and IV because the General Assembly Resolution of October 22, 1949, contemplates that these latter questions shall be answered only if replies to questions I and II are in the affirmative and the Governments concerned do not appoint their representatives to the Treaty Commissions.

It is not to be presumed that in the event the Court gives an opinion in the affirmative on question II, the Parties to the Treaties

of Peace with Bulgaria, Hungary, and Rumania will fail, within the stipulated period, to name their representatives to the Treaty Commissions.

Accordingly, the Government of the United States of America limits this statement to a consideration of its position with respect to questions I and II of the General Assembly's Resolution.

C. *Merits of dispute or sufficiency of charges not before the Court*

It is the view of the Government of the United States that the substantive aspects of any dispute as to the interpretation and execution of the Treaties of Peace, between the Parties thereto, are by the express terms of those Treaties within the jurisdiction of, and to be decided by, the respective Commissions envisaged by the Treaties. The Parties to the Treaties have agreed to use the procedures expressly provided in the Treaties for the settlement of disputes "concerning the interpretation or execution" of the Treaties. The Resolution of the General Assembly of October 22, 1949, does not call upon the Court to pass upon the merits of the dispute or the sufficiency of the complaints or answers. Rather, by the Resolution the Court is requested to give an advisory opinion on (1) whether 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 human-rights provisions of the respective Treaties "disclose disputes subject to the provisions for settlement of disputes" contained in the respective Treaties; and, in the event the answer to question (1) is in the affirmative, (2) whether the Governments of Bulgaria, Hungary, and Rumania are obligated to carry out those articles of the respective Treaties, including the provisions for the appointment of their representatives to the Treaty Commissions.

Inasmuch as the Court's replies to the questions before it under the Resolution do not include the merits or any investigation into the facts, the difficulties which deterred the Court from giving an advisory opinion on the *Status of Eastern Carelia* are not here present. (Advisory Opinion, July 23, 1923, Series B., No. 5.) In that instance the Council of the League of Nations had, on April 21, 1923, by Resolution, requested the Permanent Court of International Justice to give an advisory opinion on a question involving the merits of a dispute between Finland and Russia (not then a member of the League of Nations) as to the effect on the autonomy of Eastern Carelia of a Declaration annexed to the Treaty of Dorpat, signed October 14th, 1920. In declining to pass upon this substantive question, the Court stated:

> ".... 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 inquiry, 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 inquiry 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.*

.... 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." (*Ibid.* 28-29.)

Not only is the Court not asked to pass on the merits of the dispute or the truth of the charges made, but it is also not asked to determine whether the charges made, if established, would be sufficient to justify a Treaty Commission in finding a violation of the Treaty. All the Court is asked to determine is whether the diplomatic negotiations disclose a dispute which may properly be brought before a Treaty Commission. It is for the Commission to determine the sufficiency of the charges made and what, if any, further consideration they merit.

D. *Diplomatic exchanges between the Government of the United States and the Governments of Bulgaria, Hungary and Rumania disclose important and substantial disputes*

On September 20, 1949, the United States Representative to the United Nations transmitted to the Secretary-General of the United Nations copies of the notes transmitted through the diplomatic channel between the Government of the United States, as one of the Allied and Associated Powers party to the Treaties of Peace with Bulgaria, Hungary and Rumania, and the Governments of those countries. In its notes, the Government of the United States charged those Governments with violations of the "human-rights" Articles of the respective Treaties of Peace and invoked the "disputes" Articles of these Treaties. (U.N. Doc. A/985, September 23, 1949: Doc. A/985/Corr. 1, September 27, 1949.) The Secretary-General was requested by the General Assembly in its Resolution of October 22, 1949, referred to above, to make available to the International Court of Justice the relevant exchanges of diplomatic correspondence and the records of the General Assembly proceedings on this question.

On April 2, 1949, the Legation of the United States in Sofia, acting under instruction of the Government of the United States, as a Party to the Treaty of Peace, presented a note to the Bulgarian Foreign Office [3] formally charging the Government of Bulgaria with having repeatedly violated Article 2 of the Treaty of Peace, quoted *ante*, by "privative measures and oppressive acts" (Doc. A/985, Annex 1, p. 24*); called upon the Bulgarian Government to adopt prompt remedial measures in respect of the violations; and requested that Government to specify the steps it was prepared to take in implementing fully the terms of Article 2. As illustrative of the violations by the Bulgarian Government of the rights assured under Article 2 of the Treaty, there was pointed out in the note of the United States the fact that—

> [1.] "Through the exercise of police power the Bulgarian Government has deprived large numbers of its citizens of their basic human rights, assured to them under the Treaty of Peace. These deprivations have been manifested by arbitrary arrests, systematic perversion of the judicial process, and the prolonged detention in prisons and camps, without public trial, of persons whose views are opposed to those of the régime."
>
> [2.] "Similarly, the Bulgarian Government has denied to persons living under its jurisdiction, as individuals and as organized groups including democratic political parties, the fundamental freedoms of political opinion and of public meeting. It has dissolved the National Agrarian Union, the Bulgarian Socialist Party and other groups, and has imprisoned many of their leaders. With the Treaty of Peace barely in effect and in the face of world opinion, the Bulgarian Government ordered the execution of Nikola Petkov, National Agrarian Union leader, who dared to express democratic political opinion which did not correspond to those of the Bulgarian Government. Proceedings were instituted against those deputies who did not agree with its policies, with the result that no vestige of parliamentary opposition now remains, an illustration of the effective denial of freedom of political opinion in Bulgaria."
>
> [3.] "By restrictions on the press and on other publications, the Bulgarian Government has denied to persons under its jurisdiction the freedom of expression guaranteed to them under the Treaty of Peace. By laws, administrative acts, and the use of force and intimidation on the part of its officials, the Bulgarian Government has made it impossible for individual citizens openly to express views not in conformity to those officially prescribed. Freedom of the press does not exist in Bulgaria."
>
> [4.] "By legislation, by the acts of its officials, and by 'trials' of religious leaders, the Bulgarian Government has acted in contravention of the express provisions of the Treaty of Peace in

[3] At the time of the delivery of the note of April 2, 1949, the Bulgarian Government was informed in writing that the Canadian Government, while not in a position to make representations based on the Treaty of Peace, had requested that the Bulgarian Government be informed of the identity of Canadian views with those of the United States. (Canada is not a party to the Treaty.)

* These pages refer to the present volume.

respect of freedom of worship. Recent measures directed against the Protestant denominations in Bulgaria, for example, are clearly incompatible with the Bulgarian Government's obligation to secure freedom of religious worship to all persons under its jurisdiction."

In the note the United States charged Bulgaria not only with full responsibility for acts committed "since the effective date of the Treaty of Peace which are in contravention of Article 2" of the Treaty, but also with "failure to redress the consequences of acts committed prior to that date which have continued to prejudice the enjoyment of human rights and of the fundamental freedoms".

It was pointed out in the note that the United States had previously drawn the attention of the Bulgarian authorities on appropriate occasions to its flagrant conduct in violation of Article 2 of the Treaty, but that the Bulgarian Government had failed to modify its conduct.

On April 2, 1949, the Legation of the United States in Budapest, acting under instructions of the Government of the United States, as a Party to the Treaty of Peace, presented a note to the Hungarian Foreign Office [4] formally charging the Government of Hungary with having "deliberately and systematically" violated Article 2 of the Treaty of Peace, quoted *ante*, by denying to the Hungarian people by "privative measures and oppressive acts" the rights and freedoms assured under the Article. (Doc. A/985, Annex 2, p. 26.) The Government of the United States, in the note, called upon the Hungarian Government to adopt prompt remedial measures in respect of the violations and requested the Hungarian Government to specify the steps which it was prepared to take in implementing fully the terms of Article 2. In illustration of the violations by the Hungarian Government of the rights assured under Article 2 of the Treaty, there was pointed out in the note of the United States the fact that—

[1.] " .... Through arbitrary exercise of police power and perversion of judicial process, the Hungarian Government and its agencies have violated the rights of citizens, as free men, to life and liberty."

[2.] " .... Denial of freedom of political opinion is complete in Hungary. Democratic political parties which held substantial mandates from the people have been through the Government's initiative successively purged, silenced in Parliament, fragmentized and dissolved. To enforce rigid political conformity the Hungarian Government and the Communist Party which controls it have established a vast and insidious network of police and other

[4] At the time of the delivery of the note of April 2, 1949, because of the absence of direct diplomatic relations between Canada and Hungary, the Hungarian Government was informed in writing that the Canadian Government had requested the Government of the United States to inform the Hungarian Government that it associated itself with the contents of the United States note.

agents who observe, report on, and seek to control the private opinions, associations and activities of its citizens."

[3.] "The Hungarian Government, despite the provisions of the Treaty of Peace, has circumscribed freedom of expression. Freedom of press and publication does not exist. Basic decrees pertaining to the press are restrictive in character and are so interpreted in practice. No substantive criticism of the Government of the Communist Party is permitted. Government control of printing establishments and of the distribution of newsprint has been exercised to deny freedom of expression to individuals or groups whose political opinions are at variance with those of the Government. In the field of reporting, absence of formal censorship has not obscured the record of the Hungarian Government in excluding or expelling foreign correspondents who have written despatches critical of the regime or in intimidating local correspondents into writing only what is acceptable or favorable to the régime."

[4.] "Freedom of public meeting on political matters has been regularly denied to all except Communist groups and their collaborators. In the case of religious meetings, on various occasions attendance at such gatherings has been obstructed and the principals subjected to harassment. The Hungarian Government, moreover, has pursued policies detrimental to freedom of religious worship."

[5]" .... It has sought by coercive measures to undermine the influence of the Churches and of religious leaders and to restrict their legitimate functions. By arbitrary and unjustified proceedings against religious leaders on fabricated grounds, as in the cases of Cardinal Mindszenty and Lutheran Bishop Ordass, the Hungarian Government has attempted to force the submission of independent Church leaders and to bring about their replacement with collaborators subservient to the Communist Party and its program. Such measures constitute violations of the freedom of religious worship guaranteed by the Treaty of Peace."

In the note the United States charged Hungary not only with full responsibility for acts committed "since the effective date of the Treaty of Peace which are in contravention of Article 2", but also with failure to redress the consequences of acts committed prior to that date "which have continued to prejudice" the enjoyment of human rights and fundamental freedoms.

It was pointed out in the note that previously the United States had drawn the attention of the Hungarian authorities on appropriate occasions to Hungary's flagrant conduct in violation of Article 2 of the Treaty but that the Hungarian Government had failed to modify its conduct.

Article 3 of the Treaty of Peace between the Allied and Associated Powers and Rumania, which entered into force on September 15, 1947, contains provisions applicable to Rumania identical with those contained in Article 2 of the Treaty of Peace between the Allied and Associated Powers and Bulgaria, and quoted *ante*.

On April 2, 1949, the Legation of the United States in Bucharest, acting under instruction of the Government of the United States, as a Party to the Treaty of Peace, presented a note to the Rumanian Foreign Office [5] formally charging the Government of Rumania with having repeatedly violated Article 3 of the Treaty of Peace by "deliberately and systematically" denying to the Rumanian people, "by means of privative measures and oppressive acts", the rights and freedoms assured to them under Article 3. (Doc. A/985, Annex 3, p. 28.) As illustrative of Rumanian violations of Article 3, it was pointed out in the note that—

[1.] "In violation of freedom of political opinion assured by the Treaty of Peace, the Rumanian Government and the minority Communist Party which controls it disrupted, silenced and outlawed democratic political parties and deprived democratic leaders of their liberty. To this end, the Rumanian Government employed methods of intimidation and perversions of the judicial process. The inequities of these actions, as exemplified by the 'trial' and condemnation to life imprisonment of Iuliu Maniu, President of the National Peasant Party, and other leaders were recited by the United States Government in the Legation's note No. 61 of 2 February 1948. Moreover, large numbers of Rumanian citizens have been seized and held for long periods without public trial."

[2.] "By laws, decrees and administrative measures as well as by extra-legal acts of organizations affiliated with the Government and the Communist Party, the Rumanian Government has stifled all expression of political opinion at variance with its own. Freedom of press and publication, guaranteed by the Treaty of Peace, does not exist in Rumania. No substantive criticism of the Government is permitted. The Rumanian Government has taken control of printing establishments and has suppressed all publications which are not responsive to its direction or which do not serve the purposes of the Communist Party."

[3.] "Despite the express provision of the Treaty of Peace, only Communist and Communist-approved organizations are able in practice to hold public meetings. In view of the threat of forcible intervention and reprisals by the Government or by the Communist Party, other groups have not attempted to hold such meetings."

[4.] "The Rumanian Government has likewise abridged freedom of religious worship, guaranteed under Article 3 of the Treaty of Peace, by legislation and by other measures which effectively deny such freedom. It has assumed extensive control over the practice of religion, including the application of political tests, which is incompatible with freedom of worship. These powers have been used in at least one instance to destroy by Government decree a major religious body and to transfer its property to the State."

[5] At the time of the delivery of the note of April 2, 1949, because of the absence of direct diplomatic relations between Canada and Rumania, the Rumanian Government was informed in writing that the Canadian Government had requested the Government of the United States to inform the Rumanian Government that it associated itself with the contents of the United States note.

Here again the Government of the United States charged Rumania not only with full responsibility for acts committed "since the effective date of the Treaty of Peace which are in contravention of Article 3, but also for its failure to redress the consequences of acts committed prior to that date which have continued to prejudice the enjoyment of human rights and fundamental freedoms". It was added that the United States, "mindful of its responsibilities under the Treaty of Peace, has drawn attention on appropriate occasions to the flagrant conduct of the Rumanian authorities in this regard" but that the Rumanian Government had failed to modify its conduct in conformity with the Treaty stipulations.

Finally, as in the other notes referred to above, the Government of the United States called upon the Rumanian Government to adopt prompt remedial measures in respect of the violations referred to, and requested that Government to specify the steps which it was prepared to take in implementing fully the terms of Article 3.

The reply of the Bulgarian Government, of April 21, 1949, stated that "The Government of the People's Republic of Bulgaria has always carried out and will carry out in a most conscientious manner the clauses of the Peace Treaty." (Doc. A/985, Annex 5, p. 32.) It was stated in the communication that even before the entry of the Treaty of Peace into force, the Bulgarian Government had undertaken "all measures dependent on it (its will) for the guaranteeing of the fundamental civil liberties as well as the political rights of Bulgarian citizens, without distinction of race, nationality, sex or creed". Reference was made in the Bulgarian note (*a*) to the Government's convocation on the basis of universal, secret, equal and direct suffrage, of a Grand National Assembly which elaborated a Constitution consecrating and guaranteeing the rights and freedoms referred to in Article 2 of the Treaty of Peace ; as also (*b*) to the measures taken by the Government of Bulgaria for the liquidation of the Fascist régime. In the reply surprise was expressed that the Government of the United States had evoked facts "going back to the Armistice period". As to the facts and acts of the Bulgarian Government, "such as trials, etc.", which took place after the entry into force of the Treaty of Peace, the Bulgarian reply stated :

> ".... The Bulgarian Government having taken all measures to ensure compliance with all the political clauses of the Peace Treaty, and notably after Bulgaria had been granted the most democratic Constitution in the world, and the people had been guaranteed legal power to exercise and defend its rights and freedom, the Bulgarian Government, as government of a sovereign State, cannot agree to permit to other States the appreciation of its acts, for which it is solely responsible to the National Assem-

bly. This Government can even less agree to suffer the criticism of foreign Powers, in so far as the activities of Bulgarian courts are concerned, being in existence by virtue of the Constitution and functioning in public in accordance with the most modern and most democratic laws.

The Bulgarian Government will repel every attempt at interference in the domestic affairs of Bulgaria and will consider as an unfriendly act any attempt to force it to accept treatment as a State whose internal acts would be subject to judgment by foreign Powers."

The reply of the Bulgarian Government referred to the note of the Government of the United States as "unfounded", and as regards the "essence of the accusations", stated that it "rejects them energetically". It was added :

" .... Under the regime of people's democracy in Bulgaria, the toiling masses of towns and villages, which constitute the immense majority of the nation, enjoy not only on paper but also in fact all fundamental political rights and freedoms of man. Restrictions on the exercise of the freedom of meeting or of association, of the freedom of speech or of press, do not exist and are not applied in Bulgaria excepting in the cases provided by the law against infringers and in the interest itself of public security, maintenance of order and public morals of the people."

The reply, dated April 8, 1949, of the Hungarian Government to the note of April 2 from the Government of the United States, stated :

" .... It is well known that concerning the free enjoyment of human rights the Republic of Hungary, well before the conclusion of the Treaty of Peace, abolished all discriminations as to race, sex, language and religion which existed under the Horthy régime. Thus, the Government of Hungary has fully complied with the provisions of the Treaty of Peace." (Doc. A/985, Annex 4, p. 30.)

The Government of Hungary called attention to Article 4 of the Treaty of Peace concerning the dissolution of organizations, not only Fascist but others "which have as their aim denial to the people of their democratic rights", and stated that it was proceeding in the sense of these provisions of the Treaty of Peace "when dissolving the organizations and parties aiming at the restoration of the old Fascist régime and when summoning to Court those who pursue an activity to overthrow the democratic Republic".

Besides stating that Hungary "emphatically rejects" the note of the United States, the reply stated :

"The Government of Hungary declares once more that Hungary has fulfilled, fulfills and will fulfill all obligations embodied in the Treaty of Peace. At the same time, the Government of Hungary emphatically protests the tendency of the Government of the United States to use the stipulations of the Treaty of Peace

as a pretext for illegitimate interference in the domestic affairs of the sovereign Hungarian State and for supporting the reactionary and Fascist forces opposed to the Government of Hungary."

The reply of the Rumanian Government of April 18, 1949, to the note of April 2 from the Government of the United States, stated that the April 2 note was similar to "former notes" in which "certain affirmations were made by the Government of the United States with reference to violation by the Rumanian Government of the provisions of Article 3 of the Peace Treaty". (Doc. A/985, Annex 6, p. 34.) The reply of Rumania stated that the note of April 2 "does not correspond to reality and .... repeats the inventions of the slanderous press of the imperialist monopolists". In an effort to demonstrate that the laws of Rumania "in fact guarantee the application of the provisions of Article 3 of the Peace Treaty", it was stated in the reply:

"In the Rumanian People's Republic the exercise of the fundamental freedoms, freedom of assembly, of demonstrations, of the press and of speech are guaranteed by the Constitution, and these are assured by making available to those who work printing facilities, supplies of paper and meeting places.

Discrimination because of nationality or race is punishable by law.

Religious organizations enjoy freedom of worship and are given the places and means necessary for the exercise of their religion."

The Rumanian Government declared in the note that the United States was transgressing the Treaty of Peace by trying to prevent the application of Article 5 which, as described in the reply, "provides that the Rumanian Government will not permit the existence and activities of any organizations of a Fascist type and which have as their aim denial to the people of their democratic rights".

Finally, it was stated in the reply that—

"In consequence, the Government of the Rumanian People's Republic declares that it cannot accept the attempt of the United States Government to interfere in the internal affairs of Rumania and it rejects the note of the Government of the United States."

In view of the fact that the Bulgarian, Hungarian and Rumanian Governments denied that they had violated the provisions of the Treaties of Peace, and indicated their unwillingness to adopt the requested remedial measures in execution of the Treaties, the Government of the United States informed each of the three Governments (by notes delivered by the American Legations in Sofia, Budapest and Bucharest on May 31, 1949), that in its view that Government had "not given a satisfactory reply to the specific charges set forth in the Legation's note" [of April 2, 1949]. In the notes, the Government of the United States alluded to the fact that the replies contained allegations against the United

States "which are demonstrably false and irrelevant to the matter at hand", and informed the Governments addressed that—

> "The United States Government accordingly considers that a dispute has arisen concerning the interpretation and execution of the Treaty of Peace which the .... Government has shown no disposition to join in settling by direct diplomatic negotiations." (Doc. A/985, Annexes 7, 8 and 9, pp. 36, 37 and 38.)

Further, in the notes of May 31, the Government of the United States invoked the relevant Articles of the Treaties of Peace providing for the settlement of disputes by the Heads of Diplomatic Missions of the United Kingdom, the Soviet Union and the United States in the three capitals (Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary, and Article 38 of the Treaty with Rumania).

On May 31, 1949, the Chiefs of Mission of the United States in Sofia, Budapest and Bucharest, informed their Soviet and British colleagues in those capitals that "a dispute exists" between the United States and the country to which they were accredited, and inquired when the particular Head of Mission would be prepared to meet with his colleagues to "consider the dispute in question". (Doc. A/985, Annexes 10, 11, 12, 13, 14 and 15, pp. 39-49.) The Ministers of the United Kingdom in the three capitals expressed their willingness to meet at any time mutually agreeable. (Doc. A/985, Annexes 16, 17 and 18, pp. 50-51.) A note of the U.S.S.R., dated June 11, 1949, referred to a note of the Acting Secretary of State to the Soviet Ambassador in Washington dated May 31, 1949, as "well as .... the notes of the missions of the U.S.A. in Bulgaria, Hungary, and Rumania, delivered on the same day to the Ambassadors of the U.S.S.R., in the aforementioned countries", and stated that the U.S.S.R. considered that it was evident from the replies of the Governments of Bulgaria, Hungary and Rumania that those Governments were "strictly fulfilling the obligations undertaken by them under the peace treaties, including the obligations having to do with the security of human rights and the fundamental freedoms"; that the measures of those Governments concerning which the Government of the United States expressed dissatisfaction in the notes of April 2, 1949, "not only are not a violation of the Peace Treaties, but on the contrary, are directed toward the fulfilment of the Peace Treaties which obligate the said countries to combat organizations of the Fascist type and other organizations 'which have as their aim denial to the people of their democratic rights'"; and that it was "self-evident that such measures .... are fully within the domestic competence of these countries as sovereign States". It was concluded in the note of June 11 that the Soviet Government "does not see any ground for convening the Three Heads of the Diplomatic Missions". (Doc. A/985, Annex 19, p. 53.)

By a note of June 30, 1949, the Government of the United States requested the Soviet Government to reconsider its decision, pointing out that: "The Soviet Government .... has associated itself with the position of the Governments of Bulgaria, Hungary and Rumania in denying that the Treaties have been violated. This interpretation is disputed by the United States and by other signatories of the Treaties of Peace." (Doc. A/985, Annex 20, p. 54.) The reply of the U.S.S.R. of July 19, 1949, to the request for reconsideration of the matter, stated that that Government did not see any basis for a review of its position. (Doc. A/985, Annex 21, p. 55-56.)

On July 27, 1949, the Government of Bulgaria addressed a note to the Government of the United States setting forth its view that the settlement procedures provided for in Article 36 of the Treaty of Peace with Bulgaria were not applicable, and citing certain Bulgarian constitutional provisions as being "in full accordance with the Treaty of Peace", referring to Article 4 of the Treaty regarding the dissolution of "all organizations of a Fascist type on Bulgarian territory". The note further stated that "the various proceedings before Bulgarian courts, the acts of administrative agencies and others in various cases cannot be made a subject of discussion in connection with the execution of the Peace Treaty since, from the point of view of international law, the text and spirit of the Treaty as well as the exact provisions of Article 2 of the United Nations Charter, such a discussion would constitute an inadmissible interference in the internal affairs of our country and would be an infringement of its sovereignty". (Doc. A/985, Annex 22, p. 58.)

Two months having elapsed since the Heads of Mission in the three capitals were requested to meet for the purpose, and no meeting having taken place and the dispute remaining unresolved, the Government of the United States found it necessary to invoke the additional Peace Treaty procedure for the settlement of disputes. This procedure envisages the establishment (under each Treaty of Peace) of Commissions composed in each case of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. It provides that 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. It further provides that the decision of the Commission is to be accepted as "definitive and binding".

In notes delivered on August 1, 1949, to the Governments of Hungary, Bulgaria, and Rumania, the Government of the United States requested that the disputes be referred to Commissions constituted in accordance with the respective Articles of the Treaties of Peace and asked the several Governments to join in naming the Commissions. (Doc. A/985, Annexes 23, 24 and 25,

pp. 58-61.) The Governments of Bulgaria, Hungary and Rumania rejected the request in their notes dated September 1, August 26, and September 2, 1949, respectively. (Doc. A/985, Annexes 26, 27 and 28, pp. 61-64.)

On September 19, 1949, the Government of the United States addressed further notes to the Governments of Bulgaria, Hungary and Rumania, stating that the Government of the United States considered that the Government addressed had no grounds for declaring unilaterally that a dispute over the execution of the "human-rights" Article "does not exist". The position was taken that the fact of the existence of a dispute as to each of the several Treaties was self-evident; that refusal to comply with the "disputes" Articles constituted a serious new breach of Treaty obligations; that the defense put forward with respect to obligations to suppress Fascist organizations was a "flimsy pretext that will not stand examination in the light of the systematic suppression of human rights and freedoms"; that those Governments were not the sole arbiters of their execution of their obligations under the Treaties; that as to the defense that the sovereignty of the State addressed was impugned, "it is manifest that .... sovereignty is limited by .... clear international obligations"; and that the invocation by the United States of specific treaty procedures for the settlement of a dispute "can in no sense be regarded as unwarranted intervention in the internal affairs" of the Government addressed. It was concluded in the notes that the recalcitrant attitude of the Governments in the matter could in no way affect the determination of the Government of the United States to have recourse to all appropriate measures for securing compliance with the obligations of the human-rights provisions of the Treaties of Peace, as also of the "disputes" provisions. (Doc. A/985, Annexes 29, 30 and 31, pp. 65-.69)

Subsequently, on October 27, the Government of Hungary, in a further communication to the Government of the United States, took the position that it "was minutely observing the stipulations contained in Article 2 of the Peace Treaty"; that "compliance with the stipulations of Article 4 is a condition *sine qua non* of guaranteeing to all peoples and to the Hungarian people among them, the rights defined by Article 2 of the Treaty"; that the Governments of the United States and the United Kingdom had on several occasions infringed the stipulations of the Treaties of Peace; that Hungary was astonished that the Government of the United States expressed the opinion that by assuming certain obligations through the signature of the Treaty of Peace, Hungary had become "a State with limited sovereignty"; and finally that the note of September 19 was to be construed as a new attempt of "unlawful interference with the internal affairs of Hungary". (A copy of the communication is attached.)

On January 5, 1949, the Government of the United States, by notes delivered to the Governments of Bulgaria, Hungary and

Rumania, announced that it had named Professor Edwin D. Dickinson as the Representative of the Government of the United States on each of the three Commissions to be established under the Treaties of Peace, and requested the Governments addressed to designate their representatives forthwith and to enter into consultation immediately with the Government of the United States with a view to the appointment of the third members of the Commissions as stipulated in the "disputes" Articles of the Treaties of Peace. The Secretary-General of the United Nations was so informed. (Copies of the communications are attached.)

E. *Specific disputes concerning the "interpretation or execution" of the Treaties of Peace are disclosed in the diplomatic exchanges*

It is obvious that the diplomatic exchanges between the Government of the United States, on the one hand, and the Governments of Bulgaria, Hungary and Rumania, on the other, disclose that disputes exist between the Government of the United States and the Governments of Bulgaria, Hungary and Rumania as to the interpretation and execution of the respective Treaties of Peace. Included among these disputes regarding the interpretation or execution of the Treaties, not settled by direct negotiation, are disputes as to—

1. Whether the Governments of Bulgaria, Hungary and Rumania are, or are not, complying with the human-rights provisions of the respective Treaties of Peace:

(*a*) Specifically, and as illustrative only, has the Government of Bulgaria, or has it not, violated the human-rights provisions of the Treaty of Peace between that Government and the Allied and Associated Powers by making arbitrary arrests; systematically perverting the judicial processes; detaining in prisons and camps, without public trials and for prolonged periods, persons opposed to the existing regime in Bulgaria; denying freedom of political opinion and of public meeting; dissolving the National Agrarian Union, the Bulgarian Socialist Party and other groups, and imprisonment of many of their leaders; executing Nikola Petkov, National Agrarian Union leader, for expressing democratic political opinions which did not correspond to those of the Bulgarian Government; proceeding against deputies disagreeing with Governmental policies; denying freedom of expression by restrictions on the press and other publications, by laws, administrative acts, and the use of force and intimidation on the part of officials of the Government; proscribing freedom of the press; preventing freedom of worship, by legislation, by acts of officials, by so-called trials of religious leaders, and by measures directed against Protestant denominations in Bulgaria.

(*b*) Further, and as illustrative only, has the Government of Hungary, or has it not, violated the Treaty of Peace between that

Government and the Allied and Associated Powers by violating the rights of citizens to life and liberty through the arbitrary exercise of police power and perversion of the judicial processes; denying freedom of opinion through suppressing, dissolving and purging democratic political parties; suppressing freedom of opinion, expression and of association through an insidious network of police and other agents who observe, report on, and seek to control private opinion, association and activity of citizens; eliminating freedom of the press, publication and expression through restrictive decrees, control of printing establishments and distribution of newsprint; denying freedom of assembly on political matters to all except Communist groups and their collaborators; denying freedom of religious worship and practice, including the harassment and obstruction of religious gatherings; proceeding in an arbitrary and unjustified manner against religious leaders on fabricated grounds, as in the cases of Cardinal Mindzenty and Lutheran Bishop Ordass; and replacing religious leaders with subservient collaborators.

(*c*) And further, and as illustrative only, has the Government of Rumania, or has it not, violated the Treaty of Peace between that Government and the Allied and Associated Powers by denying freedom of opinion in disrupting, silencing and outlawing other than Communist-controlled political parties and depriving democratic leaders of their liberty; to this end, employing methods of intimidation and perversions of the judicial process as in the case of the so-called "trial" and condemnation to life imprisonment of Iuliu Maniu, President of the National Peasant Party, and other leaders; seizing and holding Rumanian citizens for long periods of time without public trial; stifling freedom of expression of political opinion at variance with that of the Government, by laws, decrees and administrative measures, as well as by extra-legal acts or organizations affiliated with the Government and the Communist Party; eliminating freedom of the press and of publication, including the taking of control of all printing establishments and the suppression of all publications not responsible to the direction of, or which do not serve the purposes of, the Communist Party; eliminating freedom of assembly and of association, save for Communist and Communist-approved organizations, by forcible interventions or threat thereof; abridging freedom of religious worship, by legislation and other measures, by assuming extensive control over the practice of religion, including the application of political tests, incompatible with freedom of worship, and, in at least one instance, by destroying by Government decree a major religious body and transferring its property to the State.

2. Whether some of the violations complained of took place only prior to the effective date of the Peace Treaties, or whether they have occurred subsequently to that date.

3. Whether the allegations of the Governments of Bulgaria, Hungary and Rumania in defense that what is complained of by the United States is, or is not, in fact a duty of the accused Governments under a proper interpretation of other provisions of the Treaties of Peace relating, *inter alia*, to the suppression of Fascist organizations.

4. Whether the States accused of violating the Peace Treaties can determine unilaterally the nature and extent of their obligations under the human-rights provisions of the several Treaties of Peace, or whether this question is properly to be resolved by the Treaty procedures.

5. Whether the States accused of violating the Peace Treaties can determine unilaterally the nature and extent of their obligations under the provisions referred to in paragraph 3, *supra*, relating generally to the suppression of Fascist organizations, or whether this question is properly to be resolved by the Treaty procedures.

6. Whether, as alleged by Bulgaria, Hungary and Rumania in defense, the matters of which they are accused are domestic matters solely of concern to them, or whether these matters have become by reason of the stipulations of the Treaties of Peace matters appropriate for determination under the "disputes" provisions of the several Treaties of Peace and have ceased to be solely of domestic concern.

F. *Pronouncements by the Permanent Court on the subject of "disputes"*

The "disputes" referred to in the respective Articles of the Treaties of Peace, and as to which provision is made for their resolution, are described in the several Treaties as "any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations". This language is exceedingly broad in scope.

The Permanent Court of International Justice dealt with the question of what constitutes a dispute on a number of occasions.

In 1924 the Government of Greece filed an application submitting to the Permanent Court of International Justice a case arising out of the alleged refusal on the part of the Government of Palestine, and also on the part of the British Government as Mandatory, to recognize to their full extent certain rights acquired by M. Mavrommatis, a Greek subject, under contracts and agreements concluded by him with Ottoman authorities in regard to concessions for certain public works to be constructed in Palestine.

Article 26 of the British Mandate for Palestine contained the following provision :

"The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations."

The British Government filed objection to the Court's jurisdiction and requested the dismissal of the proceedings.

In its Judgment on the jurisdiction, the Court considered, *inter alia*, two questions: "Does the matter before the Court constitute a dispute between the Mandatory and another Member of the League of Nations ?" and "Is it a dispute which cannot be settled by negotiation ?" (*The Mavrommatis Palestine Concessions*, Judgment No. 2, Series A., No. 2, August 30, 1924, p. 11.) In so doing, the Court defined a "dispute" in the following manner :

"A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons." *Ibid.*

It concluded that "The present suit between Great Britain and Greece certainly possesses these characteristics." *Ibid.*

Article 26 of the Mandate Agreement, it will be noted, referred to "any dispute whatever .... relating to the interpretation or the application of the provisions of the Mandate .... if it cannot be settled by negotiation", and thus set up a stricter test for determining the Court's jurisdiction, as it was necessary to show that the dispute *could not be settled* by negotiation, than the pertinent Articles of the Treaties of Peace for determining the jurisdiction of the Treaty Commissions which refer to "any dispute concerning the interpretation or execution of the Treaty, *which is not settled* by direct diplomatic negotiations".

The Court, in holding that the dispute could not be settled by negotiation, however, significantly stated :

"The second condition by which this Article defines and limits the jurisdiction of the Permanent Court in questions arising out of the interpretation and application of the Mandate, *is that the dispute cannot be settled by negotiation.* It has been contended that this condition is not fulfilled in the present case ; and leaving out of account the correspondence previous to 1924 between Mavrommatis or his solicitors and the British Government, emphasis has been laid on the very small number and brevity of the subsequent communications exchanged between the two Governments, which communications appear to be irreconcilable with the idea of negotiations properly so called. The true value of this objection will readily be seen if it be remembered that the question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations do not of necessity always presuppose a more or less lengthy series of notes and 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 diplomatic negotiation....*" (*Ibid.* 13.)

In 1925 the German Government filed an application with the Permanent Court of International Justice submitting a suit against Poland concerning certain German interests in Polish Upper Silesia and relating particularly to the expropriation of a nitrate factory at Chorzów and to the announced intention of the Polish Government to expropriate certain large agricultural estates. Poland raised an objection to the Court's jurisdiction. Article 23 of the German-Polish Convention concerning Upper Silesia, concluded at Geneva in 1922, on which the Court's jurisdiction was alleged by Germany to be based, provided:

"1. 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."

In sustaining the jurisdiction of the Court, the Court differentiated between a "difference of opinion" and a "dispute", as follows:

"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 means of unilateral action on the part of the applicant Party. And the Court cannot allow itself to be hampered by a mere defect of form, the removal of which depends solely on the Party concerned." (*German Interests in Polish Upper Silesia* and *The Factory at Chorzów*, Judgment No. 6 (Jurisdiction), August 25, 1925, Series A., No. 6, p. 14.)

Note that the Court felt that the requirement of the existence of a dispute would be met even by means of unilateral action on the part of one Party.

The Court next considered the importance, if any, to be attached to the conjunctive "and" between the words "construction" and "application" in Article 23, and concluded that this was immaterial in this case as both construction and application of the Convention were involved. The Government of the United States calls attention to the fact that the instant "disputes" Articles describe the dispute to be resolved by the Treaty procedures as "any dispute concerning the interpretation *or* execution" of the Treaties. Here, as in the *Chorzów Factory case*, the dispute involves differences with regard to both the "interpretation" and the "execution" of the several Treaties.

Poland contended that differences with regard to reparations did not fall within the scope of Article 23, paragraph 1, of the Geneva Convention just quoted. In rejecting this contention in ensuing proceedings in this case in 1927, the Court said:

> "The Court, by Judgments Nos. 6 and 7 [(Merits), May 25, 1926, Series A., No. 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 the said articles...." (*German Interests in Polish Upper Silesia* and *The Factory at Chorzów*, Judgment No. 8 (Jurisdiction), July 26, 1927, Series A., No. 9, pp. 20-21.)

The Court added:

> ".... Article 23, paragraph 1, which constitutes a typical arbitration clause .... contemplates all differences of opinion resulting from the interpretation and application of a certain number of articles of a convention. In using the expression 'differences of opinion resulting from the interpretation and application', the contracting Parties seem to have had in mind not so much the subject of such differences as their source, and this would justify the inclusion of differences relating to reparations amongst those concerning the application, even if the notion of the application of a convention did not cover reparations for possible violation." (*Ibid.* 24.)

Still later the German Government filed a request for an interpretation of the Court's Judgments Nos. 7 and 8 in the *Chorzów case*. Article 60 of the Statute of the Court provided:

> "The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any Party."

The Court accordingly had occasion to determine whether or not there existed a "dispute" as to the meaning or scope of the judgments within the meaning of Article 60. In holding that a dispute need not be manifested in a formal way so long as the Governments had in fact shown that they held opposite views and that a dispute existed as to each of the judgments, the Court said:

> "Before examining the question which has thus been raised, the Court thinks it advisable to define the meaning which should be given to the terms 'dispute' and 'meaning or scope of the judgment', as employed in Article 60 of the Statute.
>
> In so far as concerns the word 'dispute', the Court observes that, according to the tenor of Article 60 of the Statute, the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required. It would no doubt be desirable that a State should not proceed to

take as serious a step as summoning another State to appear before the Court without having previously, within reasonable limits, endeavoured to make it quite clear that a difference of views is in question which has not been capable of being otherwise overcome. But 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. The Court in this respect recalls the fact that in its Judgment No. 6 (relating to the objection to the jurisdiction raised by Poland in regard to the application made by the German Government under Article 23 of the Geneva Convention concerning Upper Silesia), it expressed the opinion that, the article in question not requiring preliminary diplomatic negotiations as a condition precedent, recourse could be had to the Court as soon as one of the Parties considered that there was a difference of opinion arising out of the interpretation and application of Articles 6 to 22 of the Convention." (*German Interests in Polish Upper Silesia* and *The Factory at Chorzów*, Judgment No. 11 (Interpretation), December 16, 1927, Series A., No. 13, pp. 10-11.)

G. *Once a dispute is disclosed to exist between the Parties concerning the interpretation or execution of the Treaties of Peace, it is for the Treaty Commission to determine its jurisdiction and authority to deal with it, including the sufficiency of the charges made to warrant the assumption of jurisdiction and the effect of matters alleged in defense upon its jurisdiction*

In harmony with the view taken at the outset (par. II C *ante*) of this Written Statement, that the merits of the dispute or the sufficiency of the charges or answers are not before the Court, the Government of the United States is of the further view that it is for the Treaty Commission to be established to determine, at least in the first instance, its jurisdiction and authority to deal with the dispute, including the sufficiency of the charges made to warrant the assumption of jurisdiction and the effect of matters alleged in defense upon its jurisdiction.

Whether the dispute, for example, relates to matters solely within the competence, domestic jurisdiction, or sovereign control of Bulgaria, Hungary or Rumania, is a question properly to be decided by the Commissions under the Treaties of Peace.

It will be for the countries making the allegation to make it before the appropriate tribunal—a Commission envisaged under the Treaties of Peace. Such Commissions, as other international tribunals, will possess the inherent power to pass upon their own jurisdiction. This is in conformity with well-accepted international law and practice. (See, for example, Ralston, *Law and Procedure of International Tribunals* (1926), Secs. 53 and 54.)

The principle that an international tribunal is vested with authority to determine its own jurisdiction is recognized by Article 36, paragraph 6, of the Statute of the Court, which provides :

> "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The Permanent Court of International Justice, in its advisory opinion in the *Interpretation of the Greco-Turkish Agreement of December 1, 1926*, 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". (Advisory Opinion No. 16, August 28, 1928, Series B., No. 16, p. 20.)

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." (*Decisions and Opinions* (1925-1926), 6-7.)

The Anglo-American Tribunal established under the Special Agreement of August 18, 1910, between the United States and Great Britain, had before it the *Rio Grande Irrigation and Land Company, Limited, case* submitted by Great Britain. The American Agent filed a motion for dismissal on the ground of lack of British interest in the claim, and of several alleged breaches of the rules of procedure in the presentation of the case. The British Agent argued in reply that a preliminary motion of this character was not contemplated or provided for by the rules or any of the instruments controlling the Tribunal, and that if such a motion were provided for in the rules the prescribed procedure had not been followed. The Tribunal held on this point :

"To these arguments there is, in the opinion of the Tribunal, one conclusive answer. Whatever be the proper construction of the instruments controlling the Tribunal or of the Rules of Procedure, there is inherent in this and every legal Tribunal a power, and indeed a duty, to entertain, and, in proper cases to raise for themselves, preliminary points going to their jurisdiction to entertain the claim. Such a power is inseparable from and indispensable to the proper conduct of business. This principle has been laid down and approved as applicable to international Arbitral Tribunals. (See Ralston's *International Arbitral Law and Procedure*, pp. 21 *et seq.*) In our opinion, this power can only be taken away by a provision framed for that express purpose. There is no such provision here. On the contrary, by Article 73 of Chapter III of the Hague Convention, 1907, which, by virtue of Article 4 of the Treaty creating this Commission, is applicable to the proceedings of this Commission, it is declared:

'The Tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other acts and documents which may be invoked, and in applying the principles of law.'" (*Agent's Report* (1926), 332, 342.)

Although the defense that the dispute relates to a matter solely within the sovereign control of Bulgaria, Hungary or Rumania, is a question to be decided by the Commissions under the Treaties of Peace, the Government of the United States desires to make it clear that by becoming Party to the Treaties of Peace, the Governments of Bulgaria, Hungary and Rumania accepted restrictions on their sovereign rights to the extent indicated in the Treaties.

It should be perfectly clear to the Governments of Bulgaria, Hungary and Rumania that by becoming party to a treaty under which a State undertakes obligations to another State or States, the sovereign rights of the State are altered precisely to the degree that it, by its own sovereign act in becoming party to the treaty, has undertaken to do or not to do what it otherwise would have the sovereign right not to do or to do, as the case may be. Surely, the Governments of Bulgaria, Hungary and Rumania are not so naive as to believe that the Court will take seriously the contention that, although a State may have undertaken treaty obligations with respect to the assurance of human rights and fundamental freedoms in that country, it cannot be expected or required to perform the obligations specified for the reason that to do so would result in the impairment of its sovereign right otherwise to do as it pleased regarding the matters now covered by treaty. By becoming party to a treaty a State frequently undertakes obligations which impair its otherwise sovereign right to decide for itself what it will or will not do in certain situations covered by the treaty. This is well settled treaty law.

On several occasions the Permanent Court of International Justice spoke forth on the subject.

Article 380 of the Treaty of Versailles, June 28, 1919, provided:

> "The Kiel canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality."

The Permanent Court of International Justice, in its initial Judgment on the merits, August 17, 1923, held that Article 380 forbade Germany's applying to the Kiel canal a neutrality order which would close the canal to a British vessel under French charter carrying munitions to Danzig for trans-shipment to Poland, during a war between Poland and Russia. In so doing the Court held that in becoming party to the Treaty of Versailles, Germany had to the extent provided in Article 380, at least, circumscribed her rights of sovereignty. The Court, in its opinion, stated:

> "The Court considers that the terms of Article 380 are categorical and give rise to no doubt. It follows that the canal has ceased to be an internal and national navigable waterway, the use of which by the vessels of States other than the riparian State is left entirely to the discretion of that State, and that it has become an international waterway intended to provide under treaty guarantee easier access to the Baltic for the benefit of all nations of the world. Under its new régime, the Kiel canal must be open, on a footing of equality, to all vessels, without making any distinction between war vessels and vessels of commerce, but on one express condition, namely, that these vessels must belong to nations at peace with Germany.
>
> . . . .
>
> .... The Court declines to see 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." (*The S.S. Wimbledon*, Judgment No. 1 (Merits), August 17, 1923, Series A., No. 1, pp. 22, 25.)

In 1921 decrees were issued by the Bey of Tunis, by His Shereefian Majesty, and by the President of the French Republic, which had the effect of converting certain British subjects in Tunis and Morocco (French zone) into French citizens, with the consequence that the French Government began to enforce against them a liability for service in the French army. The British Government protested to the French Government against the application of the decrees to British nationals, and suggested that the matter be referred to the Permanent Court of International Justice or to arbitration. Neither suggestion was accepted by the French Government. When the British Government announced its intention to place the matter on the agenda of the Council of the League of

Nations, the French Government contended that under Article 15 (8) of the Covenant of the League of Nations, dealing with matters "which by international law .... [are] solely within the domestic jurisdiction" of a party to the dispute, the Council was incompetent to deal with it. When the matter came before the Council, October 2, 1922, the British Representative explained that friendly conversations had taken place, as a result of which it was proposed that the Permanent Court be asked for an advisory opinion as to the nature of the dispute. Accordingly, the following question was put to the Court:

> "Whether the dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco (French zone) on November 8th, 1921, and their application to British subjects, is or is not, by international law, solely a matter of domestic jurisdiction (Article 15, paragraph 8, of the Covenant)."

On February 7, 1923, the Permanent Court gave the opinion that the dispute was not by international law solely a matter of domestic jurisdiction. (*Nationality Decrees issued in Tunis and Morocco (French Zone) on November 8, 1921*, Advisory Opinion, Series B., No. 4.) In giving 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.*, 24.)

In 1924, the Council of the League of Nations, at the instance of the Mixed Commission for the exchange of Greek and Turkish populations, requested an advisory opinion from the Permanent Court of International Justice on the question of the meaning and scope to be attributed to the word "established" in Article 2 of the Convention of Lausanne of January 30, 1923, regarding the exchange of Greek and Turkish populations. 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 "established" persons was a domestic matter for the municipal courts to decide. The Permanent Court rejected the contention, stating, *inter alia :*

> "The Court has not to define the meaning and scope of the word 'established' in the abstract, but only to determine the meaning and scope of that word as used in Article 2 of the Convention of Lausanne. 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.
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> . . . .
>
> The Turkish delegation however maintains that the Convention contains a reference to national legislation and in support of this contention invokes amongst other things Article 18, according to which:
>
> 'The High Contracting Parties undertake to introduce in their respective laws such modifications as may be necessary with a view to ensuring the execution of the present Con*vention.*'
>
> This clause, however, merely lays stress on a principle which is self-evident, according to which a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken. The special nature of the Convention for the Exchange of Greek and Turkish populations, which closely affects matters regulated by national legislation and lays down principles which conflict with certain rights generally recognized as belonging to individuals, sufficiently explains the express inclusion of a clause such as that contained in Article 18. *But it does not in the least follow* because the contracting parties are obliged to bring their legislation into harmony with the Convention, that that instrument must be construed as implicitly referring to national legislation in so far as that is not contrary to the Convention.
>
> . . . .
>
> 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'. In the present case, moreover, the obligations of the contracting States are absolutely equal and reciprocal. It is therefore impossible to admit that a convention which creates obligations of this kind, construed according to its natural meaning, infringes the sovereign rights of the High Contracting Parties.

Having thus made it clear that the Convention does not refer to national laws, the Court does not feel it to be necessary to consider whether any particular provisions of the Turkish laws of 1902 and 1914 are or are not contrary to the Convention.

The Turkish delegation has 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' ...." (*Exchange of Greek and Turkish populations*, Advisory Opinions, No. 10, February 21, 1925, Series B., No. 10, pp. 17-18, 20-21, 21-22.)

III. Obligation to appoint representatives to commissions

The second question before the Court concerns the obligation of the Parties to the Treaties to carry out the provisions of the Treaty articles referred to in the first question before the Court, including the provisions for the appointment of their representatives to the Treaty Commissions.

The "disputes" Articles, as previously stated, provide that, except where another procedure is specifically provided 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". It is further provided by the Articles that "Any such dispute not resolved by them within a period of two months shall", unless another means of settlement is agreed upon, 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. Provision is then made for requesting the Secretary-General of the United Nations to make the appointment of the third member, in the event that the two Parties fail within a period of one month to agree upon the third member.

Generally speaking, there can be no doubt as to the duty of the Parties thereto to comply with their treaty obligations. The legal duty to observe the provisions of a treaty freely entered into has been recognized in international law from time immemorial.

The "disputes" Articles of the Treaties in no way differ from other articles of the Treaties of Peace in binding the Parties

thereto to carry out the obligations arising therefrom. These Articles outline the procedures which the Parties have agreed to employ for the settlement of disputes concerning the interpretation or execution of Treaty provisions. They provide that if a dispute cannot be resolved by certain stated procedures it shall be referred to a Treaty Commission whose decision shall be accepted by the Parties as definitive and binding. Each of the conditions required by the "disputes" Articles as a condition for the mandatory reference of a dispute to a Treaty Commission is present in the instant situation, as is disclosed by the diplomatic exchanges between the Parties (discussed *ante*). The conditions are:

(*a*) That there is no other procedure for the settlement of the dispute specifically provided under the Treaty. Clearly no other procedure is provided in the Treaty for the type of a dispute here under consideration.

(*b*) That there exists a dispute. It has been established *ante* that a dispute or disputes exist. The words "any dispute", which appear in the Articles, are of the broadest sort.

(*c*) That the "dispute" concerns the "interpretation or execution of the Treaty". It has been shown *ante* that the dispute or disputes do concern the interpretation or execution of the Treaty.

(*d*) That the dispute has not been settled by direct diplomatic negotiations. As the diplomatic exchanges disclose, although an effort has been made by the United States and other Allied Governments to obtain a solution of the disputes through diplomatic channels, the Governments of Hungary, Bulgaria and Rumania unfortunately have rejected such efforts.

(*e*) That the dispute was referred to the Three Heads of Mission and was not settled by them within a period of two months. As has been shown *ante*, the dispute was referred to the Three Heads of Missions, but the Soviet Government refused to authorize its Ambassadors to act.

(*f*) That the Parties did not mutually agree upon another means of settlement. The diplomatic exchanges reveal that no proposal was made or consideration given by the Parties to other means of settlement.

(*g*) That a request be made by either Party to the dispute for a referral to a Treaty Commission. As pointed out *ante*, such requests were made by the United States and other Allied Governments.

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 under stated conditions clearly imposes a binding obligation on the Parties to the Treaties.

The "disputes" Articles clearly 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. Without that common consent the Parties are obligated to employ the Treaty Commission.

Since it was contemplated by the Treaties that disputes should be resolved by Commissions, the failure of a Party to co-operate in setting up a Commission would result in the unilateral defeat and frustration of the clear purposes of the Treaty in this respect. Inasmuch as the Parties to the Treaties have agreed to deal with their disputes in accordance with the "disputes" Articles, there is a solemn obligation on the Parties to take the necessary steps to make possible the solution of the disputes by the Commissions contemplated. The appointment of representatives is clearly a necessary and indispensable step to the carrying out of the "disputes" Articles.

The background of the negotiations as well as the express language of the "disputes" Articles reveal that the mechanism for the solution of disputes was intended to be obligatory and not optional. 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. The Council of Foreign Ministers after prolonged discussion accepted the Peace Conference recommendation except that Commissions were substituted for the Court. But the means of settlement was made and intended to be mandatory, not optional.

It is the view of the Government of the United States that the framers of the several Treaties of Peace intended to provide a workable settlement of disputes machinery by the inclusion of the "disputes" Articles. It was certainly not intended to describe a wholly illusory machinery, and if what was provided as the machinery for the resolution of disputes was to be only optional and as might suit the whim of a State accused of violating the Treaty, there was no point to including such provisions.

The Treaties of Peace are accordingly to be construed, in the view of the Government of the United States, in such a way as to be meaningful and workable. In this light, each contracting Party 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 reasonable effect to the "disputes" Articles as to any other article of the Treaty.

The Permanent Court of International Justice, from time to time, took a practical view of the interpretation of treaties. In practice, it avoided unreasonable or absurd results.

In the *Wimbledon* case, the Permanent Court of International Justice 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". (Judgment No. 1 (Merits), August 17, 1923, Series A., No. 1, pp. 24-25.)

In its advisory opinion in regard to the *Polish Postal Service in Danzig*, the Permanent Court of International Justice took the position that

> "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." (Advisory Opinion No. 11, May 16, 1925, Series B., No. 11, pp. 39-40.)

In connection with the *Case of the Free Zones of Upper Savoy and the District of Gex*, 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". (Order, August 19, 1929, Series A., No. 22, p. 13.)

In determining the extent of the jurisdiction conferred upon the Oder River Commission by the Treaty of Versailles, the Permanent Court of International Justice stated that it must go back to the principles governing international fluvial law in general and consider what position was adopted by the Treaty of Versailles in regard to those principles. It concluded that the Treaty of Versailles adopted the principle of internationalization, "that is to say, the free use of the river for all States, riparian or not". In taking a reasonable interpretation of the treaty, the Court concluded:

> "Article 332 grants freedom of navigation on waterways declared international in the previous article to all Powers on a footing of perfect equality. This provision would be inappropriate, if not arbitrary, if the freedom stopped short at the last political frontier." (*Territorial jurisdiction of the International Commission of the River Oder*, Judgment No. 16, September 10, 1929, Series A., No. 23, pp. 26, 28.)

In a concurring opinion concerning the *Austro-German Customs Régime*, Judge Anzilotti, in considering Article 88 of the Treaty of Saint-Germain, said:

"(*b*) It is a fundamental rule of interpretation that words must be given the ordinary meaning which they bear in their context unless such an interpretation leads to unreasonable or absurd results." (Advisory Opinion No. 20, September 5, 1931, Series A./B., No. 41, p. 60.)

The Swiss Arbitrator (Charles Edouard Lardy), in his decision in the dispute between the Netherlands and Portugal in the *Island of Timor case*, involving the interpretation of treaties, stated:

"…. 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.' " (Decision, June 25, 1914, under the Convention of April 3, 1913, Scott, *Hague Court Reports* (1916) 355, 384.)

And the American and British Claims Tribunal established under the Convention of August 18, 1910, to cite yet another example, held in the *Cayuga Indians case* that—

"…. Nothing is better settled, as a canon of interpretation in all systems of law, than that a clause must be so interpreted 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." (*Agent's Report* (1926) 203, 307, 322.)

IV. Conclusion

(I) The Government of the United States is of the view that the diplomatic exchanges between the United States, on the one hand, and the Governments of Bulgaria, Hungary and Rumania, on the other, concerning the implementation of Article 2 of the Treaties of Peace with Bulgaria and Hungary and Article 3 of the Treaty of Peace with Rumania, disclose disputes subject to the provisions for the settlement of disputes contained in Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary, and Article 38 of the Treaty with Rumania.

(II) The Government of the United States is of the further view that the Governments of Bulgaria, Hungary and Rumania are obligated to proceed under the provisions for the settlement of disputes contained in the respective Treaties of Peace, including the obligation to appoint representatives to the Commissions envisaged in the Treaties.

Attachments :

Note from United States Representative to the United Nations to the Secretary-General of the United Nations, January 6, 1950, enclosing—

1.—Hungarian note of October 27, 1949, to United States;

2.—United States note of January 5, 1950, to Bulgaria;

3.—United States note of January 5, 1950, to Hungary;

4.—United States note of January 5, 1950, to Rumania.

ATTACHMENTS

January 6, 1950.

Excellency :

I have the honor to refer to my note UN-2748 of September 20, 1949, forwarding to you copies of certain diplomatic correspondence relevant to the question of observance of human rights in Bulgaria, Hungary and Rumania. (General Assembly Resolutions of April 30, 1949 (272 (III)), and October 22, 1949 (A/1043).)

On October 27, 1949, subsequent to the date of my letter, the Government of Hungary addressed a further note to the Government of the United States (Annex 1). On January 5, 1950, the Government of the United States directed notes to the Governments of Bulgaria, Hungary and Rumania (Annexes 2, 3 and 4).

I am enclosing copies of these notes with a request that you be kind enough to transmit copies of the notes to all Members of the United Nations and also to the International Court of Justice in connection with the General Assembly Resolution of October 22, 1949 (A/1043).

Accept, Excellency, the renewed assurances of my highest consideration.

(*Signed*) WARREN R. AUSTIN,
United States Representative to the United Nations.

Enclosures :

Annex 1.—Hungarian note of October 27, 1949, to U.S.
Annex 2. U.S. note of January 5, 1950, to Bulgaria.
Annex 3.—U.S. note of January 5, 1950, to Hungary.
Annex 4.—U.S. note of January 5, 1950, to Rumania.

His Excellency Trygve Lie,
Secretary-General of the United Nations,
Lake Success, New York.

UN—2748/C.

Annex 1

HUNGARIAN NOTE TO THE UNITED STATES (27 OCTOBER 1949)

(Original text in English.)

The Hungarian Ministry for Foreign Affairs presents its compliments to the Legation of the United States of America and, with reference to the Legation's note No. 592, dated September 19, 1949, has the honor to impart as follows :

The Hungarian Government regrets to state that the Government of the United States deemed it opportune to renew the accusations, deprived of all real basis whatsoever, and rejected most emphatically by the Hungarian Government on several occasions—notwithstanding that the Hungarian Government had clearly explicated and undoubtfully proved in its notes Nos. 2672 and 7796/1949 that it was minutely observing the stipulations contained in Article 2 of the Peace Treaty.

The Hungarian Government once again rejects most categorically that tendentious and false interpretation of the Peace Treaty by which the Government of the United States tries to contrast the stipulations of Articles 2 and 4 of the Treaty. The Hungarian Government does not see any contradiction between the observing of the stipulations contained in Article 2 of the Peace Treaty and the fight against Fascist and pro-Fascist elements prescribed by Article 4 of the same Treaty. On the contrary, a consequent compliance with the stipulations of Article 4 is a condition *sine qua non* of guaranteeing to all peoples and to the Hungarian people among them, the rights defined by Article 2 of the Treaty.

It has resulted clearly from the documents of the trials against Mindszenty and his accomplices and, recently, against Laszlo Rajk and his accomplices, that the persons convicted for their antidemocratic activity were guilty of a conspiracy aiming at the reverse of the present democratic regime, and to annihilate the liberties acquired by the people, and to establish a Fascist regime of oppression, worse than any other previous regime of the kind. Accordingly, the Hungarian Government, far from infringing the Peace Treaty, acts explicitly in compliance with its stipulations when inflicting a blow upon the vile enemies of liberty and democracy, who have degenerated to espionage and murderous attempts. If the Governments of the United States and the United Kingdom accuse the Hungarian Government, this can have but one reason, i.e., the ruling circles of these countries are hostile to the independence and development of the people's democracies and, as it was proved by the aforementioned trials, support, in Hungary too, the most desperate enemies of democracy, directing them by their own network of spies, as well as by Tito and his clique, attached to their service.

As a matter of fact, the Hungarian Government has repeatedly stated that precisely these Governments have on several occasions infringed the stipulations of the Peace Treaty relating to Hungary, when unlawfully denying the restitution of Hungarian property found in their respective zones of occupation, when refusing the extradition of the Hungarian war-criminals escaped into their territory, when supporting these war-criminals in their antidemocratic activity and when even rendering possible the organization and equipment of military formations of Hungarian Fascists on the territory occupied by them.

Furthermore, the Hungarian Government states with astonishment that, in addition to the accusations already known and repeatedly refuted, the Government of the United States expresses the opinion—which is quite new and in no way compatible with the rules and spirit of international law—that, by assuming certain obligations through the signature of the Treaty of Peace, Hungary has become a State with limited sovereignty.

When signing the Peace Treaty, Hungary was not, nor is she at present, inclined to surrender her sovereignty—on the contrary, she

will defend her independence and unhampered democratic development against any imperialist interference. The Hungarian Government considers the arbitrary interpretation of the Peace Treaty by the Government of the United States an attempt to claim a right to constantly interfere with Hungary's internal affairs, ignoring the independence of the Hungarian State.

The Hungarian Government categorically rejects, moreover, the wholly fictitious calumny of the Government of the United States, alleging that the present Hungarian regime be merely "the totalitarian rule of a minority". It is a notorious fact that at the general elections on the 15th of May of 1949 the Hungarian people manifested their will in the most democratic way—by general and secret ballot—and decided to support by 95.5 percent of their votes the policy carried on by the present Hungarian Government. In view of this, the fact that the Government of the United States alleges in a diplomatic note the present Hungarian Government as being "the rule of a minority", cannot be regarded by the Hungarian Government but as an evil-minded propagandistic manoeuvre, based upon the denial of true facts.

In consideration of the above said, the Hungarian Government rejects most categorically the note No. 592 of the Legation of the United States, as a new attempt of unlawful interference with the internal affairs of Hungary.

The Hungarian Ministry for Foreign Affairs avails itself of this opportunity to renew to the Legation of the United States of America the expression of its high consideration.

Annex 2

UNITED STATES NOTE TO BULGARIA (5 JANUARY 1950)

[Original text in English]

The Legation of the United States of America presents its compliments to the Ministry of Foreign Affairs of Bulgaria and has the honor to refer to the Legation's note of August 1, 1949, asking the Bulgarian Government to join the United States Government in naming a Commission, in accordance with Article 36 of the Treaty of Peace, to settle the dispute which has arisen over the interpretation and execution of Article 2 of the Treaty. Reference is also made to the Ministry's note of September 1, 1949, and to the Legation's note of September 19, 1949, on the same subject.

The Legation has the honor to inform the Ministry that the United States Government has designated Mr. Edwin D. Dickinson as its representative on the proposed Commission. It is requested that the Bulgarian Government designate its representative forthwith and enter into consultation immediately with the United States Government through the American Minister in Sofia, with a view to the appointment of the third member of the Commission as stipulated in Article 36 of the Peace Treaty.

Annex 3

UNITED STATES NOTE TO HUNGARY (5 JANUARY 1950)

[Original text in English]

The Legation of the United States of America presents its compliments to the Ministry of Foreign Affairs of Hungary and has the honor to refer to the Legation's note of August 1, 1949, asking the Hungarian Government to join the United States Government in naming a Commission, in accordance with Article 40 of the Treaty of Peace, to settle the dispute which has arisen over the interpretation and execution of Article 2 of the Treaty. Reference is also made to the Ministry's note of August 26, 1949, to the Legation's note of September 19, 1949, and the Ministry's note of October 27, 1949, on the same subject.

The Legation has the honor to inform the Ministry that the United States Government has designated Mr. Edwin D. Dickinson as its representative on the proposed Commission. It is requested that the Hungarian Government designate its representative forthwith and enter into consultation immediately with the United States Government through the American Minister in Budapest, with a view to the appointment of the third member of the Commission as stipulated in Article 40 of the Peace Treaty.

Annex 4

UNITED STATES NOTE TO RUMANIA (5 JANUARY 1950)

[Original text in English]

The Legation of the United States of America presents its compliments to the Ministry of Foreign Affairs of Rumania and has the honor to refer to the Legation's note of August 1, 1949, asking the Rumanian Government to join the United States Government in naming a Commission, in accordance with Article 38 of the Treaty of Peace, to settle the dispute which has arisen over the interpretation and execution of Article 3 of the Treaty. Reference is also made to the Ministry's note of September 2, 1949, and to the Legation's note of September 19, 1949, on the same subject.

The Legation has the honor to inform the Ministry that the United States Government has designated Mr. Edwin D. Dickinson as its representative on the proposed Commission. It is requested that the Rumanian Government designate its representative forthwith and enter into consultation immediately with the United States Government through the American Minister in Bucharest, with a view to the appointment of the third member of the Commission as stipulated in Article 38 of the Peace Treaty.

2. WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED KINGDOM

I

1. The Peace Treaties with Bulgaria, Hungary and Roumania all contain certain provisions which have come to be known (and will herein be called) the Human Rights articles of the Treaties. These are, in the first place Article 2 of the Treaties with Bulgaria and Hungary, and Article 3 of the Treaty with Roumania, which have the following common text :—

> "Bulgaria/Hungary/Roumania shall take all measures necessary to secure to all persons under Bulgarian/Hungarian/Roumanian 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."

Secondly, the Hungarian and Roumanian Treaties contain in addition the following clause (Article 2 of the Hungarian Treaty and Article 3 of the Roumanian Treaty) :—

> "Hungary/Roumania further undertakes that the laws in force in Hungary/Roumania shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Hungarian/Roumanian 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."

In the opinion of the Government of the United Kingdom, a dispute concerning the interpretation and execution of the above quoted provisions has arisen between it and the Governments of Bulgaria, Hungary and Roumania respectively (hereinafter referred to as "the three Governments"), which should be settled by means of the procedure specified in the relevant disputes articles of the Peace Treaties. For reasons of convenience, these articles are cited, and their common text is quoted, at a later stage of the present written Statement, the five following paragraphs of which set out the history of the matter up to the present date.

2. Before the beginning of the second part of the Third Session of the General Assembly of the United Nations in April, 1949, requests were made by the Governments of Australia and Bolivia for the inclusion in the agenda of the Assembly of items concerning

the trials of Church leaders in Bulgaria and Hungary which had recently taken place in those countries. When these requests came before the General Committee of the Assembly, it was decided to amalgamate them in a single item to read as follows:—

> "Having regard to the provisions of the Charter and of the Peace Treaties, the question of 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 inclusion of this item in the agenda was opposed by the representative of the Soviet Union, mainly on the ground that the trials were the domestic concern of the countries concerned, and that the General Assembly was not competent to discuss them in view of Article 2, paragraph 7, of the Charter, which provides that nothing in the Charter "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State". It should be noted, however, in view of what subsequently occurred, that the Soviet opposition was also based on the ground that, if there was a dispute concerning any alleged violations of the Peace Treaties, the procedure laid down in those Treaties for the settlement of disputes should be followed, and that the Assembly was not the proper authority for securing the execution of the Peace Treaties. Thus at this stage, and in order to oppose the inclusion of the item in the Assembly's agenda, the Government of the Soviet Union was ready and anxious to make appeal to the provisions of the Treaties for the settlement of disputes: yet when, at a later stage, it was asked to co-operate in the application of this same procedure, it refused to do so.

3. In point of fact, the Governments of the United Kingdom and the United States had already taken the opening steps towards setting the Treaty procedure in motion by addressing notes dated April 2nd, 1949, to the Governments of Bulgaria, Hungary and Roumania, alleging a number of violations of the Human Rights articles of the Peace Treaties, and calling upon those Governments to adopt prompt remedial measures. It is not necessary for present purposes to detail these charges: suffice it to say that they related to a number of measures and actions, legislative, judicial and administrative, taken in the countries concerned, which the Governments of the United Kingdom and United States considered to be contrary to the Human Rights provisions of the Peace Treaties. In their replies of April 7th, 19th, and 21st, respectively, the three Governments contested the correctness and validity of these charges, and also the legal grounds on which they were based.

4. The General Committee of the Assembly duly decided to include the Australian/Bolivian item in the agenda, and it was

subsequently discussed in the *ad hoc* Political Committee of the Assembly, where it was again argued by the representative of the Soviet Union (the Governments of Bulgaria and Hungary (as non-Member States) having been invited to attend and having refused) that the Assembly was not competent to go into the matter. The ultimate result was that upon being informed that the Governments of the United Kingdom and the United States had already invoked the Peace Treaties, the Assembly decided, by its Resolution No. 272 (III) of April 30th, 1949 (the text of which is given in Annex I to the present Statement), to await the result of this action, in the meantime retaining the matter on the agenda for further consideration at the next (Fourth) Session of the Assembly.

5. Following on this, the Governments of the United Kingdom and United States engaged in an exchange of diplomatic correspondence with the three Governments concerned, and also with the Government of the Soviet Union, with a view to procuring the settlement of the dispute in the manner provided by the Peace Treaties. This correspondence has already been communicated to the Court, but, for convenience of reference, that relating to the United Kingdom (General Assembly document A/990 of September 27th, 1949) is attached as Annex II to the present Statement [1]. For the moment, it is sufficient to say, generally, that the three Governments, and also the Government of the Soviet Union, while disputing the charges, refused to co-operate in the application of those articles of the Peace Treaties which provided for the settlement of disputes, denying that there was, in fact, any dispute, and also reiterating that the matter was one of purely domestic concern, and could not therefore be the subject of international settlement.

6. The Governments of the United Kingdom and United States accordingly informed the Secretary-General of the United Nations of the abortive result of their efforts to set in motion the procedure contemplated by the Peace Treaties, and this information was duly communicated to the General Assembly in the course of its recent (Fourth) Session. In consequence, and having regard to the position maintained by the Governments of Bulgaria, Hungary and Roumania, and by the Government of the Soviet Union, that there was no dispute, and that the provisions of the Peace Treaties for the settlement of disputes were not applicable, the Assembly decided by its Resolution dated October 22nd, 1949 (the full text of which is given in Annex III hereto), to request an advisory opinion from the Court on the following questions :

[1] This document did not include the Hungarian note of October 27th, 1949, which was not received until later, and which was the only reply made by any of the three Governments to the United Kingdom notes of September 19th (see paragraph 19 below). This Hungarian note is accordingly attached as Annex II A.

"I. Do the diplomatic exchanges between Bulgaria, Hungary and Romania 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 Romania, 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 Romania?

In the event of an affirmative reply to question I:

II. Are the Governments of Bulgaria, Hungary and Romania 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 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?

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 definite and binding decision in settlement of a dispute?"

7. It will be observed that these questions are directed solely to establishing whether the three Governments concerned are under an obligation to take the necessary steps to enable the provisions of the Peace Treaties concerning the settlement of disputes to function, and what unilateral measures, if any, the other parties to the Treaties can take to this end if such co-operation is not forthcoming. The questions put to the Court are not, therefore, in any way concerned with the merits or demerits of the substantive allegations made against the three Governments of violations of the Peace Treaty provisions concerning Human Rights[1]. Consequently, in the present written Statement, no

[1] In this connexion, it should be noted that the second of the questions put to the Court has, by a drafting oversight, been framed too widely. It asks whether the Governments of Bulgaria, Hungary and Roumania are under an obligation to carry out "the provisions of the articles referred to in question I". It so happens that in question I reference is made not only to the articles of the Peace

reference will be made to these alleged violations except in so far as may be necessary for purposes of clarification.

II

8. The first question addressed to the Court is whether the diplomatic exchanges which have taken place concerning the implementation of the Human Rights articles of the Peace Treaties disclose disputes (i.e. international disputes) which are subject to the provisions of the Peace Treaties for the settlement of disputes. This question has therefore two elements, namely, is there an international dispute, and, if there is one, is it a dispute to which the provisions of the Peace Treaties providing for the settlement of disputes apply?

9. The three Governments, and the Government of the Soviet Union, deny that there is any dispute, on grounds which, in so far as they are disclosed in the diplomatic exchange of correspondence, are inadmissible and, indeed, almost frivolous. In the opinion of the United Kingdom Government, it is manifest on the face of the correspondence and of the discussions which have taken place in the General Assembly, that a dispute exists. Indeed, the very fact that one party denies that there is a dispute, while the other asserts there is, shows the existence of a difference of opinion—and hence of a dispute—as to the meaning and effect of the Treaty. While it may be difficult to give a precise legal definition of a dispute, the existence of which is really more a question of fact than of law, the Government of the United Kingdom considers that for present purposes 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. In the present case all these elements seem to be present. The Government of the United Kingdom has alleged specific violations of the Human Rights articles of the Peace Treaties by which the countries concerned are bound, and the observance of which the Government of the United Kingdom is entitled under the Peace Treaties to require. It will be seen that in the opening part of the diplomatic exchanges (see, for instance, the Hungarian note of

Treaties concerning the settlement of disputes, but also, incidentally, to the Peace Treaty articles concerning Human Rights, though solely by way of description of the subject on which the diplomatic exchanges had taken place. In the opinion of the United Kingdom Government, the substance of question II is intended to relate only to the settlement of disputes articles, and the Court is not called upon to go into the question of the alleged violations of human rights.

April, 7th, the Roumanian note of April 19th, and the Bulgarian note of April 21st, 1949), the three Governments discussed the actual substance of the charges made against them, either denying them, or justifying the measures or actions concerned, and making countercharges [1]. It was only at a later stage that it occurred to these Governments to deny that there was any dispute at all (see for instance the Bulgarian note of July 27th, and the Hungarian note of August 26th). They therefore tacitly admitted that a dispute on a substantive issue under the Peace Treaties had arisen. In addition to denying the substantive correctness of the charges made against them, they also denied the correctness of the United Kingdom's interpretation of the Peace Treaties, on the basis of which the charges were made. Furthermore, by their very invocation of the exception of domestic jurisdiction as being applicable in the present case, when the Government of the United Kingdom denies that it has any application in view of the existence of a specific provision in an international agreement, these Governments have admitted, have indeed themselves created a dispute. They have further (although this point is not at the moment actually in issue) failed to discontinue the actions complained of, or to take any steps of a remedial character [2].

10. For all these reasons, it seems clear to the Government of the United Kingdom that a dispute must exist, and, so far as the Government of the United Kingdom is concerned, a dispute undoubtedly does exist. It is obvious that if it were open to parties to a treaty, in reply to alleged violations of the treaty, to cause a dispute not to exist by the simple process of denying its existence, means would never be wanting to defeat the intention of the treaty; and it would be useless to include in treaties

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[1] The Hungarian Government again took up the substance of the matter in their note of October 27th, 1949 (see Annex IIA), in which they once more denied or sought to justify the acts of which they were accused, and made countercharges.

[2] Some assistance as to the circumstances in which a dispute can be said to exist is to be derived from pronouncements of the Permanent Court of International Justice. In the *Mavrommatis case* (Series A., No. 2, pp. 11, 13), a dispute was said to be "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons", and the Court refused to lay down any rule as to the extent of the previous diplomatic exchanges to be required between the parties—a point of some importance on the question (if it should be raised) of whether the previous diplomatic exchanges in the present case were adequate to establish the existence of a dispute. In the case of the *German Interests in Upper Silesia* (Series A., No. 6, pp. 14 and 22), in discussing when a "difference of opinion" could be said to have been established, the Court held that "even if .... the existence of a definite dispute were necessary, this condition could at any time be fulfilled by means of unilateral action on the part of the applicant party", and a difference of opinion was said to exist "as soon as one of the Governments concerned points out that the attitude adopted by the other conflicts with its own views". In the *Chorzów Factory case* (Series A., No. 13, p. 10), the Court said that "the manifestation of the existence of a dispute in a special manner, as for instance by diplomatic negotiations, is not required".

provisions for the settlement of disputes, for in these circumstances such provisions could never have any binding character, since they could only be operated with the consent of the very party against whom the charges of violation were made. In fact, the mere process of denying that a dispute exists is itself constitutive of one, if the other party alleges that there is a dispute arising out of charges of treaty violations, which are either denied, persisted in, or left unremedied. It is only by begging the question at issue that the conclusion can be arrived at that no dispute exists. It is, moreover, precisely by these means that the three Governments concerned reach this position. This is well exemplified in the Hungarian note to the United Kingdom of August 26th, 1949, which contains the following passage referring to the setting up of a Commission (as is required by the Peace Treaties for the final settlement of disputes) :

> "Further .... paragraph (sc. article) 40 stipulates that the Commission be delegated (sc. appointed) only in case of a 'dispute' concerning the interpretation and carrying out of the Peace Treaty. There can be no question however about such a 'dispute' because - as it can clearly be seen in the enumerated notes of the Hungarian Ministry of Foreign Affairs—the Hungarian Government has exactly fulfilled its obligations assumed in the Peace Treaty."

The above argument amounts to this, that because the Hungarian Government, in reply to charges of violating the Peace Treaty, denies that it has violated the Treaty and says that it has, in fact, exactly complied with it, therefore there is no dispute as to whether it has violated the Treaty or not. The palpable absurdity of this argument is manifest, seeing that the very question at issue is whether the Treaty is being carried out or not, and that it obviously cannot be disposed of by the simple process of denying the charge. The moment that the Hungarian Government and the other Governments concerned, in reply to charges of Treaty violation, state that in fact they are complying with the Treaty, a dispute necessarily arises, because the respective parties are taking up opposed attitudes on one and the same issue. That which causes a dispute to come into existence cannot simultaneously cause it to go out of existence ; yet this is what the Hungarian Government is suggesting. By saying that they are fulfilling the Treaty when the Government of the United Kingdom says they are not, they are themselves either admitting the existence of a dispute or bringing one into existence. It is not possible, therefore, that this dispute should fail to have any existence because the Hungarian Government say they are complying with the Treaty. The process is, again, one which (if it were valid) would necessarily make nonsense of all provisions in treaties for the settlement of disputes. These provisions are included on purpose to deal with cases in which one party says that the other party is not carrying out the treaty, but the other

party says that it is. If, therefore, the other party could cause a dispute not to exist merely by saying that the treaty was in fact being carried out, the articles for the settlement of disputes would be useless, since no dispute could ever arise.

III

11. Nor is there any greater substance in the argument (put forward in almost all of the notes of the three Governments, and by the Soviet Union) that the dispute, if it exists, is not international in character, i.e., that the matter does not come under the Peace Treaties because it is essentially one of domestic concern and jurisdiction. This again is an argument in a circle. The question whether such a matter falls within the terms of the relevant treaty is a mixed question of fact and of the legal interpretation of the treaty itself. A matter which would otherwise be, or in certain of its aspects is, one of domestic jurisdiction and concern, nevertheless (if, in fact, it is the subject of a treaty provision) necessarily, and in consequence of that alone, becomes a subject of international rights and obligations. The moment anything is a subject of international rights and obligations, it ceases to be of purely domestic concern : it becomes a matter of international concern because it concerns the other party or parties to the treaty. To say that a matter does not fall under a treaty *because* it is one of domestic concern or jurisdiction, is to reverse the correct order of reasoning, for the initial question is not whether the matter is of domestic concern, but whether, on the language and wording of the treaty, it falls under or is dealt with by, or is a subject of the treaty. If it is, then *ipso facto* it ceases to be of purely domestic concern. In other words, it is not because something is of domestic concern that it does not fall under the treaty, it is because it falls under the treaty that it is not of domestic concern, or no longer purely so. This position was clearly established by the advisory opinion of the Permanent Court of International Justice in the case of *The Tunis and Morocco Nationality Decrees* (Publications of the Court, Series B., No. 4), in which the Court stated (at p. 24 of the opinion) with reference to questions of nationality, that, although these were in principle matters solely within the domestic jurisdiction of the State concerned, that State might have restricted its freedom of action in the matter by treaty obligations, in which case, so far as the compatibility of the State's nationality law with its treaty obligations was concerned, the matter was no longer solely within its domestic jurisdiction, and the dispute became one of the interpretation of treaty provisions, in respect of which the exception in favour of matters of domestic jurisdiction did not apply. In the opinion of the United Kingdom

Government, this reasoning is exactly applicable to the present case. It may be admitted that, normally, the dealings of a government with its own nationals in its own territory, and the trial of its own nationals in its own courts for offences committed locally, are matters essentially or solely of domestic concern and jurisdiction. The Human Rights provisions of the Peace Treaties were, however, quite obviously and on the face of them, inserted for the express purpose of creating certain exceptions to this position in the case of these countries. They were expressly worded so as to cover nationals of the countries concerned and the dealings of these Governments with their own nationals. These provisions create *international* obligations in regard to matters which would or might otherwise be of purely domestic concern and jurisdiction. They have the effect (and must have it, since otherwise they could have no effect at all) of giving the other parties to the Treaty international legal rights in regard to the matters in question, for the purpose of securing the observance of these articles by the Governments concerned in their dealings with their own nationals in their own territory. To say that these matters do not come under the Peace Treaties because they are of purely domestic concern would make nonsense of provisions which, manifestly and on the face of them, must have been inserted for no other purpose than to cause the matters concerned to cease to be of purely domestic jurisdiction. The Hungarian, Bulgarian and Roumanian argument, and that of the Soviet Union, therefore begs the question from the start. To say that because the matters are of purely domestic concern, therefore they do not come under the Treaties, is to assume that they are in fact of purely domestic concern, but that is the very question at issue. The assumption is negatived by the manifest language of the Treaties. The fact that these matters are the subject of express provisions in the Peace Treaties alone suffices to take them out of the category of matters of purely domestic concern. The question becomes one of the compatibility of the local law, and of the measures locally taken, with the relevant provisions of the Treaties.

IV

12. On the basis of the above argument, it is submitted that the first element in the first question put to the Court must be answered in the affirmative, namely, that the diplomatic exchanges do disclose the existence of a dispute, and one of an international character. The second element is whether that dispute is 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 with Hungary, and Article 38 of the Treaty with Roumania.

All these articles are similar in their form and substance, and they read as follows:

> "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 37, 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 the 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."

It will be seen from the opening phrases of this provision that any dispute *ipso facto* falls under it provided (*a*) that it is a dispute "concerning the interpretation or execution of the Treaty", and (*b*) that it is not a dispute the settlement of which is specifically made subject to a different procedure under any other article of the Treaty. The present dispute, which relates to charges of violating the Human Rights provisions of the Treaties, as quoted in paragraph 1 of the present written Statement, is necessarily a dispute "concerning the interpretation or execution" of the Treaty. The Government of the United Kingdom is alleging a series of actions in violation of these provisions, on the part of the three Governments concerned. If the three Governments are, in fact, committing these actions, or have committed them, then they are not, in the United Kingdom view, executing the Treaty, or have broken it, because they are not respecting or have already failed to respect the human rights provided for. To use the language of these provisions, far from taking "all measures necessary to secure to all persons under their jurisdiction the enjoyment of human rights and of the fundamental freedoms", the Governments concerned are in fact denying these rights to the persons who should receive them. In so far as the three Governments do not admit that they have committed or are committing these actions or, alternatively, say that they have executed or are duly executing the clauses concerned, then there is necessarily a dispute as to whether the Treaty has been in this respect or is being executed. There is in fact a dispute concerning the execution of the Treaty.

13. There is also a dispute concerning the interpretation of the Treaty. This would necessarily arise from the fact alone that the three Governments have pleaded the principle of domestic jurisdiction as taking the matter out of the scope of the Treaty, whereas the Government of the United Kingdom argues the converse, that on its correct interpretation the Treaty is clearly applicable, and takes the matters concerned out of the sphere of domestic jurisdiction. It will be seen also that the argument of the three Governments to the effect that the Human Rights provisions are being fulfilled is based on a different conception of the meaning of those provisions from that held by the United Kingdom Government. The three Governments (see for instance the Hungarian and Roumanian notes of April 7th and 19th, the Bulgarian notes of July 27th and September 1st, and the Roumanian note of September 2nd) consider that these provisions must be read subject to another provision of the Peace Treaties, namely, Article 4 of the Treaties with Hungary and Bulgaria, and Article 5 of the Treaty with Roumania. These have a common text reading as follows:

> "Hungary/Bulgaria/Roumania, which in accordance with the Armistice Agreement has taken measures for dissolving all organizations of a Fascist type on Roumanian territory whether political, military or para-military, as well as other organizations conducting propaganda hostile to the Soviet Union or to any of the other United Nations, shall not permit in future the existence and activity of organizations of that nature which have as their aim denial to the people of their democratic rights."

It will be seen from the correspondence that the three Governments argue, either that they are only obliged to carry out the Human Rights articles in respect of non-Fascist persons and organizations, or alternatively, that they were justified in the actions which are the subject of the charges now made against them, because these actions were for the purpose of carrying out the provision quoted immediately above, i.e., for the purpose of carrying out their treaty obligation not to permit the existence or activities of organizations of a Fascist type or other similar organizations having as their aim denial to the people of their democratic rights. There is here involved a clear difference of opinion between the respective parties as to the meaning, effect and interrelation of these different provisions, as well as of such specific terms as "Fascist" and "denial of democratic rights". Manifestly, therefore, there is a dispute about the interpretation as well as about the execution of the Treaties.

14. It is equally clear that this dispute is not one for which some other method of settlement is provided by another article of the Treaties. In each of the three Treaties another mode of settlement is provided in connexion with certain of the economic

clauses (see Article 31 of the Treaty with Bulgaria, Article 35 of the Treaty with Hungary, and Article 32 of the Treaty with Roumania); but these articles specifically enumerate the clauses to which they apply. Thus, Article 31 of the Bulgarian Treaty says: "Any disputes which may arise in connexion with Articles 22 and 23 and Annexes IV, V and VI of the present Treaty, shall be referred to a Conciliation Commission, composed", etc., and it is the same *mutatis mutandis* in the other Treaties. The Roumanian Treaty in addition contains a special article (Article 33) providing for the settlement of disputes "which may arise in connexion with the prices paid by the Roumanian Government for goods delivered by this Government on account of reparation....". These are the only other Articles of the Peace Treaties concerned which provide a method for the settlement of disputes different from that contemplated by the general disputes provisions quoted in paragraph 12 above. It is clear that the present dispute does not fall under any of these other Articles. It arises in regard to provisions (Articles 2-5 of the Treaties) which are not amongst those listed or contemplated by these other Articles, provisions which figure in that part of the respective Treaties headed "Political Clauses", whereas the other Articles for the settlement of disputes relate wholly to provisions figuring in that part of the Treaties headed "Reparation and Restitution" or "Economic Clauses". Indeed, these other Articles for the settlement of disputes are themselves part of the economic clauses and are clearly applicable only to the provisions of that nature enumerated in them.

15. For all these reasons, it is submitted that the second element of the first question must also be answered in the affirmative, i.e., that the dispute disclosed by the diplomatic exchange is one which is subject to the general provision for the settlement of disputes quoted in paragraph 12 above.

V

16. The next question put to the Court, i.e., that numbered II, is whether the Governments of Bulgaria, Hungary and Roumania are legally bound to carry out the provisions of the general disputes Article of the Treaties, "including the provision for the appointment of their representatives to the Treaty Commissions". The United Kingdom Government submits that once it is established that a dispute falling under the Article concerned exists, there can be no doubt that the Governments of Bulgaria, Hungary and Roumania are legally bound to carry out the provisions of that Article. It was inserted in the Peace Treaties for the express purpose of enabling disputes of the present kind to be settled. It has no other purpose, and if the Governments concerned are

not bound to carry out its provisions when a dispute of the character contemplated by it arises, the Article would have no meaning or object. It must be assumed that the parties, by inserting this Article, and by subsequently signing and ratifying the Treaty containing it, intended that any disputes contemplated by it should be settled by the procedure provided in it. Unless this assumption is made, the Article has no purpose since it is always open to parties to go to arbitration *voluntarily* and a treaty clause is only required where arbitration is to be compulsory. Therefore the legal obligation of the Governments concerned to carry out this provision follows as an inescapable conclusion from the mere fact that the Article figures in the relevant Treaty.

17. The answer to the specific question whether these Governments are legally bound to carry out the provisions of the general disputes Article for the appointment of their representatives to the Treaty Commissions, naturally depends on whether the procedure contemplated by the Article has duly been gone through, and has reached a stage at which the appointment of Commissioners is requisite. The Government of the United Kingdom submits that this stage has been reached. In this connexion, it has itself endeavoured to carry out with the utmost exactitude the procedure provided for in the Article. This contemplates that when a dispute arises, an attempt should first be made to settle it by direct diplomatic negotiations. As the exchange of correspondence shows, this is what the Government of the United Kingdom did. It addressed the three notes dated April 2nd, 1949, to the three Governments concerned, setting out the general nature of the charges made, the facts on which they were based, and citing the relevant Articles of the Treaties. The three Governments, in their notes of April 7th, 19th and 21st, 1949, all denied these charges and also the legal basis on which they were put forward. Thus the dispute was not settled by direct diplomatic negotiations (and the citations contained in the footnote to paragraph 9 above, show that the Government of the United Kingdom was in no way bound to engage in prolonged or further diplomatic exchanges). Next, the disputes Article provides that, in the event of such non-settlement, the dispute is to be referred to the Three Heads of Mission in the capital concerned, i.e., the United Kingdom, United States and Soviet Diplomatic Representatives. Accordingly, the Government of the United Kingdom effected such a reference by notes dated the 31st May, 1949, addressed to the Representatives in the capitals concerned of the Governments of the United States and U.S.S.R., asking them to state at an early date when they would be prepared to meet with the United Kingdom Representative in order to take cognizance of the dispute in the manner prescribed by the Peace Treaty. (On the same date, the Government of the United Kingdom informed the three ex-enemy Governments that, in the United

Kingdom view, a dispute had arisen which was being referred to the Heads of Mission.) The United States Representative in each case expressed willingness to attend the meeting. The Soviet Representative did not reply, but a reply was sent through the Soviet Embassy in London by the note dated June 12th, 1949. This note rejected the idea of consideration by the Heads of Mission, advancing arguments similar to those put forward on behalf of the three ex-enemy Governments, namely in effect, that there was nothing to discuss, because it was obvious that the three Governments were carrying out their Treaty obligations and that, in any case, the matter fell completely within the domestic jurisdiction of those Governments. The United Kingdom reply to this communication, contesting these arguments, is contained in the note dated 30th June, 1949. Of the three ex-enemy Governments, only the Bulgarian Government replied to the United Kingdom note of 31st May. In this reply, dated 27th July, they again justified their actions, denied that there was any dispute or any ground for invoking the disputes Articles.

18. Accordingly, by 30th July, 1949 (i.e., two months after the date of the notes referring the matter to the Heads of Mission), a situation had arisen which was precisely that contemplated by the second sentence of the general disputes Article quoted in paragraph 12 above, i.e., the dispute had not been resolved by the Three Heads of Mission within the prescribed period of two months. The dispute had not been resolved by them for the simple reason that it had never been considered by them jointly, because the Soviet Representative refused to do so. The Government of the United Kingdom does not read the relevant provision as relating solely to cases in which the Heads of Mission have made some attempt to resolve the dispute, but have failed to do so within the period specified. The provision in question relates to a simple situation of fact ; it says : "Any such dispute not resolved by them within a period of two months...." The only question is therefore—was the dispute in fact resolved by the Heads of Mission ? If not, then it is irrelevant why, and it does not matter whether, it was because they were unable to do so, or because, owing to the refusal of one of them to participate, they were never able jointly to consider the matter at all. The same reasoning applies to the phrase in the preceding sentence to the effect that a dispute not settled by direct diplomatic negotiations "shall be referred to the Heads of Mission", and to any contention that the dispute was never in fact "referred" to them. The United Kingdom Government considers that this reference was definitively effected by means of the note which their Representative in each of the three capitals concerned addressed for the purpose to his United States and Soviet colleagues. It is immaterial that the Three Heads of Mission did

not, as a body, *consider* the dispute, or go into it. It was certainly referred to them. They did not consider it because one of them refused to do so. It accordingly became a dispute not resolved by them within the specified period.

19. This situation having been reached, the relevant provisions of the disputes Article are quite clear. They say that, in these events, the dispute "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....". The parties did not, in fact, mutually agree upon any other means of settlement. It is again simply a question of the existence of a fact, i.e., non-agreement on any other means of settlement. The reasons for such non-agreement do not affect the fact, and it is immaterial that they sprang, on the one side, from a denial there was any dispute to be settled [1]. Accordingly, the matter became automatically referable to the contemplated Commission on the sole request of the Government of the United Kingdom as the other party concerned. This request the Government of the United Kingdom duly and in terms made in the notes to the three Governments each dated 1st August, 1949. These Governments all replied (notes of 26th August and 1st and 2nd September) reiterating their previous arguments and specifically refusing to participate in the setting-up of any Commission. To this the Government of the United Kingdom replied by identical notes dated 19th September, 1949, stating that it was unable to accept the reasons advanced by the three Governments for refusing to comply with the Treaty provisions and procedure, and reserving all its rights. Subsequently, the Government of the United Kingdom appointed Mr. F. Elwyn Jones, K.C., M.P., as their Commissioner on each of the three Commissions concerned. The three Governments were informed of this in identical notes delivered on January 5th, 1950, in which they were also formally requested to appoint their own Commissioners and to consult with the United Kingdom Government as to the appointment of the third Commissioner. The text of these notes is given in Annex IV hereto. No reply to them has been received. It will thus be seen that the Government of the United Kingdom has taken all the steps open to it under the Treaties.

20. As regards the obligation of the parties to appoint their Commissioner (when this stage has been reached), the Treaty position is that the Commission contemplated by the relevant Article is to be composed of "one representative of each party

[1] The more particularly of course if the Court holds, in answer to question I (and it is only on that assumption that question II arises at all), that the existence of a dispute is established.

and a third member selected by mutual agreement of the two parties from nationals of a third country". It is submitted that a provision to the effect that, upon the request of one of the parties, a dispute is to be referred to a Commission composed in this way, must automatically entail an obligation on each of the parties to appoint or be ready to appoint its representative on the Commission; otherwise the provision in question has no force or meaning. It would be idle to provide that a dispute shall, at the request of either party, be referred to a Commission of this character if there were no obligation upon the parties to appoint their Commissioners, for in that case there could not come into being any Commission to which to refer the dispute. An inherent and absolute contradiction would be involved between an obligation to refer a matter to a Commission composed of Commissioners appointed by each party and a third neutral Commissioner, and the absence of any obligation on the parties to appoint their Commissioners. It is submitted therefore that, from the moment at which there arises under this Article a right for one party to have the matter referred to a Commission, there simultaneously arises, as a necessary complement, an obligation on the other party to co-operate in the setting-up of the Commission, and, when called upon, to appoint its representative on the Commission.

VI

21. Whereas the first and second questions put to the Court relate to the past, and to the obligations of the Governments of Bulgaria, Hungary and Roumania under the general disputes Article of the Peace Treaties, the third and fourth questions have reference to the position which will arise in future if these three Governments persist in their present course of refusing to co-operate in operating the Treaty procedure (assuming the Court holds that they are under a legal obligation to do so); and these questions raise the issue of what steps, if any, can be taken by the other parties to the Treaty to put the Treaty procedure into effect in the absence of such co-operation. These questions arise from the fact that the Treaty makes no provision for what is to happen in the event of such a default. In this there is nothing unusual, since most treaties containing provisions for arbitration tacitly assume that, should a dispute arise, the arbitral procedure will duly be resorted to. The Government of the United Kingdom is, however, so far as its own standpoint goes, less concerned than in the case of the first two questions to urge any particular conclusion as to the third and fourth questions, because it considers that the object of these latter questions is mainly to put the General Assembly in a position to determine its own future procedure in this matter. If these questions are both answered in the

affirmative, the Assembly may consider that it ought to defer any further action or consideration, at least until the processes contemplated by these questions have been gone through: should, however, the answer to both or either be in the negative, it will be clear that no further steps are open to the complainant parties under the Peace Treaties as such.

22. On the assumption that the Court advises, in answer to the first two questions, that the three ex-enemy Governments are under an obligation to appoint representatives to the Treaty Commissions; and if they have still failed to do so within thirty days after the delivery of this opinion, the third question asks whether the Secretary-General of the United Nations would be competent to appoint the third member of each Commission upon the request of the other party to the dispute. The Government of the United Kingdom considers that this question should be answered in the affirmative. The only element of doubt arises on a purely literal construction of the wording of the general disputes Article. The difficulty arises because the Article, after providing for a Commission composed of one representative of each party, then goes on to provide for a "third" member who is to be appointed by the Secretary-General upon the request of either party, if the two parties are themselves unable mutually to agree upon this third member. It may be argued, therefore, that the mention of a third member implies the previous existence of the other two members. But the term can equally be regarded as being merely a convenient way of describing a particular member of the Commission whose appointment is to be effected by a different procedure from that provided for the appointment of the other two members, i.e., as meaning neutral or additional rather than "third" in the temporal sense. Admittedly, the fact that the third member is to be selected in the first place "by mutual agreement of the two parties from nationals of a third country" seems primarily to contemplate a situation in which the two parties have already appointed their national Commissioners. Thus it can be argued that the question of the appointment of a third Commissioner by means of this mutual agreement can only arise after the two national Commissioners have been appointed, and that the same must therefore apply to any appointment by the Secretary-General of the United Nations, in the event of failure to agree. This argument would be much stronger if the appointment of the third member had to be made in the first instance by mutual agreement between the two national Commissioners as individuals, but the Article does not say this; it says the appointment is to be effected by mutual agreement of the two *parties*, i.e., of the two Governments. Now it is obvious that if one of the parties has refused even to appoint its own national Commissioner, there can be no question of its agreeing on the designation of the neutral member of the Commission. In brief, there is a situation in which the

party concerned has refused or failed to appoint its own national Commissioner, and has equally in effect refused, or at any rate failed to agree upon, the appointment of the neutral Commissioner. Consequently, the situation contemplated by the final sentence of the paragraph (i.e., "should the two parties fail to agree within a period of one month upon the appointment of the third member") would be literally that which would then exist, that is to say the two parties would not in fact have agreed upon the appointment of the third member, using the term "third member" in the sense indicated above as a convenient form of description of the contemplated neutral member of the Commission.

23. It should be noticed in the foregoing connexion that although the natural thing, if the Treaty machinery were being operated properly, would doubtless be for the parties to begin by appointing their own Commissioners, and then to go on to appoint the neutral Commissioner, there is nothing in the Article which positively requires that the national Commissioners should be designated first in point of time. On the wording of the Article, it would theoretically be open to the parties to begin by agreeing upon the contemplated third member of the Commission, and only after such agreement to proceed to the designation of their national Commissioners: one can indeed imagine circumstances in which they might prefer to do this. Similarly, there is nothing in the wording of the Article (and should the parties fail to agree upon the appointment of the neutral Commissioner) to prevent the Secretary-General from being at once requested to make the appointment, and for the national Commissioners only to be appointed at a later stage; and again, circumstances are conceivable in which this might be done of set purpose. If therefore this process could be carried out even though *no* national Commissioners had as yet been appointed, then *a fortiori* it could be carried out if one such Commissioner had been appointed but not the other. These considerations seem to support the view that the term "third Commissioner" is a piece of description, and does not have the result of making it a condition precedent of his appointment that the two national Commissioners should already have been designated.

24. Unless the provision concerned is read in the above sense, it would always be open to any party to a dispute under the Treaty to stultify the Treaty procedure by his own action. In other words, although the relevant Article clearly contemplates an appointment by the Secretary-General, upon the request of either party, if the parties cannot agree upon a third Commissioner within a period of one month from the date of the request for reference to a Commission, it would always be open to one of the parties to prolong the contemplated period of one month indefinitely by simply delaying (even without absolutely refusing)

the appointment of its own national Commissioner. This could easily occur; i.e., one of the parties, without refusing, might delay his appointment. If such appointment is a condition precedent of the appointment of the third member, but is delayed beyond the month, the intention of the Article, namely that the appointment should be made by the Secretary-General if the parties cannot agree within that period, would be defeated.

VII

25. There remains the fourth question put to the Court, assuming that the third question is answered in the affirmative, i.e., would a Commission composed of the representative of one party only, together with a member appointed by the Secretary-General, constitute a Commission within the meaning of the Treaty, competent to give a final and binding decision? It does not, of course, follow from the fact that the Secretary-General can properly be requested to nominate, and could validly nominate, the third member of the Commission before one or both of the national Commissioners have been appointed, that a competent Commission can exist in the total absence of one of the national Commissioners. Ordinarily, if the third member were appointed first, either by agreement between the parties or upon request by the Secretary-General and in advance of the appointment of either or both of the national Commissioners, in the manner and for the reasons which have been suggested above, this would only be anticipatory of these other appointments, and the Commission would not come into existence and would not function until these other appointments had been made. The question now at issue, however, is whether this still remains the case where one of the parties has appointed its Commissioner, and the absence of the other Commissioner is due to the wilful refusal or default of the other party to appoint him. It must be recognized that *prima facie* the Treaty contemplates a Commission composed of three members, and although failure or refusal to appoint its Commissioner would constitute a violation of the Treaty on the part of the Government concerned, it would not follow from that alone that the other two members could constitute by themselves a competent Commission and could give a valid and binding decision. The essence of a Commission of this kind is that the third or neutral member holds the balance between the two national Commissioners. It may be said that the third Commissioner can scarcely carry out properly the functions which he is intended to perform if he is not assisted by the national Commissioners of *both* sides. Not only, in the circumstances now postulated, would the national Commissioner of one of the parties be absent, but in addition it must be assumed that, having refused

or failed to appoint its Commissioner, the Government concerned would equally be unwilling to submit any evidence to a Commission composed of the other two members. Thus the Commission would have difficulty in functioning in the manner presumably contemplated by the Treaty. There is also the consideration that the second paragraph of the relevant Article on the settlement of disputes, as quoted in paragraph 12 above, says: "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 very idea of a majority, however, contemplates a Commission consisting of not less than three members. If there is a two-member Commission, they either disagree or they are unanimous: the question of a majority in the strict sense cannot arise. Further, if the two members disagree, there can be no decision at all; yet the Treaty procedure seems to have been intended to ensure that a final decision would be reached in all circumstances.

26. *The United Kingdom Government have thought it preferable* to state explicitly the difficulties which may exist in the way of giving an affirmative answer to the fourth question put to the Court. But a different point of view can also be maintained. For instance, the primary object of the provision about majority decisions being binding was to make it clear that the three Commissioners did not have to be unanimous and that the views of any two of them would suffice. This provision was not, as such, directed against the possibility of a Commission of less than two members functioning. It is suggested, moreover, that had a Commission of three members been duly constituted, but one of the parties had subsequently withdrawn its Commissioner, the other two could nevertheless have continued to function and render any decision upon which they were able to agree. It is true that in that case there would have been an initially valid constitution of the Commission, by the appointment of the contemplated three members. Nevertheless, if such a Commission can go on *functioning* and render valid decisions despite the withdrawal of one of its members by his Government, this suggests that a party cannot, by its own unilateral action, defeat the clear intention of the Treaty, and prevent the Treaty procedure for the settlement of disputes from functioning, so far as such functioning remains a material possibility in the absence of the co-operation of the party concerned. If this is true of a position in which one of the parties withdraws its Commissioner, it would seem to apply equally to the case where that party refuses or persistently fails to appoint its Commissioner [1].

[1] On the question of the right of a government to withdraw its consent to a matter being dealt with by arbitration or judicial decision (in a case where it was not obliged to give such consent, but had in fact done so), it has been stated,

27. Nor, in the last resort, is the fact that the two remaining members may not be able to agree, an insuperable objection. This merely means that it may be materially impossible, with only two Commissioners, to reach a final decision : it does not necessarily mean that, if they *can* agree, their decision is not in the circumstances a valid one. A "majority" decision might well be regarded as covering any decision upon which any two members of the Commission are in fact agreed, regardless of the circumstances in which the third, or putative third, member fails to agree : whether because he is present but disagrees, or because he is not even present, or because he was (wrongfully) never nominated, provided always that the Treaty procedure has otherwise been correctly followed.

28. As regards the difficulty that the Commission and, in particular, the third Commissioner, ought to be in possession of the views of both sides, the same principle seems to apply. A Commission cannot in any case do more than call upon both parties to make known their views and produce their evidence. If they fail or refuse to do so, the Commission has not only the right, but actually the duty to render a decision, so far as it can, on the basis of such evidence or information as it can obtain from other sources. A Commission composed of two members can, equally as well as a three-member Commission, call upon both sides to submit their views and evidence, and the failure or refusal of one side to do this cannot of itself incapacitate the Commission from rendering a decision [1].

with reference to the jurisdiction of the Permanent Court of International Justice, that : "Once consent has been given, it cannot be withdrawn during the Court's exercise of the jurisdiction consented to" (cf. Hudson, *The Permanent Court of International Justice, 1920-1942*, p. 411, citing *the case of the Minorities in Upper Silesia*) (Series A., No. 15, p. 25). Cases have certainly occurred in which, despite the withdrawal of one of the Commissioners or his refusal or failure to participate, the Commission has gone on functioning and has given decisions or awards : e.g. the Franco-Mexican Claims Commission of 1929, in the absence of the Mexican Commissioner ; the United States-German Mixed Claims Commission of 1939, after the retirement of the German Commissioner ; and the Lena Goldfields Arbitral Tribunal after the withdrawal of the Soviet arbitrator (see generally Hudson's *International Tribunals*, 1944, pp. 53-54 ; Feller's *Mexican Claims Commissions*, 1935, pp. 70-76 ; and the *Annual Digest of Public International Law Cases*, 1929-1930, p. 426).

[1] Such was the view taken by the two remaining Arbitrators, Scott and Stutzer, in the Lena Goldfields case, after the withdrawal of the Soviet Government and Arbitrator. By a clause in the arbitration article, each party had undertaken "To present to the Court in manner and period in accordance with its instructions, all the information necessary respecting the matters in dispute, which it is able and which it is in a position to produce, bearing in mind considerations of State importance." On this the Court of Arbitration pronounced as follows (the citation is from the *Annual Digest*, 1929-1931, p. 427) :—

"This information, by reason of the premises [i.e., the non-participation of the Soviet Government], the Court was not able to obtain direct from the [Soviet] Government, and, in order to ascertain the truth upon the issues

29. The point may be clearer on the basis of an application of the principle of estoppel. If a Commission composed of only two members—a national member of one party and the third member appointed by the Secretary-General—meets and gives a decision, *it is the function of the party which considers that decision to* be invalid to put forward the necessary challenge. In the present case, the only party which would have the necessary *locus standi* to do this would be the other party to the dispute. But in fact the other party to the dispute could only make this challenge by pleading its own wrongful action in not appointing its national Commissioner.

In fact, the basis of its challenge would be its own failure to appoint its Commissioner. It is submitted, however, that a plea of invalidity based solely on the default of the party making the plea cannot be good or effective. In brief, the party concerned is estopped or incapacitated from challenging the validity of the decision, because it cannot do so except by pleading its own wrong. In that case the decision would remain unchallenged in law and therefore binding. This argument would have especial force in the circumstances now contemplated, i.e., that the Court has advised that the three Governments are under a legal obligation to appoint their Commissioners, but that they have still failed or refused to do so. Can they then be heard to say (or can anyone be heard to say on their behalf) that *because* they have (wrongfully) not appointed their Commissioner, *therefore* the Commission is incompetent, or non-existent as such, and cannot properly function ? If not, there is no basis on which the validity of the decision can be challenged, and it stands.

30. The principle of estoppel has found application in certain of the pronouncements of the Permanent Court of International Justice delivered on questions bearing a close analogy to those here at issue. For instance, in the *Chorzów Factory case* (Series A., No. 9, p. 31), it was held that one of the parties was estopped from pleading the Court's lack of jurisdiction on the ground that "it is .... a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal Courts, that one party cannot avail himself of the fact that the other has not

before it, the Court was thus compelled to admit the best evidence available of various facts and documents, upon which Lena [i.e. the Lena Goldfields Company] was unable to produce primary evidence by reason of the documents or witnesses being in Russia and not available at the trial. The Court finds as a fact upon the evidence, that this was rendered necessary by the difficulty in which the Company found itself of getting either documents or persons out of Russia for the purposes of the trial."

It is submitted that this passage is of particular interest and significance in the *present connexion, where the circumstances and the difficulties as to evidence* are of a precisely similar order, and spring from just the same kind of causes as in the Lena case.

fulfilled some obligation, or has not had recourse to some means of redress, if the former party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open to him". This suggests that if, in the present case, the Governments of Bulgaria, Hungary and Roumania have, by refusing to co-operate in the setting-up of the appropriate Treaty Commission, severally prevented the other Parties concerned from having recourse to the tribunal which would otherwise have been open to them (i.e., a Commission constituted as contemplated by the relevant provision of the Treaty), they are estopped from complaining if those Parties have recourse to such process as is available to them for obtaining a finding on the merits of the dispute, and cannot question the competence of a tribunal necessarily constituted without the co-operation of the three ex-enemy Governments, though otherwise, in accordance with the procedure laid down by the Treaty. Equally in point is the well-known principle that a government cannot plead failure to adopt the necessary internal measures of implementation, as a justification for not carrying out an international treaty obligation—a principle given full effect to by the Permanent Court in the case of the *Danzig Railway Officials* (Series B., No. 15, pp. 26-27). By analogy, it would seem that a party to a treaty cannot plead (or put forward arguments involving a plea of) its own failure to operate the treaty procedure for the settlement of disputes, as a ground for contesting the validity of action by the other parties to the treaty, taken with a view to operating that procedure to such extent as is practicable in the circumstances, and being in all other respects in accordance with the relevant treaty provisions.

31. The argument of the United Kingdom under this head can, in fact, be reduced to an application of the well-known principle of treaty interpretation—*ut res magis valeat quam pereat*, i.e., that treaty provisions must be deemed to have been intended to possess force and content, and must, therefore, in general, be so interpreted and applied as to give them adequate meaning and effect, and avoid their purpose being nullified. It has several times been pointed out in the course of the present written Statement, that if the contentions of the three ex-enemy Governments were accepted, it would mean that the Peace Treaty provisions for the settlement of disputes would be operable only at the option of each of the Parties concerned, instead of constituting, as they were clearly intended to do, an obligatory process for the settlement of disputes. If a Party to the Treaty, charged with breaches of it giving rise to a dispute which has not been settled by diplomatic negotiations, or through the Three Heads of Mission, can, by refusing to appoint his representative on the Treaty Commission, or to participate in the appointment of the third Commissioner, prevent the Commission from functioning,

and thus prevent the dispute from being settled, then it is clear that the Treaty procedure for the settlement of disputes, obviously intended to be binding and compulsory on the Parties, can, in fact, in the last resort, only be operated with the consent, express or tacit, and given *ad hoc* in each case, of the very Party against whom the charges of breach of treaty are made. Such a result would fail to give the relevant provision its intended meaning and effect, or, indeed, any real meaning or effect at all, because it is in any case always open to parties to a treaty to have *voluntary* recourse to arbitration in order to settle disputes arising under it; and unless a provision for arbitration or judicial settlement is compulsory, there is no object in including it. Consequently, on the basis of the principle *ut res magis valeat quam pereat*, the above-mentioned result ought to be avoided if it is possible to do so by any fair and reasonable interpretation of the provision concerned which does not do violence to its clear wording. In paragraphs 26-28 above, reasons have been given for thinking that an affirmative answer to the fourth question put to the Court would not be inconsistent with the language of the general disputes Article of the Peace Treaties. Therefore, in the application of the principles just discussed, the Government of the United Kingdom submits that the fourth question put to the Court should also be answered in the affirmative [1]. In making this submission, the Government of the United Kingdom is not suggesting anything which the practice of the United Kingdom itself does not recognize. Section 6 of the United Kingdom Arbitration Act, 1889, expressly provides that where there is an agreement to arbitrate, and one party makes default in appointing his arbitrator, the other party may, after serving a prescribed notice, appoint his own arbitrator to act as sole arbitrator, and that such arbitrator's award shall thereupon be binding on both parties as if the arbitrator had been appointed by consent. A similar rule applies where the agreement provides for a reference to three arbitrators (see Halsbury's *Laws of England*, Vol. 1, pp. 646 and 647).

(Signed) G. G. FITZMAURICE,
Agent for the Government
of the United Kingdom.

January 11th, 1950.

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[1] The doctrine of *ut res magis valeat quam pereat*, as applied in decisions and opinions of the Permanent Court of International Justice, was exhaustively discussed in the course of the oral argument presented by the Government of the United Kingdom during the hearing of the preliminary point of jurisdiction in the *Corfu case*, February-March, 1948, and will be found on pp. 90-97 of the Record (Distr. 241), to which the Government of the United Kingdom begs leave to refer for the purposes of the present case also.

Annex I

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS AT ITS 203rd PLENARY MEETING ON APRIL 30th, 1949

272 (III). Observance in Bulgaria and Hungary of human rights and fundamental freedoms

[*Not reproduced.*]

Annex II

LETTER FROM THE UNITED KINGDOM REPRESENTATIVE TO THE UNITED NATIONS (19 SEPTEMBER 1949)

UNITED NATIONS	GENERAL ASSEMBLY	General.
Fourth Session.		A/990.
Item 27 of the agenda.		27 September, 1949.

[*Not reproduced.*]

Annex II A

HUNGARIAN "NOTE VERBALE" TO THE UNITED KINGDOM (OCTOBER 27th, 1949)

The Hungarian Ministry for Foreign Affairs presents its compliments to the British Legation and, with reference to the Legation's note No. 475 of the 19th September, 1949, has the honour to impart as follows:

The Hungarian Government regrets to state that the Government of the United Kingdom deemed it opportune to renew the accusations, deprived of all real basis whatsoever, and rejected most categorically by the Hungarian Government—notwithstanding that the Hungarian Government on several occasions had clearly explicated in its notes Nos. 2671 and 7795/1949, and undoubtfully proved that they were minutely observing the stipulations contained in Article 2 of the Peace Treaty.

The Hungarian Government once again rejects most categorically that tendentious and false interpretation of the Peace Treaty, by which the British Government try to contrast the stipulations contained respectively in Articles 2 and 4 of the Treaty. The Hungarian Government does not see any contradiction between the observing of the stipul-

ations of Article 2 of the Treaty and the fight against Fascist and pro-Fascist elements prescribed by Article 4 of the same Treaty. On the contrary, a consequent compliance with the stipulations of Article 4 is a condition *sine qua non* of guaranteeing to all peoples, and to the Hungarian people among them, the rights defined by Article 2 of the Treaty.

It has resulted clearly from the documents of the trials against Mindszenty and his accomplices and, recently, against Laszlo Rajk and his accomplices, that the persons convicted for their antidemocratic activity were guilty of a conspiracy aiming at the reverse of the present democratic regime, and to annihilate the liberties acquired by the people, and to establish a Fascist régime of oppression, worse than any other previous regime of the kind. Accordingly, the Hungarian Government, far from infringing the Peace Treaty, acts explicitly in compliance with its stipulations when inflicting a blow upon the vile enemies of liberty and democracy who have degenerated to espionage and murderous attempts. If the Governments of the United Kingdom and of the United States accuse the Hungarian Government, this can have but one reason, i.e., the ruling circles of these countries are hostile to the independence and development of the people's democracies and, as it was proved by the aforementioned trials, support, in Hungary too, the most desperate enemies of democracy, directing them by their own network of spies, as well as by Tito and his clique, attached to their service.

As a matter of fact, the Hungarian Government has repeatedly stated that precisely these Governments have, on several occasions, infringed the stipulations of the Peace Treaty relating to Hungary, when unlawfully denying the restitution of Hungarian property found in their respective zones of occupation, when refusing the extradition of the Hungarian war-criminals escaped into their territory, when supporting these war-criminals in their antidemocratic activity and when even rendering possible the organization and equipment of military formations of Hungarian Fascists on the territory occupied by them.

Furthermore, the Hungarian Government states with astonishment that, in addition to the accusations already known and repeatedly refuted, the Government of the United Kingdom expresses the opinion—which is quite new and in no way compatible with the rules and spirit of international law—that, by assuming certain obligations through the signature of the Treaty of Peace, Hungary has become a State with limited sovereignty.

When signing the Peace Treaty, Hungary was not, nor is she at present, inclined to surrender her sovereignty—on the contrary, she will defend her independence and unhampered democratic development against any imperialist interference. The Hungarian Government considers the arbitrary interpretation of the Peace Treaty by the British Government an attempt to claim a right to constantly interfere with Hungary's internal affairs, ignoring the independence of the Hungarian State.

The Hungarian Government categorically rejects, moreover, the wholly fictitious calumny of the British Government, alleging that the present Hungarian regime be merely "the rule of a minority". It is a notorious fact that at the general elections on the 15th May of 1949 the Hungarian people manifested their will in the most democratic way—by general and secret ballot—and decided to support by 95.5% of

their votes the policy carried on by the present Hungarian Government. In view of this, the fact that the British Government alleges in a diplomatic note the present Hungarian Government as being "the rule of a minority", cannot be regarded by the Hungarian Government but an evil-minded propagandistic manoeuvre, based upon the denial of true facts.

In consideration of the above said, the Hungarian Government rejects most categorically the note No. 475 of the British Legation, as a new attempt of unlawful interference with the internal affairs of Hungary.

The Hungarian Ministry for Foreign Affairs avails itself of this opportunity to renew to the British Legation the expression of its high consideration.

Annex III

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS AT ITS 235th PLENARY MEETING ON OCTOBER 22nd, 1949

[*Not reproduced.*]

Annex IV

TEXT OF IDENTICAL NOTES FROM THE GOVERNMENT OF THE UNITED KINGDOM TO THE GOVERNMENTS OF BULGARIA, HUNGARY AND ROMANIA DELIVERED ON JANUARY 5th, 1950

His Britannic Majesty's Legation present their compliments to the Bulgarian[1] Ministry of Foreign Affairs and with reference to their note No. 410 of 1st August, 1949, regarding reference to a Commission as laid down in Article 36[1] of the Peace Treaty with Bulgaria of their dispute with the Bulgarian Government over the interpretation of Article 2 of the Treaty have the honour to inform the Ministry of Foreign Affairs that His Majesty's Government in the United Kingdom have appointed Mr. F. Elwyn Jones, K.C., M.P., as their representative on the proposed Commission. It is accordingly requested that the Bulgarian Government may appoint their representative forthwith and at the same time enter into consultation with His Majesty's Government in the United Kingdom with a view to the appointment of a third member as stipulated in the Peace Treaty.

2. His Britannic Majesty's Legation take this opportunity to renew to the Bulgarian Ministry of Foreign Affairs the assurance of their high consideration.

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[1] Texts of notes to Hungarian and Romanian Governments *mutatis mutandis*.

3. TÉLÉGRAMME ÉMANANT DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE POPULAIRE DE BULGARIE ET ADRESSÉ AU PRÉSIDENT DE LA COUR

Reçu le 14 janvier 1950

Monsieur le Président,

Me référant à lettre numéro 9019 que Greffier de la Cour m'adressa en date sept novembre 1949 au sujet Résolution vingt-deux octobre 1949 par laquelle Assemblée générale Nations Unies demanda à la Cour avis consultatif sur interprétation certains articles Traité de paix avec Bulgarie, ai honneur vous faire savoir que Gouvernement bulgare, considérant que cette procédure est dénuée tout fondement juridique et estimant par conséquent inutile aborder le fond des questions posées devant Cour, désire porter à sa connaissance à titre information ce qui suit au sujet régularité cette procédure.

Assemblée générale Nations Unies en violation stipulations expresses article deux paragraphe sept et article cinquante-cinq de Charte s'occupa questions qui relèvent essentiellement de compétence nationale de l'État bulgare. De même, et toujours en violation de Charte et du Traité paix avec Bulgarie, elle aborda examen de l'article trente-six susdit traité en décidant demander à Cour internationale Justice avis consultatif sur ces questions, bien que ledit article Traité paix prévoit sa propre procédure et exclut par là compétence tant de l'Assemblée générale Nations Unies que de Cour internationale Justice.

Cela ne constitue que nouvelle phase de tentative certains pays de s'immiscer dans affaires intérieures de Bulgarie — plus spécialement dans ses fonctions législatives judiciaires et administratives — immixtion à laquelle Gouvernement de République populaire Bulgarie s'oppose de manière la plus énergique.

Incompétence de l'Assemblée générale Nations Unies dans toute cette tentative d'immixtion entraîne incompétence de Cour internationale Justice de s'occuper problème qui lui est posé, bien que ce dernier soit déguisé sous forme demande avis consultatif.

En second lieu Gouvernement bulgare estime que Cour ne saurait émettre avis consultatif demandé sans porter grave atteinte au principe bien établi en droit international, proclamé par Statut de la Cour et observé par jurisprudence constante, à savoir principe selon lequel toute procédure judiciaire dans un cas déterminé, portant sur question juridique pendante entre deux parties, exige application règles du contentieux (article soixante-huit Statut et

articles quatre-vingt-deux et quatre-vingt-trois Règlement) et par conséquent n'est opérante qu'à condition que consentement préalable de toutes les parties en cause soit acquis.

Bulgarie n'est pas membre Nations Unies. Elle n'est pas soumise obligations découlant de Charte et Statut en ce qui concerne avis consultatifs. Elle n'a pas accepté et n'accepte pas juridiction de Cour. Celle-ci est donc incompétente émettre avis consultatif demandé par Assemblée générale Nations Unies.

Veuillez agréer, etc.

(Signé) VLADIMIR POPOTOMOV,
Ministre Affaires étrangères
République populaire Bulgarie.

4. TÉLÉGRAMME DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE SOVIÉTIQUE SOCIALISTE D'UKRAINE A LA COUR INTERNATIONALE DE JUSTICE, LA HAYE

15 janvier 1950 (reçu le 16 janvier).

[*Traduction faite par le Greffe*]

Kiev.

En réponse à vos lettres nos 9021 et 9022 du 7 novembre 1949, au nom du Gouvernement de la République soviétique socialiste d'Ukraine, j'ai l'honneur de porter à votre connaissance ce qui suit : comme l'a déclaré la délégation de la République soviétique socialiste d'Ukraine au cours de la 4me Session de l'Assemblée générale, celle-ci n'a pas le droit d'examiner la question relative au respect des droits de l'homme et des libertés fondamentales en Hongrie, en Bulgarie et en Roumanie, car ceci est contraire au paragraphe 7 de l'article 2 de la Charte de l'Organisation des Nations Unies, et il semble qu'il y ait là une ingérence grossière dans les affaires intérieures d'États souverains ; en conséquence, l'Assemblée générale n'est pas fondée à demander un avis consultatif à la Cour internationale sur cette question, qui relève exclusivement de la compétence nationale desdits États. Pour ces motifs, le Gouvernement de la République soviétique socialiste d'Ukraine estime que la Cour internationale n'a pas le droit et ne possède pas de base lui permettant d'examiner cette question sans le consentement effectif à un tel examen des Gouvernements hongrois, bulgare et roumain.

(*Signé*) MANUILSKI.

4. TELEGRAM FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC TO THE INTERNATIONAL COURT OF JUSTICE, THE HAGUE

January 15th, 1950 (received January 16th).

[*Translation by the Registry*]

Kiev.

In reply to your letters Nos. 9021 and 9022 of November 7th, 1949, on behalf of the Government of the Ukrainian Soviet Socialist Republic, I have the honour to inform you of the following : as the delegation of the Ukrainian Soviet Socialist Republic stated during the IVth Session of the General Assembly, the Assembly does not have the right to examine the question relating to human rights and fundamental freedoms in Hungary, Bulgaria and Rumania, for this is contrary to Article 2, paragraph 7, of the Charter of the United Nations, and it seems that this constitutes gross interference in the domestic matters of sovereign States ; consequently, the General Assembly is not entitled to request of the International Court an advisory opinion on this question, which is exclusively within the domestic jurisdiction of the said States. For these reasons the Government of the Ukrainian Soviet Socialist Republic considers the International Court does not have the right and possesses no basis allowing it to deal with this question without the effective consent of the Hungarian, Bulgarian and Rumanian Governments to such examination.

(*Signed*) MANUILSKI.

5. LETTER FROM THE CHARGÉ D'AFFAIRES A.I. OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN THE NETHERLANDS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

Unofficial translation. The Hague, January 14, 1950.

Dear Mr. E. Hambro,

Being charged by the Ministry of Foreign Affairs of the U.S.S.R., I have the honour, in reply to the letters Nos. 9021, 9022, of November 7th, 1949, to communicate that, as it had already been declared by the Soviet Delegation at the Fourth Session of the General Assembly of the United Nations, the General Assembly, in virtue of the p. 7, Article 2 of the Charter of the Organization, is not competent to examine the question of "Maintenance of human rights and fundamental freedoms in Bulgaria, Hungary and Romania", as concerning solely to the intern competence of these States, and, consequently, the General Assembly is not competent to request the International Court of Justice for an advisory opinion on this question. On the same grounds the International Court of Justice equally is not competent to examine this question without accordance of the Governments of the directly interested States.

With respect,

(Signed) M. VETROV,
Chargé d'affaires a.i. of the U.S.S.R.
in the Netherlands.

6. TÉLÉGRAMME DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE SOCIALISTE SOVIÉTIQUE DE BIÉLORUSSIE A LA COUR INTERNATIONALE DE JUSTICE, LA HAYE

[*Traduction faite par le Greffe*]

15 janvier 1950 (reçu le 16 janvier).

Minsk.

En réponse à vos lettres 9021-9022 du 7 novembre 1949 par délégation du Gouvernement de la République socialiste soviétique de Biélorussie, j'ai l'honneur de porter à votre connaissance que, comme l'a déjà déclaré la délégation de la République socialiste soviétique de Biélorussie, lors de la 4me Session de l'Assemblée générale des Nations Unies, la question relative au respect des droits de l'homme et des libertés essentielles en Bulgarie, en Hongrie et en Roumanie relève exclusivement de la compétence intérieure de ces États et partant l'Assemblée générale, en vertu du paragraphe 7 de l'article 2 de la Charte des Nations Unies, n'est pas compétente pour examiner cette question ; en conséquence, elle n'a pas compétence pour demander un avis consultatif à la Cour internationale de Justice sur ce point pour les mêmes motifs, et en outre, en l'absence du consentement à l'examen de cette question des Gouvernements des États directement intéressés, la Cour internationale n'est pas non plus compétente pour en connaître.

(*Signé*) KISELEV.

6. TELEGRAM FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC TO THE INTERNATIONAL COURT OF JUSTICE, THE HAGUE

[*Translation by the Registry*]

January 15th, 1950 (received January 16th).

Minsk.

In reply to your letters Nos. 9021-9022 of November 7th, 1949, on behalf of the Government of the Byelorussian Soviet Socialist Republic, I have the honour to inform you that, as the delegation of the Byelorussian Soviet Socialist Republic already stated during the IVth Session of the General Assembly of the United Nations, the question relating to the observance in Bulgaria, Hungary and Rumania of human rights and fundamental freedoms is exclusively within the domestic jurisdiction of these States and therefore the General Assembly, under Article 2, paragraph 7, of the Charter, is not competent to consider this question; consequently, the Assembly is not competent to request an advisory opinion of the International Court of Justice on this question for the same reasons, and furthermore, in the absence of consent, by the Governments of the States which are directly interested, that this question be examined, the International Court is not competent to consider it.

(*Signed*) KISELEV.

7. LETTRE DU CHARGÉ D'AFFAIRES A. I. DE LA RÉPUBLIQUE POPULAIRE ROUMAINE AUX PAYS-BAS AU PRÉSIDENT DE LA COUR INTERNATIONALE DE JUSTICE

LÉGATION DE LA RÉPUBLIQUE POPULAIRE
DE ROUMANIE AUX PAYS-BAS

N° 12. La Haye, le 16 janvier 1950.

Monsieur le Président,

En réponse à l'adresse n° 9019 du 7 novembre 1949 de la Cour internationale de Justice, j'ai l'honneur de vous transmettre de la part du Gouvernement de la République populaire roumaine ce qui suit :

Par sa communication faite le 7 octobre 1949 au Secrétaire général des Nations Unies, le Gouvernement roumain a montré qu'il considère que la discussion au sein de la commission politique spéciale d'un point appelé « observations des droits de l'homme et des droits et libertés fondamentales dans la République populaire roumaine » est entièrement dépourvue de fondement et constitue une immixtion dans les affaires intérieures de la Roumanie.

Le Gouvernement de la République populaire roumaine a repoussé cette tentative d'immixtion et a protesté contre le fait que l'Assemblée générale des Nations Unies s'est laissée entraîner dans des actions contraires aux stipulations catégoriques de la Charte.

Le Gouvernement roumain considère que la Résolution de l'Assemblée des Nations Unies du 22 octobre 1949, par laquelle est demandé un avis consultatif à la Cour internationale de Justice, ainsi que la procédure engagée devant cette Cour représentent une continuation de ces ingérences dans les affaires intérieures de la République populaire roumaine, ingérences contre lesquelles le Gouvernement de la République populaire roumaine proteste et les repousse catégoriquement.

Le Gouvernement roumain considère que la Cour internationale de Justice n'est pas compétente dans la question de l'Assemblée générale que l'Organisation des Nations Unies lui a soumise par sa Résolution du 22 octobre 1949, celle-ci étant une affaire intérieure de la République populaire roumaine et, par conséquent, de la compétence exclusive de la République populaire roumaine.

Le Gouvernement roumain considère que la Cour internationale de Justice ne peut être compétente dans la question qu'on lui a

soumise, la République populaire roumaine n'étant pas partie au Statut de la Cour internationale de Justice.

Le Gouvernement roumain attire l'attention qu'en aucun cas, la Cour internationale de Justice ne peut être compétente dans une question concernant la Roumanie sans que le Gouvernement roumain y eût donné son consentement.

Veuillez agréer, etc.

(Signé) T. ANDREESCO.

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8. LETTRE DE L'ENVOYÉ EXTRAORDINAIRE ET MINISTRE PLÉNIPOTENTIAIRE DE LA RÉPUBLIQUE TCHÉCOSLOVAQUE AU GREFFIER DE LA COUR

N° 478/50. La Haye, le 16 janvier 1950.

Monsieur le Greffier,

J'ai l'honneur d'accuser réception de vos lettres en date du 7 novembre 1949, nos 9021 et 9022, au sujet de la Résolution de l'Assemblée générale de l'O. N. U. du 22 octobre 1949, concernant le « respect des droits de l'homme et des libertés fondamentales en Bulgarie, Hongrie et Roumanie », et, faisant suite à votre invitation, j'ai l'honneur, au nom du Gouvernement tchécoslovaque, de communiquer à la Cour ce qui suit :

Les questions soumises à la Cour concernent des matières qui ont fait l'objet d'amples discussions à la IIIme et IVme Assemblée générale des Nations Unies, discussions qui se sont déroulées en l'absence complète et en dépit des protestations des Gouvernements bulgare, hongrois et roumain. À cette occasion, la délégation tchécoslovaque a objecté à plusieurs reprises que le traitement de ces questions était contraire à la loi et en opposition avec les dispositions du paragraphe 7 de l'article 2 de la Charte des Nations Unies, étant donné qu'il s'agit d'intervention dans des affaires relevant de la compétence nationale d'un État.

Le Gouvernement tchécoslovaque objecte en outre :

Dans le sens de l'article 82 du Règlement et de l'article 68, la Cour doit appliquer, à la requête pour l'avis consultatif, les dispositions prévues en matière contentieuse. Dans cette procédure, la Cour est en premier lieu tenue d'examiner sa compétence et d'en décider au terme de l'article 36, paragraphe 6, et de l'article 53, paragraphe 2, du Statut.

Des faits que la Bulgarie, la Hongrie et la Roumanie ne sont pas membres de l'Organisation des Nations Unies, et ne sont pas parties du Statut de la Cour, ainsi que du fait que chacun de ces États a expressément rejeté le procédé de l'Assemblée générale des Nations Unies en cette matière, y compris l'appel à la Cour, celle-ci devra — analogiquement d'après l'avis consultatif de la Cour permanente de Justice internationale du 23 juin 1923, n° 5 — inévitablement constater qu'elle n'est pas compétente.

Veuillez agréer, etc.

(Signé) Dr J. MARTINIC.

9. WRITTEN STATEMENT PRESENTED BY THE AUSTRALIAN GOVERNMENT UNDER ARTICLE 66 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE AND THE ORDER OF THE COURT DATED 7 NOVEMBER, 1949

By Resolution adopted 22 October, 1949, the General Assembly of the United Nations requested the International Court of Justice for an advisory opinion on certain procedural questions relating to the interpretation of the peace treaties with Bulgaria, Hungary and Roumania. These questions were four in number, answers being requested to questions 3 and 4 only in the event of certain conditions not being fulfilled. The Australian Government submits the following statement in connection with the first two questions.

It may be useful to consider briefly as a preliminary question the argument advanced at the Fourth Session of the General Assembly that the International Court of Justice was not competent to give the advisory opinion suggested on the ground that interpretation of the treaties was exclusively within the competence of the contracting parties. Under Article 96 (1) of the Charter of the United Nations and Article 65 of the Statute of the I.C.J., the General Assembly may request the International Court of Justice to give an advisory opinion on any legal question. In its opinion on the Conditions of admission of a State to Membership of the United Nations, the Court itself has stated that the determination of the meaning of a treaty provision is a legal question (I.C.J. Reports 1947-1948, p. 61). The I.C.J. is therefore clearly competent to give the interpretations requested by the General Assembly.

> Question 1. "Do the diplomatic exchanges between Bulgaria, Hungary and Romania 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 Romania, 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 Romania ?"

. . . .

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 Roumania (hereinafter referred to as the Common Article) provide :

"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 36 (40, 38), 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.

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 definite and binding."

Disputes "subject to the provisions for the settlement of disputes" contained in the Common Article are disputes "concerning the interpretation or execution of the Treaty". The circumstances of the diplomatic exchanges between certain Allied and Associated Powers on the one hand and Bulgaria, Hungary and Roumania on the other, as understood by the Australian Government, clearly constitute disputes concerning the execution of the Treaties.

On 2 April, 1949, *notes verbales* on behalf of Australia, New Zealand and the United Kingdom, which States are Allied and Associated Powers signatories to the Treaties of Peace, were delivered to the Bulgarian, Hungarian and Roumanian Governments by His Majesty's Ministers in Sofia, Budapest and Bucharest. Canada associated itself with the notes to the Hungarian and Roumanian Governments. These notes set forth the grounds on which it was alleged that those Governments had denied to their peoples the exercise of the human rights and fundamental freedoms which they were pledged to secure to them under Article 2 of the Treaties with Bulgaria and Hungary, and Article 3 of the Treaty with Roumania (hereinafter referred to as the Human Rights Article). Notes couched in similar terms were addressed on 2 April, 1949, to the same three Governments by the Government of the United States of America, another Allied and Associated Power signatory to the Treaties of Peace.

By their *notes verbales* of 8 and 22 April, 10 April and 20 April, addressed to His Majesty's Ministers in their respective capitals, the Governments of Bulgaria, Hungary and Roumania rebutted these allegations and claimed that their obligations under the Treaties of Peace had been and were continuing to be honoured. The allegations of the Government of the United States of America

were likewise rebutted in notes of (21 April, 1949) Bulgaria, (8 April, 1949) Hungary, and (18 April, 1949) Roumania.

The Australian Government consider that these allegations and rebuttals amount to disputes. In the case of the Mavrommatis Palestine Concessions, reported in the Court's Publication Series A., No. 2, of 30 August, 1924, page 11, the Permanent Court of International Justice defined a dispute as "a disagreement on a point of law or fact, a conflict of legal views or of interest between two persons". There are clearly disagreements on points both of law and of fact in the present cases.

Disputes "subject to the provisions for the settlement of disputes" contained in the Common Article are, in the language of the Common Article itself, "disputes concerning the interpretation or execution of the Treaty". The disputes in question are disputes regarding the execution of the Treaties. One party to each dispute alleges that the Human Rights Article of the Treaty is not being executed. The other party maintains that the Article is being executed. Subsequent diplomatic exchanges concerning the establishment of Commissions disclose in addition disputes concerning the interpretation of the Treaties. (See General Assembly Document A/990, Annexes 13-17 *b*.)

The Australian Government, therefore, is of the opinion that the disputes in question relate both to the execution and the interpretation of the Treaties and are therefore properly subject to the provisions for the settlement of disputes contained in Article 36 of the Treaty of Peace with Bulgaria, Article 46 of the Treaty of Peace with Hungary, and Article 38 of the Treaty of Peace with Roumania.

. . . .

"In the event of an affirmative reply to question 1:

> Question II. Are the Governments of Bulgaria, Hungary and Romania obligated to carry out the provisions of the Articles referred to in question 1, including the provisions for the appointment of their representatives to the Treaty Commissions?"

The Treaties of Peace with Bulgaria, Hungary and Roumania entered into force on 15th September, 1947. The Governments of Bulgaria, Hungary and Roumania are hence under a legal obligation to carry out the provisions of all the articles of the Treaties, including the provisions relating to the settlement of disputes.

Careful reading of the Common Article and analysis of the sequence of events since the inception of the dispute lead inescapably to the conclusion that it is now mandatory for Bulgaria, Hungary and Roumania to appoint representatives and so help to constitute the commissions provided for in the Common Article:

1. No other procedure is specifically provided elsewhere in the Peace Treaties for the settlement of disputes concerning the interpretation or execution of the Human Rights Article.
2. The disputes have not been settled by direct diplomatic negotiations.
3. The disputes have been referred to the Three Heads of Missions. By their notes of 31 May, 1949, the United Kingdom and the United States Heads of Mission at Sofia, Budapest and Bucharest asked the U.S.S.R. Heads of Mission whether they would be prepared to meet them in order that the Three Heads of Mission in each case might take cognizance of the disputes in the manner prescribed in the Treaties. In a note of 12 June, 1949, addressed to the U.K. Government, the Embassy in London of the U.S.S.R. said that it was authorized to declare that the Soviet Government saw no cause for the summoning of a conference of the Three Heads of the Diplomatic Missions in Bulgaria, Hungary and Roumania.
4. The disputes were not resolved by the Heads of Mission within a period of two months.
5. The parties have not yet mutually agreed upon another means of settlement.
6. On 1 August, 1949, the parties to the disputes alleging non-execution of the Treaty in notes addressed to the Governments of Bulgaria, Hungary and Roumania, requested the reference of the disputes to commissions.

The stage has now been reached when it is mandatory for Commissions to consider the disputes.

The Common Article provides that the Commission is to be composed of one representative of each party and a third member selected by mutual agreement of the parties. There is a clearly expressed obligation imposed on the parties to the dispute that the dispute shall be referred to the Commission; the question now to be determined is whether the Governments of Bulgaria, Hungary and Roumania are under an obligation to appoint representatives to the Commission.

The nature and purpose of the Common Article is to settle disputes arising out of the interpretation or execution of the Treaties of Peace, and it is submitted that the interpretation to be favoured is that which will make the Common Article effective to serve this purpose. The compulsory reference of a dispute to the Commission presupposes that the Commission has been constituted, and this can only be done by the appointment of a representative of each party and a third member selected by mutual agreement of the two parties, or, failing agreement, by the Secret-

ary-General. It is necessarily implied that the parties to the dispute appoint representatives. They are consequently under a definite legal obligation to appoint. To contend otherwise would frustrate the whole method of adjustment of disputes as laid down in the Peace Treaties and defeat the very purpose of the Common Article.

For these reasons, it is the opinion of the Australian Government that the word "shall" appearing in the second sentence of the Common Article applies by necessary implication to the appointment of a representative by each party to the dispute, and that the Governments of Bulgaria, Hungary and Roumania have an inescapable legal obligation to appoint representatives to the Commissions.

10. LETTRE DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE POPULAIRE HONGROISE AU GREFFIER DE LA COUR

Monsieur le Greffier,

En réponse à votre communication n° 9019 en date du 7 novembre 1949, au nom du Gouvernement de la République populaire hongroise, j'ai l'honneur de porter à votre connaissance ce qui suit :

Le Gouvernement de la République populaire hongroise, dans les notes qu'il a adressées aux Gouvernements du Royaume-Uni et des États-Unis en réponse aux notes de ces derniers, a maintes fois développé et prouvé :

1° qu'il a exécuté et il exécute d'une manière conséquente les stipulations du Traité de paix et qu'il a procédé et il procède dans une stricte conformité aux stipulations de ce Traité, en ordonnant la dissolution des organisations et partis ayant eu pour but la restauration de l'ancien régime fasciste et lorsqu'il a poursuivi et continue de poursuivre en justice ceux qui déploient une activité visant à renverser la République populaire hongroise démocratique ;

2° que, du moment que le Traité de paix a expressément reconnu la souveraineté de la Hongrie et lui a imposé, en même temps, le devoir de prendre des mesures appropriées contre tout mouvement fasciste, il est évident que les mesures prises en ce sens par le Gouvernement hongrois, qui, d'ailleurs, appartiennent au domaine de ses affaires intérieures et découlent d'une stricte application des stipulations du Traité de paix, ne peuvent faire l'objet d'aucune contestation ; d'où il résulte que l'accusation d'avoir violé les « droits humains » et les stipulations du Traité de paix, n'est en réalité qu'un prétexte pour les Gouvernements du Royaume-Uni et des États-Unis pour s'ingérer dans les affaires intérieures de la République populaire hongroise et pour exercer une pression sur son Gouvernement afin que celui-ci subordonne sa politique à celle de certains États et gouvernements étrangers.

Il résulte de tout ce qui précède que les Gouvernements du Royaume-Uni et des États-Unis n'ont eu aucun droit de s'adresser à l'Organisation des Nations Unies sous prétexte d'un différend artificiellement construit, et que l'Assemblée des Nations Unies a procédé également sans aucune base légale et contrairement au droit, lorsqu'elle s'est adressée à la Cour pour demander son avis au sujet de plusieurs questions en connexité avec cette affaire.

Eu égard à tout ce qui vient d'être développé, le Gouvernement de la République populaire hongroise n'est pas à même de prendre

part à la procédure engagée devant la Cour sur l'initiative de l'Assemblée des Nations Unies, procédure que le Gouvernement hongrois considère et quant au fond et quant à la forme comme illégale et comme dépourvue de tout effet juridique. Le Gouvernement hongrois ne désire donc présenter aucun exposé concernant les questions posées à la Cour par l'Assemblée des Nations Unies et il ne fait connaître son point de vue concernant l'illégalité de la procédure qu'à *titre de simple information.*

Le principe de l'égalité, de l'indépendance et de la souveraineté des États est du nombre des règles les plus universellement reconnues du droit international. Ce principe comporte, entre autres, une interdiction expresse pour les États et pour les organisations formées par eux de s'ingérer — sans titre suffisant — dans les affaires intérieures des autres États. Or, il ne peut y avoir aucun doute que le Traité de paix avec la Hongrie, signé à Paris le 10 février 1947, loin de rétrécir sa souveraineté, a réintégré la Hongrie dans l'exercice de ses droits souverains. Il est notoire, en outre, que ce même Traité n'a attribué à l'Organisation des Nations Unies aucun droit de contrôle concernant l'exécution de ses clauses. Il est notoire, enfin, qu'à la suite de l'attitude que certaines Grandes Puissances ont adoptée contrairement à leurs engagements solennellement pris, la Hongrie, jusqu'ici, n'a pas été admise au sein de l'Organisation des Nations Unies et qu'ainsi les stipulations de la Charte visant les devoirs des États Membres, ne peuvent non plus être invoquées à son égard. Dans ces conditions, il est évident qu'aucun organe des Nations Unies n'est qualifié de s'occuper du prétendu différend relatif à l'exécution du Traité de paix, ni d'intervenir, à ce titre, aux affaires de la Hongrie. Par conséquent, l'Organisation des Nations Unies, en adoptant des résolutions et en prenant l'initiative d'autres procédures en cette matière, est sortie des cadres de ses propres attributions déterminées par la Charte.

Le Gouvernement hongrois croit devoir attirer l'attention également sur le fait que les stipulations de la Charte visant les États non-membres, ne peuvent non plus être invoquées pour justifier le procédé illégal des Nations Unies. Il est vrai que l'article 2, paragraphe 6, de la Charte prévoit que « l'Organisation fait de la 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 ». Le Gouvernement hongrois cependant — ainsi que j'en ai fait mention plus haut —, dans ses notes adressées aux Gouvernements du Royaume-Uni et des États-Unis, a suffisamment démontré que les mesures légalement prises pour la sauvegarde efficace des institutions démocratiques et contre les ennemis de la démocratie, loin de menacer la sécurité et la paix internationales, contribuent, au contraire, à leur raffermissement. Du reste, pour autant que le Gouvernement hongrois le sache, personne n'a

jusqu'ici hasardé l'affirmation que les lois de la République populaire hongroise ou les mesures prises par son Gouvernement pussent signifier une menace quelconque pour la paix et la sécurité internationales. En réalité, les dangers pour cette paix et cette sécurité proviennent de toutes autres sources.

Le Gouvernement hongrois croit superflu d'illustrer de plus près, ni la situation juridique intenable, ni l'ébranlement de la confiance dans la justice internationale, qui pourraient résulter de l'inauguration d'une jurisprudence qui admettrait que, dans les cas où la souveraineté des États s'oppose à toute intervention de la part de Puissances étrangères ou d'organes internationaux, le principe de la souveraineté des États indépendants soit rendu illusoire par la voie détournée d'une demande d'avis consultatif de la Cour internationale de Justice.

Pour tous ces motifs, le Gouvernement hongrois n'est pas en état d'attribuer des effets juridiques quelconques à la procédure illégale initiée par l'Assemblée des Nations Unies, et pour cette raison il n'est pas à même de présenter des observations concernant les questions que l'Assemblée des Nations Unies a posées à la Cour.

Veuillez agréer, etc.

Budapest, le 13 janvier 1950.

(Signé) KÁLLAI,
Ministre des Affaires étrangères
de la République populaire hongroise.