COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

1949

RÉPARATION DES DOMMAGES SUBIS AU SERVICE DES NATIONS UNIES

AVIS CONSULTATIF DU 11 AVRIL 1949.

ANNÉE 1949

SÉANCE PUBLIQUE TENUE LE 7 MARS 1949, A 11 HEURES

Présents : MM. BASDEVANT, *Président ;* GUERRERO, *Vice-Président ;* ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, sir ARNOLD MCNAIR, M. KLAESTAD, BADAWI PACHA, MM. KRYLOV, READ, HSU MO, AZEVEDO, *Juges ;* M. HAMBRO, *Greffier.*

Présents également :

M. Ivan KERNO, Secrétaire général adjoint, représentant du Secrétaire général des Nations Unies.

M. A. FELLER, Directeur principal du Département juridique, comme conseil.

Les représentants des Gouvernements suivants :

France : M. Charles CHAUMONT, professeur de droit international public à la Faculté de droit, Nancy ; jurisconsulte au ministère des Affaires étrangères.

Royaume-Uni : Mr. G. G. FITZMAURICE, conseiller juridique adjoint du Gouvernement du Royaume-Uni.

Belgique : S. Exc. M. Georges KAECKENBEECK, D. C. L., envoyé extraordinaire et ministre plénipotentiaire.

Le PRÉSIDENT, ouvrant l'audience, prononce les paroles suivantes :

En ouvrant cette audience, je tiens à rendre hommage à celui qui, pendant les trois années qui viennent de s'écouler, a occupé le fauteuil présidentiel, M. le Président Guerrero. Lorsque la Cour appela à diriger ses travaux celui qui, jusqu'à la veille et pendant une durée exceptionnelle imposée par les terribles événements qui ont bouleversé le monde, avait présidé la Cour permanente de Justice internationale, la Cour internationale de Justice s'assurait l'appui d'une expérience hors de pair. L'événement n'a pas déçu son attente. Pendant sa présidence, coïncidant avec une période d'organisation, le Président Guerrero a apporté à la Cour, avec son entier dévouement et sa grande bienveillance, le témoignage direct des méthodes et pratiques de la Cour permanente. Rien n'a mieux contribué au maintien de la continuité entre ces deux juridictions.

Trois ans se sont écoulés. Les dispositions de notre Statut ont appelé l'Assemblée générale des Nations Unies et le Conseil de Sécurité à procéder à des élections pour cinq sièges. Nos collègues sortants ont reçu la confiance des Nations Unies et ils ont été réélus. Ayant apprécié leur science et l'indépendance de leur jugement, nous nous félicitons de les conserver parmi nous et de voir confirmer par leur choix la continuité de la Cour.

YEAR 1949.

PUBLIC SITTING HELD ON MARCH 7th, 1949, AT 11 A.M.

Present: President BASDEVANT; *Vice-President* GUERRERO; *Judges* ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir ARNOLD MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO; *Registrar* HAMBRO.

Also present:

M. Ivan KERNO, Assistant Secretary-General, representing the Secretary-General of the United Nations.

Mr. A. FELLER, Principal Director of the Legal Department, as Counsel.

The representatives of the following Governments:

France: M. Charles CHAUMONT, Professor of Public International Law at the Faculty of Law, Nancy, Legal Adviser to the Ministry for Foreign Affairs.

United Kingdom: Mr. G. G. FITZMAURICE, Second Legal Adviser to the Foreign Office.

Belgium: H.E. M. Georges KAECKENBEECK, D.C.L., Envoy Extraordinary and Minister Plenipotentiary.

The PRESIDENT opened the meeting with the following words:

In opening this meeting, I should like to pay a tribute to President Guerrero, who for the past three years has occupied the presidential chair. In calling upon someone to guide its labours, who on the eve of the terrible events which convulsed the world, and for their whole, exceptionally long duration, had presided over the Permanent Court of International Justice, the International Court of Justice was ensuring to itself the support of an unrivalled experience. In the event, expectations have not been disappointed. During the term of his presidency, coinciding as it did with a period of organization, President Guerrero has brought to the service of the Court a whole-hearted devotion and a large measure of good-will, together with first-hand evidence of the methods and practice of the Permanent Court. Nothing has better contributed to maintaining continuity between the two tribunals.

Three years have gone by. By the terms of our Statute, the United Nations Assembly and the Security Council have gone about elections to five seats. Our retiring colleagues inspired the confidence of the United Nations and were re-elected. We appreciated their skill and their independent judgment, and therefore we congratulate ourselves on keeping them in our midst and thus confirming the Court's continuity.

Trois ans s'étant écoulés, la Cour a dû de nouveau élire un Président. Celui qu'elle a choisi est conscient de l'honneur que, par la confiance qu'ils lui ont manifestée, ses collègues lui ont fait. En face d'une tâche d'une inestimable grandeur, il trouve, pour l'entreprendre, un encouragement précieux dans la pensée qu'il pourra faire appel aux conseils éclairés de celui qu'il a le plaisir et l'honneur de voir siéger auprès de lui comme Vice-Président. Il sait que l'appui qu'il escompte ainsi ne lui manquera pas.

Dans le discours qu'il prononçait le 16 janvier 1925, le Président Max Huber énonçait que la Cour, en raison de sa fonction judiciaire, doit s'élever au-dessus de la mêlée où s'affrontent les intérêts et les passions des hommes, des partis, des classes, des nations et des races. Ceux qui parlent devant elle, ayant la responsabilité de la cause qu'ils défendent, cherchent à la convaincre et ils s'efforcent de parler un langage qu'elle est préparée à comprendre. Ainsi, malgré toutes les divergences, malgré toutes les contradictions du temps présent, ce à quoi l'on s'attache devant cette Cour et dans son sein, c'est ce qui reste commun entre les hommes, ce qui, dans la vie sociale, prend la forme des règles du droit et entraîne le sentiment que le respect est dû à celles-ci.

Ainsi la Cour, par la vertu même de son institution, retient et cultive des données communes à l'humanité tout entière. On lui demande de contribuer à la paix en réglant les différends qui lui sont soumis. Peut-être y contribuera-t-elle plus encore en faisant à ce propos sentir aux hommes ce qui, malgré tout, les unit.

Le Président indique que la Cour se réunit aujourd'hui pour entendre les exposés oraux qui seront présentés dans l'affaire relative à la réparation des dommages subis au service des Nations Unies.

Il prie le Greffier de donner lecture de la Résolution datée du 3 décembre 1948, par laquelle l'Assemblée générale des Nations Unies a décidé de demander à la Cour un avis consultatif à ce sujet.

Le GREFFIER ayant donné lecture de cette Résolution, le PRÉSIDENT rappelle que la requête pour avis a fait l'objet des notifications d'usage. Elle a été, conformément à l'article 66 du Statut, communiquée à tous les gouvernements des Membres des Nations Unies, jugés susceptibles, par la Cour, de fournir des renseignements sur la question. Le délai de la procédure écrite a été fixé par une ordonnance datée du 11 décembre 1948. La Cour a reçu, par ordre de dates, des observations écrites des Gouvernements de l'Inde, de la Chine, de la France, des États-Unis d'Amérique et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord.

En outre, la Cour a décidé de tenir, à partir du 7 mars 1949 — c'est-à-dire de ce jour —, des audiences au cours desquelles seraient entendus des exposés oraux. La France, le Royaume-Uni et la Belgique ont fait savoir qu'un exposé oral serait présenté en leur nom. Les représentants désignés dans cette affaire ont été : pour la France, M. Charles Chaumont, professeur à la Faculté de droit de Nancy, jurisconsulte au ministère des Affaires étrangères ; pour le Royaume-Uni, M. G. G. Fitzmaurice, deuxième conseiller juridique du *Foreign Office* ; pour la Belgique, S. Exc. M. Georges Kaeckenbeeck, envoyé extraordinaire et ministre plénipotentiaire de S. M. le Roi des Belges, chef du Service des Conférences de la Paix et de l'Organisation inter-

Three years having passed, it fell to the Court once more to elect a President. The one they have chosen is conscious of the honour done to him by his colleagues in thus manifesting their confidence in him. In face of a task of inestimable magnitude, he draws invaluable encouragement from the thought that he can call upon the enlightened counsel of one whom he has the pleasure and the honour of seeing beside him as Vice-President. He knows that the support on which he thus relies will not be found wanting.

In a speech on January 16th, 1925, President Max Huber stated that on account of its judicial function the Court should rise above the clash of men's interests and men's passions—above those of party, of class, of nation and of race. Those who speak before the Court know that they hold responsibility for the cause they are defending, and therefore, in their endeavour to convince the tribunal, use every effort to speak a language it will understand. Thus, in spite of all the divergences, the contradictions of the present age, that to which we cling before this Court and within its counsels is something which remains common to all men, something which in the life of society takes the form of the rule of law and induces the sentiment of the respect due to it.

Thus, through its very being the Court retains and cultivates ideas common to the whole of humanity. It is asked of the Court that it should contribute to peace by deciding the disputes submitted to it. Perhaps it will make a yet greater contribution by inculcating a knowledge of that which, after all, unites mankind.

The President stated that the Court was met that day in order to hear the oral statements presented in the case concerning reparation for injuries suffered in the service of the United Nations.

He requested the Registrar to read aloud the Resolution dated December 3rd, 1948, by which the General Assembly of the United Nations decided to ask of the Court an advisory opinion on this subject.

The REGISTRAR having read aloud the Resolution, the PRESIDENT recalled that the request for an opinion had been notified as was customary. In conformity with Article 66 of the Statute, it had been communicated to all the governments of those Members of the United Nations which the Court deemed likely to furnish information on the question. The time-limit for the written procedure had been fixed by an Order dated December 11th, 1948. In order of date, the Court had received written observations from the Governments of India, China, France, the U.S.A. and the United Kingdom of Great Britain and Northern Ireland.

Furthermore, the Court had decided to hold sittings as from March 7th, 1949, i.e., on that very day, in the course of which oral statements would be heard. France, the United Kingdom and Belgium had intimated that they would each present an oral statement. The representatives appointed for this purpose were the following: for France, M. Charles Chaumont, Professor of Public International Law at the Faculty of Law, Nancy, Legal Adviser to the Ministry for Foreign Affairs; for the United Kingdom, Mr. G. G. Fitzmaurice, Second Legal Adviser to the Foreign Office; for Belgium: H.E. M. Georges Kaeckenbeeck, D.C.L., Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of the Belgians, Head of the Division

nationale au ministère des Affaires étrangères, membre de la Cour permanente d'Arbitrage.

Le Secrétaire général des Nations Unies s'est fait représenter par M. Ivan Kerno, Secrétaire général adjoint chargé du Département juridique, qui est accompagné de M. A. Feller, directeur principal de ce Département, en qualité de conseil.

Le Président constate la présence devant la Cour des représentants des États susmentionnés ainsi que de celui du Secrétaire général des Nations Unies. Il annonce qu'il donnera en premier lieu la parole à M. Ivan Kerno, représentant du Secrétaire général des Nations Unies, et ensuite, conformément à l'arrangement intervenu à cet égard, aux représentants de la Belgique, de la France et du Royaume-Uni.

M. Ivan KERNO prononce l'exposé reproduit en annexe [1].

(L'audience, interrompue à 13 heures, est reprise à 16 heures.)

Le PRÉSIDENT donne la parole à M. KERNO, qui reprend et termine son exposé (annexe [2]).

Le PRÉSIDENT constate que la Cour vient d'entendre un exposé très complet, très détaillé, de ce qui a trait à l'élaboration de la question posée à la Cour et, d'autre part, de la connaissance qu'a chacune des Parties de la demande d'avis. Ces indications sont très précieuses, mais, pour éviter des discours qui seraient, en partie, superflus, le Président voudrait inviter les orateurs qui vont prendre la parole à ne revenir sur ces indications d'ordre historique ou sur cette interprétation du sens même de la demande d'avis que dans la mesure où cela leur paraîtrait indispensable afin de marquer l'orientation à suivre, à leur avis, pour donner réponse aux questions posées à la Cour.

Il donne la parole à M. Feller, directeur principal du Département juridique du Secrétariat des Nations Unies.

M. FELLER présente l'exposé reproduit en annexe [3], dont la suite, interrompue par la clôture de l'audience, est renvoyée par le Président au mardi 8 mars, à 10 heures 30.

L'audience est levée à 18 h. 35.

Le Président de la Cour,
(*Signé*) BASDEVANT.

Le Greffier de la Cour,
(*Signé*) E. HAMBRO.

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[1] Voir pp. 50 *et sqq.*
[2] » » 63 » » .
[3] » » 70 » » .

for Peace Conferences and International Organization at the Ministry for Foreign Affairs, member of the Permanent Court of Arbitration.

The Secretary-General of the United Nations had appointed as his representative M. Ivan Kerno, Assistant Secretary-General, in charge of the Legal Department, accompanied by Mr. A. Feller, Principal Director of that Department, as Counsel.

The President noted the presence before the Court of the representatives of the above-mentioned States, as also the presence of the representative of the Secretary-General of the United Nations. He announced that he would first call upon M. Ivan Kerno, representative of the Secretary-General of the United Nations, to speak, and then, as agreed, upon the representatives of Belgium, France and the United Kingdom.

M. IVAN KERNO made the statement as annexed [1].

(The Court adjourned from 1 p.m. to 4 p.m.)

The PRESIDENT called upon M. KERNO, who continued and completed his statement as annexed [2].

The PRESIDENT stated that the Court had listened to an extremely complete and detailed statement of the background of the question before it, as also of the cognizance of the opinion possessed by each of the Parties. This information was most valuable, but in order to avoid any discourse not strictly necessary, the President would suggest that speakers should not go over this historical ground or interpret the actual sense of the request for an opinion, except where absolutely necessary in order to indicate the direction they considered their answers should follow.

He called upon Mr. Feller, Principal Director of the Legal Department of the Secretariat of the United Nations, to speak.

Mr. FELLER made the statement as annexed [3], to be concluded, by order of the President, at the next sitting of the Court, to be held on Tuesday, March 8th, at 10.30 a.m.

The Court rose at 6.35 p.m.

(*Signed*) BASDEVANT,
President.

(*Signed*) E. HAMBRO,
Registrar.

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[1] See pp. 50 *et sqq.*
[2] ,, ,, 63 ,, ,,.
[3] ,, ,, 70 ,, ,,.

SÉANCE PUBLIQUE TENUE LE 8 MARS 1949, A 10 HEURES

Présents : [Voir séance du 7 mars.]

Le PRÉSIDENT, ouvrant l'audience, donne la parole à M. Feller.

M. FELLER reprend son exposé, qu'il termine (annexe [1]).

(L'audience est interrompue de midi 30 à 15 h. 30.)

Le PRÉSIDENT donne successivement la parole à M. Georges KAECKENBEECK et à M. le professeur Charles CHAUMONT, qui présentent les exposés reproduits en annexe [2].

Le PRÉSIDENT annonce que la Cour entendra le 9 mars, à 10 h. 30, le représentant du Royaume-Uni.

L'audience est levée à 18 h. 50.

[*Signatures.*]

SÉANCE PUBLIQUE TENUE LE 9 MARS 1949, A 10 H. 30

Présents : [Voir séance du 7 mars.]

Le PRÉSIDENT, ouvrant l'audience, donne la parole au représentant du Royaume-Uni.

M. FITZMAURICE présente les observations reproduites en annexe [3].

(L'audience, interrompue à 12 h. 40, est reprise à 15 h. 30.)

M. FITZMAURICE reprend et poursuit son exposé, qu'il termine [4].

Le PRÉSIDENT constate que la Cour a entendu les exposés qui lui avaient été annoncés.

Il remercie, au nom de la Cour, le Secrétaire général des Nations Unies et les trois Gouvernements qui se sont fait représenter d'avoir bien voulu participer aux débats oraux en cette affaire.

Les questions très importantes soumises à la Cour par la présente demande d'avis consultatif ont un caractère nouveau et particulièrement grave pour la vie même de l'Organisation des Nations Unies. Elles ont été traitées avec beaucoup de science et une grande vigueur d'esprit. La Cour tirera grand profit de ce qu'elle a entendu. C'est pourquoi, en son nom, après avoir remercié le Secrétaire général et les Gouvernements, le Président remercie les représentants qui se sont fait entendre.

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[1] Voir pp. 80 *et sqq.*
[2] » » 94 *et sqq.* et 102 *et sqq.*
[3] » » 110 *et sqq.*
[4] » » 122 » » .

PUBLIC SITTING HELD ON MARCH 8th, 1949, AT 10 A.M.

Present: [See sitting of March 7th.]

The PRESIDENT declared the sitting open and asked Mr. Feller to address the Court.

Mr. FELLER continued and concluded his speech. (See annex [1].)

(The Court adjourned from 12.30 p.m. till 3.30 p.m.)

The PRESIDENT called on M. Georges KAECKENBEECK and Professor Charles CHAUMONT, in succession, to address the Court. They made the statements reproduced in the annex [2].

The PRESIDENT announced that the Court would hear the United Kingdom representative at 10.30 a.m. on March 9th.

The Court rose at 6.50 p.m.

[*Signatures.*]

PUBLIC SITTING HELD ON MARCH 9th, 1949, AT 10.30 A.M.

Present: [See sitting of March 7th.]

The PRESIDENT declared the sitting open and called on the representative of the United Kingdom to address the Court.

Mr. FITZMAURICE made the statement which is reproduced in the annex [3].

(The Court adjourned from 12.40 p.m. to 3.30 p.m.)

Mr. FITZMAURICE continued and concluded his statement. (Annex [4].)

The PRESIDENT observed that the Court had now heard the statements of which notice had been given to it.

On behalf of the Court, he thanked the Secretary-General of the United Nations and the three Governments who had sent representatives for having been so good as to take part in the oral discussion of the case.

The very important questions referred to the Court in the present request for an advisory opinion were of a new character and were of particularly grave importance for the very existence of the United Nations Organization. They had been examined with remarkable talent and with great intellectual force. The Court would be greatly helped from the arguments that it had heard. Therefore, having thanked the Secretary-General and the Governments, he now desired, in the name of the Court, to thank the representatives who had addressed it.

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[1] See pp. 80 *et sqq.*
[2] ,, ,, 94 *et sqq.* and 102 *et sqq.*
[3] ,, ,, 110 *et sqq.*
[4] ,, ,, 122 ,, ,,.

Il prononce la clôture de la procédure orale dans l'affaire.

L'audience est levée à 17 heures 10.

[*Signatures.*]

SÉANCE PUBLIQUE TENUE LE 11 AVRIL 1949, A 10 H. 30

Présents : les membres de la Cour mentionnés au procès-verbal de la séance du 7 mars ; les représentants des Gouvernements suivants : *Belgique :* S. Exc. M. Georges KAECKENBEECK, ministre plénipotentiaire ; *France :* S. Exc. M. J. RIVIÈRE, ambassadeur de France à La Haye ; *Royaume-Uni :* M. B. E. F. GAGE, conseiller de l'ambassade du Royaume-Uni à La Haye.

Le PRÉSIDENT, ouvrant l'audience, annonce que la Cour se réunit aujourd'hui pour prononcer l'avis qui lui a été demandé par l'Assemblée générale des Nations Unies, au sujet des dommages subis au service des Nations Unies. Il prie le Greffier de donner lecture de cette Résolution.

Le GREFFIER ayant procédé à cette lecture, le PRÉSIDENT rappelle que, conformément à l'article 67 du Statut, le Secrétaire général des Nations Unies et les représentants des États qui ont pris part aux débats oraux dans la présente affaire, savoir : la Belgique, la France et le Royaume-Uni, ont été dûment prévenus.

Il indique qu'il va maintenant donner lecture de l'avis de la Cour, dans le texte français, qui est également un texte original, mais c'est le texte anglais qui fait foi [1].

Après la lecture de l'avis, le Président prie le Greffier de donner lecture du dispositif de l'avis dans le texte anglais.

Le GREFFIER ayant lu ce dispositif, le PRÉSIDENT signale que M. Winiarski, juge, déclare qu'à son regret il n'est pas à même de se rallier à la réponse donnée par la Cour à la question I *b*). D'une manière générale, il partage les vues exprimées dans l'opinion dissidente du juge Hackworth. MM. Alvarez et Azevedo, juges, tout en souscrivant à l'avis de la Cour, se prévalent du droit que leur confère l'article 57 du Statut et joignent audit avis les exposés de leur opinion individuelle. M. Hackworth, Badawi Pacha et M. Krylov, juges, déclarant ne pas pouvoir se rallier à l'avis de la Cour et se prévalant du droit que leur confère l'article 57 du Statut, joignent audit avis les exposés de leur opinion dissidente.

Il signale en outre que MM. les juges Alvarez, Azevedo, Hackworth, Badawi Pacha et M. Krylov l'ont informé qu'ils ne désiraient pas donner lecture de leurs opinions individuelles ou dissidentes, jointes en annexes au présent avis.

Le PRÉSIDENT prononce la clôture de l'audience.

L'audience est levée à 11 heures 15.

[*Signatures.*]

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[1] Voir *Publications de la Cour, Recueil des Arrêts, Avis consultatifs et Ordonnances. Avis consultatif du 11 avril 1949.*

He announced the closure of the oral procedure in this case.

The Court rose at 5.10 p.m.

[*Signatures.*]

PUBLIC SITTING HELD ON APRIL 11th, 1949, AT 10.30 A.M.

Present: the members of Court mentioned in the minutes of the sitting of March 7th; the representatives of the following Governments: *Belgium:* H.E. M. Georges KAECKENBEECK, Minister Plenipotentiary; *France:* H.E. M. J. RIVIÈRE, Ambassador of France at The Hague; *United Kingdom:* Mr. B. E. F. GAGE, Counsellor of the United Kingdom Embassy at The Hague.

The PRESIDENT, opening the meeting, said that the Court had met on that day to deliver the Opinion which the Assembly of the United Nations had asked it to give, on the subject of injuries suffered in the service of the United Nations. He asked the Registrar to read the Resolution.

The REGISTRAR having read the Resolution, the PRESIDENT observed that, in conformity with Article 67 of the Statute, notice had been duly given to the Secretary-General of the United Nations and to the representatives of the States which had taken part in the oral discussions in the present case, viz.: Belgium, France and the United Kingdom.

He added that he would now read the Opinion in the French text, which was also an original text, though the English was the authentic text [1].

After the Opinion had been read, the President asked the Registrar to read the operative clause of the Opinion in English.

The REGISTRAR having read the operative clause, the PRESIDENT said that Judge Winiarski had informed him that he regretted that he was unable to agree with the answer given by the Court to Question I (*b*). Speaking generally, he shared the view expressed in Judge Hackworth's dissenting opinion. Judges Alvarez and Azevedo, though subscribing to the Court's Opinion, had availed themselves of their right under Article 57 of the Statute and had attached statements of their individual opinions to the Court's Opinion. Judges Hackworth, Badawi Pasha and Krylov had declared that they were unable to agree with the Court's Opinion and, availing themselves of their right under Article 57 of the Statute, had attached their dissenting opinion to the Court's Opinion.

The President added that Judges Alvarez, Azevedo, Hackworth, Badawi Pasha and Krylov had informed him that they did not wish to read the individual or dissenting opinions which they had attached to the present Opinion.

The PRESIDENT declared that the sitting was closed.

The Court rose at 11.15 a.m.

[*Signatures.*]

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[1] See *Publications of the Court, Reports of Judgments, Advisory Opinions and Orders. Advisory Opinion of April 11th, 1949.*

ANNEXES AUX PROCÈS-VERBAUX
ANNEXES TO THE MINUTES.

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1. — EXPOSÉ DU Dr IVAN KERNO

(REPRÉSENTANT DU SECRÉTAIRE GÉNÉRAL DES NATIONS UNIES)
AUX SÉANCES PUBLIQUES DU 7 MARS 1949, MATIN ET APRÈS-MIDI.

[*Séance publique du 7 mars 1949, matin.*]

Monsieur le Président, Messieurs les Membres de la Cour, il y a moins d'un an que la Cour a, pour la première fois, consacré une audience à une demande d'avis consultatif. J'ai eu le plaisir de venir à cette audience en qualité de représentant du Secrétaire général. Au moment de me présenter à nouveau devant vous, permettez-moi de vous faire part, une fois de plus, de l'émotion profonde et sincère que je ressens en prenant la parole devant le plus haut tribunal international du monde. C'est un grand honneur personnel que de pouvoir participer aux débats de cette Cour.

L'œuvre que vous avez accomplie durant l'année qui vient de s'écouler, au cours de laquelle la Cour a presque achevé sa première grande affaire contentieuse et formulé son premier avis consultatif, a été une source de grande satisfaction. On ne saurait exagérer l'importance que présente le recours à votre haute juridiction pour régler les différends et pour recueillir des avis consultatifs sur toutes les questions de droit, si l'on veut que se développe un ordre juridique international efficace et bien ordonné.

L'année passée la Cour m'a autorisé à lui présenter un exposé oral conformément à l'article 66 de son Statut, à la suite de la demande d'avis consultatif qui lui avait été adressée par l'Assemblée générale, sur l'interprétation de l'article 4 de la Charte relatif à l'admission de nouveaux Membres dans l'Organisation des Nations Unies. Cette année encore, je suis ici devant vous, à titre de représentant du Secrétaire général, et si la Cour me le permet, je présenterai un exposé oral ayant trait à la demande d'avis consultatif de l'Assemblée générale sur la question de la réparation des dommages subis au service des Nations Unies.

Toutefois, sur un point au moins ma position actuelle diffère profondément de celle que j'avais adoptée l'année dernière.

Dans la déclaration qu'il avait faite à l'époque, le Secrétaire général s'est contenté de présenter la question telle qu'elle a évolué devant des organes des Nations Unies, sous l'angle des seuls faits historiques, sans offrir lui-même une analyse ou une discussion juridique du problème posé. Le Secrétaire général, l'année dernière, n'a désiré exprimer aucune opinion en faveur de telle ou telle interprétation de l'article 4 de la Charte, et il n'a pas estimé être en mesure de le faire. L'exposé présenté alors avait pour seul objet de donner à la Cour un tableau sommaire et objectif de l'évolution de la question devant les différents organes des Nations Unies, et j'ai été extrêmement heureux de l'accueil si favorable que vous avez réservé alors à mes modestes efforts.

Cependant, dans les débats actuels il me faudra nécessairement me présenter dans un double rôle. Comme dans le débat de l'année dernière, le Secrétaire général estime qu'il lui appartient, en sa qualité de plus haut fonctionnaire de l'Organisation des Nations Unies, de présenter à cette Cour un résumé objectif des débats de l'Assemblée générale elle-même et de sa Sixième Commission, résumé qui précisera les circonstances dans lesquelles l'Assemblée générale a été amenée à demander un avis consultatif relatif à l'affaire actuelle. Cet exposé historique aura ainsi pour objet d'élucider la question et d'en préciser le but et les motifs.

Mais le Secrétaire général participe aussi, j'allais presque dire qu'il est partie, à la procédure actuelle, qui présente pour lui un intérêt essentiel. C'est pourquoi il a jugé opportun de définir nettement son attitude à l'égard des questions juridiques que pose le problème considéré, et avec votre permission, Monsieur le Président, dans la troisième partie de notre exposé, nous allons vous présenter notre point de vue. Nous allons vous dire que, dans notre opinion, à San-Francisco les auteurs de la Charte ont créé une organisation internationale qui possède une personnalité internationale propre, personnalité internationale impliquant certains droits essentiels de caractère international, et parmi ces droits essentiels, notamment celui de protéger les fonctionnaires de l'Organisation quand ils subissent un dommage dans l'exercice de leurs fonctions au nom de l'Organisation.

Nous allons donc vous demander de vouloir bien répondre affirmativement aux deux éléments de la première question. En ce qui concerne la deuxième question, nous demanderons également à cette Cour d'éclaircir certains points et d'aider ainsi les pourparlers que le Secrétaire général devra engager à l'avenir dans des cas concrets avec l'État dont la victime aura été le ressortissant.

La question actuelle, Monsieur le Président, a été à l'origine inscrite à l'ordre du jour de l'Assemblée générale sur l'initiative du Secrétaire général lui-même.

Déjà, dans le mémorandum qu'il a présenté pour expliquer les motifs pour lesquels on a demandé l'inscription de cette question à l'ordre du jour de l'Assemblée, le Secrétaire général a constaté, et je viens de le mentionner il y a quelques instants, que dans son opinion l'Organisation des Nations Unies a la qualité requise pour intenter une action internationale en réparation des dommages subis par un agent de l'Organisation dans l'exercice de ses fonctions, dans des conditions qui engagent la responsabilité d'un État. Le Secrétaire général est, de plus, fermement convaincu que cette capacité est indispensable si l'on veut que l'Organisation puisse atteindre ses buts et exercer efficacement ses fonctions. Un avis de la Cour reconnaissant cette capacité serait, pour l'Organisation des Nations Unies, d'une haute valeur dans tous les cas où elle sera appelée à protéger ses agents dans l'exercice de leurs fonctions.

Dans la partie de l'exposé que je présenterai moi-même, je retracerai d'abord l'historique de l'affaire et je procéderai ensuite à une analyse des questions formulées par l'Assemblée générale. Dans le développement historique, première partie de mon exposé, je m'attacherai à présenter un aperçu aussi objectif que possible des débats de la Sixième Commission de manière à donner à la Cour une idée précise de l'origine et de l'évolution des questions sur lesquelles on lui demande de donner aujourd'hui son avis. Je n'entrerai cependant pas dans le détail de ces

discussions et je ne procéderai pas à des citations des textes précis des déclarations faites par les différents délégués. Car, en somme, il ne s'agit que de onze séances de la Sixième Commission, et les membres de la Cour trouveront facilement dans les procès-verbaux de ces séances tel ou tel passage qui pourrait les intéresser plus particulièrement. Mon aperçu se bornera donc à mettre en lumière aussi clairement et aussi objectivement que possible tout d'abord les différents projets de résolutions et amendements qui ont été introduits par différentes délégations au cours des discussions de la Commission juridique, et ensuite je parlerai des décisions mêmes de la Sixième Commission et de l'Assemblée.

Le texte de ces deux questions a été établi de propos délibéré et avec le plus grand soin, après mûre réflexion. C'est pourquoi je crois qu'il sera peut-être utile de donner, dans la deuxième partie de mon exposé, une analyse détaillée de ce texte, parce que chaque mot a sa signification. C'est, comme je viens de le mentionner, après des discussions prolongées en séances publiques et en marge des séances, entre différentes délégations et les représentants du Secrétaire général, que le libellé de cette question a été établi. La Cour me permettra donc de lui présenter, dans la deuxième partie de mon exposé, quelques commentaires sur le sens des questions posées.

Enfin, une troisième partie de notre exposé sera présentée par M. A. H. Feller, qui m'a accompagné à titre de conseiller et qui précisera la position du Secrétaire général à l'égard des problèmes juridiques qui se posent.

PREMIÈRE PARTIE : EXPOSÉ HISTORIQUE

Monsieur le Président, je commence donc la première partie, la partie historique de mon exposé.

Ce fut, vous le savez, au cours de la session de Paris, exactement à la 169me Séance plénière, que l'Assemblée générale a décidé de poser à la Cour les deux questions dont il s'agit et dont le texte exact vient d'être lu au début de cette séance par M. le Greffier de la Cour.

La proposition préconisant que l'Assemblée générale demande à la Cour un avis consultatif, a été présentée à l'origine par le représentant de la Belgique au sein de la Sixième Commission. Le texte de la Résolution de l'Assemblée, qui incorpore en définitive les questions que je viens de mentionner, est un texte de synthèse, élaboré par de nombreux représentants, et notamment par les représentants de la Belgique, de la Colombie, de la France, de la Grèce, de l'Iran, du Royaume-Uni, de la Syrie, de l'Uruguay et du Venezuela.

A. Exposé relatif a des cas particuliers et aux mesures prises par le Secrétaire général.

Avant de commenter les débats de la Sixième Commission, peut-être sera-t-il utile de donner à la Cour un exposé bref des cas particuliers et des mesures prises par le Secrétaire général qui ont motivé l'introduction de cette question devant l'Assemblée générale.

Cette question des réparations pour dommages subis par des agents des Nations Unies s'est posée à la suite de la série d'incidents tragiques qui ont eu lieu en Palestine, du mois de mai au mois de septembre de l'année dernière. Ces événements déplorables, dont le principal a été, le 17 septembre 1948, le meurtre du comte Bernadotte, médiateur des

Nations Unies pour la Palestine, et celui de son adjoint, le colonel Sérot, ont profondément ému le monde entier. Ils contribuent à montrer l'urgence des questions dont la Cour est aujourd'hui saisie et l'importance qu'elles revêtent du point de vue pratique.

Dans son discours à la séance d'ouverture de la Troisième Session de l'Assemblée générale, le Secrétaire général, parlant de la mort du comte Bernadotte et du colonel Sérot, a dit :

> « La mort de ces deux hommes d'honneur exige qu'il soit fait justice des responsables. Elle soulève à nouveau, et de façon plus urgente que jamais encore, la question des dispositions à prendre par les Nations Unies pour assurer à l'avenir à leurs représentants, dans toute la mesure humainement possible, une protection maximum dans l'accomplissement de leurs devoirs dans les zones dangereuses. »

La question des réparations pour dommages subis au service des Nations Unies a été inscrite, comme je l'ai déjà mentionné, à l'ordre du jour de la Troisième Session de l'Assemblée générale, à la demande du Secrétaire général. A la 142me Séance de l'Assemblée, tenue le 24 septembre 1948, cette question a été renvoyée à la Sixième Commission, c'est-à-dire la Commission juridique, sur la recommandation du Bureau de l'Assemblée. Toutes ces décisions préliminaires de procédure, je tiens à le mentionner, ont été prises à l'unanimité.

Dans le mémorandum qu'il a présenté à l'Assemblée générale, le Secrétaire général a retracé l'historique des cas particuliers. Ces cas ont été exposés très brièvement pour servir de base à la présentation de certaines questions de droit, de politique à suivre et de procédure qui, de l'avis du Secrétaire général, devaient être précisées par l'Assemblée générale. Le Secrétaire général a présumé que l'Assemblée générale ne serait pas « désireuse de jouer elle-même le rôle de commission d'enquête ou de tribunal judiciaire, ayant en ces matières à établir les faits ou à déterminer les responsabilités dans des cas particuliers ». Il a estimé que ces questions, « en ce qui concerne les cas particuliers, devraient être réglées d'autre façon, soit par le moyen de négociations directes entre l'organe compétent des Nations Unies et l'État ou l'autorité intéressés, soit par un tribunal d'arbitrage ».

Les questions qui ont été posées à la Cour n'entraînent pas la détermination de la responsabilité de tel ou tel État dans tel ou tel cas particulier. Je ne désire aucunement faire naître de la confusion en examinant, dans le détail, les divers cas qui se sont produits. Néanmoins, il sera, je crois, utile à la Cour que je rappelle en quelques mots la série des événements, tels que le Secrétaire général les a exposés devant l'Assemblée, dans son mémorandum du 7 octobre 1948.

> « La série d'incidents a commencé par l'assassinat de M. Thomas Wasson, consul général des États-Unis à Jérusalem, membre de la mission de trêve des Nations Unies, tué par un tireur isolé, le 23 mai 1948, alors qu'il regagnait son domicile après une séance de la Commission. Il est mort le lendemain matin.
>
> Le 6 juillet 1948, le commandant René de Labarrière et le commandant de Canchy, deux officiers français, observateurs des Nations Unies, sont tombés victimes d'une explosion devant une barricade juive dans la région de Nazareth. Le commandant de

Labarrière a été tué et le commandant de Canchy blessé. Des soldats juifs qui se trouvaient sur les lieux ont déclaré que les observateurs avaient été atteints par l'explosion de mines. Selon le commandant de Canchy, les explosions peuvent avoir été le fait de grenades plutôt que de mines et, à son avis, son compagnon et lui-même semblent avoir été victimes d'une attaque délibérée de la part de soldats juifs.

Le 13 juillet 1948, un convoi qui faisait mouvement sous les auspices des Nations Unies, a servi de cible à un tir de mousqueterie au voisinage du mont Scopus. L'une des jeeps du convoi était conduite par Ole Helge Bakke, membre du Secrétariat des Nations Unies, servant en Palestine comme garde des Nations Unies. Bakke a été tué sur le coup par une balle de fusil. Le général de brigade Lash, de la Légion arabe, a fait connaître au médiateur que la conclusion à laquelle avaient abouti les travaux d'une commission d'enquête, était que Bakke avait été tué par un soldat arabe, surexcité par le feu ennemi.

Le 28 août 1948, deux observateurs français, le lieutenant-colonel Joseph Queru et le capitaine Pierre Jeannel ont atterri sur l'aérodrome de Gaza, dans un secteur occupé par l'armée égyptienne. Alors qu'ils quittaient leur appareil, les deux observateurs ont été attaqués par des irréguliers d'Arabie saoudite à qui l'armée égyptienne avait confié la garde de l'aérodrome et ont été tués et dépouillés.

Le 17 septembre 1948, le comte Folke Bernadotte, médiateur des Nations Unies en Palestine, et le colonel Sérot, officier français, observateur des Nations Unies, ont été tués à coups de feu alors qu'ils traversaient en voiture un quartier de Jérusalem tenu par les Juifs. L'attentat a été commis par plusieurs hommes revêtus d'uniformes du type de ceux de l'armée israélienne. Les assaillants n'ont pas été appréhendés, mais les conditions de l'attentat ont amené des représentants des Nations Unies et des Gouvernements Membres à présumer qu'ils appartenaient au groupe Stern, bande d'irréguliers juifs qui opère à cette époque à Jérusalem.

En plus de ces cas de morts et de blessures, de nombreux autres cas de coups de feu tirés contre les fonctionnaires des Nations Unies se sont produits en Palestine. Le dernier est survenu le 22 septembre 1948, alors qu'un convoi placé sous les auspices des Nations Unies et accompagné d'observateurs des Nations Unies, a essuyé le feu de trois hommes vêtus d'uniformes arabes, et identifiés par le chef d'état-major du médiateur comme dépendant des forces arabes de Transjordanie. Aucun des fonctionnaires des Nations Unies n'a été touché, mais quatre autres personnes qui se trouvaient dans le convoi ont été tuées. »

Le Secrétaire général a également rendu compte, dans son mémorandum, des mesures qu'il a prises à la suite de ces incidents. Voici, en quelques mots, en quoi ont consisté ces mesures : premièrement, entretiens avec les autorités détenant le pouvoir dans les territoires où les agents des Nations Unies avaient été tués au sujet de la protection des intérêts de l'Organisation et, deuxièmement, paiement d'indemnités aux ayants

droit, et paiement des frais médicaux, des frais d'hospitalisation, des frais d'obsèques et des autres frais du même ordre.

Enfin, dans son mémorandum, le Secrétaire général a soumis, à l'examen de l'Assemblée générale, les trois questions suivantes :

1) De l'avis de l'Assemblée générale, un État peut-il être tenu responsable envers les Nations Unies de la mort d'un de leurs agents ou des dommages qu'il a subis ?

2) Quelle devrait être la ligne de conduite à adopter en ce qui concerne les réparations ou l'évaluation des dommages-intérêts qui peuvent être réclamés ?

3) Quelle devrait être la procédure à suivre pour la présentation des demandes de réparation et pour leur règlement ?

En ce qui concerne la première question, le Secrétaire général a déclaré qu'il était convaincu que l'Organisation des Nations Unies, ayant capacité de conclure avec les États des accords internationaux, a également capacité en droit international pour présenter une demande en réparation à un État, que cet État soit, ou non, Membre des Nations Unies.

En ce qui concerne la ligne de conduite générale à adopter en matière de réparations, le mémorandum énumérait quatre formes de réparations possibles, que j'indique brièvement : le prompt et juste châtiment des coupables, ainsi que des mesures propres à assurer, à l'avenir, la protection des agents des Nations Unies contre tous dommages, le remboursement des dépenses engagées directement par l'Organisation des Nations Unies, le paiement d'indemnités à la personne objet du dommage ou à sa famille, et enfin la possibilité de demander des dommages-intérêts exemplaires.

Quant à la troisième question, le Secrétaire général a émis l'avis qu'en sa qualité de plus haut fonctionnaire de l'Organisation en vertu de l'article 97 de la Charte, il devrait être le représentant qualifié pour intenter les actions en réparation.

B. Débats de l'Assemblée générale et de la Sixième Commission.

Les questions posées par le mémorandum du Secrétaire général ont fait l'objet d'un examen approfondi au cours des onze séances que la Sixième Commission de l'Assemblée générale a tenues du 20 au 27 novembre 1948.

Les débats de la Commission ont commencé par des explications préliminaires des représentants du Secrétaire général concernant le mémorandum qu'il avait soumis à l'Assemblée. Une discussion générale s'est ensuite engagée que les membres de la Cour pourront étudier dans la documentation que nous avons soumise. Comme je l'ai déjà indiqué au début de mon exposé, je n'entrerai pas dans le détail de ces débats. Je vais examiner tout d'abord les différents projets de résolutions présentés et ensuite les décisions successivement prises par la Sixième Commission.

1. *Projets de résolutions examinés :*

En ce qui concerne les *projets de résolutions,* on peut les réunir en trois groupes différents. En effet, trois principaux modes d'action ont été préconisés et soumis à l'examen de la Sixième Commission.

a) *Propositions tendant à ce que l'Assemblée générale confère immédiatement certains pouvoirs au Secrétaire général.*

Le premier groupe des projets de résolutions dont je parlerai a trait à des propositions qui tendaient à ce que l'Assemblée générale confère immédiatement certains pouvoirs au Secrétaire général. Ainsi notamment, le projet de résolution présenté par la délégation de l'Égypte proposait d'autoriser le Secrétaire général à présenter toute demande pertinente au gouvernement *de jure* ou *de facto* responsable, en vue d'obtenir la réparation due à la victime ou à ses ayants droit (Document A/C. 6/279).

Le représentant de la France a proposé (Document A/C. 6/282) que la demande soit présentée « en consultation avec l'État dont la victime est un ressortissant ». Un des amendements (Document A/C. 6/284) que l'Union des Républiques socialistes soviétiques a présentés, et que la délégation de l'Égypte a accepté, prévoyait que le Secrétaire général devait exercer le recours devant les tribunaux nationaux compétents. Un autre amendement présenté par l'Union des Républiques socialistes soviétiques aurait obligé le Secrétaire général à obtenir le consentement de l'État dont l'agent victime du dommage est un ressortissant, avant de pouvoir intenter une action en réparation.

Un projet de résolution proposé par la délégation de l'Uruguay était d'un caractère un peu différent. Aux termes de ce projet de résolution, l'Assemblée générale aurait approuvé les mesures déjà prises par le Secrétaire général et l'aurait autorisé à accorder une réparation complète aux agents des Nations Unies ayant subi des dommages. La « réparation complète » serait à déterminer « d'accord avec les règles techniques les mieux éprouvées, appliquées en la matière dans les pays les plus avancés et en tenant compte des conditions et sacrifices spéciaux qu'implique le service des Nations Unies ». Cette proposition de l'Uruguay n'offrait cependant aucune réponse précise aux questions posées par le Secrétaire général au sujet de la réparation due par l'État responsable (Document A/C. 6/281, et Rev. 1 et 2).

b) *Propositions tendant à ce que l'Assemblée générale renvoie la question à la Commission du droit international.*

La deuxième procédure proposée par la Sixième Commission pour résoudre le problème consistait à renvoyer la question à la Commission du droit international en lui demandant de rédiger un projet de convention internationale.

Cette suggestion a été présentée par quelques représentants qui estimaient qu'aux termes des principes du droit international en vigueur, l'Organisation des Nations Unies n'avait pas capacité pour exercer un recours sur le plan international. Selon eux, pour conférer ce droit à l'Organisation des Nations Unies, il fallait rédiger une convention. Cette proposition a été incorporée dans un projet de résolution présenté par la délégation de la Syrie, qui recommandait que la question fût renvoyée à la Commission du droit international (Document A/C. 6/276). Le représentant de la France a présenté un amendement à ce projet de résolution, demandant que la Commission du droit international entreprît son étude en se conformant à l'avis consultatif qui aura été donné par la Cour internationale de Justice (Document A/C. 6/278).

c) *Propositions tendant à ce que l'Assemblée générale demande à la Cour internationale de Justice un avis consultatif.*

La troisième procédure proposée par le groupe de représentants le plus nombreux consistait à s'adresser à la Cour internationale de Justice pour lui présenter les questions juridiques que soulève le problème des déclarations et lui demander un avis consultatif. A la 112me Séance de la Sixième Commission un avant-projet d'une question à soumettre à la Cour a été présenté par le représentant de la Belgique. Sous sa forme initiale, ce texte était ainsi rédigé (Document A/C. 6/SR. 112, p. 13) :

> « Au cas où, dans l'exercice de ses fonctions, un agent des Nations Unies subit un dommage dans des conditions qui engagent la responsabilité de l'État, l'Organisation des Nations Unies est-elle habilitée à exercer un droit de protection, concurremment ou non avec l'État dont la victime est ressortissant et à négocier avec le gouvernement *de jure* ou *de facto* responsable, en vue d'obtenir la réparation due à la victime ou à ses ayants droit ? »

Des amendements ont été proposés à ce texte par les délégations de la France (Document A/C. 6/277), du Royaume-Uni (Document A/C. 6/280 et 283), ensuite de la France et de l'Iran conjointement (Document A/C. 6/285), du Venezuela (Document A/C. 6/292) et de la Grèce (Document A/C. 6/293).

Vu le nombre considérable de ces amendements, le représentant de la Colombie a introduit une proposition tendant à former un sous-comité chargé d'élaborer un texte de synthèse (Document A/C. 6/286). Cette proposition colombienne n'a pas été adoptée de manière formelle, mais, après des échanges de vues approfondis, en séances publiques et en marge des séances, un texte commun qui tenait compte des diverses propositions successives a été rédigé et soumis à la Commission par les représentants de la Belgique, de la Colombie, de la France, de la Grèce, de l'Iran, du Royaume-Uni, de la Syrie, de l'Uruguay et du Venezuela (Document A/C. 6/294).

Le nouveau texte contenait donc les vues communes des délégations qui, ou bien avaient présenté des amendements au projet de résolution initial de la Belgique, ou bien avaient pris une part importante à la discussion de la question. Il est même à noter que l'on trouve parmi ses auteurs des représentants qui avaient préconisé, à l'origine, des modes d'action tout à fait différents (la Syrie et l'Uruguay).

Le nouveau projet conjoint de résolution apportait plusieurs modifications et adjonctions au texte de la proposition initiale de la Belgique. J'en mentionnerai brièvement les plus importantes. La formule « qualité pour exercer un droit de protection » a été modifiée comme suit : « qualité pour présenter une réclamation internationale ». Après les mots « the United Nations », on a ajouté, dans le texte anglais, les mots « as an Organization », pour faire clairement entendre que la question a trait à la capacité juridique des Nations Unies en tant qu'organisation et non à celle de ses Membres en tant qu'États particuliers. Le texte français comportait déjà, dans sa forme primitive, l'expression « l'Organisation des Nations Unies » et ne nécessitait, par conséquent, aucune altération. Mais on a fortement insisté sur le fait que les deux textes avaient la même signification, c'est-à-dire que la formule française

« l'Organisation des Nations Unies » était la reproduction exacte des mots anglais « the United Nations as an Organization ».

On a, d'autre part, ajouté au passage relatif aux réparations dues pour dommages causés à la victime, une mention concernant celles dues pour dommages causés aux Nations Unies. Le représentant des États-Unis a enfin proposé de supprimer, dans cette partie de la question, la mention relative aux réparations pour dommages causés à la victime, mais cette proposition n'a pas été acceptée.

Une deuxième question a été rédigée pour faire suite à la question initiale de la délégation belge. Dans cette deuxième question on demandait à la Cour, au cas où elle répondrait affirmativement au sujet de la capacité de l'Organisation des Nations Unies de présenter une demande en réparation pour dommages causés à la victime ou à ses ayants droit, de donner son avis consultatif sur la manière de concilier l'action de l'Organisation avec les droits que pourrait posséder l'État dont la victime est ressortissant.

On a également ajouté au texte de la résolution un préambule composé de deux considérants. C'étaient les délégations de la France et de l'Iran qui avaient proposé, lors de la préparation du nouveau texte, que le considérant qui figurait dans le projet de résolution de l'Égypte fût incorporé dans la proposition belge afin qu'il n'y ait aucun doute sur la capacité de l'Organisation des Nations Unies d'intenter une action en réparation. Le nouveau texte leur a donné une entière satisfaction et reproduit le considérant égyptien avec quelques changements de pure forme.

On a enfin inséré dans le projet de résolution un paragraphe final par lequel on charge le Secrétaire général de préparer, à la lumière de l'avis consultatif que formulera la Cour, des propositions qui seront soumises à l'Assemblée générale lors de sa Quatrième Session en septembre 1949.

2. *Décisions de la Sixième Commission :*

J'en viens maintenant aux *décisions de la Sixième Commission.*

a) *Question préliminaire.*

La Cour vient de voir par mon exposé qu'on a exprimé des opinions si diverses à la Sixième Commission et on a soumis tant de propositions différentes, que la Commission a décidé, à sa 118me Séance, de mettre aux voix une question préliminaire de principe. En vue de mettre un peu d'ordre dans les débats, on a proposé que la Commission se prononçât tout d'abord sur la question de savoir si elle considérait que l'Assemblée pouvait prendre une décision *immédiate* sur les problèmes juridiques mis en jeu. Par 27 voix contre 6 et 7 abstentions, la Commission a décidé qu'elle ne pouvait pas se prononcer *immédiatement* sur le problème juridique de la capacité de l'Organisation des Nations Unies de présenter contre un État une demande en réparation de dommages subis par ses agents dans l'exercice de leurs fonctions.

Ce vote a mis en lumière le fait qu'une grande majorité des membres de la Commission désiraient consulter la Cour avant de prendre une décision quant au fond. En même temps, il est apparu très clairement, d'après la forme même sous laquelle la question a été successivement posée, que la Commission n'avait aucunement l'intention, par ce vote, de mettre en doute la capacité de l'Organisation des Nations Unies de présenter une demande en réparation. En effet, le président de la Sixième

Commission avait proposé tout d'abord que la Commission se prononçât sur ce problème de la capacité lui-même, mais la Commission s'est refusée à suivre cette suggestion, de nombreux représentants s'étant expressément élevés contre la mise aux voix de la question préliminaire sous cette forme. Certains membres de la Commission ont tenu même à préciser qu'ils seraient parfaitement disposés à voter affirmativement, au cours de l'Assemblée, sur la question de la capacité internationale de l'Organisation des Nations Unies, mais qu'ils préféreraient quand même entendre auparavant l'opinion autorisée de la Cour internationale de Justice.

b) *Projet de résolution présenté par la délégation de l'Égypte.*

La Commission s'est ensuite prononcée sur le projet de résolution de l'Égypte, incorporant les amendements soumis par la délégation de l'Union des Républiques socialistes soviétiques que la délégation égyptienne avait acceptés. La Commission n'était pas au moment du vote en possession du texte écrit de la version définitive de la résolution, mais l'alinéa pertinent du dispositif de cette proposition dans sa dernière version écrite, vous le trouverez dans le document A/C. 6/284. Cet alinéa est le suivant :

> « L'Assemblée générale autorise le Secrétaire général, au cas où un agent des Nations Unies subit, dans l'exercice de sa mission, un dommage corporel dans des conditions engageant la responsabilité d'un État, d'après les principes reconnus du droit des gens, à présenter, sous réserve de l'accord de l'État dont la victime est le ressortissant, toute demande pertinente au gouvernement *de jure* ou *de facto* responsable, en exerçant un recours devant les tribunaux nationaux compétents, en vue d'obtenir le remboursement des frais encourus par l'Organisation des Nations Unies en raison des versements effectués à l'agent de l'Organisation ayant subi un dommage corporel ou à ses ayants droit. »

Cependant, immédiatement avant le vote, le représentant de l'U. R. S. S. a fait remarquer que le texte anglais du document que je viens de citer (Document A/C. 6/284) ne représentait pas fidèlement l'original russe, introduit en langue russe. Il a demandé, par conséquent, et la Commission l'a admis par un vote à la majorité après une assez longue discussion, que la fin de la proposition soit modifiée dans le texte anglais, de la manière suivante :

Au lieu de « .... to make any pertinent application to the responsible *de jure* or *de facto* government by taking action in the responsible national courts.... »,

lire « .... to make any pertinent demand to the responsible *de jure* or *de facto* government and also to file suit in the appropriate national courts.... ».

Ce projet de résolution égyptien avec les amendements soviétiques a été repoussé par 26 voix contre 9 et 7 abstentions (Document A/C. 6/SR. 120, p. 5). On remarquera que le résultat de ce scrutin a été presque exactement le même que celui du scrutin sur la question préliminaire de principe. En fait, la première décision de la Commission, la décision de principe, laissait prévoir le rejet de la proposition égyptienne, la Commission ayant estimé, pour différentes raisons, qu'elle préférait

ne pas se prononcer immédiatement sur le fond de la question. Ce vote négatif s'explique ainsi en grande partie par la décision préliminaire de principe. Mais il y avait une autre raison qui avait aussi son importance dans l'opinion de certaines délégations. Le projet de résolution égyptien leur paraissait trop étroit et trop rigide. La proposition égyptienne, telle qu'elle avait été amendée, apportait en effet des restrictions sérieuses à l'autorisation qu'aurait reçue le Secrétaire général. Sa compétence aurait été 1) soumise à l'assentiment de l'État dont la victime est le ressortissant, 2) limitée à une demande de remboursement des frais encourus par l'Organisation elle-même. En outre, jusqu'à l'acceptation de la dernière modification soviétique immédiatement avant le vote, le Secrétaire général n'aurait été autorisé à intervenir qu'auprès des tribunaux nationaux de l'État responsable.

Ainsi que je viens de le mentionner et que le représentant du Secrétaire général l'a fait remarquer au sein de la Commission immédiatement après le vote, le rejet de la proposition égyptienne ne constitue en aucune façon une décision négative sur la question de savoir si l'Organisation des Nations Unies a ou n'a pas le droit de présenter, sur le plan international, une demande en réparation. La très grande majorité de la Commission et notamment les représentants du Royaume-Uni, de la Belgique, du Brésil, de la Grèce, de l'Australie, des Pays-Bas, du Luxembourg, de la Colombie, des États-Unis, du Canada, de l'Uruguay et de la Suède, se sont d'ailleurs déclarés expressément d'accord avec le point de vue du représentant du Secrétaire général.

c) *Projets de résolutions présentés par les délégations de la Syrie et de l'Uruguay.*

Il y avait ensuite le projet de résolution de la Syrie et de l'Uruguay.

Comme il apparaissait clairement après ces deux premiers votes que je viens de mentionner que l'opinion générale de la Commission était favorable à une consultation de la Cour internationale de Justice, aucune décision n'a été prise au sujet des projets de résolutions syrien et uruguayen. A la 124me Séance de la Sixième Commission, le représentant de la Syrie a retiré sa proposition, tout en réservant pour son Gouvernement le droit de présenter toutes observations qu'il jugerait nécessaires plus tard. Le représentant de l'Uruguay n'a pas non plus insisté pour que le projet de résolution qu'il avait présenté fût mis aux voix. Ces deux représentants ont d'ailleurs activement participé par la suite à l'élaboration d'un texte combiné de synthèse de la proposition de la Belgique (Document A/C. 6/294).

d) *Projet de résolution présenté par la délégation de la Belgique.*

J'en viens maintenant au projet de résolution belge.

Après le rejet de la proposition égyptienne et après que les autres propositions eurent été retirées, il ne restait que la proposition tendant à renvoyer la question à la Cour pour avis consultatif sur les questions juridiques mises en jeu. Plusieurs arguments ont été mis en avant, tant pour que contre la proposition, mais l'opinion générale était nettement en faveur d'une consultation de la Cour internationale. On peut *grosso modo* grouper en deux catégories les représentants qui préconisaient le recours à la Cour: premièrement, ceux qui avaient exprimé la conviction que l'Organisation des Nations Unies a bien le droit de présenter une réclamation sur le plan international, mais qui pensaient qu'un avis

autorisé de la Cour renforcerait la position de l'Organisation quant à l'exercice de ce droit (par exemple : États-Unis, Pays-Bas, Chili, Iran, Brésil, Venezuela, Colombie et Afghanistan), et deuxièmement, ceux qui avaient exprimé quelques doutes soit au sujet de la capacité de l'Organisation des Nations Unies de présenter une telle demande, soit au sujet de l'exercice de certains aspects de cette capacité et qui, en conséquence, désiraient un avis autorisé de la Cour afin de dissiper ces doutes (Royaume-Uni, Australie, Turquie, Équateur).

Le représentant de la Belgique, qui avait le premier présenté la proposition suggérant de consulter la Cour, a expliqué que sa délégation avait agi du fait de deux considérations principales. Tout d'abord, le désir d'éviter une longue discussion sur des questions de doctrine, questions sur lesquelles il pourrait s'avérer difficile d'arriver à un accord rapide à la Sixième Commission, et ensuite l'espoir d'établir une base solide pour la protection des agents des Nations Unies, sur le plan international (Document A/C. 6/SR. 115, p. 3). D'autres représentants ont souligné qu'un avis de la Cour donnerait un grand poids à toute action que l'Organisation des Nations Unies pourrait être amenée à prendre. Certains représentants ont aussi estimé que, vu la stipulation du paragraphe premier de l'article 96 de la Charte des Nations Unies, l'Assemblée générale serait bien inspirée de demander, à titre de ligne de conduite générale, un avis à la Cour toutes les fois qu'elle se trouverait devant des problèmes juridiques importants et compliqués qu'il ne serait pas opportun de trancher sans être soutenu par l'avis d'un corps de juristes particulièrement qualifiés.

D'autre part, les représentants qui préféraient employer d'autres méthodes pour examiner la question, ont émis certains doutes et soulevé certaines objections au sujet de la demande d'avis consultatif adressée à la Cour. Ces représentants peuvent être classés eux aussi en deux grands groupes : premièrement certains d'entre eux étaient absolument convaincus que l'Organisation des Nations Unies avait la capacité requise pour présenter une réclamation internationale et, pour cette raison, ils soutenaient qu'il était inutile de demander l'avis de la Cour (France, U. R. S. S., Égypte). Quelques-uns de ces représentants craignaient même que le fait de demander un avis puisse être interprété comme jetant des doutes sur cette capacité. D'autres délégués pensaient qu'il n'existe aucun droit en vertu des principes du droit international actuel, qui autoriserait une organisation internationale à présenter une réclamation, et que l'élaboration d'une convention était la meilleure méthode pour permettre d'établir ce droit (Syrie, Grèce, Suède, Pérou). Un membre de la Commission a estimé que la question était tout à fait simple et pouvait facilement être réglée directement et immédiatement par l'Assemblée générale (voir la déclaration du représentant de l'U. R. S. S., Document A/C. 6/SR. 114, p. 2). D'autre part, un autre membre de la Commission a soutenu qu'en l'absence d'un précédent reconnu, une réponse affirmative pourrait donner naissance à une série de questions subsidiaires qu'il serait difficile de résoudre (Grèce, Document A/C. 6/SR. 112, pp. 17-19).

Je voudrais enfin attirer l'attention sur deux autres points importants. Contrairement à ce qui s'était passé au cours du débat sur l'admission de nouveaux Membres qui a eu lieu à la Deuxième Session de l'Assemblée générale, on n'a, au cours des présentes discussions de la Sixième Commission, jamais mis en doute la compétence de cette Cour de donner

un avis consultatif sur cette question. D'un autre côté, quels que soient les divers arguments qu'on a fait valoir en ce qui concerne l'opportunité de demander un avis consultatif, la Commission a été unanime à reconnaître que les Nations Unies devaient être habilitées à présenter des réclamations sur le plan international.

Après avoir ainsi discuté la question pendant une semaine, la Sixième Commission a pris sa décision définitive à sa 124me Séance, le 26 novembre 1948. A cette séance, le texte final contenant la demande d'avis consultatif a été mis aux voix et a été adopté par 34 voix contre 5 et une abstention.

3. *Décision de l'Assemblée générale.*

Nous venons maintenant à la décision de l'Assemblée générale elle-même.

Le rapport contenant le texte du projet de résolution élaboré par la Sixième Commission a été présenté à l'Assemblée plénière par le rapporteur de la Sixième Commission, à la 169me Séance plénière, le 3 décembre 1948. Après une brève discussion, un vote à main levée est intervenu et la résolution a été adoptée à l'unanimité par 53 voix sans aucune abstention. Puis-je faire ressortir une fois de plus qu'en dépit des opinions différentes exprimées lors des discussions à la Sixième Commission, les questions actuellement soumises à la Cour ont été adoptées par un vote unanime de l'Assemblée générale ?

J'approche maintenant de la conclusion de la première partie de ma déclaration, dans laquelle j'ai passé en revue les débats de l'Assemblée générale et de la Sixième Commission. Je n'ai pas eu l'intention, dans cet exposé, de suggérer que les diverses opinions exprimées devraient nécessairement être prises en considération par la Cour lors de l'étude des questions particulières au sujet desquelles l'Assemblée générale a demandé un avis consultatif. J'ai plutôt eu l'intention de fournir à la Cour un bref résumé des propositions et des décisions qui constituent l'historique des questions particulières que la Cour va étudier et qui situent ces questions dans leur vraie perspective.

Je me suis permis, Monsieur le Président, de faire ces dernières remarques, car je connais bien la doctrine constante de cette Cour — et aussi de la Cour permanente — concernant l'importance plus ou moins grande qu'il convient d'attacher aux travaux préparatoires et concernant le rôle que doit jouer la méthode historique d'interprétation. J'ai eu l'honneur de participer personnellement à plusieurs de ces débats et j'ai été heureux de trouver à ce sujet un passage significatif, tout à fait récemment, dans l'avis de cette Cour concernant l'admission des nouveaux Membres. Quoi qu'il en soit, je suis sûr que dans tous les cas, la Cour voudra être en possession de tous les éléments et de toutes les considérations qui ont décidé l'Assemblée à demander le présent avis. C'est dans ce but que la première partie de mon exposé a été consacrée à l'historique des débats et des décisions de Paris.

Avant de passer à la deuxième partie, je dois cependant mentionner encore un point que je crois important.

L'exposé historique de cette question ne serait, en effet, pas complet sans un examen attentif de l'ensemble du texte — en anglais je dirais *the context* — dont les questions posées à la Cour forment une partie. Ce texte complet, on le trouve dans la Résolution de l'Assemblée du

3 décembre. Il contient, il ne faut pas l'oublier, un préambule ainsi conçu :

« L'Assemblée générale, considérant que la série d'incidents tragiques affectant ces derniers temps des agents des Nations Unies dans l'exercice de leurs fonctions soulève, d'une façon plus urgente que jamais, la question des dispositions à prendre par les Nations Unies pour assurer à l'avenir à leurs agents une protection maximum et la réparation des dommages subis, considérant comme hautement souhaitable que le Secrétaire général puisse, sans conteste, agir de la manière la plus efficace en vue d'obtenir toute réparation due.... »

Ce préambule est suivi d'un dispositif qui comporte, en premier lieu, la décision de soumettre deux questions à la Cour pour avis consultatif et de plus, en second lieu, des instructions pour le Secrétaire général afin que, à la lumière de l'avis de la Cour, il prépare des propositions pour la prochaine session ordinaire de l'Assemblée.

Si l'on considère cette Résolution dans son ensemble, les éléments suivants s'en détachent distinctement. L'Assemblée avait la préoccupation de prendre des dispositions pour que les Nations Unies puissent, à l'avenir, s'assurer que les dommages subis entraîneront réparation; elle désirait que cette question fût réglée d'extrême urgence et elle estimait qu'il était hautement désirable que le Secrétaire général fût à même d'agir sans conteste avec une efficacité certaine afin d'obtenir toute réparation due; c'est pour cette raison qu'elle a décidé de soumettre cette question à la Cour.

Ainsi, il est clair que la demande d'avis consultatif est une étape importante dans le déroulement de l'action que l'Assemblée envisage pour assurer aux agents des Nations Unies la protection la plus complète. Certes, il y a eu quelques divergences de vues sur des questions de doctrines ou de théories juridiques parmi les représentants siégeant à la Sixième Commission, mais dans son désir fondamental d'assurer cette protection efficace et d'obtenir réparation, l'Assemblée s'exprime en des termes qui ne laissent aucun doute. L'avis de la Cour, s'il est affirmatif, fournira une base juridique solide pour que ce désir fondamental de l'Assemblée puisse se réaliser « sans conteste » et « de la manière la plus efficace ».

[*Public sitting of March 7th*, 1949, *afternoon*.]

SECOND PART: ANALYSIS OF THE QUESTIONS PRESENTED.

Having completed this morning the historical part of our statement, I should now like to discuss the meaning of the specific questions before the Court. It is our purpose here to analyse for the assistance of the Court the two questions presented to it by the General Assembly, for the purpose of determining their scope and limits.

At this time, although the text of these two questions has been read this morning by the Registrar of the Court, I think it may be useful to repeat them again in order that this text should be quite fresh in our memory :

"I. In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an

Organization, the capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of the damage caused (*a*) to the United Nations, (*b*) to the victim or to persons entitled through him ?

II. In the event of an affirmative reply on point I (*b*), how is action by the United Nations to be reconciled with such rights as may be possessed by the State of which the victim is a national ?"

Two general remarks may be in order before embarking on a detailed analysis of these questions. In the first place, it is obvious from the face of the questions that they are "legal" questions and are therefore drawn up fully in accordance with the provisions of Article 65, paragraph 1, of the Statute of the Court. In this respect may I mention that the Assembly itself has classified in its Resolution these two questions as legal questions.

There is in the report of Committee 6 to the full Assembly, which constitutes a part of the documentation submitted to the Court, an error in the English text. The English text says only "the following two questions"; the French text says: "les deux questions juridiques suivantes". But the rapporteur of Committee 6 in the full meeting of the Assembly corrected this error and stated that, the French text being correct, the English text consequently should read : "the following two legal questions". If you will look at the official copies which the Secretary-General has transmitted to the Court, you will find not only in the French but also in the English text the correct phrase "the two following legal questions".

The second preliminary remark is as follows : it is to be noted that the questions asked are abstract and general questions. They have no reference to the specific incidents which were referred to by the Secretary-General in his report to the Assembly, and which were described in the first part of our statement, nor to any specific claims which the United Nations may present to individual States.

After these two preliminary remarks I believe that it may be helpful to the Court to analyse the significant phrases and elements of the questions presented.

The first phrase which needs consideration in the first of the questions is "*an agent of the United Nations*". These words are intended to comprise all persons acting on behalf of the United Nations or any of its organs. These persons include officials and employees of the Secretariat, observers detailed by Member Governments for service under orders of the United Nations, Members of the United Nations Commissions or Committees, or persons who are themselves organs of the United Nations. While there is no explanation of the meaning of this phrase "an agent" in the records of the Committee discussions, it is noteworthy that the incidents which impelled the Secretary-General to bring this matter before the General Assembly involved persons having different relationships to the United Nations. Thus Count Bernadotte was himself an organ—a subsidiary organ—of the United Nations (the United Nations Mediator for Palestine), appointed by the General Assembly ; several of the persons involved in other incidents were observers who were detailed by national governments for service with the Mediator and with the Truce Commission, which was a subsidiary body, not of

the Assembly, but of the Security Council. One of the persons involved was a member of the General Secretariat of the United Nations. The word "agent" was used by the Secretary-General in his memorandum to the Assembly for this deliberate purpose of comprising these various types of individuals. It is important to note that the common element with respect to all of these individuals was that they were acting on behalf of the United Nations and not on behalf of any individual Member. In fact, all of the persons here referred to received some compensation from the United Nations for their activities, either salary or *per diem ;* all of them acted under orders of an organ of the United Nations, either the General Assembly, the Security Council, or one of its subordinate body, or the Secretary-General. Even if no compensation were paid, however, all persons who are clearly acting on behalf of the Organization should be considered as comprised within the category of agents. So, for instance, we may imagine that the Security Council decides to set up a small sub-committee in order to enquire into some matters, and this sub-committee is composed of three, four or five members of the Security Council. If these persons are physically injured while performing their duties, even if they do not receive any compensation, any salary, or any *per diem* from the United Nations, they are to be comprised in this category of agents because they are acting officially on behalf of the Organization of the United Nations.

The phrase *"in the performance of his duties"* is intended to restrict the question so as to comprise only injuries suffered while the individual is performing duties on behalf of the United Nations. The question therefore does not cover any situation in which the individual suffers injury while engaged on private affairs or while performing duties which are not part of his responsibility to the United Nations. The significance of this restriction resides in the fact that the Court is not called upon to consider whether the United Nations possesses a right vis-à-vis a State for injuries suffered to its agents generally, in the same sense that a State possesses a right of protection for its nationals generally. The injured individual must not only be an agent of the United Nations ; it must also be shown that the injury was suffered "in the performance of his duties".

The phrase *"suffering injury in circumstances involving the responsibility of a State"* has the effect of providing a premise which is of considerable importance having regard to the task of the Court in this matter. The Court does not need to deal with the question as to whether any particular State has responsibility in any of the circumstances here involved. The question for the Court implies as a premise that a State does have responsibility because of the circumstances in which the injury was suffered. There is thus no need for the Court to concern itself with such questions as denial of justice, exhaustion of local remedies, and various other questions of the same character which were discussed in the Sixth Committee. The question, in effect, is, assuming that a State is responsible for the injury, does the United Nations have the capacity to bring an international claim ?

It should be noted that the Sixth Committee deliberately drafted the question so that this premise should be made clear. In the memorandum presented originally by the Secretary-General, the question was asked in a somewhat different fashion, thus : "whether, in the view of the General Assembly, a State may have a responsibility as against the

United Nations for injury to, or death of, an agent of the United Nations". The deliberation with which the Committee adopted a different formulation of the question was brought out by the remark of the delegate of Venezuela who thought that the first question in the Secretary-General's memorandum was so worded as to emphasize the factor of the State's responsibility, while, in his opinion, the emphasis should be laid on the question as to whether the United Nations was entitled to claim reparation. The question of the responsibility of the State on whose territory the injury was incurred was also interesting, but it was of secondary importance, as it would in any case be settled when the claim was under discussion. In that respect, he preferred the wording of the question submitted by the representative of Belgium, because it started from the premise that the responsibility of the State concerned had already been established (Document A/C. 6/SR. 114, p. 4).

The phrase *"the United Nations, as an Organization"* is intended to make it quite clear that the question asked of the Court involves the capacity of the United Nations as such, and not the capacity of any individual Member acting through the Organization. I touched on this question of the terminology of the English and French versions in the first part of my statement, but may I say here in parenthesis that this terminology was discussed very much at San Francisco when the Conference had to decide what should be the official title of the new international organization? There were several delegates, and I remember that I personally was among them as the representative of my State of origin, to propose that the name should not be simply the "United Nations", but the "Organization of the United Nations", even in the English text, precisely in order that there should be no possibility of confusion between the United Nations as an Organization and the United Nations who are the Members of the Organization. But then the Conference decided on the title of the "United Nations" chiefly after the intervention of the American delegate who asked that the title should be simply "The United Nations". The Conference decided to do so, chiefly to honour the memory of President Roosevelt who was one of the initiators of the Charter, and who, during the war, first employed the title of "United Nations". Therefore the name was "The United Nations"; but you will see, if you read the Charter, that in the French text the words "l'Organisation des Nations Unies" are employed more often than in the English text. Nevertheless, according to the Charter itself, the English words "United Nations" define the Organization as such. In our case, however, in order to be quite clear, as I explained, the words "as an Organization" were added after the words "United Nations" in the English text.

May I add that in our view the Court does not have to deal with the question which was raised in the memorandum of the Secretary-General as to who may present such a claim in the name and on behalf of the United Nations? While this question was discussed in the Sixth Committee, it is clear that it is a question internal to the United Nations Organization and need not concern the Court in this proceeding.

The phrase *"the capacity to bring an international claim"* is, in effect, the heart of the question asked of the Court. While the question of the capacity of the United Nations to act as a legal person in the national courts of Member States will be referred to hereafter in our argument, that question is not an issue before the Court. It will be recalled that

a proposal that the United Nations should proceed through national courts was not adopted by the Sixth Committee or the General Assembly. The General Assembly was concerned here with receiving the advice of the Court as to the capacity of the United Nations to act on the international rather than national plane. We interpret the word *"bring"* to mean to present the claim, to press for its settlement, and to accept settlement through international machinery. In the first analysis this machinery would be direct negotiation with the government of the State concerned, and further proceedings might involve such arbitral and judicial procedures as might be open to the Parties or on which they might agree. The Court is thus asked to consider whether the United Nations is empowered under the rules of international law to claim against a State through international machinery reparation for an injury for which the State is responsible under rules of international law. In short, we have here the direct issue of the international personality of the United Nations.

The phrase *"against the responsible* de jure *or* de facto *government"* makes it clear that the Court is not required to concern itself with whether or not responsibility exists in the respondent government. As has already been pointed out, this is the premise on which the question has been asked of the Court. Nor need the Court concern itself with the distinction which may exist between a *de jure* or *de facto* government.

There was much discussion before the Sixth Committee with regard to the kind of reparation which might be claimed by the United Nations. That question is not now before the Court. However, some consideration needs to be given to the phrase *"with a view to obtaining the reparation due in respect of the damage caused"*. It would appear from the wording of this phrase that the General Assembly had mainly in view the question of pecuniary reparation, since it refers to the "damage caused". This is also borne out by the fact that most of the discussion in the Sixth Committee revolved around the question of pecuniary injuries and the amount of compensation which should be paid. The Secretary-General is of the opinion, however, that the question may be properly interpreted so as to comprehend reparation in forms other than money, designed to insure against repetition of the injury, such as, for example, the improvement of the system of protection of United Nations agents and other steps which might be taken by their governments to prevent the recurrence of the events, including appropriate punishment of the offenders. It is not necessary for the Court to enter into a discussion of the particular type of reparation which might be due to the United Nations, but we do wish to point out that it is not necessary for the Court so to restrict its opinion that it would cover only pecuniary reparation.

The first question asked by the General Assembly ends with the phrase *"caused* (a) *to the United Nations,* (b) *to the victim or to persons entitled through him"*. The division of this phrase into two separate parts was made by the General Assembly with very great deliberation, and the Sixth Committee attached very great importance to this division. The Court will note from the record of the debate that, while many members were certain that the United Nations had the capacity to claim for damages caused to itself, some delegations were doubtful as to whether the United Nations had capacity to claim for the damages

caused to the agent. The Committee, therefore, put both aspects to this Court for its advice.

The damage *"to the United Nations"* would, in our view, include at least the direct cost to the United Nations by reason of the injury as, for example, payment made to the victim or to the person entitled through him, cost for hospitalization or funeral expenses paid by the United Nations, premiums on insurance policies taken out by the United Nations for the benefit of the injured agent. This cost might also include necessary expenditures incurred in replacing a valuable agent, such as the expense of training someone to take his place. Damage to the United Nations might also comprise the loss of security by other personnel in the area, leading to the necessity of demanding that the responsible State take measures to prevent recurrence of the injury. It was also suggested in the Sixth Committee that damage to the United Nations might consist of the loss of service of valuable agents. However, it is not necessary, in our view, for this Court to concern itself with the precise element of reparation which the United Nations might demand. That question, it would seem to us, would properly be dealt with in the negotiations between the United Nations and the responsible State in each case. It is, however, necessary for the Court to distinguish clearly between the damage to the United Nations and the damage to the victim, or to persons entitled through him, because of the division of these two elements made in the question asked of the Court.

The damage *"to the victim, or to persons entitled through him"*, will obviously comprise such elements as loss of property, loss of life or corporeal injury. It might also, under certain circumstances, include the damage caused by suffering and perhaps even loss of reputation or dignity. However, it should be emphasized again that we do not believe it necessary for the Court in this proceeding to enter into the propriety of the claim for any particular element of damage caused to the individual.

As has been said before, one of the chief reasons for the separation of the two elements at the end of the first question asked of the Court was the belief of some of the delegates on the Sixth Committee that the capacity of the United Nations to bring an international claim was more doubtful when the claim was brought on behalf of the victim or the persons entitled through him than when the claim was brought for damage caused to the United Nations. During the discussion, much reference was made to the conflict between the right of the United Nations to present a claim and the right of the State of which the victim was a national. It was the possibility of such a conflict which led the Assembly to ask the second question. The reference in the second question to *"action by the United Nations"* obviously means the bringing by the United Nations of an international claim for reparation in respect of the damage caused to the victim, or the persons entitled through him.

The phrase *"to be reconciled with such rights which may be possessed by the State of which the victim is a national"* raises a number of points which require consideration. This phrase would seem to include two elements: on the one hand the legal relationship between the claim of the United Nations and the claim of the State, and on the other hand the practical measures which can be taken to reconcile both claims.

It is not necessary for the Court, in our view, to consider which may be the right possessed by the State of which the victim is a national.

It is assumed in the question asked of the Court that the State may have such right, and the question is only how action by the United Nations may be reconciled with these rights. There is, however, one special situation as was pointed out in the Sixth Committee. This is the question which arises as to the right of the United Nations in the event that the victim is a national of the respondent State, that is to say, the State alleged to be responsible for the injury. It would appear to us that the Court may properly concern itself with this hypothetical point, if it so desires, since, if the victim were a national of a respondent State, the question of reconciliation of action by the United Nations with the rights of that State would imply an answer to the question as to whether the United Nations may present a claim at all under such circumstances.

Mr. President, before concluding this portion—the second portion—of our statement, I should like to dwell for a moment on the great importance of the questions put before the Court. In the first place, the issue here involves the international personality of the United Nations. For many years scholars have discussed the personality of international organizations. Now a precise question on this major issue has been presented to the highest international judicial body. Your answer to the question may involve the most important consequences for the development of international organization. In the second place, the issue is a serious one for the ability of the United Nations to protect its agents and thus to increase its effectiveness for carrying out the tasks entrusted to it by the Charter. In this respect it may be noted that Article 2, paragraph 5, of the Charter has provided as one of the fundamental principles of the Organization that all Members shall give to the United Nations every assistance in any action it takes in accordance with the Charter, and, furthermore, the Organization within the purview of Article 2, paragraph 6, is to ensure that States which are not members shall act in accordance with the principles of the Charter so far as may be necessary for the maintenance of international peace and security. Lastly, there are involved here principles of the highest importance for the future development of international law. You will be concerned here with an enquiry as to whether and how the rules of international law can be adapted to meet a new situation arising out of the growth of new instrumentalities for the conduct of international affairs.

It is not too much to say that your opinion will be a historic marker in the development of the system of law of which you are the highest exponent.

2.—STATEMENT BY Mr. FELLER

(COUNSEL FOR THE SECRETARY-GENERAL OF THE UNITED NATIONS)

AT THE PUBLIC SITTINGS OF MARCH 7th AND 8th, 1949.

[*Public sitting of March 7th, 1949, afternoon.*]

THIRD PART: STATEMENT OF LAW.

A. FIRST QUESTION.

May it please the Court: in his opening statement Dr. Kerno pointed out that the Secretary-General conceives it to be his duty in this case, not only to present the Court with information regarding the questions before it, but also to take a definite position on these questions. The Secretary-General therefore respectfully submits to the Court that the first question asked by the General Assembly should be answered in the affirmative. I might summarize our argument for this position very briefly as follows:

First: that the United Nations possesses international juridical personality conferred upon it by the States which created it; that incidental to such personality the United Nations possesses the procedural capacity to present an international claim; and that as a consequence of its personality the United Nations possesses certain substantive rights under international law.

Second: that among these substantive rights possessed by the United Nations is the right of protection of its agents from unlawful injury while engaged in its service.

Third: that by virtue of the foregoing the United Nations may bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of damage caused either to the United Nations, or to the victim or to persons entitled through him.

1. *The United Nations possesses an international juridical personality.*

We contend that the States, which are both the subjects and creators of international law, intended to and did in fact create in the United Nations a personality of international law.

It will be recalled that when the Charter of the United Nations was under discussion at the San Francisco Conference, the question arose as to whether the Charter should contain a specific provision regarding the international personality of the Organization. The Legal Committee of the Conference believed that such a provision would be superfluous, and the report of Committee IV/2, approved by Commission 4, states that the international personality of the Organization was, in effect, "to be determined implicitly from the provisions of the Charter as a whole". We submit that the provisions of the Charter as a whole make it clear beyond doubt that the Organization of the United Nations possesses an international juridical personality.

This conclusion results from the general aims and purposes of the Organization, from the express powers which the Charter confers on the Organization to act in the international field and from specific provisions of the Charter relating to the capacity, privileges and immunities of the Organization.

The provisions of the Charter taken together indicate unequivocally that the Organization called the United Nations was set up by its Members as an entity. The Charter is of course in part a series of undertakings by the Members to conduct themselves in accordance with certain standards, but numerous provisions of the Charter specifically confer on the Organization of the United Nations as such, or on one of its organs, specific power and authority. These provisions, which are so numerous that it is hardly possible to cite them without making a catalogue of most of the articles in the Charter, show that the Members desired to create a collective entity which would act on their behalf, and not merely a meeting place or forum in which the individual Members could have the opportunity of stating what action each of them would take separately. The very excellent analysis of this point at page 23 of the United Kingdom's written statement (Distr. 49/48) makes unnecessary further demonstration of this intention to create an entity. As that statement well puts it, the language of the Charter "is difficult to reconcile with any other view but that the framers of the Charter regarded the Organization as possessing an international capacity of its own, separate and distinct from that of its individual Members or of the plurality of its Members".

In addition this entity, the United Nations, was endowed with specific capacity to exercise functions and undertake rights and obligations on a parity with similar functions, rights and obligations exercised or possessed by States which are recognized personalities under international law. The most striking example is Article 43, which empowers the Security Council to enter into agreements with Member States or groups of Members regarding the armed forces, assistance and facilities to be made available to the Security Council for the purpose of maintaining international peace and security. It is hardly necessary to say that such agreements are agreements which would be binding under international law, in the same way as are treaties between States, and it is of interest to note that Article 43 concludes by providing that these agreements "shall be subject to ratification by the signatory States in accordance with their constitutional processes".

The United Nations has authority to enter into other international agreements. Thus, by virtue of Article 105, it is a party to the Convention on Privileges and Immunities of the United Nations, which binds the United Nations as an Organization, on the one part, and each of its Members individually, on the other part. The United Nations has entered into international agreements with individual States. For example, the agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, and the Interim Arrangement on the Privileges and Immunities of the United Nations which was concluded with Switzerland. As the Court knows, under Article 63 of the Charter, the United Nations enters into agreements with the Specialized Agencies.

In addition to its express capacity to enter into international agreements, the Charter confers on the United Nations as an Organization

other express functions which imply the possession of international personality. The Security Council is authorized to make certain decisions with regard to international peace and security, and these decisions are, by Article 25, binding upon the Members of the United Nations. Under Article 42 the Security Council may itself take action by armed force to maintain or restore international peace or security.

Moreover, Article 81 provides that the Organization itself may be designated as the administering authority of a trust territory.

As the Court is aware, the only express reference to the legal capacity of the United Nations in the Charter is Article 104, which provides that: "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes." It was suggested in the Sixth Committee that the intent of this Article was to give the United Nations legal capacity only under the municipal laws of its Members, and this because of its reference to "in the territory of each of its Members". It is of course clear that the Article confers at least this capacity on the United Nations, but we submit it is equally clear that the Article does not mean that the United Nations has only such domestic legal capacity and not capacity under international law. In our view this Article can properly be interpreted to require recognition by the Members in each of their territories both of capacity under internal law and of capacity under international law. This derives from the language which provides that the legal capacity shall be such as "may be necessary for the exercise of its functions and the fulfilment of its purposes". Certain of these functions, for example, the capacity to sue in a private law contract, or to possess land, require a legal capacity under municipal law. On the other hand, the express functions of the United Nations to enter into international agreements and to administer territory require legal capacity under international law. The recognition of international capacity may thus be said to be properly, and even necessarily, comprehended within the obligation imposed by this Article. However, we wish to make it clear that we do not rest our case on this interpretation alone since, in our view, even if Article 104 were not in the Charter, the United Nations would possess international juridical personality by virtue of the provisions of the Charter taken as a whole.

There are still other indicia of international juridical personality present both in the Charter and in the practice of States. Under Article 105 the United Nations enjoys in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes, and certain privileges and immunities are also conferred on representatives of the Members of the United Nations and on officials of the Organization.

The Convention on the Privileges and Immunities of the United Nations, which I referred to earlier, provides in its first section that "The United Nations shall possess juridical personality", and then goes on to specify the privileges and immunities of the Organization. Under this same Convention the United Nations may issue *laissez-passer* to its officials which are to be recognized and accepted as valid travel documents by its Members.

The Headquarters Agreement between the United Nations and the United States has some significant provisions in this connexion. Under

Section 8 of this Agreement the United Nations is given "power to make regulations, operative within the headquarters district, which may supersede the laws and regulations of the United States, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No Federal, State or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this Section shall, to the extent of such inconsistency, be applicable within the headquarters district." The Agreement also provides that the headquarters district shall be inviolable and that no official of the United States shall enter the district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General (Section 9). The principle of inviolability of the premises is also recognized in the Arrangement between the United Nations and Switzerland regarding the Ariana Site, and in the Arrangement between the United Nations and France regarding the Palais de Chaillot in 1948. These are rights which would hardly be granted to a mere private corporation, but only to a legal personality under international law.

Under the regulations regarding the registration of treaties by virtue of Article 102 of the Charter adopted by the General Assembly, agreements entered into by the United Nations with States and other international organizations are treated as international agreements and made subject to filing and recording. Numerous Member States maintain permanent missions at the seat of the Organization, and this practice, so closely akin to the traditional right of legation exercised by States, has been approved by resolution of the General Assembly. Under the Agreement between the United Nations and the United States, certain of the members of these missions are entitled to the same privileges and immunities as the United States accords to diplomatic envoys accredited to it. It may be remembered in passing that the United Nations has a flag and an emblem recognized by Member States, and is considering the establishment of its own postal service.

It is instructive to note the differences in this regard between the Charter of the United Nations and the Covenant of the League of Nations. The Charter, as has been said, refers over and over again to the United Nations as an entity. The Covenant, on the other hand, makes only rare references to the League as such; the centre of gravity, so to speak, is in the Members and not in the League. For example, nowhere in the Covenant is the League called "an organization", nor is there any provision similar to that of Article 104 (although the League did, of course, enjoy inviolability of its premises). Contrast also Article 10 of the Covenant, in which the Members of the League undertake to protect all Members against aggression, and the Council is only authorized to "advise upon the means by which this obligation shall be fulfilled"; contrast this with Chapter VII of the Charter in which the Security Council is empowered to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and may itself decide what measures shall be taken. Nevertheless, as the Court will recall, the majority opinion among writers was that the League of Nations did possess international legal personality. (For example, such writers as Oppenheim, P. E. Corbett, Schücking and Wehberg, Rougier, Fauchille.)

From the sum of all the provisions of the Charter and the other texts we have cited there emerges a collective entity; endowed with the

capacity to enter into international agreements; with the authority to administer territory, including the rights and obligations which would arise therefrom; with the extraordinary power in certain circumstances to make decisions binding upon States; with authority to enforce certain of its decisions by the use of armed force against States; and with express recognition of legal capacity in the territory of Member States and of the privileges and immunities necessary for the fulfilment of its purposes. These functions and rights do not make of the United Nations a super-State, nor indeed even a State, but they are certainly indicia of an international juridical personality. To deny the existence of such a personality in the United Nations would entail a conclusion that only States may under any conceivable circumstances possess international personality. Only a very small minority of reputable writers of international law would support so extreme a statement.

To hold this would be tantamount to holding that the States which are both the subjects and creators of international law do not possess the power, by their own free will and agreement, to create a new international personality. There is no rule of international law which imposes such a restriction on the freedom of the States. In the Charter of the United Nations and in the practice of intercourse amongst them, they have in fact created such an international personality in the United Nations.

This international personality is recognized not only by the Member States but by the non-member States as well, and we would say it is now founded upon a general rule of international law. The Charter had been adhered to by the overwhelming number of States of the world and there are grounds for saying that it is not to be considered as a *lex specialis* for the Members alone but as having been made law by and for the entire international community. There is, however, no necessity here for determining whether a non-member State is bound by any specific provision of the Charter; it is enough to say that the entire international community has recognized the capacity of the Organization which the Charter created. This recognition appears in the fact that every known State in the world which possesses control over its foreign relations, with the exception of Spain (which is specifically debarred from membership) and several of the diminutive States such as Monaco and Andorra, and Switzerland, has applied for membership. It should also be noted that Switzerland, although a non-member State which has not applied for membership, has expressly recognized in its agreement with the United Nations "the international personality and legal capacity of the United Nations".

(a) *The United Nations has the procedural capacity to bring an international claim.*

As we have just shown, the international personality of the United Nations is firmly established in international law, not only by the Charter provisions as a whole, but also by State practice on the part of those Member and non-member States. I should now like to demonstrate that this personality carries with it the capacity necessary for the fulfilment of its purposes and the exercise of its functions from a procedural standpoint. The Organization clearly has the right to negotiate with States and has in fact exercised this right continuously since its origin. It has communicated with States on a basis of equality,

and has protested to States the violation of its rights. In this connexion it is significant that it was the United Nations, and not the States of which the officials were nationals, which protested the injuries suffered by United Nations agents in Palestine. The right of the United Nations to enter into agreements either with a large group of States or with a particular State has already been pointed out. These rights of communication, negotiation and agreement have been exercised not only in relations with Member States but also in relations with non-member States.

The Organization has the capacity to participate in arbitral proceedings with a State when the question of its rights or obligations is concerned. Provision for such arbitration will be found in treaties and agreements in force, as for instance Section 21 of the Headquarters Agreement between the United Nations and the United States, and Section 27 of the Interim Arrangement between the United Nations and Switzerland.

Although by Article 34 of the Statute of the International Court of Justice the United Nations may not be a party in a case before this Court, its organs, under Article 96 of the Charter of the United Nations, may request advisory opinions, and its representatives may appear before the Court as is evidenced by the fact we are here to-day. Advisory procedure may be made to yield the same results as a judgment in a contentious proceeding by an agreement in advance to accept the advisory opinion as binding. Members of the Court will recognize that an agreement of this kind is incorporated into Section 30 of the Convention on the Privileges and Immunities of the United Nations. Section 30 is as follows:

> "All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

It should therefore be clear that the United Nations has, and in some instances is exercising, the same procedural rights by which a State brings an international claim against another State. These rights of negotiation, diplomatic interposition, agreement, arbitration and, in a modified form, judicial settlement, are open to the United Nations under positive international law as it exists to-day. The fact that for the exercise of the right to arbitrate or to submit a case for judicial settlement a special agreement or *compromis* between the United Nations and the defendant State might be necessary, in no way derogates from the legal capacity possessed by the United Nations in positive law.

In the absence of an obligation under the optional clause of Article 36, or of an obligation in some other treaty or convention in force, such a special agreement or *compromis* is necessary for the exercise of this right by a sovereign State. On the other hand, the right to negotiation and diplomatic interposition which the United Nations is, and has been, exercising, may be exercised immediately.

(b) *The United Nations possesses substantive rights under international law.*

The essence of legal personality is the capacity to enjoy legal rights and assume legal obligations. It follows that since the United Nations is a personality of international law, it has the capacity to enjoy international legal rights. The international legal personality which we call a State enjoys certain rights under general or customary international law, in common with other States, such as sovereignty, equality, etc., and other rights which it acquires by virtue of treaties with other States. The international legal personality called the United Nations similarly enjoys rights deriving both from general international law and conventional international law. These rights of the United Nations are not necessarily the same as those of States, although they may in certain circumstances be the same or similar.

The legal rights which a State enjoys by virtue of customary law are those which are necessary and proper for the exercise of the functions of a State. Obviously, there are certain of these rights, as, for example, sovereignty, which are not necessary and proper for the exercise of the functions of the international personality called the United Nations. On the other hand, there are certain other rights which States possess which must also be possessed by the United Nations if it is to exercise the functions conferred on it. A few examples will suffice.

When the United Nations enters into an international agreement with a State, it is entitled to the right that the contracting State will fulfil the obligations of the agreement in accordance with the rule *pacta sunt servanda*, which is indeed the fundamental principle of international law.

If the United Nations were to become the administering authority of a trust territory, it would seem obvious that its acts in the exercise of this function would be entitled to the same recognition under the rules of international law as would those of a State which acted as an administering authority of a trust territory.

Let us take another case. A striking instance would be the case where the Security Council found it necessary to employ an international armed force under Chapter VII. It would be most extraordinary to say that this force could not rely on the protection of the general rules of warfare established by international law.

Conventions and agreements relating to the United Nations have expressly recognized that rules of general international law may govern certain aspects of the Organization's activities. For instance, in the Arrangement on Privileges and Immunities of the United Nations and Switzerland, the recognition of the personality and legal capacity of the United Nations which I have already cited is followed by the provision that the Organization "according to the rules of international law" may not be sued before the Swiss courts without its express consent. Section 19 of the Convention on the Privileges and Immunities of the United Nations accords to the Secretary-General and Assistant Secretaries-General the privileges and immunities accorded to diplomatic envoys "in accordance with international law".

In essence, our position at this point is that the United Nations, in addition to its rights under the Charter or express international agreement, possesses those substantive rights of general international law which are necessary and proper for the exercise of its functions. We

are aware that this position may have an appearance of novelty and perhaps boldness, but it is novel only because the problem of the practical implications of the personality of an international organization arises here for the first time. We submit that this view is wholly in accordance with the needs of the modern international community, and with the progressive development of the international legal order.

2. *The right of the United Nations for the protection of its agents.*

It is not necessary in this proceeding to explore the whole catalogue of the substantive rights which the United Nations may enjoy under international law. The essential point in our contention before the Court now is that the United Nations unquestionably has the right to insist, under international law, vis-à-vis a State, whether that State be a Member or a non-member, that its agents be given the protection necessary for the performance of the functions of the Organization. It is elementary that States possess a right to receive protection for their diplomatic and consular officials by the territorial sovereign. Freedom from interference with this right to protection either through acts of violence by State officials, through failure to provide protection from illegal acts of individuals, or through other delicts of a like or similar nature is indispensable to enable officials to carry out their functions.

A right to special protection for those persons occupying official positions is universally recognized in international law. An inviolability of the person has been said to be the first right of diplomatic representatives.

> [Sir Cecil Hurst, *Les Immunités diplomatiques*, Recueil des Cours de l'Académie de Droit international (1926, II), Vol. 12, pp. 124-125; Article 17, of the Harvard Research Draft Convention on Diplomatic Privileges and Immunities, and comment thereto, pp. 90-97; Hackworth, *Digest of International Law*, Vol. IV, pp. 507-510; Hyde, *International Law* (2nd Rev. Ed., 1945), Vol. 2, p. 1249; Anzilotti, *La Responsabilité internationale des États à raison des Dommages soufferts par des Étrangers*, 13, Revue générale de Droit international public (1906), p. 15; De Visscher, *La Responsabilité des États*, 2, Bibliotheca Visseriana (1924), p. 102; Whiteman, *Damages in International Law*, Vol. 1, p. 366; and cases cited by the above authorities.]

It is the only right recognized by general international law for consuls and minor officials of foreign governments who are not accorded diplomatic privileges and immunities proper.

> [Article 15 of the Harvard Research Draft Convention on Legal Position and Functions of Consuls, and comment thereon; Hackworth, *Digest of International Law*, Vol. IV, pp. 708-716; Hall's *International Law* (Pearce Higgins' 8th Ed.), 372, 375; Borchard, *The Diplomatic Protection of Citizens Abroad* (1915), pp. 216, 223; Hyde, *International Law* (1945), Vol. 2, p. 1327; Bustamante, *Derecho Internacional Público* (1938), Toma I, p. 388.]

The Vice-President of this Court, M. Guerrero, as rapporteur of the Sub-Committee of the League of Nations Committee of Experts for the Progressive Codification of International Law, stated in his report:

"It was obviously not the intention of the international community that the representative character of an individual should render him immune from ordinary misadventure.

Nevertheless, States have undertaken to exercise greater vigilance over these persons than they do over private individuals. They are also bound to take special steps to forestall any assault against the persons of foreign representatives and to display particular energy in pursuing the criminals and ensuring the proper course of justice." (League of Nations, C.196. M.70. 1927. V, p. 96.)

The same opinion was expressed in the comment to Article 17 of the Harvard Research Draft on Diplomatic Privileges and Immunities, and in the comment to Article 10 of the Harvard Research Draft on Responsibility of States.

The reasons which underlie the right of a State to require protection for its officials, apply with equal force in the case of the United Nations. The Member States have established an international organization, endowed as we have seen with international personality and authorized to carry out functions of high significance to international peace and security. These functions must be carried out by agents who, as experience shows, and sometimes tragically shows, must often exercise their duties in troubled areas in various parts of the globe. The necessity for the United Nations to exercise its functions through such agents implies as a co-relative a duty on the territorial sovereign to furnish them with protection appropriate to the circumstances, to enable these functions to be properly exercised.

The existence of such a duty of protection for the representatives of an international body on a parity with the duty to protect a national representative was strikingly illustrated in the opinion given by the Committee of Jurists appointed by the Council of the League of Nations in connexion with the *Tellini case* (which will be discussed in detail hereafter). It will be recalled that General Tellini was assassinated in Greece while serving on a border commission appointed by the Conference of Ambassadors. In answer to the question "in what circumstances and to what extent is the responsibility of a State involved by the commission of a political crime in its territory", the Committee answered in part : "The recognized public character of a foreigner and the circumstances in which he is present in its territory entail upon the State a corresponding duty of special vigilance on his behalf" (L. of N. O.J., 1924, p. 524).

In the Convention on Privileges and Immunities the officials of the United Nations are expressly accorded immunity from legal process for acts performed in their official capacity, and are granted other privileges and immunities closely analogous to diplomatic privileges and immunities. Since the right to protection against illegal acts is so firmly established in international law, it was not necessary expressly to mention it in the Convention on Privileges and Immunities, which was primarily designed to furnish immunity from legal acts of government. It is a necessary right of the Organization which is derived directly from principles of international law, and is also assured by Article 105 of the Charter. As was pointed out by the Preparatory Commission : "Under Article 105 of the Charter, the obligation of all

Members to accord to the United Nations, its officials and the representatives of its Members all privileges and immunities necessary for the accomplishment of its purposes, operates from the coming into force of the Charter, and is therefore applicable even before the General Assembly has made the recommendations or proposed the Conventions referred to in paragraph 3 of Article 105." (Report of the Preparatory Commission of the United Nations, PC/20, 23 December, 1945, p. 6.)

The Report of Committee IV/2 at San Francisco, after indicating that the terms "privileges" and "immunities" indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, and the free functioning of its organs and to the independent exercise of the functions and duties of its officials, continues :

> "It would moreover have been impossible to establish a list valid for all the Member States and taking account of the special situation in which some of them might find themselves by reason of the activities of the Organization or of its organs on their territory. But if there is one certain principle it is that no Member State may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other."

The illegal interference with the officials of the United Nations either by agents of a State, or by private individuals with the complicity of the State, or because of failure of the State to afford protection, hinders in the worst imaginable way the working of the Organization and prevents the independent exercise of the functions and duties of its officials. The duty to provide protection is clearly included within the obligations imposed on Member States by Article 105, and also by paragraph 6 of Article 2, which requires that "all Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter".

It is not within the scope of the present question to discuss particular injuries that have occurred. But it may be pointed out that responsibility of a State toward the United Nations might also arise from violation of an express or an implied agreement at the time that a mission is sent to a particular area. A violation of a truce agreement, or a violation of an agreement for the movement of a particular convoy might also under certain circumstances result in responsibility.

The duty which the State has to protect United Nations agents is, of course, a duty owed to the Organization. Where special protection is accorded to an individual because of his official status, it is accorded to him not as an individual but as a representative of a State or as a representative of an international organization. The privileges and immunities which are enumerated in the Convention on Privileges and Immunities of the United Nations are "granted to officials in the interest of the United Nations and not for the personal benefit of the individuals themselves" (Article V, Section 20). This may also be said to be the correct rule for other privileges granted to officials by general international law and by Article 105 of the Charter.

The duty to afford protection to United Nations agents in the course of their duties rests not only on the provisions of the Charter or on special arrangements with individual States, but is, as we have already

indicated, a rule of general international law. It is, therefore, binding alike on Member and non-member States.

[*Public sitting of March 8th, 1949, morning.*]

3. *The United Nations may bring an international claim for reparation due in respect of damages caused to the United Nations as an Organization for the violation of its international rights.*

May it please the Court.

At the previous sitting we demonstrated that the United Nations possesses international juridical personality and that it has procedural capacity to bring an international claim ; also that it possesses certain rights under international law, including the right to insist on the protection of its agents. It follows, we submit, that the United Nations may bring an international claim for reparation due in respect of damages caused to it as an Organization for the violation of its international right of protection of its agents.

The Permanent Court of International Justice in the *Chorzów case* pointed out that violation of an international right entails a duty to make reparation for the damage suffered thereby. The Court, as you will remember, said that "it is a principle of international law that the breach of agreement involves an obligation to make reparation in an adequate form. Reparation therefore is an indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself."(Judgment No. 8, Ser. A., No. 9, p. 21.)

This principle that the breach of an agreement involves an obligation to make reparation is not only well established in customary international law, but is also, of course, a general principle of law recognized in the legal systems of all civilized nations. Elaborate citation is obviously unnecessary, and I need only refer to Article 1382 of the French Civil Code, which provides : "Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer."

The only objection which has been made to the application of this principle to the instant situation is that there is no case on record in which an international organization brought such a claim. This objection was most succinctly stated by M. Spiropoulos, representative of Greece on the Sixth Committee, who stated : "In his opinion, by virtue of the existing principles in force, if an alien suffered injury, only the State of which he was a national had the right to take action on his behalf, and that right directly derived from the fact of his nationality. It was an established principle of international law that an injury to an alien constituted an injury to this State of which he was a national.

"To establish whether the United Nations has the same right, it was necessary to find out if there was any rule of law providing for such a right for the United Nations. In the memorandum of the Secretary-General, it was stated that to the best knowledge of the Secretariat, no situation exactly similar to the present cases had ever arisen. There was, therefore, no custom or usage which might be used as a basis for

deciding that the United Nations had that right." (Document A/C. 6/SR. 112, p. 16.)

While there was considerable disagreement with this view in the Sixth Committee, it is important both for this case and for the general development of international law that this objection be dealt with.

International law has often been stated to be a primitive and incomplete system. Nevertheless, its entire development has shown that it is a legal order, capable of growth and of adaptation to the changing needs of the States and of the international community. I have the highest respect for the scholarship and intellectual capacities of M. Spiropoulos, but it must be pointed out that the principle which he put forth would condemn international law to a static existence, composed of rules which the swift march of events would soon render obsolete, and which could only be changed by the conclusion of new international agreements. Such a principle would reduce the judicial process of international tribunals, such as this Court, to a mere mechanical listing of precedents and conventional stipulations. The history of international tribunals clearly refutes any such static and mechanistic conception.

A noteworthy instance is the case of the *Eastern Extension, Australasia and China Telegraph Company, Limited*, which was decided in 1923 by the British-American Arbitral Tribunal under the Convention of 18th August, 1910. Discussing the contention that there was no rule of international law on the question of the right of the belligerent to cut neutral submarine cables, the Tribunal said that, even assuming that there was no specific rule of international law governing the case of cutting of cables by belligerents, it could not be said that there was no principle of international law applicable. The Tribunal then said: "International law, as well as domestic law, may not contain, and generally does not contain, express rules decisive of particular cases; but the function of jurisprudence is to resolve the conflict of opposing rights and interests by applying, in default of any specific provision of law, the corollaries of general principles, and so to find—exactly as in the mathematical sciences—the solution of the problem. This is the method of jurisprudence. It is the method by which law has been gradually evolved in every country resulting in the definition and settlement of legal relations as well between States as between private individuals." (Nielsen's Report, pp. 73-81.)

In answer to the question: "In what manner do international tribunals proceed when confronted with novel situations in the course of their judicial activity?", Professor Lauterpacht has listed these ways (*The Function of Law in the International Community*, p. 111):

"(*a*) They may proceed either by analogy with specific rules of international law or by recourse to general principles of international law.

(*b*) They may apply general principles of law, notably of private law.

(*c*) They may bridge the gap by an even more conspicuous recourse to creative judicial activity, aiming at solving the controversy by shaping a legal rule through the process of judicial reconciliation of conflicting legal claims entitled to protection by law.

(*d*) They may accomplish the same task by a consideration of the larger needs of the international community."

There is present here the most ample and proper opportunity for the application of these principles.

First : There is the rule of international law that a State is entitled to bring an international claim for unlawful injury to one of its officials or nationals. We shall discuss this rule at length later. At this point it is sufficient to state that the general principles underlying this rule apply equally to the case of a claim by the United Nations.

Second : This case arises out of a new situation presented by the growth of international organization, in which the needs of the international community require that a step forward be taken for the protection of the agents of the community.

Third : The legal consequences deriving from the provisions of the Charter, the juridical personality of the United Nations, and its rights under international law, lead irresistibly to the conclusion that it has the right to bring such a claim.

It is, of course, true that there has been no case precisely identical with the situation envisaged by the present question ; but it needs to be pointed out that the view that an international organization has the right to demand reparation for an injury to its agents is by no means a novel one. Reference has already been made to the *Tellini case*, involving the assassination of the Italian representative on a border commission appointed by the Conference of Ambassadors.

The arrogant methods adopted by the Mussolini Government towards Greece in this case, and the disproportionate indemnity exacted, can hardly commend themselves to the Members of the United Nations. It is, however, significant that the Italian Government stated that the assassination involved the violation not only of its right, but also of the right of the Conference of Ambassadors. The Conference itself demanded that reparation should be paid to the Italian Government and also that apologies should be made to the three Allied Powers whose delegates were on the Delimitation Commission. Such apologies were duly made.

It is of interest that Professor Clyde Eagleton, shortly after the event, wrote : "The assumption by the Conference of Ambassadors of jurisdiction when General Tellini was murdered, would seem to be an assertion of the responsibility of a State to an organ of the international community." (*The Responsibility of the State for the Protection of Foreign Officials*, 19 Amer. Journal of Int. Law, p. 314.) This was said in 1925. The Court will also note the precedents relating to Upper Silesia and the Commission of the Danube, whose citation we owe to the French Government in its written statement to this Court.

As we have said before, the question before the Court does not involve a determination of the reparation due in the actual instances where injury has occurred. It may be useful, however, to indicate briefly some of the ways in which the United Nations as an Organization may be damaged by an injury to its agent, and to point out methods of reparation that are sanctioned by international law in respect to such injury.

In the first place, injury to an agent of the United Nations may result in direct financial loss to the Organization itself. The Secretary-General in his memorandum submitted to the General Assembly stated in respect to claims of this nature :

> "The next item which it would appear that the United Nations is clearly entitled to claim, is reparation for the direct costs incurred by the United Nations, such as medical services, funeral expenses,

and payments to the injured official or his family." (Document A/674, p. 5.)

While, in most cases, States have demanded reparation based on damage suffered by an injured national, it would seem obvious that the first element of reparations would be the damage, if any, suffered by the State itself; and there are certain cases in which a direct loss to the State has been involved. One example is the *Imbrie case*, where Persia paid to the United States the cost of transporting the body of a United States consul who had been killed in the former country, this payment being in addition to a sum paid for the benefit of his widow. (I. Whiteman, *Damages in International Law*, p. 138.) Another example is the *Henry R. Myers case*, where the United States claimed for injury to the property of the United States Government in a Consulate in El Salvador. (I. Whiteman, p. 80.) I also call to your attention the *case of the H.M.S. "Scarab"*, where the United States paid to the United Kingdom a sum of money for injuries suffered by a British warship in collision with a United States warship. (I. Whiteman, p. 81.)

These cases, we submit, support a claim by the United Nations for a direct financial loss suffered by the Organization itself. This view was supported in the Sixth Committee by representatives of the United States, Egypt, Czechoslovakia, Iran, Australia, Netherlands, Union of Soviet Socialist Republics, and Uruguay. As an example, the representative of the United States stated:

> "Once it had been established that damage had been caused, that such damage had been incurred by the United Nations, and, finally, that it had been caused by a State in violation of international law, the United Nations would have a case for demanding reparation from the State responsible. It would be illogical to say that the United Nations could be a party to a treaty and at the same time to deny that it could present claims for reparation for injuries it had incurred." (Document A/C. 6/SR. 113, p. 6.)

The representative of Australia, after he had pointed out "that the discussion had shown there was unanimous agreement with regard to the obligation of the United Nations to pay a fair indemnity to victims of injury or to their families", said:

> "No one questioned the United Nations' right—at least its moral right—to have such payments reimbursed." (Document A/C. 6/SR. 113, p. 2.)

The representative of the Union of Soviet Socialist Republics stated:

> "The question had been raised as to whether the United Nations was entitled to demand payment of damages incurred by the Organization itself. The answer to the question was undoubtedly in the affirmative. If property of the United Nations was damaged, it was naturally entitled to file a suit for damages." (Document A/C. 6/SR. 115, p. 12.)

Secondly: injury to an agent of the United Nations may result in material injury to the Organization by interfering with the exercise of its functions and the fulfilment of its purposes. Injury of this kind

would include the loss of irreplaceable personnel and the increased difficulties which government provoked attacks or lack of reasonable protection against illegal acts of private individuals would place in the way of the proper exercise of the duties of the United Nations' agents.

The Secretary-General in his memorandum to the General Assembly put it this way :

> "It is clear that the United Nations should be entitled to claim as the first item of reparations, prompt and adequate punishment of the offenders and the taking of such measures as will protect agents of the United Nations against future injuries." (Document A/674, p. 5 ; see also statement by Mr. Feller, A/C. 6/SR. 113, p. 4.)

It would appear to be obvious that the very basis of the rule regarding reparations for injuries would justify a claim that the respondent State take appropriate steps to prevent repetition.

I might say parenthetically that in the memorandum of the Secretary-General to the Sixth Committee, reference was also made to the question of exemplary or punitive damages, and in that memorandum attention was called to the case of the *I'm Alone*, in which the Court will remember that the Commissioners appointed by Canada and the United States recommended that "the United States ought formally to acknowledge the illegality of its act, and to apologize to His Majesty's Canadian Government therefor ; and, further, that as a material amend in respect of the wrong the United States should pay the sum of 25,000 dollars to His Majesty's Canadian Government". (U.S. Dept. of State Arbitration Series, No. 2 (1-7), 1931-1935.)

Now the Secretary-General made no recommendation with regard to the inclusion of such an item in a claim for reparation, and it would appear to be the general view of the representatives who discussed this aspect of the question in the Sixth Committee that such damages should not be asked for. For these reasons we do not believe it necessary to take the time of the Court for a discussion of this point of exemplary or punitive damages.

In summary, it may be said that for the reasons which we have advanced we believe that the Court should state affirmatively that the United Nations may bring a claim for reparations against a responsible *de jure* or *de facto* government for damages suffered by the Organization itself.

4. *The United Nations may bring a claim for reparation with respect to damages suffered by its agents or persons entitled through them.*

We now come to the aspect of the question before the Court which received much attention in the Sixth Committee : may the United Nations bring a claim for reparations with respect to damages suffered by its agents or persons entitled through them ? That is point (*b*) of the first question asked by the General Assembly. It is our contention that this question should be answered in the affirmative.

Where a claim is brought by a State for injury to one of its nationals against another State, the most usual and the most important measure of reparation is the damage suffered by the individual. The Permanent Court of International Justice, in the *Chorzów Factory case* put it in

this fashion—and I beg the indulgence of the Court if I read this, since we consider it of considerable importance:

> "It is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law. This is even the most usual form of reparation.... The reparation due by one State to another does not however change its character by reason of the fact that it takes the form of an indemnity for the calculation of which the damage suffered by a private person is taken as a measure. The rules of law governing the reparation are the rules of international law in force between the two States concerned, and not the law governing relations between the State which has committed a wrongful act and the individual who has suffered damage. Rights or interests of an individual the violation of which rights causes damage are always in a different plane to rights belonging to a State, which rights may also be infringed by the same act. The damage suffered by an individual is never therefore identical in kind with that which will be suffered by a State; it can only afford a convenient scale for the calculation of the reparation due to the State." (Series A., No. 17, pp. 27-28.)

In another case, that of the *Mavrommatis Palestine Concessions*, the Permanent Court again gave authoritative expression to the principle by which a State brings a claim for an injury to its nationals. The Court there stated:

> "It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its rights to ensure, in the persons of its subjects, respect for the rules of international law." (Series A., No. 2, p. 12.)

We need not linger too long in considering the fundamental basis of this right of protection. In another place (in a book on *The Mexican Claims Commission*), I pointed out that the principle "springs from a primitive feeling of clannishness, the necessity of protecting a member of the clan and of avenging him when he is injured". The classic statement by Vattel, which is well known to this Court, is perhaps an expression of this idea. (See Vattel, *The Law of Nations*, text of 1758, 3rd ed., 1916, p. 136.)

The development of the law of protection of nationals over the past century has led modern writers to re-state its fundamental postulate in the terms of "the interest in maintaining a reasonable freedom of international intercourse". As one recent writer, Mr. Frederick Dunn, in his book *The Protection of Nationals* (at p. 1), has put it, this branch of international law "is ultimately concerned with the possibility of maintaining a unified economic and social order for the conduct of international trade and intercourse among independent political units of diverse

cultures and stages of civilization, different legal and economic systems, and varying degrees of physical power and prestige".

However we look at the fundamental postulate of the rule, it is clear that international law has found it essential to give a right to the States to demand reparation for unlawful injuries to their nationals.

In the usual case of an international claim, the nexus between the claimant State and the injured individual is nationality. In the question before this Court all the elements of the usual international claim are present except that the nexus of nationality has been replaced by the nexus of official status and official duties. If the needs of the international community require the rule that a State may demand reparation for its injured national, they equally demand, in the present international order, that the United Nations may demand reparation for its injured agent.

Although an agent of the United Nations cannot conceivably be described as a national of the Organization, his position in relation to the Organization is such that the United Nations has the primary responsibility to see that he receives reasonable protection in the course of his duties. The relation of all agents to the United Nations is of course not exactly the same, and as Dr. Kerno stated yesterday, the term "Agent" has been used to cover several different relationships. Probably the strongest and clearest nexus exists in the case of officials of the Organization, or of those agents such as Count Bernadotte, who are themselves organs of the Organization. Those agents who are members of the staff of the Secretariat occupy a position as international officials responsible only to the Organization, under Article 100 of the Charter, and this primary responsibility to the United Nations is recognized by each Member of the United Nations.

While the relationship is closest between officials and the Organization, we believe that all agents of the United Nations stand in a sufficiently close relationship to the Organization to place on it a responsibility for their welfare and protection in the course of their duties, and to permit a claim by the United Nations for injuries suffered by them in case of a violation of international obligations.

In this respect our views differ somewhat from those of the United Kingdom, which, in its written statement to the Court, if I understand it correctly, would limit the right of the United Nations to make a claim to staff members and to persons employed in their personal capacity and/or as representing the Organization, and who are in no sense delegates or representatives of their own countries as such. While this formula would cover nearly all of the cases which have hitherto occurred, we believe it to be rather too restrictive. We suggest that the test should be whether the individual involved represents the United Nations as an Organization and has suffered injury in the service of the United Nations, and that in such event the United Nations has a right to demand protection even though he may also be representing his government in an organ of the United Nations. The Organization accomplishes its task through a variety of agencies. I might cite an example which is particularly striking. At one stage the task of mediating the conflict in Palestine was entrusted to a single individual—Count Bernadotte; since then it has been given to a commission composed of the representatives of three governments. None the less the task is substantially the same.

We have shown that in order to enable its agents to perform their tasks and carry out the functions of the Organization, it is indispensable

that the United Nations have a legal right to protect them and to redress injuries suffered by them in the performance of their functions.

The United Nations' agents who have gone to an area as representatives of the Organization cannot be expected to look to their governments for the necessary protection. Governments may be reluctant to engage in international controversy because of injuries to their citizens in such circumstances. Even when there is no organization with primary responsibility for their protection, States have often declined to press a claim for an injury to their nationals. Professor Jessup has recently written :

> "Instances in which the Department of State [of the United States] has declined to press diplomatic representation on behalf of importunate claimants are frequent and have often been due, not to the demerits of the claims, but to some overriding policy of fostering friendly relations. The Foreign Offices of small States may hesitate to antagonize a powerful neighbour by pressing against it the claim of one of its nationals." (*A Modern Law of Nations*, 1948, p. 98.)

In most instances governments may well prefer to let the United Nations handle the case. This has already been shown to be true in respect of the injuries suffered by the United Nations' agents in Palestine. Moreover, the officials of the United Nations in the performance of their duties may even be exposed to the displeasure of their own governments. It therefore does not seem appropriate that they should have to rely solely on their own governments for protection against injuries done to them in violation of international law. In their capacity as agents of the United Nations they ought to be protected principally by the international organization which they serve.

Not only should an agent be able to look to the Organization for protection for his own sake, but such protection is also necessary if the individual is to carry out the functions which have been assigned to him by the Organization. The necessity of furnishing such protection has been recognized, and the United Nations itself sent guards with the United Nations' Mission to Palestine. The United Nations has also made representations to the territorial sovereigns in order to request special protection in certain instances. If, notwithstanding these efforts to secure protection, an agent is injured in circumstances involving the responsibility of a State, it logically follows that the Organization has the right to claim reparation for an injury which has occurred from the violation of the obligations of the State.

The right of the United Nations to make this claim need not rest solely on the analogy of nationality. In a claim arising from an injury to a private individual, nationality is the only nexus between the private individual and his government, but if the individual is abroad not as a private citizen but as an official of his government, there is another link upon which the right to protection may be based. Although in most instances both nationality and agency co-exist, and the latter is often submerged in the former, a careful analysis of cases involving reclamation for injuries suffered by persons in the service of governments reveals that a principle distinct from that of nationality is involved in the latter instance, the principle of special protection of an official representative.

Professor Jessup has emphasized this distinction as follows :

> "Various situations in the history of international claims reveal that in addition to the rights of its nationals a State has, in its relations with other States, certain rights which appertain to it in its collective or corporate capacity. The typical cases are those in which injury is done to an official of the State, particularly a consular or diplomatic official. The recognition accorded to their special status in traditional international law is extended because of their representative character and not because of their status as individuals, although a supplementary claim may lie for the injury to the individual as such." (*A Modern Law of Nations*, 1948, pp. 118-119.)

This point is further illustrated by cases in which a State has made a claim on behalf of persons who are not its nationals but who stand in some other relation to it, for example, alien seamen, inhabitants of mandated territories, and other protégés, and cases of consuls who have a nationality different from that of the State which they represent.

These are all cases in which the nexus is not nationality, but some other basis on which the protection of the State may be invoked. So here, although the nexus of nationality may be missing, the basis for invoking the protection of the United Nations is present.

If an official of the United Nations is arrested in violation of the rights of the Organization, the United Nations will make representations to the government to secure his release. If necessary, as I have said, it will address a request for protection. As already pointed out, the proper functioning of missions of the United Nations requires that the Organization will assume primary responsibility for insisting upon the protection of its agents. The responsibility cannot be left solely to the government of a State of which the agent is a national.

That government, in many cases, has no control over the individual in question so far as his services to the United Nations are concerned. It may not even know into what territory he has been sent, or the conditions of peril to which he has been exposed. The government of the territory in which the agent functions will look to the United Nations itself to see that the agent comports himself properly, and the agent, in turn, will expect the United Nations to make the arrangements for his proper treatment with the territorial government. Under these circumstances, the right of protection of the national government may in most instances wither away to a mere juridical fiction, and the agent be left without protection unless the United Nations has the right to insist on it.

We have relied here on two significant analogies : one, the analogy of the right of protection which a State exercises over its nationals, and the other the special right of protection which a State may claim for its officials in foreign countries. In connexion with the analogy of protection of nationals, we wish to make it clear that we are not pressing it to the extent that the United Nations would, in all circumstances, stand in the same relationship to its agents as a State does to its national. The question before the Court limits the issue to reparations for the injuries incurred "in the service of the United Nations". It is therefore unnecessary for us to argue whether the United Nations might present a claim for injuries incurred while the agent was not engaged in his official

duties. It can be said here that the Secretary-General has never considered that such a claim might be made.

We are also well aware of the important part played by the rules of denial of justice and of exhaustion of local remedies in the subject of claims by States for injuries to their nationals. As Dr. Kerno has pointed out, these issues do not come into consideration here, because the question submitted by the Assembly assumes, as a premise, that the State is responsible. In the discussion of any individual claim which the United Nations might present, there would be room for consideration as to whether these rules of denial of justice and exhaustion of local remedies are applicable.

It should be emphasized that we consider the analogy of special protection of officials far more important to this case than the analogy of protection of nationals. The latter analogy served mainly to illuminate the reasons for our contention and to show the procedure by which the right of special protection of United Nations' agents may be vindicated. In this sense, however, it has considerable importance, because it shows the well-established rule that although the injury committed against the individual national is under international law an injury to the State, the measure of reparations to be recovered by the State is the damage to the individual.

This is what the Permanent Court of International Justice referred to as "the most usual form of reparation" and "a convenient scale for the calculation of the reparation due to the State".

Here lies the answer to the doubt expressed in the written statement of the United States to this Court (p. 22). With your permission I propose to spend a few moments analyzing this point of the United States' statement. It is said that : "The basis of an international claim is, in theory, an injury or loss suffered by the State of which the claimant is a national." That is quite true, and at the same time the basis of the claim here is an injury or loss suffered by the United Nations of which the injured individual is an agent.

The statement then goes on to say that : "For that reason it would be appropriate for the government of the State of which the claimant is a national to present the claim to the government of the State causing the injury or loss." But, for an exactly analogous reason, namely the injury or loss suffered by the United Nations, it would be appropriate for the United Nations to present the claim to the government of the responsible State.

Finally, the United States' statement concludes that nevertheless if the victim or the persons entitled through him are stateless, and have no government to make claims on their behalf, "no reason is perceived why the United Nations should not have capacity to intervene to support the claim of the stateless individual".

I suggest, with all due respect, that this conclusion demonstrates the fallacy of the view taken on this point in the United States' statement. Either the United Nations has the capacity to present a claim for injury to its agent, or it does not. If it has not the capacity, how can it receive that capacity by the mere fortuitous circumstance that the injured agent happens to be stateless ? The only relevance of the fact of statelessness would be that no claim by a State of nationality would need to be reconciled with the claim of the United Nations.

This fallacy arises, I imagine, from the notion that our contention involves a sort of substitution of the United Nations for the State of nationality as *parens patriæ* of the agent. That, however, is definitely not our view. We emphasize again that where the right of a State has been violated, the reason for the assessment of reparations based on the damage to the injured individual is, in the words of the Permanent Court, because it affords "a convenient scale for the calculation of the reparation due to the State".

So here, we submit that where the right of the United Nations to require protection of its agents has been violated, that the same "convenient scale for the calculation of the reparation" should be used. The application here of the usual rule would enable the full reparation for the wrong to be assessed and settled in one proceeding, without placing on the State of nationality the burden of going forward with a separate claim, and inconveniencing the respondent State with a second proceeding in which the facts would have to be proved all over again. The only factual reason for departing from the usual rule would be the possibility of conflict between the United Nations and the State of nationality. This point we shall consider later in connexion with the second question asked by the General Assembly.

I now come to our final submission on the first question before the Court. The United Nations has an international juridical personality, possessing, under international law, the right to insist on the protection of its agents in the course of their duties, together with the procedural capacity to vindicate this right on the international plane. Established rules of international law, the interests of the international community, and the strongest practical necessities lead, we respectfully submit, to an affirmative answer to the first question asked by the General Assembly.

B. SECOND QUESTION.

Reconciliation of action by the United Nations with rights possessed by the State of which the victim is a national.

I come now to the second question upon which the General Assembly has asked the advice of the Court. This question presents both procedural and doctrinal aspects.

In most instances, as has already been pointed out, it is believed that the State of which the victim is a national will prefer that the United Nations should bring a claim. For example, the representative of Sweden on the Sixth Committee said that "the impression made in my country by the death in the service of the United Nations of one of its foremost citizens was still very strong. In the face of that crime, and others of its kind, Sweden thought it entirely natural that measures should be taken by the United Nations against the authorities who exercised power in the territory in which the crime was committed. Sweden did not, for the moment at least, intend to take direct action. That attitude should not be interpreted to mean that Sweden considered there was no doubt as to the legal competence of the United Nations to take such action." (Document A/C. 6/SR. 115, p. 10.)

It is the intention of the Secretary-General, as a matter of policy, and subject to any further instructions by the General Assembly, to approach the States of which the victims are nationals with a

view toward reaching an agreement as to the method of bringing the claim and the allocation of reparations. I stated on behalf of the Secretary-General at the 112th Meeting of the Sixth Committee : "It is obvious that two parallel claims should not be made, one by the United Nations and the other by the State of which the victim was a national. However, in order to obviate that, the United Nations might consult with the State concerned and come to some agreement with regard to the allocation of reparations." (Document A/C. 6/SR. 112, p. 10.)

It may be of assistance to the Court if I review very briefly the precedents in the matter of conflicting claims.

Conflicting rights of different States to assert claims for the same injury have arisen in cases of dual nationality. Where the individual injured has the nationality of both the claimant and the defendant States, the principle is well established that no international claim may be made on behalf of a private individual. This is the well-known rule of the *Canevaro case*. (Scott, Hague Court Reports, 1916, p. 284.)

[See also U.S. (Tellech claim) *v.* Austria and Hungary, Tripartite Claims Comm., Dec. and Ops., 1929, p. 71 ; Great Britain (Alexander claim) *v.* U.S., Hale's Report 1874, p. 15 ; Italy (Miliani claim) *v.* Venezuela, Ralston and Doyle, Venezuelan Arbitrations of 1903, p. 754 ; Great Britain (Oldenbourg claim) *v.* Mexico, Dec. and Ops. of Comm., 1931, p. 97 ; and Hackworth, *Digest*, pp. 352-377.]

Where the individual injured has the nationality of a claimant State and of a third State, the conflicting rights have been settled in several different ways. The most satisfactory method of such settlement would appear to be by agreement between the two States of which the individual is a national. In some cases tribunals which have had to pass on the question of dual nationality have sought to resolve the question of conflicting rights by "examining in which of the two countries existed the elements in law and in fact essential in view of creating an effective link of nationality and not simply a theoretical one". Case of Baron de Born *v.* Serb-Croat-Slovene State, 6 T.A.M. 1927, 499 (see Ralston, *Supplement to the Law and Procedure of International Tribunals*, p. 81).

The most usual solution seems to have been, however, for the tribunal before which the claim was first asserted to permit recovery. In the Salem claim involving the United States and Egypt, in which I believe Judge Badawi Pasha was a member of the tribunal, it was declared in effect that a dispute as to citizenship may not be taken advantage of by a third Power not a party to the difference. The tribunal stated that "in a case of dual nationality a third Power is not entitled to contest the claim of one of the two Powers whose national is interested in the case by referring to the nationality of the other Power". (U.S. Dept. of State Arbitration Series No. 4 (6), p. 42.)

Nielsen has summarized the situation as follows :

> "The status with respect to a third country of a person having a dual nationality presents an interesting question. While neither of the two countries whose laws conflict can claim the allegiance of such a person to the exclusion of the other, the principle governing a case of that kind is not applicable to the case of a person who may have a dual allegiance, but who is not a national of a respondent government against which a claim is presented. And it would seem therefore that with respect to the acts of a third State each

of the two nations may exercise the right of protection through diplomatic channels or judicial methods." (Nielsen, *International Law applied to Reclamations*, p. 14.)

The same position was taken in the replies of South Africa, Australia and Great Britain to the questionnaire on the Responsibility of States for damage caused in their territory to the person or property of foreigners by the Committee of Experts of the League of Nations.

These principles which have been followed in the case of dual nationality where private individuals have been injured, are not entirely relevant where the victim is not in the position of a private citizen but in the position of an official. As an official, either of a foreign government or of the United Nations, he is entitled to special protection which he cannot claim as a national of his own State. The primary nexus in these instances is that of service and not of nationality. Under these circumstances, the right to make the claim in the first instance would appear to rest with the State or with the organization of which he is an agent. This applies with particular strength to officials of the United Nations who have primary responsibility to the Organization, and who are in a position of independence so far as States are concerned. The right of the State to make a claim would not be lost, but it appears that it would remain dormant unless the United Nations decided not to press the claim itself.

Our analysis, therefore, leads to the conclusion that, except where the injured agent is a national of the respondent State, the claim of the United Nations would have priority over the claim of the State of which the official is a national. We do not, however, take a definite stand in favour of this conclusion, since as a matter of policy the Secretary-General would undertake to work out the relative rights of the United Nations and State by agreement with the State.

There remains to be considered the situation in which the injured United Nations agent is a national of the respondent State. This problem was raised in the Sixth Committee by the representatives of Egypt and the United States.

The Court will recall from the Record that the representative of Egypt wondered what would be the position if the United Nations presented a claim against the Government of Egypt in order to ensure that an Egyptian national injured in the service of the United Nations received proper damages. The Egyptian Government, he said, might conceivably reply that the person in question was one of its own nationals and that the decision rested entirely with it. (Document A/C. 6/SR. 112, p. 9.)

The representative of the United States said:

"The cases in which the victim had dual nationality had given rise to some difficulty, but the question had been settled at the time of the Canevaro case, and it was now an accepted principle of international law that no State could present a claim on behalf of one of its nationals who was, at the time, a national of the respondent State. In such cases the claimant State could not claim damages on behalf of the victim but it could claim damages if it had itself sustained any injury." (Document A/C. 6/SR. 112, p. 11.)

At the time of these discussions I, as representing the Secretary-General, stated that "the point raised by the representative of Egypt

concerning the possibility that the victim might be a national of the State from which the United Nations wished to claim reparations, was very complex and would require some study before any satisfactory answer could be given". (Document A/C. 6/SR. 112, p. 10.) The question has now received a well-reasoned response in the written statement of the United Kingdom. That statement points out that the obligation of Members to afford assistance and protection to United Nations missions operating in their territory relates equally to any member of the mission who is one of their own nationals, and is not in any way diminished or cancelled by reason of the fact of such nationality. The United Kingdom statement then goes on to say:

> "The duty is one owed to the Organization as such, independently of any consideration as to the nationality of the individual members of the mission, or in other cases of the nationality of the particular servant employed. If so, however, then clearly the State concerned cannot, or ought not to be permitted to plead the nationality of the injured party as a defence to any international claim which may be brought on his behalf by the Organization." (Pp. 41-42.)

We fully agree with this answer and urge that for these reasons the doctrine of the *Canevaro case* has no application here. At the same time, we desire to make it clear that the Secretary-General would consider the presentation of a claim against the State of the victim's nationality as a matter of delicacy and would most carefully weigh all relevant considerations before proceeding further.

CONCLUSION.

Mr. President, yesterday you invited us not only to give reasons for our points of view but also to suggest to the Court the appropriate answers to the questions asked by the General Assembly. With all due deference we suggest that the following answers should be given.

To the first question our answer would be this: In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of the State, the United Nations as an Organization has capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining reparation due in respect of damage caused either to the United Nations, or to the victim or persons entitled through him, or to both.

To the second question our answer would be this: While in legal theory the United Nations may proceed to bring a claim with a view to obtaining the reparation due in respect of the damage caused to the victim or persons entitled through him, irrespective of such rights as may be possessed by the State of which the victim is a national, it is to be presumed that the United Nations would proceed in so far as possible in agreement with the State concerned.

Mr. President, may I thank the Court for the attention with which you have followed our argument.

3. — EXPOSÉ DE M. KAECKENBEECK

(REPRÉSENTANT DU GOUVERNEMENT BELGE)

A LA SÉANCE PUBLIQUE DU 8 MARS 1949, APRÈS-MIDI.

Monsieur le Président, Messieurs de la Cour, mon premier désir et mon premier devoir, en me présentant devant vous, est de m'acquitter d'une agréable mission : celle de transmettre à la Cour les hommages respectueux du Gouvernement belge, que j'ai l'honneur de représenter.

Je crois ensuite utile de préciser que le Gouvernement belge, n'ayant en l'occurrence aucun intérêt particulier à défendre, n'intervient ici que comme ami de la Cour, soucieux de contribuer au développement du droit et de l'organisation internationale.

Ma mission est double. Elle consiste tout d'abord à expliquer brièvement pour quels motifs la délégation belge à l'Assemblée générale des Nations Unies a proposé de demander un avis consultatif sur la question qui vous est soumise. J'esquisserai ensuite le point de vue de mon Gouvernement en ce qui concerne la capacité juridique internationale de l'Organisation des Nations Unies.

I. En proposant à l'Assemblée générale des Nations Unies de demander un avis consultatif sur la question qui vous est soumise, la délégation belge était mue avant tout par le souci d'assurer à l'action éventuelle des Nations Unies une base juridique qui soit incontestée, élaborée dans le calme et la sérénité et exprimée avec la précision et les nuances désirables.

Nous pensions, en effet, que les aspects doctrinaux et les points d'interprétation impliqués pourraient être traités par la Cour d'une manière plus homogène, plus fouillée et plus précise qu'ils ne pourraient l'être par les représentants de cinquante-huit États réunis en Assemblée. Car nous souhaitons, dans cette matière, où peuvent intervenir beaucoup de considérations diverses, qu'un choix judicieux soit fait parmi les arguments possibles et qu'une terminologie et une méthode soient indiquées avec autorité sans autres préoccupations que celles d'assurer une bonne justice et de se conformer à une saine logique juridique.

Au sujet de la solution qu'il conviendrait de donner au problème soulevé par le Secrétaire général à la suite d'incidents tragiques qu'il est pénible de rappeler, l'Assemblée entretenait moins de doutes qu'au sujet des interprétations et des constructions juridiques susceptibles de l'étayer. Il est remarquable, en effet, qu'aucune voix dissidente ne se soit élevée, même en commission, contre la description du but poursuivi telle qu'elle est contenue dans les deux considérants qui introduisent le libellé de la question posée à la Cour. Je les cite :

> « Considérant que la série d'incidents tragiques arrivés ces derniers temps aux agents des Nations Unies dans l'exercice de leurs fonctions soulève, et d'une façon plus urgente que jamais, la question des dispositions à prendre par les Nations Unies pour assurer à l'avenir à leurs agents une protection maximum et la réparation des dommages subis ;

Considérant comme hautement souhaitable que le Secrétaire général puisse, sans conteste, agir de la manière la plus efficace en vue d'obtenir toute réparation due. »

Le désir unanime, exprimé dans les deux considérants que je viens de lire, de doter l'Organisation des Nations Unies de moyens efficaces pour assurer la protection de ses agents et obtenir toute réparation due, nous tenions à ce qu'il puisse se réaliser à l'abri de contestations, d'équivoques juridiques, de procédures douteuses. Et c'est pourquoi nous avons proposé que la question juridique fût avant tout soumise à la Cour.

L'objet est donc de préciser l'étendue de la capacité juridique internationale de l'Organisation des Nations Unies et la nature des procédures que la Charte et le droit international mettent à sa disposition pour la poursuite des buts précités.

Plus l'avis de la Cour sera constructif, mieux il répondra aux vœux de ceux qui l'ont demandé.

II. La question soumise à la Cour implique l'hypothèse qu'un agent des Nations Unies a subi, dans l'exercice de ses fonctions, un dommage dans des conditions de nature à engager la responsabilité d'un État. La Cour n'est pas priée de déterminer les conditions dans lesquelles la responsabilité d'un État peut être engagée. L'Assemblée des Nations Unies est manifestement partie de l'idée que cette question doit, dans chaque cas, être résolue conformément aux principes du droit international.

L'hypothèse ci-dessus étant précisée, la question posée à la Cour vise essentiellement la capacité juridique de l'Organisation des Nations Unies comme telle pour présenter une « réclamation internationale » (*an international claim*) en vue d'obtenir réparation d'un dommage.

La Charte ne contient pas de dispositions stipulant spécialement cette capacité. Ne contient-elle rien qui s'oppose à la reconnaissance de cette capacité ? Cela soulève immédiatement un point d'interprétation de l'article 104 de la Charte. Cet article stipule que « l'Organisation jouit, sur le territoire de chacun de ses Membres, de la capacité juridique qui lui est nécessaire pour exercer ses fonctions et atteindre ses buts ».

Les mots « sur le territoire de chacun de ses Membres » ont-ils, dans cet article, un sens restrictif dont l'effet serait, somme toute, d'exclure toute capacité juridique internationale et, en particulier, de limiter aux procédures et instances nationales tout droit de recours de l'Organisation des Nations Unies ?

Une telle interprétation doit, à notre avis, être rejetée. Elle n'est commandée par aucune considération décisive de langue ou de logique. Elle se trouve, d'autre part, en contradiction avec les nécessités fonctionnelles auxquelles se réfère précisément la disposition.

Le rapport du Sous-Comité IV, 2. A, de San-Francisco, sur le statut juridique de l'Organisation (Doc. 803) confirme d'ailleurs que le texte de l'article 104 ne procède pas d'une telle intention restrictive. « Cette disposition est », dit-il, « conçue en termes très généraux. Elle *se borne* à rappeler l'obligation incombant à tout État Membre de faire en sorte que, sur son territoire, l'Organisation jouisse d'un statut juridique lui permettant d'exercer ses attributions. » Et le rapport ajoute un peu plus loin : « Quant à la question de la personnalité juridique internationale, le Sous-Comité a jugé *superflu* d'en faire l'objet d'un texte. Elle

sera, en effet, *implicitement* réglée par l'ensemble des dispositions de la Charte. »

Voici la raison d'être de ces deux dernières phrases : A San-Francisco, la délégation belge s'était souvenue de ce que la qualité de sujet de droit international avait été autrefois contestée à la Société des Nations. Il en était résulté des difficultés pratiques qui s'étaient manifestées surtout dans la vie administrative de la Société. Toutefois, dans la suite, la tendance dominante de la doctrine et de la jurisprudence fut d'en admettre l'existence. C'est cette dernière évolution que la délégation belge à San-Francisco eût voulu consacrer en mettant fin à toute possibilité de controverse. A cet effet, elle proposa d'insérer dans la Charte une disposition reconnaissant expressément que « l'Organisation possède la personnalité internationale avec les droits qui en découlent ». (U. N. C. I. O., vol. 3, p. 243.)

Les questions soulevées par cette proposition furent discutées en comité (Doc. 554). Elles laissent clairement apparaître la crainte d'accréditer la notion d'un super-État, en raison sans doute d'une tendance à confondre les notions de personnalité juridique internationale et d'État. Une telle confusion est pourtant erronée. Il est vrai que les États ont une personnalité juridique internationale. Mais il n'en résulte nullement que toute personnalité juridique internationale soit un État. A notre avis, l'Organisation des Nations Unies n'a nullement la nature d'un État ni d'un super-État, mais elle possède la personnalité juridique internationale.

Quoi qu'il en soit, ces questions furent renvoyées pour étude et compte rendu au Sous-Comité IV, 2. A, et c'est ce Sous-Comité qui, dans le rapport que j'ai cité plus haut (Doc. 803), jugea superflue l'insertion d'un texte concernant la personnalité juridique internationale de l'Organisation, puisque celle-ci est implicitement réglée par l'ensemble des dispositions de la Charte. Il en résulte que le texte de l'article 104 n'était pas rédigé en vue d'éliminer la personnalité juridique internationale de l'Organisation et, partant, sa capacité juridique internationale, et que le rejet de la proposition belge ne constitue pas non plus un argument en faveur de l'interprétation restrictive de l'article 104.

Il en résulte, d'autre part, que c'est d'implications des dispositions de la Charte que doit se dégager la personnalité internationale de l'O. N. U.

En premier lieu, il n'y a aucun doute que l'Organisation des Nations Unies a été conçue comme une entité distincte (voir U. N. C. I. O., Doc. 933). Le langage de la Charte en témoigne constamment. Prenez comme exemple l'article 2 : « L'*Organisation* des Nations Unies *et* ses Membres, dans la poursuite des buts énoncés à l'article 1, *doivent agir* conformément aux principes suivants : » (ce qui implique bien qu'à côté de l'action et des obligations des États Membres, il y a l'action et les obligations de l'Organisation comme telle). Sans entreprendre l'énumération des principes énoncés, qu'il me soit permis de relever que, tandis que plusieurs d'entre eux commencent par les mots : « Les Membres de l'Organisation.... », le numéro 6 dit : « L'*Organisation* fait en sorte que les États qui ne sont pas membres des Nations Unies agissent conformément à ces principes dans la mesure nécessaire au maintien de la paix et de la sécurité internationales », ce qui indique clairement à nouveau que l'Organisation comme telle, distincte de ses

Membres, peut avoir certaines obligations d'agir et cela, dans le cas présent, sur le plan international.

Et lorsque le n° 5 stipule que : « Les Membres de l'Organisation donnent *à celle-ci* pleine assistance dans toute action entreprise *par elle*, conformément aux dispositions de la Charte.... », il prouve encore qu'à côté des obligations des Membres vis-à-vis des autres Membres, il y a des obligations des Membres vis-à-vis de l'Organisation elle-même, et, partant, des droits de l'Organisation vis-à-vis de ses Membres.

Lorsque l'article 57 parle de relier les Institutions spécialisées à l'Organisation, lorsque l'article 58 stipule que l'Organisation fait des recommandations et l'article 59 que l'Organisation provoque des négociations, que l'article 75 prévoit que l'Organisation établira, *sous son autorité*, un régime international de tutelle, et que les articles 83 et 85 parlent des « fonctions de l'Organisation », on se rend compte que l'Organisation constitue bien une entité à la fois sujet et objet d'obligations internationales, et donc sujet de droits, et même détentrice d'autorité internationale.

Ajoutons que l'Organisation agit par le truchement d'organes qui prennent leurs résolutions à la majorité simple ou qualifiée des voix, et que, dans certains cas, les décisions d'un organe ne comprenant que quelques Membres sont obligatoires pour tous les Membres (article 25).

Il n'y a donc pas de difficulté à montrer que l'existence de la personnalité juridique internationale de l'O. N. U. est bien impliquée dans une série de dispositions de la Charte, comme le fait prévoir la dernière phrase du rapport du Sous-Comité IV, 2. A.

La meilleure confirmation s'en trouve dans la pratique. L'Organisation, comme telle, conclut des conventions internationales avec ses Membres et avec des États non-membres. Cela serait-il possible si elle n'avait pas de personnalité juridique internationale, c'est-à-dire si elle n'était pas sujet de droits sur le plan international ? Sans parler de l'article 43 de la Charte, qui reste inappliqué, l'Organisation a fait avec les États-Unis d'Amérique une convention dénommée *Headquarters Agreement ;* elle a fait avec la Suisse, qui n'est pas membre des Nations Unies, un accord sur le siège à Genève ; elle a fait avec les États Membres une convention relative aux privilèges et immunités des Nations Unies.

L'accord avec la Suisse revêt un intérêt spécial du fait que les rapports de ce pays avec l'Organisation des Nations Unies ne résultent pas des stipulations de la Charte mais uniquement du droit international. Or, la section I de l'article 1 de cet accord est, de tous, le texte le plus révélateur, parce que le plus précis, sur le point qui nous occupe. Je le cite :

> « Le Conseil fédéral suisse *reconnaît la personnalité internationale* et la capacité juridique de l'Organisation des Nations Unies.... »

La Convention sur les privilèges et immunités qui, dans son article 1, stipule, sans qualification, que « l'Organisation des Nations Unies possède la personnalité juridique » et ajoute : « Elle a la capacité *a*) de contracter, *b*) d'acquérir et de vendre des biens mobiliers et immobiliers, *c*) d'ester en justice », cette convention, dis-je, est conçue comme une convention entre l'Organisation, d'une part, et chacun des Membres des Nations Unies, d'autre part. Cela ressort du mécanisme prévu pour sa conclusion : approbation par une résolution de l'Assemblée générale et adhésion de chacun des Membres et, plus clairement encore, de la section 35 de l'article final qui stipule que :

« La présente Convention restera en vigueur *entre l'Organisation* des Nations Unies *et tout Membre* qui aura déposé son instrument d'adhésion », etc.

De plus, la section 36 prévoit que « le Secrétaire général pourra conclure, avec un ou plusieurs Membres, des accords additionnels.... » lesquels doivent, dans chaque cas, être soumis à l'approbation de l'Assemblée générale.

L'économie de cette dernière disposition rappelle celle de la Résolution de l'Assemblée du 13 février 1946, autorisant le Secrétaire général à négocier avec les États-Unis les arrangements rendus nécessaires par l'établissement du siège permanent de l'Organisation des Nations Unies aux États-Unis d'Amérique.

L'alinéa 4 de cette Résolution s'exprimait comme suit :

« Tout accord conclu à la suite de ces négociations .... avec les autorités compétentes des États-Unis, sera subordonné à l'approbation de l'Assemblée générale avant d'être *signé au nom des Nations Unies.* »

Et, en fait, le préambule de la Convention qui est en vigueur énonce que :

« L'Organisation des Nations Unies et les États-Unis d'Amérique,
Désireux de conclure un accord....
Ont désigné à cet effet comme leurs représentants :
L'Organisation des Nations Unies : Trygve LIE, Secrétaire général, et
Les États-Unis d'Amérique : George C. MARSHALL, Secrétaire d'État,
Qui sont convenus de ce qui suit : .... »

Messieurs, l'ensemble des faits rappelés ne laisse pas, à mon avis, de doute sur la personnalité juridique internationale de l'Organisation des Nations Unies. Ni le langage de l'article 104, ni le rejet de la proposition belge à San-Francisco n'ont exclu cette personnalité, ni amoindri la capacité juridique internationale des Nations Unies.

Si l'Organisation peut conclure des conventions internationales, posséder des droits et des obligations d'ordre international, elle a un intérêt incontestable à posséder les moyens de faire déterminer ces droits et obligations et de les défendre. Et si des dommages lui sont indûment causés, prétendra-t-on qu'il n'est nécessaire ni à son fonctionnement, ni à la réalisation de ses buts, qu'elle possède le moyen d'obtenir réparation ?

Une fois que la personnalité internationale est hors de doute, le reste suit facilement. L'étendue de la capacité juridique internationale de l'Organisation résulte des dispositions de la Charte, soit expressément, soit implicitement, en vertu du principe, applicable ici, que fonction implique capacité — principe d'ailleurs reconnu par les articles 104 et 105 et se trouvant à la base même des deux dernières phrases du rapport du Sous-Comité IV, 2. A, de San-Francisco.

Si tel est le cas, la question de savoir si l'Organisation des Nations Unies possède, dans l'hypothèse prévue par la demande d'avis, la capacité de présenter une « réclamation internationale », c'est-à-dire une réclamation comme un État en présente normalement à un autre en vue d'obtenir réparation d'un dommage, revient à celle de savoir si cette capacité lui est nécessaire pour exercer ses fonctions et atteindre ses buts. Or, sur ce point, il me semble que l'Assemblée générale a déjà

exprimé un avis unanime dans les deux considérants que j'ai cités et qui précèdent le libellé de sa demande d'avis consultatif.

D'ailleurs, ne serait-il pas étrange de donner à l'Organisation des droits et un patrimoine, tout en lui déniant la possibilité d'obtenir réparation d'un dommage injustement infligé ?

Pour obtenir satisfaction, la procédure à adopter semble devoir être sensiblement la même que celle généralement suivie entre États. Elle peut notamment donner lieu soit à une transaction, soit à une décision arbitrale. Et, à cet égard, la personnalité juridique internationale étant hors de doute, on ne voit vraiment pas pourquoi un tribunal arbitral ne pourrait pas résoudre un différend entre l'Organisation et un État, tout comme il le ferait entre deux États ou même entre un État et un particulier. Le droit de l'Organisation d'ester en justice, stipulé sans qualification à l'article 1 de la Convention sur les privilèges et immunités, ne fait ici point de doute. Toutefois, en ce qui concerne la Cour internationale de Justice, la situation est particulière.

La Cour, on le sait, est un organe des Nations Unies. Le Statut de la Cour forme partie intégrante de la Charte des Nations Unies. Conformément à l'article 96, l'Organisation peut, par son Assemblée générale ou par son Conseil de Sécurité, demander à la Cour un avis consultatif sur toute question juridique. C'est de cette manière, expressément prévue par la Charte, que l'Organisation peut faire usage de son plus haut organe judiciaire.

Est-ce la seule manière ?

Il est pour le moins douteux que l'Organisation puisse, à l'instar des États Membres, ester devant la Cour comme partie à un litige et faire la déclaration prévue à l'article 36, alinéa 2, du Statut. C'est, en tout cas, un point sur lequel la Cour devra se prononcer : l'article 34, alinéa 1, du Statut de la Cour a-t-il pour effet d'empêcher l'Organisation des Nations Unies de se présenter devant la Cour parce qu'elle n'est pas un État ? Ou bien, cet article exclut-il simplement les individus et les organisations de caractère non étatique sans viser pour cela l'Organisation des Nations Unies, qui est une entité composée d'États ? Sur cette question de savoir si l'Organisation des Nations Unies peut ou ne peut pas se présenter devant la Cour en matière contentieuse, alors qu'elle peut indubitablement le faire en matière consultative, il n'entre pas dans ma mission de prendre parti.

Je me bornerai à rappeler les moyens auxquels les Nations Unies ont, jusqu'à présent, convenu de recourir. Je cite tout d'abord la section 21 de l'article 8 de l'Accord entre l'Organisation des Nations Unies et les États-Unis d'Amérique, relatif au siège des Nations Unies :

> « *a*) Tout différend entre l'Organisation des Nations Unies et les États-Unis au sujet de l'interprétation ou de l'application du présent Accord ou de tout accord additionnel sera, s'il n'est pas réglé par voie de négociations ou par tout autre mode de règlement agréé par les Parties, soumis aux fins de décision définitive à un tribunal composé de trois arbitres, dont l'un sera désigné par le Secrétaire général, l'autre par le Secrétaire d'État des États-Unis, et le troisième choisi par les deux autres, ou, à défaut d'accord entre eux sur ce choix, par le Président de la Cour internationale de Justice.
>
> *b*) Le Secrétaire général ou les États-Unis pourront prier l'Assemblée générale de demander à la Cour internationale de Justice un

avis consultatif sur toute question juridique qui viendrait à être soulevée au cours de ladite procédure. En attendant l'avis de la Cour, les deux Parties se conformeront à une décision intérimaire du tribunal arbitral. Par la suite, celui-ci rendra une décision définitive en tenant compte de l'avis de la Cour. »

La Convention sur les privilèges et immunités prévoit, à la section 30 de son article 8, une méthode de règlement quelque peu différente. Je cite:

« Toute contestation portant sur l'application ou l'interprétation de la présente Convention sera portée devant la Cour internationale de Justice à moins que, dans un cas donné, les Parties ne conviennent d'avoir recours à un autre mode de règlement. Si un différend surgit entre l'Organisation des Nations Unies, d'une part, et un Membre, d'autre part, un avis consultatif sur tout point de droit soulevé sera demandé en conformité de l'article 96 de la Charte et de l'article 65 du Statut de la Cour. L'avis de la Cour sera accepté par les Parties comme décisif. »

L'accord provisoire entre le Conseil fédéral suisse et le Secrétaire général de l'Organisation des Nations Unies stipule ce qui suit à sa section 27:

« Toute contestation entre l'Organisation des Nations Unies et le Conseil fédéral suisse, portant sur l'interprétation ou l'application du présent Accord provisoire ou de tout accord additionnel et qui n'aura pas été réglée par voie de négociation, sera soumise à la décision d'un collège de trois arbitres; le premier sera nommé par le Conseil fédéral suisse, le second par le Secrétaire général de l'Organisation des Nations Unies et un surarbitre par le Président de la Cour internationale de Justice; à moins que, dans un cas donné, les Parties ne conviennent d'avoir recours à un autre mode de règlement. »

Dans chacun de ces cas, il semble bien que l'on soit parti de l'idée que l'Organisation des Nations Unies ne pouvait pas se présenter devant la Cour comme partie à un litige et ne pouvait faire usage devant la Cour que de la procédure consultative. On a donc cherché à tourner la difficulté, dans le cas de la Convention générale, en rendant conventionnellement l'avis de la Cour décisif entre les Parties et, dans le cas de la Convention du siège en insérant la procédure consultative de la Cour dans une procédure arbitrale. Dans l'accord avec la Suisse, on s'est contenté du recours à un collège de trois arbitres.

Passons maintenant au point I *b*), c'est-à-dire à la question de savoir si, toujours dans l'hypothèse prévue, la qualité de l'Organisation pour présenter une réclamation internationale s'étend au cas où la réclamation vise à obtenir la réparation des dommages causés, non à l'Organisation même, mais à l'agent victime ou à ses ayants droit.

Nous ne voyons pas d'objection à admettre cette extension. Les agents des Nations Unies doivent pouvoir compter sur l'aide et la protection de l'Organisation. Dans une large mesure, ils doivent, dans l'exercice de leurs fonctions internationales, faire abstraction de leurs sympathies nationales et des intérêts particuliers du pays de leur allégeance. Comme le stipule l'article 100 de la Charte, ils doivent s'abstenir de tout acte incompatible avec leur situation de fonctionnaires internationaux et ne seront responsables qu'envers l'Organisation. D'autre

part, chaque Membre de l'Organisation doit respecter le caractère international de leurs fonctions. Le lien qui unit les fonctionnaires et agents de l'Organisation à cette Organisation dépasse donc considérablement les liens qui unissent normalement employeurs et employés. Il existe ou il doit exister une sorte d'allégeance à l'égard de l'Organisation, et, pour celui qui la doit, un affaiblissement de certains aspects au moins des liens nationaux en résulte. Ces considérations portent à croire que l'extension peut se justifier juridiquement, tandis qu'en fait l'Assemblée générale a montré par les considérants de sa demande d'avis qu'elle jugeait l'extension désirable.

Bien entendu, admettre la qualité de l'Organisation pour présenter, dans un cas où un agent des Nations Unies a subi, dans l'exercice de ses fonctions, un dommage dans les conditions de nature à engager la responsabilité d'un État, une réclamation internationale en vue d'obtenir la réparation du dommage causé à la victime ou à ses ayants droit ne préjudicie pas la faculté d'un État, reconnue en droit international, d'agir de la sorte en faveur d'un ressortissant. Il y a toutefois lieu de remarquer qu'il s'agit, dans le chef de l'État, d'un droit et non d'une obligation, que l'État décide discrétionnairement s'il veut agir ou non en faveur d'un ressortissant et que, dans un cas où les liens d'allégeance ont été affaiblis par suite de la création d'un lien spécial en faveur de l'Organisation des Nations Unies, il est parfaitement concevable que l'État préfère ne pas intervenir. De plus, il importe de tenir compte du nombre croissant d'apatrides, de personnes déplacées, d'exilés, de cas de nationalité douteuse après les bouleversements de la dernière guerre. N'est-il pas à craindre que, dans de pareils cas, la protection nationale s'avère illusoire ?

En toute occurrence, il y a lieu de croire que, dans la très grande majorité des cas, l'Organisation et l'État n'auraient aucune difficulté à se mettre d'accord pour éviter une double intervention, et, dans les cas exceptionnels où cet accord n'existerait pas, il me semble que l'instance saisie de la question pourrait, sans difficulté, décider à laquelle des deux réclamations il y a lieu de faire droit sur la base d'une comparaison de l'importance des liens respectifs et conformément aux principes en usage en cas de réclamations relatives à des personnes ayant deux nationalités.

Pour me résumer, il y a lieu, à mon avis, de répondre affirmativement aux questions I *a*) et I *b*).

L'Organisation des Nations Unies possède la personnalité juridique internationale, ce qui d'ailleurs ne lui confère pas le caractère d'un super-État.

L'Organisation des Nations Unies peut ester devant un tribunal arbitral. Il semble, toutefois, qu'en ce qui concerne la Cour internationale de Justice, seule la procédure consultative soit accessible à l'Organisation. Je ne formule toutefois pas de conclusion sur ce point au nom de mon Gouvernement.

En ce qui concerne la question 2, à défaut d'accord entre l'Organisation et l'État dont la victime est ressortissant, on pourrait, semble-t-il, s'inspirer *mutatis mutandis* des principes en usage dans les cas où deux États se prévalent de la nationalité d'un individu aux fins d'une réclamation.

Je remercie la Cour de son attention.

4. — EXPOSÉ DE M. CHAUMONT

(REPRÉSENTANT DU GOUVERNEMENT FRANÇAIS)

A LA SÉANCE PUBLIQUE DU 8 MARS 1949, APRÈS-MIDI.

Monsieur le Président, Messieurs les Juges, le Gouvernement français, que j'ai l'honneur de représenter devant la Cour, a voulu marquer, en formulant quelques observations au sujet de la demande d'avis dont elle est saisie, tout à la fois sa préoccupation constante de voir développer et affirmer des règles de droit dans la vie internationale et l'importance qu'il attache à l'intervention de la plus haute juridiction existant dans le monde.

Sans doute, la France a-t-elle été intéressée directement, comme quelques autres nations, dans les douloureux événements qui sont à l'origine de l'affaire dont la Cour doit connaître. Et si elle ne demande rien ici pour elle-même, tout au moins son représentant se doit-il de saluer respectueusement la mémoire de ceux qui ont servi l'Organisation des Nations Unies et son idéal jusqu'au suprême sacrifice. Ce n'est pas le lieu d'insister sur la reconnaissance qui leur est due ; mais n'est-ce pas leur être fidèles que d'assurer plus fermement, pour l'avenir, l'institution pour laquelle ils ont donné leur vie ?

La demande d'avis présentée par l'Assemblée des Nations Unies à la Cour comporte deux questions qu'il importe d'examiner successivement. La seconde apparaît en effet comme subsidiaire, la Cour n'ayant à en délibérer que dans l'hypothèse où sa réponse à la première serait affirmative.

Voici les observations du Gouvernement français sur l'une et l'autre questions.

I. J'estime inutile de relire la première question posée à la Cour. La qualité de l'Organisation des Nations Unies pour présenter dans certaines circonstances une « réclamation internationale » contre un État, tel est le problème en discussion.

Cette formule « la réclamation internationale » est à la fois précise et souple. Elle est précise en ce qu'elle désigne, sans doute possible, une procédure se plaçant sur le plan du droit international. Elle écarte du problème soumis à la Cour toute procédure qui s'inscrirait dans le cadre du droit interne et mettrait en jeu la responsabilité de l'État suivant ce droit interne. Une telle manière de procéder est concevable. Ce n'est pas celle qui est ici employée.

Par contre, aucune forme particulière ne s'attache à la notion de réclamation internationale. C'est une demande susceptible d'être présentée suivant des procédures diverses. En général, elle émane d'un État, traditionnel sujet de droits dans l'ordre international. L'Assemblée désire savoir si elle pourrait émaner aussi de l'Organisation des Nations Unies. Le problème de la « qualité » de l'Organisation des Nations Unies, c'est le problème de sa capacité pour agir dans certaines circonstances, ou pour parler plus exactement, de l'étendue de sa compétence.

L'hypothèse même dans laquelle la compétence de l'Organisation des Nations Unies est en discussion a été nettement précisée par l'Assemblée

au lendemain des douloureux événements auxquels il a été fait plus haut allusion : un agent des Nations Unies a subi, dans l'exercice de ses fonctions, un dommage, dans des conditions de nature à engager la responsabilité d'un État, et c'est à l'égard du gouvernement de celui-ci que la réclamation doit être présentée.

Il s'agit d'examiner si, dans cette situation, la demande de réparation peut être formée sur le plan international par l'Organisation internationale.

Il est bien connu, et la jurisprudence de la Cour permanente de Justice internationale l'a souvent rappelé, que la responsabilité internationale implique la violation d'une règle du droit des gens et que seul le sujet du droit des gens intéressé peut former une réclamation internationale. C'est là le sens du mot « qualité » employé dans la demande d'avis.

Deux questions dès lors doivent être examinées, qui sont toutes deux impliquées dans cette notion de qualité.

Première question : Des règles spéciales obligent-elles les États à l'égard des agents des Nations Unies dans l'exercice de leurs fonctions ?

Deuxième question : L'Organisation peut-elle en réclamer elle-même le respect ?

a) Et d'abord, *des règles spéciales obligent-elles les États à l'égard des agents des Nations Unies dans l'exercice de leurs fonctions ?*

D'après les règles traditionnelles, un dommage subi par un individu qui a son origine dans une violation du droit des gens, permet à l'État national de présenter une réclamation contre l'État coupable. Ce faisant, l'État national exerce la protection diplomatique au profit de son ressortissant, à l'égard duquel il possède une compétence personnelle.

L'État, en prenant fait et cause pour l'un des siens, suivant la formule donnée par la Cour permanente de Justice internationale dans l'affaire Mavrommatis, « fait valoir son droit propre, le droit qu'il a de faire respecter dans la personne de ses ressortissants, le droit international ».

Les règles de droit international qu'un État doit respecter à l'égard des étrangers ont été définies par les conventions et par la coutume internationales.

Les procédés par lesquels l'État national peut faire valoir son droit sont les procédés généraux du droit des gens : réclamation diplomatique, demande d'arbitrage, recours à la juridiction internationale.

Mais il est certain que la responsabilité internationale d'un État n'apparaît pas seulement dans le cas où il a violé les règles touchant la condition des étrangers. La responsabilité internationale de l'État apparaît chaque fois qu'une règle quelconque de droit international est méconnue à l'encontre d'un autre gouvernement. Notamment, la responsabilité internationale apparaît lorsque l'État méconnaît son obligation de respecter un service public étranger. C'est ainsi, par exemple, qu'elle est engagée si la protection prescrite par le droit international au profit des services diplomatiques et consulaires n'est pas assurée. La personne d'un agent diplomatique doit faire l'objet d'une vigilance spéciale de la part des autorités de l'État qui le reçoit. Si cette vigilance fait défaut, s'il en résulte un dommage, l'État dont le service diplomatique est en cause peut former une réclamation internationale. Et il en est ainsi même si la victime de l'acte dommageable n'est pas son national, ce qui peut arriver pratiquement s'agissant d'un consul. Ainsi le dommage subi par un individu peut, à raison de ses fonctions,

provoquer une réclamation internationale d'un État qui n'est pas son État national. La situation visée par la demande d'avis n'est pas sans analogie avec cette hypothèse.

De quoi s'agit-il en effet ? D'un agent des Nations Uniès, dans l'exercice de ses fonctions, c'est-à-dire d'un individu se trouvant sur le territoire d'un État étranger dans des conditions qui sont très différentes des conditions dans lesquelles un particulier peut s'y trouver.

Les conditions matérielles, d'abord, sont très spéciales. L'agent des Nations Unies agit pour le compte de l'Organisation internationale. Or, celle-ci n'intervient le plus souvent que dans les cas de crise, lorsque se rencontrent une situation politique particulièrement difficile, des troubles graves. Loin de s'éloigner des lieux de danger, l'agent des Nations Unies doit y être présent. Il peut, par son attitude et par sa mission, exciter la haine de certains éléments de la population. Il se trouve donc exposé à des dangers spéciaux que ne connaissent pas les simples particuliers, qu'ils se doivent d'éviter, car s'ils subissaient un dommage, pour les avoir encourus, la responsabilité de l'État de séjour n'existerait probablement pas.

Mais surtout la situation juridique de l'agent des Nations Unies est aussi très spéciale. Il agit pour le compte de l'Organisation internationale. Il est sous la dépendance de celle-ci. Il en reçoit des ordres et, suivant l'article 100 de la Charte, il n'est responsable qu'envers elle et ne peut obéir à des directives de son propre gouvernement. Ses fonctions ont un caractère exclusivement international.

Il est donc lié à l'Organisation par un lien particulier, celui de la fonction, celui de la participation au service public.

Par ailleurs, il est tenu dans l'accomplissement de son devoir de n'accepter aucune instruction du gouvernement de son État d'origine, et celui-ci est tenu de ne pas l'influencer dans sa tâche.

Comment imaginer dès lors que ce soit l'État national qui puisse connaître et discuter de l'activité de son ressortissant en présentant une réclamation internationale ?

Il faut donc constater que la situation existant ici est profondément différente, sous tous ses aspects, de la situation d'un individu, simple particulier, se trouvant en territoire étranger.

Quelles peuvent être alors les obligations de l'État où s'exerce l'activité d'un agent des Nations Unies ?

Les termes de la demande d'avis impliquent la conviction de l'Assemblée qu'il a des obligations spéciales.

C'est ce qu'exprimait déjà un comité de juristes dans un avis dont le Conseil de la Société des Nations prit acte le 13 mars 1924 au sujet du meurtre du général Tellini, président de la Commission de délimitation de la frontière gréco-albanaise nommée par la Conférence des Ambassadeurs : « Le caractère public reconnu que revêt l'étranger, les circonstances dans lesquelles il se trouve sur le territoire de l'État entraînent pour celui-ci un devoir de vigilance spécial à son égard. »

Examinons tout d'abord la situation des États Membres des Nations Unies.

Les Membres de l'Organisation, qui doivent lui donner « pleine assistance » dans toute action entreprise par elle, sont tenus de respecter le service public international, comme ils doivent respecter le service public d'un État étranger, et ceci comporte des obligations particulières de protection en vue d'assurer la continuité du service. La nécessité de

protéger et faciliter le fonctionnement des Nations Unies est à la base des règles sur les immunités et la convention spéciale en fixe certains éléments importants dans le but d'assurer l'indépendance de leurs services. Mais il est évident qu'elle n'épuise pas la matière et que l'obligation de protéger la personne existe comme pour les diplomates étrangers.

En second lieu, et en ce qui concerne les États non membres, le problème peut apparaître, à première vue, comme plus délicat, quoique l'article 2, paragraphe 6, de la Charte déclare que l'Organisation fait en sorte « que les États qui ne sont pas membres des Nations Unies agissent conformément à ces principes », c'est-à-dire à ceux qui dominent l'action de l'Organisation.

Mais il faut remarquer que, sauf dans l'hypothèse où les agents internationaux feraient partie d'une force internationale de coercition à l'encontre d'un État non membre, ces agents se trouvent sur le territoire de cet État avec le consentement de son gouvernement, que celui-ci soit *de jure* ou *de facto*. En provoquant ou en acceptant sa présence, l'autorité quelle qu'elle soit qui exerce le pouvoir effectif là où l'agent international remplit sa mission, s'oblige à assurer le respect de sa fonction.

Dans ces conditions, qui peut agir sur le plan international si ces obligations sont méconnues ? C'est là la deuxième question fondamentale qu'il nous faut examiner maintenant.

b) *L'Organisation des Nations Unies peut-elle former elle-même une réclamation internationale ?*

En général, ce sont les États qui réclament lorsque, le droit international étant violé, leurs ressortissants subissent des dommages. Mais nous venons de voir que des règles spéciales existent pour protéger les agents internationaux. Qui pourra mettre en œuvre ces règles spéciales ?

Il convient de relever que, dans la pratique internationale, lorsque plusieurs États ont assumé une tâche en commun, désigné des agents d'exécution, la protection de ceux-ci a généralement été assurée par les États agissant de concert et non par les divers États nationaux agissant isolément. Cette action spontanée, qu'aucun texte n'a organisée, a été acceptée et par les États nationaux et par les États auxquels elle s'adressait.

Lorsque le Concert européen a procédé à des actes de police, les autorités qui agissaient pour son compte n'ont jamais hésité à prendre les mesures nécessaires pour protéger les agents internationaux. En général, ces autorités internationales ont agi seules, sans que l'État national prétendît exercer sa protection.

Ainsi, lors des affaires de Crète, à une époque où, suivant la formule de Gabriel Hanotaux parlant au Parlement français, le Concert européen était « le seul tribunal et la seule autorité devant laquelle tout le monde pouvait et devait s'incliner », les amiraux des Puissances qui avaient la charge d'assurer la protection de l'île et la responsabilité de l'ordre au nom du Concert européen ont créé, par une ordonnance du 31 août 1897, une commission militaire internationale pour juger les « offenses de toute nature commises au préjudice des officiers et des soldats internationaux ».

Quelques années plus tard, en 1905, les insurgés attaquant les troupes internationales, les consuls des Puissances devaient, par une proclamation

commune des 17/30 juillet 1905, rétablir cette commission internationale de justice militaire. Par conséquent, ce n'était pas chaque gouvernement qui assurait la sécurité de ses propres contingents, mais une action concertée était entreprise au profit des troupes expressément qualifiées « troupes internationales ».

Lorsque des incidents se sont produits, notamment un incident entre poste français et poste turc à La Canée, auquel fait allusion une dépêche de Gabriel Hanotaux du 18 avril 1898, ils ont été examinés en commun par les représentants des Puissances qui ont décidé en commun des mesures à prendre. Par conséquent, l'action de l'État national était remplacée par l'action collective des États qui avaient pris en charge la question de la Crète.

Parmi les exemples cités par le Gouvernement français dans ses observations écrites, l'exemple le plus frappant d'une action gouvernementale pour la protection d'un agent international est incontestablement l'action entreprise, par la Conférence des Ambassadeurs en 1923, après l'assassinat des membres italiens de la Commission de délimitation des frontières gréco-albanaises. La Conférence des Ambassadeurs n'a pas hésité à présenter elle-même la réclamation contre le Gouvernement grec. Sans doute, parallèlement le Gouvernement italien prétendait-il aussi faire valoir son droit à la protection diplomatique. Mais il convient de souligner que le Gouvernement grec n'a soulevé aucune objection juridique contre l'action de la Conférence et qu'il en a reconnu la validité en des termes particulièrement nets.

Le Gouvernement italien avait lui-même fait la distinction entre les réparations qu'il demandait pour le dommage causé à l'État italien et les sanctions à prendre par la Conférence des Ambassadeurs pour le fait que la délégation italienne assassinée faisait partie d'une commission qui était mandataire de la Conférence.

Enfin, les débats au Conseil de la Société des Nations, saisi par le Gouvernement grec de la question de l'occupation de Corfou par le Gouvernement italien, font ressortir que les États Membres du Conseil considèrent que la Conférence des Ambassadeurs était atteinte par le meurtre des officiers italiens. Ainsi, non seulement les États intéressés au différend, mais les agents des Puissances membres de la Conférence des Ambassadeurs et le Conseil de la Société des Nations ont accepté sans hésiter la compétence de l'Organisation internationale pour assurer la protection de ses agents.

Voilà donc un certain nombre de précédents. Je pense que ces précédents nous permettent d'affirmer que si, en l'absence de tout texte sur le droit pour un organe collectif d'agir par voie de réclamation internationale, on a admis sans discussion la possibilité pour lui de protéger ses agents, si à aucun moment on ne relève d'opposition des États tiers, soit de l'État dont la victime a la nationalité, soit de l'État auquel la réclamation est présentée, à plus forte raison doit-on reconnaître à l'Organisation des Nations Unies la même compétence.

En effet, en ce qui touche l'Organisation des Nations Unies, il n'est pas douteux qu'on a voulu lui attribuer une personnalité juridique au sens propre du mot. Sans doute, la Charte se contente-t-elle de parler, dans l'article 104, de « la capacité juridique dont l'Organisation jouit sur le territoire de chacun de ses Membres pour exercer ses fonctions et atteindre ses buts ».

Mais l'article 105 donne à l'Organisation, comme telle, des privilèges et immunités qui ne se concevraient pas si on ne lui reconnaissait pas une personnalité juridique distincte. Il faut constater que, dans la pratique, les États n'ont pas hésité à tirer de cette notion de personnalité juridique de l'Organisation toutes ses conséquences sans se restreindre à des effets de pur droit interne.

La Convention sur les immunités et privilèges des agents des Nations Unies en est la preuve. Cette Convention est passée entre l'Organisation et les États Membres. Elle prévoit dans sa section 30 le mode de règlement des différends qui peuvent surgir entre l'Organisation et un État Membre. Ainsi, l'Assemblée des Nations Unies qui a établi le texte, comme les États signataires, considèrent-ils que la personnalité de l'Organisation produit ses effets, non seulement à l'intérieur des États, sur le plan du droit interne, mais sur le plan international. Dans ces conditions (et sans insister davantage sur ces citations de textes qui ont déjà été développées par les orateurs précédents), il n'apparaît pas contestable que l'Organisation puisse présenter une réclamation internationale à un État responsable d'un dommage causé à l'un de ses agents. Au surplus, telle a été la procédure suivie lors des événements récents qui sont à l'origine de la demande d'avis à la Cour. Le Gouvernement égyptien notamment, dans sa réponse au Médiateur au sujet de la mort d'observateurs français en Palestine, n'a pas contesté la compétence d'un représentant des Nations Unies pour présenter une réclamation et s'est contenté de contester au fond l'existence de sa responsabilité.

Les procédés par lesquels l'Organisation des Nations Unies peut présenter cette réclamation internationale sont ceux du droit international. A notre avis, aucun argument contraire ne pourrait être tiré du fait que l'article 34 du Statut de la Cour internationale de Justice réserve l'accès de la Cour aux États.

Si la juridiction de la Cour constitue un progrès considérable dans la mise en jeu de la responsabilité internationale, il ne faut pas oublier que c'est un procédé relativement récent, que c'est encore un procédé exceptionnel. Le droit de présenter des réclamations, qui a été reconnu par exemple à la Commission européenne du Danube, n'impliquait pas pour elle, pas plus que pour l'Organisation des Nations Unies, sur la base de l'article 34, accès à la Cour.

Par conséquent, la réclamation internationale est possible et l'article 34 doit être interprété restrictivement.

Au surplus, si une difficulté juridique surgit à propos d'une réclamation de cet ordre, l'Organisation a toujours la faculté de demander à la Cour un avis consultatif susceptible de l'éclairer pleinement sur les problèmes de droit.

Les observations précédentes couvrent ainsi les deux objets possibles de réclamation prévus dans la demande d'avis : les dommages causés aux Nations Unies et les dommages causés aux victimes ou à leurs ayants droit.

En ce qui concerne les dommages causés aux Nations Unies, aucune discussion n'est possible. Quant au point de savoir si une réclamation internationale peut tendre directement à la réparation d'un dommage à la victime ou à ses ayants droit, en principe, l'individu n'apparaît pas directement dans les réclamations internationales. La Cour permanente de Justice internationale s'est longuement expliquée sur ce point dans son Arrêt n° 13, et elle a indiqué nettement que le dommage subi par

l'individu ne peut que fournir une mesure convenable de la réparation due à l'État. Ces mêmes principes doivent, à notre avis, s'appliquer à la réclamation formulée par les Nations Unies pour assurer la protection du service public international.

Telle paraît être la base d'une réponse affirmative à la première question posée à la Cour.

II. Par la deuxième question, on demande à la Cour comment l'action de l'Organisation doit se concilier avec les droits que l'État, dont la victime est ressortissant, pourrait posséder.

Il résulte des précédents développements que les dommages subis par un agent des Nations Unies du fait d'un État peuvent poser un double problème de responsabilité. D'une part, l'agent peut être considéré en sa qualité d'étranger et les règles sur le traitement des étrangers et la protection due aux étrangers ont pu être violées. D'autre part, l'agent peut être considéré sous l'aspect de sa fonction internationale et les règles sur le respect du service public international ont pu être méconnues.

Dans le premier cas, l'État national est compétent pour agir par l'exercice de la protection diplomatique, et il peut seul le faire. Dans le second, c'est l'Organisation internationale qui peut seule protéger le service public international.

Ainsi, un même dommage peut provoquer des réclamations émanant de deux autorités distinctes ; deux compétences internationales sont donc susceptibles de jouer touchant le même fait. Cette situation n'est pas sans précédent, et on peut rappeler que la Cour permanente d'Arbitrage, dans l'affaire des déserteurs de Casablanca, s'est trouvée également en présence d'un concours de compétences touchant les mêmes individus, les déserteurs allemands de la Légion étrangère.

La Cour permanente d'Arbitrage a indiqué qu'il n'y avait pas de règles de droit permettant d'établir d'une façon absolue et pour toutes les circonstances laquelle de ces compétences devait l'emporter sur l'autre.

Il semble que dans la question soumise à la Cour le problème puisse être envisagé de la même manière : il n'y a pas de règle de droit qui détermine *a priori* que la compétence de l'État national doit l'emporter sur la compétence de l'Organisation internationale ou réciproquement.

Dans ces conditions, la conciliation entre ces droits ne peut se faire que par un accord amiable entre l'État national et l'Organisation internationale. Il faut cependant relever que pratiquement la responsabilité existera plus souvent à l'égard de l'Organisation internationale qu'à l'égard de l'État national, car la règle de protection d'un agent public international est incontestablement plus stricte que la règle de protection due à un simple étranger, et les exigences de la primauté du service international ne doivent pas être perdues de vue.

C'est ce qui a été indiqué par le Comité de juristes consulté en 1924 à propos de l'affaire que j'ai déjà citée du meurtre du général Tellini. Dans cet avis, « le caractère public reconnu à l'agent étranger, les circonstances dans lesquelles il se trouve sur le territoire de l'État entraînent pour celui-ci un devoir de vigilance spécial à son égard ».

Par ailleurs, il est évident que le concours de compétence ne doit pas entraîner un cumul d'indemnités au profit des victimes.

Sous réserve de ces observations, qui montrent que le problème doit surtout se régler sur le plan pratique et que la tâche d'un tel règlement

incombera au Secrétaire général des Nations Unies et à l'Assemblée générale, aucune règle précise de droit n'existe actuellement sur la conciliation des droits de l'État national et des Nations Unies.

III. Monsieur le Président, Messieurs les Juges, je résumerai en quelques propositions les observations que j'ai présentées dans cet exposé au nom du Gouvernement français. Elles sont les suivantes :

Sur la première question : l'Organisation des Nations Unies a qualité pour présenter une réclamation internationale contre l'État considéré comme responsable selon le droit international. Cette qualité lui permet de poursuivre sa réclamation par les procédures en usage dans la société internationale. Cette réclamation porte sur la réparation des dommages causés à la fonction internationale, soit directement, soit en la personne des agents des Nations Unies.

Sur la deuxième question : en l'absence d'une règle positive de droit international, l'action des Nations Unies se concilie avec les droits de l'État national de la victime, par le fait que ceux-ci n'ont pas la même cause juridique et ne peuvent nuire à l'autonomie de l'intervention des Nations Unies.

Monsieur le Président, Messieurs les Juges, permettez-moi en terminant de remercier la Cour de l'attention bienveillante avec laquelle elle a suivi mon exposé.

5.—STATEMENT BY Mr. FITZMAURICE

(REPRESENTATIVE OF THE UNITED KINGDOM GOVERNMENT)

AT THE PUBLIC SITTINGS OF MARCH 9th, 1949.

[*Public sitting of March 9th, 1949, morning.*]

Mr. President and Members of the Court, before I embark on the legal part of my statement, I should like to make three preliminary observations.

The first is to express my personal sense of privilege at having the honour to appear before so eminent a tribunal—an honour of which I can assure the Court I am very vividly sensible.

Secondly, I wish to stress the importance which the Government of the United Kingdom attaches to the question now before the Court. This question may, at first sight, appear to be a relatively minor one, that is to say, as compared with a number of the other questions which have engaged the attention of the Court and of its illustrious predecessor the Permanent Court of International Justice. But this is not really so, for in addition to the moral and personal problems raised by it, the question also involves two legal or quasi-legal issues of the highest importance. The first of these is that of the international legal status of the United Nations Organization, because, as I shall suggest to the Court in the course of my argument, it is scarcely possible to answer the questions put to the Court without reaching some preliminary conclusion on the subject of the international legal status and personality of the Organization.

The second important issue which I have in mind as being involved in the present case, is that of the independence of the United Nations Organization, by which I mean the necessity for the Organization and its officials, in carrying out the work of the Organization, to be independent of all considerations or influences based on or arising from nationality. This issue is crucial to the whole conception of the United Nations, and any question which involves or may affect it accordingly merits the most careful consideration.

My final preliminary observation is this. It is quite true, as previous speakers have said, that in referring this matter to the Court the Assembly hoped that the Court might be able to give what I will term a favourable answer to the questions put to the Court. At the same time it was, of course, appreciated that the issues are legal ones on which the Court may take quite another view. Even if this should be the case, it will still be helpful to the Assembly to have the Court's opinion since the Assembly will then be able to consider what special steps can be taken to endow the Organization with the requisite personality and capacities, if the Court should consider that the Organization does not at present possess them.

I now turn to my legal argument, and here I find myself in this difficulty, that a great deal of what there is to be said has already

been said very effectively by previous speakers. On the other hand, my approach to the subject is a little different, for reasons which I shall explain to the Court. As the Court knows, the Government of the United Kingdom has already, in the form of its written statement, given a full and systematic expression of its views on the subject-matter of the present request for an advisory opinion, believing that the somewhat novel nature of the problem called for the presentation of a relatively comprehensive written statement previous to the oral proceedings. It would be as unnecessary as it would be wearisome to the Court merely to recapitulate in detail the argumentation already contained in this written statement, and what I propose to do is to offer a number of additional observations, in the nature more of a commentary than of a systematic treatment of the subject. I will ask that this commentary be regarded as additional to and not in any way as replacing the United Kingdom's written statement.

Mr. President and Members of the Court, it is in one sense regrettable that the Court has not had before it someone to argue that the United Nations does *not* possess the capacities which we are discussing. I cannot supply that particular deficiency, but perhaps I can do the next best thing. It often happens that when a problem is difficult or novel, as I think the present one is, the best method of approach to it is the negative rather than the positive one. In order to ascertain what a thing is, it is sometimes very useful to begin by enquiring what it is not, and in order to decide what exactly is covered or involved by a certain question, it may be well to determine first what is not involved by that question. The United Kingdom Government attaches importance to this method of approach in the present case, because the comparative novelty of the problem, and the difficulty of foreseeing in advance all of its possible implications, makes it particularly desirable that the correct conclusions should not only be reached, but that they should be reached on the right grounds. It is natural, in a good cause, to advocate certain ideas, but it is less easy to foresee where those same ideas may lead if applied in a wider field. In its written statement, the United Kingdom Government indicated what it regarded as the correct conclusions on the present questions, and also the grounds on which it considered that these conclusions should be reached. In the present oral statement it will be at least in part my object to discuss what are the grounds on which, in the submission of the United Kingdom Government, these same conclusions ought preferably *not* to be reached.

When the present problem was being discussed in the General Assembly of the United Nations, there was a very general tendency, natural in view of the novelty of the question, to misunderstand, or at any rate not in all respects to appreciate its exact nature—a tendency from which, I hasten to add, the delegation of the United Kingdom was no freer than any other—and it is indeed only after a good deal of reflection that it has proved possible to arrive at what seems a just appreciation of these issues. There was, for instance, in the General Assembly, a disposition to conclude that if the United Nations Organization could be shown to be a juristic entity or to have legal personality of some kind, it must automatically follow that it had capacity to make an *international* claim, a conclusion which I think everyone would now agree does not follow at all. Similarly, the fact that a State can sometimes make an international claim in

respect of injuries to persons who are not its nationals, for instance, if they are in its service, was thought, and I think is still thought by some, to point *of itself* to the conclusion that the United Nations Organization could equally make international claims on behalf of its servants in respect not only of the loss caused to itself, but also in respect of the damage done to the servant. This, equally, is a conclusion which, as I hope to show, either does not follow from these particular premises, or else, in so far as it may be correct, can nevertheless only properly be arrived at after a number of other questions have first been satisfactorily answered.

Further—and this is very important for the purposes of the present enquiry—the very term "international claim" contained in the first of the two questions addressed to the Court, has seemed to be liable to misinterpretation. It has apparently sometimes been thought that any claim against a government, other than a claim on the part of one of its own nationals or corporate national entities, must be an international claim, whether the claimant be a foreign *government*, or merely a foreign individual or corporation. Now, if claims by individuals or corporations against a foreign government can be called "international claims", they can be so only in a purely popular or descriptive sense, as being claims the parties to which belong to different countries. In the submission of the United Kingdom Government they are, however, not international claims at all in the technical sense of the term, as it is to be understood (as a term of art) under and for the purposes of international law. The United Kingdom Government considers that, for an international claim to exist, there are two essential elements, *both* of which *must* be present, namely, first, that the claim must be made under international law and not merely under the domestic law of one of the parties ; and secondly, that the claim must be brought by, and must be made against, parties both of whom are international persons. It will be seen that, on this basis, it would be quite possible even for a claim brought by one State against another not to be an international claim, if it was a claim brought under the domestic law of the defendant State and not under international law. This might occur in the type of case in which, for instance, one government leases premises in another country, which belong to the government of that country, the lease being an ordinary lease made under the local law. Any dispute concerning the interpretation or execution of that lease would equally fall to be decided according to the local law, so far as the purely legal issues were concerned, and might well be the subject of proceedings in the local courts, given the necessary voluntary submission to the jurisdiction of those courts. To all this international law would have nothing to say. Before an *international* claim can exist, there must be, to adopt a phrase employed by Hatchek (*Outline of International Law*, p. 274) :

> "a transgression against international law, and not merely against a national legal régime".

Even clearer is the necessity for the second of the two main elements of an international claim, as already defined, namely that it should be brought by and against entities both or all of which are international and not merely domestic persons—which have international personality and are subject to international law. In the opinion of the United Kingdom Government, a claim brought by, for instance, an ordinary

private company or corporation against a foreign government is not, as such, and cannot be, an international claim at all, in the technical sense. It may *become* one, if the claim of the company or corporation is taken up and espoused by the government of the country of which the company is a national, but in that event the claim will lie between the two governments, both of whom are international persons.

In support of the view that an international claim is essentially both a claim under international law, and one which lies between two or more international persons, I will cite a passage from the judgment of the Permanent Court of International Justice in the *Mavrommatis case* (Series A., No. 2). The Court said, at page 12 of its judgment :

> "It is true that the dispute was at first between a private person and a State—i.e. between M. Mavrommatis and Great Britain. Subsequently the Greek Government took up the case. The dispute then entered upon a new phase; *it entered the domain of international law* and became a dispute *between two States.*"

In other words, it was only when it became a dispute between two States, i.e. two international persons, that it entered the domain of international law, that is to say it became an international claim. The judgment of the Permanent Court in the *Chorzów Factory case* (Series A./B., No. 17) will also be found to support this view. At page 28 of the report it is stated that

> "The rules of law governing the reparation are the rules of international law in force between the two States concerned, and not the law governing relations between the State which has committed a wrongful act and the individual who has suffered damage."

If the views I have been expressing are correct, they will serve to show why, in the opinion of the United Kingdom Government, an affirmative conclusion on the first of the two questions put to the Court, namely as to the capacity of the United Nations Organization to bring an international claim, could not correctly be arrived at merely by demonstrating that the Organization is a juristic entity or that it has legal personality of some kind. Similarly, it is not enough to show that, from a procedural point of view, the Organization is able to have dealings, to enter into negotiations, with States and governments ; for that, after all, is something which ordinary private persons and entities can equally do. They often deal or negotiate with foreign governments, but that does not make them international persons, and their dealings and negotiations are on the domestic and not on the international plane. It is therefore necessary to go further than all this, and to show that the Organization has a particular kind of legal personality, namely international legal personality.

It is for these reasons that the United Kingdom Government considers the question of the international personality of the United Nations to be of fundamental, indeed of crucial importance in connexion with the questions upon which the Court is asked to advise. Unless international personality of some kind exists, it is difficult to see *any* basis upon which it can be held that the Organization has the capacity to make an international claim in the proper and strict sense of that term. If, on the other hand, such international personality does exist, then, although it does not follow that the capacity of the Organization to bring an inter-

national claim is in all respects the same, or as extensive, as that of a State, nevertheless the indispensable foundation is there, on the basis of which it can be held there is capacity of some sort, and on which the question can be examined as to what exactly that capacity consists of.

Holding these views, the United Kingdom Government devoted an appreciable part of its written statement to attempting to establish the international personality of the United Nations Organization. I do not propose to recapitulate these arguments on the present occasion, but I will briefly summarize them. First, it was suggested that, although sovereign States may be the natural and normal possessors of international personality, they are not necessarily the only ones, and that international practice has established, and international authority has recognized, the existence of other entities which have such personality. In paragraph 7 of the United Kingdom's written statement a number of possible examples of such entities was given and discussed. Consequently, it was submitted that there is no necessary identity between international persons and States, and therefore no *a priori* reason why international organizations, such as the United Nations Organization, should not be regarded as being international persons. Secondly, it was suggested that any entity which, as such, can be shown to have international rights and obligations must be an international person, since only international persons can have international rights and obligations ; and it was suggested, further, that the United Nations Organization can duly be shown, under the Charter and other related international instruments, to have international rights and obligations. Another, and perhaps more picturesque method of expressing these ideas, would be to say that once it has been established that there is no inherent reason why entities other than States should not be invested with international personality, there is equally no reason why such an international person should not be set up or created by the use of the appropriate means. This is the view apparently suggested in a recent work on international law by Georg Schwarzenberger, in which (Volume I, p. 35), after referring to States as members of the legal system constituted by international law, he goes on to say :

> "As the full members of this legal system are entitled to enlarge their circle by the admission of new full members, they are equally competent to create, by the exercise and modification of their recognition, *new types and different classes of international persons* .... [whose] personality and status entirely depend on the attitude taken towards them by the existing subjects of international law."

In brief, so far as the United Nations is concerned, there would, on this view, be nothing to prevent the creation of a new international person by means of the Charter, recognized as such by the parties to the Charter, but of a type and class different from that of a State ; and it would then become a matter of determining whether, on its language and true interpretation, the Charter did do this or not.

I may perhaps also draw the attention of the Court (although the argument is of a minor character) to an interesting suggestion in Hatchek's *Outline of International Law* as to the historical reasons why the Papacy, even during the period when it was not territorially a State, was recognized as having international personality ; and these reasons, though on constitutional rather than historical grounds, could

apply, *mutatis mutandis*, to the case of international organizations such as the United Nations. Writing before the date of the Lateran Treaty, the author of this work says (p. 56) :

> "Since .... international law does not allow any one State to control the Pope in his character as head of the Catholic Church, he has to be put in a position of international independence, that is, even though he is not the head of a State .... he has to be made an independent subject of international law."

By parity of reasoning it might be argued that since no one State can control an organization such as the United Nations, it must be deemed to have its own separate international personality.

At this point I feel it necessary to digress a little from the main course of my statement, in order to make clear something which was not fully brought out in the written statement of the United Kingdom but which is necessary for the purposes of my argument, namely that, just as claims made by private persons or juristic entities cannot, as such, be international claims, so also, in the opinion of the United Kingdom Government, is it incorrect to regard indivuals, or private companies, corporations or other such associations, as being subjects of international law or as having any direct international rights or obligations. They may indeed be objects of international law—for instance international law prescribes certain rules for the treatment of foreigners by all countries—while international treaties may even prescribe certain rules for the treatment by countries of their own nationals, such as treaties about minorities or human rights. Again, private individuals and entities may, *by reason of* a rule of international law, or of a treaty provision, become the recipients of *benefits* or be subjected to certain *liabilities ;* but in all those cases this occurs indirectly and at second remove, through the medium or agency of a State or government or other international person which is a party to the treaty or a subject of the rule of international law concerned, and through whom alone the benefit or liability can be made available or be enforced. Thus, to cite again the rules of international law as to the treatment of foreigners, the foreigner may get the *benefit* of this treatment, but the international law right to *claim it* belongs solely to his government. It is a right under international law for the government to claim certain treatment for its nationals, and the corresponding international duty is one owed to the foreigner's government, not directly to the foreigner himself. It can only be owed directly to the foreigner himself if the international law rule in question is also made, or becomes, part of the local law of the country concerned ; but then, as between the local government and the foreigner, it is a duty owed under domestic and not under international law. As was stated by the Permanent Court of International Justice in the *Chorzów Factory case* (Series A./B., No. 17, p. 28), "Rights or interests of an individual .... are always in a different plane from rights or interests belonging to a State." These principles also find expression in the Advisory Opinion of the Permanent Court in the case of the *Danzig Railway Officials* (Series B., No. 15), when the Court said (p. 17) :

> "It may be readily admitted that, according to a well established principle of international law .... an international agreement

cannot, as such, create direct rights and obligations for private individuals."

Similarly, in the opinion of the United Kingdom Government, the general rules of international law do not create direct rights and obligations for individuals.

Mr. President and Members of the Court, this theme is one which it would take time to develop fully, and as it is only incidental to my main purpose I will not go into it further here. Nevertheless I felt obliged to mention the point because it forms an essential part of my argument : seeing that, on the one hand it seems impossible to deny that entities which, as entities, are genuinely and directly possessed of international rights and obligations, are international persons, while on the other hand it seems equally impossible to admit, in any significant sense or in any ordinary acceptation of the term, the international personality of individuals or of private entities or associations.

I now revert to the main course of my argument. As I said earlier, the United Kingdom Government has endeavoured in its written statement to give positive reasons for the view that the United Nations, as an Organization, is possessed of international rights and duties and of international personality. These reasons are founded mainly on the language and effect of the Charter, and on the intentions to be inferred or presumed from the Charter. In this connexion, I should like to stress the importance which the Government of the United Kingdom attaches to the principle that the constitutive instrument setting up an organization, and containing its constitution, must be the primary source of any conclusions as to the status, capacities and powers of the organization concerned. It would, in the opinion of the United Kingdom Government, be as dangerous as it would be unsound to ascribe to international organizations, a status, capacities or powers not provided for or to be inferred from their constitutive instruments, except in so far as may result from clearly applicable, universal, and recognized principles of general law. In this connexion, I should like to refer to two arguments which have been suggested in regard to the status and capacities of the United Nations, which the Government of the United Kingdom considers should be viewed with some reserve.

First, there is a suggestion in one of the written statements furnished to the Court that the correct principle to be adopted in this matter is the following, namely, that the United Nations Organization should *ipso facto* be regarded as entitled to perform any juristic act not actually contrary to the principles and purposes of the Charter. If this is intended to suggest that, it having once been decided that the Organization is properly to be regarded as possessing a given form of legal personality, it should *then* be deemed automatically to possess all such powers and capacities as would normally be possessed by legal personalities of the same class, so long as these would not be contrary to the Charter, then the United Kingdom Government would find itself broadly in agreement with such a view. On the other hand, the preliminary question whether the Organization possesses legal personality at all, and if so of what kind, cannot, in the opinion of the United Kingdom Government, be answered in the affirmative merely on the ground that the possession of such personality would not be actually inconsistent with any provision of the Charter. Such personality must either be specifically pro-

vided for in the constitutive instrument, or be a necessary or legitimate inference from its provisions and from the powers and duties of the Organization as therein set out. In brief, it is not the case that international organizations can do anything which their constitutive instruments do not actually forbid them to do. That would be a most dangerous doctrine, the limits of which could not be foreseen. On the contrary, the correct position is that, *prima facie*, international organizations only have such capacities and powers as their constitutive instrument gives them, or must be presumed to have intended them to have if they are to carry out their functions and fulfil their purposes as set out in the instrument concerned ; together with such powers and capacities as would, under general and universally recognized principles of law, be ascribable to any entity of the class or category created by that instrument.

Next, when it comes to determining which articles of the Charter can most appropriately be cited in support of the view that the Organization has international legal personality, the Government of the United Kingdom fully shares the views which have been expressed by M. Kaeckenbeeck, on behalf of the Government of Belgium, as regards Article 104 of the Charter, which is sometimes cited as establishing or supporting the international legal personality of the Organization. It is difficult in this connexion not to contrast Article 104 of the Charter with such a provision as Article 89 of the Havana Charter of the International Trading Organization. Article 89 of the Havana Charter is specifically entitled "International Legal Status of the Organization" and, in addition, it does not contain the limiting words "in the territory of each of its Members", which appear in Article 104 of the Charter, but, on the contrary, it provides quite generally that the International Trading Organization "shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions". The contrast is the more marked in that the next article of the Havana Charter, Article 90, is specifically headed "Status of the Organization in the Territory of Members" and proceeds to deal with *that* particular matter on very much the same lines as Articles 104 and 105 of the United Nations Charter.

Thus, there is ground for thinking that Article 104 of the Charter and, consequentially, Article I, Section 1, of the General Convention on the Privileges and Immunities of the United Nations, made under and for the purposes of Article 104 of the Charter (see the Preamble to the Convention), do not specifically cover or deal with the international personality of the Organization. On the other hand, as was suggested in the United Kingdom written statement, too much importance should not be attached to the fact that later instruments, drafted in the light of greater experience, have dealt specifically with something not covered, or anyhow not dealt with in terms by the Charter, and it would certainly be a curious result if the International Trading Organization, for instance, possessed an international status denied to the United Nations. Therefore, the fact that Article 104 of the Charter does not deal with international legal status as such, should not be held to rule out the possession of international personality by the Organization if such personality appears to be established by, or to result from, the other provisions of the Charter. This view was most vividly illustrated by M. Kaeckenbeeck on behalf of Belgium in his citations from the minutes of the San

Francisco Conference. The same view is also endorsed by an interesting and illuminating commentary on Article 104 of the Charter made in the report of the Chairman of the United States delegation to the San Francisco Conference. It appears in Department of State Publication No. 349, Conference Series 71. This passage reads as follows:

> "This article, i.e. 104, does not deal with what is called the 'international personality' of the Organization. The Committee which discussed this matter was anxious to avoid any implication that the United Nations will be in any sense 'a super-State'. So far as the power to enter into agreements with States is concerned, the answer is given by Article 43 which provides that the Security Council is to be a party to the agreements concerning the availability of armed forces. International practice, while limited, supports the idea of such a body being a party to agreements. No other issue of 'international personality' requires mention in the Charter. Practice will bring about the evolution of appropriate rules so far as necessary."

If the view suggested by this citation is correct, it seems to follow that Article 104 is neutral on the question of the international personality of the Organization. It does not establish this personality, but neither need it be regarded by any process of negative implication as ruling it out. It would, therefore, be proper and legitimate to infer such personality from any other provisions of the Charter which lent themselves to such an inference. In paragraphs 9-11 of its written statement, the Government of the United Kingdom has referred in detail to those articles of the Charter which it relies on as establishing the international personality of the Organization. These provisions constantly refer to the Organization as an entity separate and distinct from the various Member States or even the sum of the Member States, and appear to endow the Organization with a separate personality of its own. These articles also provide in terms for duties owed by the Member States not *inter se* or to each other, but specifically to the Organization as such; and in this connexion I would ask the Court to pay particular attention to such provisions as Article 2, paragraph 5, of the Charter, and to Article 56. Other provisions of the Charter invest the Organization with rights and duties which are essentially international in character. Thus, we have an Organization which (*a*) has a personality separate and distinct from that of its Members or the sum of its Members, and (*b*) has international rights and duties. The sum of all these things is international personality, since, according to the premises adopted for the purposes of the present argument, only international persons can have international rights and obligations, while any entity which does have direct international rights and obligations must be an international person.

May I be permitted, however, to urge some caution as to attaching too much significance to the mere *ability* of the United Nations Organization to enter into agreements with States and governments. After all, private persons and entities can, and often do, the same thing, and with foreign governments. What is really significant is not the mere fact that the Organization enters and can enter into such agreements, but that the agreements themselves, in their form and nature, are essentially international in character.

Article 105 of the Charter is also significant, as I think Professor Chaumont pointed out on behalf of France. It provides that "*The Organization* shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes" and that the representatives of the Members of the United Nations and officials of the Organization are similarly to enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. The last paragraph of Article 105 says that the General Assembly may make recommendations or propose conventions for the purpose of giving detailed effect to these provisions, and this is accordingly done by the General United Nations Convention on Privileges and Immunities, which provides for extensive immunities and privileges for the Organization, its officials, and representatives of the Members of the United Nations. Now while it may not follow that, because an entity is an international person, it and its servants, etc., must necessarily be invested with privileges and immunities of a diplomatic or quasi-diplomatic character, the converse does seem to hold good, that the possession of international personality is an essential pre-condition of the enjoyment of such privileges or immunities. Even if it is not possible to put it quite as definitely as that, it can safely be said that the enjoyment of these privileges and immunities, which are by Article 105 given directly to the Organization as such, points to, and is evidence of, the possession of international personality on the part of the Organization, and that it would be difficult to reconcile the enjoyment of these privileges and immunities with a position according to which the entity enjoying them was not possessed of any international legal status or personality at all.

Mr. President, and Members of the Court, that concludes my observations on the question of international legal status and personality of the Organization. For the purposes of the remainder of my argument I shall assume the existence of this personality, without which, in the submission of the United Kingdom Government, the Organization cannot have any legal capacity to make an international claim at all, whatever it may be able to do in the domestic spheres of its respective Member States.

The next question, which we now come to, is how far the capacity of the Organization to make a claim extends, and what does its capacity in this respect include. Since the Organization, whatever international personality it may have, is not a State (a point which the United Kingdom Government wishes to stress) it cannot automatically or *ipso facto* possess the same capacities in regard to making international claims as States do. The Organization may indeed possess certain analogous capacities, but, if so, they must derive and be deduced from its own particular kind of international personality, as capacities inherent in, or as reasonably necessary attributes of, such personality, and cannot consist of mere automatic extensions to the Organization of the capacities possessed by States. For this reason, the Government of the United Kingdom feels that the apparent similarities between the position of the Organization and that of a State—such as that the Organization has a flag, may run a postal service, has missions accredited to it, etc.—may be misleading, and that it is better, in the present connexion, to

rely on considerations of principle rather than on factual comparisons of this kind.

Now, relying thus on principle, there would seem to be little difficulty in regarding the Organization, given that it is an international person, as being necessarily possessed of the capacity to make the kind of international claim contemplated by point (*a*) in the first of the two questions addressed to the Court, namely a claim for reparation due in respect of damage caused to the Organization itself, because it would seem to be a necessary and self-evident legal attribute of any juristic entity to have the capacity to make claims in respect of damage done directly to itself; and if the juristic entity concerned has international legal status as an international person, such capacity would necessarily relate to making an international claim under international law in respect of such damage.

This category of damage to the Organization would appear to be capable, for present purposes, of subdivision into two main classes. The first of these would consist of the fundamental loss to the Organization itself, resulting from the injury to or death of its servant, independently of any question of compensation for that servant himself or his dependents. For instance, he may be irreplaceable, with resulting material or moral injury to the work of the Organization. Or the Organization will have lost the time and expenditure involved in his training, or in other ways connected with the post he filled or the function he performed. Or perhaps he can only be replaced at additional cost, and so on.

In the other class would come the cost of compensating the injured party or his dependents out of United Nations funds. The Government of the United Kingdom considers that, where such compensation is contractually due as a matter of legal obligation, as part of the injured party's terms or conditions of employment, it can properly be classed as a loss caused to the Organization itself in consequence of the injury, and that it can properly be claimed by the Organization under that head, to the extent to which the payments in question are reasonable payments by way of compensation having regard to all the relevant circumstances such as the status of the employee, the work he was doing, the nature of the injury, etc.

It will thus be seen, if this view is accepted, that if the Organization invariably entered into contractual obligations to compensate its employees or their dependents in case of death or injury suffered in the course of duty, the question put to the Court in point (*b*) of the first main question addressed to it would never, in practice, arise. However, it cannot be assumed that such contractual obligations will necessarily be entered into in every case, or that the present general policy of the Organization to include terms of this kind in its contracts with its employees will always be maintained in the future. It is, therefore, necessary to consider whether the international personality of the Organization gives it the capacity not merely to claim as reparation due to itself the reimbursement of compensation which it has been obliged to pay by contract to the injured party or his dependents, but also, in case of need, to claim this compensation directly on behalf of those concerned. In other words, can the Organization make a claim not merely in respect of the loss caused to itself, but also on behalf of the injured servant and in respect of the damage caused to him?

The United Kingdom Government considers that the question which has just been asked should be answered in the affirmative, but it also considers that it is important to be clear as to the grounds on which such an affirmative answer should be given. I hope, therefore, that the Court will bear with me if I devote a little time to considering the position of States when making claims on behalf of individuals, as this has a distinct bearing on the question under discussion. The truth is that there is here a definite difficulty which ought not to be minimized or brushed aside, arising from the fact that, where States are concerned, the relationship of nationality between the claimant State and the injured individual is the normal basis on which claims made directly on behalf of such individuals, and in respect of the loss or damage caused to them, are usually put forward. It is quite true that States may be entitled, where for instance the injured party was in their service, to make claims even where the person concerned is not their national (for instance where States employ foreigners in their government, diplomatic or consular services, as they sometimes do); but in that case the State is claiming on its own behalf, not on behalf of the individual, and it claims in respect of the damage done to itself through the loss of its servant and not in respect of the damage done to him. Now, Mr. President and Members of the Court, it is, of course, also true that *all* claims made by a State in respect of injuries to individuals, even where the individual is their national and the claim is made on his behalf, are, in the formal sense, claims made on behalf of the State, because, according to the accepted theory of this matter, where an individual is injured in circumstances involving the responsibility of the State by whom or in whose territory the injury was committed, his own State is held to have sustained an international wrong in the person of its national, and is, on that basis, entitled to make a claim. (See the *Mavrommatis case*, Series A., No. 2, p. 17.) It is, however, none the less clear that in this type of case (i.e. that of an injury to an individual not in the service of his State) although the international wrong is to the State, the actual injury or damage to the State is indirect or, as it were, figurative. That this is so is recognized by the fact that, in such case, the measure of damages is not so much the loss or damage caused to the State itself, which might often be negligible, but that caused to the victim or his dependents, which is likely usually to be considerable. (See the *Chorzów Factory case*, Series A./B., No. 17, p. 27.)

Moreover, these damages, if and when they are recovered by the government to whom they are formally due, are in practice always paid over to the individual or his dependents by that government, and are not simply pocketed or retained by the government.

Now (and here I come to the point to which the foregoing remarks are intended to lead) although in the formal sense it is, accordingly, always the State which, on the international plane, is the party wronged, there are nevertheless several possible bases on which the State may be entitled to make its claim in respect of a breach of international law. The victim may have been in its service though not one of its nationals, or he may have been one of its nationals—or both factors may be present. In each case, however (and leaving aside, for the moment, the special cases which may arise out of breaches of treaties), there must be a legal *nexus* or connexion between the State and the individual concerned—either the relationship of master and servant, or that of nationality, or

both—and in each case the basis of damages is different. In particular, where the sole connexion is that of master and servant, the State can only claim in respect of the direct damage to itself resulting from the loss of or injury to its servant ; any claim on behalf of the servant himself —that is, in respect of the loss or damage suffered by him or his dependents—must, according to traditional practice and doctrine, be made by his national State ; though if the State employing him were under a contractual liability to compensate him or his dependents, it could include the compensation thus paid under the head of loss caused to itself, but formally it would still remain a claim for loss to the State itself and not, as such, a claim on behalf of the individual. The matter may be clearer if considered from the standpoint of the *defendant* State. Where the sole basis of a claim between States is that the injured individual was in the service of the claimant State, the defendant State could properly refuse to pay, in consequence of a claim made by that claimant State, any damages in respect of the injury done to the individual personally, and could require the damages to be limited to the service loss caused to the claimant State itself, since no other relationship would exist between the claimant State and the individual giving legal cause for any other claim. In brief, the defendant State could refuse to entertain any claim in respect of the damage to the individual himself, unless that claim were put forward by the individual's national State. (These remarks are intended to apply to claims in respect of breaches of the general rules of international law. Breaches of treaty may give rise to special considerations to which I shall refer later.)

[*Public sitting of March 9th, 1949, afternoon.*]

Mr. President and Members of the Court, when the Court rose this morning I was arguing that when a State makes a claim against another State on behalf of an individual, it can, apart from certain special treaty cases, only do so if that individual is its national, and that if the individual is merely its servant or employee, the State can only claim on behalf of itself and not on behalf of the individual. The relevance of this in the case of international claims made by the United Nations Organization will, I believe, be at once apparent. It has been suggested—it certainly was suggested in the discussions in the General Assembly—that *because* States can sometimes make claims in cases where damage has been done to persons not their nationals (in particular if the injured person was in their service) *therefore* the criterion of nationality is irrelevant, and the United Nations can make direct claims on behalf of its servants in respect of the damage caused to them as individuals. That is the argument ; but if what I have said earlier is correct, it will be seen at once that this reasoning is incorrect. It is, of course, quite true, as we have seen, that States can make claims on behalf of persons not their nationals but who are in their service. But in that case, as I hope I have shown, the claim should properly be limited to the loss or injury caused to the State itself. It should not include a claim in respect of the damage done to the individual or his dependents. Consequently, on the analogy of State practice, the simple relationship of master and servant between the United Nations Organization and its employees would not, of itself, do more than

enable the Organization to make a claim in respect of the loss caused to itself by the injury to its servant ; and this relationship would not, *per se*, enable the Organization to make a claim on behalf of the injured party or his dependents. Where a State is legally entitled to make a claim on behalf of the victim himself and in respect of the damage caused to him, it is because of the existence of a special relationship between them, namely, nationality, and it would seem, on the same reasoning, that if the United Nations Organization is to be able to make a similar claim, it must equally be because of the existence of some special relationship of an analogous character between it and its servants, over and above the ordinary relationship of master and servant, because, as we have seen, the mere relationship of master and servant would not of itself enable the Organization to do more than claim in respect of its own losses.

Moreover (and this is perhaps the crucial point), except in the case of stateless servants of the Organization, there is, and continues to be, an entity which, whether it chooses to do so or not, *can* make a claim on behalf of persons injured in the course of their service with the United Nations, namely, their own national State. Here, Mr. President and Members of the Court, I think we reach the heart of the difficulty. We have to find a basis, other than the mere relationship of master and servant *per se*, which will enable us to conclude that the Organization has the capacity to make a direct claim on behalf of the individual concerned, not only despite the absence of any nationality link between him and the Organization, but even in spite of the presence of that very link between him and another international entity, his own national State, which is perfectly entitled to make the claim, and whose right to do so continues to exist and to be valid.

In its written statement the United Kingdom Government has suggested that the requisite basis may be found in Article 100 of the Charter which creates a special relationship of *international allegiance* between the Organization and its servants. This, it is suggested, does forge between the Organization and its servants a link going beyond the ordinary relationship of master and servant, and which may provide the necessary basis for claims made by the Organization on behalf of the servants themselves in respect of the damage done to them.

If we follow the argument out, I think we shall see how this comes about. This special allegiance partially displaces the normal allegiance owed by individuals to their national State, and, in all matters affecting the United Nations, replaces it by an allegiance due exclusively to the Organization. Thus, where the servant concerned suffers injury in the course of doing the work of the Organization, in respect of which his allegiance is owed solely to the Organization, and even, if necessary, as against his own national State, it seems not only an appropriate, but even a necessary consequence of this position, that the Organization should be regarded as having the capacity to make a claim in respect of the loss or damage caused to him or his dependents.

Indeed, one might go further and say that the effect of Article 100 of the Charter is that the Members of the United Nations can be regarded as having implicitly recognized that such capacity must exist if the Organization is to be in a position adequately to carry out its functions. The point may be illustrated by considering the case of a United Nations servant who is required in the course of his work to do something which

his own national State disapproves of or considers to be contrary to its own interests. If he suffers injury in the course of doing this, it is then very possible that his national State will refuse to make any claim on his behalf, or will, at any rate, not feel called upon to do so. Consequently, unless the Organization itself be regarded as having the capacity to make claims on behalf of these persons, and in respect of the loss or damage caused to them, there will exist a lack of adequate protection, a position which may be prejudicial to the good functioning of the Organization, because if United Nations servants feel that they cannot look to the Organization for protection if they suffer injury in carrying out their duties, and that they must look, if at all, to their own national State for protection, their allegiance is liable, to that extent, to be divided, and the work of the Organization to suffer in consequence. This is precisely the situation which it was the intention of Article 100 of the Charter to guard against, and the Members of the United Nations must be considered as having recognized this fact. To put the matter in another way, the capacity of the Organization to make a direct claim on behalf of its servants in respect of injuries suffered by them in the course of performing their duties, is really the necessary complement to or, as it were, the opposite facet of the exclusive allegiance owed by them to the Organization; for you cannot ask a man to be faithful solely to an international organization in doing his work and even as against his own national State, and yet expect him to remain solely dependent on that State for protection in case he suffers injury in the course of doing this same work—especially when, as Professor Chaumont pointed out, he may be placed in especial danger by the very nature of this work. Such a position would be obviously contrary to the principle enshrined in the Charter, and clearly inherent in the very conception of the United Nations, that the Organization and its servants should function independently of all considerations of nationality: because, if they *ought* to do so, then they must also be *enabled* to do so, that is to say the Organization must have such capacities as are necessary to bring this about, or, if you prefer it, must not lack capacities in the absence of which this independence may be prejudiced.

There is a further ground, Mr. President and Members of the Court, on the basis of which it can be held that the United Nations Organization has a right to make a direct claim on behalf of its servants, despite the absence of the usual relationship of nationality between the claiming entity and the injured individual. It is recognized that States can make claims, irrespective of the nationality of the person concerned, where they possess a direct treaty right to do so (as might be the case, for instance, under a treaty containing clauses for the protection of minorities) or in any other case where the claim arises out of the breach of a treaty to which the claimant State is a party. Thus we have the principle that where an international person has an international duty owed to it, by reason of a treaty, it is entitled to make an international claim in respect of any breach of that duty. If therefore Members of the United Nations owe a duty to the Organization, as an international person, in respect of its servants, the Organization, as an international person, is entitled to make a claim in respect of any breaches of that duty. (See the *Chorzów Factory case*, Series A./B., No. 17, p. 21.) Now it is clear from Article 105 of the Charter, which was cited earlier, and from the General Convention on the Privileges and Immunities of

the United Nations, made under it, that the Member States of the Organization are under an obligation to extend in their territories to servants of the Organization all such privileges and immunities as are necessary for the performance of their functions. Further, in the case of those Members which have ratified the Privileges and Immunities Convention, there is an obligation to extend to servants of the Organization a number of particular and specified privileges, immunities and protections. It seems a necessary complement or implied consequence of this, that the Member State concerned will not itself be guilty of inflicting injury on a United Nations servant, or of permitting the existence of conditions in its territory (so far as it can by all due diligence prevent them) which might result in such injury being inflicted. These obligations, expressed or implied, which arise directly or indirectly out of the Charter, are essentially obligations towards the Organization as a whole. They are not duties owed directly to the national State of the victim; or, if they are owed to it, they are owed to it not in its individual capacity, but in its capacity as a Member of the Organization, and they are not any more especially owed to the national State than to any other Member of the Organization. It seems to follow, therefore, that the Organization, as the international person to whom these obligations are owed, is entitled to make a claim in respect of the breach of them, and in respect not only of the loss caused to itself, but also in respect of the loss or damage caused to the victim or his dependents. Furthermore, it would seem not only that the Organization is entitled to do this, but also that, in so far as the claim is based on a failure by a Member State to extend to servants of the Organization the protection due under the Charter or any related instrument, the Organization is the only, or at any rate the appropriate and proper party to make the claim.

Mr. President and Members of the Court, this brings me to the last part of my argument, and to the second of the two main questions addressed to the Court, namely how the claim of the Organization is to be reconciled with any claim which the national State of the victim may be entitled to put forward. But before I discuss this, I ought perhaps to say a word on one case in which it has been suggested that the right of the Organization to make a claim on behalf of its servant is manifest—namely where he is stateless. On this subject I entirely agree with the opinion which has been expressed here by Mr. Feller, representing the Secretariat, and I should not mention the matter again if it were not for the fact that in its written statement the United Kingdom Government suggested a view which it now desires to modify. It is quite true that, where the United Nations employee concerned is stateless, a claim by the Organization may be *facilitated* by reason of the fact that there is no possibility of a clash with any national State also entitled to claim. But statelessness does not, of itself, create any special link between the Organization and its officials, and it is unnecessary to have recourse to any argument founded on statelessness, since stateless officials of the Organization are in exactly the same position as any other of its officials, in that they are equally United Nations servants who, under Article 100 of the Charter, owe a special allegiance to the Organization. Indeed, although the position of the Organization in making a claim on behalf of a stateless employee may seem clearer on account of the absence of any possible competing claim, it is, in fact, I believe, weaker, not stronger, because the very statelessness of the

individual precludes the possibility of a conflict of allegiance, such as we have seen might arise if servants of the Organization were obliged to look to their national States rather than to the Organization for protection in respect of injuries caused to them in the course of their work. Consequently, the reasons for holding that the Organization must have the necessary capacity to claim are, if anything, somewhat less strong in the case of stateless individuals than in the case of United Nations servants who have a nationality. The Government of the United Kingdom desires on further reflection to modify in the foregoing sense the suggestion made in the footnote numbered 10 to paragraph 18 of its written statement to the effect that the case is stronger where the employee is stateless.

I now come to the last section of my statement and to the final question before the Court, namely that of reconciling the claim of the United Nations with that of the national State, and on this question I can permit myself to be relatively brief, partly because Mr. Feller has already dealt with it very fully and I agree with most of what he said, and partly because, although the question is put to the Court as if it were a new one, it is in fact, in the submission of the United Kingdom Government, not a new one—or at any rate it presents no new problem of principle. As was pointed out in the written statement of the United Kingdom, the existence of dual, even of multiple, nationality, has always made it possible for more than one State to be entitled to put forward a claim in respect of one and the same injury to one and the same individual. Whatever rules and principles are properly applicable to reconciling such claims would, speaking generally, and with two important exceptions which I shall discuss presently, be equally applicable to the case of reconciling the claim of the United Nations with that of the national State of the victim. In its written statement, the United Kingdom has suggested what some of these rules and principles are, and their main object, of course, while not denying the right of both claimants to make a claim, is to avoid the payment of double damages by the defendant State. If the Court considers that the two sets of claims are reconcilable on some such general basis as has been suggested in the United Kingdom's written statement, the details of the application on this basis as between Members of the Organization, and for the purpose of claims of this character, could be left to be worked out, if the Court so desires, by the Organization itself, for adoption by Member States, as is indeed implied by the final paragraph of the General Assembly's Resolution of December 3rd last, which instructs the Secretary-General to prepare proposals in the light of the Court's advisory opinion, when given, and to submit these proposals to the Assembly at its next regular session. The Court will, however, remember that the problem of reconciling conflicting claims only arises in regard to point (*b*) in the first of the questions put to the Court, and if that point is answered in the affirmative. It has nothing whatever to do with point (*a*). In other words, there is no question of conflict between the right of the Organization to claim in respect of the damage done to itself by reason of the injury to its servant, and the right of the national State of that servant to claim on behalf of the servant—just as there is no conflict in the case of a claim by two States where the injured person is a national of one of them but in the service of the other,

because the basis of the two claims is different. Conflict can only arise where both international entities concerned are claiming on the same basis ; that is, for present purposes, not in respect of the direct damage suffered by themselves as entities, but on behalf of the individual and in respect of the damage done to him. Consequently, the fact that the victim is in the service of the United Nations will not, of itself, avoid the possibility of conflict with the right of his national State, if the Organization is seeking to claim on the victim's behalf as well as on its own.

I have referred to two important exceptions to the general principle suggested, that, whatever rules apply for reconciling a duality of national claims, should be regarded as broadly applicable to reconciling dual claims by the Organization and by the national State of the victim. Where two States both have a claim against a third State in respect of an individual who is a national of each of the claimant States, both claims have, generally speaking, equal status and priority, although, as was suggested in the written statement of the United Kingdom, when it comes to damages it may well be found that one of the two claimant States is entitled to recover all, or the major part, of the amounts due. It is much less certain that the same equality of status exists, or ought to exist, between the claim of the United Nations and the claim of the national State. The claim of the national State cannot, of course, be ousted or overridden ; but there are grounds for thinking that it should defer to that of the United Nations, which should be given priority or preference. In the first place, assuming, as we must, that the United Nations Organization is an international person, that it has capacity to make a claim on behalf of its servants and in respect of the damage done to them as well as the damage done to itself, and further that the claim arises (as it will) out of injuries done to the individual in the course of performing his functions as a United Nations servant, in respect of which he owes an exclusive duty to the Organization, it would seem that the Organization is the natural and proper party to make the claim and that it should be regarded as the one primarily entitled to do so. Secondly, the Court will remember that, in so far as the basis of the claim is the failure of the defendant State to afford to the victim the protection due under, or in consequence of the Charter or any related instrument, it may well be that the Organization is the *only* party entitled to claim on that particular basis, as it is certainly the natural party to do so. Thirdly, as several speakers have pointed out, there are grounds for thinking that the majority of national States, at any rate those who are Members of the Organization, would, in the case of injuries inflicted on United Nations servants in the course of performing their duties, very much prefer that the Organization should make the claim, if it is entitled to do so—in short the feeling would be that, in cases of this kind, the wrong done was primarily a wrong to the Organization as a whole, and as such, and only secondarily a wrong to the victim's national State. By this, Mr. President and Members of the Court, I have in mind that, in those cases, it is not only the national State of the victim which is wronged ; it is in a sense *all* the Members of the United Nations, and therefore it is very appropriate that, acting on behalf of all those Members, the Organization should make the claim rather than one particular Member of the United Nations which, although it may have suffered a separate wrong because the individual is

its national, is also a participant in the general United Nations system, and suffers, in *that* respect, no greater wrong than any other Member of that system. Now, even if the Court were to consider that it was not possible to regard these principles as amounting yet to established legal rules, it is to be hoped and, I think, expected, that the practice of States will establish in due course a rule in favour of the priority of the claim of the United Nations in this type of case. The claim of the national State would not, of course, be ousted or destroyed. Thus, if the Organization failed to make any claim in respect of the loss or damage done to the victim, the case being one in which he did not receive any compensation from the Organization itself—or if in such a case the Organization made a claim but was not successful in recovering any damages, the national State would be free to take any action that seemed to it to be useful and appropriate.

The other exception to the general applicability in these cases of the principles governing duality of claims, relates to the very important subject of injuries inflicted on a United Nations servant by his own national State, or in circumstances entailing the responsibility of that State. This is one of the most important aspects, if not in a sense the most important, of the questions put to the Court, since it affords a test, in the most crucial form, of the principles enshrined in the Charter and inherent in the whole conception of the Organization, of the independence of the United Nations and its servants from all considerations of nationality.

Where an individual is a national of two States and suffers injuries at the hands of one of them, it is the accepted rule, save in exceptional cases, for instance where there exists a special treaty right, that the other national State cannot make a claim in respect of the injury to the individual, though if, for instance, the individual was in its service, that State can claim for any direct injury to itself. It is unnecessary for me to tell the Court that the principle involved is that, subject to the treaty exception just referred to, you cannot make an international claim against a State on behalf of one of its own nationals, such an issue being for settlement between the government of that State and its own national, on the basis of the law and constitution of the State concerned. This position is assisted by the doctrine of what is called "master nationality", in those cases where the individual was actually present at the time of the injury in the territory of the responsible State, when his local nationality for the time being prevails over all others.

It is clear that if a similar rule were held to operate by analogy, as regards claims by the United Nations where the injury to its servants had been inflicted by their own national State, or in circumstances entailing the responsibility of that State, an important breach would be made in the principle of the independence of the Organization and its servants from all considerations of nationality; for this case is not only liable, but in a sense very likely to arise—the possibility and probability of it doing so being inherent in the character and work of the Organization. Suppose, for instance, that the United Nations decides to send a commission of enquiry, or it may be a boundary commission, or a commission to establish a truce or to observe and report on certain facts and conditions: it may be essential for the proper functioning of that commission that one or more of its members should have first-hand knowledge of local conditions, and this may well entail the necessity

of having a national of the country as a member of the commission. Nothing could be more important, or more necessary for the proper carrying out of the work of the Organization, than that, in such a case, the Organization should be possessed of rights on behalf of the individual concerned, even as against his own government. In this connexion, Mr. President and Members of the Court, I had been going to cite a passage from the concluding paragraph of the United Kingdom's written statement, but as Mr. Feller did me the honour to cite this passage in his own speech, I will not cite it again but I will only ask the Court to be kind enough to pay particular attention to the observations contained in it.

There is a further argument leading to the same conclusion. It is admitted that where a treaty right exists, parties to the treaty are entitled to intervene in case of a breach of the treaty, and even, in appropriate cases, to make a claim, although the individual concerned is not only not one of their own nationals, but is actually a national of the State which has committed the breach of treaty. Treaties containing minority clauses or provisions safeguarding the human rights of the population of a country, are outstanding examples of this class of treaty. If the treaty is broken, the other parties to it have the right to protest, possibly to intervene, possibly to claim, although the injured party may not be their national, and may even be a national of the State which has broken the treaty, because the claim is founded, *in law*, not on considerations relating to the individual, but on the breach of the treaty. According to this principle, therefore, a claim by the United Nations would be legally valid if it was based on a breach of the obligation of Member States, arising under or in consequence of the Charter or related instruments, to afford due protection to United Nations servants engaged on United Nations work or missions (an obligation which comports no exception on account of the local nationality of the United Nations servant concerned) ; by which I mean, Mr. President and Members of the Court, that the obligations contained in Article 105 of the Charter and in the General Convention on Privileges and Immunities, and the implied obligations which result from those written obligations, are quite general and there is no exception written into or implied from them concerning the case where the individual servant happens to be a national of the State which commits the injury. Such a claim, therefore, on the part of the Organization would be good, irrespective of any consideration of nationality, since it would be by way of enforcement of a treaty right owned by the Organization as such, or at any rate in respect of a breach of an obligation due to it by treaty, and covering the nationals of the defendant State if they are United Nations servants.

Mr. President and Members of the Court, I have now finished my arguments and I must state my conclusion, first thanking the Court for the attention given me in the presentation of a case which, however clearly I have tried to put it, is necessarily full of difficulties. I should perhaps add that, in all this, I have purposely avoided going into the question of the position of the United Nations Organization vis-à-vis non-member States. The whole case for the international personality and capacity of the Organization is so closely bound up with the Charter and its related instruments that it is obviously applicable primarily to Members of the Organization. Certain of the arguments making up this case would, however, be equally applicable to any non-member

State who could be held, in one way or another, to have recognized the international personality of the United Nations and its capacities under the Charter. Others of these arguments, in particular those founded on the obligations of Member States towards the Organization under the Charter or its related instruments, would not, as such, be applicable to non-member States, because they are not parties to the Charter, and therefore cannot have any direct obligations to the Organization under it.

I conclude then, as follows, that for the reasons which have been given in my oral statement here, and for those contained in the United Kingdom's written statement (except in so far as they are modified by the present oral statement), the Government of the United Kingdom considers that the first of the two questions put to the Court should, as a matter of law, be answered in the affirmative as regards both its point (*a*) and its point (*b*); and that the answer to the second question is that the claims of the United Nations and of the national State of the victim should be reconciled on broadly the same basis as is applicable to claims by States both or all of whose nationalities the injured party possesses, with the two exceptions already noticed in favour, first, of the priority of a claim of the United Nations over that of the victims of a national State, and secondly, of the right of the Organization to claim even when its servant is a national of the State responsible for the injury.

I thank the Court.