

## HUNDRED AND EIGHTY-SIXTH MEETING

*Held at Lake Success, New York, on Tuesday, 8 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. Mr. MAÚRTUA (Peru) stated that it was necessary to differentiate between the international personality of States and that of international organizations. While States had legal personality *eo ipso* and had such definite rights as those to existence, equality, independence and jurisdiction, rights which they exercised freely, the international personality of international organizations was more limited in scope and confined to what was required to fulfil the purposes for which those organizations had been created.
2. The Peruvian delegation considered that it would be excessive to call the conclusions of the Court "an authoritative opinion of international law".
3. Advisory opinions were by their very nature not decisions or judgments, but interpretations of general principles of law. Consequently, it could not be maintained that there was a "jurisprudence" (case-law) of advisory opinions in the limited sense. For that reason, it was possible for States either to accept or to reject those opinions.
4. The Peruvian delegation noted, further, that the French draft resolution (A/C.6/L.71) authorized the Secretary-General to present claims against the responsible State. Which authority, however, was to determine the responsibility of the State? Presumably, the competent courts of the State concerned. International claims could be brought only after a denial of justice on the part of the State alleged to be responsible and after all other means of redress had been exhausted. That was the legal tradition in his country and in the other Latin-American States.
5. There should be no special treatment of United Nations officials exercising their functions in a given State. According to a generally recognized principle of international law practised in the American countries, aliens enjoyed rights and duties equal to those of nationals, with certain exceptions stipulated by law. The Peruvian delegation attached extreme importance to that reservation.
6. With regard to the French draft resolution, he pointed out that it did not determine how the responsibility of the State would be established. Secondly, the Chilean representative had noted<sup>2</sup> in that connexion that the possibility of claims being brought on behalf of a United Nations agent against his own State would be contrary to the principle of the relationship between a national and his State. Thirdly, the draft resolution did not make a clear distinction between reparation to the United Nations and to the victim or those entitled through him, and did not provide for conciliation of the claims of the United Nations with those of the victim's national Government. Fourthly, the proposal merely provided for arbitration, without specifying the possible types of such arbitration; for example, whether the arbitrators should base their award on rules of law or decide *ex aequo et bono*. Fifthly, the French draft resolution spoke of a report by the Secretary-General on "the status of claims" without making it clear that only the claims referred to earlier in the draft resolution were intended; that could, however, be remedied by the acceptance of the Ecuadorean suggestion<sup>3</sup> made at the 185th meeting.
7. In view of those considerations, the draft resolution gave very wide powers to the Secretary-General. As no precedent for such action by the Secretary-General existed, the draft resolution would virtually give him *carte blanche*. The Secretary-General would, in effect, be empowered to bring claims before Governments or to institute judicial proceedings. It would be wiser to make special provisions enabling him to bring claims before the courts.
8. The Peruvian delegation was not opposed to the objective of finding means to ensure reparations for injuries incurred in the service of the United Nations, but had merely wished to clarify the situation and to reserve its position on a matter which seemed to that delegation to be one of great importance. Reparation for damages was a basic principle of international law, and the delegation of Peru would therefore vote for that principle, provided its application were specified.
9. Mr. DUYNSTEE (Netherlands) wished to make a few remarks in clarification of his earlier statement.<sup>4</sup> The question whether the advisory opinion of the Court should be accepted implicitly, as in the French draft resolution, or explicitly, did not seem to be important. The General Assembly could obviously not change such an opinion, but just

<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 the Summary Record of the 185th meeting, paragraph 22.

<sup>3</sup> *Ibid.*, paragraph 13.

<sup>4</sup> See the Summary Record of the 183rd meeting, paragraphs 16 to 24.

as it might have accepted the draft declaration on rights and duties of States as prepared by the International Law Commission, so the Assembly might also accept all the arguments used by the Court in its advisory opinion, serious though the consequences might be.

10. In the first place, certain arguments of the Court might have the effect of weakening the basic right of every State to set up, with other States, a legal entity possessing objective international personality. That was a problem of great importance to many delegations, as the representative of Ecuador had noted when he had stated<sup>1</sup> at the 185th meeting that the Organization of American States possessed international personality.

11. Secondly, regarding the question of claims brought by the United Nations against a State in respect of damages to itself, the Court had referred<sup>2</sup> to certain illustrations cited by the Secretariat. Although, as Mr. Feller<sup>3</sup> had pointed out before the Court, punitive damages should be excluded, the examples he had cited did in fact relate to punitive damages. Payments made by a corporation to an injured agent could not be the basis of a claim of the corporation against the responsible third party. Such payments were *res inter alios acta* whether or not made under a contract concluded between the corporation and its personnel. In common law, no legal entity could bring such claims against a third party. Where the parties concerned were States, the question assumed a punitive aspect which should be avoided in negotiations where the United Nations was a party. The United Nations would lose more psychologically thereby than it would gain financially.

12. There had been other objections to the Court's arguments, such as those raised by the representative of Ecuador.<sup>4</sup> Consequently, the General Assembly should not add in any way its authority to the arguments or *rationes decidendi* of the Court.

13. Mr. Duynstee requested the Rapporteur to mention in the Committee's report to the General Assembly the reservations he had formulated; and he expressed the hope that those reservations would be made not only on behalf of his delegation, but on behalf of the great majority of the Committee.

14. Mr. FITZMAURICE (United Kingdom) wished to clarify his earlier remarks in which he had agreed<sup>5</sup> with the representative of the USSR that the Court had created new law, since they had been misunderstood by the Polish representative.<sup>6</sup> He emphatically denied that he had said the Court could create new law in the sense of legislating, since it was not the function of courts to create new sets of rules; those could be obtained only by express or tacit agreement between States — by convention or by long usage. What he had said was that the Court might create, and in the present case had created, new law by the application of precedents and existing legal principles to a new situation. That was the customary and only pos-

sible procedure the world over by which courts could give a decision in cases for which there was no law to apply. In that sense and to that extent, the Court had created new law. The Polish representative's view that the Court could give an opinion on existing law only, and not on what ought to be the law, was unrealistic. Any lawyer consulted on a case for which there was no existing rule precisely covering it would nevertheless give his legal opinion on the basis of an application of existing rules and precedents to the new situation. The Court had done the same.

15. He recalled that at the preceding session the question had been raised, in connexion with injuries suffered by agents of the United Nations in the performance of their duty, whether it was possible for the United Nations as an organization to bring international claims which hitherto had been the exclusive right of States. That was a new situation. The General Assembly had decided to consult the Court on the legal question. The latter, in rendering its advisory opinion, had recognized that it was faced with a new situation<sup>7</sup> for which new law had to be created, and had dealt with that situation not *in vacuo*, but by applying the provisions of the Charter in the light of the principles of existing international law.

16. With regard to the Egyptian representative's view<sup>8</sup> that the Court's opinion was not binding on either the General Assembly or on the Court itself, which could later revise it, the United Kingdom representative noted under Article 59 of the Statute of the Court, the same applied to decisions or judgments of the Court which were not binding except between the parties to the dispute and only in respect of the particular case.

17. There still seemed to be some confusion between the binding force of a judgment or an advisory opinion on the one hand, and their authoritative nature on the other. Any opinion or decision by the Court was reversible, but until it was reversed by another decision or opinion of the Court, it had the high authority of a pronouncement of that principal legal organ of the United Nations. Consequently, while any representative would be entitled to consider that the Secretary-General should not be authorized to bring claims for agents of the United Nations on the grounds that it was within the competence of the national State to bring such action — a view with which he personally disagreed — in the light of the authoritative opinion of the Court, it could not be said that it would be legally impossible for the Secretary-General to bring such action, or to reconcile the concurrent claims of the national State and of the United Nations in respect of damages incurred by an agent of the United Nations.

18. Turning to the French draft resolution, (A/C.6/L.71) Mr. Fitzmaurice stated that, in the light of his previous remarks,<sup>9</sup> he supported the omission of any reference to the authoritative status of the advisory opinion of the Court on the

<sup>1</sup> See the Summary Record of the 185th meeting, paragraph 4.

<sup>2</sup> See *C.I.J. Reports*, 1949, page 181.

<sup>3</sup> See *I.C.J. Pleadings, Oral Arguments, Documents*, 1949, page 84.

<sup>4</sup> See the Summary Record of the 185th meeting, paragraphs 7 to 14.

<sup>5</sup> See the Summary Record of the 184th meeting, paragraph 15.

<sup>6</sup> See the Summary Record of the 185th meeting, paragraphs 27 to 29.

<sup>7</sup> See *I.C.J. Reports*, 1949, page 182.

<sup>8</sup> See the Summary Record of the 185th meeting, paragraph 15.

<sup>9</sup> See the Summary Record of the 184th meeting, paragraph 26.

question of reparations for injuries incurred in the service of the United Nations. The phrase of the French draft "having regard to the advisory opinion" was therefore adequate. In that connexion, he supported the Cuban representative's proposal<sup>1</sup> that it should be made clear in the report that, in accepting such a formulation, those who had supported the text of the joint draft resolution which had regarded the advisory opinion as an authoritative expression of international law on the questions considered had not revised their view, but had merely considered that the authoritative nature of the advisory opinion should be taken for granted.

19. In conclusion, he wished to draw attention to a few points of drafting in the English text of the French draft resolution, to ensure greater correspondence between the French and English versions. He suggested that the word "whereas", appearing twice in the preamble, should be changed to "considering that" and the words "Now therefore the General Assembly" might be replaced by "The General Assembly consequently". In the fifth paragraph, the expression "any international claim" might be changed to "an international claim", and the phrase "which may be deemed responsible" to "alleged to be responsible". Subject to those drafting amendments, he supported the French draft resolution.

20. Mr. RIVERA HERNÁNDEZ (Honduras) stated that for the reasons given by other speakers, he supported the French draft resolution, with the amendments accepted by its author at the 185th meeting. He suggested, however, that the words "or any other means of peaceful settlement" might be inserted after the words "submit to arbitration" in the fifth paragraph, so as to cover all possible methods of settlement.

21. Mr. SHANAHAN (New Zealand) stated that he agreed generally with the French draft resolution and would vote for it.

22. With regard to paragraph 21 of the Secretary-General's report (A/955), which suggested the procedure to be followed in respect of claims for agents of the United Nations who had incurred injury, he noted that there might be two categories of victims: first, nationals of States who were in the regular service of the United Nations and on whose behalf, unless special circumstances otherwise demanded, the Secretary-General might most appropriately bring action; and secondly, members of special missions whose employment by the United Nations would be temporary and on whose behalf their own Governments might be in a better position than the United Nations to bring claims for damages suffered by them. The Government of New Zealand therefore reserved its position with regard to the latter category of agents.

23. The United Kingdom representative had just observed that it would be legally possible, according to the advisory opinion, for the Secretary-General to bring claims in respect of injury incurred by agents of the United Nations. According to paragraph 22 of the Secretary-General's report (A/955), any difference between the United Nations and a national State which could not be settled by negotiation would be reported by the Secretary-General to the General Assembly. He wished to point out, in that connexion, that if

the Government of the State of nationality itself wished to handle a claim for the agent concerned, it could not be prevented from doing so.

24. Mr. PEABODY (Liberia) stated that, having carefully studied the matter, his delegation considered the advisory opinion given by the Court on the subject to be in conformity with the pertinent principles of international law and to be consistent with legal reasoning. Law, especially international law, was not static; it must develop logically and keep in step with changing world conditions. Consequently, while the advisory opinion might not be binding, as some representatives had pointed out, it was based upon logical and sound reasoning and did not seem to infringe the sovereign rights of States. The laws of democratic countries doubtless provided for settlement of claims of their citizens against the State, and vice versa. It would be logical for international law also to admit of claims of persons against an alien State, or of a State against an alien person through the latter's national State. Consequently, Mr. Peabody supported the advisory opinion on the question of claims brought by the United Nations on its own behalf or on behalf of its agents, and would vote for the French draft resolution.

25. Mr. ORIBE (Uruguay) stated that his delegation, together with the delegations of Cuba and Ecuador, wished to submit a joint amendment to the French draft resolution (A/C.6/L.71). Those delegations proposed that the following paragraph should be added at the end of that draft resolution:

*"Recommends that the Secretary-General should study the most appropriate technical measures to enable the United Nations to provide its agents, or persons entitled through them, with full and immediate reparation for injuries incurred in the exercise of their duties."*

26. With regard to the significance of the advisory opinion of the International Court of Justice, his delegation considered that, theoretically, an advisory opinion did not have the binding force of a judgment. In practice, however, the Court settled a question when it handed down an opinion. The Council of the League of Nations had always considered a matter definitely settled when the Court had given an opinion on it. The Court had shown an increasing tendency to view its task of giving opinions as essentially the same as its judicial task. At first, the judgments and opinions had been published separately; later they had been combined in one series. The high quality of the opinions of the Court did not seem to justify any sharp distinction between opinions and judgments.

27. The delegation of Uruguay was glad that the advisory opinion had been requested, because it considered that recourse to the International Court was the most effective means of realizing the aims of the United Nations and ensuring the application of rules of law.

28. With regard to the procedure which should be followed by the Secretary-General in the presentation and settlement of claims, the Uruguayan delegation considered that the Secretary-General should, whenever possible, first direct a claim to the courts of the responsible State and should address a claim through diplomatic channels only after the national courts had been approached and access to them had been denied.

<sup>1</sup> See the Summary Record of the 184th meeting, paragraph 51.



29. Mr. Oribe shared the view that instructions should be given to the Secretary-General concerning the procedure he should follow. In that connexion, he referred to a problem which concerned his Government and other American Governments, namely, the concurrence or co-existence of claims made by the United Nations and by the State of which the victim was a national. That problem had been raised the year before, when the question of reparations had been discussed. The problem had also been mentioned in the dissenting opinions of some of the judges of the International Court.

30. The delegation of Uruguay had studied the problem and had reached the conclusion that it was legally impossible to allow a concurrence of claims. In accordance with the Court's reply to question I (b) in the advisory opinion, the United Nations could present a claim in its own name, by virtue of its own right; in asking for reparation for its agent, it did not represent that agent. Its action was eminently public in character, and the rule of diplomatic protection could not be applied. That rule applied to claims brought by a State, and not to claims brought by the Organization. In practice, diplomatic protection applied only to cases in which private persons were concerned; other procedures were followed in cases in which public officials were concerned. In international law, diplomatic protection was exercised only after a long series of measures had been taken, among them recourse to national courts. Only in case of a denial of justice was diplomatic protection exercised. The Court had decided that the United Nations should not have recourse first to national courts, but should take public action at the outset, and that diplomatic protection applied only to private persons. The delegation of Uruguay considered that, since it was impossible to initiate public action and private proceedings at the same time, concurrence of claims was legally impossible. That delegation therefore thought that that question should not have been raised.

31. During the general debate, mention had been made of the possibility that an injured United Nations official might be the national of a State deemed responsible for the injury; that State might invoke the Canevaro ruling and refuse to accept the claim.<sup>1</sup> The delegation of Uruguay thought that the Committee had taken the wrong approach in its consideration of such cases. The Canevaro case was one of private persons with dual nationality. The case of United Nations agents was different; they were not private persons but public international officials.

32. If a national of one State was appointed by another State as ambassador to the country of which he was a national, the rule had been laid down that no person could be thus appointed ambassador to his own State without the consent of that State. If the State accepted his appointment, it could not refuse him diplomatic privileges and immunities and base its arguments for such refusal on the question of his nationality. The same procedure might be followed with respect to agents of the United Nations. The States which had signed the Convention on Privileges and Immunities could not logically oppose the appointment of their nationals to positions in the United

Nations. They must realize that those officials might have to exercise their functions on the territory of their own States. Those States had therefore tacitly renounced the use of the nationality argument. It was true that in international law the will of a State must not be presumed. The problem needed further study by the Secretary-General. He should perhaps obtain the consent of the State concerned before sending such an agent on a mission to that State. In giving its consent, the State recognized certain immunities and the possibility of claims being presented against it; it could not therefore make use of the nationality argument to deny any such claims.

33. Mr. KORETSKY (Union of Soviet Socialist Republics) said, in reply to the United Kingdom representative,<sup>2</sup> that the view that the International Court of Justice could create new law when faced with a new situation was, in his opinion, entirely erroneous.

34. It would be wrong to follow the course indicated by the Court in its reply to question I (b) of General Assembly resolution 258 (III) and to recognize that the United Nations had capacity to bring an international claim for damages suffered by its agents. Such action would represent an infringement of the sovereignty of States, and the Committee should not permit itself to be diverted from its goal or blinded to the political importance of the question by casuistic and scholastic arguments.

35. The USSR delegation was in the habit of considering all questions, even technical ones, from the point of view of whether they represented yet another attack on the principle of State sovereignty. Whenever that principle was attacked—even though any particular attack might seem unimportant—the alarm should be sounded. The USSR delegation, armed with a knowledge of historical processes, had been trained to recognize real danger from afar. In the question at issue, the danger was clear and unmistakable; the preceding debate had shown beyond any doubt that the principle of State sovereignty was at stake.

36. The basic source of international law was voluntary agreement among States, entered into in the form of conventions or treaties. Any other source could at most be regarded as auxiliary. Yet the United Kingdom and the United States delegations tried to impose upon all other delegations their own peculiar concept that the source of law lay in precedents established by courts. The "judge-made law" was a notion which arose from the special Anglo-Saxon legal tradition, which differed greatly from that of the rest of the world. Mr. Koretsky did not wish to dwell on the historical conditions which had led to the law being frequently established by court judgments: in the United Kingdom in circumvention of Parliament, which was the true law-making body of the land, and in the United States in order to resolve the conflict between the rights of the Federal Government and those of states. Nothing in that development would justify the current attempt of the Anglo-American bloc to foist its own tradition upon the United Nations.

37. He recalled that the USSR delegation had warned at the second session<sup>3</sup> of the Assembly

<sup>1</sup> See the Summary Record of the 185th meeting, paragraph 37.

<sup>2</sup> See paragraph 14 above.

<sup>3</sup> See the *Official Records of the second session of the General Assembly*, Sixth Committee, 45th meeting, page 54.

against the acceptance of the Australian draft resolution on the need for greater use by the United Nations and its organs of the International Court of Justice. In the view of that delegation, the intent behind that resolution had been to permit the imposition of the will of some States on others, in circumvention of the Charter.

38. The Court's advisory opinion presented a similar case; the opinion, too, was being used to contravene the provisions of the Charter, to curtail State sovereignty, and to create a breach between a State and its own nationals.

39. Mr. Koretsky did not agree with the United Kingdom representative that the Court could create new law in the face of a new situation not covered by existing law. In point of fact, however, the Court had gone even further. It had attempted to lay down a new rule of law in the face of, and contrary to, an existing rule. That rule conferred the right of diplomatic protection on States, and on States alone. Any attempt to take that right away from States and to give it to the United Nations consequently represented an attack on that principle of State sovereignty which was the very basis of the United Nations. The Organization had been created, not in order to weaken the separate States, but in order to strengthen them and to enable them jointly to resist warmongers and aggressors contemptuous of State sovereignty.

40. The United States representative had made a virtue of altering his original position.<sup>1</sup> Mr. Koretsky felt strongly that that position had been right, just as had been the dissenting opinion<sup>2</sup> of Judge Hackworth and that the new United States position was a mistaken one. The United States Government could hardly be more anxious than any other to weaken its bonds with its own citizens or to relinquish any measure of the sovereignty of its own State; but that Government was apparently prepared to sacrifice certain principles to its political purposes. A wedge between the State and its nationals might be useful if it was desired to give protection to traitors and political dissidents, especially those who came from the People's Democracies. The tendency to drive in such a wedge was clearly manifested in the Court's reply to question I (b), which, whether deliberately or not, might transform the United Nations into at least a "super-State" in the making. It was a tendency to which the USSR delegation was firmly opposed.

41. Mr. Koretsky could not agree with the representative of Ecuador who, perhaps because of the adverse experience of Latin-American States with diplomatic protection, had held that agents of the United Nations should sever all connexion with their national States and should place themselves wholly at the disposal of the Secretary-General. Past abuses on the part of large States should not lead small States to surrender any measure of their national sovereignty. It was for each State—and not for the Secretary-General—to protect its own nationals.

42. Consequently, since the part of the French draft resolution (A/C.6/L.71) dealing with reparation in respect of damage caused to the victim or to persons entitled through him was unaccept-

able in principle, the USSR delegation was unable to vote either for it or for any of the amendments to it which, while constituting a partial amelioration, did not alter the principle. Nothing less than the complete deletion of that part would be satisfactory.

43. The CHAIRMAN announced that the general debate was closed.

44. Mr. WENDELEN (Belgium), referring to the amendment<sup>3</sup> submitted jointly by the delegations of Cuba, Ecuador and Uruguay, remarked that he would abstain from voting on that amendment although he had no basic objection to it since the Secretary-General had already begun to study the problem of compensating staff members for injuries incurred in the exercise of their duties and would no doubt take into account the Uruguayan representative's remarks on that subject. Moreover, the amendment represented an additional paragraph which was not logically consequent upon the advisory opinion of the Court or the preamble to the French draft resolution.

45. If that amendment were accepted, the representative of Belgium felt that the results of the Secretary-General's study would be more appropriately reported to the Fifth Committee, only, however, in the event that the matter was placed on the agenda of a later session by a Member State.

46. Mr. FELLER (Secretariat) explained that, as stated in the Secretary-General's report (A/955), some consideration had already been given to that matter. Furthermore, since the above-mentioned report had been issued, the report of the Committee of Experts on salary, allowances and leave systems (A/C.5/331) had been submitted to the Fifth Committee, which would consider it shortly. The report of the Committee of Experts dealt at some length with questions of social security, and, in particular, in a section devoted to risks which resulted directly from the exercise of duties, presented a comprehensive plan for indemnification of staff members and their dependents for injuries incurred in the service of the United Nations.

47. Thus, in his view, the Secretary-General had already made the study called for in the joint amendment. Mr. Feller wished to know, therefore, whether, if that amendment were adopted, the Secretary-General would be expected to make a further study of the matter and to submit supplementary proposals. Such action would, in any case, have to await the decision of the Fifth Committee on the current proposals.

48. Mr. RENOUF (Australia) said that he was prepared to vote for the French draft resolution (A/C.6/L.71), although he had found the joint draft resolution of Brazil, India, Iran and the United States (A/C.6/L.51) preferable in some respects.

49. As his delegation accepted the French draft resolution on the understanding that the advisory opinion of the International Court of Justice was still regarded as "an authoritative expression of international law" and that the phrase was not included merely because it was not necessary for the purpose in hand, the representative of Aus-

<sup>1</sup> See the Summary Record of the 185th meeting, paragraph 38.

<sup>2</sup> See *I.C.J. Reports*, 1949, pages 196 to 204.

<sup>3</sup> See paragraph 25 above.

tralia strongly supported the Cuban representative's suggestion<sup>1</sup> that some such explanation should be included in the Committee's report to the General Assembly.

50. For the reasons given by the Belgian representative, and in view of Mr. Feller's explanation, he too would abstain from voting on the joint amendment.

51. Mr. MAKTO (United States of America) said that he would abstain for the same reasons; but he hoped that the sponsors of the joint amendment would be willing to withdraw it since Mr. Feller's statement made it clear that the joint amendment was really unnecessary.

52. In reply to the USSR representative's remark that the Anglo-American bloc sought to impose its ideas on other nations, he pointed out that the part of the Court's opinion to which the USSR representative had taken exception had been upheld by ten judges and that the United States judge had not been among them. He further observed that the USSR had been less concerned about the sovereignty of States when it had approved the Convention on genocide than it appeared to be in the present case; yet that Convention permitted far greater intervention on the part of the United Nations in the relationship between the State and its own nationals.

53. Mr. LOUTFI (Egypt), agreeing with the preceding speakers with respect to the joint amendment, would abstain from voting on it for the same reasons.

54. He inquired whether the French representative would accept his amendment,<sup>2</sup> submitted at the 185th meeting, to the effect that the words "of a State Member or non-member of the United Nations" should be inserted after the word "Government" in the fifth paragraph of the French draft resolution.

55. Mrs. BASTID (France) stated that her delegation would accept the suggestion that the words "of a State Member or non-member of the United Nations" should be inserted after the word "Government" in the fifth paragraph of the French draft resolution.

56. With regard to the joint amendment of Cuba, Ecuador and Uruguay, which was to add to the draft resolution a paragraph recommending that the Secretary-General should study measures to provide for full and immediate reparation, the delegation of France shared the view expressed by the representative of Belgium.<sup>3</sup> It was advisable to call attention to the matter, but it was a separate question and did not bear on the draft resolution under consideration.

57. In referring to the omission from the French draft resolution of the statement made in the third paragraph of the joint draft resolution (A/C.6/L.51), that the General Assembly accepted the advisory opinion of the International Court of Justice as an authoritative expression of international law on the questions considered, Mrs. Bastid requested that the Rapporteur should mention in his report that the French delegation, in omitting that paragraph, had not meant to cast

doubt upon the validity of the Court's opinion but had considered that that statement was not necessary in the resolution.

58. Mr. ORIBE (Uruguay), referring to the suggestion that the authors of the joint amendment of Cuba, Ecuador and Uruguay should withdraw their amendment, explained that it was designed to call attention to the importance of the question of full and immediate indemnification. The representative of Belgium had questioned the logical relation between the subject of the amendment and the Court's advisory opinion, which was the subject of the French draft resolution. Action recommended to the Secretary-General with a view to providing for full and immediate indemnification was the subject of that amendment and, in his opinion, that subject was connected with that of the draft resolution. As Mr. Feller had explained, the Secretary-General had already studied the problem and it was under consideration in the Fifth Committee. He wished to know if the draft submitted to the Fifth Committee contained the provision that reparations would be paid before the claim was granted, as soon as possible after the injury, and would be paid in full.

59. Mr. FELLER (Secretariat) replied that the plan<sup>4</sup> under consideration by the Fifth Committee provided for immediate reparation; the victim would be paid as soon as the claim was processed. With regard to the amount of indemnification, he explained that a scale was established which provided that, in case of total disability, the victim would receive two-thirds of his annual salary. The widow of an agent who was killed in the exercise of his duties would receive one-third the amount of his annual salary, and there were other provisions relating to funeral expenses and the like. The scale had been studied by social security experts; whether or not it represented full indemnification was a matter of opinion.

60. Mr. ORIBE (Uruguay) stated that by "full reparation", the authors of the joint amendment meant that the taking into account, in the assessment of indemnities, of all the factors normally taken into account in such claims in international law, should be considered. The question was not one of salary percentages. He thought that those factors had probably been taken into account by the experts who drew up the scales appearing in the draft submitted to the Fifth Committee. He considered that, since the matter was being studied by the Fifth Committee, the joint amendment submitted by Cuba, Ecuador and Uruguay was unnecessary, and, if the delegations of Cuba and Ecuador did not object, he would withdraw it.

61. The delegations of CUBA, ECUADOR and URUGUAY agreed to withdraw their joint amendment.

62. Mr. SOTO (Chile) requested that each paragraph of the French draft resolution should be voted on separately.

63. Mr. GÓMEZ ROBLEDO (Mexico) requested that the fifth paragraph of the draft resolution should be divided into three parts, and that each part should be put to the vote separately.

64. He stated that his delegation reserved its right to explain its vote at the following meeting.

<sup>1</sup> See the Summary Record of the 184th meeting, paragraph 50.

<sup>2</sup> See the Summary Record of the 185th meeting, paragraph 19.

<sup>3</sup> See paragraphs 25, 44 and 45 above.

<sup>4</sup> See document A/C.5/331, paragraphs 138 to 147.

65. The CHAIRMAN stated that he would put to the vote the French draft resolution (A/C.6/L.71), as amended.

*The first paragraph of the French draft resolution (A/C.6/L.71) was adopted by 45 votes to none, with 5 abstentions.*

*The second paragraph was adopted by 46 votes to 5, with no abstentions.*

*The third paragraph was adopted by 53 votes to none, with no abstentions.*

*The fourth paragraph was adopted by 45 votes to 4, with one abstention.*

66. The CHAIRMAN put to the vote the first part of the fifth paragraph (first paragraph of the operative part) of the French draft resolution as amended, which read:

*"The General Assembly*

*"Consequently*

*"Authorizes the Secretary-General, in accordance with his proposals to the General Assembly, to bring an international claim against the Government of a State, Member or non-member of the United Nations, which may be alleged to be responsible with a view to obtaining the reparation due in respect of the damage caused to the United Nations. . ."*

*That first part of the fifth paragraph of the French draft resolution was adopted by 50 votes to none, with one abstention.*

67. The CHAIRMAN put to the vote the second part of the same paragraph which read: "and in respect of damage caused to the victim or to persons entitled through him. . ."

*The second part of that paragraph was adopted by 42 votes to 7, with 2 abstentions.*

68. The CHAIRMAN put to the vote the last part of that paragraph, which read: "and, if necessary, to submit to arbitration, under appropriate procedures, such claims as cannot be settled by negotiation".

*The last part of that paragraph was adopted by 45 votes to 5, with one abstention.*

*The sixth paragraph (second paragraph of the operative part) was adopted by 41 votes to 6, with 3 abstentions.*

*The seventh paragraph (third paragraph of the operative part) was adopted by 45 votes to none, with 5 abstentions.*

69. The CHAIRMAN put to the vote the French draft resolution (A/C.6/L.71) as a whole.

*The French draft resolution as a whole was adopted by 45 votes to 5, with one abstention.*

The meeting rose at 1.20 p.m.