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THE ROLE OF INTERNATIONAL INSTITUTIONS AS CONFLICT-ADJUSTING AGENCIES*

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I. TRADITIONAL METHODS FOR SETTLING INTERNATIONAL DISPUTES

1. *Settlement of Disputes by Peaceful Means or by Force.*—The present state of tensions in the world is due primarily to three factors: the “cold war” between the Soviet Union and the nations of the West, the growing demands of the underdeveloped nations, and the danger of total destruction of mankind by indiscriminate use of nuclear weapons. But apart from these all-pervasive tensions there is an agglomeration of other tensions resulting from a large variety of unresolved conflicts. In the past, many of these conflicts were solved by resort to war or to coercive measures short of war; others were solved by peaceful means which international law makes available. If the parties should not be willing to go to war, and if they cannot agree on a peaceful method for adjusting their conflict, a dispute may fester for a long time and embitter relations between the states concerned.¹ Many smaller disputes, especially those relating to claims for damages suffered by individuals, linger in the archives of foreign offices because diplomatic negotiations have not led to their settlement and no tribunals are available for their decision.

The alternative of war or of other military or naval action, which not long ago was resorted to at the slightest provocation, is no longer available. The Charter of the United Nations proscribes the use of armed force, except as a collective measure in the common interest.² The members of the United Nations have agreed to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence

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¹ The yet unsolved disputes between Argentina and the United Kingdom about the Falkland Islands (Malvinas), and between Guatemala and the United Kingdom about Belize (British Honduras) have lasted for more than a hundred years.

² U.N. CHARTER Preamble. A limited use of force in self-defense is also permitted. *Id.* art. 51; see BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW 182–99 (1958).

of any state, or in any other manner inconsistent with the Purposes of the United Nations."³ This prohibition has been rigorously enforced in a number of cases,⁴ and only where its enforcement might have led to a nuclear war has the United Nations limited itself to a strong condemnation of the violator.⁵ The danger of mutual annihilation has circumscribed the freedom of even the largest nations to engage in military action, except in narrowly defined spheres of influence where action by one side does not provoke more than verbal attacks by the other side. Thus, war as an important means for solving international conflicts between the two super-powers has become obsolete; resort to war by other powers, even large ones, can easily be stopped by pressure of the super-powers. National military strength is of negative importance only, as a preventive against an attack by a potential enemy; military action is no longer an ordinary means of supporting diplomatic demands.

The only remaining method for adjusting conflicts is, therefore, settlement of disputes by peaceful means, several kinds of which are at the disposal of the parties in conflict. They range from diplomatic negotiations, through good offices, mediation, commissions of enquiry (or investigation) and conciliation, and settlement pursuant to regional arrangements or the United Nations Charter, to arbitration and judicial settlement. If proper use can be made of this variety of methods of settlement, tensions caused by conflicts may usually be dissipated.

2. *Diplomatic Negotiations.*—The most common method for solving disputes is through diplomatic negotiations. Hardly a day passes without one or more agreements being reached through patient negotiations between foreign offices. Both oral discussions and exchanges of letters and memoranda constantly narrow down points in dispute, and sooner or later an agreement is reached. As most of these negotiations are conducted quietly, without provoking the attention of the press, it is seldom realized how much has been and is still being accomplished through ordinary diplomatic channels. Not all these agreements are embodied in treaties or executive agreements, but there are some 200 formal agreements negotiated annually by the United States alone, and between 1946 and 1959, the United Nations has published in its Treaty Series more than 300 volumes of international agreements containing over 5,000 such agreements. The number of disputes which have been solved or quieted down by less formal agreements is even more impressive; though no exact figures are available, each volume of *United States Foreign Relations* (of which several are now published for each year) testifies to the number, variety and scope of disputes settled by informal agreements.

³ U.N. CHARTER art. 2, para. 4.

⁴ For example, with respect to the Middle East crisis of 1956, see *Annual Report of the Secretary-General, 1956-1957*, U.N. GEN. ASS. OFF. REC. 12th Sess., Supp. No. 1, at 8-25 (A/3594) (1957).

⁵ For example, in the Hungarian question in 1956. *Id.* at 31-43.

That diplomatic negotiations still constitute the preferred method for settling disputes is made clear by innumerable provisions of international treaties for the pacific settlement of disputes which limit the application of these treaties to disputes "which it has not been possible to settle by diplomacy."⁶ International tribunals have recognized the importance of this rule and have held that "before a dispute can be made the subject of an action at law, its subject matter should have been clearly defined by means of diplomatic negotiations."⁷ On the other hand, "the question of the importance and chances of success of diplomatic negotiations is essentially a relative one"; if, for instance, "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," there can be no doubt that the disputes cannot be settled by diplomatic negotiations.⁸ While the issue of whether sufficient negotiations have been conducted would have to be settled in each case by the court, the court has stated that it would not disregard "the views of the States concerned, who are in the best position to judge as to political reasons which may prevent the settlement of a given dispute by diplomatic negotiation."⁹

It may also be noted that the establishment of the United Nations and of other international agencies has opened new arenas for diplomacy, which need to be explored with more boldness and determination than in the past.¹⁰

3. *Good Offices*.—Once a decision is reached that a dispute cannot be solved by diplomatic negotiations, and the dispute is important enough to warrant further action, a variety of methods is open to the parties in conflict. The initiative might be taken by a third state (or by a prominent individual, such as the Secretary-General of the United Nations) in the form of an offer of good offices, which may be exercised, however, only if the offer is accepted by both parties. "Good offices" usually means that the parties agree that the third state will be permitted to make an attempt "to bring the parties together, so as to make it possible for them to reach an adequate solution between themselves."¹¹ In particular, if a dispute has led to a severance of diplomatic relations between the parties, the government of a third state and its diplomats may act as go-betweens, passing back and forth messages and sug-

⁶ See, e.g., General Act for the Pacific Settlement of International Disputes, 93 L.N.T.S. 345 (1928), revised, 71 U.N.T.S. 101 art. 1. (1949).

⁷ Case of Mavrommatis Palestine Concessions, P.C.I.J., ser. A, No. 2, p. 15 (1924).

⁸ *Id.* at 13.

⁹ *Id.* at 15.

¹⁰ See Jessup, *Parliamentary Diplomacy*, 89 ACADEMIE DE DROIT INTERNATIONAL, RE-CUEIL DES COURS 181-320 (1956).

¹¹ American Treaty on Pacific Settlement of Disputes (so-called Pact of Bogotá), April 30, 1948, art. IX, 30 U.N.T.S.86. The right of one or more states not parties to a dispute to offer their good offices "on their own initiative" was also recognized in the Hague Conventions for the Pacific Settlement of Disputes of 1899 and 1907, in article III, reprinted in 2 MALLOY, TREATIES BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS 2016, 2020, 2021, 2228-29 (1910).

gestions for bringing the dispute back to the point where the parties would be willing to talk to each other directly. The exercise of good offices is a friendly and unofficial proceeding, and should not be considered as an intervention for the benefit of one of the parties to the dispute or for the benefit of the state offering its good offices.¹² The good offices end usually as soon as the parties have been brought together and have resumed direct negotiations, but the parties may invite the third state which offered its good offices (or which accepted a request by the parties to assist them through such good offices) to be present at the negotiations.¹³

4. *Mediation*.—If a third state (or person) is not only transmitting the communications of the parties or helping them by its (or his) mere presence at their negotiations, but also is actively assisting them in the settlement of a dispute, then a shift has been made from good offices to mediation. The function of a mediator has been defined as "reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance."¹⁴ His duty is to assist the parties "in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution"; he is not required to make a report, and the proceedings are usually "wholly confidential."¹⁵ The functions of the mediator come to an end either when a settlement is reached or when one of the parties (or the mediator himself) declares "that the means of reconciliation proposed by him are not accepted."¹⁶ The proposals made by the mediator "have exclusively the character of advice, and never have binding force."¹⁷

In practice, the functions of good offices and mediation are often exercised simultaneously by the same state, person, or group of persons, without any clear distinction being made between these two functions.¹⁸

5. *Commissions of Enquiry*.—In disputes which involve a difference of opinion on points of fact, the parties may agree to the appointment of a commission of enquiry. The task of such a commission is "to facilitate a solution of these disputes by elucidating the facts by means of an impartial and con-

¹² See 6 MOORE, DIGEST OF INTERNATIONAL LAW 239 (1906). The Hague Conventions, *supra* note 11, provided explicitly in the last paragraph of article III that the right to offer good offices can never be regarded by either of the parties in dispute as an unfriendly act.

¹³ Pact of Bogotá, *supra* note 11, art. X.

¹⁴ Hague Conventions of 1899 and 1907, *supra* note 11, art. IV.

¹⁵ Pact of Bogotá, *supra* note 11, art. XII.

¹⁶ Hague Conventions of 1899 and 1907, *supra* note 11, art. V.

¹⁷ *Id.* art. VI.

¹⁸ For example, the Committee of Good Offices on the Indonesian Question, appointed pursuant to the resolution of the Security Council of August 25, 1947, has engaged also in mediation and investigation. See Memorandum No. V by the Secretary-General on the Organization and Procedure of the United Nations Commissions, pp. 7, 29-31, 36-44 (U.N. Pub. Sales No. 1949. X.7).

scientious investigation.”¹⁹ The commission may hear the parties and examine witnesses and experts; it may, with the consent of the parties, conduct an enquiry on the spot.²⁰ The final report of the commission should be limited to a statement of facts, and “leaves to the parties entire freedom as to the effect to be given to the statement.”²¹

6. *Conciliation*.—The procedure of investigation is often combined with that of conciliation, and many treaties provide for the appointment of commissions of “investigation and conciliation.”²² Even those commissions which are given the name of “conciliation commissions” only are often given in addition to their primary task “to endeavour to bring the parties to an agreement,” the complementary duty “to elucidate the questions in dispute, [and] to collect with that object all necessary information by means of enquiry or otherwise.”²³ After examining the case, a conciliation commission should “inform the parties of the terms of settlement which seem suitable to it.”²⁴ In a few cases the commission has even been empowered to make proposals not only with respect to “an equitable and mutually satisfactory solution of the questions submitted to it,” but also “with a view to obviating any future differences of opinion between the two Parties on the said questions.”²⁵ The reports and conclusions of a conciliation commission are not binding on the parties, even with respect to the statement of facts, and have only the character of “recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.”²⁶

Many treaties provide for the creation of permanent conciliation commissions, which may even be empowered to offer their services “spontaneously by unanimous agreement” in case of a dispute which the parties fail to adjust by diplomatic means.²⁷ Other treaties provide for the establishment of an *ad hoc* commission after a dispute has already arisen.²⁸

¹⁹ Hague Conventions of 1899 and 1907, *supra* note 11, art. IX.

²⁰ The Hague Convention of 1907 contains, in articles IX–XXXVI, a more elaborate description of the procedure of investigations than was contained in the 1899 Convention.

²¹ Hague Convention of 1907, *supra* note 11, art. XXXV. For a list of the Commissions established under the Hague Conventions and an analysis of their work, see HUDSON, *THE PERMANENT COURT OF INTERNATIONAL JUSTICE, 1920–1942*, at 37–41 (1943).

²² *E.g.*, Pact of Bogotá, *supra* note 11, art. XV.

²³ General Act for the Pacific Settlement of International Disputes of 1928 and 1949, *supra* note 6, art. 15.

²⁴ *Ibid.*

²⁵ Conciliation Convention between Germany and the Union of Soviet Socialist Republics, Jan. 25, 1929, art. 5, 90 L.N.T.S. 219.

²⁶ Pact of Bogotá, *supra* note 11, art. XXVIII.

²⁷ Treaty of Conciliation With Germany, May 5, 1928, T.S. No. 775.

²⁸ For an analysis of treaty provisions relating to conciliation, see *SYSTEMATIC SURVEY OF TREATIES FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, 1928–1948*, at 130–280 (U.N. Pub. Sales No. 1949.V.3) (prepared by L. B. Sohn). See also HUDSON, *INTERNATIONAL TRIBUNALS 223–30* (1944).

7. *International Organizations*.—Procedures developed by the United Nations and by regional organizations (such as the Organization of American States) usually constitute a combination of the various methods discussed above, especially of investigation and conciliation. For instance, a “panel for inquiry and conciliation” was established by the General Assembly of the United Nations in 1949,²⁹ thus making available to member states a list of persons qualified to serve as members of commissions. Many special commissions were also appointed by the United Nations to deal with specific situations.³⁰ The role played by the main organs of the United Nations in the settlement of international disputes is investigated in greater detail in part two of this study, and the role of regional organizations in part three. It may be noted, however, that the decisions of international organizations in the field of pacific settlement are ordinarily either of a procedural character or in the form of non-binding recommendations. In this respect they are closer to conciliation commissions than to arbitral or judicial tribunals, which usually render binding decisions.

8. *Arbitration and Judicial Settlement*.—The distinction between arbitral and judicial tribunals is not well grounded.³¹ In the international field, most arbitrators behave like judges; they show no special tendency to compromise or to go outside the framework of established legal principles and precedents. Unless the parties ask a tribunal to apply different standards, the object of international arbitration is to settle disputes between states “on the basis of respect for law.”³² The main difference between arbitral and judicial tribunals seems to lie, therefore, not in the basis of their decisions but in the method of selection of the arbitrators and judges. While the parties have a free choice with respect to members of an arbitral tribunal, they have to accept a court as it is and can vary the membership of the court only in a slight degree.³³

Both a court and an arbitral tribunal may be authorized by the parties to a case to decide a dispute *ex aequo et bono*, without strict adherence to existing

²⁹ U.N. GEN. ASS. OFF. REC. 3d Sess., pt. II, Resolutions, at 13–16 (1948). This panel has never been used.

³⁰ For an analysis of the work of some of these commissions, see the memoranda by the Secretary-General on the Organization and Procedure of United Nations Commissions (U.N. Pub. Sales Nos. 1949.X.1–9 & 1950.X.1–3), and the report of the Interim Committee of the General Assembly of August 17, 1949, U.N. GEN. ASS. OFF. REC. 4th Sess., Supp. 11, at 12–26 (A/966) (1949).

³¹ For a comprehensive analysis, see 1 MOORE, INTERNATIONAL ADJUDICATIONS: MODERN SERIES xv–xci (1929).

³² Hague Conventions of 1899 and 1907, *supra* note 11, arts. XV & XXXVII, respectively.

³³ In some cases a party might be able to challenge a member of the court, in others it might be permitted to select an additional member of the court. See STAT. INT’L CT. JUST. arts. 17 & 31. There is also an amount of discretion as to the membership of a chamber of the court established “for dealing with a particular case.” *Id.* art. 26, para. 2.

law.³⁴ In particular, many treaties empower, in advance, the tribunal (and in a few cases, the court) to decide a dispute *ex aequo et bono* "in so far as there is no rule of international law applicable to the dispute."³⁵ It may be noted, however, that the International Law Commission has expressed an opinion that even where there is no authority to decide a case *ex aequo et bono*, a tribunal "may not bring a finding of *non liquet* on the ground of the silence or obscurity of the law to be applied."³⁶

The prevailing trend is, however, to distinguish between legal and other disputes, and to provide different methods for dealing with these two types of disputes. There are many possible combinations adopted in the treaties on the subject; the principal ones are as follows:

- (a) Judicial settlement of legal disputes and arbitration of other disputes;
- (b) Judicial settlement of legal disputes, and conciliation and arbitration of other disputes;
- (c) Conciliation of all disputes, followed, if necessary, by judicial settlement of legal disputes and arbitration of other disputes; and
- (d) Judicial settlement of legal disputes, and conciliation of other disputes.³⁷

The most recent multipartite agreement on the subject, the European Convention for the Peaceful Settlement of Disputes, of April 29, 1957,³⁸ provides for the submission to the International Court of Justice of all legal disputes between the parties, and for conciliation and arbitration of other disputes. With respect to the applicable rules, the convention provides, rather ingeniously, that the arbitral tribunal "shall decide *ex aequo et bono*, having regard to the general principles of international law, while respecting the contractual obligations and the final decisions of international tribunals which are binding on the parties."³⁹

Awards of arbitral tribunals and judgments of international courts settle a dispute "definitively and without appeal,"⁴⁰ though the tribunal or court may revise its decision if new, previously unknown facts are discovered.⁴¹ If

³⁴ Compare STAT. INT'L CT. JUST. art. 38, para. 2, with General Act for the Pacific Settlement of International Disputes, *supra* note 6 art. 28. See also International Law Comm'n, *Draft on Arbitral Procedure*, art. 10, para. 2, U.N. GEN. ASS. OFF. REC. 13th Sess., Supp. No. 9, at 5 (A/3859) (1958).

³⁵ For a list of such treaties, see SYSTEMATIC SURVEY OF TREATIES FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, *op. cit. supra* note 28, at 120-22.

³⁶ International Law Comm'n, *Draft on Arbitral Procedure*, *supra* note 34, art. 11.

³⁷ For a detailed analysis of the relationships among these various methods (and many others), see SYSTEMATIC SURVEY OF TREATIES FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, *op. cit. supra* note 28, at 3-12.

³⁸ Europ. T.S. No. 23, [1958-59] I.C.J.Y.B. 228.

³⁹ *Id.* art. 26.

⁴⁰ Hague Conventions of 1899 and 1907, *supra* note 11, arts. LIV & LXXXI, respectively; see STAT. INT'L CT. JUST. art. 60.

⁴¹ Hague Conventions of 1899 and 1907, *supra* note 11, arts. LV and LXXXIII, respectively; STAT. INT'L CT. JUST. art. 61.

the validity of an arbitral award should be challenged by one of the parties to an arbitration, the issue should be submitted to the International Court of Justice for final decision.⁴²

While most arbitral tribunals are composed not only of arbitrators representing, to some extent, the parties but also of neutral members, the United States has experimented also with joint commissions composed of an equal number of persons from each country. Such a commission, even when empowered to render a binding decision, cannot impose a decision adverse to one of the parties without the acquiescence of at least one of the party's representatives. This might encourage states to submit to a joint commission a dispute which they would not be willing to submit to the arbitrament of foreigners. Once the dispute is submitted to the commission, however, it might through patient exploration find an equitable solution acceptable to a majority of its members.⁴³

9. *Jurisdiction of International Tribunals.*—At present, there are in force some 300 treaties for the peaceful settlement of disputes through investigation, conciliation, arbitration or judicial settlement, or through a combination of these methods.⁴⁴ In addition, some 600 treaties have conferred on the International Court of Justice jurisdiction to decide disputes as to their interpretation and application.⁴⁵

The largest amount of jurisdiction is conferred on the International Court of Justice by the 39 declarations made under the optional clause contained in article 36 of the statute of the court; they are equivalent to 741 bilateral treaties. Their value is diminished, however, by the fact that many of them contain important reservations.⁴⁶ The most drastic of them is the reservation made by the United States which excludes from the jurisdiction of the court "disputes with regard to matters which are essentially within the domestic

⁴² International Law Comm'n, *Draft on Arbitral Procedure*, *supra* note 34, arts. 35-37.

⁴³ This approach is endorsed in, *e.g.*, 2 HYDE, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 1645-48 (2d ed. 1945). See also JESSUP, *THE USE OF INTERNATIONAL LAW* 132-33 (1959). Some Soviet treaties provide for the establishment of joint commissions but entrust them only with conciliation powers. For a list, see *SYSTEMATIC SURVEY OF TREATIES FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES*, *op. cit. supra* note 28, at 153.

⁴⁴ The *Systematic Survey*, cited in note 28 *supra*, contains 234 agreements for the 1928-1948 period, to which should be added 85 treaties for the 1917-1927 period, published in *LEAGUE OF NATIONS, ARBITRATION AND SECURITY* (U.N. Pub. Sales No. 1927.V.29). While some of these treaties are no longer in force, many treaties concluded prior to 1917 are still binding, and a few have been entered into since 1948. For lists of older arbitration treaties, see DE WOLF, *GENERAL SYNOPSIS OF TREATIES OF ARBITRATION* (1933); HABICHT, *POST-WAR TREATIES FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES* (1931).

⁴⁵ For instance, the United States has conferred such jurisdiction on the court in a series of recent treaties of friendship, commerce and navigation. See, *e.g.*, Treaty with the Netherlands, March 27, 1956, art. XXV, 8 U.S.T. & O.I.A. 2043, T.I.A.S. No. 3942.

⁴⁶ For the text of these declarations, see [1958-59] I.C. J.Y.B. 205-27. See also Briggs, *Reservations to the Acceptance of Compulsory Jurisdiction of the International Court of Justice*, 93 *ACADÉMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS* 223 (1958-I).

jurisdiction of the United States of America as determined by the United States of America.”⁴⁷ This clause is deemed by some⁴⁸ as contrary to the authority of the court to determine the question of its own jurisdiction.⁴⁹ Even if it is valid, this reservation diminishes the importance of the United States’ acceptance of the jurisdiction of the court to almost zero, as it enables the United States to determine unilaterally that any case of any importance is a matter essentially within the domestic jurisdiction of the United States.⁵⁰ It is encouraging to note that several official statements indicate that the question of modifying this reservation is now being considered seriously by the Government of the United States.⁵¹

In general, great progress has been made since 1920 in developing the means for settling international disputes of a juridical nature. The International Court of Justice has dealt effectively with the cases submitted to it, and its decisions have not only settled the disputed points of law but have also contributed to the development of international law in many fields.⁵² Three problems have not yet been solved, however: how to expand the jurisdiction of the court; how to ensure the election of the best qualified judges; and how to provide the court with an adequate system of international law.

⁴⁷ [1959–60] I.C.J.Y.B. 256. This formula has been followed by several other states, including France, India, Liberia, Mexico, Pakistan, Sudan and the Union of South Africa. France replaced this reservation in July 1959 by a slightly narrower clause excepting “disputes arising out of any war or international hostilities and disputes arising out of a crisis affecting the national security or out of any measure or action relating thereto.” *Id.* at 240. India removed the self-judging part of the domestic-jurisdiction reservation in September 1959. *Id.* at 241–42.

⁴⁸ See, e.g., the opinions of Judge Lauterpacht in the Norwegian Loans case, [1957] I.C.J. Rep. 9, 43; and the Interhandel case, [1959] I.C.J. Rep. 6, 95.

⁴⁹ STAT. INT’L CT. JUST. art. 36, para. 6.

⁵⁰ Such determination was made, for example, in the Interhandel case, [1959] I.C.J. Rep. 6 at 11, on rather flimsy grounds.

⁵¹ See 40 DEP’T STATE BULL. 115, 117–18 (1959); 40 DEP’T STATE BULL. 151, 153 (1959); 40 DEP’T STATE BULL. 622, 624 (1959); 42 DEP’T STATE BULL. 111, 117–18 (1960); 42 DEP’T STATE BULL. 202, 212 (1960); 42 DEP’T STATE BULL. 227 (1960). See also *Reports of Committee on Study of Legal Problems of the United Nations*, 52 PROC. AM. SOC’Y INT’L L. 289 (1958) and 53 PROC. AM. SOC’Y INT’L L. 354 (1959); American Bar Ass’n, Section of Int’l and Comparative Law, *Report on the Self-Judging Aspect of the United States’ Domestic Jurisdiction Reservation with Respect to the International Court of Justice* (1959); *Hearings Before the Senate Committee on Foreign Relations on S. Res. 94*, 86th Cong., 2d Sess. (1960); Briggs, *The United States and the International Court of Justice: A Re-examination*, 53 AM. J. INT’L L. 301 (1959); Briggs, *Confidence, Apprehension, and the International Court of Justice*, 54 PROC. AM. SOC’Y INT’L L. 25 (1960).

⁵² See the masterly description of the role of the court by Sir Hersch Lauterpacht in his book *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT* (1958). For a penetrating analysis of the judgments of the court, see the series of nine articles by Sir Gerald Fitzmaurice on the law and procedure of the International Court of Justice, published annually from 1950 to 1959 in the *British Yearbook of International Law*. For an exhaustive treatment of questions of jurisdiction and procedure, see ROSENNE, *THE INTERNATIONAL COURT OF JUSTICE* (1957). See also LISSITZYN, *THE INTERNATIONAL COURT OF JUSTICE* (1951).

10. *Expansion of Jurisdiction of the International Court of Justice.*—In the first place, the court's jurisdiction needs further expansion, and a concerted drive is required to persuade more than sixty governments to make declaration under the optional clause, and to persuade those governments which have accepted the court's jurisdiction with crippling reservations to remove these reservations. It might be desirable to consider the following suggestions as first steps in that direction:

(a) A new optional clause, supplementary to the existing one, might be made available which would enable states not willing to go further to accept at least the jurisdiction of the court with respect to disputes relating to the interpretation and application of international agreements concluded either with any other state accepting that obligation or with certain specified states. Such a clause could easily be accepted by those states which are not yet ready to confer on the court general jurisdiction to interpret all rules of international law and possibly to create new ones out of general principles of law recognized by civilized nations.⁵³ Under the proposed new clause the court would have jurisdiction to interpret only those rules which have been expressly approved by states in agreements accepted by them in accordance with their respective constitutional processes. Almost all states in the world, including the members of the Soviet bloc, have accepted the jurisdiction of the court to interpret some treaties among them; the new clause would broaden this acceptance to all treaties, past and present. If this should be too big a step for some states to take, they might be willing, perhaps, to accept the jurisdiction of the court with respect to at least some other states with which they have especially close relations. It is conceivable, for instance, that the United States would not hesitate to accept such jurisdiction with respect to treaty disputes with other members of the North Atlantic Treaty Organization (NATO).

(b) Agreements might be concluded by groups of states which are linked together by special ties to submit all intra-group disputes (not only those relating to treaties) to the court. States not willing to accept the jurisdiction of the court in a way which would open them wide to claims by their enemies, might accept a much broader measure of jurisdiction if that jurisdiction were limited to their friends. For instance, the United States and those members of the Commonwealth whose legal systems are also derived from common law might find it easier to accept the idea that disputes among themselves should be decided by the International Court of Justice, than to have their disputes with the Soviet Union submitted to the court. A similar agreement might also be reached by Spain and Portugal with nations of Latin America, and by other groups of nations united by historical, cultural or regional ties.

It may be noted, however, that some groups of states might prefer to submit intra-regional disputes to regional tribunals, or at least to regional chambers

⁵³ STAT. INT'L CT. JUST. art. 38. para. 1(c).

of the International Court of Justice. In particular, many proposals have been made to establish an Inter-American Court of Justice,⁵⁴ and a European Court of Justice.⁵⁵

11. *Composition of the International Court of Justice.*—In the second place, there is some dissatisfaction with the composition of the International Court of Justice. On the one hand, it is claimed that too many members of the court come from the Western world and that both the Soviet bloc and the Afro-Asian region are underrepresented.⁵⁶ On the other hand, doubts have been expressed about the effectiveness of the present method for nominating and electing the members of the court, and proposals have been made for improving the quality of the court's membership.⁵⁷ Both complaints seem justified, and can be remedied to some extent even without changes in the statute of the court. In particular, an informal agreement might be reached in the General Assembly and the Security Council about the proper distribution of seats among the "principal legal systems of the world."⁵⁸ To ensure that the persons nominated for the court should be either properly qualified "for appointment to the highest judicial offices" in their respective countries or be "jurisconsults of recognized competence in international law,"⁵⁹ the Assembly and the Council might require that each national nominating group⁶⁰ should present to the United Nations sufficient proof that before making these nominations it has actually consulted "its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law," as recommended by the statute of the court.⁶¹ The General Assembly and the Security Council might also authorize the Secretary-General to communicate the list of the nominated persons to international associations of lawyers⁶² for their opinion.

⁵⁴ See SCOTT, *INTER-AMERICAN TRIBUNAL OF INTERNATIONAL JUSTICE* (1937); HUDSON, *INTERNATIONAL TRIBUNALS* 169-79 (1944); ORGANIZATION OF AMERICAN STATES, *INTER-AMERICAN COURT OF JUSTICE* (Tenth Inter-American Conference, 1954, Doc. No. 7).

⁵⁵ COUNCIL OF EUROPE, *CONSULTATIVE ASSEMBLY, TEXTS ADOPTED*, 4th Sess., pt. II, pp. 55-58. See also FODA, *THE PROJECTED ARAB COURT OF JUSTICE* (1957).

⁵⁶ See, e.g., the statements made during the debate in 1959 on a proposal to increase the number of judges of the International Court of Justice, U.N. GEN. ASS. OFF. REC. 14th Sess., Special Pol. Comm., pp. 5, 14, 17, 19, 29 (1959).

⁵⁷ See, e.g., 44 *ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL* 439 (1952-II); 45 *id.* 407 (1954-I); 45 *id.* 60 (1954-II).

⁵⁸ STAT. INT'L CT. JUST. art. 9.

⁵⁹ *Id.* art. 2.

⁶⁰ These groups are either national groups in the Permanent Court of Arbitration, appointed pursuant to the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907 (*supra* note 11), or special groups appointed by governments not parties to these conventions under the same conditions as those prescribed by these conventions. These groups are usually composed of four persons.

⁶¹ STAT. INT'L CT. JUST. art. 6. See also JESSUP, *THE USE OF INTERNATIONAL LAW* 124-28 (1959).

⁶² Such as the Institute of International Law, the International Law Association, the International Bar Association, and the International Commission of Jurists.

It may be expected that the cumulative effect of these consultations will be such that the governments will find it very difficult to support candidates who have been disapproved by a preponderant majority of the consulted organizations.

12. *Codification and Development of International Law.*—In the third place, the reluctance of states to submit cases to the court is blamed on the primitive, unsatisfactory state of development of international law.⁶³ As long as international law is not clear and there are large gaps in its principles and rules, the uncertainty about what the court might decide is so great that it cannot be expected that states would dare to bring their disputes before the court in any matter of importance. The Secretary-General of the United Nations has stated, for instance, that “the reluctance of Governments to submit their controversies to judicial settlement stems in part from the fragmentary and uncertain character of much of international law as it now exists. Where wide margins of uncertainty remain in the law, the tendency to seek a political settlement even in cases where questions of law lie at the heart of the dispute is understandable.”⁶⁴ But international tribunals have not found it too difficult to provide an adequate legal basis for their decisions, and alleged gaps have been filled by those tribunals by proper application of legal techniques (by analogy, or by resort to general principles of law, or to the rule that what is not prohibited by law is permitted).⁶⁵

Though international law has been mostly developed by decisions of international tribunals and by the practice of states, its growth might be accelerated by a systematic process of clarification and codification. The Charter of the United Nations made the General Assembly responsible for “encouraging the progressive development of international law and its codification.”⁶⁶ The General Assembly established for that purpose the International Law Commission,⁶⁷ which has prepared drafts on a variety of subjects, some of which

⁶³ See, e.g., Bloomfield, *Law, Politics and International Disputes*, 516 INT’L CONC. 255, 278–86 (1958).

⁶⁴ Annual Report of the Secretary-General, 1954–1955, U.N. GEN. ASS. OFF. REC. 10th Sess., Supp. No. 1, p. xiii (A/2911) (1955).

⁶⁵ See, e.g., the *Procès-verbaux* of the Advisory Committee of Jurists which prepared the Statute of the Permanent Court of International Justice, pp. 293–97, 307, 314, 317, 331–38 (1920). See also Gihl, *Lacunae de droit international*, 3 ACTA SCANDINAVICA JURIS GENTIUM 37 (1932); LAUTERPACHT, FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY 63–69, 105–07, 110–35 (1933); Lauterpacht, *Some Observations on the Prohibition of ‘Non Liquet’ and the Completeness of the Law*, [1958] SYMBOLAE VERZIJL 196–221; SIORAT, LE PROBLEME DES LACUNES EN DROIT INTERNATIONAL 199–461 (1958); Stone, *Non Liquet and the Function of Law in the International Community*, 35 BRIT. YB. INT’L L. 124 (1959). Tammelo, *On the Logical Openness of Legal Orders: A Modal Analysis of Law with Special Reference to the Logical Status of Non Liquet in International Law*, 8 AM. J. COMP. L. 187 (1959).

⁶⁶ U.N. CHARTER art. 13, para. 1(a).

⁶⁷ U.N. GEN. ASS. OFF. REC. 2d Sess., Resolutions, at 105–10 (1947).

have been embodied in international conventions.⁶⁸ Careful work of codification cannot be hurried, but the work of the International Law Commission could nevertheless be accelerated if it could be established on a full-time basis and if the necessary funds and research assistance were available. The drafts prepared by the commission, even if not transmuted into formal conventions, are likely to be regarded by international tribunals as accurate and persuasive statements of international law.

Not all questions of international law can be solved, however, by the process of codification. In certain areas, the existing rules of international law, even if perfectly clear, are too limited in scope and sometimes completely unsatisfactory. The quick growth of interdependence of states during the twentieth century has not been accompanied by a fast enough process of adaptation of international law. The proscription of force, for instance, has not been accompanied by the creation of new rules prohibiting those activities of states which, though not amounting to a threat or use of force, nevertheless injure vital interests of other states. Thus a state can take over the property of nationals of another state, permit its radio stations to engage in subversive propaganda against another state, or interfere with the trade relations between other states, without violating its international obligations. The Draft Declaration on Rights and Duties of States, prepared by the International Law Commission,⁶⁹ even if it were generally accepted, is still too vague and indefinite to provide a guarantee against dangerous activities which might lead to an international conflict. Thus further work needs to be done with respect to the rules which should govern removal of threats to the peace and adjustment of situations likely to endanger peace. This area of rule-making should be separated from the more conservative task of codifying classical international law, and a separate United Nations commission might be established for that purpose, composed not only of lawyers but also of diplomats of world renown. Its main task would be to investigate those areas of law where the gaps in the law cannot be bridged by judicial interpretation, or where drastic changes in political circumstances or new economic or technical developments require proper legal recognition. In the first stages of its work such a commission might concentrate more on methods and procedures needed for dealing with new problems rather than on substantive issues. All the work of the commission would be subject, of course, to scrutiny by the General Assembly which would make the final decision as to what steps should be taken to embody the results of this work into law. If such a commission

⁶⁸ For a review of the work of the commission during its first ten sessions, see its *Tenth Report*, U.N. GEN. ASS. OFF. REC. 13th Sess., Supp. No. 9, at 31-32 (A/3859) (1958). See also Lauterpacht, *Codification and Development of International Law*, 49 AM. J. INT'L L. 16, 43 (1955); Stone, *On Vocation of the International Law Commission*, 57 COLUM. L. REV. 16 (1957).

⁶⁹ For the text of the Draft Declaration, see International Law Comm'n, *Report*, U.N. GEN. ASS. OFF. REC. 4th Sess., Supp. No. 10, at 7-10 (A/925) (1949).

were established, it would take some burden off not only the International Law Commission but also the International Court of Justice and other international tribunals.⁷⁰

13. *Settlement of Private Claims.*—There is a general dissatisfaction with existing arrangements for the settlement of international disputes arising out of injuries suffered by nationals of one state because of action by another state which was contrary to international law.⁷¹ The International Court of Justice has followed the rule established by the Permanent Court of International Justice that “by taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person to its subjects, respect for the rules of international law.”⁷² Under this theory individuals do not have any rights under international law and cannot directly approach an international tribunal. In particular, the Statute of the International Court of Justice provides expressly that “only states may be parties in cases before the Court.”⁷³

To remedy this situation, it has been suggested that special international tribunals be established which would have jurisdiction over complaints by nationals of one state, whether individuals or corporations, against other states.⁷⁴

A proposal has also been made which would allow private persons to approach the International Court of Justice through the following procedures: A state may enact general legislation enabling lawyers employed by its nationals to present claims against other states as “agents” for the state, subject to specified conditions about the character and size of such claims. Such legislation may also require prior notification of the claim to the national government, which will be entitled to veto a particular application within a certain time limit. If there should be no objection by the government, the lawyer for the private claimant, acting simultaneously as a representative of the state, will present an application to the International Court of Justice on behalf of that state and take part in all the written and oral proceedings, it being understood that all the necessary costs will be paid by the claimant. Thus, as between states which have accepted the jurisdiction of the International Court of Justice, the procedural obstacle to the submission of private claims to the

⁷⁰ I am indebted for this suggestion to a group of my colleagues at Harvard (Professors Baxter, Fisher and Katz), who considered various aspects of this problem in November of 1959.

⁷¹ See, e.g., JESSUP, *A MODERN LAW OF NATIONS* 94-122 (1948).

⁷² *Nottebohm Case*, [1955] I.C.J. Rep. 4, 24, citing P.C.I.J., ser. A, No. 2, at 12, and P.C.I.J. ser. A/B, Nos. 20-21, at 17.

⁷³ STAT. INT'L CT. JUST. art. 34, para. 1.

⁷⁴ For a summary of these suggestions, see Sohn, *Proposals for the Establishment of a System of International Tribunals*, in *INTERNATIONAL TRADE ARBITRATION* 63, at 65-73 (Domke ed. 1958).

court would be abolished, and these claims would no longer have to be treated as inter-state claims causing tensions between states.⁷⁵

14. *Settlement of Nonlegal (Political) Disputes.*—While it seems desirable in the near future to concentrate on the enlargement of the jurisdiction of the International Court of Justice over legal disputes and on the development of international law, the settlement of nonlegal disputes should not be neglected. Leaving aside for the moment the line of distinction between legal and other disputes,⁷⁶ it seems important not only to develop new general rules which would diminish the number of dangerous disputes but also to find a better method for dealing with conflicts which have nevertheless arisen and which require an *ad hoc* solution. As in the field of adjudication, one of the main obstacles to effective settlement has been for a long time the lack of a permanent body empowered to deal with such conflicts. What is needed is an organ parallel to the International Court of Justice, a permanent commission or tribunal with power to make recommendations with respect to nonlegal disputes which recommendations would, if endorsed by a preponderant vote of the General Assembly of the United Nations, become binding on the parties. Experience has shown in the past that the main difficulties in international conciliation and arbitration relate to the establishment of a commission or tribunal. The draft on arbitral procedure, prepared by the International Law Commission in 1958, constitutes an important contribution to the law on the subject and should help to plug the loopholes now existing in this area.⁷⁷ But no constant jurisprudence can be developed without a permanent tribunal, and the very existence of such a tribunal would encourage states to submit disputes to it.

Various proposals have been made in the past for a permanent conciliation commission and an international equity tribunal.⁷⁸ It might be desirable to distinguish between the fact finding and mediatory functions of a conciliation commission and the law-changing function of an equity tribunal. There is no question here, of course, of applying the modern concepts of equity as developed by the common law, but rather of returning to the original concept of equity as setting aside excessively harsh rules of ordinary law and devising a new solution especially suited to the circumstances of a particular case. In

⁷⁵ I am indebted for this suggestion to my colleague at Harvard, Professor Roger Fisher.

⁷⁶ See pp. 230–33 *infra*.

⁷⁷ International Law Comm'n, *Report*, U. N. GEN. ASS. OFF. REC. 13th Sess., Supp. No. 9, at 2–10 (A/3859) (1958).

⁷⁸ See HUDSON, INTERNATIONAL TRIBUNALS 223–30 (1944); DAVIES, IT NEED NOT HAVE HAPPENED 41–52 (1942); DAVIES, THE SEVEN PILLARS OF PEACE 21–30, 46–49 (1945); FRIEDMANN, THE CONTRIBUTION OF ENGLISH EQUITY TO THE IDEA OF AN INTERNATIONAL EQUITY TRIBUNAL (1935); HABICHT, THE POWER OF THE INTERNATIONAL JUDGE TO GIVE A DECISION “EX AEQUO ET BONO” (1935); NEW COMMONWEALTH SOCIETY, THE FUNCTIONS OF AN INTERNATIONAL EQUITY TRIBUNAL (1936); CLARK & SOHN, WORLD PEACE THROUGH WORLD LAW 97–106, 338–41 (2d ed. 1960).

its decisions the tribunal would endeavor to discover those rules which would provide the most reasonable, just and fair solution of the issues presented to it. While initially its decisions would necessarily reflect to a large extent the subjective judgments of the members of the tribunal, this element would be tempered by the knowledge that the decision would not be enforced unless its reasonableness would persuade the General Assembly that the solution proposed is the best one for the case at hand. With the passage of time, certain basic rules might crystallize and a foundation for predicting the probable decision of the tribunal might thus be established. At that point, the tribunal would become an integral part of the international legal system and its function would be performed more and more in a manner similar to that of an ordinary court, just as in domestic legal systems the differences between equity and common law courts have progressively narrowed. Whatever might be the precise functions and the appropriate name of the new institutions here proposed, it seems that the process of dealing with nonlegal disputes would be improved if two permanent general organs were to be established in place of the present plethora of *ad hoc* and semi-permanent commissions and tribunals. Their original jurisdiction should be entirely optional, and all the present methods of accepting the jurisdiction of the International Court of Justice might apply here by analogy. In addition, matters might be referred by United Nations organs to the conciliation commission for investigation and conciliation, and to the arbitral (or equity) tribunal for an advisory opinion. In certain circumstances, as specified below,⁷⁹ such advisory opinions might become binding.

15. *Conclusions.*—The variety of means available for the peaceful settlement of international disputes offers a reasonable chance for finding an adequate solution so long as the parties are searching for it in good faith. Some methods, such as diplomatic negotiations, depend completely on the cooperation of the parties; the purpose of others is to bring the parties together, as in the case of good offices. Sometimes a solution can be found if the facts have been clarified by an impartial investigation or enquiry. A mediator or a conciliation commission, through suggestions and proposals, may help the parties to reach a reasonable compromise. If a dispute involves legal questions, they may be referred to an arbitral tribunal or the International Court of Justice; if the issues involved are, however, political, a decision by a tribunal authorized to temper the law might be required.

The very variety of the means available for settling disputes might lead to confusion, especially if there should be a disagreement between the parties to the dispute about its character or about the means of settlement which should be used. This is an area in which the United Nations and regional organizations have an important role to play, as discussed in parts II and III of this study. It is the principal function of these organizations to determine both whether a dispute is serious enough to require further action and what method

⁷⁹ Pp. 236-39 *infra*.

would be most likely to result in a satisfactory settlement of the dispute. Once this decision has been made, the parties to the dispute would ordinarily follow the recommended method. If that method does not yield the desired result, the dispute might be sent back to the competent international organization which would decide what should be the next step. With patience and perseverance the area of the dispute would be whittled down and the danger to peace would be greatly reduced. As the alternative of war has become too perilous, it may be hoped that the nations of the world will soon realize that it is in their best interests to devise adequate procedures for an effective settlement of all disputes among them. Some of the available avenues have been explored in the first part of this study; others are investigated in the parts which follow.

II. THE CHARTER OF THE UNITED NATIONS AND THE SETTLEMENT OF INTERNATIONAL DISPUTES

1. *Basic Obligations.*—The Charter of the United Nations imposes on all members of that organization the duty to “settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”⁸⁰ It also declares that one of the main purposes of the United Nations is “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”⁸¹ While the duty of members to settle international disputes by peaceful means seems thus unlimited and seems to apply to any dispute, whether important and dangerous or not, the obligation of the United Nations to bring about adjustment or settlement of international disputes or situations relates only to those “disputes or situations which might lead to a breach of the peace.” But even in the statement of members’ duty to settle disputes the emphasis is on “peaceful means” and on the injunction not to endanger international peace and security.

The more detailed provisions of chapter VI of the charter, which deals with the pacific settlement of disputes, are expressly limited to those disputes “the continuance of which is likely to endanger the maintenance of international peace and security.”⁸² It is only with respect to such disputes that the parties to a dispute have a duty to seek, first of all, a solution “by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” All these means are, of course, open to the parties to a dispute even if their dispute is not likely to endanger peace, and long before the creation of the United Nations these various means were employed by states in a variety of situations, both unimportant and peace-threatening.

⁸⁰ U.N. CHARTER art. 2, para. 3.

⁸¹ *Id.* art 1, para. 1.

⁸² *Id.* art. 33, para. 1.

The duties of the organs of the United Nations, on the other hand, are more strictly limited. They can deal with a dispute only when its continuance is likely to endanger peace, but they have also the preliminary competence to investigate any dispute or situation brought to their attention "in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."⁸³ If the organ of the United Nations to which the dispute has been submitted should determine that its continuance is not likely to endanger peace, it would have to declare itself no longer competent to deal with the case. It would not be entitled to call upon the parties to settle their dispute by peaceful means,⁸⁴ as even that power of the United Nations organs is limited to disputes the continuance of which is likely to endanger peace.

In a dispute which falls properly within the jurisdiction of the United Nations, the competent organ is not supposed to deal with the merits of the dispute, but should determine instead which procedure or method of settlement is best suited for that dispute. It should call upon the parties to settle their dispute by one of the seven principal means for settling disputes which are enumerated in the charter or by any "other peaceful means of their own choice."⁸⁵ If such general call does not lead to a settlement, the competent organ of the United Nations may recommend, in a more specific manner, "appropriate procedures or methods of adjustment," taking into consideration "any procedures for the settlement of the dispute which have already been adopted by the parties."⁸⁶ Should the parties fail to settle the dispute by the means thus recommended, the dispute would have to be referred again to the United Nations.⁸⁷ The competent organ of the United Nations would then have a choice of recommending another method of settlement not yet tried by the parties or of recommending "such terms of settlement as it may consider appropriate."⁸⁸ In either case action by the United Nations is conditional on a prior finding by the Security Council that "the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security."⁸⁹ Though the difference between a dispute the continuance of which is likely to endanger peace and a dispute the continuance of which is "in fact" likely to endanger peace is minimal, the second case would require a finding that the dispute constitutes a serious danger to peace. Only if such danger is found to exist would further action by the United Nations be justified; without such a finding there would be no basis for further recommendations either as to the additional procedure to be followed by the parties or as to the actual terms of settlement which are deemed by the United Nations to be appropriate.

⁸³ See *Id.* art. 34.

⁸⁴ Pursuant to art. 33, para. 2, of the charter.

⁸⁵ See *id.* art. 33, paras. 1 & 2.

⁸⁶ See *id.* art. 36, paras. 1 & 2.

⁸⁷ See *id.* art. 37, para. 1.

⁸⁸ See *id.* art. 37, para. 2.

⁸⁹ *Ibid.*

Finally, "if all the parties to any dispute so request," the United Nations is authorized to "make recommendations to the parties with a view to a pacific settlement of the dispute," regardless of the limitations of the other provisions of chapter VI.⁹⁰ This authority would seem to extend to "any dispute," even if such a dispute is not one likely to endanger peace or one the continuance of which "is in fact likely to endanger" peace. The range of the recommendations to be adopted would be determined by the agreement of the parties, and such recommendations might relate to either procedure or substance.

This procedure has been carefully devised to permit a gradual approach to each international dispute, the powers of the United Nations in each case depending on the seriousness of the dispute and the amount of danger to peace resulting therefrom. A minor dispute can be submitted to the United Nations only if all the parties to it agree expressly to the submission. Compulsory jurisdiction of the United Nations exists only when a dispute reaches the stage at which its continuance is likely to endanger peace. Such jurisdiction is ordinarily limited to recommendations as to procedure to be followed by the parties, and only when the continuance of the dispute is "in fact" likely to endanger peace is the United Nations permitted to make recommendations with respect to actual terms of settlement.

Even when a competent organ of the United Nations has determined that a threat to the peace, breach of the peace, or act of aggression exists, the power to make recommendations concerning the settlement of the underlying dispute continues, as the charter authorizes the making of recommendations in such a case "to maintain or restore international peace and security."⁹¹ This power is independent of the power to decide what diplomatic, economic or military measures should be taken to remove a threat to the peace or to suppress an act of aggression, and can be exercised simultaneously. While the first duty of the United Nations in case of a breach of the peace is to stop hostilities, it must not neglect its other duty—to bring the dispute back below the boiling point. Once these special tasks have been accomplished, the United Nations may proceed in a more leisurely fashion to its basic task under chapter VI, and may make such recommendations as it may deem appropriate as to methods or terms of adjustment.

2. "*Disputes*," "*Situations*" and "*Questions*."—In the preceding discussion no attempt has been made to distinguish between "disputes" and "situations," but the charter seems to attach some importance to this distinction. In some cases, the duties under the charter apply both to disputes and situations, in others only to disputes. For instance, it is one of the purposes of the United Nations to bring about by peaceful means "adjustment or settlement of international disputes or situations";⁹² but the duty of members to settle conflicts

⁹⁰ *Id.* art. 38.

⁹¹ *Id.* art. 39.

⁹² *Id.* art. 1, para. 1.

applies only to "disputes."⁹³ The charter, on the one hand, authorizes an investigation by the United Nations of "any dispute" or "any situation which might lead to international friction or give rise to a dispute";⁹⁴ it permits a member of the United Nations to call to the attention of the competent organ "any dispute" or "any situation" of the nature referred to above;⁹⁵ and it confers jurisdiction on such organ to recommend appropriate procedures or methods of adjustment with respect to both disputes and situations the continuance of which is likely to endanger peace.⁹⁶ On the other hand, a state which is not a member of the United Nations can bring before a United Nations organ only a dispute to which it is party;⁹⁷ an organ of the United Nations must take into account procedures adopted by the parties only in case of a dispute;⁹⁸ that organ can recommend terms of settlement, as distinguished from procedural methods, only with respect to disputes;⁹⁹ and parties can confer on an organ of the United Nations special jurisdiction, outside the general framework of chapter VI of the charter, only as to disputes.¹⁰⁰ It may also be noted that in the Security Council, only "a party to a dispute" is obliged to abstain from voting, and there is no such express prohibition as to situations.¹⁰¹

Some provisions are restricted, however, to situations. For instance, the General Assembly may call the attention of the Security Council only "to situations which are likely to endanger peace and security,"¹⁰² and may recommend measures for peaceful adjustment only with respect to a "situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations";¹⁰³ these two bases for the action of the Assembly do not seem to extend to disputes. The Security Council may call upon the parties to comply with provisional measures only in case of a "situation,"¹⁰⁴ which expression seems in that case to embrace "any threat to the peace, breach of the peace, or act of aggression"; there is no clear authority in the charter for ordering provisional measures in case of a "dispute."

The charter distinguishes also between a dispute and a "question," but "question" seems to be a broader term, including not only disputes and situations but also some other matters.¹⁰⁵ While the jurisdiction of the Security Council is limited to "disputes" and "situations," the jurisdiction of the Gen-

⁹³ *Id.* art. 2, para. 3 and art. 33.

⁹⁴ *Id.* art. 34.

⁹⁵ *Id.* art. 35, para. 1.

⁹⁸ *Id.* art. 36, para. 2.

⁹⁶ *Id.* art. 36, para. 1. See also art. 12.

⁹⁹ *Id.* art. 37, para. 2.

⁹⁷ *Id.* art. 35, para. 2.

¹⁰⁰ *Id.* art. 38.

¹⁰¹ *Id.* art. 27, para. 3. But see Liang, *The Settlement of Disputes in the Security Council. The Yalta Voting Formula*, 24 BRIT. YB. INT'L L. 330, 347-53 (1947).

¹⁰² U.N. CHARTER, art. 11, para. 3.

¹⁰³ *Id.* art. 14.

¹⁰⁴ *Id.* art. 40.

¹⁰⁵ Compare *id.* art. 31 with art. 32; compare art. 11, para. 2 with art. 35, para. 2.

eral Assembly extends to "any questions or any matters within the scope of the present Charter."¹⁰⁶ The General Assembly may, in particular, deal with "any questions relating to the maintenance of international peace and security,"¹⁰⁷ and economic, social, cultural, education and health "matters."¹⁰⁸ It may not, however, make any recommendations as to "any dispute or situation" in respect of which the Security Council is exercising its function under the charter.¹⁰⁹

In provisions about voting, the charter distinguishes also between "important questions" and "other questions,"¹¹⁰ and between "procedural matters" and "all other matters."¹¹¹

While the authors of the charter seem to have distinguished purposely between "disputes," "situations" and "questions," in the practice of the United Nations these fine distinctions have been in fact abandoned, and there is a general tendency to use the all-embracing term "question" rather than the more precise terms "dispute" or "situation."¹¹² Nevertheless, in a few cases before the Security Council the problem of whether a "dispute" had arisen had to be solved, as the voting rights of the parties depended on the solution of that problem.¹¹³

3. *Competent Organs.*—Most provisions of chapter VI of the charter, and all provisions of chapter VII confer jurisdiction to deal with dangerous disputes and situations on the Security Council. This is consistent with the idea that the Security Council should have "primary responsibility for the maintenance of international peace and security."¹¹⁴ It was expected that this would "ensure prompt and effective action by the United Nations,"¹¹⁵ particularly as the Security Council was to be "so organized as to be able to function continuously."¹¹⁶

The charter provides, however, at the same time, that a member of the United Nations may bring a dangerous dispute or situation not only to the attention of the Security Council but also to the attention of the General Assembly.¹¹⁷ Even a non-member state can bring a dispute to the attention of either the Security Council or the General Assembly.¹¹⁸ While the charter

¹⁰⁶ *Id.* art. 10.

¹⁰⁹ *Id.* art. 12.

¹⁰⁷ *Id.* art. 11, para. 2.

¹¹⁰ *Id.* art. 18.

¹⁰⁸ *Id.* art. 13.

¹¹¹ *Id.* art. 27.

¹¹² For instance, the list of matters which were being dealt with by the Security Council in September 1959 included twelve questions, four situations, seven complaints, and not even one "dispute." Letter from the Secretary General to the General Assembly, Sept. 17, 1959 (A/4216). Several "disputes" were, however, submitted to the Council in earlier years.

¹¹³ REPERTOIRE OF THE PRACTICE OF THE SECURITY COUNCIL 1946-1951, at 165-70 (ST/PSCA/1) (U.N. Pub. Sales No. 1954.VII.1).

¹¹⁴ U.N. CHARTER art. 24, para. 1.

¹¹⁵ *Ibid.*

¹¹⁶ *Id.* art. 28, para. 1.

¹¹⁷ *Id.* art. 35, para. 1; art. 11, para. 2.

¹¹⁸ *Id.* art. 35, para. 2; art. 11, para. 2.

does not determine in precise terms the procedure to be followed in such cases by the General Assembly, it might have been assumed that the provisions of chapter VI as to the various steps to be taken by the Security Council apply, *mutatis mutandis*, to the General Assembly. The rules of procedure of the General Assembly contain, however, no indication of the procedure to be followed with respect to disputes or situations submitted to the Assembly, and in practice the Assembly does not observe the progressive steps and the fine distinctions laid down in chapter VI.¹¹⁹ It might be added that even the Security Council does not follow the provisions of chapter VI in a precise manner, and often takes steps under the latter articles of that chapter without prior action under its earlier articles.¹²⁰

In its activities under chapter VI the Security Council is not to be hampered in any way by any action of the General Assembly. In particular, the Assembly is prohibited from making any recommendations with regard to any dispute or situation in respect of which the Security Council is exercising the functions assigned to it in the charter.¹²¹ Thus, when the Security Council deals with a dispute, the General Assembly cannot interfere with the Council's action through adoption of inconsistent resolutions. This does not, however, preclude Assembly discussion of a question considered simultaneously by the Security Council, as long as no recommendations are adopted by the Assembly.¹²²

There is, of course, no restriction on the power of the General Assembly to deal with questions which have not been brought before the Security Council, or with which the Security Council has ceased to deal.¹²³ In cases in which the jurisdiction of the General Assembly is thus unrestricted, it can not only discuss the matter but can also adopt recommendations with regard thereto. Such recommendations may be addressed either directly to the states concerned, or to the Security Council, or simultaneously to both.¹²⁴ In particular, the General Assembly "may" call the attention of the Security Council to situations which are likely to endanger international peace and security;¹²⁵ and it "shall" refer to the Council any question "on which action is necessary."¹²⁶ Such questions may be referred to the Security Council "either before or after discussion," and it is not clear whether the Assembly may accompany such references with its recommendations as to further steps to be taken. In

¹¹⁹ For a summary of the practice of the General Assembly, see Interim Committee of the General Assembly, *Report*, U.N. GEN. ASS. OFF. REC. 5th Sess., Supp. No. 14, at 6-31 (1950).

¹²⁰ For a summary of the practice of the Security Council under chapter VI of the charter, see *REPERTOIRE OF PRACTICE OF THE SECURITY COUNCIL 1946-1951*, at 375-417 (ST/PSCA/1) (U.N. Pub. Sales No. 1954. VIII.1); *Id.*, *SUPPLEMENT 1952-1955*, at 131-41 (ST/PSCA/1/Add.1) (U.N. Pub. Sales No. 1957. VII.1).

¹²¹ U.N. CHARTER art. 12, para. 1.

¹²⁴ *Id.* art. 11, para. 2.

¹²² *Id.* art. 11, para. 2.

¹²⁵ *Id.* art. 11, para. 3.

¹²³ *Id.* art. 12, para. 2.

¹²⁶ *Id.* art. 11, para. 2.

fact, the General Assembly has on several occasions requested the Security Council to take action if certain events should occur,¹²⁷ but the Security Council did not find it necessary to comply with all such requests.¹²⁸ The question has been debated, especially in connection with the Uniting for Peace Resolution,¹²⁹ whether the General Assembly itself can take "action," if the Security Council should fail to exercise its primary responsibility for the maintenance of the peace. As such action would usually be taken under chapter VII rather than chapter VI of the charter, it is doubtful that this problem would arise with respect to the activities of the General Assembly in the field of peaceful settlement of disputes. Neither recommendations as to procedures to be followed in settling a dispute nor recommendations as to the merits of a dispute should be considered as "action"; otherwise all the provisions conferring jurisdiction on the General Assembly in this field would become meaningless. In any case, the practice of the General Assembly is to adopt such recommendations directly and not to refer such cases to the Security Council.

Consequently, the only important limitation on the activities of the General Assembly with respect to disputes submitted to it is the one enjoining recommendations by the General Assembly while the Security Council is dealing with the same dispute. As, however, an item on the agenda of the Security Council may be removed from it by a procedural vote of any seven members of the Council, this limitation has not proved to be an obstacle in any case before the Assembly.¹³⁰

4. *Recommendations.*—The provisions of the charter which contain the voting rules of the General Assembly and the Security Council both speak about "decisions" of these two organs.¹³¹ The provision relating to the General Assembly enumerates as one of the "important questions" requiring a two-thirds majority "recommendations with respect to the maintenance of international peace and security," which category presumably includes decisions concerning the settlement of particular disputes submitted to the Assembly.

Most of the provisions relating to the functions of the General Assembly and the Security Council in the field of pacific settlement of disputes mention explicitly the right of these organs to make appropriate recommendations.¹³²

¹²⁷ For lists of such recommendations, see *REPertoire of Practice of the Security Council*, SUPPLEMENT 1952-1955, *op. cit. supra* note 120, at 80.

¹²⁸ See, e.g., the discussion in the Security Council on the recommendations of the General Assembly on the Palestine question, U.N. SECURITY COUNCIL OFF. REC. 3d year, 253d-254th meetings, at 264-92 & 262d-263d meetings, at 7-44 (1948).

¹²⁹ U.N. Resolution 377 A (V), U.N. GEN. ASS. OFF. REC. 5th Sess., Supp. No. 20, at 10-12 (A/1775) (1950).

¹³⁰ This is due principally to the fact that the majority in the Security Council belongs to the same group of states which command a majority in the General Assembly.

¹³¹ U.N. CHARTER arts. 18 & 27.

¹³² *Id.* arts. 10-12, 14 & 36-38.

It is generally understood that a recommendation is not binding, and that the parties to a dispute are not bound to execute a recommendation addressed to them. It is, of course, possible for all the states concerned to agree in advance that a recommendation will be binding on them, and binding recommendations have been made on a few occasions pursuant to such agreements.¹³³ But even a non-binding recommendation is not without political effect, and the great battles in the United Nations concerning the adoption of some recommendations testify to the importance attached to them by all the states concerned. While a state may decline to execute a recommendation, it may not ignore it; it should give to the recommendation "due consideration in good faith," and if it decides to disregard the recommendation, "it is bound to explain the reasons for its decision."¹³⁴

In practice, members of the United Nations seldom have explicitly refused to follow the recommendations of the General Assembly or the Security Council, except where they could contend with some justification that in adopting a particular recommendation the organ of the United Nations either exceeded its competence or committed a violation of the charter. As the organs dealing with a controversial question usually refuse to submit the question of their competence to an impartial determination by the International Court of Justice,¹³⁵ the state contesting the validity of a recommendation cannot obtain an authoritative decision regarding competence and has no other choice than to refuse to execute it.

A question has arisen also as to the effect of the decisions of the Security Council under chapter VI of the charter which are not labeled "recommendations." The charter provides expressly that "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."¹³⁶ There is no doubt that this provision applies to decisions (as distinguished from mere recommendations) under chapter VII of the charter in case of a threat to or breach of the peace; but does it apply to any decisions under chapter VI? In particular, what are the limits on the Security Council's power to investigate disputes and to appoint special commissions of investigation? The practice of the Security Council

¹³³ For example, in the case of former Italian possessions in Africa, pursuant to Annex XI to the Treaty of Peace with Italy of Feb. 10, 1947, 49 U.N.T.S.3, at 214-15 (1950).

¹³⁴ Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of S.W. Africa, [1955] I.C.J. Rep. 67, 119 (separate opinion of Judge Lauterpacht). See generally Johnson, *The Effect of Resolutions of the General Assembly of the United Nations*, 32 BRIT. YB. INT'L L. 97 (1955-1956); Sloan, *The Binding Force of a "Recommendation" of the General Assembly of the United Nations*, 25 BRIT. YB. INT'L L. 1 (1948).

¹³⁵ See the report of the Special Committee on Reference to the International Court of Justice of Questions of United Nations Competence, 44 PROC. AM. SOC'Y INT'L L. 256-69 (1950).

¹³⁶ U.N. CHARTER art. 25.

does not provide a definitive answer to this question,¹³⁷ especially as this issue has often been submerged in the broader issue of "double veto."¹³⁸ The most recent trend is to consider such a decision as a procedural one which can be executed to the extent that at least one of the parties to the dispute is willing to allow an investigation of the situation on its side of the border.

Another recent development would give even to the resolutions of the General Assembly a binding effect in certain circumstances. As pointed out by the Secretary-General of the United Nations, it seems "appropriate to distinguish between recommendations which implement a Charter principle, which in itself is binding on Member States" and other recommendations; a "recommendation of the first kind would have behind it the force of the Charter."¹³⁹ Or, as it was stated on another occasion, "the Assembly's directions are legally binding . . . because it is prescribing simply what the United Nations Charter prescribed, and its resolution merely gives effect to, and interprets, the Charter in a specific case"; accordingly, it "involves a legal obligation" which may be enforced by all available sanctions.¹⁴⁰ In accepting the charter, the members of the United Nations have accepted several important obligations limiting henceforth their freedom of action. Whenever the General Assembly should find that a member has violated one of these obligations, it would have not only the right but also the duty to call this fact to the attention of all concerned and to remind the delinquent member of his duty to fulfill the obligations of the charter "in good faith."¹⁴¹ The General Assembly might also specify in its recommendation the manner in which the charter obligation should be fulfilled in a particular case, and such recommendation would have the same binding force as the charter provision which it implements. Consequently, to the extent that a resolution of the General Assembly is merely a reiteration in a more specific form of an obligation already imposed by the charter, such a resolution would be binding on all concerned. The only limitation would be that the Assembly must keep strictly within the bounds of the

¹³⁷ Cf. the discussion of the Greek Question, U.N. SECURITY COUNCIL OFF. REC. 2d year, 147th-167th meetings, at 1126-1548, especially the statement by the President of the Council, at 1547 (1947).

¹³⁸ Compare the discussion of the events in Czechoslovakia, U.N. SECURITY COUNCIL OFF. REC. 3d year, 288th, 300th, 303d & 305th meetings (1948), with the discussion of the Laos question, U.N. SECURITY COUNCIL OFF. REC. 14th year (847th-848th meetings) (1959). See generally Gross, *The Question of Laos and the Double Veto in the Security Council*, 54 AM. J. INT'L L. 118 (1960); Gross, *Double Veto and the Four-Power Statement on Voting in the Security Council*, 67 HARV. L. REV. 251 (1953); Rudzinski, *The So-Called Double Veto*, 45 AM. J. INT'L L. 443 (1951); JIMEZ DE ARECHEGA, *VOTING AND THE HANDLING OF DISPUTES IN THE SECURITY COUNCIL* 1-17 (1950).

¹³⁹ Report of the Secretary-General in pursuance of General Assembly Resolutions 1124(XI) & 1125(XI), U.N. GEN. ASS. OFF. REC. 11th Sess., Annexes, Agenda Item No. 66, at 59 (A/3527) (1957).

¹⁴⁰ Statement by Mr. Belaunde of Peru, U.N. GEN. ASS. OFF. REC. 11th Sess., Plenary, 836, 837 (1957).

¹⁴¹ U.N. CHARTER art. 2, para. 2.

charter and might not create new obligations under the guise of applying or interpreting charter provisions. It would be extremely difficult to draw in advance a precise jurisdictional line; it would have to be determined in each instance according to all the circumstances of the case. Again, it would be desirable to have the possibility of an appeal to a judicial body in case of a dispute about the power of the General Assembly to implement a charter obligation in a particular manner, but the current practice of the Assembly does not warrant an expectation that such auto-limitation will be accepted by the Assembly. There is a grave danger, therefore, that the decision of the Assembly about the fulfillment of charter obligations in a particular case would be political rather than quasi-judicial.

In conclusion, it would seem that the original clear distinction between non-binding recommendations under chapter VI of the charter and binding decisions of the Security Council under chapter VII has lost its importance in practice, and that in certain circumstances the recommendations of the General Assembly might have the same effect as the obligations assumed by member states through their acceptance of the charter itself. Only the requirement of a two-thirds majority in respect of recommendations relating to maintenance of international peace stands in the way of a possible abuse of this power by the Assembly.

5. *Legal and Political Disputes.*—The Charter of the United Nations retains the traditional distinction between legal disputes and other disputes, *i.e.*, “political” disputes. In particular, it requires that the Security Council, in making recommendations as to the appropriate procedures for settling a dispute, should “take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice.”¹⁴² There are two important limitations in this clause. One is contained in the phrase “as a general rule,” which makes it possible for the Security Council in a particular case to refuse a reference to the court on the ground that such a reference is not desirable in view of the special circumstances of that case. The other limitation is contained in the requirement that the actual reference to the court be made “by the parties.” The court cannot acquire obligatory jurisdiction over a dispute on the basis of a decision of the Security Council; its jurisdiction would depend on the agreement of the parties to refer the case to the court.¹⁴³ Consequently, this provision does not actually increase the jurisdiction of the court in any manner, except to the extent that in ordinary circumstances parties to a dispute are quite likely to follow a recommendation

¹⁴² U.N. CHARTER, art. 36, para. 2.

¹⁴³ Thus, the claim of the British Government in the *Corfu Channel Case*, that the mere recommendation of the Security Council was sufficient to endow the court with jurisdiction was rejected by the seven judges who dealt with this contention. *Corfu Channel Case*, [1947–1948] I.C.J. Rep. 15, 31–32 (1948) (separate concurring opinion). An agreement to submit the case to the court was, however, reached later by the parties concerned. *Corfu Channel Case*, [1949] I.C.J. Rep. 4, 6,

of the Security Council.

The charter allows also the reference of "any legal question" to the court for an advisory opinion. Both the General Assembly and the Security Council may request such opinions, and the General Assembly may authorize other organs of the United Nations and specialized agencies to "request advisory opinions of the court on legal questions arising within the scope of their activities."¹⁴⁴ Four other organs of the United Nations and twelve specialized agencies have been authorized by the General Assembly to make such requests.¹⁴⁵ By 1960, eleven questions were submitted to the court for its opinion, nine of them by the General Assembly itself and two by specialized agencies.¹⁴⁶ With respect to an advisory opinion, the consent of the states parties to a dispute is not required, "even where the Request for an Opinion relates to a legal question actually pending between States"; and no state "can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take."¹⁴⁷ On the other hand, "The Court's reply is only of an advisory character; as such it has no binding force."¹⁴⁸ It guides, however, the activities of the organ which made the request, and in consequence the court's opinion has usually an important effect. While the power to request advisory opinions should not be used to introduce by a back door complete jurisdiction over disputes between states, the court is not likely to consider itself incompetent simply because the question asked is connected with an actual dispute, except when the request relates directly to "the main point of a dispute" or "touches" its "merits."¹⁴⁹ Thus there can be no doubt that important legal issues may be decided through advisory procedure, and that this procedure constitutes an important departure from the principle that disputes can be submitted to the court only by agreement of the parties to a dispute.

The crucial limitation both as to recommendations of the Security Council to refer a dispute to the court and as to requests for advisory opinions is that

¹⁴⁴ U.N. CHARTER art. 96.

¹⁴⁵ For a list, see [1958-1959] I.C.J.Y.B. 42-43.

¹⁴⁶ For a list, see *id.* at 44.

¹⁴⁷ Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, [1950] I.C.J. Rep. 65, 71 (advisory opinion).

¹⁴⁸ *Ibid.*

¹⁴⁹ The Permanent Court of International Justice in the *Eastern Carelia Case* refused to give a reply on the ground, *inter alia*, that "answering the question would be substantially equivalent to deciding the dispute between the parties." *Eastern Carelia Case*, P.C.I.J., ser. B, No. 5, at 29. This case was distinguished by the International Court of Justice in the *Peace Treaties* case on the ground that the question in the *Carelia Case* "directly related to the main point of a dispute," while in the *Peace Treaties* case the request related to a procedural question and "in no way touches the merits" of the dispute. [1950] I.C.J. Rep. at 71. It might be quite difficult to determine in a particular case whether the question asked "touches" the merits, but the trend of recent decisions seems to indicate that the court is not likely to relinquish jurisdiction on this ground.

they must relate to "legal" disputes or questions. The court has considered as legal rather than political, for instance, questions relating to the interpretation of the United Nations Charter or to the interpretation of international agreements.¹⁵⁰ It has not yet refused a case on the ground that it was not legal.

There is a large amount of literature on the question of criteria to be used in determining the legal character of a dispute.¹⁵¹ While some authors and some international treaties try to establish objective criteria,¹⁵² others prefer subjective ones and leave the decision in such cases to the parties to the dispute. According to this second theory, if a party to a dispute considers that the dispute does not relate to the "rights" of the party (or parties) concerned but involves instead a conflict of "interests," this should be sufficient to establish the political character of the dispute. This attitude is but a modern echo of the classical reservation in arbitration treaties limiting arbitration to those disputes of a legal nature which "do not affect the vital interests, the independence, or the honor of the two Contracting States,"¹⁵³ or, more precisely, allowing each party to the treaty to exclude from pacific settlement "all disputes which, in its opinion, relate to questions affecting principles of its constitution or its vital interests or questions which international law leaves to the exclusive jurisdiction of States."¹⁵⁴

As long as the question of the political character of a dispute is left to the subjective determination of one of the parties, the acceptance of international jurisdiction is almost completely illusory. It is quite clear that the draftsmen of the United Nations Charter did not accept this approach; the determination of the question whether a dispute is legal is left, in the first instance, to the organ of the United Nations or of a specialized agency which refers the matter to the court. If the issue of the legal character of the dispute or question is revived before the court, it has the power to make the final determination, and its practice shows that the court applies in such a case objective rather than subjective criteria.¹⁵⁵ The fact that the question presented to the

¹⁵⁰ See, e.g., Conditions of Admission of a State to the United Nations, [1948] I.C.J. Rep. 57, 61 (advisory opinion).

¹⁵¹ See, e.g., the books and articles cited in SOHN, *CASES ON WORLD LAW* 1041-42 (1950). See also Bloomfield, *Law, Politics and International Disputes*, 516 INT'L CONC. 257 (1958).

¹⁵² For example, the Arbitration Treaty With Germany, May 5, 1928, art. I, T.S. No. 774, provides for the arbitration of disputes in which the parties are concerned "by virtue of a claim of right made by one against the other under treaty or otherwise . . . and which are justiciable in their nature by reason of being susceptible of decision by the application of principles of law or equity. . . ."

¹⁵³ See, e.g., Arbitration Convention With Great Britain, April 4, 1908, art. I, T.S. No. 494.

¹⁵⁴ Treaty of Conciliation, Judicial Settlement and Arbitration Between Switzerland and Turkey, Dec. 9, 1928, 159 L.N.T.S. 219.

¹⁵⁵ See Conditions of Admission of a State to the United Nations, [1948] I.C.J. Rep. 57 (advisory opinion).

court contains a political element is irrelevant, at least as long as that element is not a dominant one.¹⁵⁶

It may be noted that in no contentious case before the court has the question of the legal character of a dispute been presented for adjudication. This might mean either that the parties do not as a rule submit to the court disputes which one of them might consider as non-legal or that once a matter is before the court a legal solution can be found for it without any special difficulty. In particular, it has often been argued that the court can always dispose of the contentions of the parties in a legal manner, as any contention which is not legally justified will be rejected by the court.¹⁵⁷ If the problem is to find out which party is right on the basis of existing law, the court can provide the answer. On the other hand, if there is agreement on the rule to be applied but one of the parties claims that the rule should be changed to its advantage, the court would have to refuse to deal with the question whether and how the law should be changed. Even this limitation is not absolute, however, as the parties may authorize an international tribunal to establish new rules for them,¹⁵⁸ or to decide the case *ex aequo et bono*,¹⁵⁹ i.e., by going outside the sphere of existing law in order to find the solution which would be most just, appropriate and fair in the circumstances of the case. In some cases, the court may make suggestions or recommendations to the parties without their prior authorization, but such suggestions and recommendations do not, of course, bind the parties.¹⁶⁰

In conclusion, it seems that the distinction between legal and political disputes does not play an important role in the practice of either the United Nations or the International Court of Justice, but may play a significant role when a decision has to be made as to what procedure should be chosen to deal with a particular dispute.¹⁶¹

6. *Domestic Jurisdiction*.—It might be said that in modern practice the issue of domestic jurisdiction has replaced the question of the legal character of disputes, and this might account for the fact that this second question is

¹⁵⁶ *Id.* at 69–71 (separate opinion of Judge Alvarez).

¹⁵⁷ See, e.g., Kelsen, *Principles of International Law*, 380–86, especially 383 (1952).

¹⁵⁸ This was done, for example, in *The North Atlantic Fisheries Arbitration* (1910), 1 SCOTT, *THE HAGUE COURT REPORTS* 141, 174–76 (1916); and in the *Behring Sea Arbitration* (1893), 1 MALLOY, *TREATIES . . . BETWEEN THE UNITED STATES AND OTHER POWERS* 751, 754–55 (1910).

¹⁵⁹ This is specifically authorized by paragraph 2 of article 38 of the statute of the International Court of Justice. The application of this paragraph was agreed to by Guatemala in the *Belize* (British Honduras) case, but the corresponding British declarations were limited to legal disputes only. *Belize*, [1946–1947] I.C.J.Y.B. 217, 219–20, [1950–1951] *id.* 205.

¹⁶⁰ For some recent examples, see Fitzmaurice, *The Law and Procedure of the International Court of Justice, 1951–1954: Questions of Jurisdiction, Competence and Procedure*, 34 BRIT. YB. INT'L L. 1, 132–37 (1958).

¹⁶¹ See further section 7, pp. 236–39 *infra*.

not often raised.¹⁶² The common feature of these two questions is that the contention in both of them is that a particular matter is not and cannot be regulated by international law or decided upon by an international tribunal. Both political and domestic questions are considered as being outside the ordinary framework of international law and adjudication. But there is an important difference between these two questions. Though the political questions are withdrawn from the jurisdiction of the court, they can be dealt with by political organs of the United Nations. On the other hand, if a matter is "essentially within the domestic jurisdiction of any state," there is no obligation to submit it to settlement under the provisions of the charter which have been discussed above.¹⁶³ The charter contains also the important injunction that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."¹⁶⁴ The only exception to this rule is that "this principle shall not prejudice the application of enforcement measures under chapter VII."¹⁶⁵

In the practice of the United Nations the issue of domestic jurisdiction has been raised frequently, but in almost all the cases it has been held that the action contemplated by the United Nations did not constitute an intervention in matters which were essentially within the domestic jurisdiction of the state against which the action was taken.¹⁶⁶ The controversy has centered around the meaning of the word "intervene" and the interpretation of the phrase "matters which are essentially within the domestic jurisdiction of any state." The word "intervene" has been generally interpreted as prohibiting only "dictatorial interference" in domestic matters.¹⁶⁷ There seems to be also general agreement that the question of what is a matter essentially within the domestic jurisdiction of a state is a relative question, depending on the development of international law; and that, in particular, matters dealt with in international agreements binding upon the parties to a case cannot be considered any longer as domestic.¹⁶⁸ The question arose, however, whether issues of human

¹⁶² For example, the consideration of these two questions is combined in VAUCHER, *LE PROBLÈME DE LA JUSTICIABILITÉ ET DE LA NONJUSTICIABILITÉ EN DROIT INTERNATIONAL DES DIFFÉRENDS DITS "POLITIQUES" OU "NON-JURIDIQUES" ET LES NOTIONS DE COMPÉTENCE EXCLUSIVE ET DE COMPÉTENCE NATIONALE* (1951).

¹⁶³ U.N. CHARTER art. 2, para. 7.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ For a list of the cases discussed in the United Nations, see 1 *REPERTORY OF UNITED NATIONS PRACTICE* 157-59, and table opposite p. 156 (U.N. Pub. Sales No. 1955. V.2); *id.* Supp. No. 1, at 68-71 (U.N. Pub. Sales No. 1957. V.4).

¹⁶⁷ See, e.g., United Nations Comm'n on the Racial Situation in the Union of South Africa, *Report*, U.N. GEN. ASS. OFF. REC. 8th Sess., Supp. No. 16, at 17-18 (A/2505 & A/2505/Add.1) (1953).

¹⁶⁸ Modern practice follows in this respect the advisory opinion of the Permanent Court of International Justice in *Nationality Decrees in Tunis and Morocco*, P.C.I.J., ser. B, No. 4, at 24-26 (1923). See, e.g., the discussion of the treatment of Indians in the Union of South Africa, GEN. ASS. OFF. REC. 1st Sess., pt. 2, at 3, 10, 22 & 50 (1946).

rights and self-determination of peoples are still matters essentially within domestic jurisdiction or have become matters of international concern because of the emphasis placed on them by the charter; the majority view denies that either of these issues is an essentially domestic matter.¹⁶⁹

The principal disagreement in this area relates to the question whether the issue of domestic jurisdiction should be determined by the organ dealing with the matter (usually the General Assembly or the Security Council) or should be sent to the court for an impartial judicial determination. The contention that the matter should be decided by the interested state has been discarded almost unanimously, but in several cases a considerable minority has demanded that the matter should be referred to the court; in no case, however, has an advisory opinion been asked on the subject. The reasons given for this approach were that the political aspects of the matter far outweighed the legal ones, that the decision should not be delayed, and that submitting such an issue to the court would put too heavy a strain on it and expose the court to criticism.¹⁷⁰

It may be pointed out that the issue of domestic jurisdiction has been raised in several cases before the court, and—except in one case—the court found no difficulty in dismissing the objection.¹⁷¹ On the other hand, where the respondent state relied on a condition in the other party's declaration which excluded from the jurisdiction of the court "differences relating to matters which are essentially within the national jurisdiction as understood by the Government" concerned, the court held that it was without jurisdiction to adjudicate upon the dispute.¹⁷² There seems to be, however, no doubt that the court would refuse to allow a state to claim the right to define for itself what matters should be considered matters within its domestic jurisdiction except in the few instances where such special right has been expressly reserved by a state in a declaration or agreement accepting the jurisdiction of the court. In par-

¹⁶⁹ See, e.g., United Nations Comm'n on the Racial Situation in the Union of South Africa, *Report*, *supra* note 167, at 18–21.

¹⁷⁰ See, e.g., 1 REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS 155–56 (1955).

¹⁷¹ For example, in *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, [1950] I.C.J. Rep. 65 (advisory opinion), the court held that the "interpretation of the terms of a treaty . . . could not be considered as a question essentially within the domestic jurisdiction of a State." *Id.* at 70–71. In *Anglo-Iranian Oil Co.*, [1951] I.C.J. Rep. 89, 92–93, the court expressed the view that a claim based on an alleged violation of international law by the breach of a concession agreement and by a denial of justice cannot be considered as a claim which *a priori* "falls completely outside the scope of international jurisdiction." The court also held in *Interhandel*, [1959] I.C.J. Rep. 6, that the dispute in that case related to "questions of international law" rather than "matters within the domestic jurisdiction of the United States." *Id.* at 24–25.

¹⁷² *Case of Certain Norwegian Loans*, [1957] I. C. J. Rep. 9, 22–27. In a vigorous separate opinion Judge Lauterpacht held that this condition was incompatible with the power of the court to determine its own jurisdiction and that, therefore, the whole declaration was invalid. *Id.* at 34, 43–66. The issue was also raised but not decided upon in *Interhandel*, *supra* note 171.

ticular, it may be expected that the court would interpret in a reasonable manner the provisions of the charter with respect to domestic jurisdiction, and the fears expressed in the General Assembly seem to be entirely unwarranted. This does not mean, however, that the court would impose no limits whatsoever on the powers of the United Nations in this area; it only means that in view of the constant growth of the area which is of international concern, the court is not likely to draw the boundaries between domestic and international matters in any permanent, *a priori* manner, but would be willing to adjust them in the light of actual development of new rules of international law. Such rules need not be derived from treaties only, but might also develop through custom and through generally accepted practice of the United Nations.

Consequently, it seems that the basic issue in the field of domestic jurisdiction is not where to draw the line between domestic and international matters, but to ensure that the line would be drawn not by a political body in the heat of a passionate debate but by an impartial judicial tribunal on a basis of some objective criteria. Whenever a challenge is made to the competence of the United Nations, which seems to present a substantial *prima facie* case against such competence, the matter should be referred to the International Court of Justice for an advisory opinion.¹⁷³ If a sufficient number of cases is presented to the court, it can be expected that the matter of domestic jurisdiction would be clarified. Such an approach is preferable to the present practice under which, on the one hand, the General Assembly steam-rollers all the objections, and, on the other hand, the objecting state claims that the Assembly's decision is unconstitutional and refuses to execute it.

7. *Conclusions.*—The role played by the United Nations in the field of settlement of international disputes is an important one. Many disputes have actually been submitted to either the General Assembly or the Security Council; in most of them the recommendations of these organs have contributed significantly to the settlement or, at least, subsidence of these disputes. Nevertheless, due to the use of the veto in the Security Council in almost all important cases and to the constant increase in the membership of the General Assembly toward one hundred, neither of these two organs seems properly suited to dealing with the merits of a dispute. In addition, the purely political character of these organs makes it difficult for them to devise an objective, impartial solution for the issues involved in a dispute. On the other hand, these organs are well qualified to make the preliminary decision about the procedure to be followed in settling a particular dispute. This was the original basis of chapter VI of the charter, and the idea needs to be revived that the recommendations of the United Nations should not deal, in the first place, with the merits of a

¹⁷³ For an elaboration of the procedure which might be followed in such cases, see *Report on Reference to the International Court of Justice of Questions of United Nations Competence*, 44 PROC. AM. SOC'Y INT'L L. 256, 268-89 (1950).

dispute but with the means by which the dispute should be settled.¹⁷⁴ Any decisions of the United Nations on the merits of a dispute should be based on a prior, impartial investigation of the factual and legal issues by a non-political body, and should be limited to the endorsement or rejection of the report or opinion of that body as a whole. Last-minute tampering by the General Assembly with proposals of its own special committees or commissions has seldom proved satisfactory in the past, and should be avoided in the future.

As suggested in the first part of this article, the work of the United Nations would be greatly facilitated if it had at its disposal, in place of the constantly created and abolished *ad hoc* commissions, two permanent bodies with eminent membership, high prestige and a reputation for complete impartiality. A permanent conciliation commission might be available for dealing with those disputes which require primarily an elucidation of facts and the bringing of the parties to the dispute together. If the commission should find that the dispute referred to it contains important legal elements which need to be clarified, it might be authorized to submit these questions directly to the International Court of Justice for an advisory opinion, or it might propose to the General Assembly that it request an opinion concerning these questions. The first solution seems more desirable, but the second one would provide a political check before the matter were directed into the legal channel.

The clarification of the legal issues by the court might enable the parties to reach an agreement, with or without additional help by the conciliation commission. If, however, the remaining core of the dispute should prove irreducible and further action should appear necessary in order to remove a threat to the peace, the commission might recommend to the General Assembly sending the whole dispute to a permanent arbitral (or equity) tribunal for an advisory opinion. Should the General Assembly determine that the dispute is serious enough to warrant such further action, it would seem to have power even under the present charter to refer the matter to a tribunal for an advisory opinion. The tribunal would hear the parties, consider all aspects of the dispute, and try to put together a formula for as comprehensive a settlement of the dispute as possible, taking into account all the relevant interests of both parties. If the proposed settlement is considered reasonable, just and fair not only by the tribunal, but also by the General Assembly, the General Assembly would recommend putting it into effect. It may be hoped that the pressure of public opinion would be so strong that no state would dare to oppose the execution of such a recommendation. If, however, one of the parties should defy the Assembly's recommendations, the General Assembly might consider such defiance as a threat to the peace justifying action under the Uniting for

¹⁷⁴ For an early plea to that effect, see Sohn, *Exclusion of Political Disputes from Judicial Settlement*, 38 AM. J. INT'L L. 694 (1944).

Peace Resolution,¹⁷⁵ and apply economic sanctions against the recalcitrant state.

The suggestions made above can be executed within the framework of the existing charter, as the powers of the General Assembly to create subsidiary organs and to refer matters to them for advice are in no way restricted by the charter. The power of the United Nations to prevent and remove threats to the peace is a broad one, and is stated in parallel terms of its power to suppress acts of aggression or other breaches of the peace.¹⁷⁶ The United Nations is entitled, and even required, to take "effective collective measures" in either case, and has done so in the Spanish and Greek Questions though there was no technical breach of the peace in those cases.

Nevertheless, it might be desirable to codify the new procedures in a comprehensive resolution of the General Assembly.¹⁷⁷ Such a resolution might be considered as an authoritative interpretation of the charter which would be binding at least upon all members who have accepted it by voting for it or otherwise. Alternatively, an agreement might be opened for the acceptance by members in accordance with their respective constitutional processes. Such an agreement might contain as an additional feature an optional clause allowing states to accept as binding one or all of the following:

(a) a decision of the General Assembly requesting them to submit their legal disputes to the International Court of Justice or their nonlegal disputes to the proposed arbitral (or equity) tribunal, subject to a prior determination by the General Assembly by a specified, large majority (e.g., three-fifths of the total membership of the Assembly) that the dispute is likely to become a threat to the peace unless properly settled;

(b) a decision by the court of the legal issues referred to it on request by the General Assembly;

(c) an opinion by the arbitral (or equity) tribunal which has been endorsed by a specified overwhelming majority of the General Assembly (e.g., by a three-fourths majority of all the members, including a two-thirds majority of the twelve largest members); and

(d) a decision of the General Assembly to use economic (or perhaps even military) sanctions to enforce a decision of the court or an opinion of the tribunal.

If enough states should accept such additional provisions, any lingering doubts about the power of the United Nations to take such steps would be dissipated.

The proposals made here are only an extrapolation from existing trends and an acceleration of current developments. It might be politically feasible in the

¹⁷⁵ *Supra* note 129.

¹⁷⁶ U.N. CHARTER art. 1, para. 1.

¹⁷⁷ Such a resolution might embody some of the features and guarantees contained in CLARK & SOHN, *WORLD PEACE THROUGH WORLD LAW* 95-106, 338-41 (2d ed.; 1960).

near future to embody more effective methods for settling disputes in an overall agreement to diminish and dissipate existing tensions. In a world where war is no longer a practicable way for solving disputes, the need for improving peaceful means for dealing with disputes is imperative. It is hoped that the suggestions herein outlined would constitute a contribution to an early improvement of these means.

III. SETTLEMENT OF CONFLICTS THROUGH REGIONAL ARRANGEMENTS

1. *The Charter of the United Nations and Regional Arrangements.*—The Charter of the United Nations puts emphasis on resort to regional arrangements prior to the submission of a dispute to the United Nations. Thus, parties to “any dispute, the continuance of which is likely to endanger the maintenance of international peace and security,” are required by the charter, “first of all,” to seek a solution by peaceful means of their own choice, including “resort to regional agencies or arrangements.”¹⁷⁸ On the other hand, the Security Council “shall, when it deems necessary, call upon the parties to settle their dispute by such means.”¹⁷⁹

These obligations are implemented by more detailed provisions of chapter VIII of the charter which deals with regional arrangements and agencies. In particular, the members of the United Nations “entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.”¹⁸⁰ A parallel provision imposes the obligation on the Security Council to “encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.”¹⁸¹ There is also the procedural requirement that the Security Council “shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.”¹⁸²

The relationship between these provisions and the rules governing the powers of the Security Council is not entirely clear, as the charter provides also that the provisions on regional arrangements shall in no way impair the application of those articles of the charter which relate to the submission of

¹⁷⁸ U.N. CHARTER art. 33, para. 1.

¹⁷⁹ *Id.* art. 33, para. 2.

¹⁸⁰ *Id.* art. 52, para. 2.

¹⁸¹ *Id.* art. 52, para. 3.

¹⁸² *Id.* art. 54. Article 53 deals with enforcement action under regional arrangements. For a more detailed discussion of these provisions, see Garcia Amador, *Regional Action for Pacific Settlement within the Framework of the Charter* (A/AC. 18/SC. 9/L. 7) (1950), reprinted in Interim Committee of the General Assembly, *Report*, U.N. GEN. ASS. OFF. REC. 5th Sess., Supp., No. 14, at 31–36 (A/1388) (1950).

disputes or situations to the Security Council and to the Council's power to investigate disputes or situations.¹⁸³ This lack of clarity caused great difficulties in the Guatemalan question in 1954.¹⁸⁴ Guatemala complained to the Security Council that it had been invaded by forces operating from bases in Honduras and Nicaragua and requested the Council to send an observation mission to Guatemala and to call on the governments of Honduras and Nicaragua to apprehend the Guatemalan exiles operating in their territories. The United States and the Latin American members of the Security Council (Brazil and Colombia) countered with the suggestion that the Council refer the complaint to the Organization of American States for urgent consideration. The resolution proposing such a reference was vetoed, however, by the Soviet Union. The Security Council adopted instead a resolution calling "for the immediate termination of any action likely to cause bloodshed," and requesting "all Members of the United Nations to abstain, in the spirit of the Charter, from rendering assistance to any such action."¹⁸⁵ A few days later Guatemala requested further action by the Security Council, as the hostilities continued in violation of the Council's resolution. She contended, *inter alia*, that the Council, by adopting the resolution, assumed full jurisdiction in this matter; that there was no "dispute" between Guatemala and the neighboring states; and that the obligations under the charter prevailed over the obligations toward the Organization of American States.¹⁸⁶ At the next meeting of the Council, the representatives of the United States, Brazil and Colombia emphasized the fact that the Organization of American States was ready to send a commission of enquiry to Guatemala, Honduras and Nicaragua; the United States representative also contended that the charter established a careful balance between universality and regional arrangements, and that "if the United Nations Security Council does not respect the right of the Organization of American States to achieve a pacific settlement of the dispute between Guatemala and its neighbours, the results will be a catastrophe of such dimensions as will gravely impair the future effectiveness of the United Nations itself and of regional organizations such as the Organization of American States."¹⁸⁷ Consequently they opposed both the putting of the Guatemalan question on the agenda of the meeting and the invitation to Guatemala to participate in the discussion. On the other side, it was argued that the Security Council should not "give the appearance of abdicating the supreme responsibility and authority conferred on it by the Charter," and that "a Member State who so

¹⁸³ U.N. CHARTER art. 52, para. 4.

¹⁸⁴ See SECURITY COUNCIL OFF. REC. 9th year, 675th-676th meetings (1954); SOHN, CASES ON UNITED NATIONS LAW 371-419 (1956).

¹⁸⁵ SECURITY COUNCIL OFF. REC. 9th year, 675th meeting, at 38.

¹⁸⁶ SECURITY COUNCIL OFF. REC. 9th year, Supp. April-June 1954, at 14-15 (S/3421) (1954).

¹⁸⁷ SECURITY COUNCIL OFF. REC. 9th year, 676th meeting, at 28-29 (1954).

desires should have a right to be heard.”¹⁸⁸ The agenda was rejected, however, by 5 votes to 4, with 2 abstentions.¹⁸⁹ Before the fact-finding committee of the Organization of American States could arrive in Guatemala, the government there changed and the new government informed the committee that the controversy between it and the neighboring states “has ceased to exist.”¹⁹⁰

The claim that in this case at least a hearing should have been granted to a small country which was in danger, overshadowed other constitutional considerations; the Security Council did not consider the basic issue whether this question involved a dispute only, a civil war, or an act of aggression, either direct or indirect. In case of a dispute, regional arrangements should have received priority; in case of aggression, the Security Council should have followed its first resolution by further action; and in case of civil war not endangering international peace, no action should have been taken either by the United Nations or by the Organization of American States.¹⁹¹

No similar issues have arisen in other cases brought before the Organization of American States between 1955 and 1959, and no action by the Security Council was found necessary with respect to them. Effective action was taken, for instance, by the Organization of American States in the Costa Rican case in 1955, and, though the matter was brought to the attention of the Security Council, no action by the Council was requested.¹⁹²

The question of the relationship between the United Nations system and the Organization of American States arose again in 1960 in connection with the Cuban and Dominican Republic cases. In the first case, the Security Council, despite some objections, referred the situation existing between Cuba and the United States of America to the Organization of American States for a report, invited other American States to lend their assistance toward the achievement of a peaceful solution of that situation, and urged “all other States to refrain from any action which might increase the existing tensions between Cuba and the United States of America.”¹⁹³

¹⁸⁸ Statements by the representatives of New Zealand and Denmark, *id.* at 21–22.

¹⁸⁹ The votes were distributed as follows: in favor—Denmark, Lebanon, New Zealand and the Soviet Union; against—Brazil, China, Columbia, Turkey and the United States; abstaining—France and the United Kingdom.

¹⁹⁰ U.N. Doc. No. S/3267, at 9–19 (1954).

¹⁹¹ For comments on this case, see Fenwick, *Jurisdictional Questions Involved in the Guatemalan Revolution*, 48 AM. J. INT’L L. 597 (1954); Gibson, *The Guatemalan Case and Universal-Regional Relationships*, 4 INDIAN COUNCIL OF WORLD AFFAIRS, FOREIGN AFFAIRS REPORTS 1 (1955); Key, *The Organization of American States and the United Nations: Rivals or Partners?*, 31 DEP’T STATE BULL. 115 (1954); Whitaker, *Guatemala, OAS and US*, 33 FOREIGN POLICY BULL., No. 24, p. 4 (1954). See also comments made at the ninth session of the General Assembly, U.N. GEN. ASS. OFF. REC. 9th Sess., Plenary at 23–24, 98, 147–48, 150, 174–75 (1954).

¹⁹² Report of the Security Council to the General Assembly, U.N. GEN. ASS. OFF. REC. 10th Sess., Supp. No. 2, at 27 (1955).

¹⁹³ U.N. Doc. No. S/4395 (1960).

In the dispute between the Dominican Republic and Venezuela, the Organization of American States condemned "the participation by the Government of the Dominican Republic in the acts of aggression and intervention" against Venezuela, and ordered the termination of diplomatic relations and partial interruption of economic relations.¹⁹⁴ In order to assert the authority of the United Nations in the matter of diplomatic and economic sanctions, the Soviet Union proposed that the Security Council expressly approve the measures ordered by the Organization of American States; in its resolution on the subject, the Security Council, however, limited itself to taking note of the Organization's report.¹⁹⁵

No questions have arisen in the United Nations about the actual application of the provisions on disputes contained in other regional arrangements; the disputes about the conformity of such arrangements with the charter have related primarily to their collective self-defense provisions and not to their provisions about settlement of local disputes.¹⁹⁶

While most regional agreements contain provisions on the settlement of disputes, these provisions are usually quite general and are not accompanied by procedures or institutions for their implementation. Only in the Americas and in Western Europe has progress been made towards the creation of adequate instruments for dealing with various types of disputes.

2. *Inter-American Agreements.*—The Charter of the Organization of American States, of April 30, 1948, contains only general provisions on the settlement of disputes.¹⁹⁷ A separate American Treaty on Pacific Settlement, the Pact of Bogotá, was signed, however, at the same time, establishing various procedures for the pacific settlement of disputes between American States.¹⁹⁸ Relevant provisions are contained also in the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro on September 2, 1947.¹⁹⁹ The Inter-American Peace Committee functions on the basis of several resolutions adopted at various inter-American meetings.²⁰⁰

¹⁹⁴ ORGANIZATION OF AMERICAN STATES OFF. REC. 4-6 (OEA/SER.F/11.6) (1960); U.N. Doc. No. S/4476 (1960).

¹⁹⁵ U.N. Docs. Nos. S/4481, S/4481/Rev. 1 & S/4491 (1960).

¹⁹⁶ With respect to the North Atlantic Treaty Organization, see, e.g., 2 REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS 431-32 (U.N. Pub. Sales No. 1955.V.2) (1955); BECKETT, THE NORTH ATLANTIC TREATY, THE BRUSSELS TREATY AND THE CHARTER OF THE UNITED NATIONS 1-35 (1950); BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW 182-248 (1958).

¹⁹⁷ Arts. 20-23. For the text of the charter, see 119 U.N.T.S. 3 (1952), [1951] 2 U.S.T. & O.I.A. 2394, T.I.A.S. No. 2361.

¹⁹⁸ For the text of the Pact of Bogotá, see 30 U.N.T.S. 55 (1949).

¹⁹⁹ For the text of the Rio Treaty, see 21 U.N.T.S. 77 (1948), T.I.A.S. No. 1838.

²⁰⁰ Resolution XIV of the second meeting of the Ministers of Foreign Affairs of the American Republics, Havana, July 1940, at 34-35 (Pan American Union, Cong. & Conf. Ser. No. 32, 1940); STATUTE OF THE INTER-AMERICAN PEACE COMMITTEE, approved by the Council of the Organization of American States on May 9, 1956, 8 ANNALS OF THE ORGANI-

Though the Pact of Bogotá was meant to replace eight prior inter-American agreements, it has been ratified by only a few states, and in disputes involving states which have not become parties to the Pact of Bogotá one or more of those older agreements might still be applied. Most of them deal with various procedures for mediation, investigation and conciliation of inter-American disputes, but one at least provides for arbitration.²⁰¹ In any dispute between two American states it is necessary, therefore, to investigate in the first place whether they are both bound by any inter-American treaty on pacific settlement, and if they are bound by more than one, one has to determine in addition the order in which those agreements should be applied. In practice, however, the procedures most commonly used are those provided for by the Rio Treaty of 1947, by the resolutions relating to the Inter-American Peace Committee, and by the Pact of Bogotá.

(a) *Procedures of Consultation*.—The procedure of consultation may be traced to the Convention for the Maintenance, Preservation and Reestablishment of Peace, signed at Buenos Aires, on December 23, 1936.²⁰² It provided for consultation among the American republics "in the event that the peace of the American Republics is menaced" either by "war, or a virtual state of war between American States" or by "war outside America."²⁰³ The Declaration of Lima, adopted at the Eighth International Conference of American States on December 24, 1938, specified that these consultations should be held through meetings of ministers of foreign affairs, to be convened "when deemed desirable and at the initiative of any one of them."²⁰⁴ Three such meetings of

ZATION OF AMERICAN STATES 194-96 (1956); Resolution No. IV of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, Aug. 18, 1959, 41 DEP'T STATE BULL. 343-44 (1959).

²⁰¹ These treaties are: (1) Treaty to Avoid or Prevent Conflicts Between the American States (the Gondra Treaty), Santiago, Chile, May 3, 1923, 2 HUDSON, INTERNATIONAL LEGISLATION 1006 (1931) (commissions of inquiry); (2) General Convention of Inter-American Conciliation, Washington, Jan. 5, 1929, 4 *id.* at 2635 (conciliation commissions); (3) General Treaty of Inter-American Arbitration, with Protocol of Progressive Arbitration, Washington, Jan. 5, 1929, 4 *id.* at 2625, 2633 (arbitration of disputes of juridical character); (4) Anti-War Treaty of Non-Aggression and Conciliation (Saavedra Lamas Treaty), Rio de Janeiro, Oct. 10, 1933, 6 *id.* at 448 (conciliation commissions); (5) Additional Protocol to the General Convention of Inter-American Conciliation, Montevideo, Dec. 26, 1933, 6 *id.* at 618 (commissions of investigation and conciliation); (6) Convention to Coordinate, Extend and Assure the Fulfillment of Existing Agreements between the American States, Buenos Aires, Dec. 23, 1936, 7 *id.* at 574 (consultations); (7) Inter-American Treaty on Good Offices and Mediation, Buenos Aires, Dec. 23, 1936, 7 *id.* at 568 (good offices or mediation by eminent persons); and (8) Treaty on the Prevention of Controversies, Buenos Aires, Dec. 23, 1936, 7 *id.* at 563 (bilateral mixed commissions). See also Pan American Union, *Improvement and Coordination of Inter-American Peace Instruments*, in 3 EXISTING INTER-AMERICAN PEACE INSTRUMENTS (1941).

²⁰² T.S. No. 922, 188 L.N.T.S. 9, 7 HUDSON, INTERNATIONAL LEGISLATION 558 (1941).

²⁰³ *Id.* arts. 1 & 2.

²⁰⁴ CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, THE INTERNATIONAL CONFERENCES OF AMERICAN STATES, Supp. for 1933-1940, at 308-09 (1940).

consultation of the ministers of foreign affairs were held during the Second World War: at Panama in 1939, at Havana in 1940 and in Rio de Janeiro in 1942. The Inter-American Conference on Problems of War and Peace, held at Mexico City in 1945, provided for regular meetings of the ministers of foreign affairs to take "decisions on problems of great urgency and importance concerning the inter-American system and with regard to situations and disputes of every kind which may disturb the peace of the American Republics."²⁰⁵

The Rio Treaty of 1947²⁰⁶ empowered the Organ of Consultation to deal not only with armed attacks against an American state but also with any case in which "the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America."²⁰⁷ In addition, that treaty authorized the Organ of Consultation, in case of a conflict between two or more American states, to adopt all "necessary measures to re-establish or maintain inter-American peace and security and for the solution of the conflict by peaceful means."²⁰⁸ While the meetings of ministers of foreign affairs were to function ordinarily as the Organ of Consultation, the Governing Board of the Pan American Union was empowered to act provisionally as an organ of consultation until the meeting of the Organ of Consultation takes place.²⁰⁹ This provisional function was transferred to the Council of the Organization of American States by the charter of that organization.²¹⁰

The practice in most cases has been to convoke the meeting of the Organ of Consultation but not to hold such a meeting. The Council of the Organization of American States, once it has convoked a meeting of the Organ of Consultation, can itself function as a provisional organ of consultation and take such measures as may be necessary to deal with a conflict. In most cases this is sufficient and the conflict is settled by the provisional organ without the participation of the meeting of ministers.²¹¹ When necessary, an investigating committee is sent to the area where the dispute has arisen, and the recommendations of the committee usually form the basis of the decisions of the provisional organ of consultation. These decisions have been accepted by the parties, at least in principle, in most cases, and quite often they led also to agreements between the parties either removing the cause of the conflict or

²⁰⁵ Final Act of the Inter-American Conference on Problems of War and Peace, Mexico City, Mar. 8, 1945, T.I.A.S. No. 1548, 9 HUDSON, INTERNATIONAL LEGISLATION 290-97 (1951).

²⁰⁶ *Supra* note 199.

²⁰⁷ *Id.* arts. 3 & 6.

²⁰⁸ *Id.* art. 7.

²⁰⁹ *Id.* arts. 11 & 12.

²¹⁰ *Supra* note 197, art. 52.

²¹¹ For a summary of the early cases, see PAN AMERICAN UNION, APPLICATIONS OF THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE, 1948-1956, at 19-237 (1957).

establishing measures and procedures designed to prevent the recurrence of the conflict. For instance, the first intervention of the provisional organ in a dispute between Costa Rica and Nicaragua resulted in the signature of a pact of amity in 1949 in which those states agreed to certain measures to be taken to prevent revolutionary activities in one country against the government of the other country.²¹² When a new dispute arose between those states in 1955, the provisional organ of consultation quickly sent an investigating committee which was provided with planes for aerial observation of the activities on the Costa Rican-Nicaraguan border. This prevented the repetition in Costa Rica of the Guatemalan events of 1954, and the revolutionary troops withdrew to Nicaragua where they were immediately interned. On the basis of the report of the investigating committee, the Council of the Organization of the American States, acting provisionally as Organ of Consultation, made an appeal to the parties that they sign further agreements to prevent the organization of revolutionary movements by persons granted political asylum, recommended general measures for curbing illegal traffic in arms, and appointed a special committee to cooperate with the parties in the preparation of agreements recommended by the council and to continue military observation of the frontier. With the assistance of the special committee, the parties arrived at two agreements: one on the establishment of a Commission of Investigation and Conciliation, and the other on detailed measures to prevent revolutionary, subversive and terrorist activities.²¹³

Meetings of the Organ of Consultation itself have been held after the Second World War on only four occasions: in 1951, to deal with "common defense against the aggressive activities of international communism," and to strengthen in this connection both internal security and international, political and military cooperation;²¹⁴ in 1959, to consider "the situation of international tension in the Caribbean area" and to study the question of the "effective exercise of representative democracy and respect for human rights";²¹⁵ and, in 1960, to consider, first, "the acts of intervention and aggression by the Government of the Dominican Republic against the Government of Venezuela," and, second, at a separate meeting, the Cuban situation, which was disguised under the general heading "strengthening of continental solidarity and of the inter-American system especially in the face of threats of extra-continental intervention that might affect them." While diplomatic and limited economic sanctions were ordered against the Dominican Republic, the action in the Cuban case was limited to a condemnation of the Soviet threat of intervention in the affairs of the American republics and a declaration that "the

²¹² *Id.* at 48-50.

²¹³ *Id.* at 159-214.

²¹⁴ 3 ANNALS OF THE ORGANIZATION OF AMERICAN STATES 143-57 (1951).

²¹⁵ Final Act of the Fifth Meeting of Consultation of Ministers of Foreign Affairs 3 (Doc. No. 89/Rev. 2 of the meeting) (1951).

acceptance of a threat of extra-continental intervention by any American state jeopardizes American solidarity and security.”²¹⁶

These last two meetings represent a departure from the previous pattern, *i.e.*, that the ministerial meetings should deal only with general questions, while actual conflicts should be considered by the Council of the Organization of American States acting as a provisional organ of consultation. Nevertheless, it may be expected that in the future there will be a return to the less formal and less expensive meetings of the Council, except in grave crises endangering the security of the Western Hemisphere.

(b) *The Inter-American Peace Committee.*—When the inter-American institutions were reorganized in 1947 and 1948, the special committee established by the Havana Meeting of Consultation in 1940 was forgotten. Originally, two duties were imposed upon it: “keeping constant vigilance to insure that States between which any dispute exists or may arise, of any nature whatsoever, may solve it as quickly as possible,” and “suggesting, without detriment to the methods adopted by the parties or to the procedures which they may agree upon, the measures and steps which may be conducive to a settlement.”²¹⁷ The committee was to be composed of representatives of five countries, and the Governing Board of the Pan American Union selected in 1940 as its members two countries from South America (Argentina and Brazil), two countries from North America (Mexico and the United States), and one country from Central America and the Antilles (Cuba).²¹⁸ The committee was finally organized in 1948, in consequence of a request by the Dominican Republic which asked it to deal with a situation between that republic and Cuba; after a few meetings, the parties agreed to solve the problem by direct negotiations.²¹⁹ In later cases, the Peace Committee has sometimes been called upon to deal with a situation prior to, or simultaneously with, the provisional organ of consultation acting under the Rio Treaty. In several disputes, the committee succeeded in getting the parties together and in helping them to reach an agreement settling their controversy.²²⁰ It encountered, however, great difficulties in the Guatemalan case in 1954, as Guatemala changed its attitude towards the committee several times during the crucial period and

²¹⁶ Final Acts of the Sixth and Seventh Meetings of Consultation of Ministers of Foreign Affairs (1960); ORGANIZATION OF AMERICAN STATES OFF. REC. (OEA/SER.F./11.6 & 11.7) (1960); U.N. Docs. Nos. S/4476 & S/4480 (1960).

²¹⁷ Report on the Second Meeting of the Ministers of Foreign Affairs of the American Republics 34 (Pan American Union, Cong. & Conf. Ser. No. 32) (1940).

²¹⁸ See Inter-American Peace Committee, *Second Report*, submitted to the Tenth Inter-American Conference, at 4 (Conf. Doc. No. 11) (1954).

²¹⁹ *Id.* at 4–6.

²²⁰ *Id.* at 6–12; UNITED NATIONS SECRETARIAT, RECENT INTER-AMERICAN EXPERIENCE IN THE FIELD OF PACIFIC SETTLEMENT (A/AC.18/SC.9/L.6) (1950).

the committee was not able to arrive on the spot prior to the final overthrow of the Guatemalan government.²²¹

The Statutes of the Inter-American Peace Committee were finally approved by the Council of the Organization of American States on May 9, 1956.²²² In the light of the Guatemalan experience, these statutes restrict the jurisdiction of the committee to cases in which all the parties to the dispute consent to the committee's taking action in the case.²²³ A rotation was also established in the membership of the committee.²²⁴ In 1959, the 1956 decision was reversed and the functions of the Peace Committee were again broadened; it was authorized to examine:

- a. Methods and procedures to prevent any activities from abroad designed to overthrow established governments or provoke instances of intervention or aggression as contemplated in instruments such as the Convention on Duties and Rights of States in the Event of Civil Strife, without impairment to: (i) the right and liberties of political exiles recognized in the Convention on Territorial Asylum; (ii) the American Declaration of the Rights and Duties of Man; and (iii) the national constitutions of the American States;
- b. The relationship between violations of human rights or the nonexercise of representative democracy, on the one hand, and the political tensions that affect the peace of the hemisphere, on the other; and
- c. The relationship between economic underdevelopment and political instability.

With respect to these three matters, the committee was empowered to take action not only at the request of the governments but also on its own initiative, except that the consent of the states concerned would be required "in the case of investigations that would have to be made in their respective territories." These new powers were granted to the committee by the Fifth Meeting of Consultation of Ministers of Foreign Affairs only "temporarily," leaving the matter for final decision to the Eleventh Inter-American Conference to be held in 1961.²²⁵

(c) *The Pact of Bogotá*.²²⁶—The American Treaty on Pacific Settlement (Pact of Bogotá), signed at Bogotá on April 30, 1948, codified the various methods for settlement of inter-American disputes which were developed in

²²¹ 6 ANNALS OF THE ORGANIZATION OF AMERICAN STATES 239-45 (1954). With respect to the difficulties caused by this case in the United Nations, see pp. 239-42 *supra*.

²²² For the text of the statutes, see 8 ANNALS OF THE ORGANIZATION OF AMERICAN STATES 194-96 (1956).

²²³ *Ibid.*

²²⁴ *Id.* art. 5 and Transitory Article. El Salvador replaced Cuba in 1957, and Uruguay took the place of Argentina in 1958. 9 *id.* at 193 (1957); 10 *id.* at 21 (1958).

²²⁵ Resolution No. IV of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, Aug. 18, 1959, 41 DEP'T STATE BULL. 343-44 (1959); Final Act of the Fifth Meeting of the Ministers of Foreign Affairs 7-8 (Doc. No. 89/Rev.2 of the meeting) (1959).

²²⁶ 30 U.N.T.S. 55 (1948). The English version begins at p. 84.

the inter-war period. The parties to the pact agreed "to settle international controversies by regional pacific procedures before referring them to the United Nations."²²⁷ Once any such procedure has been initiated, "no other procedure may be commenced until that procedure is concluded."²²⁸ Though the procedures provided for by the pact "may not be applied to matters which by their nature, are within the domestic jurisdiction" of a state, either party to a dispute may submit to the International Court of Justice the preliminary question "whether the controversy concerns a matter of domestic jurisdiction."²²⁹ The provision of the pact binding the parties not "to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective State," was rejected by the United States which considered it as inconsistent with the rules of international law governing diplomatic protection.²³⁰

In addition to provisions relating to good offices and mediation, the Pact of Bogotá contains detailed provisions on commissions of investigation and conciliation, and on arbitral and judicial procedure. The pact establishes a permanent panel of American conciliators. In case of a controversy each party shall designate two members from the panel; the four members thus selected shall choose the fifth; and, if they cannot agree on the fifth member, each of the four members shall separately list the conciliators composing the permanent panel in order of his preference, "and upon comparison of the lists so prepared, the one who first receives a majority of votes shall be declared elected."²³¹ A similar, though slightly more complicated, procedure is provided for the selection of an arbitral tribunal from a list of twenty jurists chosen from the general panel of members of the Permanent Court of Arbitration established by the Hague Conventions of 1899 and 1907.²³²

If the conciliation procedure does not lead to a solution, and the parties have not agreed upon an arbitral procedure, either of them may refer the dispute to the International Court of Justice.²³³ Should the court declare itself to be without jurisdiction (e.g., because the dispute is not of a juridical nature), the parties are obliged to submit the dispute to an arbitration.²³⁴ If one of the parties should fail to carry out the obligations imposed upon it by a

²²⁷ *Id.* art. II.

²²⁸ *Id.* art. IV.

²²⁹ *Id.* art. V. Reservations to the jurisdiction of the court over the preliminary question were made by Argentina, Peru and the United States. *Id.* at pp. 108-10.

²³⁰ *Id.* art. VII. For the United States reservation, see *id.* at p. 110.

²³¹ *Id.* art. XIX.

²³² *Id.* art. XL.

²³³ *Id.* arts. XXXI-XXXII.

²³⁴ *Id.* art. XXXV. Reservations to these provisions for obligatory adjudication and arbitration were made by Argentina, Paraguay, Peru and the United States. *Id.* at pp. 108-12.

decision of the International Court of Justice or by an arbitral award, the other party may request a meeting of consultation of ministers of foreign affairs which may "agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award."²³⁵

As the Pact of Bogotá has been ratified by only a few states,²³⁶ the Tenth Inter-American Conference accepted a Brazilian proposal to request the Council of the Organization of American States to "conduct an inquiry among the Member States to ascertain the suitability of, and the appropriate opportunity for, proceeding to revise the American Treaty on Pacific Settlement."²³⁷ Though several governments, including those of Brazil, Ecuador, the United States and Venezuela were decidedly in favor of revising the Pact of Bogotá, the Council concluded on the basis of a not really persuasive report of its Committee on Juridical-Political Matters that "the majority of the governments of the member States were not in favor" of such revision.²³⁸

The procedures under the Rio and Bogotá treaties were combined in the conflict between Honduras and Nicaragua which had arisen as a result of the alleged Nicaraguan invasion of Honduran territory in 1957. The matter was first considered under the Rio Treaty, and the Council of the Organization of American States, acting provisionally as an organ of consultation, appointed an investigating committee which with the assistance of a committee of military advisors arranged for a cease-fire and the withdrawal of troops to prevent recurrence of acts of violence. In its report to the Council, the investigating committee pointed out that the invaded territory was awarded to Honduras by an arbitral award made in 1906 by the King of Spain, but that Nicaragua has refused to recognize the validity of that award, and has continued to consider the territory in question as Nicaraguan territory. The Council appointed an *ad hoc* committee to assist the parties in obtaining "a peaceful and definitive solution to the controversy," and, taking into account the fact that both parties had ratified the Bogotá Pact, declared that the procedures of that Pact should be applied and that if they did not produce satisfactory results, "the competent organ to settle this controversy once and for all is the International Court of Justice." The *ad hoc* committee succeeded in persuading the parties to carry out their obligations under the Bogotá Pact, and they signed an agreement to submit their disagreement with respect to the arbitral award of 1906 to the International Court of Justice, and, if all the phases of that disagreement should not be settled by the decision of the court, to apply the arbitral procedure provided by the pact "to settle definitively the

²³⁵ *Id.* art. L.

²³⁶ By the end of 1960, it had been ratified by Costa Rica, the Dominican Republic, El Salvador, Haiti, Honduras, Mexico, Nicaragua, Panama and Uruguay.

²³⁷ 6 ANNALS OF THE ORGANIZATION OF AMERICAN STATES 118-19 (Special Number, 1954).

²³⁸ 9 *id.* at 109-10 (1957).

new situation created between them." The call for a meeting of consultation was cancelled on June 27, 1958, and, on July 1, 1958, Honduras instituted proceedings before the court.²³⁹

In conclusion it may be stated that the procedures for the settlement of conflicts developed by the Organization of American States, though confused by the multiplicity of agreements and the lack of ratifications, have functioned effectively in almost all cases. The Council of the Organization of American States and its investigating committees have acted ordinarily in a prompt and efficient manner. Only minor difficulties were encountered about investigations on the spot, and the good offices and mediatory efforts of the Council, of its committees and of the semi-independent Inter-American Peace Committee, have led in most cases to an agreement between the parties. Though in several unstable situations the settlement reached proved only temporary, further outbreaks of animosities have usually been calmed down by the Organization of American States. New storms are brewing, however, and the recent injection of issues relating to representative democracy and human rights might make the task of maintaining peace and settling disputes considerably more difficult.

3. *Western European Arrangements.*—(a) *Western European Union.*—The first important Western European regional arrangement was embodied in the so-called Brussels Treaty, *i.e.*, the Treaty of Collaboration in Economic, Social and Cultural Matters and for Collective Self-Defense, signed at Brussels on March 17, 1948.²⁴⁰ The parties to that treaty agreed to settle all legal disputes between them by referring them to the International Court of Justice, "subject only, in the case of each of them, to any reservation already made by that Party" in its declaration accepting the jurisdiction of the court under article 36, paragraph 2, of its statute. They also agreed to submit to conciliation all non-legal disputes, and recognized the right of a party to a mixed dispute, involving both legal and non-legal questions, "to insist that the judicial settlement of the legal questions shall precede conciliation."²⁴¹ While no provisions on the conciliation procedure are contained in the Brussels Treaty, all parties to it are bound by the conciliation provisions of the Geneva General Act for the Pacific Settlement of Disputes of 1928.²⁴²

It may be noted that two minor territorial disputes between parties to the Brussels Treaty were actually submitted to the International Court of Justice; the dispute between France and the United Kingdom concerning the islets and rocks of the Minquiers and Ecrehos groups,²⁴³ and the dispute between

²³⁹ 9 *id.* at 264-70 (1957); 10 *id.* at 14-15 (1958). On November 18, 1960, the court decided that Nicaragua should give effect to the award made by the King of Spain. I. C. J. Rep. 192 (1960).

²⁴⁰ 19 U.N.T.S. 51 (1948).

²⁴¹ *Id.* art. VIII.

²⁴² 93 L.N.T.S. 343 (1928), 4 HUDSON, INTERNATIONAL LEGISLATION 2529 (1932).

²⁴³ *Affaire de Minquiers et des Ecréhous* [1953] I.C.J. Rep. 47.

Belgium and the Netherlands over certain plots of land in the communes of Baerle-Duc and Baarle-Nassau.²⁴⁴ In both cases the judgments of the court were accepted by the parties.

When Germany and Italy were invited in 1954 to join the Western European Union, those two countries made special declarations accepting the jurisdiction of the International Court of Justice with respect to all disputes with other parties to the Brussels Treaty, with the exception of disputes relating to prior facts or situations and of "disputes with regard to questions which, by international law, fall exclusively within the domestic jurisdiction of States."²⁴⁵ Though an agreement was reached at the same time on the need to establish a simpler procedure for disputes relating to the interpretation of the Brussels Treaty and the accompanying protocols and annexes,²⁴⁶ no such procedure seems to have been devised.

(b) *Council of Europe*.—The constitutional instruments of the Council of Europe contain no provisions on the settlement of disputes between its members. In November, 1950, the Consultative Assembly of the Council of Europe recommended that the members of the Council conclude a convention "which would ensure the settlement in a regular manner by the International Court of Justice of the justiciable disputes which may arise between them," and that the principle of mandatory conciliation of other disputes, as set out in the Brussels Treaty, be extended to all members of the Council.²⁴⁷ In 1952, the Consultative Assembly recommended the adoption of a "Statute of the European Court of Justice" and a "European Act for the Peaceful Settlement of Disputes," prepared by its Committee on Legal and Administrative Questions.²⁴⁸ Though the idea of a separate European court, competing with the International Court of Justice, was later abandoned, a European Convention for the Peaceful Settlement of Disputes was finally signed on April 29, 1957.²⁴⁹ It was modeled on the Geneva General Acts for the Pacific Settlement of International Disputes of 1928 and 1949,²⁵⁰ but a few innovations were introduced into the convention. It provides for reference to the International Court of Justice of all international legal disputes between the parties, and for conciliation of all other disputes. In the case of a mixed dispute, any party to the dispute may, as under the Brussels Treaty, require that the judicial

²⁴⁴ *Affaire Relative a la Souveraineté sur Certaines Pareilles Frontalières*, [1959] I.C.J. Rep. 209.

²⁴⁵ [1954-1955] I.C.J.Y.B. 217-18.

²⁴⁶ LONDON AND PARIS AGREEMENTS 40-42 (Dep't of State Pub. No. 5659) (1954).

²⁴⁷ COUNCIL OF EUROPE, COMPILATION OF RECOMMENDATIONS AND RESOLUTIONS ADOPTED BY THE CONSULTATIVE ASSEMBLY DURING ITS SECOND SESSION, SECOND PART 29 (1950).

²⁴⁸ COUNCIL OF EUROPE, CONSULTATIVE ASSEMBLY, FOURTH ORDINARY SESSION, SECOND PART, TEXTS ADOPTED BY THE ASSEMBLY 55-58 (1952).

²⁴⁹ Europ. T.S. No. 23 [1958-1959] I.C.J.Y.B. 228.

²⁵⁰ 93 L.N.T.S. 345 (1928), *revised*, 71 U.N.T.S. 101 (1949).

settlement of the legal questions shall precede conciliation. If a non-legal dispute is not settled by conciliation, it will have to be submitted to arbitration, either by agreement or by application of one of the parties. With respect to the rules to be applied by an arbitral tribunal, departing from the General Acts, the convention provides that "if nothing is laid down in the special agreement or no special agreement has been made, the Tribunal shall decide *ex aequo et bono*, having regard to the general principles of international law, while respecting the contractual obligations and the final decisions of international tribunals which are binding on the parties."²⁵¹ The convention does not apply to disputes relating to facts or situations prior to its entry into force, nor to "disputes concerning questions which by international law are solely within the domestic jurisdiction of States."²⁵² It may be noted that this last limitation, which is based on languages used in the Covenant of the League of Nations, is less exclusive than the corresponding language of article 2, paragraph 7, of the Charter of the United Nations, which contains no reference to international law and speaks of matters which are "essentially" rather than "solely" within the jurisdiction of any state.

The convention allows reservations only with respect to "disputes concerning particular cases or clearly specified special matters, such as territorial status, or disputes falling within clearly defined categories"; if one party has made a reservation, the other parties may, as under the optional clause in the statute of the court, enforce the same reservation in regard to the party which made it.²⁵³ The convention also provides explicitly that not only disputes relating to its interpretation or application but also disputes concerning "the classification of disputes and the scope of reservations" shall be submitted to the International Court of Justice for a binding decision.²⁵⁴ If one of the parties fails to carry out its obligations under a decision of the International Court of Justice or an award of an arbitral tribunal, the Committee of Ministers of the Council of Europe may, by a two-thirds majority of the representatives entitled to sit on the Committee, "make recommendations with a view to ensuring compliance with the said decision or award."²⁵⁵ By December 1960, the convention was ratified by Austria, Denmark, Italy, the Netherlands, Norway, Sweden, and the United Kingdom, but no disputes seem to have been dealt with under the procedures provided in it.

(c) *Disputes relating to Human Rights*.—Special procedures have been developed, under the auspices of the Council of Europe, for dealing with petitions and disputes relating to alleged violations of human rights by governmental action. In the Statute of the Council of Europe,²⁵⁶ each member of the Council accepted as basic conditions of membership "the principles of the

²⁵¹ Europ. T.S. No. 23, art. 26.

²⁵² *Id.* art. 27.

²⁵³ *Id.* art. 35.

²⁵⁴ *Id.* art. 38.

²⁵⁵ *Id.* art. 39.

²⁵⁶ Signed on May 5, 1949. For text, see 87 U.N.T.S. 103.

rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.”²⁵⁷ To implement this provision, the members of the Council signed at Rome, on November 4, 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms.²⁵⁸ This convention provides detailed protection for such human rights and freedoms as the rights to life, liberty and security of person, freedom from slavery and servitude, freedom of thought, conscience and religion, and freedom of expression and association. An additional protocol, signed at Paris on March 20, 1952, deals with property rights, right to education, and free and secret elections.²⁵⁹ A European Commission of Human Rights was established, to which any party to the convention may refer a complaint that another party has committed a breach of the convention. By a separate declaration a country could also agree that the Commission be entitled to receive petitions against it from individuals, non-governmental organizations, or groups of individuals claiming to be victims of a violation of the convention by that country.²⁶⁰ Such petitions may be brought, however, only after all domestic remedies have been exhausted. The Commission must reject all anonymous petitions and those dealing with matters which have already been examined by it; it may also consider a petition inadmissible, if it is incompatible with the convention, manifestly ill-founded or constitutes an abuse of the right of petition. If a petition is accepted, the Commission is empowered to investigate the facts and to attempt to secure a friendly settlement of the matter on the basis of respect for human rights. In a case in which such a settlement is not reached, the Commission is bound to draw up a report on the facts and to state its opinion whether these facts disclose a breach of the convention by the state concerned. The Committee of Ministers, by a majority of two-thirds of the members entitled to sit on it, may then make a binding decision that there has been a violation of the convention, and, if that decision is not complied with within a prescribed period, it shall further decide what effect shall be given to its original decision.

The convention provides also for the creation of a European Court of Human Rights, the jurisdiction of which extends to all cases concerning the interpretation or application of the convention brought before the court against a party which has accepted such jurisdiction by a special declaration.²⁶¹ Cases may be brought before the court only by a state which itself has accepted the court's jurisdiction (e.g., by a state a national of which is alleged

²⁵⁷ *Id.* art. 3.

²⁵⁸ 213 U.N.T.S. 221.

²⁵⁹ *Id.* at p. 262.

²⁶⁰ Such declarations have been made by Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway and Sweden.

²⁶¹ Such declarations have been made by Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, Luxembourg and the Netherlands.

to be a victim of a violation of the convention) or by the European Commission of Human Rights (e.g., on the basis of a prior petition by an individual).

The European Court of Human Rights was actually established in January 1959, and the first case (against Ireland, on behalf of Mr. Lawless) was referred to it by the European Commission in April 1960.²⁶² The Commission itself has dealt with more than three hundred petitions and with a few cases submitted by governments. It considered, e.g., the cases brought by Greece against the United Kingdom concerning allegations of torture and ill-treatment of prisoners in Cyprus, and by Austria, against Italy concerning the sentences imposed by a Bolzano court in a murder case.²⁶³ Only a few petitions were held admissible by the Commission; many of them were dismissed because the petitioners did not exhaust available local remedies; and many others were considered inadmissible because they related to facts which had occurred prior to the entry into force of the convention. For instance, the petition of Rudolf Hess against his conviction at the Nuremberg Trial was rejected by the Commission on two main grounds: as not receivable, because one of the four powers responsible for these trials (France) had not ratified the convention and another one (the United Kingdom) did not accept the right of individual petition; and as inadmissible, because a provision in the convention specifically excluded trials of acts which were criminal according to the general principles of law recognized by civilized nations.²⁶⁴ On the other hand, the Commission declared admissible the petition by Mr. Nielsen, involving offenses committed through hypnotic suggestions.²⁶⁵

(d) *European Communities*.—The treaty establishing the European Coal and Steel Community, signed in Paris on April 18, 1951,²⁶⁶ created a Court of Justice "to ensure the rule of law in the interpretation and application" of the treaty and of the regulations for its execution.²⁶⁷ The court was given jurisdiction over appeals by a member state or by the Council of Ministers of the Community "for the annulment of decisions and recommendations of the High Authority on the grounds of lack of competence, major violations of procedure, violation of the Treaty or of any rule of law relating to its application, or abuse of power." Enterprises and producers' associations were also given a right of appeal "on the same grounds against individual decisions or recommendations affecting them, or against general decisions and recommendations which they deem to involve an abuse of power affecting them."²⁶⁸ The court has competence to assess damages against the Community in cases where injury results from "an official fault" of the Community in violation

²⁶² Council of Europe News, New Series, No. 8, May 1960, pp. 2-3.

²⁶³ EUROPEAN COMMISSION OF HUMAN RIGHTS, DOCUMENTS AND DECISIONS 1955-1957, pp. 128-30 (1959); Council of Europe News, New Series, No. 10, Sept. 1960, pp. 2-3.

²⁶⁴ Council of Europe News, New Series, No. 6, Jan. 1960, p. 9.

²⁶⁵ *Id.* No. 10, Sept. 1960, p. 3.

²⁶⁷ *Id.* art. 31.

²⁶⁶ 261 U.N.T.S. 140.

²⁶⁸ *Id.* art. 33.

of the treaty, to assess damages against any official of the Community in cases where injury results from "a personal fault" of such an official in the performance of his duties, and to assess equitable damages against the Community if the injured party is unable to recover damages from such an official.²⁶⁹ In addition to several other matters which may be submitted to the court, it has also general jurisdiction to decide any dispute among member states "concerning the application of the Treaty."²⁷⁰

Many technical questions relating to the interpretation of the treaty have been submitted to the court, both by member states and enterprises or their associations, and a few decisions of the High Authority have been annulled by the court.²⁷¹ More than 140 cases were submitted to the court between 1952 and 1960; they related to decisions of the High Authority on such matters as publication of road transport rates, railroad stations on frontiers, compensation levy on scrap imports, and reorganization of the coal-selling system in the Ruhr. More than sixty judgments were given, over twenty cases were withdrawn, and the rest were still pending by the end of 1960.²⁷²

When the two new European Communities—the European Economic Community and the European Atomic Energy Community (Euratom)—were established in 1957, the jurisdiction of the Court of Justice was extended to these communities on grounds similar to, though slightly different from, those enumerated in the treaty establishing the Coal and Steel Community.²⁷³

(e) *North Atlantic Treaty Organization (NATO)*.—The North Atlantic Treaty, signed at Washington on April 4, 1949, contained only a general undertaking by the parties to it "to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security are not endangered."²⁷⁴ The question of developing procedures for settling disputes between the members of NATO has from time to time been raised at NATO meetings, but no formal procedures have been established. In December, 1956, the North Atlantic Council in Ministerial Session decided, however, that "such disputes which have not proved capable of settlement directly be submitted to good offices procedures within the NATO framework before member governments resort to any other international

²⁶⁹ *Id.* art. 40.

²⁷⁰ *Id.* art. 89.

²⁷¹ For an evaluation of the work of the court, see, e.g., Stein, *The Court of Justice of the European Coal and Steel Community, 1954-1957*, 51 AM. J. INT'L L. 821 (1957); VALENTINE, *THE COURT OF JUSTICE OF THE EUROPEAN COAL AND STEEL COMMUNITY* (1955).

²⁷² 40 BULLETIN FROM THE EUROPEAN COMMUNITY 10 (July 1960).

²⁷³ For the text of the relevant provisions, see articles 164-88 of the Treaty Establishing the European Economic Community, articles 136-60 of the Treaty Establishing the European Atomic Energy Community, and articles 3-4 of the Convention relating to Certain Institutions Common to the European Communities. For the text of these agreements, see 298 U.N.T.S. 11, 167 & 267.

²⁷⁴ 34 U.N.T.S. 243, T.I.A.S. No. 1964.

agency except for disputes of a legal character appropriate for submission to a judicial tribunal and those disputes of an economic character for which attempts at settlement might best be made initially in the appropriate specialized economic organizations"; recognized the "right and duty of member governments and of the Secretary General to bring to its attention matters which in their opinion may threaten the solidarity or effectiveness of the Alliance"; empowered "the Secretary General to offer his good offices informally at any time to member governments involved in a dispute and with their consent to initiate or facilitate procedures of inquiry, mediation, conciliation, or arbitration"; and authorized "the Secretary General where he deems it appropriate for the purpose outlined in the preceding paragraph to use the assistance of not more than three permanent representatives chosen by him in each instance."²⁷⁵

The North Atlantic Council has itself dealt with a few disputes between its members. For instance, in 1956 it considered a dispute between Iceland and the United States whether there was continued necessity for the presence of American troops in Iceland. The Council found that the international situation had not improved to such an extent that American defense forces were no longer required in Iceland and recommended that the parties reach an agreement on the continued stationing of forces and the maintenance of facilities in a state of readiness.²⁷⁶ Such an agreement was reached on December 6, 1956.²⁷⁷

In March 1957, the Secretary General of NATO offered his good offices for conciliation of the Cyprus dispute between Greece, the United Kingdom and Turkey, in accordance with the Resolution on the Peaceful Settlement of Disputes of December 1956. The governments of Turkey and the United Kingdom accepted this proposal in principle, but the government of Greece was unable to do so.²⁷⁸ The offer was renewed in 1958, and with the assistance of the Secretary General and the Council of NATO an agreement was reached in February 1959.²⁷⁹ The consultations in NATO with respect to the dispute between Iceland and the United Kingdom over the Icelandic fisheries proved less successful, nevertheless an agreement was reached by the parties in 1961.

Despite the close ties existing among the members of NATO, the procedures for the settlement of disputes between them are still rudimentary. As a minimum, it might be desirable to prepare a NATO Convention for the Peaceful Settlement of Disputes, similar to the European Convention of

²⁷⁵ NATO Letter, Special Supp. to vol. 5, No. 1, Jan. 1957, p. 14.

²⁷⁶ *Id.* vol. 4, Nos. 9 & 10, Sept.-Oct. 1956, pp. 4-6.

²⁷⁷ *Id.* vol. 5, No. 1, Jan. 1957, pp. 6-7.

²⁷⁸ *Id.* vol. 5, No. 4, April 1957, p. 3.

²⁷⁹ *Id.* vol. 7, No. 3, March 1959, pp. 4-6.

1957.²⁸⁰ Alternatively, the members of NATO might agree to submit to the International Court of Justice all legal disputes between them. If they should prefer a tribunal composed only of judges coming from NATO countries, they may request the International Court of Justice to establish a special chamber for the decision of disputes between them,²⁸¹ or they may establish a special permanent NATO tribunal.²⁸²

There are many ways available for improving the means of settling international conflicts; improvements are possible on both the universal and regional levels. With a little courage and a lot of persistence, it may be hoped that almost all important disputes between nations will become amenable to a satisfactory process of settlement. There is always likely to be a group of difficult cases not susceptible of immediate solution, but even as to such cases proper procedures might be devised for separating those elements which can be settled by judicial and other means from those which are for the moment intractable. After such treatment is applied to a dispute, it would be less likely to endanger peace; and after a while even its hard core might melt away. Both universal and regional organizations can contribute effectively to this goal.

²⁸⁰ See pp. 251-52 *supra*.

²⁸¹ The possibility of a similar special chamber of the court for the American states is envisaged by article XXXVI of the Bogotá Pact of 1948. 30 U.N.T.S. 55, 96.

²⁸² For further suggestions on this subject, see Committee on Study of Legal Problems of the United Nations, *Report*, 53 PROC. AM. SOC'Y INT'L L. 354, 358 (1959); Sohn, *International Tribunals: Past, Present and Future*, 46 A.B.A.J. 23, 26 (1960).