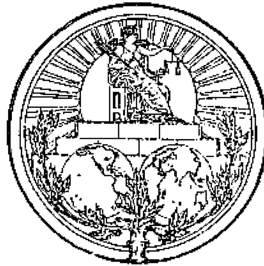
COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

1949

RÉPARATION DES DOMMAGES SUBIS AU SERVICE DES NATIONS UNIES

AVIS CONSULTATIF DU 11 AVRIL 1949.



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I.—LETTER FROM THE DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE.

New Delhi 3.
Dated the 28th December 1948.

No. D. 6693-UN. II/48.

Sir,

With reference to your telegram No. 6677 dated the 11th December 1948, notifying the dates fixed for submission of written and oral statements by the States entitled to appear before the Court on the question of reparation for damage suffered in the service of the United Nations, I have the honour to give below a statement of the views of the Government of India :

"If it is established that the United Nations, as an Organization, is competent legally to bring an international claim against the responsible State for reparation of damage caused to the victim, the Government of India consider that the only way to deal satisfactorily with the rights of the State of which the victim is a national and of the United Nations of which he was agent is to make the State as well as the United Nations parties to the proceedings in order that the rights of both may be worked out in the same proceedings."

Government of India would, however, request that they be allowed to reserve their right to be heard on the specified date.

I have the honour to be, etc.

(*Signed*) LEILAMANI NAIDU,
Officer on Special Duty,
for Deputy Secretary to the Government of India.

II.—LETTER FROM THE CHINESE AMBASSADOR TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE.

The Hague, 26th January, 1949.

No. 38/80049/20A.

Sir,

I beg to refer to your letter of December 10th, 1948, ref. HHW/EAA 6667, enclosing a copy of a letter (together with an Annex), certified as a true copy and dated December 4th, 1948, in which the Secretary-General of the United Nations transmitted to the Court a Resolution adopted by the General Assembly on December 3rd, 1948, requesting an Advisory Opinion on the question of reparation for damage suffered in the service of the United Nations, and also to your letter of December 11th, 1948, ref. GC/HW/MES 6677, stating that the Court has decided, pursuant to paragraph 2 of Article 66 of its Statute, to notify all States entitled to appear before it that it will be prepared to receive written statements up to Monday, the 14th February, 1949, and that it will hold public sittings on and after Monday, the 7th March, 1949, for the purpose of hearing oral statements.

Now, in conformity with the above-mentioned communications, I am instructed by the Chinese Government to transmit to you the following statement in respect of the two legal questions on which an Advisory Opinion of the International Court of Justice has been requested by the Resolution of the General Assembly of the United Nations of December 3rd, 1948 :—

"(A). *Question I.*

The United Nations, as a legal entity, should in no case be incapacitated from engaging itself in any juristic act which is not inconsistent with the principles and express provisions of the Charter of the United Nations. It naturally follows that, 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, the United Nations should have 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.

(B). *Question II.*

However, such capacity of the United Nations should not preclude the State of which the victim is a national from exercising such rights as it may possess, especially when that State is not a Member of the United Nations. In order to reconcile the position of the United Nations with that of such a State, some special

arrangements will have to be made between them. These arrangements may in respect of States Members of the United Nations take the form of a convention along the lines of the Convention on the Privileges and Immunities of the United Nations."

I shall be obliged if you will lay the above statement of my Government before the International Court of Justice.

I avail myself of this occasion to assure you of my high consideration.

(*Signed*) HENRY KUNGHUI CHANG,
Chinese Ambassador.

III. — OBSERVATIONS ÉCRITES DU GOUVERNEMENT FRANÇAIS SUR L'AVIS CONSULTATIF DEMANDÉ A LA COUR INTERNATIONALE DE JUSTICE

I. — De l'avis du Gouvernement français, la demande d'avis à la Cour présente, dans son principe, deux aspects fondamentaux. Un premier aspect concerne le fond du droit et un deuxième aspect concerne la procédure, la solution sur le fond du droit devant aider à la solution sur la procédure.

II. — Sur le fond du droit, la jurisprudence de la Cour permanente de Justice internationale a reconnu qu'un dommage subi par un individu peut engager la responsabilité internationale d'un État lorsque ce dernier a manqué, à son égard, aux obligations qu'impose le droit international.

Normalement, l'obligation de réparer existe au profit de l'État national de la victime. C'est pour ce dernier, suivant les termes employés par la Cour dans l'affaire des concessions Mavrommatis en Palestine, un « droit propre, le droit qu'il a de faire respecter dans la personne de ses ressortissants le droit international ».

Vis-à-vis de certaines personnes, le droit international peut prescrire aux États des obligations particulières : il est certain, par exemple, que s'agissant d'agents diplomatiques, le devoir d'assurer leur sécurité en cas de troubles est, pour l'État de séjour, plus strict que si de simples particuliers sont en cause.

Il paraît raisonnable de penser que le droit international impose aux États une obligation particulière de protection dans le cas d'agents chargés d'une mission par les Nations Unies. Et, à vrai dire, la question posée par l'Assemblée à la Cour implique sa conviction qu'il en est bien ainsi.

Cette obligation particulière ne peut exister à l'égard de l'État national de l'agent, puisque le principe même de la fonction internationale implique l'indépendance de l'agent par rapport à

cet État. La Charte, dans son article 100, précise que les fonctionnaires de l'Organisation « ne sont responsables qu'envers elle », que chaque « Membre de l'Organisation s'engage à respecter le caractère exclusivement international des fonctions » des agents internationaux.

Donc, l'État national qui reste étranger à la mission confiée par les Nations Unies à son ressortissant n'a pas de titre pour faire respecter dans la personne de celui-ci les obligations naissant pour un État tiers de la présence et de l'activité d'un titulaire d'une fonction internationale.

Sans doute lui serait-il loisible d'exercer sa protection diplomatique, comme pour tout autre de ses nationaux, afin de demander le bénéfice d'une attention spéciale de l'État dont la responsabilité est en cause, mais sans pouvoir exciper de la mission remplie qui lui est extérieure.

Par contre, l'Organisation des Nations Unies qui a défini le but et les conditions de la mission de l'agent, paraît en situation de considérer qu'elle a droit, de la part des États Membres, des États non membres par application de l'article 2, paragraphe 6, de la Charte, et même des groupes organisés qui ont sollicité ou accepté son action, à un certain traitement pour cet agent.

En prenant fait et cause pour lui, elle ne le défend pas personnellement, elle fait respecter le service public international que les États signataires de la Charte ont donné mission à ses organes de constituer.

Son intervention est tout à fait comparable à celle d'un État intervenant pour protéger un de ses consuls qui ne serait pas de sa nationalité.

III. — Si la Cour, sur le fond du droit, reconnaît que des obligations spéciales existent pour permettre aux agents des Nations Unies d'exercer pleinement leurs fonctions, la responsabilité qui en résulte pour les États intéressés peut-elle être mise en jeu par l'Organisation elle-même ? Telle est la question fondamentale qui se pose sur le plan de la procédure.

Dans une large mesure, la réponse à cette seconde question dépend de la solution donnée à la première, car il est légitime que l'Organisation des Nations Unies, si elle possède un droit à réparation, puisse disposer des moyens juridiques propres à faire valoir ce droit.

Les moyens habituellement reconnus aux États sont la négociation diplomatique et le recours aux procédures d'entente ou aux procédures juridictionnelles.

Le texte de l'article 34, paragraphe 1, du Statut de la Cour internationale de Justice empêche *a priori* toute organisation internationale de se présenter au contentieux devant la Cour, réservant cette faculté aux États. Mais c'est là un moyen dont les États eux-mêmes ne peuvent pas toujours user. Subsistent en

tout cas la négociation diplomatique, les procédures d'entente, voire l'arbitrage, sans exclure la demande d'avis à la Cour qui dans un cas donné peut mettre à la disposition de l'Organisation une opinion autorisée sur la question de droit.

IV. — Il existe sans doute des exemples d'une organisation internationale agissant spontanément pour assurer le respect du droit dans la personne de ceux qui, placés sous ses ordres, exécutaient une mission d'intérêt collectif.

Ces affaires concernent en réalité deux situations différentes : ou bien l'Organisation internationale a la responsabilité du maintien de l'ordre là où ses agents subissent un dommage, ou bien c'est une autre autorité qui possède en droit ou en fait la compétence territoriale.

Dans le dernier cas seulement se pose le problème de la procédure à employer pour obtenir réparation de l'autorité locale. Tandis que dans l'une et l'autre hypothèses se présente la question de la protection spéciale due à l'agent international.

Le Gouvernement français se permet d'attirer l'attention de la Cour sur certains de ces précédents.

V. — L'article 88 du Traité de Versailles avait prévu qu'un plébiscite déciderait du sort de la Haute-Silésie pour son rattachement éventuel à l'Allemagne ou à la Pologne, et que, à cet effet, la zone du plébiscite serait placée sous l'autorité d'une Commission internationale qui « jouirait de tous les pouvoirs exercés par le Gouvernement allemand ou le Gouvernement prussien ».

Pendant l'occupation alliée de cette zone, divers troubles se produisirent et, notamment, un officier français, le commandant Montalègre, en service commandé pour le maintien de l'ordre, fut tué au cours d'une émeute.

Une indemnité fut attribuée par la Commission et prélevée sur les fonds pour dépenses de fonctionnement et d'administration qui avaient été mises à la charge du territoire du plébiscite, par le paragraphe 6 de l'annexe à l'article 88 du Traité de Versailles.

Cette affaire ne met pas en jeu la responsabilité d'un gouvernement vis-à-vis d'une organisation internationale, puisque c'est précisément cette organisation qui remplit provisoirement les tâches gouvernementales et à laquelle incombe en conséquence la responsabilité.

Mais, du moins, étant donné qu'une responsabilité de ce genre se fonde sur les pouvoirs de police détenus par la Commission — telle était la thèse à laquelle se rangeait le ministre des Affaires étrangères français dans une lettre du 25 juillet 1921 au président de la Commission —, la solution intervenue dans cette affaire appuyait la conviction du Gouvernement français, conviction partagée par la Commission, que des obligations *spéciales* existent pour l'autorité qui exerce la compétence territoriale, à l'égard

d'agents d'une organisation internationale dans l'exercice de leurs fonctions.

VI. — L'article 352 du Traité de Versailles disposait que « l'Allemagne[1] sera tenue, vis-à-vis de la Commission européenne du Danube, à toutes restitutions, réparations et indemnités pour les dommages subis pendant la guerre par cette Commission ».

Après discussion, l'application de cet article fut prescrite par la Conférence des Ambassadeurs et la Commission du Danube entra en négociations directes avec les États intéressés, l'Allemagne, l'Autriche et la Hongrie. Ces négociations aboutirent aux Accords des 16 mai et 14 octobre 1924.

Les réclamations de la Commission ont porté non seulement sur les dommages matériels qu'elle avait elle-même subis, mais, malgré les protestations des plénipotentiaires des Puissances ennemies, attachés à une interprétation restrictive de l'article 352 du Traité de Versailles, sur les dommages causés à son personnel.

La Commission obtint une indemnité forfaitaire assortie d'une majoration, la somme versée représentant l'ensemble des dommages réclamés par la Commission quelle qu'en fût l'origine. L'on se trouve donc ici en présence de l'application par analogie du principe de droit positif traditionnel, d'après lequel l'autorité réclamante fait valoir un droit propre, qui se rapporte non seulement aux dommages qu'elle a directement subis, mais aussi à ceux qui l'ont indirectement atteinte en la personne de ses ressortissants.

VII. — Le 27 août 1923, plusieurs membres italiens de la Commission de délimitation des frontières entre l'Albanie et la Grèce, parmi lesquels le général Tellini, furent assassinés sur le territoire hellénique. Étant donné que cette Commission avait été envoyée en Épire par la Conférence des Ambassadeurs, les victimes pouvaient être considérées comme des agents de la Conférence en mission.

Le Gouvernement italien exigea des réparations, la punition des coupables, la présentation d'excuses et le salut à son pavillon. Il se livra en outre à un acte de force sous la forme d'une occupation militaire de Corfou, le 1er septembre 1923.

De son côté, la Conférence des Ambassadeurs entreprit des négociations avec le Gouvernement grec pour la réparation des dommages subis.

Dans sa lettre au Gouvernement grec du 7 septembre, la Conférence soulignait que « les personnes qui ont été victimes [de l'attentat] étaient chargées [par elle] d'une mission officielle, d'accord avec le Gouvernement hellénique qui avait à en assurer la sécurité ». Elle demandait en conséquence et notamment au Gouvernement grec : des excuses à l'adresse des représentants de

[1] Des dispositions analogues existaient dans les Traités de Saint-Germain (art. 307), de Neuilly (art. 235), de Trianon (art. 291), de Sèvres (art. 235, alinéa 2).

la Commission de délimitation, le salut de la flotte hellénique aux pavillons des Puissances alliées et la réparation des dommages subis par les officiers italiens.

Dans sa réponse du 10 septembre, le Gouvernement grec, après avoir constaté que les victimes « faisaient partie d'une mission officielle relevant de la Conférence des Ambassadeurs », « s'empressa de déclarer qu'il admettait intégralement les chefs de demande » énoncés par la Conférence.

Simultanément, le Conseil de la Société des Nations avait été saisi par le Gouvernement hellénique de son conflit avec l'Italie. Dans ses délibérations, le Conseil ne mit pas en doute la compétence internationale de la Conférence. Il reconnut également, ainsi que l'attestent les déclarations faites au cours de sa séance du 6 septembre, que « la Conférence des Ambassadeurs avait été elle-même atteinte par le meurtre des officiers italiens par elle chargés d'une mission internationale ».

Le Gouvernement italien n'a pas dénié la légitimité de l'intervention de la Conférence. Le 31 août, à la fois dans une note au Gouvernement grec, dans une communication aux grandes Puissances et dans un télégramme aux représentants diplomatiques de l'Italie à l'étranger, il a affirmé que ses propres démarches « n'excluaient pas les sanctions à prendre par la Conférence des Ambassadeurs pour le fait que la délégation italienne assassinée faisait partie de la mission de délimitation des frontières, qui, présidée par le général Tellini, était mandataire de la Conférence ».

Mais, de l'avis du Gouvernement italien, l'État italien restait le « principal offensé ».

Le délégué italien au Conseil de la Société des Nations, dans la séance du 8 septembre, a exprimé cette idée sous deux formes : d'abord l'Italie « affirme son droit de discuter la question des réparations qui lui sont dues pour le crime dont ses officiers ont été victimes » ; ensuite et en conséquence, « le Gouvernement italien ne peut pas admettre que la question de la mesure des réparations soit résolue par la Conférence des Ambassadeurs sans intervention du Gouvernement italien ».

Ayant égard à la revendication juridique du Gouvernement italien, la Conférence, dans sa note déjà citée du 7 septembre, demandait au Gouvernement hellénique de « s'engager à payer l'indemnité au Gouvernement italien, pour le meurtre de ses délégués », se contentant, pour elle, de réparations d'ordre moral. C'est ce qui fut fait en fin de compte.

VIII. — Le Gouvernement français a tenu à formuler les observations qui précèdent, sans préjudice de l'argumentation qu'il se réserve de fournir sur l'ensemble du problème.

IV.—LETTER FROM THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE.

DEPARTMENT OF STATE, WASHINGTON, D.C., February 14, 1949.

Sir:

I acknowledge the receipt of your communication dated December 10, 1948, transmitting a certified copy of a letter dated December 4, 1948, in which the Secretary-General of the United Nations transmitted to the President of the International Court of Justice certified copies of the Resolution adopted by the General Assembly on December 3, 1948, requesting an Advisory Opinion on the following legal questions:

> "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?"

The receipt is also acknowledged of your further communication dated December 14, 1948, transmitting a certified copy of the Order of the International Court of Justice, dated December 11, 1948, by which the Court fixed February 14, 1949, as the date of expiry of the time-limit within which States entitled to appear before the Court may file written statements with regard to the above request for an Advisory Opinion, and March 7, 1949, as the date of the opening of the public sittings for the hearing of oral statements. You state that in regard to the oral statements, you would be grateful, in case this Government desires to present such a statement, if it would inform you of the fact not later than Monday, February 28, 1949.

This communication may be regarded as the written statement of this Government. The Department shall inform you subsequently, and prior to February 28, 1949, should this Government desire to make an oral statement.

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 ?"

Two major problems are posed in the first paragraph of the request for an Advisory Opinion : (1) has the United Nations, as an Organization, the capacity to bring an international claim against a government, *de jure* or *de facto* ; and, (2) has the United Nations the capacity to seek reparation for damage caused (*a*) to the United Nations, (*b*) to the victim or to the persons entitled through him ? It is on these aspects of the request for an Advisory Opinion that this Government desires to address itself.

(1) Has the United Nations, as an Organization, the capacity to bring an international claim against a government, *de jure* or *de facto ?*

In the traditional sense an "international claim" is a claim by the government of one State against that of another seeking reparation for damage either to the interests of the claimant State or to that of a private citizen or a legal entity whose interest the claimant State is entitled to espouse and to represent : whether the emergence of public international organizations of sovereign States requires a redefinition of the concept of "international claim" to include claims by the United Nations and similar international organizations is a question which need not be decided at this time and as to which the United States reserves its views for the purposes of the question before the Court. It is sufficient to point out the established principle of international law that any legal entity having legal capacity whether it be a State, an individual, or a public or private entity may present claims against the government of the responsible State for reparation for losses or damages suffered by them as a consequence of acts deemed violative of principles of international law. The United Nations as a public international organization having legal capacity may therefore present claims against the government of a State for reparation for losses or damages sustained by it as a result of such violations nor is there any reason why, as frequently occurs in the case of claims asserted by one State against another, the matter of the settlement of claims on behalf of the United Nations as an organization should not be the subject of direct negotiation between it and the government of the State against which the organization's

claim is asserted. Of course there may exist certain local remedies in the tribunals of a respondent State which it may be necessary to exhaust to obtain reparation. Also there is no reason why if the claim is not settled the United Nations might not agree to submit the claim to arbitration under an agreement concluded by the United Nations with the government concerned.

Article 104 of the Charter of the United Nations 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."

While the enjoyment of legal capacity under this Article is limited to the territory of Members of the United Nations, it results that although Member States are under a legal duty to recognize the legal capacity of the United Nations, the United Nations may enjoy legal capacity in non-Member States recognizing such capacity in whole or in part. Whether in a particular case, the United Nations has "legal capacity" to bring suit in a particular State will depend upon the law of the State and the circumstances of the case.

Whether the government responsible for the loss or injury has been recognized as *de jure* or *de facto* in character by certain States is immaterial as the United Nations, as such, does not recognize States.

It is accordingly the view of this Government that the United Nations, as an Organization, has the capacity to bring a claim against a government. The United Nations, in the view of the United States, cannot "as an Organization" submit a claim to the International Court of Justice for judgment. The Court, under Article 35, is only open to "States", and the United Nations is not, under the Charter, a State, although it may possess certain attributes of a State, as for example "legal capacity" under Article 104.

(2) Has the United Nations the capacity to seek reparation for damage caused (*a*) to the United Nations, (*b*) to the victim or to the persons entitled through him ?

(*a*) In the view of the Government of the United States the United Nations could present a claim for and recover reparation for direct pecuniary loss sustained by it on account of the act of which complaint is made, responsibility otherwise obtaining.

For the information of the Court, it may be stated that the Government of the United States does not make claim for the loss of officials or employees, as such. It is understood that the same practice obtains in other countries. A claim of the Government of the United States on behalf of an official or employee, or of his dependents, is limited so far as the claim of the Government itself is concerned—as distinguished from any claim presented by it on

behalf of the victim or his dependents—to its actual losses or extraordinary expenses arising as a direct result of the wrongful act. Reimbursement for annuities paid by the Government of the United States under sections 831 and 832 of the Foreign Service Act of 1946 (60 Statutes at Large 999, 1021-1022 ; 22 United States Code sections 1081, 1082), for example, would not be regarded as such a direct result.

(*b*) In such a situation as envisaged under (*b*) of paragraph I of the question submitted to the Court, the United Nations, as an Organization, is without capacity, under ordinary circumstances, to bring an international claim against a government with a view to obtaining the reparation due in respect of the damage caused to the victim or to the persons entitled through him. The basis of an international claim is, in theory, an injury to, or loss suffered by, the State of which the claimant is a national. 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, and that failing, in an appropriate case, to present it to a proper international forum.

However, Article 100 of the Charter of the United Nations contemplates that officials of the Organization shall be "international officials responsible only to the Organization". Occasionally, such individuals, or those entitled through them, may be stateless and have no government to make claims on their behalf. Under such circumstances, no reason is perceived why the United Nations should not have capacity to intervene to support the claim of the stateless individual.

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 ?"

In view of the character of the answer properly to be given to question I (*b*), comment on paragraph II of the question submitted to the Court becomes unnecessary.

Very truly yours,

For the Secretary of State,
(*Signed*) JACK B. TATE,
Acting Legal Adviser.

V.—WRITTEN STATEMENT PRESENTED BY THE GOVERNMENT OF THE UNITED KINGDOM UNDER ARTICLE 66 OF THE STATUTE OF THE COURT AND THE ORDER OF THE COURT DATED 11th DECEMBER, 1948.

I.

By a Resolution dated December 3rd, 1948, the General Assembly of the United Nations decided to request the International Court of Justice for an Advisory Opinion on certain questions relative to the right of the United Nations to claim reparation from States or governments responsible for injuries done to United Nations servants in the course of the performance of their duties. The specific questions put to the Court were the following :

> "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 [1] 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 ?"

2. The matter arose out of a Memorandum by the Secretary-General of the United Nations dated the 7th October, 1948, and submitted to the Assembly as Document A/674. In this Memorandum the Secretary-General drew attention to a number of cases which had occurred during the previous year, mainly with reference to Palestine, in which members of the United Nations Secretariat or other persons discharging duties as members of United Nations Commissions had been killed or injured while performing their official duties, one of the most recent and prominent cases being that of the murder of Count Bernadotte, the United Nations Mediator in Palestine, and his companion Colonel Sérot, a United Nations Observer. The Secretary-General's Memorandum went on to record the fact that under various domestic arrangements the Secretary-General had paid out considerable sums to the injured persons themselves or to their dependents by way of indemnities, compensation, and medical and other expenses.

[1] So far as the Government of the United Kingdom is aware, there is no difference of principle between the two cases.

3. In the light of these facts, the Secretary-General raised the question whether it was desirable and possible for the United Nations, as an Organization, to claim reparation for these injuries (or alternatively reimbursement for the payments which it had itself made) from the States or governments in whose territories or by whose action the injuries had occurred, in all those cases where the circumstances were such as would normally, under the general principles of international law, entail the international responsibility of that State or government. On this question, the general line taken in the Secretary-General's Memorandum was that it was both desirable and legally possible for such a claim to be made by the United Nations. On the legal issues, the Memorandum, while admitting that no case had previously presented itself which was precisely analogous to those under consideration, and that no case had been found in which an international organization had presented a claim against a State for injury to, or death of, one of its officials or agents, pointed out that there was a very large body of legal precedent, and of accepted rules of international law, relating to the responsibility of *States* for injuries to the nationals of other States, and for the right of States to make international claims in these cases. The view put forward by the Memorandum was in effect that, by analogy, the United Nations, as an Organization, could be regarded as having rights in this respect similar to that of States. This view was expressed in the two following passages :

> "It is the view of the Secretary-General that the same principles on which this legal doctrine is based lead to the conclusion that an injury to an agent of the United Nations in the course of his official mission, committed by a State in violation of international law, is an injury to the United Nations, and that the United Nations is entitled to claim reparations for such an injury.
>
> The Secretary-General has no doubt that the United Nations, which has capacity to enter into international agreements with States, possesses the legal capacity to present a claim under international law against a State, whether a Member or non-Member of the United Nations."

It will be appreciated that the sole question at issue here is that of the *capacity* of the United Nations, as an Organization, to make claims of this kind, on the assumption that grounds for such a claim otherwise exist. Moreover, the question is essentially directed to the capacity of the Organization under *international* law to make a claim on the *international* plane, and not to its capacity under the domestic laws of the different Member States to bring claims and proceedings to their courts, this last question not being in any real doubt for reasons to be given later. The Secretary-General's Memorandum clearly raises the international

issue, but it also expressly disclaimed any intention, at that stage, of putting the question whether the injuries to United Nations servants which had actually given rise to this problem had occurred in circumstances involving the international responsibility of any State or government [2].

4. It will be seen that the first of the two questions put to the Court distinguishes under its heads (*a*) and (*b*) between the damage which the United Nations, as an Organization, has itself suffered by the death of or injury to one of its servants, and, on the other hand, the damage suffered by the victim or his dependents. In the first category would come damage resulting to the Organization from the fact e.g. that it had lost a valuable servant and that this might result in loss to or expenditure by the Organization, e.g. arising from the necessity of having to send someone to replace him, or train someone else to do the work. In this category might also come the expense to which the United Nations was put by reason of paying indemnities to the injured party or his dependents (see further below, paragraph 16).

5. The second of the two questions put to the Court arises out of the fact that, except where the United Nations employee concerned happens to be stateless, the general principles of international law would allow of a claim being put forward by his own national State in respect of the injury done to him or to his dependents. The question arises, therefore, in such a case, which is the proper party to make the claim, assuming that the United Nations has the necessary capacity to make an international claim at all. The formal right of the national State to put forward a claim cannot, in any event, be denied, although the measure of the damages due to that State may be affected by the fact that the victim is already in receipt of adequate compensation under the arrangements made by the United Nations.

6. In the opinion of the United Kingdom Government the questions put to the Court involve four main issues, which can be stated as follows :

(i) Does the United Nations, as an Organization, possess international personality and if so what is the general character of this personality ?

(ii) Does such international personality as the United Nations may possess include the capacity to bring an international claim in the circumstances contemplated by the questions put to the Court ?

[2] In the same way the question of capacity is entirely without prejudice to the applicability of all the ordinary rules governing international claims—such as the rule about the exhaustion of municipal remedies—assuming that capacity to bring the claims exists.

(iii) If so, does this capacity relate only to the damage caused to the United Nations itself, as an Organization, or does it also extend to enabling the United Nations to claim compensation for the victim or his dependents ?

(iv) If the capacity of the United Nations does extend so as to cover a claim on the latter basis also, what is to be the relationship between any United Nations right of claim on this basis, and the right of the State of which the victim is a national to make a similar claim?

7. On the first question, the international personality of the United Nations as an Organization, the United Kingdom Government considers that it would be difficult to deny the existence of some form of international personality, even though this may not be stated in terms in the Charter. It is important not to confuse this question, in either the positive or the negative sense, with that of statehood. The United Nations Organization is not a State and has virtually none of the essential characteristics of a State. On the other hand, while all sovereign independent States are international persons, it does not follow that there are no international persons other than sovereign independent States. On the contrary it is now widely admitted that such personality, in a greater or lesser degree (and if not for all, at any rate for some, purposes), may be possessed by other entities or organisms such as (*a*) protected States or other semi-dependent territories not fully sovereign and independent ; (*b*) entities which are not States at all, such as the Vatican between 1870 and 1929, the International Labour Office and the late League of Nations ; (*c*) composite international persons such as Real Unions, and Federations of the kind where the constituent members themselves retain a measure of international personality side by side with that possessed by the Federation as a whole ; and (*d*) miscellaneous entities or authorities such as parties to a civil war where these have received international recognition as belligerents or insurgents. Of course not all these organisms or entities have in every case been universally recognized as possessing international personality ; nevertheless there do seem to be grounds for the general proposition that the possession of international personality is not necessarily dependent on statehood, and conversely that the possession of statehood is not a *sine qua non* of having the status of an international person [3]. If, therefore, statehood

[3] It would be out of place in this Memorial to discuss all the possible cases in full, but reference may be made to Oppenheim, Vol. I, Sections 63-70, 75 *a*, 85-89, 90-93, 104-107 and 167 *c* ; and the following points may be noted (the quotations are taken from Lauterpacht's 7th edition).

(*a*) Of not fully sovereign States, Oppenheim (§ 65) says : "That they cannot be full, perfect and normal subjects of international law, there is no doubt. But it is wrong to maintain that they can have no international personality whatever.... They often enjoy in many points the rights, and

is not the test, then what is ? The answer seems to be the possession of international rights and obligations, for since only persons, natural or juridical, can have rights and obligations (for present

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fulfil in other points the duties of international persons.... No other explanation of these and similar facts can be given except that these not fully sovereign States are in some way or another international persons and subjects of international law.

(*b*) Speaking of certain other entities, Oppenheim (§ 63) says : "there are also apparent .... international persons—such as Confederations of States and insurgents recognized as a belligerent Power in a civil war. These are not .... real subjects of international law, but in some points are treated as though they were international persons." As regards parties to a civil war, to whom recognition of belligerency (or the more limited recognition of insurgency) is extended, there is no doubt that they thereby become invested with certain rights and obligations vis-à-vis other States which are the subject of and governed by international law ; yet there is no question of these entities being States or even, in the true sense, governments. Nevertheless, according to the doctrine set out in this Memorial, they do acquire some form of international personality, because only international persons of *some* kind can have international rights and duties.

(*c*) Of a Real Union Oppenheim says (§ 87) that it "is not itself a State but .... a union of two fully sovereign States which together make one single but composite international person". The German Federation from 1866 to 1918 is an example of an entity which possessed international personality over and above that of its constituent members, since the individual German States were by no means deprived of all such personality, and retained the right to receive and accredit diplomatic missions, and, within a limited sphere, to conclude treaties with States outside the Federation.

(*d*) The position of the Vatican between 1870 when Italy annexed the Papal States, and 1929, when, by the conclusion of the Lateran Treaty, the Holy See once more acquired a degree of territorial sovereignty, affords a good illustration of international personality possessed in some sense by an entity which was not a State at all. Of this period in the history of the Vatican, Oppenheim (§ 105) says : "Several foreign States sent, side by side with their diplomatic envoys accredited to Italy, special envoys to the Pope, and the latter sent envoys to foreign States. They concluded with the Holy See agreements, usually called concordats, which they treated in most respects as analogous to treaties. The question of the position of the Holy See was widely discussed in the literature of international law and many writers, including the author of this treatise, were of the view that although the Holy See was not an international person, it had by custom and tacit consent of most States acquired a quasi international position." Another interesting, if limited, example cited is that of the Maltese Order. In 1884 Italy recognized the Order's right of legation and in 1929 its right to be described as sovereign. In 1935 the Italian Court of Cassation held that the Order was an international person (*Giurisprudenza Italiana*, 1935 I (i), p. 415). At this time also representatives of the Order formed part of the diplomatic corps at Vienna and Budapest. For an account of other cases in which municipal courts have held international organizations to be international persons, see Oppenheim, p. 776, note 5, in the 7th edition of Vol. I.

(*e*) Oppenheim also seems to suggest (§§ 107 and 340 gg) that the International Labour Office may for certain purposes rank as an international person. Of the League of Nations (the structural resemblance to which of the United Nations is very marked), Oppenheim says (§ 167 *c*) : "The prominent opinion was that the League, while using a juristic person *sui generis*, was a subject of international law and an international person side by side

purposes the class of rights and obligations *in rem*, relating to specific pieces of property can be ignored) then any entity which has rights and obligations is a person, and, if the rights and obligations concerned are essentially international in character, the personality must be international also. This point can be put in another way. Most authorities postulate that States are subjects of international law. But States are admittedly international persons. It seems to follow that any entity which is, in a greater or lesser degree, a subject of international law must, to that extent, be an international person. Now any entity which is, qua entity, possessed of international rights and duties must be a subject of international law. Hence, if the United Nations is possessed of such rights and duties, it has, as an Organization, international personality.

8. If this reasoning is correct, it follows that to ask whether the United Nations, qua Organization, has (in what precise degree remains to be considered) some form of international personality, is equivalent to asking whether it has international rights and duties. The most up to date pronouncement on the position of the United Nations in this respect from the standpoint of general international law is that contained in Professor Lauterpacht's 7th edition of Oppenheim's *International Law*, which it will be convenient to quote *in extenso* :—

"The United Nations is the legal organization of the international community. It has a legal personality distinct from that of its members. That fact is to some extent brought out by Article 104 of the Charter which provides that 'The Organization shall enjoy in the territory of each of its members such legal capa-

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with the several States.... Not being a State, and neither owning territory nor ruling over citizens, the League did not possess sovereignty in the sense of State sovereignty. However, being an international person *sui generis*, the League was the subject of many rights which, as a rule, can only be exercised by sovereign States. For instance, the League possessed the so-called right of legation; was able to exercise sovereign rights over such territories as were not under the sovereignty of any State (as it did for a time in the Saar Basin); was able to intervene between two disputing member-States and, exceptionally, in the internal affairs of a member-State; was able to exercise a protectorate over a weak State (Danzig); and was, perhaps, able to declare war and make peace." The analogy between much (though not all) of this and the position of the United Nations Organization is striking.

(*f*) The divorce of international personality from the conception of statehood is illustrated by the fact that a State may be a State and yet not be an international person, or a subject of international law, if it has not received recognition as part of the family of nations. The extreme view on this subject is expressed by Oppenheim (§ 71) as follows: "Through recognition only and exclusively a State becomes an international person and a subject of international law." All this suggests that if an entity is in fact recognized as having international rights and obligations, subject to and governed by international law, it must be an international person, whether it is a State or something else.

city as may be necessary for the exercise of its functions and the fulfilment of its purposes.' There was apparently some apprehension—for which there was no basis in fact—lest the express conferment of 'international personality' upon the United Nations be interpreted as creating a super-State [4]. In the Convention on the Privileges and Immunities of the United Nations, approved by the First General Assembly in 1946, Article I provided expressly that 'The United Nations shall possess juridical personality' and that it shall have the capacity to contract, to acquire and dispose of immovable and movable property, and to institute legal proceedings. That juridical personality is not limited to capacity for action in the sphere of private law [5]. The Charter itself recognizes the contractual capacity of the organs of the United Nations in what is in effect the wide sphere of treaties. Thus Article 43 of the Charter provides for agreements between the Security Council and the Members or groups of Members of the Organization concerning the armed forces and other forms of assistance to be contributed by them for the maintenance of international peace and security; it is laid down that these agreements shall be subject to ratification by the signatory States in accordance with their constitutional processes. Article 62 provides for agreements to be made by the Economic and Social Council with various specialized international organizations brought into relationship with the United Nations. A number of such agreements have been concluded. The First Assembly adopted, for the guidance of the Secretary-General, a draft Convention between the United Nations and the United States of America in connexion with the establishment of the seat of the United Nations in that country. The United Nations as such may also exercise direct jurisdictional and legislative powers, as, for instance, with regard to its seat or such trust areas as, according to Article 81 of the Charter, may be placed under the administrative authority of the United Nations.

The United Nations, thus endowed with an international personality of its own in its capacity as the legal organization of the international community, is a juristic person *sui generis*. The question of the legal nature of the potentially universal association of States constituting the political organization of mankind transcends that of any accepted classification of composite States...."

[4] *Footnote by the U.K. Government.*

This is probably true, but, for the reasons given in footnote 6 below, should not be given undue weight.

[5] *Footnote by the U.K. Government.*

In so far as this is intended to suggest that the Convention on Privileges and Immunities directly confers international personality, as such, on the Organization, the United Kingdom Government would feel some difficulty in subscribing to it, for the reasons given in paragraph 12 below. The arguments which, in the opinion of the United Kingdom Government, can, in the present connexion, legitimately be based on this Convention are set out in the same paragraph.

Thus it will be seen that the view taken by Professor Lauterpacht of the international personality of the United Nations Organization is broadly similar to that taken in respect of the former League of Nations as set out in paragraph (*e*) of footnote 3 above.

9. A number of points may be noticed in addition to those made by Professor Lauterpacht. It might theoretically be possible to regard the United Nations as a mere assemblage, as a sort of association, of States, and the rights and duties of the United Nations under the Charter as vesting in the individual Members jointly and severally. This however would be inconsistent with the language of the Charter (and, as with all other international organizations, it is of course the Charter as the constitutive instrument which must primarily govern all questions affecting the state of the Organization). The Charter continually uses such phrases as: "The Organization shall ensure....", "The Organization shall make recommendations....", "The Organization shall initiate negotiations....", "The United Nations shall establish....", "The Organization shall enjoy...." (see for instance Article 2, paragraph 6, and Articles 58, 59, 75, 104 and 105). Other Articles (e.g. 60, 83 and 85) speak of "The functions of the *Organization*", "The functions of the United Nations". All this is the more striking in that where the rights or obligations of the individual Members, in contradistinction to those of the Organization itself, are intended, the appropriate wording is employed (see for instance Article 2, paragraphs 2-5, and Articles 25, 35, 43, 45, 49, 56, 73 and 74). The antithesis is very striking in certain Articles which provide for duties clearly to be owed, not by the individual Members to each other, but by each of them to the Organization as a whole, and as such. For instance Article 2, paragraph 5, says that "All Members shall give *the United Nations* every assistance in any action *it* takes in accordance with the Charter and shall refrain from giving assistance to any State against which *the United Nations* is taking preventive or enforcement action" (italics added). Again there are provisions, such as those of Article 56, which state that "All Members pledge themselves to take joint and separate action *in co-operation with the Organization* [not "in co-operation with each other" or "with other Members"] for the achievement of....", etc. (italics added). Such language is difficult to reconcile with any other view but that the framers of the Charter regarded the Organization as possessing an international corporate capacity of its own, separate and distinct from that of its individual Members or of the plurality of its members [6]. It being clear therefore that,

[6] Too much importance should not, therefore, be attached to the fact, referred to in the passage from Oppenheim above quoted, that the framers of the Charter, for reasons of a political character, refrained from doing what has been done in the constitutions of certain other international organizations (see for instance Article 89 of the Havana Charter of the I.T.O.) drafted in the light of later

under the Charter, many duties are owed by the Members of the Organization, not to one another, but to the Organization as such, it must follow that, if these duties are not carried out, it is the Organization which has a right to complain and to claim their fulfilment—or, where appropriate, reparation for their non-fulfilment. This is not to say that individual Members may not have an independent and concurrent right of complaint, or that they are precluded from making it directly to the Member whose conduct is in question ; but in general, and according to what has become the established practice in the Organization, complaints of breaches of the Charter, or non-fulfilment of prescribed duties, are made in, and dealt with by the Organization itself, as an organizational matter and according to the forms and procedures of the Organization as provided in the Charter. Certainly, as handled by and within the Organization, allegations of a breach of the Charter do not, or at any rate do not exclusively, have the character of disputes between Members : rather do they have the character of issues between the Organization as a whole and the offending Member.

10. Broadly similar conclusions emerge from a consideration of the agreements entered into by the Organization or its constituent organs. For instance the so-called Headquarters Agreement with the United States, as the country in which the Organization has its site, is concluded between the Government of the United States and the Organization. This might not be conclusive in itself since private persons and juristic entities do often enter into agreements with foreign governments, and such agreements in no way rank as international agreements. But where an agreement is made by and in the name of an Organization consisting of, and representing, some half a hundred or more fully sovereign independent States, and the other party to it is another such State, it becomes very difficult to regard the agreement other than an international agreement. But only international persons can be parties to international agreements *stricto sensu*. Hence the United Nations Organization is an international person [7]. In just the same way, and perhaps even more clearly, must any military agreements made under Article 43 of the Charter, between Members, or groups of Members of the Organization, and the

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experience, namely to provide *in terms* that the Organization shall possess international legal personality, as well as the domestic or municipal juridical personality which clearly results from Article 104 of the Charter and Article I, Section 1, of the General Convention on the Privileges and Immunities of the United Nations.

[7] Equally, if the Government of the country in which the Organization is situated broke the agreement, with resulting loss or damage to United Nations property or funds, there can be no doubt either that it would be the Organization as such which would be prejudiced by the breach of the agreement made with it, and which would be entitled to claim ; or that the claim would be international in character.

Security Council, rank as international agreements, governed by international law; and the entity making them (for the Security Council would clearly act as the agent of the Organization in making these agreements) rank equally as an international person. Without such personality the Organization cannot have the status requisite to enter into agreements of this character, and therefore the existence of such personality is a logical deduction from the capacity of the Organization, under the Charter, to enter into these agreements.

11. Attention should also be drawn to the position of the United Nations with reference to the International Court of Justice itself. There is no doubt that the Court is an international court. It is also, according to Article 92 of the Charter, "the principal judicial organ of the United Nations". It would be a strange anomaly if an international court were the "principal judicial organ" of an entity which was not itself an international person. Article 92 also states that the Statute of the Court "forms an integral part of the present Charter". Article 96 of the Charter gives the Organization the power, through the General Assembly or the Security Council to request an Advisory Opinion from the Court, and Article 66 of the Statute enables the Organization in such a case to present written and oral arguments to the Court. None of this can easily be reconciled with the view that the United Nations is not an international person.

12. The foregoing argument is based on the view that if the United Nations can be shown to have international rights and obligations, it must be an international person. The matter can also be approached in a slightly different way. Is the United Nations, qua Organization, a juristic person at all, international or other? The answer to this is not in doubt. Article 104 of the Charter states 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". The detailed application of this provision is contained in the General Convention on Privileges and Immunities, Article I, Section 1 of which provides that the United Nations shall possess juridical personality and shall, *inter alia*, have the capacity to institute legal proceedings. Now, in view of the Preamble to the Convention, which recites Articles 104 and 105 of the Charter and indicates that the substantive provisions of the Convention are directed to giving effect to those Articles, it would, in the opinion of the United Kingdom Government, be difficult to argue that the Convention, purely in itself, goes further than Articles 104 and 105 go, i.e. that it goes further than to confer on the United Nations certain personality and capacity "in the territory of each of [the] Members [of the Organization]". In brief it does not, of itself, go further than to give the United Nations a right to be regarded,

in the territory of each of its Members, as being a juristic entity and a juridical person under and for the purposes of the laws of that territory, i.e. personality in the domestic and municipal sphere, analogous to that possessed by any private company or corporation [8]. Nevertheless, although the scope of the Convention is thus limited, since it is entirely governed by Articles 104 and 105 of the Charter, and they are limited to the position of the Organization "in the territory of each of its Members", it does, in combination with those Articles produce at least this result, that the Organization is *a* juristic person, even if only, so far as these provisions are concerned, a juristic person under domestic and municipal law. But it has (it is hoped) been shown above that the Organization is invested with rights and duties essentially international in character. The combination is therefore that of an entity which is, on any view, *a* juristic person and which also has *international* rights and obligations. The result is an international person, possessed of international personality and (to an extent still to be discussed) international capacity, since only international persons can have international rights and obligations.

13. In conclusion on this part of the argument, it may be noticed that even if, contrary to the view suggested above, the Organization, as such, were not regarded as having a distinct international personality, and were simply regarded as a union or association of States, analogous on the international plane to an association or partnership of individuals in private law, it would still not follow that it was devoid of all international personality, or at any rate of all international capacity. A private firm or partnership under private law, although it may have no actual juridical personality separate and distinct from that of the individual partners (such as is the position under English, though not, it is thought, under all systems of law), is nevertheless not wholly devoid of something analogous to personality. It can for instance sue and be sued in the firm's name and can, as a firm, make pecuniary claims.

14. Assuming for the purposes of the present argument that the Organization has international personality, the next question which arises is the second of those set out in paragraph 6 above, namely what is the exact content and extent of such personality and what precise rights and capacities does it cover. For reasons already given it clearly need not—and, in the opinion of the United Kingdom Government it equally clearly does not—follow that

[8] As a consequence of the position which the United Nations is entitled to enjoy under the laws of its several Members, there can be no doubt as to its capacity to make claims on the domestic or municipal plane against any one of those Members and to bring proceedings in the municipal courts of the country concerned, under its domestic law. That is not in doubt, and the question here in issue is essentially that of the capacity of the Organization to bring an *international* claim under *international* law.

the international personality of the Organization gives it the same status as a sovereign State. While it may, by analogy, enjoy certain rights analogous to those possessed by a sovereign State, it is by no means entitled to exercise all such rights, and only brief reflection is necessary to indicate that a wholly impracticable situation would arise if the Organization as such were deemed to have the position and status of a sovereign State, and to be entitled to exercise all the rights and functions of such a State. The question here at issue, therefore, resolves itself into one of determining what is the precise content and extent of the international personality enjoyed by the Organization, and what exact rights and capacities it covers, or rather, more particularly, whether this personality and these capacities extend to the bringing of claims on the international plane in respect of injuries done to employees of the Organization in circumstances entailing the responsibility of some State or government. As there are virtually no applicable precedents or rules of law, the matter becomes one of drawing a series of necessary or reasonable inferences from the premise that some degree of international personality is possessed by the Organization, and of the construction of the relevant texts such as the Charter and the General Convention on Privileges and Immunities.

15. On this basis, the governing factors appear to be, first, that any entity possessed of juridical personality must be deemed, as an inherent and necessary attribute of its personality, to possess the capacity to protect its interests and, up to a point at any rate, those of its servants in the exercise of their functions, and that this must include the capacity to make claims for reparation in respect of injuries, and further that if the personality is an international one the capacity in question must exist on the international as well as on the domestic plane ; secondly, that Articles 104 and 105 of the Charter and the provisions generally of the Convention on Privileges and Immunities, limited though they may be in form by the words "in the territory of each of its Members", are evidence of an intention that the Organization should have all such capacities as are "necessary for the exercise of its functions and the fulfilment of its purposes", and it seems clear that the Organization is liable to be prejudiced in exercising its functions and fulfilling its purposes if it has not the capacity to claim in respect of injuries to itself and its servants and to protect its servants in the performance of their duties ; and thirdly that Article 100 of the Charter (more fully discussed below) and Sections 18 and 22 of the Privileges and Immunities Convention [9] show a clear

[9] These two sections provide (*inter alia*) for the immunity and inviolability of officials of the Organization and of experts on Missions for the Organization, in the territories of all Members ; and this is of course irrespective of the nationality of the person concerned, or of the fact that it may be that of the country he is operating in.

intention to create for the Organization, its officials and experts on United Nations Missions a status of independence, especially independence of all national or nationality considerations.

16. Passing on to the third of the issues set out in paragraph 6, it would seem to follow from what has just been stated that there can be no doubt as to the capacity of the Organization to bring a claim on the international level in respect of direct loss or damage suffered by itself as an Organization in consequence of the death of or injury to its servant—arising for instance from the necessity of replacing him. Next, there is the question whether, in this category, there can properly be included the reimbursement to the United Nations of sums which it may have paid out to the victim or his dependents by way of compensation or otherwise. In so far as the Organization has, under its contracts or agreements with the employees concerned, an *obligation* to make these payments, it would seem reasonable to hold that the United Nations has a claim which could properly be classed as one of loss suffered by itself. This might not be the case where the arrangements for compensation did not result from any contractual obligations already entered into by the Organization, but consisted of payments made on a voluntary or *ex gratia* basis. Furthermore, questions of the proper measure of damages recoverable by the United Nations, and payable by the State responsible for the injury, may arise where the scales of compensation paid by the United Nations exceed those which would be paid in comparable circumstances by a State or government. On the whole, it would seem that the recovery of these sums under the head and in the guise of reparation for loss suffered by the Organization itself, must be confined to cases in which the Organization is contractually obliged to make the payments concerned, and within the limits to which such payments are reasonable in amount having regard to all the circumstances.

17. There remains the case of the right of the United Nations to make an international claim directly on behalf of the victim or his dependents (i.e. not by way of reimbursement to the Organization itself). Here, it may be somewhat less clear that the international personality of the Organization covers the right to make such a claim. Indeed, if it be admitted that, whatever international personality the Organization may have, it is not a sovereign independent State, and does not possess more than certain particular rights and capacities analogous to those of a sovereign State, it might be argued that such a claim should be ruled out at once, because the basis upon which States put forward claims in consequence of injuries done to individuals, and in respect of the loss or damage suffered by those individuals or their dependents, is normally the nationality of the injured party and the fact that he is a national of the State making the claim. The State has

accordingly suffered an international wrong in the person of its national, for which it is entitled to claim ; the measure of damages (apart from any direct losses to the State itself) being the loss suffered by the injured party or his dependents. Now, as the United Nations is not a State and there is no United Nations nationality, it is clear that a claim for compensation to the victim or his dependents could not be made by the United Nations on the same basis as is done by a State. Furthermore, it might be argued that there is no recognized basis, other than nationality, upon which such a claim could be made. It is true that States do make claims arising out of injuries done to persons in foreign countries where these persons, although not their nationals, are connected in some other way with the claimant State, e.g. are in its service. But in that case the basis of the claim is the international wrong done to the State itself, arising from the direct loss or damage suffered by it owing to the disablement or loss of a person in its service. Indirectly, in such a case, the claim might cover compensation to the victim or his dependents where the State concerned had itself, under a contractual liability, paid such compensation on a reasonable scale, and was therefore entitled to reimbursement on the ground that the action of the defendent State had involved the claimant State in loss to that extent. If these considerations are correct, and if they were the sole considerations applicable, it might seem that, unless a claim covering compensation for the victim or his dependents could be brought under the head of reimbursement to the United Nations Organization itself of such reasonable sums by way of compensation as it may have paid out, and consequently under the head of reparation for an actual loss suffered by the Organization as such, there would be no other basis for a claim than that of nationality ; and this would rule out the possibility of such a claim being made by the United Nations.

18. It appears to the Government of the United Kingdom, however, that other considerations are applicable, and that grounds exist for implying, from such international personality as the Organization may be assumed to possess, and from the relevant texts, a right to intervene directly on behalf of the Organization's injured employees and to claim compensation for them or their dependents. Thus, while it must be granted that the analogy with a State is imperfect, yet just as a State is entitled to protect its nationals, so the Organization being assumed to have international personality, a similar right of protection on behalf of its servants might be predicated if, for instance, some relationship between the Organization and its servants, analogous in the circumstances to that of nationality, were found to exist. On enquiry it would seem that some such relationship does exist, at any rate as regards the regular and permanent staff of the United Nations Secretariat. While these persons have not lost their own ordinary

nationality upon joining the United Nations Organization[10], it would seem that their allegiance to, and connexion with, their own country is for the time being in abeyance as regards all matters connected with their work, and is, in those respects, superseded by an overriding allegiance to, and connexion with, the United Nations Organization. The primary duty of such persons in all matters affecting the work of the Organization is to the Organization itself, and not to their own national States. This principle is enshrined in Article 100 of the Charter which in terms refers to members of the Secretariat as being "responsible only to the Organization", and it says that in the performance of their duties the staff shall not seek or receive instructions from any government or from any other authority external to the Organization, and that they are to refrain from any action which might reflect on their position as international officials "responsible only to the Organization". This last phrase must mean that there is a duty upon the staff to refrain from any action of this kind (even where it might be favourable to their countries) if it would conflict with their position as being solely responsible to the Organization. Correspondingly, by the second paragraph of Article 100 each of the Member States of the United Nations "undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff, and not to seek to influence them in the discharge of their responsibilities". In consequence, when a member of the regular staff of the United Nations is injured in the course of the performance of his duties, and in circumstances entailing the responsibility of a State or government, the Government of the United Kingdom considers that it would be a reasonable inference to draw from the special nature of the connexion between the staff and the Organization, as enshrined in Article 100, and the effect of this special connexion on the normal allegiance owed by every individual to his own national State, that the Organization should have the right to claim compensation on behalf of the individual concerned. The individual concerned is indeed in a position analogous to that of a person having dual nationality and possessing a double allegiance. But, by the same token, and applying the doctrine of master nationality or allegiance, it might well be considered that, where a case of this kind arises (i.e. one of injury suffered in the course of the performance of United Nations duties by a person owing primary responsibility to the Organization rather than to his own national State), the party having the prior right to make a claim for compensation on the individual's behalf is the Organization rather than the national State concerned, given the circumstances out of which the claim

[10] The case is of course even stronger when the employee concerned happens to be stateless, because then he has no other possible protector, and the Organization might be said to be as it were *in loco parentis* from a nationality standpoint.

arose and the predominant allegiance to the Organization owed at the time, and in respect of his work, by the injured person.

19. These considerations apply with less force to the case of persons not members of the regular staff of the Organization but employed temporarily or *ad hoc* for some special purpose, e.g. to act as mediators in a dispute or to serve as members of a commission. In some cases it is clear that members of a commission, although their expenses and emoluments may be paid out of United Nations funds, and although they may be bound by the terms of reference of the commission, are nevertheless acting primarily as representatives of their own governments, rather than in their personal capacity and/or as representatives of the Organization as a whole. In such cases it is difficult to see any reason for departing from the normal rule that any claims for compensation for injuries done to those concerned, should be made by their own national States rather than by the Organization. In other cases it may be clear that, although the employment is only temporary, the person concerned is employed in his personal capacity and/or as representing the Organization, and is in no sense a delegate or representative of his own country as such. These cases might, by analogy, be treated as similar to those of members of the permanent staff. Some of these appointments, though temporary, are extremely important, and they entail, no less than in the case of the permanent staff, the necessity that, while they last, the primary allegiance of the person concerned, in all matters concerning the work he is doing, should be to the Organization rather than to his own country. Consequently, there is in principle no reason for differentiating these cases from that of members of the permanent staff.

20. To sum up the views of the Government of the United Kingdom on this part of the subject, while there may be reasons, arising mainly from the principle of nationality, for doubting whether the international personality of the United Nations Organization covers the right to claim compensation on behalf of the victim or his dependents (except in cases where the United Nations, having itself paid such compensation within a reasonable figure, may be able to claim it under the head of damage resulting to itself), there are, nevertheless, grounds, based (*a*) on the special nature of the relationship between the Organization and its servants, (*b*) on the necessity for the Organization to enjoy all such capacities as are necessary to exercise its functions and to fulfil its purposes, and (*c*) on the importance of the Organization and its servants being free from any limitations deriving from considerations of nationality, for concluding that the Organization is possessed of the necessary capacity to make claims directly on behalf of its servants or their dependents

(1) where the injured party is a regular member of the permanent staff of the Organization;

(2) where, although temporarily employed, he is employed in his personal capacity and/or solely on behalf of the Organization, and is not acting as the representative of his own country.

II

21. On the assumption that the Organization may be regarded as having, to the extent above suggested, the right to put forward claims for compensation on behalf of the injured party, there arises the question, which is the fourth of those indicated in paragraph 6 above, and the second of the two main questions put to the Court, namely, what is to be the relationship of such a claim with any similar claim which the government of the injured party's national State may have a parallel right to make, or, as the matter is put in the question addressed to the Court, how action by the United Nations is to be reconciled with the rights of the national State. The Government of the United Kingdom does not consider that there is necessarily any conflict between these two possible claims. Moreover, the issue is not really a new one, because the possibility of a dual right to make a claim on behalf of the same individual has already long been in existence, in view of the possibility that individuals may possess more than one nationality. There is, therefore, nothing specifically new in this situation, and (with one probable exception) whatever rules are properly to be applied in dealing with it when it arises as between two different countries, both of whose nationalities is possessed by the injured party, should, broadly speaking, be applicable to cases where a claim can properly be put forward both by the national State concerned and by the United Nations Organization. Where two States are concerned, of both of which the injured party is a national, there can be no doubt that both have a formal right to make a claim in all those cases where the injury took place in the territory of, or as the result of action by, some third State. Where, on the other hand, the injury took place in the territory of one of the two national States concerned, or by reason of its action, then according to the general rules applicable under international law, no claim would normally lie at the instance of the other national State. It is probable, however, that in this respect the United Nations is possessed of superior rights, for reasons to be discussed later. But where the injury entails the responsibility of a third State, although, as just indicated, both the national States would have a formal right to claim, seeing that they would both, as States, have suffered an international wrong in the person of their national, yet when it comes to computing the measure of the loss and damage suffered by the respective States, different

considerations apply. A State certainly has a right to claim on the ground of the international wrong suffered by it through the illegal action of another State towards its national. But it is generally accepted that the measure of the damages which such a State may be entitled to recover in such a case, apart from any direct loss or injury which it may itself have suffered, is the damage suffered by the individual or by his dependents. Now in many cases, the injured party, although he may have more than one nationality, will be residing and will be connected with, and will have his dependents in one or other of these two countries, in which case that country will be entitled to recover all or nearly all the damages properly due, and the other country will be held not to have suffered more than a species of notional or token damage. In other cases it might be found that the victim was connected by residence or otherwise, as well as by nationality, with both countries, or that he had dependents, who would normally rank for the receipt of some compensation, resident in both countries, in which case there would be clear ground for the apportionment of the damage within whatever was the proper total. These cases may give rise to difficulties of detail or of the application of the principles involved, but there is not much room for doubt as to the principles themselves and, theoretically, no difficulty exists.

22. Applying these considerations to the case of a dual right of claim on the part both of the United Nations Organization and of the national State of the victim, and taking first the more usual case, namely where the injury has been suffered at the hands of a country of which the victim is not a national, the circumstances as to the nature of the victim's employment, whether he is stateless or not, what is the nationality and residence of his dependents, will probably indicate whether the national State or the United Nations should most appropriately make the claim—or it may be a matter of arrangement. In many cases the national State might well prefer to leave the claim to be made entirely by the United Nations, since, where the injury is incurred on United Nations service, the special relationship of the victim to the Organization and his independence of nationality considerations in relation to his service appear to make the Organization the natural claimant and to give it the predominant right (see paragraph 18 above). Also, where the Organization has already paid compensation to the dependents of the victim under contractual obligations, the damages due to the national State under this head would in fact have been discharged, and it would be clear that it was the United Nations which was entitled to recover. The Government of the United Kingdom does not consider it necessary to indicate here how all the permutations and combinations of any duality of claims might be worked out in the circumstances. It suggests that the foregoing considerations indicate broadly how

the rights of the United Nations might be reconciled with those of the national State, and that if the Court comes to the conclusion that these rights are reconcilable on some such basis, the details of the procedure to be followed in the various possible cases might be worked out subsequently by the United Nations Secretariat for submission to the Assembly, and in this connexion the Government of the United Kingdom draws attention to the final paragraph of the Assembly Resolution of the 3rd December, 1948, instructing the Secretary-General, when the Court has given its opinion, to prepare proposals in the light of that opinion and to submit them to the General Assembly at its next regular session.

23. There remains the case (not at all unlikely to occur with United Nations servants on foreign missions) where the injured party is a national of the State responsible for the injury. Whereas, in such a case, and according to the doctrine of the master nationality, no claim could be made by any other State of which the injured party was also a national, except in respect of any direct loss or damage sustained by that State itself, there are grounds for thinking that this limitation does not, or ought not to apply to claims by the United Nations. The need for the United Nations and its servants, if it is adequately to exercise its functions and fulfil its purposes, to be independent of all considerations of nationality, and the implications in this respect of Articles 100, 104 and 105 of the Charter and of the Convention on Privileges and Immunities, make it all the more necessary for the United Nations to be able to protect its servants even as against their own governments and in their own countries, and for the latter to feel that they can carry out their tasks in the knowledge that such protection will be afforded. Now it seems to be a necessary consequence and implication of Articles 100, 104 and 105 of the Charter and of the Convention on Privileges and Immunities and also of such provisions as Article 2, paragraph 5, of the Charter by which Members undertake to "give the United Nations every assistance in any action it takes in accordance with the present Charter" that the obligation of Members (owed to the Organization) to afford assistance and protection and to extend immunity to United Nations Missions operating in their territory, and to the personnel of such Missions, relates equally to any member of the Mission who is one of their own nationals, and that it is not in any way diminished or cancelled by reason of the fact of such nationality. 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 United Nations 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. Whereas, if the issue is between two States, one State does not (apart from special cases created by treaty) owe a duty to another State in respect of its own nationals (i.e. the nationals of the former State even if they are also nationals of the latter), the contention here advanced is that Members of the Organization do owe duties to the Organization even in respect of their own nationals if these are servants of the Organization, and that this fact takes the case out of the operation of the ordinary rule.

(*Signed*) PHILIP NICHOLS.