

**Middle East - Suez story No  
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Middle East/Suez story - 39

24 March 57

Declarations -

Sent by O. Schachter, U.N. Legal Counsel, to D. H.

24 March 1957

*C. H. H. H.*

DECLARATIONS

Among international transactions other than treaties, declarations are frequently of legal importance. A declaration may be unilateral or made by two or more parties. In one type a state communicates (to other states or urbi et orbi) an explanation of views and intentions concerning certain matters. Declarations of this kind may be very important but they hardly comprise transactions out of which follow rights and duties of other states. It seems clear that such unilateral declarations cannot in law be relied upon by other states. A mere general statement of policy and principle cannot be regarded as intended to give rights to a contractual obligation in the strict sense of the word.

In another type of declaration, made within a larger treaty framework, it has been recognized that a unilateral declaration may be binding on the declaring state. Obvious examples are the declaration accepting the obligations of the Charter submitted under Article 4 of the Charter by a state desiring membership in the United Nations, or the declaration accepting the compulsory jurisdiction of the International Court of Justice made under Article 36 of the Statute of the Court. Both types are registered under Article 102 of the Charter.

It is more than doubtful whether registration with the United Nations of itself imparts to a declaration the complexion of an instrument

creating legal rights and obligations. It might be assumed that a declaration could be withdrawn or modified by the declarer at any time unless it made clear the intention of the declaring state that it considered itself bound by the terms of the declaration. Basically, therefore, the binding character of a declaration is dependent in the first instance upon the intent of the declaring state to be bound; this legal character may then be re-enforced by the reliance of other states upon the terms and expressed intention of the declaration.

If it were intended that such a declaration, followed by registration, were to have a binding effect on the declaring state, the language used in the declaration should be precise. For instance, it might instead of the term "declare" use the word "undertake". It might also state that registration will be effected in recognition of the formal and obligatory status of the declaration-undertaking. That is, the clauses of the declaration should indicate in sufficient clarity that they are intended as formulating legal obligations rather than general statements of principle and policy.

Such an undertaking could also at the same time be confirmed and re-enforced by the inclusion of a statement under Article 36 of the Statute of the International Court of Justice, recognizing as compulsory ipso facto and without special agreement, the jurisdiction of the Court in any legal dispute arising out of the interpretation of the Convention of 1888 or of the proposed declaration itself, or concerning the existence of any fact which, if established, would constitute a breach by Egypt of an obligation under either of those instruments.

24 March 1957

### DECLARATIONS

Among international transactions other than treaties, declarations are frequently of legal importance. A declaration may be unilateral or made by two or more parties. In one type a state communicates (to other states or urbi et orbi) an explanation of views and intentions concerning certain matters. Declarations of this kind may be very important but they hardly comprise transactions out of which follow rights and duties of other states. It seems clear that such unilateral declarations cannot in law be relied upon by other states. A mere general statement of policy and principle cannot be regarded as intended to give rights to a contractual obligation in the strict sense of the word.

In another type of declaration, made within a larger treaty framework, it has been recognized that a unilateral declaration may be binding on the declaring state. Obvious examples are the declaration accepting the obligations of the Charter submitted under Article 4 of the Charter by a state desiring membership in the United Nations, or the declaration accepting the compulsory jurisdiction of the International Court of Justice made under Article 36 of the Statute of the Court. Both types are registered under Article 102 of the Charter.

It is more than doubtful whether registration with the United Nations of itself imparts to a declaration the complexion of an instrument

creating legal rights and obligations. It might be assumed that a declaration could be withdrawn or modified by the declarer at any time unless it made clear the intention of the declaring state that it considered itself bound by the terms of the declaration. Basically, therefore, the binding character of a declaration is dependent in the first instance upon the intent of the declaring state to be bound; this legal character may then be re-enforced by the reliance of other states upon the terms and expressed intention of the declaration.

If it were intended that such a declaration, followed by registration, were to have a binding effect on the declaring state, the language used in the declaration should be precise. For instance, it might instead of the term "declare" use the word "undertake". It might also state that registration will be effected in recognition of the formal and obligatory status of the declaration-undertaking. That is, the clauses of the declaration should indicate in sufficient clarity that they are intended as formulating legal obligations rather than general statements of principle and policy.

Such an undertaking could also at the same time be confirmed and re-enforced by the inclusion of a statement under Article 36 of the Statute of the International Court of Justice, recognizing as compulsory ipso facto and without special agreement, the jurisdiction of the Court in any legal dispute arising out of the interpretation of the Convention of 1838 or of the proposed declaration itself, or concerning the existence of any fact which, if established, would constitute a breach by Egypt of an obligation under either of those instruments.

. . . . will accept advisory opinions of the Court rendered in interpretation of the Convention in accordance with the procedures envisaged in Article 96 of the Charter and Article 65 of the Statute of the Court.

The General Assembly,

Considering the efforts of the United Nations with a view to the maintenance of international peace and security in the Middle East;

Further considering that it would contribute to the success of these efforts if certain legal questions could be clarified;

Having regard to the Charter of the United Nations and relevant resolutions of the Security Council and General Assembly, the Convention of Constantinople of 29 October 1888, and the Egypt-Israeli General Armistice Agreement of 24 February 1949;

1. Requests the International Court of Justice, in the light of the state of relations in law and fact existing between Egypt and Israel and any other considerations of law or fact that may be relevant, to give an advisory opinion on the following legal questions:

I. What are the rights of Egypt and of Israel with respect to passage through the Suez Canal of

(a) Israeli merchant ships and cargoes?

(b) Israeli warships?

II. What are the rights of other States vis-a-vis Egypt with respect to passage through the Suez Canal of merchant ships and cargoes of such other States destined for or coming from an Israeli port?

2. Requests the Secretary-General to transmit to the International Court of Justice in accordance with Article 65 of the Statute of the Court the present resolution accompanied by all documents likely to throw light upon the question including particularly the relevant records of the Security Council and the General Assembly.

The General Assembly,

Considering the efforts of the United Nations with a view to the maintenance of international peace and security in the Middle East;

Further considering that it would contribute to the success of these efforts if certain legal questions could be clarified;

Having regard to the Charter of the United Nations and the Egyptian-Israeli General Armistice Agreement of 24 February 1949;

1. Requests the International Court of Justice, in the light of the state of relations in law and fact existing between Egypt and Israel and any other considerations of law or fact that may be relevant, to give an advisory opinion on the following legal questions:

- I. What are the rights of Egypt and of Israel with respect to passage through the Straits of Tiran and the Gulf of Aqaba of:
  - (a) Israeli merchant ships and cargoes?
  - (b) Israeli warships?

- II. What are the rights of other States vis-à-vis Egypt with respect to passage through the Straits of Tiran and the Gulf of Aqaba of:
  - (a) Merchant ships and cargoes of such other States destined for or coming from an Israeli port?
  - (b) Warships of such other States?

2. Requests the Secretary-General to transmit to the International Court of Justice in accordance with Article 65 of the Statute of the Court the present resolution accompanied by all documents likely to throw light upon the question including particularly the relevant records of the Security Council and the General Assembly.