

## HUNDRED AND EIGHTY-FIFTH MEETING

*Held at Lake Success, New York, on Monday, 7 November 1949, at 11:15 a.m.*

*Chairman: E MAUNG (Burma).*

**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,<sup>1</sup>A/955) (continued)**

1. The CHAIRMAN, after mentioning that the French amendments (A/C.6/L.68) to the draft resolution submitted jointly by Brazil, India, Iran and the United States (A/C.6/L.51) had been replaced by the French draft resolution (A/C.6/L.71), asked the Committee to continue general debate on the above item.
2. Mr. TRUJILLO (Ecuador) remarked that the highly interesting discussion on the question of reparation for injuries incurred in the service of the United Nations which had taken place in the Sixth Committee at the third session of the General Assembly<sup>2</sup> had been most ably summarized in the oral statements<sup>3</sup> made by Mr. Kerno and Mr. Feller on behalf of the Secretary-General before the International Court of Justice. That discussion had shown that opinion in the Sixth Committee had been divided. While some delegations had held that the United Nations was entitled to bring claims for reparation due in respect of damage caused both to the United Nations and to the victim or to persons entitled through him, others had entertained some doubt as to whether the United Nations was so entitled, and as to how the right of action could be asserted if it did exist.
3. His delegation had been in that second group, but it had modified its view since the advisory opinion of the International Court of Justice had been delivered. Accordingly, his delegation was prepared to advance from its previous position and to recognize that the United Nations had the capacity to bring claims for reparation in respect of damages sustained not only by itself, but by its agents, in the performance of their duties.
4. In his statement before the Court, Mr. Feller had carefully distinguished<sup>4</sup> between the international personality possessed by the United Nations and that possessed by States and specialized agencies, and between the different rights and duties pertaining to each. It was a pity that Mr. Feller, although he had mentioned a number of other international organizations, had omitted all mention of the Organization of American States which, by virtue of the Bogotá Charter, also unquestionably possessed international personality.
5. Still, the oral statement made on behalf of the Secretary-General before the Court had shed considerable light on the international personality of the United Nations, as distinct from that possessed by States and specialized agencies. The immediate consequence was, however, that it became urgently necessary to define the concept of the State. Until a clear and generally accepted definition existed, a line could not be drawn between the rights and duties of States and those of other international persons. The solution of that problem was of the greatest possible importance for the further development of international law.
6. The International Court of Justice, the highest judicial organ of the United Nations, had adopted and was exercising with great success a function it had inherited from the Permanent Court of International Justice of the League of Nations. The International Court not only pronounced judgment but also delivered advisory opinions upon request. The advisory opinion was a relatively new and very convenient instrument; States which were unwilling actually to submit a case to the jurisdiction of the Court were frequently ready to ask for an advisory opinion which, unlike the Court's judgments, was not binding upon them. At the same time, the moral value of the Court's advisory opinions was such that they were generally accepted. It was highly satisfactory to note the growing tendency to submit important problems to international jurisdiction, in one form or another.
7. In the advisory opinion before the Committee, the Court had defined the international personality possessed by the United Nations and had stated that consequently the United Nations had the capacity to bring international claims with a view to obtaining the reparation due in respect of the damage caused to the United Nations and to the victim or to persons entitled through him. As he had already stated, his delegation fully concurred with that opinion. Unfortunately, the Court had not been wholly consistent. In its reply<sup>5</sup> to question II of General Assembly resolution 258 (III), the Court recommended reconciliation between the claims of the United Nations and those of the victim's national State. It had, in other words, refused to draw the logical consequence from the principle it had itself laid down; for if, as the Court had stated, the United Nations had the right to claim reparation for injuries incurred by one of its agents in the performance of his duties, logically the agent's national State should have no right to present a similar claim.
8. In previous international practice, the State had claimed damages for its citizens, either on the basis of diplomatic protection or on the grounds of nationality. Apart from the old relationship between the State and its citizens, a new relationship was established; that was the relationship between the United Nations and its agents, who surrendered all considerations of nationality in the exercise of their functions and should similarly surrender any claim to the protection of their national State with respect to injuries incurred during the exercise of those functions. The Court's advisory opinion had thus created a new principle of international law: that an agent of the United Nations who had incurred injuries in the

<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 *Official Records of the third session of the General Assembly, Part I, Sixth Committee, 112th to 121st meetings*.

<sup>3</sup> See *I.C.J. Pleadings, Oral Arguments, Documents, 1949, pages 50 to 69 and 70 to 93*.

<sup>4</sup> *Ibid.*, page 74.

<sup>5</sup> See *I.C.J. Reports, 1949, page 188*.

performance of his duties was under the protection of the United Nations, and that the latter had the capacity to bring an international claim for reparation in respect of the damage caused to him. That principle should be accepted with all its logical consequences, lest the advisory opinion should give rise to difficulties and complications greater than those which the Court had intended to resolve.

9. At the third session of the General Assembly, the representative of Egypt had raised<sup>1</sup> the question whether an action could be brought against the State of which the victim was a national. Mr. Trujillo recalled that the United Kingdom representative had delivered a brilliant statement<sup>2</sup> before the International Court of Justice in which he had proved incontrovertibly that, when claims for reparation were brought, the relationship between the agents of the United Nations and their national States should be considered irrelevant. The representative of Sweden — the country which had suffered perhaps the greatest loss to date, in the person of Count Bernadotte — had declared<sup>3</sup> in the Sixth Committee at the third session that his country, whilst asserting that it had the right to bring a claim, considered that the claim in that particular case should be brought by the United Nations. It should be made clear, therefore, that when agents of the United Nations incurred injuries in the performance of their duties, the usual relationship between them and their national States did not apply for the purpose of claiming reparation.

10. While the Secretary-General had upheld that very opinion before the Court, he had in his report (A/955, paragraph 21) made proposals which were plainly intended to bring his own views into line with the last part of the Court's advisory opinion. The Ecuadorean representative therefore thought it advisable not to make a specific reference to those proposals in any resolution which the Committee might recommend, in order not to bind the Secretary-General to a procedure which might well prove ineffective.

11. In that connexion, he considered that the French draft resolution (A/C.6/L.71) was preferable to the joint draft resolution (A/C.6/L.51), for the following reasons. The first paragraph of the French draft resolution stated the background of the case and was a logical introduction to the rest of the text. The second paragraph continued in the same vein, and had the advantage of replacing the third paragraph of the joint draft resolution, which contained the controversial phrase "as an authoritative expression of international law". The third paragraph of the French text reproduced the completely acceptable second paragraph of the joint draft resolution; and the fourth paragraph of the French text was satisfactory in that it merely referred to "a number of proposals" submitted by the Secretary-General. Whereas the joint draft resolution contained no mention of those proposals, the United Kingdom amendment (A/C.6/L.70)<sup>4</sup>

would expressly approve them, thereby compelling the Secretary-General to follow a specific procedure which might prove to be difficult in the future.

12. Continuing his analysis of the French draft resolution, the representative of Ecuador pointed out that the fifth paragraph contained a much clearer statement of the two types of claims involved than did the corresponding fourth paragraph of the joint draft resolution. Consequently, by requesting that the two parts of that paragraph be put to the vote separately, delegations would be able to take a different position on each if they so desired. The sixth paragraph of the French text appeared superfluous, however, since the Secretary-General was, in any case, implicitly authorized to negotiate under the preceding paragraph; moreover, the instruction to the Secretary-General to reconcile action by the United Nations with the rights of the victim's national State might result in unnecessary complication. He therefore hoped that the paragraph would be deleted.

13. The final seventh paragraph would, he thought, be clarified by the insertion of the word "above-mentioned" before the word "claims".

14. Mr. Trujillo said in conclusion that his delegation was prepared to vote for the French draft resolution, subject to the reservations he had mentioned.

15. Mr. LOUTFI (Egypt) noted that no difficulty arose in connexion with the Court's advisory opinion on question I (a) which had been submitted to it in General Assembly resolution 258 (III). That opinion had been rendered by a unanimous vote, and had reflected the views expressed during the debates of the Sixth Committee during the third session. With respect to question I (b), however, no such unanimity had been achieved by the Court, and his delegation had been greatly impressed by the dissenting opinions<sup>5</sup> of Judges Krylov, Hackworth and Badawi Pasha.

16. Without going into the legal arguments, he considered that the advisory opinion of the International Court of Justice — the principal judicial organ of the United Nations — was highly authoritative and should therefore be accepted as a whole. His delegation, notwithstanding Egypt's special position, maintained the view taken by it at the third session<sup>6</sup> that the United Nations had international personality and the capacity to bring international claims for damage suffered by its agents in its service. His delegation therefore accepted the advisory opinion of the Court. It should be stressed, however, that that opinion was not a judgment and was therefore not binding; the Court might even reverse its own ruling. Consequently, a discussion of the advisory opinion by the General Assembly was permissible.

17. Mr. Loutfi welcomed the text of the new French draft resolution (A/C.6/L.71), which substituted new paragraphs for those in the preamble to the joint draft resolution (A/C.6/L.51). He was particularly glad to note that the French text did not include the paragraph of the joint draft resolution which called for acceptance of the Court's advisory opinion as an authoritative expression of international law on the questions considered. The question before the

<sup>1</sup> See *Official Records of the third session of the General Assembly, Part I*, Sixth Committee, 112th meeting, page 524.

<sup>2</sup> See *I.C.J. Pleadings, Oral Arguments, Documents*, 1949, pages 110 to 130.

<sup>3</sup> See *Official Records of the third session of the General Assembly, Part I*, Sixth Committee, 115th meeting, page 555.

<sup>4</sup> See the Summary Record of the 184th meeting, paragraph 30.

<sup>5</sup> See *I.C.J. Reports*, 1949, pages 196 to 219.

<sup>6</sup> See footnote 1 to paragraph 9 above.

General Assembly was to give instructions to the Secretary-General in the light of the Court's advisory opinion; to do that it was not necessary to pronounce the advisory opinion as an authoritative expression of international law. Consequently, the preamble to the new French draft resolution was adequate.

18. He also preferred the fifth paragraph of that draft resolution which reproduced the phraseology of the advisory opinion and, by dealing separately with the Court's opinion on questions I (a) and I (b), would make it possible to vote on the two issues involved. The sixth paragraph of the French draft was also useful, since it called for co-ordination of action by the United Nations and by the State of which the victim was a national.

19. In view of those considerations, he supported the French draft resolution, although it had not taken into account the question of claims brought against Members and non-members of the United Nations, which the Court had also considered. He therefore informally suggested that the words "Member or non-member of the United Nations" might be inserted in the operative part of the draft resolution.

20. Mr. Soro (Chile), though not wishing to embark on a thorough analysis of the Court's advisory opinion, felt bound to say a few words about the scope of the draft resolution under consideration.

21. The Court's advisory opinion had authority and intrinsic value, but that was all. It was for the General Assembly to decide whether or not it wished to use the opinion as a basis for action. His delegation had no objection to using the advisory opinion as a basis for a General Assembly resolution on reparation for injuries incurred in the service of the United Nations, but considered that the General Assembly need not accept the Court's opinion in its entirety.

22. The Court's advisory opinion on question I (a), which concerned the capacity and right of the United Nations to bring international claim for damages caused to the United Nations itself, was indisputable. With regard to question I (b), which concerned the capacity of the United Nations to bring claims for injury incurred by its agents in the performance of their duty, two conflicting rights seemed to be involved: that of the State of which the victim was a national, on the one hand, and that of the United Nations, on the other. The first right was generally recognized under existing international law; the second, recognized for the first time in the advisory opinion, might in practice lead to difficult situations. Reserving his delegation's view on the Court's novel notion of "functional protection" as well as on various relevant theoretical questions, he wished to consider the problem from a practical point of view. Before doing so, he pointed out that his country had been traditionally opposed to the principle of diplomatic protection except in cases of manifest denial of justice or refusal to take action on account of the foreign nationality of the claimant. His country did not accept international claims brought against the State of Chile on behalf of Chilean citizens. The principle of diplomatic protection

did not apply to claims by the nationals of a State against that State; that was a general principle of international law, and had been expressly recognized<sup>1</sup> in the Convention on Certain Questions relating to the Conflict of Nationality Laws signed at the League of Nations Codification Conference of 1930.

23. It was possible in practice, however, to reconcile that position with the purpose of obtaining reparation for injuries incurred by agents of the United Nations, or to persons entitled through them. He agreed in that connexion with the concluding remarks<sup>2</sup> in the dissenting opinion of Judge Hackworth that, if the United Nations wished to bring claims on behalf of employees, the conventional method was open. If the States should agree to allow the Organization to bring claims on behalf of their nationals in the service of the Organization, no one could question its authority to do so. The respondent State would not have to answer demands from two sources; the employee or his dependants would know to whom to look for assistance; and the whole procedure would be free from uncertainty and irregularity. That view was in conformity with established principles and practice, and reconciled the rights and interests of the United Nations and its agents with those of States.

24. In view of those considerations, his delegation supported in principle — in lieu of the joint draft resolution (A/C.6/L.51) — the new French draft resolution (A/C.6/L.71), embodying as it did the amendments<sup>3</sup> presented earlier by France (A/C.6/L.68) and Australia (A/C.6/L.62). His delegation agreed to the disappearance of the third paragraph of the joint draft resolution (A/C.6/L.51) and approved the replacement of that paragraph by the second paragraph of the new French draft resolution (A/C.6/L.71). The advisory opinion of the Court could merely be taken into consideration in a resolution of the General Assembly, but in no case could that opinion be accepted as an authoritative expression of positive international law. His delegation had no objection to the first part of the fifth paragraph of the French text dealing with United Nations claims for reparation due in respect of damage caused to the Organization itself; but the second part of that paragraph, dealing with United Nations claims for reparation for injuries incurred by its agents, could be accepted by his delegation only if the Committee adopted the sixth paragraph of the French draft resolution authorizing the Secretary-General to take steps and to negotiate agreements necessary to reconcile action by the United Nations with such rights as might be possessed by the State of which the victim was a national.

25. The delegation of Chile attached great importance to that sixth paragraph, which would safeguard the rights of States in the event of a conflict of interests with the United Nations. It was necessary that any such negotiations would be preliminary to any United Nations action to bring claims on behalf of the victim or of those entitled through him. While the Secretary-General, as stated in his report (A/955), would presumably enter into prior negotiations, his delegation would prefer to see that point made clear in the paragraph in question. He therefore suggested that the words "Authorizes the Secretary-General"

<sup>1</sup> See League of Nations "V" *Legal Questions*, 1930, Volume 3, article 4.

<sup>2</sup> See *I.C.J. Reports*, 1949, page 204.

<sup>3</sup> See the Summary Record of the 183rd meeting, paragraphs 37 and 43.



in the sixth paragraph of the French draft resolution might be changed to "The Secretary-General shall". Thus, such prior negotiation, which was implicit in the French text, would become mandatory. If that paragraph was not adopted, his delegation would be compelled to vote against the draft resolution as a whole. He therefore requested that the French draft resolution be put to the vote paragraph by paragraph.

26. Mr. KRAJEWSKI (Poland) said that, in view of the importance attached by his Government to the question at issue, he wished to reply to some points raised during the debate.

27. With reference to the United Kingdom representative's remarks that advisory opinions were authoritative although not binding, and that the General Assembly had no right to agree or disagree with a point of law established by the Court which was the highest authority in the matter,<sup>1</sup> he recalled that an advisory opinion, by its very nature, was not legally binding upon the United Nations or upon any of its organs including the Court itself, which could on a later occasion take an entirely different view on the same issue. That had been made clear in the report<sup>2</sup> of the Committee of Jurists which had prepared the Statute of the Permanent Court of International Justice in 1920. Thus, advisory opinions, unlike judgments, were not binding and could have moral value and persuasive authority only if they were unanimous, leaving no doubt on the question involved. A majority view in the case of an advisory opinion was bound to carry less weight than one reached unanimously.

28. The United Kingdom representative had also stated that the advisory opinion had created new law, which was a contradiction in terms. A judicial organ, called upon to give an opinion, could only do so on the basis of existing rules of law; in no circumstances could it be allowed to create new law. Furthermore, the creation of new law through judgments was limited under Article 59 of the Statute of the Court to the parties to the dispute; that was to say, it became *lex inter partes*. An advisory opinion could never become *lex inter partes*; if it did, that opinion would be much greater in scope than a judgment since, if accepted, it would be binding upon all Member States. That had obviously not been the intention of the Statute, and would have been inconsistent with the practice of the Permanent Court of International Justice. At best, the International Court of Justice might advise the General Assembly what, in its view, would be an improvement of existing law. If it were admitted, however, that the Court could create law and that the General Assembly could not even discuss the substance of that law, that would mean that all organs of the United Nations would have to submit blindly to all changes of law the Court might suggest, and that eventually the whole development of international law would be exclusively in the hands of the Court, leaving no authority in the matter to the Security Council or the General Assembly. Such a theory of the creation of law without the consent of the Member States might affect the very existence of the States, and was obviously unacceptable. Furthermore, such a theory would be incompatible with

the principle laid down by the Court that the binding force of the rules of international law emanated from the States' own free will.

29. In the opinion under discussion, however, the Court had unfortunately exceeded the limits of an advisory opinion and had attempted to create a new rule of law, without the consent of Member States and in conflict with the above-mentioned principle. That involved a fundamental legal issue with political implications which should be considered before a final decision was taken.

30. By a majority, the Court had held that the United Nations had the capacity to bring an international claim against a responsible *de jure* and *de facto* Government with a view to obtaining the reparation due in respect of the injury caused to an agent of the United Nations or to persons entitled through him. That constituted a departure from a fundamental principle of international law, the principle that every State had the basic right and duty to protect its own citizens. That right was inherent in the notion of independence; membership in the United Nations could not deprive the State of that right, which in no circumstances could be transferred to an international organization. The opinion of the Court would have the effect of limiting the jurisdiction of Member States. In defending the rights of its citizens, the State was actually asserting its own rights to enforce, in the person of its subjects, respect for the rules of international law, according to the judgment delivered by the Permanent Court of Justice in the case of the Mavrommatis concessions.<sup>3</sup>

31. The proposal that States should waive that right with respect to its citizens who were officials and agents of the United Nations could lead — as the United Kingdom representative himself had pointed out<sup>4</sup> in trying to prove the advantage of such procedure — to a situation where an agent of the United Nations might be protected against his own State. In such a contingency, the Organization would intervene between the State and its own citizen, an impossible situation in international law. Furthermore, the proposal would cease to be subject to the laws of any State their temporary service in the United Nations, would cease to be subject to the laws of any State and would, contrary to what the Court had said, enjoy the rights of supra-nationals. The problem was closely linked with diplomatic protection and, as had frequently been stated and been made clear by the French courts in the case of *Avenol v. Avenol*,<sup>5</sup> an international official remained the citizen of his own country and could not claim extra-territoriality when at home. That had also been the view of many other courts.

32. Consequently, acceptance of the principle that the United Nations could interfere between a State and its national and bring claims against a State of which the agent was a national would be extremely dangerous. Rejection of that principle, however, would not affect the functioning of the United Nations; since question I (a) had been answered in the affirmative, the United Nations would have full power to claim reparation for damage caused to it. The argument that smal-

<sup>1</sup> See the Summary Record of the 184th meeting, paragraphs 15 and 16.

<sup>2</sup> See *Minutes to the 1920 Committee of Jurists*, pages 730 to 731.

<sup>3</sup> See P.C.I.J., Series A, No. 2, 1924, page 12.

<sup>4</sup> See the Summary Record of the 184th meeting, paragraphs 19 and 20.

<sup>5</sup> See *Annual Digest on Reports of Public International Law Cases, 1935-1937*, edited by H. Lauterpacht, London, 1941, pages 395 to 397.

ler States would be at a disadvantage in bringing claims in behalf of their nationals against more powerful States was not relevant.

33. In view of those considerations, the delegation of Poland considered that, while the Court had gone beyond its competence in attempting to establish new principles of law, the General Assembly should state that it did not intend to change the existing principles of international law. His delegation was strongly opposed to the acceptance of point I (b) of the advisory opinion.

34. Mr. MAKTO (United States of America) asked for an explanation of the meaning of the Statement in paragraph 21 of the Secretary-General's report (A/955) that the Secretary-General proposed to "consult with the Government of the State of which the victim was a national in order to determine whether that Government has any objection to the presentation of a claim or desires to join in submission". In the light of the advisory opinion of the International Court, the United Nations had the right to present a claim with a view to obtaining reparation due in respect of the damage caused to the United Nations and to the victim or to persons entitled through him. But what would happen if the State refused to have a claim presented on behalf of the victim?

35. Mr. FELLER (Secretariat) replied that it was explained in the report (A/955, paragraph 23) that the Secretary-General, in the presentation and settlement of claims, would be guided by the principle that "the State involved should be given appropriate assurances that it would not be subjected to multiple claims by the United Nations, the victim and the State of the victim's nationality for the same damages". If a State objected or refused to join in submission, the Secretary-General would report that fact to the General Assembly at its next session, and the Assembly would give him the necessary instructions. Under the advisory opinion of the Court, the United Nations could still present its claim, even if the State objected. The opinion stated that conciliation between claims in case of conflict between the action of the United Nations and such rights as the agent's national State might possess "must depend upon considerations applicable to each particular case, and upon agreements to be made between the Organization and individual States, either generally or in each case".<sup>1</sup> The United Nations would of course exhaust all possible means of reaching agreement before proceeding to exercise the rights given it by the opinion of the Court.

36. Mr. MAKTO (United States of America) replied that the International Court of Justice did not go so far as to deprive a State of the right to proceed with the presentation of claims. The State had that right. The joint draft resolution of Brazil, India, Iran and the United States (A/C.6/L.51) expressly stated that the General Assembly accepted the advisory opinion of the Court as an authoritative expression of international law on the questions considered. Some States might not accept principles even though they were recognized as existing international law. By definition, international law was made up of generally accepted principles, and not principles which were accepted by every State.

<sup>1</sup> See *I.C.J. Reports*, 1949, page 188.

<sup>2</sup> See *American Journal of International Law*, Volume 6, No. 3, July 1912, page 746.

37. Before the International Court presented its advisory opinion, if a State had brought a claim against another State of which the claimant was a national, the Canevaro case, in which Peru and Italy had been concerned, had offered the defendant a perfect defence. The tribunal had found that the case involved a national of the defendant State and had therefore concluded that his claim could not be presented.<sup>2</sup> In the light of the International Court's recent advisory opinion, however, a defendant State could not plead that defence.

38. He considered that the view of the Polish representative in respect of the creation of new international law was in part correct. But from a practical point of view, by applying existing law to a specific case, new law was created for such cases. Courts must take existing circumstances into account. The United Nations existed. A new situation had arisen. A national of one State might, as an agent of the Organization, be sent to another State where he was needed; he must be protected. For such cases, the Canevaro ruling no longer applied; it was no longer law. Moreover, an advisory opinion was not binding. Other courts might disagree with the opinion of the International Court, or that Court might reverse its own opinion. Some of the judges of the Court had even disagreed with the opinion under discussion. If the minority gained a vote or two, its opinion might even become the majority opinion. But for the time being, the view of the majority had to be accepted. The advisory opinion, representing the view of the majority of the International Court, stated what the law was only to the extent that it ruled out the Canevaro case. The United States delegation had stated<sup>3</sup> at the third session that it agreed to the United Nations capacity to present claims for reparations, but did not agree that the United Nations might do so on behalf of its agents against their national State. His delegation had altered that view, and accepted the advisory opinion of the Court. His delegation agreed with the French draft resolution, in general, and would accept it in a spirit of compromise, if no substantial amendments were made.

39. Mrs. BASTID (France) wished to explain a few of the points mentioned by several delegations in regard to the French draft resolution (A/C.6/L.71). In reply to the representative of Venezuela,<sup>4</sup> who wished to insert, in the third paragraph after the words "injuries incurred", the words "by the Organization or", she pointed out that the two elements "by the Organization" and "in the service of the Organization" were covered by the reference to the advisory opinion of the Court in the preceding paragraph. The proposed addition would not affect the meaning of the draft resolution, however; and the French delegation was prepared to accept the insertion if it was considered desirable.

40. In regard to the fourth paragraph, some delegations wished it to contain a reference to the document in which the Secretary-General had submitted his proposals. That was acceptable.

<sup>3</sup> See *Official Records of the third session of the General Assembly, Part I*, Sixth Committee, 113th meeting, page 536.

<sup>4</sup> See the Summary Record of the 184th meeting, paragraph 59.

41. The proposed addition<sup>1</sup> to the fifth paragraph (first paragraph of the operative part) of the draft resolution seemed unnecessary, since reference to the Secretary-General's report (A/955) implied its acceptance, including paragraph 21 which explained what would be done if a State objected to the presentation of a claim. Moreover, that paragraph also referred to settlement and arbitration. The Secretary-General would, of course, pursue his case to the end, if no objection on the part of the State concerned was raised.

42. With reference to the sixth paragraph of the draft resolution, Mrs. Bastid pointed out that the text of the paragraph should reproduce the terms of the advisory opinion of the Court; in the French text, therefore, "*ressortissant*", not "*ressortissante*" should be used. The idea expressed in that paragraph was that the Secretary-General should negotiate the necessary agreements, in each particular case; it was not intended that the Secretary-General should negotiate agreements of a general nature. Her delegation would agree to the suggestion of several delegations and insert after the word "negotiate", the words "in each particular case".

43. In answer to the suggestion of the delegation of Ecuador<sup>2</sup>, that the word "above-mentioned" should be inserted before the word "claims" in the last paragraph she remarked that she considered the text sufficiently clear without the addition.

44. Mr. BARTOS (Yugoslavia) stated that his delegation would vote for the French draft resolution. He wished, however, to make some points clear. The Court had given an advisory opinion, not a judgment. Consequently, the General Assembly was not bound by the opinion, but could let itself be influenced by the opinion. His delegation did not accept all the legal arguments of the Court, but considered its answers to the questions submitted to be a practical solution favourable for the Organization and international co-operation. He considered that Mr. Feller's explanation of paragraph 21 of the Secretary-General's report (A/955) provided a guarantee that the Secretary-General would do everything in his power to reconcile any action by the United Nations with such rights as might be possessed by the State of which the victim was a national; and he accepted those arguments as an integral part of the fifth and sixth paragraphs of the French draft resolution. In accepting the French draft resolution, his delegation assumed that it was understood that a State would not surrender any part of its sovereignty. The resolution would not violate sovereignty. The rights of States would continue unimpaired, and they could present their claims independently of the United Nations. For practical reasons and to preserve the international character of the United Nations, his delegation would vote for the draft resolution. (A/C.6/L.71).

45. Mr. ORIBE (Uruguay), referring to the suggestion to close the general debate, said that his delegation was preparing a statement and wished to reserve the right to present it at the following meeting.

46. In connexion with the French draft resolution,

he said his delegation had asked<sup>3</sup> at the preceding session of the General Assembly what was the exact situation with respect to reparations payable to persons who incurred injuries while in the service of the United Nations. On behalf of the Secretary-General, the answer had been given that such persons received in compensation a certain sum, but not full indemnification. His delegation wished to thank the Secretary-General for including in his report (A/955) the last section on "Action by the Secretary-General with respect to indemnification for injuries". But paragraph 23 of the report stated that the Secretary-General would be guided, in negotiations for the settlement of claims, by the principle that reparations requested should be "reasonably adequate to compensate the Organization and the victim or persons entitled through him". He inquired if that referred to cases in which the victims had not yet been fully compensated. His delegation thought that some provision should be made so that victims would be compensated immediately and fully, irrespective of the possibility for the Organization to recover such indemnity from the responsible State. Otherwise, they might wait for years for such compensation, since the settlement of claims usually required from three to six years. The agents of the United Nations might be covered by insurance policies, but those policies probably did not provide for war risks, or various other serious risks which some United Nations personnel had to take in the discharge of their duties. The United Nations must assume responsibility for immediate and full indemnification.

47. He feared that, if the Secretary-General's proposed suggestions were adopted, certain difficulties would arise. For instance, the cases provided for were all cases in which the liability for accidents was established or presumed; but that did not cover cases where liability could not be established or was doubtful. In such cases, the individual would have to go without compensation. Or else it might happen that liability was proved but the Government concerned declined to accept the claim, or refused to appoint an arbitrator. As had been mentioned in the debate, a State might decline to receive a claim or might deny liability on the ground that the accident happened in international conditions in which no liability could be fixed. Moreover, the Secretary-General might lose his suit or his claim might have to be reduced. Provisions should be clearly laid down for such cases, and the powers of the Secretary-General to take steps to cope with them should be defined.

48. Furthermore, if a State admitted liability and the United Nations won its case, there arose the question of the time within which reparations were payable; the relevant time-limit should be clearly fixed. It was not sufficient to say that payment should be made at the end of negotiations; that might force the victims to wait for years for payment of compensation.

49. His delegation wished to see the Committee express its desire, subject to the procedure laid down, that the United Nations should be liable for immediate payment of compensation; the Organization could thereafter negotiate for the settlement of claims. Where the agents were

<sup>1</sup> See paragraph 19 above.

<sup>2</sup> See paragraph 13 above.

<sup>3</sup> See *Official Records of the third session of the General Assembly, Part I, Sixth Committee, 113th meeting*, page 533.

covered by insurance policies which did not provide for war risks or other dangerous risks incurred by agents of the United Nations, the Organization should be liable for the payment of the difference between those policies and full indemnification of the victim or persons entitled

through him. Even if the question might be covered by the envisaged social security scheme, it was essential to have clearly stated assurances on that point.

The meeting rose at 1.15 p.m.

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