

ENABLING THE UNITED STATES TO CONTEST "ILLEGAL" UNITED NATIONS ACTS

It is quite likely that at one of the next sessions of the General Assembly some action might be taken which the United States would like to contest on the ground that it constitutes a violation of the Charter. In the early days of the United Nations, when questions of legality arose, the United States was able to muster a majority for requesting an advisory opinion of the International Court of Justice on the subject, and the opinion of the Court was in practically every case favorable to the view taken by the United States. This is no longer possible, as the contest is likely to be between, on the one hand, the developing countries, which have a preponderant majority in the United Nations, and, on the other hand, the United States and very few other states.

To enable the United States in this situation to bring a case before the International Court of Justice contesting the validity of a General Assembly action, it will be necessary for the United States to accept the jurisdiction of the Court for that purpose. Though the United States has accepted the jurisdiction of the Court in 1946 with respect to any legal dispute concerning the "interpretation of a treaty"—which term includes the Charter of the United Nations—the so-called "Connally amendment" to the U.S. declaration of acceptance nullifies the usefulness of that acceptance. Any state can contend that it has determined that its support or not of a particular decision of the United Nations is purely a matter of domestic discretion, not subject to the Court's jurisdiction.

The United States has also excepted from the jurisdiction of the Court "disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction." It is unlikely that the first condition could be complied with in any case which might arise under the Charter; but the United States could specially agree to the jurisdiction of the Court not only in a particular case but also, more generally, with respect to a particular multilateral treaty.

A new, specialized declaration is therefore needed. Such a declaration is permissible. For instance, the Iranian declaration of 1930 was limited to situations or facts relating directly or indirectly to the application of treaties accepted by Iran and subsequent to the ratification of the declaration. (In the Anglo-Iranian case the Court decided that the dispute did not relate to a treaty subsequent to the declaration and that the Court did not have jurisdiction.) In 1946 the United Kingdom accepted the jurisdiction of the Court with respect to "all legal disputes concerning the interpretation, application or validity of any treaty relating to the boundaries of British Honduras." This declaration was in addition to a more general declaration of 1929, which was revised from time to time.

Similarly, the United States may file an additional declaration limited to disputes relating to the interpretation of the United Nations Charter. Such a declaration will be in addition to, and not a substitute for, the declaration of 1946, and would be in a way equivalent to a special treaty provision conferring jurisdiction on the Court, as has been done in many treaties since 1946. Many such clauses have by now been accepted by the Senate as permissible exceptions to the Connally amendment. (A list prepared by the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State, in 1975 lists 36 multilateral and 22 bilateral treaties containing such clauses.)

Such a declaration might, for instance, read as follows:

The United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning the interpretation or application of the Charter of the United Nations.

This declaration is made for a period of five years. Unless it is denounced six months before the expiration of that period, it shall be considered as renewed for a further period of five years and similarly thereafter.

Should the United States file such a declaration, it would be able to bring before the Court a dispute with any state about the consistency of any General Assembly resolution with the Charter of the United Nations, provided that the other state has accepted the jurisdiction of the Court with respect to disputes relating to treaty interpretation, without any reservation allowing that state to exclude in some manner a dispute relating to Charter interpretation.

Should, for instance, the United States and state Alpha disagree during the General Assembly meeting whether a particular resolution is valid under the Charter, and should the United States thereafter through an exchange of diplomatic notes ascertain that Alpha persists in its interpretation, after an appropriate warning about its intentions, the United States will be able to bring the dispute to the Court, if Alpha's declaration contains no blocking reservations. Similarly, cases could be brought against any other state which has accepted the jurisdiction of the Court without any relevant reservations and has taken a point of view different from the United States.

It would seem desirable to obtain the consent of the Senate to such a declaration as soon as possible, without waiting for a situation in which the United States may find it necessary to contest an important UN decision. It may not be too difficult to obtain such consent, in view of the fact that a large majority of the Senate is concerned about the possibility of serious violations of the Charter occurring at sessions of the General Assembly.

Of course, it needs to be considered that the United States may also be accused of having violated the Charter on some occasion, and by reciprocity such a case could be brought against the United States. This

problem has two aspects: allegations of past violations, and the possibility of future violations. The proposed declaration is limited to "disputes hereafter arising" and will not allow the dredging up of any past situations. As far as future disputes are concerned, if the United States makes such a declaration, it would have to consider carefully in each case that any U.S. action which may be considered by some other state a violation of the Charter could be brought before the Court. In some cases, this fact may have some restraining influence on U.S. decisionmakers, both the Administration and the Congress. For a country which claims to be dedicated to the rule of law in world affairs, such restraint may be salutary. But the main importance of the declaration will be in restraining the action of other states, as for the first time the United States would have a legal weapon to challenge those actions of the United Nations which it considers contrary to the Charter. This might be a more useful weapon than a threat to withdraw from the United Nations, an act which might have as disastrous consequences as U.S. refusal to join the League of Nations.

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STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION
(Act of August 12, 1970: Sec. 3685, Title 39, U.S. Code)

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