

NOTES AND COMMENTS

GEORG SCHWARZENBERGER (1908–1991)

Georg Schwarzenberger, Professor Emeritus of International Law at the University of London, died on September 20, 1991, at the age of 83.

Schwarzenberger was born in Heilbronn, Germany, and educated at the Universities of Heidelberg, Frankfurt, Berlin, Tübingen, Paris and London. It was at Tübingen in 1929, under the supervision of Carlo Schmid, that he secured his doctorate, submitting a thesis entitled “Das Völkerbunds Mandat für Palestina.”

As a Jew and an active member of the German Social Democratic youth movement, he was in grave danger from the Nazis and went to England in 1934 to become Secretary of the New Commonwealth Institute, which later became the London Institute of World Affairs. As editor of the institute, he was responsible for the publication of a series of leading volumes on international law and relations in the Library of World Affairs; and as Director of Studies, for introducing extramural diplomas in international relations and air and space law in the University of London.

He was appointed to the Faculty of Laws at University College London in 1938, where he remained until his retirement in 1975. There he was responsible, with G. W. Keeton, for introducing the series of faculty lectures published as *Current Legal Problems*. He was called to the English bar by Gray’s Inn in 1955.

Schwarzenberger was an ardent believer in an interdisciplinary approach to international studies, as may be seen from his seminal work, *Power Politics*, first published in 1941, and the latest (3d) edition in 1964. In international law he used an inductive approach, convinced that the practice of states and the jurisprudence of courts, both international and national, were more significant than doctrine and theory. His greatest contribution to international law is the four-volume work *International Law as Applied by International Courts and Tribunals* (1945–1986); however, the philosophy behind his approach is to be found in his *Inductive Approach to International Law* (1965). Among other works of major significance are his *International Law and Totalitarian Lawlessness* (1943); *A Manual of International Law* (6th ed., with E. D. Brown, 1976); *The Legality of Nuclear Weapons* (1958); *The Frontiers of International Law* (1962); *Foreign Investments and International Law* (1969); *Economic World Order?* (1970); *International Law and Order* (1971); and *The Dynamics of International Law* (1976). In addition, he was a prolific writer of learned papers, which appeared in a variety of journals, including the *American Journal of International Law*, and in a variety of languages.

Georg Schwarzenberger was an outstanding teacher who inspired his students from all over the world, many of whom are today well-known academics in international law and relations. Particularly in some of the Third World countries, they are also found among senior judicial, diplomatic and governmental officials. He was a hard taskmaster but drove his students for their own benefit, persuading them that their second best would never suffice. To many, he became a lifelong friend whose devotion and interest lasted until his death. For them, he became the standard of academic integrity and true research.

He is survived by his wife, Suse, whom he married in 1931, and his son, Professor Rolph Schwarzenberger.

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CORRESPONDENCE

TO THE EDITOR IN CHIEF:

Judge Roberto Ago's article, "*Binding*" *Advisory Opinions of the International Court of Justice* (85 AJIL 439 (1991)), expressly invites a response. The issues he raises focus on a central question: should the United Nations now be given the capacity to appear before the Court as a contentious party? Judge Ago's argument is highly persuasive, and it suggests an affirmative answer to this question. It would require amendment of the Statute of the Court, but, in addition, it would require the United Nations to think through some of the implications of this new capacity. And at a time when the United Nations is contemplating what it might usefully do during the Decade of International Law, this particular exercise strikes one as an eminently suitable one. The following are all issues to which some thought would need to be given.

1. *Which organ would decide to initiate an application to the Court?* The most likely candidate would be the General Assembly, if only for the reasons that there would be budgetary implications (litigation costs money!), and that a decision on this course of action by the plenary organ would be less likely to raise subsequent controversy than a decision by an organ of limited composition.

2. *What categories of disputes would be subject to United Nations participation as a contentious party?* There is clearly an important policy decision to be made, namely, whether the new UN capacity would extend only to those subject matters in relation to which, at present, a "binding" advisory opinion can be sought; or whether the capacity ought to extend to any legal dispute, or defined categories of legal disputes. In either event, thought would have to be given as to how the consent of the other parties would be expressed. Would it be an ad hoc consent expressed in a special agreement, or would there be some form of consent in advance (e.g., by an amendment to the 1946 General Convention on Privileges and Immunities)?

3. *Who would control the policy of the litigation?* No doubt the routine or technical control of the conduct of any litigation—selection of counsel, preparation of pleadings, etc.—could be left to the Legal Counsel. But what of the many crucial policy decisions that arise during litigation? Should the United Nations seek interim measures of protection? Should the United Nations seek to intervene in a case between states? Should damages or some other form of remedy be sought? It is commonplace for quite critical decisions of policy to have to be taken during litigation, and, whereas these can be taken by the government of a state party, it is by no means so clear who would take them for the United Nations. The General Assembly would not be very appropriate, if only because these are matters not appropriate for open, general debate: confidentiality about such decisions is vital.

The answer might lie in a small committee of the General Assembly, appointed in each case, to advise the Secretary-General. But it would have to be understood that decisions reached and implemented could not thereafter be reopened and questioned by the entire General Assembly, for the conduct of litigation would be impossible on such a basis.

4. *A formal commitment to the binding character of any judgment.* It may seem unnecessary to require such a commitment, but Article 94 of the Charter imposes obli-

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