HUNDRED AND EIGHTY-FOURTH MEETING

Held at Lake Success, New York, on Friday, 4 November 1949, at 3 p.m.

Chairman: Mr. LACHS (Poland).

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,[1] A/955) (*continued*)

1. The CHAIRMAN requested the Committee to continue the discussion of the question of reparation for injuries incurred in the service of the United Nations.

2. Mr. KRAJEWSKI (Poland) pointed out that the problem dealt with in the advisory opinion of the International Court of Justice was not an easy one to solve. He therefore felt that it could not be disposed of without careful consideration of its implications.

3. Before discussing the substance of the matter, he wished to speak of the value of an advisory opinion of the International Court of Justice. He had been surprised to hear the view by eminent jurists in the Sixth Committee that the General Assembly had no right to hold a debate on the substance of the opinion given by the Court.

4. An opinion of the Court, however, was only advisory; in handing one down, the Court did not decide on the substance of the issue in question nor did it decide a dispute. Its advisory opinions could have only a persuasive character, and it should not be assumed that any case was prejudged thereby. Such an opinion was not binding on either the Organization or the parties directly concerned. In support of that view, the representative of Poland referred members to the history of the Permanent Court of International Justice. Moreover, eminent judges, members of the Court, had stated that an advisory opinion was not even binding on the Court itself.

5. In the circumstances, the United Nations could utilize the Court's opinions in whatever way it saw fit. By merely requesting such an opinion the United Nations did not bind Member States to subject themselves to the views of the Court as if those views were a judgment. The situation would be different if the Court was called upon to adjudicate a particular issue. Under any other interpretation, the Committee would be confusing Articles 96 of the Charter and 65 of the Statute of the International Court of Justice with Articles 94 of the Charter and 36 of the Statute, and would be implying that Member States, by requesting an advisory opinion from the Court, bound themselves in advance to accept the Court's findings. That was not the case at all, and was moreover, contrary to the well-established principle that rules of law binding upon States emanated from the States' own free will.

6. Moreover, since organs of the United Nations could request opinions on problems the various aspects of which might exceed the sphere of law, the United Nations should necessarily be free to consider all the political implications as well as the legal aspects of a question before deciding on the problem as a whole. If an advisory opinion were considered binding, however, a political problem with legal aspects would be considered only from one point of view, which was inadmissible.

7. The Sixth Committee would therefore be exposed to dangers should it adopt the view, urged principally by the representative of France,[2] that it could not discuss the substance of any advisory opinion of the Court. That view was pernicious and had no foundation either in the Charter or in the Statute of the International Court of Justice.

8. With regard to the substance of the question, the Polish delegation held the view that the Organization had only the right to claim damages for any loss suffered by the United Nations as such. The capacity to claim damages for losses suffered by persons was the exclusive right of the State and could not be transferred to any other body.

9. Traditionally, the State exercised its functions upon both territory and persons and there was no reason to assume that it had renounced that right by entering an international organization. The State continued to claim the right of jurisdiction over its citizens both at home and abroad. Moreover, the Permanent Court of International Justice had stated in one of its judgments[3] that it was an elementary principle of international law that a State was entitled to protect its subjects when they were injured by acts contrary to international law which had been committed by another State. Any limitation of that right of the State would be a serious attack on its basic functions and, in the question under consideration, the International Court of Justice had obviously exceeded the proper limits by attempting to establish the Organization's right to a function pertaining exclusively to the State. The Court had also mistaken the character of the Convention on Privileges and Immunities, which clearly stated[4] that those privileges and immun-

[1] 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.

[2] See the Summary Record of the 183rd meeting, paragraph 41.

[3] See P.C.I.J., Series A, No. 2, 1924, page 12.

[4] See *Resolutions adopted by the General Assembly during the first part of its first session*, page 26, section 14.

ities were granted to officials solely in the interests of the United Nations and not for their personal benefit.

10. The question had no connexion with what the Court seemed to claim, that is functional protection, which was an innovation contrary to the well-established principles of international law. While the Organization protected its staff members in carrying out their functions, they nevertheless remained citizens of their own States and were therefore subject to the general principles of the law of nationality and its consequences.

11. If the views of the Court were adopted, the world would be faced with the absurd situation in which the United Nations could act against the State of which the official concerned was a national. What would be the situation, however, should a member of the staff or an agent of the United Nations need protection from the Organization? Would the State be barred from protecting him or would the Organization become so powerful as to claim super-rights over any Member State?

12. Those issues deserved serious consideration by the Committee because they involved essential problems of law and State sovereignty, which Mr. Krajewski would revert to later.

13. In conclusion, he wished to add that the provision concerning eventual arrangements by the Secretary-General and the States concerned could not solve the problem because that provision was placed on the basis of consultation, whether successful or not. The State would be obliged thereby to negotiate in a situation seriously affecting its rights. Arbitration was possible whenever there were conflicting interests or rights but the situation was very different if the matter concerned the exclusive rights of a State; in such a case, that State's exclusive competence in the sphere of its personal jurisdiction could not be transferred to the initiative of the Organization. For that reason, the Polish delegation considered that the advisory opinion on question I (b)[1] could not be accepted.

14. Mr. FITZMAURICE (United Kingdom) recalled that his Government had been among those which addressed both written and oral arguments on the subject to the Court. Oral arguments had also been delivered by persons well-known to the Sixth Committee, namely by Mr. Chaumont and Mr. Kaeckenbeeck on behalf of their respective Governments and by Mr. Kerno and Mr. Feller on behalf of the Secretary-General. He welcomed at the Committee's table the French representative, Mrs. Bastid, the hand of whose father, the President of the International Court of Justice, could be detected in the brilliant and lucid drafting of the French text of the advisory opinion.

15. Regarding the general basis of the advisory opinion, he agreed with the USSR representative[2] that the opinion really created new law. That statement was tantamount to an admission that, although the opinion was not binding, it was authoritative as a statement of law. The United Kingdom representative was not shocked, as perhaps the USSR representative was, at the idea of the Courts creating new law. Courts were constantly creating new law because they were constantly being faced with new situations not completely covered by existing rules or precedents. The Court expressly recognized in the advisory opinion (page 182), that it had been faced with a new situation. Ordinarily, in order to create law, courts made deductions from existing principles and precedents and applied them to the case in hand. That was not an alarming procedure, however. Mr. Fitzmaurice then quoted the French text of that part of the advisory opinion in which the Court stated that the question arising from that new situation could only be solved by determining the manner in which it was governed by the provisions of the Charter interpreted in the light of the principles of international law. The record of the arguments presented to the Court showed clearly that a firm basis of principle and precedent existed for the conclusions which the Court had reached.

16. That did not mean that the views of the Court were correct merely because of that foundation. The United Kingdom delegation believed that the Sixth Committee could neither approve nor disapprove of the findings of the Court on a point of law; the Committee could only welcome them or not welcome them. The United Kingdom Government greatly welcomed the opinion of the Court, not because its findings were in accordance with the argument which the United Kingdom had presented to the Court but because it believed they were in the best interests of the United Nations itself.

17. One of the salient features of the Court's opinion was the finding that the United Nations as an organization was an international person subject to, and entitled to, the benefit of the rules and principles of international law. As the Court itself emphasized,[3] however, that did not mean that the Organization was a State or that its legal personality and rights and duties were the same as those of the State. Nor was it in any sense a "super-State." The finding established, however, that States were not the only possible entities possessing international personality nor the only possible subjects of international law. That finding was fundamental to all the questions before the Court, for, unless the United Nations possessed international personality, it could not have the capacity to bring international claims in the international sphere.

18. Mr. Fitzmaurice then drew attention to the fact that the Court considered that the capacity of the United Nations to make a personal claim on behalf of its agents for reparation for injuries incurred in the service of the Organization was a necessary deduction from the Charter because it was an essential concomitant of the position of independence which United Nations staff members should have if they were to be able to carry out their functions. The Court considered that "in order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization . . . It is essential that in performing his duties he need not have to rely on any other protection than that of the Organization . . . In particular, he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter. And lastly, it is essential that —

[1] See *I.C.J. Reports*, 1949, page 187.

[2] See the Summary Record of the 183rd meeting, paragraph 62.

[3] See *I.C.J. Reports*, 1949, page 179.

whether the agent belongs to a powerful or to a weak State — he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless."[1]

19. The United Kingdom attached great importance to the Court's view that the United Nations was not precluded from making a claim on behalf of one of its servants against a State responsible for an injury to him merely because that servant happened to bear the nationality of the State responsible for the injury. That was important because of the rule that ordinarily claims could not be made by the Government of one State against the Government of another State on behalf of a national of that latter State. For instance, in the case of persons possessing dual nationality, the doctrine of master-nationality prevented the Government of one of the States of which he was a national from making a claim for an injury done to him by the Government of the other State of which he was a national. The opinion of the Court clearly established that the principle did not apply in respect of claims made by the United Nations on behalf of its staff; those claims, in any case, were not based on consideration of nationality.

20. It was most important for the proper functioning of the United Nations that that position should be clearly established. In many instances, it might be desirable for a member of a United Nations commission to be a national of the State in which the Commission was to operate, and it was essential, if he was to perform his functions in an independent manner, that he should be entitled to the full protection of the Organization irrespective of his nationality. Persons in those circumstances might even be exposed to special risks; it was therefore all the more important that they should be fully protected.

21. In regard to claims on behalf of the United Nations against non-member States, the United Kingdom delegation felt that, although the subject was important, the majority of possible claims were covered by the international personality of the Organization and its right to make claims against Member States. There might even be a time when the problem of non-member States would no longer exist. The question should, therefore, not cause the Committee any particular difficulty. In that connexion, the Netherlands representative had seemed to express[2] undue concern over the observations of the Court with respect to non-member States.

22. Regarding the position of the State concerned in the case of injury done to a United Nations staff member, Mr. Fitzmaurice was surprised that the USSR delegation found any derogation from national sovereignty in the Court's opinion. On the contrary, the Court had appeared expressly to preserve the position and rights of the national State of the victim. While leaving unchanged the rights of the national State, the opinion of the Court established for the United Nations a concurrent jurisdiction and right to bring an international claim in certain cases. There were certain aspects of such a claim which might not be covered by the actual claim put forward on behalf of the United Nations, which would not claim punitive or exemplary damages; that would remain a matter for the national State of the victim, rather than for the United Nations, to take up just as would be the punishment for the perpetration of the crime and measures for its prevention in the future. The Court merely said[3] that the claim of the national State was to be reconciled with that of the United Nations and that the defendant State could not be compelled to pay reparation twice in respect of the same damage. That problem was not a new one; it occurred whenever an individual with a dual nationality suffered an injury for which a third State was considered liable.

23. Mr. Fitzmaurice was gratified that the Secretary-General, as stated in his report (A/955), intended to consult with the Government of the State of which the victim was a national in order to determine whether it had any objection to, or wished to participate in, the submission of a claim. In those circumstances it appeared that the sovereignty of States would be fully protected.

24. It should be recalled that the Court had been asked to advise on the capacity of the United Nations to make international claims in general, and not whether a claim in any particular case would be valid. The question concerned solely the capacity of the United Nations and not the responsibility of a State for any unfortunate occurrence. The Court's advisory opinion made that quite clear, since it pointed out[4] that, before any State could be held responsible in a case, it would have to be established that the damage resulted from a failure by the State concerned to act in accordance with international law or the provisions of the Charter. That opinion was without prejudice to the application of other principles concerning international claims. For those reasons, the United Kingdom delegation hoped that no difficulty would be experienced by any State which might feel itself to be concerned in accepting the opinion of the Court on the question.

25. Although he had no doubt as to the authoritative nature of opinions of the Court on questions of international law, a distinction should be made between the binding character and the authoritative nature of those opinions. The representative of Poland seemed to have confused those two characteristics. Advisory opinions were not binding in the sense that judgments of the Court were, because in the case of advisory opinions the General Assembly was not bound to act in accordance with the opinion. The Assembly could take other factors into consideration; it was also free to accept or reject the opinion. It could not be said, however, that the opinion of the Court was wrong from the legal standpoint or that the Assembly did not agree with the Court in its findings, because the Assembly had no competence in a legal matter to agree or disagree with the Court on a point of law. The Court was the highest authority on matters of international law and its findings were necessarily authoritative.

26. Although he therefore fully agreed that an opinion of the Court was authoritative, Mr. Fitzmaurice wondered whether the phrase "as an authoritative expression of international law on the questions considered", which appeared in the joint draft resolution (A/C.6/L.51) should be

[1] See *I.C.J. Reports*, 1949, pages 183 and 184.
[2] See the Summary Record of the 183rd meeting, paragraph 20.
[3] *Ibid.*, paragraph 62.
[4] See *I.C.J. Reports*, 1949, page 186.

maintained. As the representative of Belgium had stated[1], those words might suggest that the authoritative nature of the opinion was derived from its acceptance as such by the General Assembly and not from its intrinsic nature and the inherent status of the Court. They might imply that the Assembly could say that it did not regard the opinion as an authoritative expression of the law concerned, whereas no one could wish to make that suggestion. Moreover, no phrase of the kind had been included in General Assembly resolution 197 (III) on the opinion of the Court regarding the admission of new Members. Inclusion of that passage in the current joint draft resolution might suggest that only the opinion in question was authoritative but not so the previous one, and might necessitate the inclusion of a similar qualification in all future resolutions concerning opinions of the Court; that would be inadvisable.

27. For all those reasons, he would vote in favour of the Belgian amendment (A/C.6/L.57)[2]. He hoped that the authors of the joint draft resolution and their supporters would also be able to do so. In that way virtual unanimity would be achieved, and that was most desirable.

28. Mr. Fitzmaurice thought that the English translation of the term *"se rallie à"* in the Belgian amendment did not correspond with the French, and suggested that it might be better to substitute the word "accepts" for "expresses its agreement", which was too broad: The same word could possibly be used in the French text.

29. He favoured the Belgian amendment because it stressed the replies of the Court rather than the advisory opinion as such. If Members accepted the replies, they implicitly accepted the reasoning on which they were based and therefore the opinion as a whole. Still, the wording of the Belgian amendment might be of assistance to those delegations which found it difficult to imply acceptance of the entire text of the opinion.

30. Mr. Fitzmaurice accepted the joint draft resolution subject to the French amendments (A/C.6/L.68)[3]. He thought, moreover, that some mention should be made therein of the report of the Secretary-General (A/955) and in particular of its eminently practical proposals for further action. He proposed therefore that the joint draft resolution should contain a reference to document A/955 and should express approval of the suggested procedure for presenting claims. A written amendment to that effect, being circulated, called for the insertion of a new paragraph to follow the third paragraph of the joint draft resolution (A/C.6/L.51), and to be couched in the following terms (A/C.6/L.70):

"Takes note of the report of the Secretary-General on this subject dated 23 August 1949 and approves the suggestions made therein for the presentation and prosecution of claims on behalf of the United Nations and its Servants."

The United Kingdom amendment (A/C.6/L.70) also called for the insertion of "Consequently" before the word "authorizes" at the beginning of the fourth paragraph of the joint draft resolution.

31. Mr. GÓMEZ ROBLEDO (Mexico) said that his delegation fully agreed with the unanimous advisory opinion of the International Court of Justice that the United Nations had the capacity to bring an international claim against the responsible Government of a Member or a non-member State with a view to obtaining the reparation due in respect of the damage caused to the United Nations.

32. It was, however, unable to accept the majority view of the Court that the United Nations had the capacity to bring such a claim in respect of the damage caused to the victim or to persons entitled through him.

33. In that connexion, he remarked that he could not accept the view that the Committee was not competent to analyse the advisory opinion of the Court. The decision whether or not to authorize the Secretary-General to proceed in accordance with the proposals contained in his report (A/955) would necessarily be made on the basis of agreement or disagreement with the Court's opinion.

34. While the United Nations should accord to its agents all the protection necessary for the fulfilment of their duties, it should not usurp the prerogatives of their national States. Under international law, it was for the State itself to claim reparation for injuries incurred by one of its nationals. As the United Nations was not a State and certainly not a "super-State", it should not be endowed with the attributes which traditionally pertained to the State. The fact that several judges had expressed dissenting opinions on that point showed that the question involved a new rule of law and therefore called for utmost caution; it was necessary to guard against interpreting reparation as a punitive measure and against interfering with the jurisdiction of sovereign States.

35. On that point, he fully agreed with the dissenting opinions of Judges Hackworth, Badawi Pasha and Krylov. Thus, Judge Hackworth stated: "Certainly there is no specific provision in the Charter, nor is there provision in any other agreement of which I am aware, conferring upon the Organization authority to assume the role of a State, and to represent its agents in the espousal of diplomatic claims on their behalf. I am equally convinced that there is no implied power to be drawn upon for this purpose."[4] Judge Hackworth also insisted that there was no basis for an analogy between the relationship of a State to its nationals and the relationship of the Organization to its employees; or for an analogy between functions of a State in the protection of its nationals and functions of the Organization in the protection of its employees.[5] Nationality had been the only recognized basis for the right of diplomatic protection[6]; international functional protection constituted a much weaker basis.

36. The Mexican representative also agreed with the statement of Judge Krylov that the Court had gone "far outside the limits of the international law in force"[7] in stating that the protection afforded by the United Nations to its agent could be exercised against the State of which the agent was a national.

37. True, in some cases it might be difficult to draw the line between damages suffered by the

[1] See the Summary Record of the 183rd meeting, paragraph 31.
[2] *Ibid.*, paragraph 30.
[3] *Ibid.*, paragraph 43.
[4] See *C.I.J. Reports*, 1949, pages 197 and 198.
[5] *Ibid.*, pages 198 and 199.
[6] *Ibid.*, page 202.
[7] *Ibid.*, page 218.

United Nations and injuries incurred by the victim; that was no reason, however, for confounding the distinct and separate principles involved. The Court itself had been scrupulously careful to separate them when giving its opinion.

38. He added that Maxico had had considerable experience with international claims for reparation and possessed a complete jurisprudence on the subject which it would not wish to alter. The Mexican delegation was thus obliged to disagree with the advisory opinion of the Court on the question of claims with respect to damages to the victim. The delegation did so largely in order to safeguard the interests of the responsible State, which might be faced with a double claim for damages, one on the part of the victim's national State and another on the part of the United Nations.

39. Mr. ZIAUDDIN (Pakistan) considered that damages should be recoverable for injuries suffered by a United Nations staff member in the line of duty. If there had been any doubts regarding that point, they had been resolved when the late Count Bernadotte had been assassinated. There was reason for the Organization to consider the problem with so many of its staff members stationed in far-flung corners of the world.

40. There was probably general agreement on the principle involved. The discussion really resolved at that time to the question of the form in which the opinion of the Court was to be accepted and acted on. The joint draft resolution and the amendments thereto in reality had but one object, which was to clarify that question. He suggested therefore that the authors of the joint draft resolution and of the various amendments should attempt to agree on a combined text.

41. The representative of Pakistan found the Secretary-General's report (A/955) very clear on the procedure to be followed in presenting claims and thought that the Secretary-General should be authorized to act in accordance with the proposals laid down in that document.

42. In connexion with the fourth paragraph of the joint draft resolution (A/C.6/L.51) he suggested that the phrase "settlement of claims for injuries" should be reworded to read "settlement of claims on account of injuries". That change did not affect the French text.

43. Mr. AMADO (Brazil) stated that his delegation had been prepared, at the third session of the General Assembly, to recognize the capacity of the United Nations to make international claims for reparation. At that time it had been felt, however, that action by the General Assembly in the matter would not be authoritative until the International Court of Justice had clarified the legal position. Accordingly, the General Assembly had put several questions to the Court, which the Court in its advisory opinion had answered affirmatively.

44. While he agreed with the USSR representative that an advisory opinion of the Court was not binding, as a judgment of the Court would be, Mr. Amado felt that the opinion should certainly be accepted by the General Assembly. The International Court of Justice was the highest authority on international law, and the General Assembly, far from closing its ears to the Court's advisory opinion, should enhance its intrinsic value by the political prestige which acceptance by fifty-nine Member States would carry.

45. He was consequently prepared to accept the joint draft resolution (A/C.6/L.51) in the third paragraph of which the Assembly would accept the advisory opinion of the Court "as an authoritative expression of international law on the questions considered". While the Belgian amendment (A/C.6/L.57) to that particular passage might be acceptable, he failed to see much difference between it and the joint draft resolution. The words *"se rallie à"* were not very different from "Accepts". The French amendment (A/C.6/L.68) to the same paragraph was somewhat more drastic; yet the final result of all the French amendments to the joint draft resolution would be to produce little change of substance. He therefore would wish to retain the third paragraph of the joint draft resolution which, of all the versions proposed, was the clearest statement of acceptance by the General Assembly of the Court's advisory opinion.

46. He was not opposed to the Australian amendment (A/C.6/L.62).[1] Resolution 258 (III), in fact, instructed the Secretary-General, after the Court had given its opinion, to prepare proposals in the light of that opinion and to submit them to the General Assembly at its fourth session. The Secretary-General had complied with that instruction and the proposals prepared by him were to be found in his report (A/955). It would therefore seem logical, as the United Kingdom representative had also remarked, to include the specific reference to those proposals in the draft resolution.

47. In conclusion, Mr. Amado quoted from the individual opinion by Judge Alvarez to the effect that the International Court of Justice had faced a new situation and had, in its advisory opinion, proclaimed a new precept of international law.[2]

48. Mr. GARCÍA AMADOR (Cuba) stated that his delegation considered the advisory opinion of the International Court of Justice highly satisfactory, in particular the Court's statement that the United Nations possessed international personality and the capacity to bring international claims, to negotiate, to enter into agreements, and to submit its claims to an international tribunal.

49. He drew the Committee's attention to the fact that Article 104 of the Charter, which had served as the basis for the advisory opinion of the Court, had been incorporated in a more extensive form in article 103 of the Charter of the Organization of American States. The Cuban delegation hoped, therefore, that the conclusions reached by the Court would be applied by analogy, should the necessity arise, to the international personality and legal capacity of the Organization of American States.

50. While his delegation might make certain reservations with respect to the advisory opinion, it felt that the General Assembly should accept that opinion as an authoritative expression of international law. In his opinion, explicit acceptance by the General Assembly was not really important, since advisory opinions of the Court had an objective validity as authoritative expressions of international law regardless of such acceptance.

[1] See the Summary Record of the 183rd meeting, paragraph 37.

[2] See *I.C.J. Reports*, 1949, pages 190.

51. In that connexion, he pointed out that the Committee found itself in an impasse. The third paragraph of the joint draft resolution, (A/C.6/L.51) described the advisory opinion in precisely those words: "an authoritative expression of international law". Both the French and the Belgian amendments to that paragraph suggested the deletion of that phrase. It would be difficult for either the Committee or the General Assembly to vote in favour of such a deletion, lest the conclusion should be drawn that they did not consider advisory opinions of the International Court of Justice as authoritative expressions of international law. The United Kingdom representative had, however, explained most logically and convincingly that, inasmuch as a similar phrase had not been used in the previous resolution of the General Assembly regarding an earlier advisory opinion of the Court, the inference of adopting that phrase might be that those opinions had not been considered equally authoritative. He therefore suggested that, if the phrase in question were not adopted, the Committee should include that explanation for its action in its report to the General Assembly as an annex to the draft resolution.

52. Mr. PÉREZ PEROZO (Venezuela) recalled that, when the question of reparation for injuries incurred in the service of the United Nations had been considered at the third session,[1] the Venezuelan delegation had greatly appreciated the initiative taken by the Secretary-General in protecting the interests of the United Nations and its agents. It had been deeply impressed by the list of deaths — including that of Count Bernadotte — contained in the Secretary-General's memorandum (A/674). It had conceded that justice and humanity required that necessary protection should be ensured to officials of the United Nations who faced grave dangers in the performance of their duties and had consequently supported resolution 258 (III) asking for an advisory opinion of the International Court of Justice in the matter.

53. Having studied both the advisory opinion received and the Secretary-General's current report (A/955), he wished to say that he fully accepted the opinion of the Court and was in favour of authorizing the Secretary-General to proceed with the claims for reparation in connexion with which the advisory opinion had been requested.

54. In his view, the Committee should recommend acceptance by the General Assembly of the advisory opinion of the Court without discussing the Court's conclusions, not because the General Assembly did not have the right to do so or because the opinion was binding, but because that opinion, vested with the high authority of the Court, provided a firm and useful basis for the purposes of the General Assembly. The Court had given its opinion on an abstract question which had no relation to any existing claims; it was therefore for the General Assembly to make use of that opinion in reaching a decision with respect to specific claims, taking into account political as well as legal considerations.

55. Furthermore, to engage in a discussion of the substance of the advisory opinion would merely mean to repeat the work performed by the Court; and for such a purpose, no one would deny that the General Assembly was a less competent and less impartial body. Had it been otherwise, there would have been no need to consult the International Court of Justice.

56. If the General Assembly accepted the advisory opinion, as the Venezuelan delegation thought it ought to, it should apply the conclusions of the Court to the solution of the problems which had led to the request for the Court's opinion. In that connexion, he supported the proposals submitted by the Secretary-General (A/955).

57. He wished to draw particular attention to the Court's reply to question I(*b*), affirming that the United Nations had the capacity to bring an international claim against the responsible Government with respect to the damage caused to the victim or to the persons entitled through him. That constituted a double guarantee that just claims for reparation would be collected, inasmuch as not only the victim's national State, but the United Nations also could make such a claim. Small States especially would have better prospects of collecting reparations if they had behind them the moral authority of the United Nations. It was, understood, of course, that no State would be called upon to pay double reparation and that the reparation would never be punitive in character.

58. Furthermore, any State which pressed its claims through the United Nations would do so of its sovereign will; its sovereignty would therefore not be impaired. In no case would a State be obliged to act trough the intermediation of the United Nations. It was to be hoped that such peaceful methods as joint action by the victim's national State and the United Nations would in the future prevent the repetition of aggression by large States against small which in the past had often resulted from the "diplomatic protection" given to the former's nationals.

59. The representative of Venezuela supported in principle the joint draft resolution (A/C.6/L.51), which might, however, be amended in some respects. Thus, he was in favour of deleting the phrase "as an authoritative expression of international law on the questions considered". As had already been pointed out, during the debate on the draft declaration on rights and duties of States, much had been made of the difficulty of determining what was international law. Caution should therefore be exercised in the present case. He had no objection to the Australian amendment (A/C.6/L.62)[2] and would vote in favour of French amendment IV (A/C.6/L.68)[3] which would authorize the Secretary-General to negotiate the agreements necessary to reconcile action by the United Nations with the rights of the State of which the victim was a national.

60. He reserved the right to make further remarks at a later date.

61. Mr. MATTAR (Lebanon) remarked that he had not intended to take part in the debate since he had not expected the Committee to encounter any difficulty in reaching unanimous agreement on the question of reparation for injuries incurred in the service of the United Nations.

[1] See *Official Records of the third session of the General Assembly, Part I*, Sixth Committee, 112th to 121st meetings and 124th meeting.

[2] See the Summary Record of the 183rd meeting, paragraph 37.

[3] *Ibid.*, paragraph 43.

Despite the fact that divergent views had been expressed, he was still of the opinion that the problem was very simple.

62. The Lebanese delegation accepted the advisory opinion of the International Court of Justice and agreed that the United Nations was an international person subject to international law and enjoying certain rights under that law, among them the same right as sovereign States to bring international claims for reparation of damages. He also agreed that the United Nations, acting together with the State of which a victim was a national, could make claim for damages suffered by the victim.

63. While in his view the General Assembly could, if it wished, discuss the Court's advisory opinion, he thought that for practical reasons it should not do so but should simply accept that opinion as coming from the highest international legal authority in response to a specific request.

64. In reply to the USSR representative,[1] who considered that the Court's answer to question II of General Assembly resolution 258 (III) would cause derogation from the national sovereignty of States, he observed that such fears were groundless. No one contested that agents of the United Nations retained their nationality and that, consequently, their national State had the right to bring claims on their behalf against any other State. The Court had stated, however, that there was no rule of law which assigned priority either to the State or to the United Nations or which compelled either of them to refrain from bringing an international claim and that there was no reason why the parties concerned should not find solutions inspired by good will and common sense.

65. He further pointed out that neither the joint draft resolution (A/C.6/L.51) nor French amendment IV (A/C.6/L.68)[2] to that draft gave the Secretary-General the right to take the place of a claimant State. French amendment IV, which clearly provided for negotiation between the Secretary-General and such a State, was preferable to the joint draft resolution which contained no such provision. If, however, some delegations wished the situation to be clarified still further, the Secretary-General might be authorized — as suggested in his report (A/955, paragraph 21) — to "consult with the Government of the State of which the victim was a national in order to determine whether the Government had any objection to the presentation of a claim or desires to join in submission". He did not, however, move that suggestion as a formal amendment.

66. Inasmuch as the joint draft resolution and the various amendments to it could be reconciled without great difficulty, he supported the suggestion of the representative of Pakistan that the delegations concerned might prepare a joint text in the interests of expediting procedure and of obtaining the greatest possible number of votes.

67. Mr. WENDELEN (Belgium) said that his amendment (A/C.6/L.37)[3] had been designed to clear up the ambiguity arising from the third paragraph of the joint draft resolution (A/C.6/L.51).

68. The United Kingdom representative, in his opinion, had adequately clarified the situation. He agreed with him that the exact meaning of the words *"se rallie à"* in the Belgian amendment might be difficult to render into English although, as the Brazilian representative had pointed out, the following paragraph of the joint draft resolution showed plainly that the General Assembly intended to follow the advisory opinion of the Court.

69. In order to obtain majority agreement on the joint draft resolution, and to meet the view of the Pakistani representative, he would be prepared to withdraw his amendment in favour of the French amendment to the third paragraph provided that the latter was adopted. He therefore requested that the French amendment should be put to the vote first and, if it was not adopted, the Belgian amendment next.

70. Mrs. BASTID (France) explained that French amendment II (A/C.6/L.68), to insert at the end of the preamble of the joint draft resolution (A/C.6/L.51) the words "Now therefore", gave the necessary indication that the action to be taken by the Secretary-General under the fourth paragraph of the joint draft resolution was directly connected with the advisory opinion of the Court. Thus it would be made clear that the General Assembly had not merely taken the advisory opinion of the Court into consideration, but had also followed it.

71. She also supported the Australian amendment 2 (A/C.6/L.62)[4] to the fourth paragraph of the joint draft resolution, to refer to the Secretary-General's proposals and to authorize him to take action in accordance with them.

72 MR. FERRER VIEYRA (Argentina) thought that the advisory opinion of the International Court of Justice, which he supported in substance, was one of the most important documents of current international law.

73. However, the Committee should not discuss the opinion in substance, but should consider the texts of the various proposals before it. He preferred the more logical text of the French amendment to that of the joint draft resolution. The Australian amendment also contained some important provisions which should be included in the final text. He therefore thought that the authors of the joint draft resolution and of the amendments to it might be asked to draft a single text.

74. Mr. GOTTLIEB (Czechoslovakia) felt it difficult to state his delegation's view on the joint draft resolution and the amendments to it without touching upon the substance of the advisory opinion of the International Court of Justice. Respect for the Court, the highest world tribunal, did not exclude the possibility of criticism, especially with regard to an advisory opinion. The report (A/955) of the Secretary-General, as well as the joint draft resolution (A/C.6/L.51) proposed that the General Assembly should accept the advisory opinion of the Court as an authoritative expression of international law on the questions involved. The view might

[1] See the Summary Record of the 183rd meeting, paragraph 62.
[2] *Ibid.*, paragraph 43.
[3] *Ibid.*, paragraph 30.
[4] *Ibid.*, paragraph 37.

thus be taken that a legal opinion of the Court, when confirmed by the majority of the Member States of the United Nations, could become a new rule of international law. That would be wrong and in contradiction with existing principles for the creation of international law.

75. It should be recalled that the advisory opinion of the Court had been sought because the Secretariat of the United Nation had wished to ascertain whether, and in what manner, it could proceed to bring an international claim. The advisory opinion represented in that sense a juridical consultation, and notwithstanding its prestige and moral force, could not be binding for any future arbitral tribunal.

76. His delegation firmly believed that the United Nations clearly had the capacity to bring an international claim with the view to obtaining reparation for damage caused to the Organization itself but not for damage caused to the victim or to persons entitled through him. The theory of functional protection could not abrogate the existing rule of international law that diplomatic protection was exercised by the national State.

77. It was only right that agents of the United Nations should have the largest possible measure of security in the performance of their duty but there was a difference between, on the one hand, the responsibility of the Organization in relation to its agent and the damages which it suffered — that was to say between the reparations which it must make to the agent and those which it could demand *per regressum* from the State concerned — on the one hand, and the purely personal claims of the injured person, which did not concern the Organization itself, on the other. The fact that the injured person had been in the service of the United Nations could not constitute a justification for the protection of the injured person; that protection fell within the competence of his national State. The United Nations could not exceed its legal title; such action would be analogous to a court proceeding *ultra petitum*. Neither the Charter nor the Convention on the Privileges and Immunities of the United Nations afforded a basis for functional protection.

78. The agent, as that term was conceived in the Court's opinion[1], was not even an international official in the sense of the Charter. Be that as it might, his "internationality" could not replace his nationality; otherwise, the Organization would follow the doctrine of a "super-State," contrary to the provisions of the Charter. He noted, in that connexion, that there had been many signs in recent years of a tendency towards the "super-State". First it had been the question of the *laissez-passer,* then that of the United Nations Guard, and now the arrogation of the so-called power of functional protection. The agent was the subject of his own national State, and not of the Organization.

79. The Court, in its opinion, had envisaged the possibility of a conflict between the action of the United Nations and such rights as the agent's own national State might possess. It had recommended[2] conciliation in such cases, and that agreements should be concluded between the Organization and individual States, either generally or in each individual case. He saw no reason for the attempts artificially to establish functional protection, which was as yet not recognized in international law, instead of establishing the right of the United Nations to bring international claims on behalf of its agents, with the express consent of the State, either by the preparation and conclusion of a general convention on the matter, or by agreements concluded in each individual case between the Organization and the respective States.

80. In view of those considerations, the Czechoslovak delegation, with all due respect to the International Court of Justice, could not agree that its advisory opinion as a whole should be accepted and confirmed by the General Assembly, and that the Secretary-General should be authorized to sponsor the personal claims of an agent of the United Nations.

81. Mr. MELENCIO (Philippines) said that it could not be denied that the United Nations had international personality and the capacity to bring international claims, which was implicitly vested in it by the Charter and was inherent in the very nature of the Organization. That international personality had been compounded of the distinct sovereignties of the Members of the United Nations, all of which had relinquished part of their sovereignty in favour of the United Nations. In so doing, the Member States had not impaired their sovereignties but had merely given moral sanction to the policies and resolutions of the United Nations. From that it should follow that agents of the United Nations, being the instruments of its policies, were vested with certain rights which the United Nations must uphold and protect. When, in the performance of duty, an agent was injured and killed for lack of protection by the defendant State, the latter must make reparation to the United Nations and to the injured victim.

82. One of the problems to be settled was how the claims on behalf of the United Nations and of the injured agent could be prosecuted. The Secretary-General's report (A/955) suggested two courses of action: first, amicable settlement between the Secretary-General and the defendant State; and secondly, submission of the case to an arbitral tribunal. The right to prosecute claims had been conferred upon the United Nations not expressly, but by necessary implication of the Charter. In acting on behalf of its agent, the United Nations represented not only the interests of the agent, but asserted its right to secure respect for the United Nations and its undertakings. It was important for the functioning of the United Nations to ensure the protection of its agents; without that protection, its activities would be hampered and its efforts to carry out its policies defeated.

83. He did not share the other speakers' apprehensions concerning possible infringement of national sovereignty. Quoting from the Secretary-General's report (A/955, paragraph 21), he thought that the procedure proposed by the Secretary-General involving amicable or arbitral settlement ensured full respect for the rights of States. The procedure was not compulsory and consequently could not impair the national sovereignty of States; in cases of damages suffered by agents of the United Nations, there was

[1] See *I. C. J. Reports,* 1949, page 177.

[2] *Ibid.,* page 188.

nothing to prevent the agent or the persons entitled through him from refusing United Nations intervention and resorting exclusively to the protection of the national State.

84. In view of those considerations, the Philippine delegation supported the joint draft resolution (A/C.6/L.51) and many amendments designed to improve it.

85. Mr. RENOUF (Australia) supported the joint draft resolution with the drafting amendments (A/C.6/L.62) which he had introduced at the 183rd meeting, and which the United States delegation had accepted[1]. He hoped that the other authors of the draft resolution would also accept those amendments.

86. Judging by the amendments presented by Belgium (A/C.6/L.57) and France (A/C.6/L.68) and the statements made in the Committee, the only disagreement of substance seemed to arise from the third paragraph of the joint draft resolution (A/C.6/L.51), in which the General Assembly would resolve to accept the advisory opinion of the Court as an authoritative expression of international law upon the questions considered by the Court.

87. Dealing first with the substance of that paragraph, he could not find any serious fault with it. As the USSR representative and others had pointed out, an advisory opinion of the Court did not have the force of a judgment; it could be accepted or disregarded by the body requesting it. The latter should, however, manifest some attitude to the opinion after it had been delivered. It was therefore proper and fitting that the General Assembly, after having requested an advisory opinion upon the questions of law which had arisen in the discussion of the problem at its third session, should now make some positive expression of its attitude to the opinion. The Australian delegation's objection to the French amendment was that it only tacitly accepted the opinion.

88. The course of action to be adopted by the General Assembly seemed clear. The General Assembly had referred certain legal problems for advice to the International Court of Justice, which was the principal judicial organ of the United Nations. His delegation had welcomed that action as being in conformity with General Assembly resolution 171 (II) concerning the need for greater use, by the United Nations and its organs, of the International Court of Justice. That advice had been given. In the absence of good reason to the contrary, his delegation felt that the advice, emanating as it did from the highest judicial authority in the international field, should be accepted by the General Assembly as resolving the legal problems which had arisen in the matter, and as sound international law. His delegation agreed with the views expressed by the United Kingdom representative in that regard[2]. There were many precedents for such action: the advisory opinions delivered in the past by the Permanent Court of International Justice had always been favourably received by the bodies which had requested them. As a result, the procedure of requesting advisory opinion had gained much prestige, as had been shown by the readiness of Members of the United Nations during the past years to accept advisory opinions as binding upon them even before the opinions had been delivered: that readiness had been expressed in the Charter for an International Trade Organization, as well as by the representatives of the United Kingdom and the United States at the current session in their statements[3] in the *Ad Hoc* Political Committee on the question of the alleged violations of human rights in Bulgaria, Hungary and Romania. His delegation therefore considered that the General Assembly should be careful not to take, without good and sufficient reason, any step which might reflect adversely upon the established worth of that procedure.

89. He next turned to the Belgian and French amendments to the joint draft resolution. His delegation had already stated its opposition to the French amendment III requiring the deletion of the third paragraph of the joint draft resolution. With regard to the French text for a new third paragraph, his delegation, after careful consideration, preferred the original draft of the paragraph, which was better calculated to give the Secretary-General the desired authority. With regard to the new penultimate paragraph proposed in French amendment IV, the Australian amendments (A/C.6/L.62) to the joint draft resolution adequately covered the points contained therein.

90. His delegation, while originally opposed to the Belgian amendment (A/C.6/L.57), had decided to support it in the light of the Belgian representative's statement. It also supported the United Kingdom representative's suggestion[4] that the words "expresses its agreement with" should be changed to "accepts" so as to obviate the difficulties of translation from the French, indicated by the latter. He supported the suggestion of the representatives of Pakistan and Argentina that the authors of the various proposals should prepare and submit a single text.

91. Mr. ABDOH (Iran) said that the Iranian delegation, as one of the co-sponsors of the joint draft resolution (A/C.6/L.51), accepted wholeheartedly the advisory opinion of the Court, which would enable the United Nations to afford maximum protection to its agents. At the third session of the General Assembly, the majority of delegations had considered it 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 majority had wished, however, to obtain the Court's opinion on the matter to strengthen its position. He was glad to note that the Court's opinion had in fact confirmed that view.

92. The advisory opinion of the Court was an authoritative expression of international law, and there had been general agreement with the conclusion reached by the Court. Some representatives had contested, however, the substance of the Court's opinion on question I (*b*) and question II. He pointed out in that regard that, while the General Assembly was free to accept or disregard the Court's opinion for political reasons, it could not contest it on legal grounds, since the Court was the highest judicial organ.

[1] See the Summary Record of the 183rd meeting, paragraphs 37 and 55.

[2] See paragraphs 16 to 20 above.

[3] See *Official Records of the fourth session of the General Assembly, Ad Hoc* Political Committee, 13th meeting, paragraph 38 and 14th meeting, paragraph 45.

[4] See paragraph 28 above.

93. The conclusions of the Court were very valuable; they established the international personality of the United Nations, and its capacity to bring international claims for damage to itself or damage to its agents or to those entitled through them. There was no need to justify the opinion of the Court; the Court itself had done so brilliantly, and Mr. Kerno, Mr. Feller and the United Kingdom representative had explained the opinion in detail. Consequently, he wished only to add a few points.

94. Some representatives had felt that the advisory opinion could infringe upon the sovereignty of States, and that the right to bring claims was based on the power of diplomatic protection. Mr. Abdoh felt that nationality was not the only criterion; the right of protection could be based on the obligation of Members to ensure protection to officials of the United Nations to enable them to fulfil their functions. The United Nations should be able to bring claims if those obligations were not lived up to. The Member States which had founded the United Nations had wanted it to have international personality in order to enable it to carry out its functions, especially with regard to the maintenance of peace and security. Those functions must be discharged by its agents who had to go to different parts of the world, sometimes under dangerous conditions. All States had the duty to ensure the protection of those agents so that they might adequately perform their functions. Consequently, the right of functional protection granted to the United Nations did not impair the sovereignty of the national State. Any view to the contrary was in contradiction to Article 104 of the Charter and harmful to the proper functioning of the United Nations.

95. The opinion of the Court might be considered progressive. It should be borne in mind that the Court, in recognizing the right of the United Nations to bring international claims, especially for damage to its agents, had decided on an unprecedented case, taking into acount the current situation and the growing activities of States. The main political mission of the United Nations, to maintain peace and security, could not be fulfilled unless Members and organs of the United Nations adapted themselves to the needs of the United Nations. The International Court, facing the reality of the situation, had done its work well.

96. In view of those considerations, the Iranian delegation would vote for the joint draft resolution with certain points in the amendments which would improve the text.

97. Mr. FELLER (Secretariat), without touching upon the substance of the amendments, pointed out that resolution 258 (III) of the General Assembly had stated, as a reason for asking the advisory opinion of the Court, that it was highly desirable that the Secretary-General should be able to act "without question". Whether the joint draft resolution or the French amendment was adopted, he assumed that this point, which was important to the Secretary-General, would be preserved.

98. He drew attention to French amendment III (AC.6/L.68) which proposed a text to replace the third and fourth paragraphs of the joint draft resolution (A/C.6/L.51); in that amendment, the words "and settlement" which figured in the fourth paragraph of the latter had been omitted. In view of the text of the last phrase of that French amendment he presumed that, notwithstanding that omission, the Secretary-General would preserve the right to settle, as well as to bring international claims.

99. Mrs. BASTID (France) agreed that there had been no intention to limit the Secretary-General's power. In the light of the remarks of the Belgian and Australian representatives, her delegation had submitted a new text[1] which referred to the Secretary-General's report and empowering him to act in accordance with his proposals. The omitted words could be inserted in the French text.

100. Mr. HSU (China) supported the joint draft resolution with the amendments necessary for its improvement.

101. A fundamental issue had been raised by those who had felt that the capacity of the United Nations to claim damages for victims was an infringement of the rights of States. Recognition of that right of the United Nations was the best way of handling the question of reparations. He doubted whether, if the Court had not been consulted, any State would have taken exception to such a right. The General Assembly had been extremely prudent in asking the opinion of the Court. Now that the opinion had been given, however, no State could refuse to comply with it.

102. The United Nations had been established for certain purposes. It could not be denied the necessary power for the discharge of its duties to achieve those purposes when that power was not forbidden by the Charter and did not encroach upon the rights of States.

103. The CHAIRMAN thought, in view of the progress of the debate, that the Committee might be able to come to a decision on the various proposals before it without asking its authors to present a joint text, as suggested by the representatives of Pakistan and Argentina. Moreover, the representative of France had just handed him a new text with a view to co-ordinating the joint draft resolution and the amendments thereto.

The meeting rose at 5.50 p.m.

[1] Subsequently issued as a French draft resolution under the symbol A/C.6/L.71.