



United Nations

UNREST

GENERAL ASSEMBLY

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ORIGINAL

Fourth Session

REPARATION FOR INJURIES INCURRED IN THE SERVICE OF THE UNITED NATIONS

Report of the Secretary-General

1. The General Assembly, on 3 December 1948, adopted resolution 258(III) as follows:

"Whereas the series of tragic events which have lately befall agents of the United Nations engaged in the performance of the duties raises, with greater urgency than ever, the question of arrangements to be made by the United Nations with a view to ensuring to its agents the fullest measures of protection in the future and ensuring that reparation be made for the injuries suffered, and

"Whereas it is highly desirable that the Secretary-General should be able to act, without question, as efficaciously as possible with a view to obtaining any reparation due,

"The General Assembly

"Decides to submit the following legal questions to the International Court of Justice for an advisory opinion:

"I. In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international claim against the responsible de jure or de facto Government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons ent through him?

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

"Instructs the Secretary-General, after the Court has given its opinion, to prepare proposals in the light of that opinion, to submit to the General Assembly at its next regular session

2. This resolution resulted from a memorandum placed before the Assembly by the Secretary-General (A/674). The memorandum recounted the history of a number of cases of the deaths of United Nations agents who had been killed while performing official duties in Palestine, including Count Bernadotte and Colonel Sérot, mentioned certain actions taken by the Secretary-General, and presented a number of questions for consideration by the General Assembly.

Organization has capacity to bring a claim for damage caused to the interests of the Organization itself, to its administrative machine, and to the interests of which it is guardian. It stated that it "is not called upon to determine the precise extent of the reparation which the Organization would be entitled to recover. It may, however, be said that the measure of reparation should depend upon the amount of damage which the Organization has suffered as a result of the wrongful act or omission of the defendant State and should be calculated in accordance with the rules of international law."

10. In answering question I (b), the Court began by saying that, "It can now be assumed that the Organization has the capacity to bring a claim on the international plane, to negotiate, to conclude a special agreement and to prosecute a claim before an international tribunal." It pointed out that the traditional rule of diplomatic protection of nationals abroad does not in itself justify either a negative or affirmative answer, and said: "The Court is here faced with a new situation. The questions to which it gives rise can only be solved by realising that the situation is dominated by the provisions of the Charter considered in the light of the principles of international law." While the Charter does not expressly confer upon the Organization the capacity to include, in its claim for reparation, damage caused to the victim or the persons entitled through him, under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. After examining the character of the functions entrusted to the Organization and the nature of the missions of its agents, the Court said that it becomes clear that the capacity of the Organization to exercise a measure of functional protection of its agents arises by necessary intendment out of the Charter. In claiming reparation based on the injury suffered by its agent, the Organization does not represent the agent, but is asserting its own right, the right to secure respect for undertakings entered into toward the Organization.

11. The Court then concluded that, in case of a breach of the obligations entered into by its Members in the interest of the good working of the Organization, the latter has the capacity to claim adequate reparation, and that in assessing this reparation it is authorized to include the damage suffered by the victim or by persons entitled through him. It added that an affirmative answer should be given to questions I (a) and (b) whether or not the defendant State is a Member of the United Nations.

/12. The answer to

12. The answer to question II, which was given by 10 votes against 5, is as follows:

"When the United Nations as an Organization is bringing a claim for reparation of damage caused to its agent, it can only do so by basing its claim upon a breach of obligations due to itself; respect for this rule will usually prevent a conflict between the action of the United Nations and such rights as the agent's national State may possess, and thus bring about a reconciliation between their claims; moreover, this reconciliation 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."

13. In its advisory opinion the Court stated that there is no rule of law which assigns priority either to the State or to the Organization, or which compels either to refrain from bringing a claim; that although the bases of the two claims are different, that does not mean that the defendant State can be compelled to pay the reparation due in respect of the damage twice over; and that, in law, it does not seem that the fact of the possession of the nationality of the defendant State by the agent constitutes any obstacle to a claim brought by the Organization for a breach of obligations towards it occurring in relation to the performance of his mission by that agent.

Individual and dissenting opinions

14. Judges Alvarez and Azevedo, while concurring in the opinion of the majority of the Court, delivered individual opinions,

Judges Hackworth, Badawi Pasha and Krylov each delivered a dissenting opinion with respect to question I (b).

Judge Winiarski stated he was unable to concur in the reply given by the Court to question I (b) and that, in general, he shared the views expressed in Judge Hackworth's dissenting opinion.

Proposals by the Secretary-General for further action

15. The advisory opinion of the Court gives an adequate legal basis for the consideration of further action. The Secretary-General proposes that the General Assembly should accept the advisory opinion of the Court as an authoritative expression of international law on the questions considered.

16. Assuming such acceptance of the advisory opinion, the following questions remain to be decided: (1) Should the United Nations proceed to present claims for the deaths or injury of its agents in cases in which the responsibility of a State may appear to be involved? (2) What procedure should be followed in the presentation of such claims?

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(3) What policy should be followed with respect to damages?

Question (1).

17. The Secretary-General is strongly of the opinion that the United Nations should proceed to present claims for the deaths or injury of its agents in cases in which the responsibility of a State may appear to be involved. It is of the highest importance for the functioning of the Organization that its agents receive the requisite protection. Where the breach of the obligation of a State to afford protection has taken place and the Organization or its agent has suffered material damage, adequate compensation should be requested in order to ensure respect for such obligations in the future. In this connexion attention is called to the comment by the Acting Mediator for Palestine in his final report to the Security Council, dated 26 July 1949, (S/1357): "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. Some of these lives have been lost under conditions which would appear fully to justify the United Nations in holding the Governments concerned liable for the deaths." Moreover, a claim for reparations is an asset of the Organization, and every effort needs to be made to protect and realize upon them as in the case of other assets.

Question (2).

18. It must be emphasized that the opinion of the Court deals only with the general questions of the right of the United Nations to put forth claims. The Court did not, and could not by the terms of the request for an advisory opinion, go into the question whether any particular State was responsible in any specific case.

19. In his memorandum to the third session (A/674), the Secretary-General stated that he "assumes that the General Assembly will not desire to consider itself as a fact-finding body or judicial tribunal for determining the facts in these matters, or for the assessment of responsibility in individual cases. He considers that these must be determined elsewhere, as far as individual cases are concerned, that is to say, either by direct negotiations between the appropriate organ of the United Nations and the State or authority concerned, or by an arbitral tribunal." The Secretary-General assumes that the General Assembly will continue to adhere to this view.

/20. In his judgment,

20. In his judgment, the Secretary-General, as chief administrative officer of the Organization, is the appropriate organ for the presentation and settlement of the claims here involved. The Secretary-General has acted on behalf of the Organization in the prosecution of all other claims, and there is no apparent reason for differentiation here.

21. Subject to the General Assembly's approval, the Secretary-General proposes to adopt the following procedure: Determine which of the cases appear likely to involve the responsibility of a State; consult with the Government 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; present, in each such case, an appropriate request to the State involved for the initiation of negotiations to determine the facts, and the amount of reparations, if any, involved. In the event of differences of opinion between the Secretary-General and the State concerned which cannot be settled by negotiation, it would be proposed that the differences be submitted to arbitration. The arbitral tribunal would be composed of one arbitrator appointed by the Secretary-General, one appointed by the State involved, and a third to be appointed by mutual agreement of the two arbitrators, or, failing such agreement, by the President of the International Court of Justice.

22. Lastly, the Secretary-General would propose to make an annual report to the General Assembly on the status of such claims, and proceedings in connexion with them.

Question (3).

23. The Secretary-General considers that negotiations for settlement of these claims would be facilitated by allowing him discretion with respect to the elements of damage which should be included in any claim and the amount of reparation to be requested, or eventually accepted. He would be guided by the following principles in presentation and settlement:

The reparations requested should be reasonably adequate to compensate the Organization and the victim or the persons entitled through him.

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;

The Secretary-General would not advance any claim for exemplary damages.

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Action by the Secretary-General with respect to
indemnification for injuries

24. As a result of the losses suffered by United Nations agents in the field, and in the light of discussions in the Sixth Committee at the third regular session of the General Assembly, the Secretary-General undertook consideration of a revision of the general policy respecting indemnification of staff members for injuries.

25. Early in 1949, a Secretariat Committee on Staff Indemnities was appointed, with the following terms of reference:

- (i) To prepare a statement as to the present arrangements for providing special indemnities to staff members and others assigned to missions and their relationship to the general arrangements applicable to the Secretariat as a whole;
- (ii) To study the adequacy or otherwise of the compensation afforded, including the question of possible overlapping or duplication in the arrangements which are in effect;
- (iii) To make recommendations with a view to the establishment of a comprehensive policy for social security, both as applied to staff assigned to field duties and the Secretariat generally, and for special compensation in the case of members of commissions and other personnel such as military observers attached to the United Nations for special duties;
- (iv) To study the methods to be adopted to implement the recommendations made, and particularly the question of using commercial insurance companies as against a scheme of self-insurance by United Nations.

26. In June 1949, the Committee submitted a report to the Secretary-General, which is still under consideration. The Secretary-General intends to present later a further report to the fourth regular session of the General Assembly containing his conclusions on this matter.