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REPARATION FOR INJURIES INCURRED IN THE SERVICE OF THE UNITED NATIONS

Report of the Sixth Committee

Rapporteur: Mr. E. FERRER VIEYRA (Argentina)

1. The General Assembly, during the first part of its third session, considered several questions with regard to injuries incurred in the service of the United Nations. These questions had been raised in a memorandum by the Secretary-General (A/674) which set forth a number of instances of death or injury of United Nations' agents in Palestine, including the assassination of Count Bernadotte and Colonel Serot.
2. By resolution 258 (III) of 3 December 1948 the General Assembly decided 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 entitled through him?

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

3. On 11 April 1949 the International Court of Justice gave its advisory opinion.* It answered question I (a) in the affirmative, by a unanimous vote, and question I (b) in the affirmative, by 11 votes to 4. The Court added that the United Nations had the capacity to bring an international claim against the Government of either a Member or a non-Member state. In reply to question II, the Court, by 10 votes to 5, stated:

"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

* "Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949".

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."

4. By resolution 258 (III) referred to above the General Assembly instructed the Secretary-General to prepare proposals in the light of the opinion of the Court to be submitted to the next regular session of the General Assembly. In pursuance of this instruction the Secretary-General duly submitted a report (A/955) to the General Assembly together with his proposals for action.
5. The General Assembly, at its 224th plenary meeting on 22 September 1949, referred this item to the Sixth Committee for consideration.
6. The Sixth Committee considered the item at its 183rd to 187th meetings from 3 to 9 November 1949. It had before it a draft resolution submitted jointly by Brazil, India, Iran and the United States of America (A/C.6/L.51) and amendments to that draft resolution submitted by Belgium (A/C.6/L.57), Australia (A/C.6/L.62), France (A/C.6/L.68) and the United Kingdom (A/C.6/L.70). At the 184th meeting the French amendment was withdrawn and a draft resolution (A/C.6/L.71) incorporating the views expressed in the Belgian and Australian amendments was submitted in its place by the representative of France. This draft resolution was accepted by the sponsors of the joint draft resolution.
7. With regard to the draft resolution proposed by France it was stated that, in omitting the paragraph reading "Resolves that it accepts the advisory opinion of the International Court of Justice, delivered on 11 April 1949, as an authoritative expression of International law on the questions considered" which had appeared in the joint draft resolution, it was not intended to cast doubt upon the authority of the Court's opinion; it was, however, considered that a statement to that effect in the resolution was unnecessary. It was specifically requested that the report to the General Assembly should make clear that, in accepting the French resolution, those who had supported the text of the joint draft resolution had not changed their view, but had merely considered that the authoritative nature of the advisory opinion should be taken for granted. No conclusion was reached on this issue.
8. At the 186th meeting of the Sixth Committee, the representatives of Cuba, Ecuador and Uruguay submitted an amendment (A/C.6/SR.186, page 7) to the French draft resolution recommending that the Secretary-General should study the most appropriate measures to enable the United Nations to provide its agents or persons entitled through them, full and immediate reparation. Following a
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statement on behalf of the Secretary-General that a study on these lines had already been included in a document submitted to the Fifth Committee (A/C.5/331), the joint amendment was withdrawn.

9. The French draft resolution, with drafting amendments suggested in the course of the 185th and 186th meetings and accepted by the French delegation, was voted on by the Sixth Committee at its 186th meeting on 8 November 1949. At the request of the representative of Chile each paragraph was voted on separately, and at the request of the representative of Mexico the first paragraph of the operative part of the draft resolution was divided into three parts, each of which was voted on separately.

The first paragraph of the preamble was adopted by 45 votes to none, with 5 abstentions.

The second paragraph of the preamble was adopted by 46 votes to 5, with no abstentions.

The third paragraph of the preamble was adopted by 53 votes to none, with no abstentions.

The fourth paragraph of the preamble was adopted by 45 votes to 4, with 1 abstention.

The first part of the first paragraph of the operative part of the draft resolution, which would authorize the Secretary-General to bring an international claim for reparation due in respect of damage caused to the United Nations, was adopted by 50 votes to none, with 1 abstention.

The second part of the first paragraph, authorizing the Secretary-General to bring international claims for reparation due in respect of damage caused to the victim or persons entitled through him, was adopted by 42 votes to 7, with 2 abstentions.

The last part of the paragraph, which would authorize the Secretary-General if necessary to submit claims to arbitration, was adopted by 45 votes to 5, with 1 abstention.

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

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

The draft resolution as a whole was adopted by 45 votes to 5, with 1 abstention.

10. The Sixth Committee accordingly recommends to the General Assembly the adoption of the following resolution:

REPARATION FOR INJURIES INCURRED IN THE SERVICE OF THE UNITED NATIONS

The General Assembly,

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

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

Considering that it is highly desirable that reparation be secured for injuries incurred in the service of the United Nations,

Considering that the Secretary General has submitted in his report of 23 August 1949 (A/955) a number of proposals relating to the aforementioned advisory opinion,

Consequently

1. Authorizes the Secretary-General, in accordance with his proposals, to bring an international claim against the Government of a State, Member or non-Member of the United Nations, alleged to be responsible, with a view to obtaining the reparation due in respect of the damage caused to the United Nations and in respect of the damage caused to the victim or to persons entitled through him and, if necessary, to submit to arbitration, under appropriate procedures, such claims as cannot be settled by negotiation;
2. Authorizes the Secretary-General to take the steps and to negotiate in each particular case the agreements necessary to reconcile action by the United Nations with such rights as may be possessed by the State of which the victim is a national;
3. Requests the Secretary-General to submit an annual report to subsequent sessions of the General Assembly on the status of claims for injuries incurred in the service of the United Nations, and proceedings in connexion with them.
