

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

Beginning of Public Hearings -
Statement by Dr. Ivan S. Kernó.

The Hague, 28th February, 1950.

In its second public sitting this year, the International Court of Justice this morning began hearings at the Peace Palace in The Hague, in the advisory case concerning the interpretation of Peace Treaties with Bulgaria, Hungary and Romania (for background information see Release issued on 25th February.)

A brief opening address was given by the President, M. Jules BASDEVANT, and the Registrar, Dr. Edvard HAMBRO, read out the text of the four questions on which the Court's advisory opinion was sought by the General Assembly (See Release mentioned above).

The first oral statement was then made by Dr. Ivan S. KERNÓ, United Nations Assistant Secretary-General for legal matters, who spoke as representative of the Secretary-General of the United Nations.

Dr. Kernó gave an objective account of the main points and aspects which had been brought out in the previous discussions concerning the issue before the General Assembly.

He paid tribute to the Court as the highest international judicial authority in the world, and expressed gratification at recent tendencies towards making greater use of the Court. In evidence of this he recalled the last session of the General Assembly which had decided to request the Court for no less than three advisory opinions, and furthermore, several contentious cases have been brought before it by certain States. The provisions of the Charter with regard to the International Court of Justice have thus become a living reality, Mr. Kernó said.

In an historical review of the issue before the United Nations, Mr. Kernó pointed out that when the subject was discussed by the General Assembly in spring 1949, the charges that Bulgaria and Hungary had committed certain acts in violation of the Charter and the Treaties of Peace were strenuously argued by certain delegations, and equally strenuously denied by others. In its resolution of 30th April, 1949, the Assembly expressed "its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary regarding the suppression of human rights and fundamental freedoms in those countries"; but it passed no judgment upon the substance of the charges, and simply noted "with satisfaction that steps have been taken by several States signatories to the Peace Treaties with Bulgaria and Hungary regarding these accusations". The Assembly then, uniquely and expressly, made an urgent appeal to the States concerned to apply for the settlement of the issue, - the procedure provided for in the Peace Treaties.

Some delegations, Mr. Kernó observed, had denied from the outset and throughout the discussions, that the General Assembly had any competence whatsoever to deal with the problem. The main arguments in support of this point of view were summarized by Dr. Kernó as follows:

On the one hand it was argued that, by Article 2, paragraph 7, the authors of the Charter had intended to bar any intervention in matters which are essentially within the domestic jurisdiction of any State. The Charter's general provisions concerning human rights and fundamental freedoms could not prevail against the express injunction of Article 2,

paragraph 7, since the binding nature of these provisions was considered extremely doubtful, and also because the Charter's provisions could not be binding upon non-member States. The only stipulation of the Charter which might be interpreted as being binding upon a State not a Member of the United Nations was Article 2, paragraph 6, under which the Organisation "shall ensure that States which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security".

Since, however, the alleged dispute did not involve the maintenance of international peace and security, that provision was not applicable. Lastly, it was said that under Article 107 of the Charter, questions relating to treaties of peace were outside the competence of the United Nations. Even if a violation of these Peace Treaties had occurred, the only measures applicable were those provided for in the Treaties concerning the execution and interpretation thereof.

As against this, Dr. Kerno continued, it was contended by the delegations which claimed that the General Assembly was competent that, firstly, the General Assembly had powers to determine the scope of its jurisdiction. Under Article 10 of the Charter the General Assembly was entitled to "discuss any question or any matters within the scope of the present Charter". The problem at issue involved human rights and fundamental freedoms; the provisions of the Charter which contained references to the obligations of Member States with regard to respect for human rights and fundamental freedoms were so numerous that it could hardly be denied that any question involving these great principles was within the scope of the Charter. The United Nations should obviously be able to intervene in the case of a violation of human rights; otherwise, those provisions would be worthless. Apart from the Charter itself, the respect for human rights and fundamental freedoms specially and expressly was provided for in the Treaties of Peace, which had been registered with the Secretariat of the United Nations.

Thus, the whole question had become one of international concern and was no longer one essentially within the domestic jurisdiction of a State. It was further pointed out that the Peace Treaties could in no case be pleaded to rebut the competence of the United Nations if and to the extent that such competence was previously in existence. Indeed, Article 103 of the Charter provided that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

Finally, in reply to the argument that non-member States could not be bound by the obligations contained in the Charter, attention was drawn to the terms of Article 55 c, requiring the United Nations to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Thus, it was the duty of the United Nations to ensure the universal respect for, and observance of, human rights and fundamental freedoms by Member and non-Member States alike.

When consideration of the question was resumed in September, 1949, the General Assembly had before it the voluminous exchange of notes between the United States of America and the United Kingdom on the one hand, and Bulgaria, Hungary and Romania on the other hand. The discussions again dealt with the substance of the charges, which had now been brought not only against Bulgaria and Hungary, but also against Romania. The question of the competence of the United Nations was raised again. But in both of these respects, the arguments advanced on either side were, broadly speaking, the same as those used during the third session.

The greater part of the discussion dealt with the difficulties which emerged in the diplomatic correspondence between the States concerned with regard to the procedure provided for in the Peace Treaties and its application. In the first days of the debate a draft

resolution

resolution was proposed by Bolivia, Canada and the United States of America, the purpose of which was to ask for an opinion on the four questions which are now before the Court.

Those who favoured this draft resolution maintained that, in pursuance of the resolution adopted by the General Assembly at its previous session, certain Allied and Associated Powers had taken steps to set in motion the machinery provided in the Peace Treaties for the settlement of disputes. The refusal of the Governments of Bulgaria, Hungary and Romania to participate in the Treaty procedures constituted a further violation of the Treaties as well as of the General Assembly resolution. By stating that they considered their obligations under the Treaties fulfilled and denying the existence of any dispute requiring the application of the Treaty machinery, they sought to evade all charges of violations.

The refusal by the three Governments raised legal issues of paramount importance. The determination of the issues was essential in the interest of international law. It was therefore urged that the General Assembly should request an advisory opinion from the International Court of Justice on the legal questions concerning the applicability and implementation of the Treaty procedures.

On the other hand, Mr. Kerno continued, other representatives asserted that Bulgaria, Hungary and Romania were not guilty of violating the Peace Treaties. In fact, there was no "dispute", since there were no "parties". In the opinion of these representatives, the Treaties of Peace, envisaged that one of the parties would be Bulgaria, Hungary or Romania, that is to say, the conquered party, and the other would be the party formed by the three Governments of the United States of America, the United Kingdom and the Soviet Union. In the case at issue, however, such a situation did not exist. In fact, there was only one party, namely Bulgaria, Hungary and Romania, and that party was not convinced of the existence of a dispute. On the other side, there was no party in the sense of the Treaties, since the only governments involved were those of the United Kingdom and the United States, that is to say, two Governments and not three. Accordingly, they argued, the question was clear, and it was unnecessary to request the Court for an advisory opinion.

In reply to this last argument, it was contended that the three Powers did not have to come to a prior agreement as to the existence of the dispute before the Treaty procedures could be applied. If prior agreement were necessary, there would be no point in stipulating that the question should be referred to the three Heads of Mission, since the latter would already have the matter before them. There was no doubt that the Treaty procedures applied to any dispute arising between any one of the Allied and Associated Powers and the ex-enemy States.

The resolution adopted on 22nd October, 1949, again refrained from passing any judgment and from dealing with the substance of the problem. Apart from requesting an advisory opinion, it simply kept the question on the agenda of the fifth regular session. It expressed the General Assembly's "continuing interest in and its increased concern at the grave accusations made against Bulgaria, Hungary and Romania", and recorded its opinion that the refusal of the Governments of Bulgaria, Hungary and Romania to co-operate in its efforts to examine the grave charges with regard to the observance of human rights and fundamental freedoms justified "this concern of the General Assembly about the state of affairs prevailing in Bulgaria, Hungary and Romania in this respect".

Dr. Kerno then drew the Court's attention to the fact that the Secretary-General of the United Nations occupies a very special position in the matter. Under the treaties in question he may be requested to make the appointment of the third member of a Commission. It is of the essence of this procedure, Dr. Kerno said, that the appointment of the third member should be entirely free from the slightest suspicion of partiality. The Secretary-General therefore cannot take any position either on the merits or on the questions presented to this Court. To do so might

affect

affect the views which the parties might hold with respect to his impartiality.

On the other hand, the General Assembly deemed it "important for the Secretary-General to be advised authoritatively concerning the scope of his authority under the Treaties of Peace". In these circumstances it was evident, Dr. Kernö concluded, that the Secretary-General would be able to define his attitude only in the light of the opinion of the Court and with full knowledge of the views of the General Assembly.
