CHAPTER 6

The Decisions of Political Organs of the United Nations and the Rule of Law

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I THE PURPOSE

In celebrating the long career of our colleague, Professor Wang, it is appropriate to discuss a problem which is both endemic and fundamental. The political realignments of the recent past have produced a situation in which the Security Council is more often able to take decisions without the interference of the veto. At the same time, in respect of the use of force by the United States (the bombing of Libya in 1986, coupled with an attempt to assassinate the Head of State; the invasion of Panama in 1989) and its close associates, the Security Council can be counted upon to do nothing, or to do nothing involving sanctions. In brief, the familiar problem of double standards has become more acute.

These developments highlight a question which has always been on the agenda; the relation of the work of the political organs of the United Nations to the Rule of Law. It is perhaps particularly fitting to rehearse the problem during the Decade of International Law.

1 Judging the International System by Municipal Law Criteria

Before the criteria which form the practical manifestation of the Rule of Law are set forth by way of reference, it is necessary to take care of the objection that it is unsuitable and irrelevant to subject the system of international law and diplomacy to evaluation on the basis of the criteria derived from municipal law. In this context it is necessary to distinguish two propositions. It is, of course, true to say that the relations of States should not be equated to the relations of legal persons within domestic law, and that as a consequence, legal concepts should not be translated too readily from the realm of domestic law to the plane of international relations. At the same time there is no reason to refrain from subjecting international law and the

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sphere of international organisation to *analysis* in terms of the values of national legal and, or, political systems.

It would be absurd if it were not possible to evaluate the workings of the international system in terms of the rule of law. Indeed, the development of standards of human rights, as well as the procedural standards prevalent in international tribunals, as an aspect of general principles of law, demonstrate that domestic law standards, adopted as paradigms or ideals, have penetrated the sphere of international law to a considerable degree.

2 *An Epitome of the Rule of Law*

The Rule of Law is not, and cannot be, a purely "legal" artefact, since it involves elements derived from political science, constitutional theory, and historical experience. Moreover, it cannot be reduced to a few simple formulations, and it involves a series of conjointly applicable principles or desiderata. For the purposes of this essay, the reader is asked to accept the following elements as an epitome of the Rule of Law as a practical concept. All that is needed for present purposes is a working instrument for analysis.

The key elements constituting the Rule of Law, taken in conjunction, are as follows:

(1) Powers exercised by politicians and officials must be based upon authority conferred by law.
(2) The law itself must conform to certain standards of justice, both substantial and procedural.
(3) There must be a substantial separation of powers between the executive, the legislative and the judicial. While this separation is difficult to maintain in practice, it is at least accepted that a body determining facts and applying legal principles with dispositive effect, even if it is not constituted as a tribunal, should observe certain standards of procedural fairness.
(4) The judiciary should not be subject to the control of the executive.
(5) All legal persons are subject to rules of law which are applied on the basis of equality.

These elements are derived from the standard British sources.[1] At the same time, there is no reason to consider the principles set forth to be parochial or idiosyncratic.

To the elements offered above, Dicey[2] would have added that the rule of law implies the absence of wide discretionary powers in the government which may encroach on personal liberty, rights of property or freedom of contract.

[1]S. A. de Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed., 1989, pp. 18–22; Wade, *Administrative Law*, 6th ed., 1988, pp. 23–27; Wade and Bradley, *Constitutional and Administrative Law*, 10th ed. by Bradley, 1985, pp. 91–104.

[2]Dicey, *Introduction to the Study of the Law of the Constitution*, 7th ed., 1908, Chapter IV; and see p. 198 in particular.

3 Equal Subjection to Law

It is not proposed to attempt a general examination of international law and its institutions in the light of this assemblage of criteria, but to focus upon two standards which are particularly relevant to any consideration of the powers of the political organs of the United Nations. The first of these criteria is the requirement of an equal application of the law. An insistence on equal subjection to the law is a shared characteristic of the opinions of a variety of constitutional law theorists.[3]

The workings of the political organs of the United Nations have, particularly in the recent past, produced results which exhibit double standards in the application of the law, on a scale which places the principle of equal subjection to law in jeopardy. No doubt the normal criticism of the international system is that it lacks enforcement procedures. There is, however, another dimension to the problem of enforcement. It has only been a political contingency which has prevented the Security Council from exercising its powers extensively. In reality the powers accorded to it under the Charter are very considerable. When those powers are exercised extensively, the question then arises: What are the legal limits to those powers?

Analogous problems arise in relation to the General Assembly, although they have tended only to surface when operations authorised by the Assembly resulted in disputes about the budget, at which stage constitutional issues would come home to roost.

4 The Powers Concerned must be Exercised in Accordance with Law

The second criterion of the Rule of Law which is of special relevance for present purposes is the principle that the law itself should be exercised in accordance with certain standards of justice, both substantial and procedural. In the sphere of international organisations, this may be regarded as self-evident. As one writer has stated the position:

> Whatever the legal nature of the powers attributed to an international institution, they are specific in the sense that they may be exercised only with respect to certain subject-matters prescribed by the constituent instrument.[4]

There is thus no question that in principle international organisations may act *ultra vires* and create the necessity to decide on the legal effect of the illegal acts of organisations.[5] The fact that the international system does not allow for any automatic review of the decisions of organisations has not obscured the real possibility that in certain circumstances the question of *ultra vires* will be dealt with judicially. The validity of the acts of organs of the United Nations thus came into question in

[3]See Geoffrey Marshall, *Constitutional Theory*, Oxford, 1971, pp. 137–139.

[4]El Erian, in Sørensen (ed.), *Manual of Public International Law*, London, 1968, p. 75.

[5]See Elihu Lauterpacht, *Cambridge Essays in International Law*, London, 1965, pp. 88–121.

the advisory opinion procedure, in the Opinion on *Certain Expenses of the United Nations* (1962)[6] and in the *Namibia Opinion* (1971).[7]

It is a striking fact that the predecessor of the International Court was firmly of the view that the effective application of the Covenant of the League of Nations required the observance of certain procedural standards. In its 12th Advisory Opinion concerning the *Interpretation of the Treaty of Lausanne (Iraq Boundary)* the Permanent Court decided that in respect of an actual dispute laid before the Council of the League, the vote of the interested parties did not count for the purpose of ascertaining unanimity in the context of Article 5 of the Covenant.

In the words of the Permanent Court:[8]

> Unanimity, therefore, is required for the decision to be taken by the Council of the League of Nations, in virtue of Article 3, paragraph 2, of the Treaty of Lausanne, with a view to the determination of the frontier between Turkey and Iraq. The question has now to be considered whether the representatives of the interested Parties may take part in the vote.
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> In this connection, it should be observed that the very general rule laid down in Article 5 of the Covenant does not specially contemplate the case of an actual dispute which has been laid before the Council. On the other hand, this contingency is dealt with in Article 15, paragraphs 6 and 7, which, whilst making the limited binding effect of recommendations dependent on unanimity, explicitly state that the Council's unanimous report need only be agreed to by the Members thereof other than the representatives of the Parties. The same principle is applied in the case contemplated in paragraph 4 of Article 16 of the Covenant and in the first of the three paragraphs which, in accordance with a Resolution of the Second Assembly, are to be inserted between the first and second paragraphs of that article.
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> It follows from the foregoing that, according to the Covenant itself, in certain cases and more particularly in the case of the settlement of a dispute, the rule of unanimity is applicable, subject to the limitation that the votes cast by representatives of the interested Parties do not affect the required unanimity.
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> The Court is of opinion that it is this conception of the rule of unanimity which must be applied in the dispute before the Council.
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> It is hardly open to doubt that in no circumstances is it possible to be satisfied with less than this conception of unanimity, for, if such unanimity is necessary in order to endow a recommendation with the limited effects contemplated in paragraph 6 of Article 15 of the Covenant, it must *a fortiori* be so when a binding decision has to be taken.
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> The question which arises, therefore, is solely whether such unanimity is sufficient or whether the representatives of the Parties must also accept the decision. The principle laid down by the Covenant in paragraphs 6 and 7 of Article 15, seems to meet the requirements of a case such as that now before the Council, just as well as the circumstances contemplated in that article. The well-known rule that no one can be judge in his own suit holds good.
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> From a practical standpoint, to require that the representatives of the Parties should accept the Council's decision would be tantamount to giving them a right of veto, enabling them to prevent any decision being reached; this would hardly be in conformity with the intention manifested in Article 3, paragraph 2, of the Treaty of Lausanne.

[6] *ICJ Reports*, 1962, p. 151.
[7] *ibid.*, 1971, p. 16.
[8] *PCIJ, Series B*, No.12 (1925), pp. 31–32.

> Lastly, it may perhaps be well to observe that since the Council consists of representatives of States or Members, the legal position of the representatives of the Parties upon the Council is not comparable to that of national arbitrators upon courts of arbitration.

This reasoning involves the interpretation of the Covenant but, as Sir Hersch Lauterpacht observed: ".... the Court's vindication of the unanimity rule stopped short of disregarding altogether the general principle of law that no one may be judge in his own cause."[9] The Advisory Opinion is given prominence in Lauterpacht's examination of "judicial legislation through application of general principles of law".[10]

The significance of the opinion lies in the clear acceptance of the view that certain standards of procedural fairness should be applicable when a political organ is dealing with an actual dispute.

Particular difficulties arise when the powers of the Security Council, by virtue of Chapter VII of the Charter, are involved. It is sometimes assumed, without argument, that if the Council makes a determination of the existence of a threat to the peace or breach of the peace, or act of aggression, it assumes an unlimited consequential discretionary power. And it is true that the Rule of Law experts tend to have difficulties with discretionary powers. Provided the powers have been lawfully conferred it is, so it is said, impossible to regard discretion as incompatible with the Rule of Law.

At least a part of the answer to this conundrum is that there is no dichotomy involving discretionary power and the Rule of Law. A discretion can only exist within the law and the real question relates to the ambit of and conditions attaching to the discretionary power.

The few writers who advert to the problem are clearly of the opinion that the Council cannot act arbitrarily. Thus Professor Bowett[11] describes the position as follows :

> 3. Functions and Powers
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> These are stated in Articles 24–26 of the Charter. In conferring on the Council 'primary responsibility for the maintenance of international peace and security', the members of the Organisation agree that it 'acts on their behalf'. The Council thus acts as the agent of all the members and not independently of their wishes; it is, moreover, bound by the Purposes and Principles of the Organisation, so that it cannot, in principle, act arbitrarily and unfettered by any restrains. At the same time, when it does act *intra vires*, the members of the Organisations are bound by its actions and, under Article 25, they 'agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'. This agreement would not extend to a mere 'recommendation' as opposed to a 'decision'.

In this context it is to be recalled that Article 2 of the Charter provides that the "Principles" shall bind "the Organisation and its Members". Furthermore, the

[9] *The Development of International Law by the International Court*, London, 1958, p. 160.
[10] *ibid.*, pp. 158–172.
[11] *The Law of International Institutions*, 4th ed., London, 1982, p. 33.

provisions of Article 24 do not indicate an unfettered conferment of powers, and Article 24(2) stipulates expressly that: "In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII."

The conclusion must be that the Security Council is subject to the test of legality in terms of its designated institutional competence. Certain basic criteria therefore apply. A determination of a threat to the peace as a basis for action necessary to remove the threat to the peace, cannot be used as a basis for action which — if the evidence so indicates — is for collateral and independent purposes, such as the overthrow of a government or the partition of a State. Such questions of *vires* are clear enough as a matter of principle, provided the evidence of collateral purposes can be marshalled.

More difficult is the situation in which the Security Council (or the General Assembly) makes a determination which is contrary to principles of general or customary international law. This hypothesis calls for careful identification. The presupposition is that the political organ has made a determination of a threat to the peace (etc.) which is in principle *intra vires* but then, in the course of implementing this decision, adopts a method of proceeding which is on its face incompatible with general international law and, or, the normal application of multilateral standard-setting treaties.

Initially, it may be asserted that it is question-begging to suppose that any issue of *vires* could arise, because, once the purposes of Chapter VII are involved, the Council has a wide discretion and this particularly in respect of ways and means. However, this assertion has its own problem of circularity and it is precisely in the sphere of means of implementation that the concepts of purpose and necessity (the colleagues of *intra vires* action) tend to become more open-textured, given that it cannot be *ex hypothesi* necessary to select a method of implementation which is incompatible with general international law.

The position can be clarified by reference to two recent episodes. In Resolution 687 (1991) adopted on 3 April 1991[12] the Security Council made the following dispositions:

> 2 *Demands* that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the 'Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters', signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations and published by the United Nations in document 7063, United Nations, *Treaty Series*, 1964;
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> 3 *Calls upon* the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate

[12] *International Legal Materials*, vol. 30 (1991), p. 847. *Cf.* also the items in Lauterpacht, Greenwood, Weller and Bethlehem, *The Kuwait Crisis: Basic Documents*, Cambridge, 1991, pp. 45–50, 73–77.

material, including the map transmitted by Security Council document S/22412 and to report back to the Security Council within one month;

4 *Decides* to guarantee the inviolability of the above-mentioned international boundary and to take as appropriate all necessary measures to that end in accordance with the Charter of the United Nations; ....

It is probable that the alignment as such was disputed (and there is also a question of title to certain islands) and that, therefore, the adoption of a particular alignment by the Security Council involved rather more than a "demarcation". If this is a correct view, then the Security Council has adopted a role which is inappropriate and incompatible with general international law. It is one thing to effect a restoration of Kuwaiti sovereignty on the basis of the status quo prior to Iraq's invasion; it is quite another to impose a boundary in the absence either of bilateral negotiation and agreement or an arbitration or reference to the International Court. Moreover, the position is rendered anomalous precisely because, as Resolution 687 makes clear, the intention was to establish "the international boundary", and it is to be presumed that this was to be the alignment justified on the basis of principles of international law.

The result is incompatible with normal principles of procedural justice and cannot be regarded as a necessary method of restoring international peace and security in accordance with Article 39 of the Charter. As Sir Hersch Lauterpacht observed:[13]

> No rule is more firmly embedded in the practice of modern international law than the principle that States are not bound, in the absence of an agreement to the contrary, to submit their disputes with other States to final adjudication by a third party.

Recent dealings between the Security Council and the Government of Libya provide a further example. The key document is Resolution 731 (1992) adopted on 21 January 1992[14], of which the material parts are as follows:

The Security Council, ...

Deeply concerned over the result of investigations, which implicate officials of the Libyan Government and which are contained in Security Council documents that include the requests addressed to the Libyan authorities by France, 1/. 2/ the United Kingdom of Great Britain and Northern Ireland 2/, 3/ and the United States of America 2/, 4/, 5/ in connection with the legal procedures related to the attacks carried out against Pan American flight 103 and Union de transports aériens flight 772;

Determined to eliminate international terrorism;

(1) *Condemns* the destruction of Pan American flight 103 and Union de transports aériens flight 772 and the resultant loss of hundreds of lives;

(2) *Strongly deplores* the fact that the Libyan Government has not yet responded effectively to the above requests to co-operate fully in establishing responsibility for the terrorist acts referred to above against Pan American flight 103 and Union de transports aériens flight 772;

[13] *op. cit.* (footnote 9, *supra*), p. 158.

[14] *International Legal Materials*, vol. 31, 1992, p. 732.

(3) *Urges* the Libyan Government immediately to provide a full and effective response to those requests so as to contribute to the elimination of international terrorism;
(4) *Requests* the Secretary-General to seek the co-operation of the Libyan Government to provide a full and effective response to those requests;
(5) *Urges* all States individually and collectively to encourage the Libyan Government to respond fully and effectively to those requests;
(6) *Decides* to remain seized of the matter.[15]

This Resolution appears to incorporate various other documents by reference, these being described as "requests addressed to the Libyan authorities". The following item is an example of one of the documents referred to in the Resolution. It is a British Statement of 27 November 1991 and it reads as follows:

> Following the issue of warrants against two Libyan officials for their involvement in the Lockerbie atrocity, the Government demanded of Libya the surrender of the two accused for trial. We have so far received no satisfactory response from the Libyan authorities.
> The British and American Governments today declare that the Government of Libya must:
> Surrender for trial all those charged with the crime; and accept complete responsibility for the actions of Libyan officials.
> Disclose all it knows of this crime, including the names of all those responsible, and allow full access to all witnesses, documents and other material evidence, including all the remaining timers.
> Pay appropriate compensation.
> We are conveying our demands to Libya through the Italians, as our protecting power. We expect Libya to comply promptly and in full.[16]

Here again the Security Council has chosen to make dispositions in an area governed by precise principles of public international law. One such principle is that extradition can only take place on the basis of an extradition treaty. In the case of Libya the two States demanding surrender of two Libyan nationals do not have extradition treaties with Libya and have adopted the position that the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971 is not applicable.

Libya has instituted proceedings in the International Court against the United Kingdom and the United States in respect of a dispute over the interpretation and application of the Montreal Convention.

The proceedings were begun by two Applications dated 3 March 1992, which were accompanied by requests for interim measures of protection. Oral observations were presented on behalf of the Parties on 26 and 28 March 1992. Whilst the Court was deliberating, the Security Council adopted Resolution 748 (1992) on 31 March 1992.[17] The relevant parts of Resolution 748 are as follows:

[15]The footnote references are to the following UN documents: (1) S/23306; (2) S/23309; (3) S/23307; (4) S/23308; (5) S/23317.

[16]Doc. S/23307, Annex III.

[17]*International Legal Materials*, vol. 31, 1992, p. 750.

Determining, in this context, that the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992), constitute a threat to international peace and security,

Determined to eliminate international terrorism,

Recalling the right of States, under Article 50 of the Charter, to consult the Security Council where they find themselves confronted with special economic problems arising from the carrying out of preventive or enforcement measures,

Acting under Chapter VII of the Charter,

(1) *Decides* that the Libyan Government must now comply without any further delay with paragraph 3 of resolution 731 (1992) regarding the requests contained in documents S/23306, S/23308 and S/23309;

(2) *Decides also* that the Libyan Government must commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism;

(3) *Decides* that, on 15 April 1992 all States shall adopt the measures set out below, which shall apply until the Security Council decides that the Libyan Government has complied with paragraphs 1 and 2 above: ...

It was in the light of this second Resolution that the International Court decided, by eleven votes to five, not to accede to the Libyan requests for provisional measures of protection.[18]

The writer does not intend to enter upon an examination of the respective roles of the Council and the Court. However, certain observations are in order on the basis that the adoption of Resolutions 731 and 748 involved substantial anomalies from the point of view of the Rule of Law. Such anomalies appear at two levels. The Council took the view that a refusal to respond to demands for the surrender of the two suspects by Libya, constituted a threat to the peace for the purposes of Chapter VII. This determination is itself problematical, but even more problematical is the fact that Resolution 731 simply adopts the "demands" of the United Kingdom and the United States, which demands contain no reference to considerations of international law.

Nor do the anomalies end there. The United Kingdom and the United States had made it abundantly clear that they would not accept any recourse to peaceful methods of settlement. Consequently, the demands involved Libyan acceptance of the version of the facts asserted by the United Kingdom and the United States and, as the documents indicate, the presumption of innocence was not adhered to (see the British Statement set forth on page 98).

Of particular concern is the fact that the subject matter of the two resolutions involves the rights of two individuals and has ramifications in the sphere of procedural fairness and standards of human rights. Moreover, in the light of the

[18]Order of 14 April 1992; Case Concerning Questions of Interpretation of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya* v. *United Kingdom*), *ICJ Reports*, 1992, p. 3; the same (*Libyan Arab Jamahiriya* v. *United States of America*), *ibid.*, p. 114.

public statements made by senior officials, both in the United Kingdom and in the United States, there is now substantial doubt as to whether the two suspects could receive a fair trial either in the United States or in Scotland.

5 Human Rights Standards

The development of human rights standards both in the context of multilateral standard-setting treaties and in the context of general international law has considerable relevance to the role of the political organs. Human rights standards have produced two different effects, which to some degree involve contradiction and paradox. In the first place, the development of human rights and the erosion of the reserved domain of domestic jurisdiction have caused an extension of the powers, and the willingness, of political organs to seek to intervene in situations involving patterns of breaches of human rights standards and breaches of the principle of self-determination. However, as a consequence of this extension of jurisdiction of organs of the United Nations, the possibility of double standards has increased. The most blatant, current example is the uncensured policy of Turkey to bomb Kurdish rebels both in Turkey and in northern Iraq, while the Government of Iraq is forbidden to use force against Kurdish rebels within its own territory.[19]

There is a further aspect to the relevance of human rights standards. The rights of individuals to equality of treatment and to the benefit of ordinary standards of procedural justice are inherent and not subject to the shifts of political preference. It is the total disregard of the principles of procedural fairness, in relation to the two individuals whose surrender is demanded, which renders Resolutions 731 and 748 problematical.

6 The Control of the Conduct of Political Organs

An important part of the overall picture is the absence of any system of judicial review of the decisions of political organs of the United Nations. There is no compulsory system of review of the acts of organs either by bodies external to them or by individual States. The advisory opinion procedure provides a certain form of review, but it is only occasionally that the majority of States in a political organ will decide to make a request.

7 Some Modest Proposals

This essay has the purpose of exposing the existence of certain anomalies in the practice of the political organs in the light of the criteria of the Rule of Law, and standards of procedural justice based both in the Rule of Law, and in contemporary

[19]See SC Resolution 688 (1991), adopted on 5 April 1991; *International Legal Materials*, vol. 30, 1991, p. 858.

human rights standards. As is often the case, the identification of the problem is easier than the prescription of a cure. It is probable that there is no simple cure in the form of an institutional reform or procedural device. As in the case of States — so also in the case of organisations and their organs — the legal regime is primarily one of self-limitation.

In the case of the Security Council there is no reason to assume a tension between effectiveness and legality. Common sense would suggest that the authority of a political organ must depend on respect for the Rule of Law and that there is an essential link between operational efficacy and legality.

Two critical areas may be segregated. The first concerns the situation in which there is a problem of demarcation of functions as between the Security Council acting by virtue of Chapter VII and the International Court. This question arose in the recent proceedings relating to the Libyan requests for interim measures, and will no doubt reappear in the pleadings in other phases of the two cases.[20] The second critical area concerns Security Council resolutions which are intended to have dispositive effects upon a subject matter which is essentially one which involves international law, but which resolutions contain dispositions radically incompatible with public international law either in terms of procedure, or substance, or both.

It may be recalled that the political organs not infrequently adopt a course of conduct carefully based upon legal considerations. The resolution adopted by the General Assembly concerning reparation for injuries incurred in the service of the United Nations[21](the assassinations by terrorists of Count Folke Bernadotte and Colonel André Serot) was rooted in legal considerations and was related to an Advisory Opinion of the International Court.[22] Similarly, the resolutions adopted by the Security Council relating to the Cyprus question in the period since July 1974[23] have been drafted against a background of legal considerations, whether implicit or explicit.

It is inevitably surprising when, in the course of the debate in the Security Council leading to the adoption of Resolution 731, the United States representative, Mr Pickering, expressed himself as follows:[24]

> The resolution makes it clear that neither Libya nor indeed any other State can seek to hide support for international terrorism behind traditional principles of international law and State practice.

The setting aside of the "traditional principles of international law" is but one dimension of the problem of legality. Another dimension is the distinction between

[20]See note 17, *supra*.

[21]Resolution 365 (IV) adopted on 1 December 1949; see also Brownlie, *System of the Law of Nations: State Responsibility, Part 1*, Oxford, 1983, pp. 124–127.

[22]*Reparation for Injuries Suffered in the Services of the United Nations*, *ICJ Reports*, 1949, p. 174.

[23]See, in particular, Resolutions 367 (1975), 370 (1975), 541 (1983), and 649 (1990).

[24]*UN Doc.* S/PV.3033, p. 80.

purpose and the modalities of implementation. Even if the political organs have a wide margin of appreciation in determining that they have competence by virtue of Chapter VI or Chapter VII, and further, in making dispositions to maintain or restore international peace and security, it does not follow that the selection of the modalities of implementation is unconstrained by legality. Indeed, when the rights of individuals are involved, the application of human rights standards is a legal necessity. Human rights now form part of the concept of international public order and the International Court, in a dictum supported by 12 Judges, has asserted that the obligations of States deriving from "the basic rights of the human person" are obligations *erga omnes*.[25] This discipline is no less applicable when Member States are discharging their responsibilities as members of the Security Council.

[25] *Barcelona Traction* case (Second Phase), *ICJ Reports*, 1970, p. 3 at p. 32.