

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

Statement by Mr. G.G. Fitzmaurice (U.K.) - Public Hearing concluded.

The Hague, March 2nd, 1950.

The Court in public sitting, which occupied the whole day, heard Mr. G.G. FITZMAURICE, C.M.G., deputy legal adviser of the Foreign Office, giving an oral statement on behalf of the United Kingdom

The Court has now concluded the public sitting during which statements were made by the representatives of the United States and the United Kingdom, as well as by the representative of the Secretary-General of the United Nations.

To-morrow, Friday, at 11 o'clock, the Court will deliver its decision in the advisory case concerning the competence of the General Assembly for Admission to United Nations membership.

In his statement to-day, Mr. Fitzmaurice put before the Court the following points:

(1) The Court is competent to give an advisory Opinion on the case before it and should do so.

(2) There is a manifest dispute between the Government of the United Kingdom and each of the three "ex-enemy Governments" concerned; this dispute is disclosed by the exchanges of diplomatic correspondence.

(3) The dispute relates principally to the question whether the three Governments have violated the human rights provisions of the Peace Treaties; but it also relates to a number of other matters arising on the Treaties. On all these matters the United Kingdom and the three Governments concerned have taken up totally opposed attitudes. There is therefore a dispute about both the interpretation and the execution of the Treaties.

(4) The dispute is not one for which the Peace Treaties provide any other mode of settlement than that set out in the Peace Treaties articles providing for the settlement of disputes. It therefore has to be settled under these articles.

(5) Neither the principle of domestic jurisdiction nor that of national sovereignty exclude the dispute from settlement under the Peace Treaties, since these principles cannot be applied to treaty obligations unless the treaty itself so provides. The United Kingdom is asserting its own rights under the Peace Treaties and claiming fulfilment of the treaty articles for her own interest. This cannot constitute an interference with the domestic affairs or internal sovereignty of the "ex-enemy countries".

(6) Since there exists a dispute and since this dispute is subject to the provisions for settlement contained in the Peace Treaties, and since furthermore all the necessary preliminary steps have been taken, the three Governments concerned are under a legal obligation to appoint their representatives to the commission envisaged in the Peace Treaties for the settlement of disputes.

Procedure of Peace Treaties.

Mr. Fitzmaurice said that in the past the United Kingdom and United States Governments had made every effort and had taken every step open to them

to set the Peace Treaty machinery in motion. In his opinion, these endeavours, had they been successful, would have resulted in a complete suspension or even cessation of any proceedings before the United Nations. However, at every turn the efforts of the two Governments had been frustrated by the three Governments concerned who, supported by the Soviet Union, categorically refused to carry out the procedure provided for in the Peace Treaties. Furthermore, they persisted in maintaining that this machinery was not applicable and on these grounds they refused to nominate their commissioners on the arbitral commissions.

Mr. Fitzmaurice pointed out that it was the General Assembly of the United Nations which had asked the Court for an advisory opinion. It would therefore be misleading to pretend, as had been done, that the United Kingdom and the United States Governments had been the principal instigators of the matter. The proceedings before the Court, Mr. Fitzmaurice said, arose from nothing else but the desire of the Assembly to obtain an authoritative legal opinion for its own requirements and purposes. This could not be considered by any means as a litigation, and this argument could not therefore be used against the competence of the Court.

Future of arbitration.

In the opinion of the United Kingdom Government, the case before the Court raises issues of considerable significance for the future of international law and of the legal relations between States. These issues would appear to transcend in importance the particular points relating to the application of the Peace Treaties. Because of the ground on which the three Governments concerned chose to base their objections, nothing less was at stake than the whole future of arbitration, Mr. Fitzmaurice said. It was obvious that if the Governments concerned simply say there is nothing to arbitrate about, arbitral clauses in treaties are useless. Binding obligations could then be evaded at any time by a party which even in the face of the plainest facts was prepared blandly to deny that any dispute existed. However, unless arbitral clauses were intended to ensure compulsory arbitration, there was no object in including such clauses at all, nor would it be to do so in future.

Doctrine of Domestic Jurisdiction.

To refuse to arbitrate because the matter was said to be one of domestic jurisdiction was to beg the question at issue, he continued. Acceptance of the doctrine of domestic jurisdiction and national sovereignty, in cases which were the subject of some clause in a treaty or international agreement, would produce startling consequences in the normal treaty relations between States, he said. It would be useless, he continued, to insert henceforth in any treaty a provision on anything which would otherwise belong to the realm of domestic jurisdiction or internal sovereignty. The assertion of treaty rights was not only juridically inevitable, but it was a necessity of international life, unless treaties were to lose all obligatory character and compulsive effect. If it was open to parties to a treaty to claim that something which was clearly the subject of, and regulated by, a clause in the treaty, nevertheless lacked any obligatory force, or was not internationally justiciable, because it affected the national sovereignty or domestic or internal jurisdiction of the Government concerned, the door would be flung wide open to every kind of plausible evasion of treaty obligations.

Such an argument would reduce the great majority of bi-lateral treaties to mere gentlemen's agreements, hardly even that: it would reduce them to mere unilateral expressions of intention which the parties would adhere to as a working arrangement, so long as it suited them both to do so, but which either could depart from at any time without the other having any right to complain, or any means of procuring a settlement of the matter on the international plane.

Human Rights.

The question of human rights as involved in the present case clearly constitutes a question of international character and must be subject to whatever is the appropriate and applicable form of international jurisdiction, Mr. Fitzmaurice said. This can never be the matter of domestic jurisdiction in the sense of not being justiciable, since treaty provisions are of their very nature justiciable, whatever they may be about, even if they concern something which, but for its inclusion in the treaty, would otherwise be one of purely domestic jurisdiction.

Mr. Fitzmaurice then drew attention to the three Governments having voluntarily restricted or placed certain limitations on the free exercise of their sovereignty in regard to questions of human rights by entering into treaty provisions on the subject. They undertook certain definite obligations about securing human rights to all persons under their jurisdiction, he said. Having done this, they cannot contend that because these are questions which would otherwise lie primarily between them and their own subjects, the submission of these questions under the Peace Treaties is inadmissible because of the principle of national sovereignty.

Mr. Fitzmaurice then stated that the plea of national sovereignty was not an answer to a charge of breaking a treaty obligation, and that correspondingly the assertion of a treaty right did not constitute an interference with sovereignty, even though it related to the territory or nationals of the defendant State.

The Government of the United Kingdom was not intervening on behalf of any Bulgarian, Hungarian or Romanian national as such, or even specifically, on behalf of any individual. It was intervening, or seeking to intervene, primarily in order to assert its own rights. It was established that a Government always had international competence to intervene in the assertion of its own legal rights, whether arising under general international law or by reason of a treaty provision, even if the issue was one which affected or related to persons or classes of persons having the nationality of the defendant Government. In the present case, the Government of the United Kingdom was seeking the fulfilment towards itself of obligations expressly undertaken by a clause in a treaty to which both the United Kingdom and the ex-enemies were parties, and the observance of which the United Kingdom as a party was entitled to require from the ex-enemies, he said.

The allied Powers had introduced the human rights clauses in the Peace Treaties because, in view of conditions in those countries, they had considered this necessary for a true and lasting peace and as part of the terms on which alone the allies would be willing to enter into a treaty of peace. Events have shown, he said, that in this view the allies have not been far wrong.

Jurisdiction of Court.

Some of the objections to the jurisdiction of the Court, Mr. Fitzmaurice said, merit serious consideration; others appear to verge on the frivolous. Some of the countries concerned seemed to be only too ready to invoke the Peace Treaties when it suited them to do so in order to deny the status and competence of the United Nations. At the same time, however, they were quite unwilling to co-operate in the procedure laid down by those very treaties whose primacy they invoked.

Mr. Fitzmaurice repudiated accusations that the United Kingdom Government and others were seeking to intervene in the internal affairs of the three countries concerned and to subject them to some supposed form of international submission. The arguments of these countries, he said, had shown extraordinary inconsistency and contradictions, and he submitted that whatever these countries may now purport to say, they have in fact admitted the existence of a dispute and are juridically bound by this admission. Side by side with denying the

existence ...

existence of a dispute, these Governments also have put forward a legal defence to the charges made against them. These, Mr. Fitzmaurice said, they are perfectly entitled to do, but what in his opinion they cannot do, is both to put forward these legal defences and simultaneously to deny that there is a dispute; because if there is no dispute then there is nothing to put forward a defence about. By arguing the substance of the charges made against them under the Peace Treaties, the three Governments have admitted the existence of a dispute and it is not now open to them to deny it. It is difficult, he continued, to regard this process otherwise than as an attempt to give a plausible appearance to what is really a wilful refusal to carry out a clear obligation.
