

INTERPRETATION OF PEACE TREATIES WITH BULGARIA, HUNGARY AND ROMANIA (FIRST PHASE)

Advisory Opinion of 30 March 1950

The question concerning the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania had been referred to the Court for an advisory opinion by the General Assembly of the United Nations (G.A. resolution of 19 October, 1949).

By eleven votes to three the Court stated that disputes existed with those countries subject to the provisions for the settlement of disputes contained in the Treaties themselves; and that the Governments of the three countries were obligated to carry out the provisions of the Articles of those Treaties which relate to the settlement of disputes, including the provisions for the appointment of their representatives to the Treaty Commissions.

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The following are the circumstances in which the Court was led to deliver its opinion:

In April, 1949 the question of the observance of human rights in Bulgaria and Hungary having been referred to the General Assembly, the latter adopted a resolution in which it expressed its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary in this connection, and drew their attention to their obligations under the Peace Treaties which they had signed with the Allied and Associated Powers, including the obligation to co-operate in the settlement of all these questions.

On 22nd October, 1949 the Assembly, confronted by the charges made in this connection by certain Powers against Bulgaria, Hungary and Romania, which charges were rejected by the latter, and noting that the Governments of these three countries had refused to designate their representatives to the Treaty Commissions for the settlement of disputes on the grounds that they were not legally obligated to do so, and deeply concerned with this situation, decided to refer the following question to the International Court of Justice for an Advisory Opinion:

I. Do the diplomatic exchanges between the three States and certain Allied and Associated Powers disclose disputes subject to the provisions for the settlement of disputes contained in the Treaties?

II. In the event of an affirmative reply, are the three States obligated to carry out the provisions of the Articles in the Peace Treaties for the settlement of disputes, including the provisions for the appointment of their representatives to the Commissions?

III. In the event of an affirmative reply to question II and if within thirty days from the date when the Court delivered its opinion the designation has not been made, is the Secretary-General of the United Nations authorised to appoint the third Member of the Commissions?

IV. In the event of an affirmative reply to Question III, would a Commission so composed be competent to make a definitive and binding decision in settlement of a dispute?

However, Questions III and IV which refer to a clause in the Peace Treaties under which the Secretary-General of the United Nations is charged to appoint, failing agreement

between the parties, the third member of the Treaty Commissions, were not submitted to the Court for an immediate answer. The Court would have to consider them only if the appointment of national members to the Commission had not been effected within one month after the delivery of the opinion on Questions I and II.

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In its Opinion the Court answered Questions I and II.

The Court first considered whether Article 2, paragraph 7 of the Charter, which prevents the United Nations from intervening in matters which are essentially within the domestic jurisdiction of a State, barred it from delivering an Opinion in the present case. It noted on the one hand that the General Assembly justified the examination which it had undertaken by relying upon Article 55 of the Charter, which states that the United Nations shall promote universal respect for and observance of human rights and on the other that the request for an Opinion did not call upon the Court to deal with the alleged violations of the provisions of the Treaties concerning human rights: the object of the Request is directed solely to obtaining certain clarifications of a legal nature regarding the applicability of the procedure for the settlement of disputes as provided for in the Treaties. The interpretation of the terms of a Treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State, it is a question of international law which, by its very nature, lies within the competence of the Court.

The Court considered, on the other hand, whether the fact that Bulgaria, Hungary and Romania had expressed their opposition to the advisory proceedings should not determine it, by the application of the principles which govern the functioning of a judicial organ, to decline to give an answer. It pointed out that contentious procedure resulting in a judgment, and advisory procedure were different. It considered that it had the power to examine whether the circumstances of each case were of such a character as should lead it to decline to answer the Request. In the present case, which was clearly different from the Eastern Carelian case (1923) the Court held that it should not decline because the request was made with a view to enlightening the General Assembly on the applicability of the procedure for the settlement of disputes, and the Court was not asked to pronounce on the merits of these disputes. The Court gave an affirmative answer to Question I, pointing out on the one hand that disputes existed because certain charges had been brought against certain States, which the latter rejected, and on the other hand that these disputes were subject to the provisions of the Articles for the settlement of disputes contained in the Peace Treaties.

Taking up Question II, the Court determined its meaning and pointed out that it referred solely to the obligation upon Bulgaria, Hungary and Romania to carry out the Articles of the Peace Treaties concerning the settlement of disputes, including the obligation to appoint their representatives to the Treaty Commissions. The Court found that all the conditions required for the commencement of the stage of the set-

tlement of disputes by the Commissions, had been fulfilled. Consequently, it gave an affirmative answer to Question II.

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The Opinion of the Court was delivered in public, the Secretary-General of the United Nations and the States sig-

natories to the Treaties having been duly notified. The text of the conclusions of the Opinion was cabled to those signatory States which were not represented at the Hearing.

Judge Azevedo, whilst concurring in the Opinion, appended to it his individual opinion. Judges Winiarski, Zoricic and Krylov, considering that the Court should have declined to give an Opinion, appended to the Opinion statements of their dissenting opinion.