

## HUNDRED AND EIGHTY-THIRD MEETING

*Held at Lake Success, New York, on Thursday, 3 November 1949, at 11 a.m.*

*Chairman: Mr. LACHS (Poland).*

### **Report of the International Law Commission (A/925) (concluded)**

#### **PART II: DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES (concluded)**

#### *Explanations of votes on the proposals and amendments regarding the disposal of the draft declaration.*

1. The CHAIRMAN invited members of the Committee who wished to do so, to explain their votes on the joint resolution of Argentina, the Netherlands and the United States (A/C.6/L.50) which had been adopted at the 182nd meeting with respect to the draft declaration (A/925, paragraph 46) on rights and duties of States.
2. Mr. SHANAHAN (New Zealand) said that his delegation had abstained because in its opinion it would be difficult or even impossible for some Governments to present their comments on the draft declaration within the brief time allowed. Thus, the Government of New Zealand, like other Governments, would not have all the documentation in its possession before the end of March. If its comments were to reach Lake Success in good time, his Government could devote not more than three or four weeks to the study of that documentation and the preparation of its observations. It could not be denied that such a period was entirely inadequate for any serious study of the question.
3. He therefore regretted that the Committee, in making its decision, had not taken into account the special position of some Governments.
4. Mr. FITZMAURICE (United Kingdom) explained that his delegation, which had been in favour of the first part of the draft resolution (A/C.6/L.50) in which the General Assembly took note of the draft declaration and commended it to the consideration of Governments, had nevertheless been regretfully obliged to abstain from voting on the draft resolution as a whole because of the adoption of certain amendments, in particular those dealing with the time-limit for the transmission of comments and the inclusion of the question in the agenda of the next session.
5. Mr. Fitzmaurice thought that, as a result of the adoption of that draft resolution, the time spent by the Committee in discussing the draft declaration had been wasted, since the Committee at the next session would have to resume the same discussion on the same draft and on the limited number of comments that might arrive in time.
6. Mr. MELENCIO (Philippines) said he had voted for the joint draft resolution because, in his view, it was the best that could be adopted at the current session.
7. The Philippine delegation would certainly have preferred the adoption of the draft declaration prepared by the International Law Commission, in accordance with the Assembly's intention of achieving a definitive solution at the current session. That intention was clear from the instruction given to the Commission to prepare a draft declaration on the rights and duties of States, taking as a basis the Panamanian draft and taking into consideration the observations made by Governments (A/925, paragraph 44). The International Law Commission, which was composed of the world's most eminent jurists, had strictly complied with that instruction; the Commission had studied and revised the Panamanian draft, had eliminated from it controversial subject-matter and had based itself on the relevant provisions of the Charter in presenting a homogeneous draft to the General Assembly.
8. During the general debate, some representatives had raised the question whether the International Law Commission had been entitled to present its draft directly to the General Assembly. The majority of the International Law Commission had, however, considered that the Commission was quite competent to take a decision in that respect with full knowledge of the facts. As a tribute to the prestige of its members and to the work they had performed, the Committee had decided to propose an increase in their emoluments. Would it not have been consistent to have recognized that the draft declaration, the product of the best legal minds of the countries represented on the Commission, was an authoritative document which deserved to be adopted? Moreover, the Philippine delegation had emphasized that most of the fourteen articles of the draft declaration were a reaffirmation of principles enunciated in the Charter. Despite all those considerations, the Committee had refused to adopt the draft declaration and had relegated it to the status of a working paper. Fortunately, the Committee had adopted amendments setting a time-limit for the transmission of comments and providing for the reconsideration of the draft at the next session of the General Assembly. Without those amendments, there might have been some doubt as to when the declaration on rights and duties of States would have seen the light of day. Even with those amendments, however, it was not certain that such a declaration could be adopted at the fifth session of the General Assembly, especially in view of the fact that the draft resolution did not indicate what body would revise the International Law Commission's draft in the light of the comments received.
9. For all those reasons, and despite the gaps to be found in it, the Philippine delegation had voted for the draft resolution.
10. The CHAIRMAN announced that, in view of the adoption of the joint draft resolution, the amendments dealing with the substance of the draft declaration which had been presented by various delegations no longer had any point.

### **Reparation for injuries incurred in the service of the United Nations: advisory opinion of the International Court of Justice and report of the Secretary-General (A/960, A/955)**

11. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) explained that

the advisory opinion (A/960)<sup>1</sup>, concerning reparations for injuries incurred in the service of the United Nations, an opinion which was delivered by the International Court of Justice to the General Assembly by virtue of the latter's resolution 258 (III) of 3 December 1948, constituted an adequate legal basis for decisions to be taken by the General Assembly. Without going into the details of the legal considerations on which that opinion was based, Mr. Kerno wished to emphasize that the Court had clearly recognized that the United Nations possessed an international personality involving certain essential international rights. In the opinion of the Court, one of those rights was that of protecting agents of the Organization who had suffered injuries in the performance of their duties. Consequently, the Court had answered affirmatively all the questions put before it by the General Assembly.

12. On the strength of that opinion, the Secretary-General thought that the United Nations should proceed to press claims for injuries suffered by its agents in cases in which the responsibility of a State was involved. The Secretary-General was of the opinion that, if the United Nations was to function properly, it must ensure all necessary protection to its agents. In order to underline the urgent necessity of that protection, it was sufficient to quote the words of the Acting Mediator for Palestine who had stated in his report (S/1357) to the Security Council that "the United Nations effort in Palestine has been costly in casualties as well as in monetary expenditure. Ten members of the Organization, including the Mediator, have lost their lives over a period of fourteen months, and twice that many have been wounded".

13. The Secretary-General considered, furthermore, that in his capacity of chief administrative officer of the Organization, he was the appropriate agent for the presentation and settlement of such claims, in view of the fact that he had already acted on behalf of the Organization in the prosecution of other claims. The Secretary-General wished to add that, if he received the necessary authorization of the General Assembly, he intended to proceed through direct negotiations with the State which might be involved. In the event of differences of opinion, he would resort to arbitration. Lastly, Mr. Kerno stated that the Secretary-General considered it advisable to present an annual report to the General Assembly on the status of all claims and proceedings in connexion with them. In conclusion, Mr. Kerno drew the Committee's attention to the Secretary-General's report (A/955) and expressed the hope that it would be favourably received and acted upon.

14. Mr. FERRER VIEYRA (Argentina) pointed out that the fourth paragraph of the Spanish text of the draft resolution presented jointly by Brazil, India, Iran and the United States (A/C.6/L.51) did not correspond with the French and English texts.

15. The CHAIRMAN assured Mr. Ferrer Vieyra that the Secretariat would make the necessary correction in the Spanish text.

16. Mr. DUYNSTEE (Netherlands) stated that his delegation accepted the conclusions which the Court had reached in its advisory opinion. The high authority of the Court would dispel any doubts on certain aspects of the question which might have existed before the opinion had been given. The questions submitted to the Court had now a definite legal solution.

17. The Netherlands delegation, however, experienced difficulties with regard to some of the arguments used by the Court. In view of the vagueness of some phrases which might give rise to divergent interpretations, the Netherlands delegation would support the Belgian amendment (A/C.6/L.57)<sup>2</sup> to the joint draft resolution (A/C.6/L.51) presented by Brazil, India, and the United States.

18. Mr. Duynstee cited as an example the following difficulties of interpretation to which the advisory opinion might give rise.

19. Regarding the objective character of the international personality possessed by the United Nations, the Court had limited itself to stating that the vast majority of existing States had the power to bring into being an entity having not merely a personality recognized by themselves alone, but also an objective international personality<sup>3</sup>. In conformity with general international law, however, it was the right of every State to establish, together with any other State, an entity possessing objective international personality. Consequently, the reference by the Court to the vast majority of States might cast some doubt on the existence of such a principle of international law. Thus, the argument of the Court might be so interpreted as to deny to Benelux or the Western Union the right to obtain objective international personality. The Netherlands delegation considered, however, that States had the right to constitute unions which might, when necessary, have an objective international personality.

20. Turning to another example, Mr. Duynstee stated that the arguments advanced by the Court in support of the right of functional protection in relation to States which were not Members of the Organization might give rise to some misunderstanding. The Court did not consider in what cases a non-member State could be held responsible towards the United Nations. Such a responsibility could exist only in cases recognized by general international law. Whether there were such cases and what their nature was could be decided only as a result of future legal developments. The capacity to become responsible should be the exact counterpart of the protective power of the United Nations. But the argumentation of the International Court of Justice<sup>4</sup>, might lead to the interpretation that such power was the consequence of international personality. The Netherlands delegation felt that such an interpretation should not be entertained and that it was undesirable since international co-operation would be hampered if every organization possessing international personality would

<sup>1</sup> Under that symbol, the Secretary-General transmitted to the General Assembly the Court's advisory opinion of 11 April 1949: *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports, 1949, page 174*. Subsequent references will be made directly to that advisory opinion.

<sup>2</sup> See paragraph 30 below.

<sup>3</sup> See *I.C.J. Reports, 1949, page 185*.

<sup>4</sup> *Ibidem*.

also have the power of functional protection. Too much importance would be attached to the recognition of the possession of objective international personality if the right of functional protection in relation to non-member States would result from it and, as a consequence, such recognition would be more difficult to achieve. The Netherlands delegation considered that in the future it would be necessary to establish a large number of legal entities possessing international personality, but only a small number of such entities would possess the right of functional protection. That dangerous interpretation of the opinion of the Court could, besides, be upheld only in the case of non-member States. It became clear from the Court's advisory opinion (as expressed on pages 177 to 180 of the *Reports*) that the power of functional protection of the United Nations in relation to Member States would be derived from the Charter.

21. The Netherlands delegation felt that the power of protection in relation to non-member States was governed by the principles of international law. From the advisory opinion, it would seem that the Charter had so influenced general international law that it governed relations between Members of the United Nations and non-member States. Any interpretation under which the power of functional protection was derived either from the Charter or from the status of the United Nations as an objective international personality must be excluded.

22. Finally, Mr. Duynstee drew attention to the passage (on page 181) of the Court's advisory opinion which stated: "Amongst other things, this damage would include the reimbursement of any reasonable compensation which the Organization had to pay to its agent or to persons entitled through him. Again, the death or disablement of one of its agents engaged upon a distant mission might involve very considerable expenditure in replacing him." While he could agree with both examples, they might, in his opinion, give rise to misinterpretation. Thus, a responsible State was not obligated to reimburse payments which the Organization had made in the fulfillment of its contractual obligations. The Organization was entitled to bring such a claim only if the obligation to make such payments was founded directly upon a rule of international law. Consequently, the existence of a contractual agreement could not be regarded as sufficient title for a claim for reparation of the injury incurred. On the other hand, the expenditure involved in replacing an agent could not include the expenditure made for the training of the old or of the new agent. Mr. Duynstee considered it necessary to combat the tendency to make claims of that kind, claims which would be impossible in private law and which appeared to be claims for punitive damages. Judging by the explanations given on behalf of the Secretariat, that tendency was rather strong. The Netherlands delegation considered that it was in general undesirable to make claims for the damages incurred by a legal entity as a result of an injury suffered by one of its agents.

23. For all those reasons, the Netherlands delegation was in some difficulty as to the position it should take with respect to the advisory opinion of the Court. On the one hand, the delegation would be against every attempt to diminish the authority of the Court. On the other hand, some

of the arguments used by the Court raised questions of general international law which required clarification. Other arguments were ambiguous and might give rise to dangerous interpretations.

24. The Netherlands delegation would, consequently, vote in favour of the joint draft resolution as amended by Belgium.

25. Mr. FELLER (Secretariat) pointed out, in connexion with the Netherlands representative's remarks regarding the tendency to bring in claims for punitive damages, that the Secretary-General, in his report (A/674) to the third session of the General Assembly had stated that he was making no recommendation with regard to such claims in view of the uncertain state of international law on that point.

26. Mr. Feller had pointed out in his statement before the Court that, in the general opinion of the Members of the General Assembly, no punitive damages should be claimed for injuries incurred in the service of the United Nations. In conclusion, Mr. Feller wished to draw the Committee's attention to the categorical statement on the matter at the end of paragraph 23 of the Secretary-General's report (A/955).

27. The CHAIRMAN, complying with a suggestion made by Mr. LOUTFI (Egypt), asked whether the representatives of the delegations which had submitted the draft resolution or amendments had any comments to make. The representatives of BRAZIL, INDIA, IRAN and the UNITED STATES said they would prefer to wait.

28. Mr. HARMEL (Belgium) considered that it would be helpful to recall a statement made on 8 March 1949 by the representative of Belgium at the International Court of Justice, which showed the spirit in which the Belgian Government considered the request which had been addressed to the Court for an advisory opinion. Mr. Kaeckenbeeck had said:

"In proposing to the General Assembly of the United Nations that an advisory opinion be requested on the questions now before you, the Belgian delegation was primarily actuated by the desire to assure that any future action by the United Nations would be founded on an indisputable legal basis, on a basis which had been thought out in a calm and serene atmosphere and expressed with all desirable care and respect for *nuances*. Indeed, we felt that the doctrinal aspects and the points of interpretation involved in the question could be treated by the Court in a more homogeneous, more elaborate and more precise manner than by fifty-eight States meeting in the Assembly. For in this matter, which involves so many possible and different considerations, it is our wish that a judicial choice should be made among the possible arguments and that a terminology and a method be determined with authority, having in view no other end than that justice be done and sound legal logic respected."<sup>1</sup>

29. The Belgian delegation had been glad to note that the opinion of the Court fully came up to what one could expect from it. The Court had unanimously decided that the United Nations was a legal person, that it could obtain reparation for the injury incurred by one of its agents in an accident, and that it might include in the claim

<sup>1</sup> See I.C. of J., *Pleadings, Oral Arguments, Documents*, 1949, page 94.



for damage the expenses which it had directly incurred as a result. But, in addition to those important questions, the following two subsidiary questions had arisen: (1) that of reparation for damage suffered by the victim himself or by the persons entitled through him and (2) that concerning the manner in which the action of the Organization must be reconciled with the laws of the State of which the victim was a national. Opinions on the last two questions were divided, and in the decision of the Court there were numerous arguments which militated in favour of the various theories advanced. The Belgian delegation did not intend to discuss each of those arguments, for it thought that the International Court of Justice was more highly qualified than any other organ to express a balanced and closely defined opinion on those points.

30. Although the Belgian delegation unreservedly supported the replies provided in the opinion of the Court, it had submitted an amendment to the third paragraph of the joint draft resolution (A/C.6/L.51) which was designed to amend it in two respects. The Belgian amendment called for replacing the third paragraph of that joint draft resolution by the following paragraph (A/C.6/L.57):

*"Expresses its agreement with the replies given in the advisory opinion of the International Court of Justice, delivered on 11 April 1949, to the questions submitted to it by the General Assembly on 3 December 1948."*

31. On the one hand, in fact, a decision to accept the advisory opinion of the Court as an authoritative expression of international law on the questions considered might be interpreted to mean that the General Assembly had the authority to approve, on behalf of the United Nations, an interpretation of the Charter which might establish a precedent. As had been stated<sup>1</sup> at San Francisco, in the report of Committee 2 of Commission IV, an interpretation of that kind might mean that the procedure for the revision of the Charter would have to be applied. It would seem therefore that the wording of the joint draft resolution (A/C.6/L.51) was too general.

32. The Belgian delegation thought that it was not the duty of the General Assembly to express an opinion on the decision of the Court or to say to what extent the Court's decision was authoritative. The delegation considered that the opinions and the judgments of the International Court of Justice derived their legal validity from their intrinsic qualities and that their conformity with international law could not be proclaimed by the Assembly which did not have international legislative power. Moreover, that was the attitude which the General Assembly itself had adopted in regard to the advisory opinion of 27 May 1948 concerning the admission of new Members; in its resolution 197 (III), the General Assembly had merely noted that opinion. A somewhat similar solution was recommended in the Belgian amendment which refrained from taking any general position.

33. Moreover, in order to avoid the long debate which would necessarily result from a discussion of each of the reasons on which the advisory opinion of the Court was based, the Belgian dele-

gation proposed that the General Assembly should accept only the replies given by the Court to the questions which had been put to it, and not the statements of reasons which had led the Court to express its opinion.

34. Mr. Harmel pointed out that the cases in which the General Assembly was called upon to express its opinion of the advisory opinions of the Court were not very numerous. The terms of the resolutions adopted on the subject should therefore be carefully weighed, since they might form a precedent.

35. With regard to the amendments (A/C.6/L.68) proposed by the French delegation to the joint draft resolution the Belgian delegation would willingly support it if the majority of the Committee approved it.

36. Mr. RENOUF (Australia) recalled that the General Assembly, in its resolution 258 (III), had requested an advisory opinion of the International Court of Justice and had instructed the Secretary-General to submit to the Assembly proposals prepared in the light of that opinion. In conformity with that resolution, the Secretary-General had submitted to the General Assembly a report containing his proposals with respect to the measures to be taken (A/955).

37. The Australian delegation had been surprised to see that the joint draft resolution contained no reference to the proposals of the Secretary-General. It was true that certain provisions of the draft resolution repeated some of those proposals, but it would have been preferable to specify them. The delegation of Australia, which thought that the proposals of the Secretary-General were well-advised and entirely acceptable, had therefore submitted some amendments to the joint draft resolution (A/C.6/L.51). The Australian amendments called for the following (A/C.6/L.62):

1. To insert, between the second paragraph of the joint draft resolution and the words "The General Assembly", a new third paragraph in these words:

*"Whereas the Secretary-General has submitted certain proposals in the light of the above-mentioned advisory opinion."*

2. To insert in the first part of the fourth paragraph of the joint draft resolution, between "to undertake" and "the presentation", the clause "in accordance with the proposals submitted by him to the General Assembly."

3. In the last paragraph of the joint draft resolution, to insert the words "the above-mentioned" before the word "claims".

38. At first sight, the proposals submitted by the delegation of France (A/C.6/L.68) seemed to cover the purposes of the Australian amendments. If those proposals proved acceptable, the Australian delegation might be able to withdraw its amendments.

39. Finally, Mr. Renouf called the attention of the representative of Belgium to the fact that the English translation of the Belgian amendment (A/C.6/L.57) did not correspond exactly to the French text. The term "expresses agreement with" would seem to have greater implications than the expression "*se rallie aux*".

40. Mrs. BASTID (France) stated that her Government had no hesitation in accepting the sub-

<sup>1</sup> See Publications of United Nations Conference on International Organization, Volume VII, page 832.

stance of the advisory opinion of the International Court of Justice, in view of the fact that that opinion was entirely consistent with the point of view advanced by the French delegation<sup>1</sup> at the third session of the General Assembly. In fact, France considered that the United Nations had international personality and that it could, when one of its agents had suffered injury in the performance of his duties, rightly claim reparation for that injury, both on its own behalf and on behalf of the agent or of persons entitled through him.

41. The French delegation, while considering that the advisory opinion of the Court was an authoritative expression of international law on the questions with which it dealt, would hesitate, however, to include a statement to that effect in a resolution of the General Assembly. The delegation would hesitate to do so first, for reasons of expediency, to avoid a repetition of the long debate which had taken place without satisfactory results at the preceding session of the General Assembly; and secondly, because the delegation thought that the General Assembly was not competent to reconsider the problem from the point of view of substance, now that it had received the advisory opinion of the Court. In fact, the General Assembly was a political body whose duty it was to act or to give appropriate instructions for any action in international life. When, during its third session, it had had before it a political problem of higher international administration — it had been necessary to know whether the Secretary-General of the United Nations had the right to initiate certain legal proceedings for reparation for injuries suffered by its agents — the Assembly had requested an authoritative opinion of the International Court of Justice, for it did not know exactly what legal conditions must be complied with for the Secretary-General to be able to take action. The General Assembly was now in the same situation as an individual who had consulted a jurist on a legal matter and who, on the strength of his opinion and without discussing it, acted in conformity with that expert's conclusions.

42. The Belgian amendment (A/C.6/L.57) was also based on the idea that it was useless for the General Assembly to state whether or not the advisory opinion of the International Court of Justice represented an authoritative expression of international law on the questions considered. Nevertheless, the terms in which that amendment was drafted seemed to limit the approval given by the General Assembly to certain provisions of that opinion. The French delegation considered that it would be preferable for the General Assembly not to pass judgment on the substantive value of the advisory opinion of the International Court, but to take note of that opinion and to determine the measures to be taken by the Secretary-General in accordance with the conclusions reached by the Court. The Secretary-General had to be given directives for the action he was to take on the international plane. It was not necessary for that purpose to give an appraisal of the Court's opinion; it would be enough to give the Secretary-General precise indications of what he was authorized to do.

43. The foregoing considerations had led the French delegation to submit amendments to the joint draft resolution (A/C.6/L.51) as follows (A/C.6/L.68):

I. To replace the first paragraph of that joint draft resolution by the two following paragraphs:

"Considering the request to the International Court of Justice for an advisory opinion formulated by the General Assembly in its resolution 258 (III) of 3 December 1948 concerning reparation for injuries incurred in the service of the United Nations,

"Having regard to the advisory opinion rendered by the International Court of Justice on 11 April 1949."

II. To insert the words "Now therefore" before "The General Assembly" at the end of the preamble.

III. To replace the third and fourth paragraphs of the joint draft resolution by the following paragraph:

"Authorizes the Secretary-General to bring any international claim against the responsible government with a view to obtaining the reparation due in respect of the damage caused to the United Nations and in respect of damage caused to the victim or to persons entitled through him and, if necessary, to submit to arbitration, under appropriate procedures, such claims as cannot be settled by negotiation."

IV. To insert, between the fourth and fifth paragraphs of the joint draft resolution, the following text as a new penultimate paragraph:

"Authorizes the Secretary-General to take the steps and to negotiate the agreements necessary to reconcile action by the United Nations with such rights as may be possessed by the State of which the victim is a national."

44. Mrs. Bastid pointed out that the second paragraph called for in amendment I would take the place of the third paragraph of the joint draft resolution, the deletion of which was called for in the French amendment III above, and that the new paragraph called for in the latter amendment would include the essential provisions of the enacting terms of the Court's opinion. In that text, the French delegation had retained the provision on arbitration because it was convinced that the Secretary-General would make judicious use of the authority given him to resort to that procedure.

45. In conclusion, Mrs. Bastid repeated that her delegation made no reservations with regard to the advisory opinion of the International Court. Its attitude was motivated solely by the wish to define clearly the functions of various organs of the United Nations.

46. Mr. PETREN (Sweden) recalled that the assassination of Count Bernadotte and Colonel Sérot had been the reason for the inclusion in the General Assembly agenda of the item on reparations for injuries incurred in the service of the United Nations. Sweden, which had lost one of its most outstanding citizens in Count Bernadotte, was especially interested in that question.

47. The Government of Sweden would abide by the conclusions of the International Court. It would do so the more willingly because it was obvious from the reply to the second question that any action that the United Nations might take

<sup>1</sup> See *Official Records of the Third Session of the General Assembly, Part I*, Sixth Committee, 114th meeting, page 547.

in that particular case would not prejudice any possible action by Sweden.

48. The Swedish delegation was prepared to accept the joint draft resolution (A/C.6/L.51) provided that it incorporated the Belgian amendment (A/C.6/L.57) and amendments III and IV proposed by France (A/C.6/L.68).

49. Mr. MAKTO (United States of America) stated that when he had taken part in the preparation of the joint draft resolution (A/C.6/L.51) he had not thought that the opinion of the International Court would have to be confirmed by the General Assembly. The Belgian representative's objection in that connexion was unjustified. In view of the fact that, as a result of discussions that had taken place during the third session on whether the United Nations had the capacity to submit international requests for reparations, the General Assembly itself had decided to consult the International Court on the subject, it was natural that the Assembly should now express its agreement with the conclusions of the opinion that had been given, according to which the Organization did indeed possess that right. That approval might admittedly have been expressed in wording different from that of the third paragraph of the draft resolution, but if the Belgian amendment (A/C.6/L.57)<sup>1</sup> were substituted for it, future commentators comparing the two texts might infer that the General Assembly had not wished to admit that the advisory opinion was an expression of international law. Such an interpretation should be avoided.

50. The Belgian representative had criticized the text of the joint resolution on the ground that it extended the General Assembly's approval both to the motives and to the replies given in the advisory opinion. He thought that no differentiation could be made between the two parts of the advisory opinion without a profound study of the substance of the question. As the representative of France had rightly pointed out, the advisory opinion should be accepted as a whole, in order to avoid any discussion of that kind. That was what the United States delegation was doing, although it had expressed views contrary to those of the International Court with regard to the Organization's right to bring claims for reparations for injuries incurred by its agents. Moreover, in accepting a legal decision, the parties concerned did not necessarily agree with the entire text of the document in which it appeared, but only accepted the operative part and the determining motives. The same could be said of an advisory opinion of the International Court, and the General Assembly should approve it in that sense, and not merely agree with the replies given in that opinion, as the Belgian delegation wished.

51. Considered from that angle, did the opinion of the International Court really express existing international law? The French delegation seemed to hold that view, since the text of its amendment III (A/C.6/L.68)<sup>2</sup> showed that it admitted that the claims of the United Nations could be addressed not only to Member States, but also to States which were not Members of the United Nations. Non-Member States, however, could be bound only by rules of positive international law. The opinion of the International Court, therefore, expressed that existing law, and there seemed

no reason why the draft resolution should not state that fact.

52. The Belgian representative had referred to the precedent of resolution 197 (III), in which the General Assembly had confined itself to quoting the advisory opinion of 28 May 1948 concerning the admission of new Members. In that resolution, the Assembly had in fact recommended members of the Security Council to act in accordance with that opinion. It could scarcely be maintained that the Assembly had not thus implicitly approved the opinion.

53. If the French amendment were adopted, the situation as it had been during part I of the third session would remain unchanged, and all the debates that had taken place in the Assembly and in the International Court would be disregarded. The directives to the Secretary-General might just as well have been given in 1948, at any rate with regard to the recommendations to Member States, without having awaited the opinion of the International Court. Since that opinion existed, it was not enough merely to mention it in the text of the draft resolution; it was essential to take the opinion into consideration and thus acknowledge it to be an expression of existing international law.

54. Finally, he considered that amendment IV submitted by the French delegation for a new penultimate paragraph was not sufficiently clear. If it was to be interpreted as an authorization for the Secretary-General to negotiate with States, in advance and without waiting for a case of the kind to occur, a series of general agreements to reconcile action by the United Nations with the rights of the State of which the victim was a national, the United States delegation would prefer the procedure suggested by the Secretary-General in paragraph 21 of his report (A/955) to the effect that the Government concerned should be consulted in every particular case, in order to determine whether that Government had any objection to the presentation of a claim by the Organization or desired to join the Organization in the submission of a claim.

55. In view of those considerations, the United States delegation considered that the Committee should adopt the joint draft resolution (A/C.6/L.51), which stated two undeniable facts in its preamble, followed by three perfectly justified decisions based on principles which could not be questioned. The only amendment that could be retained was that of Australia (A/C.6/L.62)<sup>3</sup> which would introduce certain improvements of form into the original draft.

56. Mrs. BASTID (France), replying to the United States representative's remarks, explained that the agreements specified in French amendment IV (A/C.6/L.68) were not agreements to be concluded in advance between the United Nations and States, but special agreements with States which the Secretary-General should be authorized to negotiate whenever the need arose.

57. The United States representative had said that it was not necessary to have an advisory opinion in order to give directives to the Secretary-General. Yet, the General Assembly had not given such directives in 1948 precisely because it had not considered that it had sufficient knowledge of the juridical aspect of the problem; accordingly, the Assembly had asked the Inter-

<sup>1</sup> See paragraph 30 above.

<sup>2</sup> See paragraph 43 above.

<sup>3</sup> See paragraph 37 above.



national Court for an opinion on the subject. The Court had issued its opinion and the Assembly could henceforth give its instructions on the strength of an authorized opinion on that legal point. It was therefore natural that some reference should be made to the latter in the form proposed by the French delegation.

58. Mr. MAÚRTUA (Peru) would confine himself to three remarks on the subject of the joint draft resolution (A/C.6/L.51) and the French amendments (A/C.6/L.68).

59. The joint draft resolution proposed that the General Assembly should accept the advisory opinion as an authoritative expression of international law on the questions considered. As a result, the problem which had arisen in connexion with the draft declaration on rights and duties of States — the problem concerning the exact meaning and scope of the text before the Committee, and whether that text represented an accurate expression of existing international law — would arise again.

60. In the second place, neither the authors of the joint draft resolution nor the French delegation had indicated how the responsibility of the State against which the international claim of the United Nations was presented would be determined. It should be made clear what kind of action would be instituted for that purpose, on whose initiative it would be taken, and under what procedure it would be applied.

61. Lastly, there was no provision concerning the Secretary-General's powers to represent the Organization in cases where he acted on behalf of the victim or of the latter's beneficiaries.

62. Mr. KORETSKY (Union of Soviet Socialist Republics) wished to present a view entirely different from those expressed so far during the consideration of the question. He stressed that the advisory opinion issued by the International Court of Justice could not be compared to a judgment which bound the parties concerned. The General Assembly was therefore not bound to abide by that opinion and, in any case, had the right to discuss it and not to accept all its conclusions forthwith. The Assembly maintained a certain power of discretion. The Netherlands and French delegations felt that the General Assembly was not entitled to appraise the advisory opinion, since by doing so it would infringe the authority of the International Court of Justice. The USSR representative believed that that argument did not deserve attention; respect for the authority of the Court should not be placed above the interests of the States forming the community of nations. The Court was composed of men no less fallible than others; however exceptional their competence might be, the General Assembly still had the incontestable right not to follow their advice, for, as the saying went: *Amicus Plato, sed magis amica veritas*. The advisory opinion should be considered strictly according to the validity of the motives on which it was based.

63. The reply of the Court to question I (b)<sup>1</sup> was not based on any rule of existing international law. The Court had formulated a new law on that subject. While it could do so by issuing a decree which would be binding only upon the parties concerned in a given case, it could not, in an advisory opinion, establish a

rule of general law. A more serious fact was that, by its reply, the Court had struck at the very foundations of existing international law, which required absolute respect for the sovereignty of States. The Court thus appeared to have shown a regrettable reactionary tendency, which had manifested itself at a time in history when the lawmakers were anxious to free certain Powers from the limitations imposed by existing law on their desire for domination.

64. The Court was, in effect, granting the United Nations a kind of diplomatic immunity in respect of its agents, thus deciding in the Organization's favour the conflict of authority arising in such cases between the United Nations and the State of which the victim was a national. It should not be forgotten that the right of diplomatic immunity was not based on the right of the State to represent its nationals; that right was part of the basic function of the State, which thereby asserted its due right through the medium of its national. That right pertained to relations between the State and its citizens, which came within the scope of national competence and was reserved to the State. Consequently, there was justification for saying that the Court had intervened illegally and without valid reason in the domestic affairs of States by attempting to remove their own nationals from the sphere of their competence.

65. Nothing could warrant such a derogation from a rule duly established in existing international law. The international personality which the United Nations was recognized as possessing could not confer upon it the same rights in respect of its agents as those enjoyed by the State in respect of its nationals. The United Nations was not a State; its connexion with its agents was not a relationship under public law. In entering the service of the Organization, staff members retained their nationality; they could not therefore accept a second allegiance, since by doing so they would require a dual nationality. If the United Nations abided by the opinion of the Court, it would be in conflict with the State of which the victim was a national and which alone possessed the right to present a claim with a view to obtaining reparation for injuries incurred by its own national.

66. Mr. Koretsky recalled that the United States had adhered to the Statute of the Permanent Court of International Justice on the condition that the Court should not, without that country's consent, entertain any request for an advisory opinion touching any dispute or question in which the United States had or claimed an interest.<sup>2</sup> The advisory opinion of the International Court of Justice did affect the basic interests of States inasmuch as it restricted their rights in respect of their own nationals. On that point, therefore, States were entitled not to accept the conclusions of the Court. Consequently, they were also free not to approve the suggestion that the Secretary-General should be authorized to submit to arbitration claims for injuries incurred by the victim. The right of compromise was merely an aspect of the right of free action; only the State concerned was therefore entitled to exercise it. The General Assembly could not confer upon the Secretary-General rights which the United Nations itself did not enjoy.

<sup>2</sup> See League of Nations, C493, M157, 1929, V, article 5.

<sup>1</sup> See *I.C.J. Reports*, 1949, page 187.

67. In conclusion, the representative of the USSR considered that, after having expressed due thanks to the Court for its advisory opinion, the United Nations should confirm that the Secretary-General might present any international claim with a view to obtaining the reparation due in respect of the damage caused to the United

Nations, but should also state that the Secretary-General could not do so in respect of reparation **due for damages** incurred by its agents or collaborators, since that would be inconsistent with existing international law and with the very principle of the sovereignty of States.

The meeting rose at 1 p.m.

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