

Confidential

PLEASE RETAIN
ORIGINAL ORDER

UN ARCHIVES

SERIES 1086
BOX 33
FILE 3
ACC.

SMS

Universities

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

EXECUTIVE OFFICE OF THE SECRETARY-GENERAL
CABINET DU SECRETAIRE GENERAL

REFERENCE:

21 July 1994

Dear Professor Seyersted,

On behalf of the Secretary-General, I write to acknowledge receipt of the articles written by Judge Ago and Professor Bowett, which you were kind enough to send. The articles will be brought to the attention of the Secretary-General.

Yours sincerely,



Stanlake J.T.M. Samkange
Executive Office of the
Secretary-General



Professor Finn Seyersted
University of Oslo
Institutt for Offentlig Rett
Department of Public
and International Law
Karl Johansgate 47
Oslo 0162
Norway

UNIVERSITETET I OSLO

OE 20/7

Statulule

Professor Finn Seyersted
INSTITUTT FOR OFFENTLIG RETT
Department of public and
international law

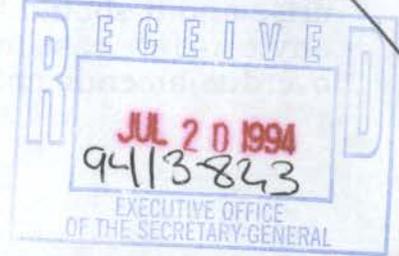


KARL JOHANSGATE 47 0162 OSLO
0162 OSLO

TELEFON (22) 85 94 21
TELEFAX (22) 85 94 20

Oslo, 6 June 1994

The Editor
American Journal of International Law



Somewhat belatedly my attention has been drawn to the articles by my friends Judge Roberto Ago and Professor Derek Bowett proposing that the International Court of Justice should be opened to the United Nations (Bowett) or the UN and the Specialized Agencies (Ago) as contentious parties. This will not confer any new capacity upon international organizations - it will merely remove an explicit bar to the exercise of their inherent capacity under general international law to, *inter alia*, being parties to disputes.

Professor Bowett is very right in pointing out that it would be a pity if Roberto Ago's article were to be met with no reaction. Indeed, the proposal is overdue and it should not be confined to the UN, but comprise all intergovernmental organizations. With their steadily increasing number (exceeding by far the number of states) and role in international affairs and international law, it will soon be as outdated to exclude them through an express provision in Article 34 in the Statute of the Court from being parties in cases before the Court, as it would be to provide in national law that only physical persons may be parties in cases before national courts.

Such extension of the competence of the Court would automatically comprise all disputes to which the organization is a party as a distinct legal person, e.g. relating to its privileges and immunities or those of its officials, or to its legal claims under its constitution or other treaties against member (or even non-member) states in organizational and substantive matters, and vice-versa. It would, on the other hand, imply an important progress if it now, after the end of the cold war, were possible to obtain agreement to extend the competence of international organizations also to suing states (or other international organizations) for violations of international law generally, i.e. to act as a guardian of international law on behalf of the international community as a whole - each organization within its substantive (and geographical) field of competence. However, such important advancement of international law must be considered separately, in relation to specific organizations, and should not be allowed to hold up the obvious, general - and now presumably non-controversial - adjustment of Article 34 of the Statute of the International Court of Justice to existing international law by making it read:

"Only states and intergovernmental organizations may be parties in cases before the Court".

Other questions discussed by professor Bowett - such as which organ would decide to initiate application to the Court - are, as he points out, internal matters for each organization to decide. One can of course envisage cases where the Court might have to consider whether the suit has been brought by a competent organ - just as it might in principle have to do in the case of a state. But even in the case of international organizations this problem is not very likely to arise and it should in any event be left for decision by the Court in any concrete case and should not be allowed to hold up the now overdue amendment of Article 34 of its Statute.

1991 11 5 JUL
2082 1/P

Finn Seyersted

Finn Seyersted

UNIVERSITETET I OSLO

Professor Finn Seyersted
INSTITUTT FOR OFFENTLIG RETT
Department of public and
international law



Karl Johansgt. 47
0162 OSLO

Telefon 22 85 94 21
Telefax 22 85 94 20

7 Juin 1994

Personal

M. Boutros Boutros-Ghali
Secrétaire Général
Nations Unies

Mon cher Confrère

Je Vous remercie d'avoir pris le temps pour une conversation pendant votre séjour à Oslo.

Conformément à votre désir - j'envoie à Vous personnellement ci-joints ma proposition de ce que les Nations Unies accèdent aux quatre conventions de Genève de 1949 pour obtenir la protection de ces conventions pour les membres de leurs forces armées, y compris des soldats de mon pays.

En plus, je Vous envoie une proposition (verte) - élaboré en premier lieu par quatre membres de cette Faculté de droit - d'un système quasi-législatif pour la protection de l'environnement à la modèle, par exemple, de l'OMS (World Health Regulations) et des commissions régionales de pêche (voir Annexe III - où bien la page 2 de mon intervention à UNCED qui également est annexée à cette lettre). J'espère que cette proposition également pourra être poursuivie par les Nations Unies.

Veuillez bien agréer, cher Confrère, l'expression de mes sentiments cordiaux.

Finn Seyersted

cc: Comité international de la Croix-Rouge
Norwegian Ministry for Foreign Affairs

UNIVERSITETET I OSLO

Professor Finn Seyersted
INSTITUTT FOR OFFENTLIG RETT
Department of public and
international law



KARL JOHANSGATE 47 0162 OSLO
0162 OSLO

TELEFON (22) 85 94 21
TELEFAX (22) 85 94 20
Oslo, 7 June 1994

Mr. Boutros Ghali
Secretary General
United Nations

Mon cher ~~C~~onfrère,

As I mentioned during our conversation in Oslo, my country has been an active contributor to UN forces over many years. Now that the cold war is ended and the UN is envisaging the possibility of peace-making UN forces that might become involved in fighting, I propose that the UN, together with the International Committee of the Red Cross, establish a group of experts to elaborate a draft additional protocol or unilateral declaration of accession (article 2 in fine) to the Geneva Conventions for the protection of the victims of war - in order to ensure protection for members of UN forces under the specific provisions of the conventions. Since it is not Norway and the other member states providing contingents, but the UN itself, which will be party to any conflict, it is necessary for this purpose that the UN itself become a party to the conventions. Since the UN is not a state with a national army and its own organs of enforcement, its accession may require some adjustments which could be specified in the protocol or the declaration of accession.

On the details, I refer to my book "United Nations Forces in the Law of Peace and War" (Sijthoff, Leiden, 1966) Chapter VIII. I also refer to the brief versions in the Conclusions (pp. 411-26, especially pp. 419 ff.) and to pp. 15-16 of the enclosed proposal for UN Security Forces by a WAWF Commission of Experts.

I have earlier discussed the matter with the International Committee of the Red Cross. They have for many years considered a UN accession highly desirable and will be happy to take part in a working group.

With kind regards

Yours sincerely

Finn Seyersted