

REPARATION FOR INJURIES SUFFERED IN THE SERVICE OF THE UNITED NATIONS

Advisory Opinion of 11 April 1949

The question concerning reparation for injuries suffered in the service of the United Nations, was referred to the Court by the General Assembly of the United Nations (Resolution of the General Assembly dated December 3rd, 1948) in the following terms:

"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?"

With respect to questions I (a) and I (b), the Court established a distinction according to whether the responsible State is a Member or not of the United Nations. The Court unanimously answered question I (a) in the affirmative. On question I (b) the Court was of opinion by 11 votes against 4 that the Organization has the capacity to bring an international claim whether or not the responsible State is a Member of the United Nations.

Finally, on point II, the Court was of opinion by 10 votes against 5 that when the United Nations as an organization is bringing a claim for reparation for 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; moreover, this reconciliation must depend upon considerations applicable to each particular case, and upon agreements to be made between the Organization and individual States.

The dissenting Judges appended to the Opinion either a declaration or a statement of the reasons for which they cannot concur in the Opinion of the Court. Two other Members of the Court, while concurring in the Opinion, appended an additional statement.

*

* *

In its Advisory Opinion, the Court begins by reciting the circumstances of the procedure. The Request for Opinion was communicated to all States entitled to appear before the Court; they were further informed that the Court was prepared to receive information from them. Thus, written statements were sent by the following States: India, China, United States of America, United Kingdom of Great Britain and Northern Ireland and France. In addition, oral statements were presented before the Court by a representative of the Secretary-General of the United Nations, assisted by counsel, and by the representatives of the Belgian, French and United Kingdom Governments.

Then the Court makes a number of preliminary observations on the question submitted to it. It proceeds to define certain terms in the Request for Opinion, then it analyses the contents of the formula: "capacity to bring an international claim". This capacity certainly belongs to a State. Does it also belong to the Organization? This is tantamount to asking whether the Organization has international personality. In answering this question which is not settled by the actual terms of the Charter, the Court goes on to consider what characteristics the Charter was intended to give to the Organization. In this connection, the Court states that the Charter conferred upon the Organization rights and obligations which are different from those of its Members. The Court stresses, further, the important political tasks of the Organization: the maintenance of international peace and security. Accordingly the Court concludes that the Organization possessing as it does rights and obligations, has at the same time a large measure of international personality and the capacity to operate upon an international plane, although it is certainly not a super-State.

The Court then examines the very heart of the subject, namely, whether the sum of the international rights of the Organization comprises the right to bring an international claim to obtain reparation from a State in respect of the damage caused by the injury of an agent of the Organization in the course of the performance of his duties.

On the first point, I (a), of the Request for Opinion the Court unanimously reaches the conclusion that the Organization has the capacity to bring an international claim against a State (whether a Member or non-member) for damage resulting from a breach by that State of its obligations towards the Organization. The Court points out

that it is not called upon to determine the precise extent of the reparation which the Organization would be entitled to recover; the measure of the reparation should depend upon a number of factors which the Court gives as examples.

Then the Court proceeds to examine question I (b), namely, whether the United Nations, as an Organisation, has the capacity to bring an international claim with a view to obtaining the reparation due in respect of the damage caused, not to the Organization itself, but to the victim or to persons entitled through him.

In dealing with this point the Court analyses the question of diplomatic protection of nationals. The Court points out in this connection that really only the Organization has the capacity to present a claim in the circumstances referred to, inasmuch as at the basis of any international claim there must be a breach by the defendant State of an obligation towards the Organization. In the present case the State of which the victim is a national could not complain of a breach of an obligation towards itself. Here the obligation is assumed in favour of the Organization. However, the Court admits that the analogy of the traditional rule of diplomatic protection of nationals abroad does not in itself justify an affirmative reply. In fact, there exists no link of nationality between the Organization and its agents. This is a new situation and it must be analysed. Do the provisions of the Charter relating to the functions of the Organization imply that the latter is empowered to assure its agents limited protection? These powers, which are essential to the performance of the functions of the Organisation, must be regarded as a necessary implication arising from the Charter. In discharging its functions, the Organization may find it necessary to entrust its agents with important missions to be performed in disturbed parts of the world. These agents must be ensured of effective protection. It is only in this way that the agent will be able to carry out his duties satisfactorily. The Court therefore reaches the conclusion that the Organization has the capacity to exercise functional protection in respect of its agents. The situation is comparatively simple in the case of Member States, for these have assumed various obligations towards the Organization.

But what is the situation when a claim is brought against a State which is not a Member of the Organization? The Court is of opinion that the Members of the United Nations created an entity possessing objective international personality and not merely personality recognized by them alone. As in the case of Question I (a), the Court therefore answers Question I (b) in the affirmative.

*

* *

Question No. II of the General Assembly refers to the reconciliation of action by the United Nations with such rights as may be possessed by the State of which the victim is a national. In other words, what is involved is possible competition between the rights of diplomatic protection on the one hand and functional protection on the other. The Court does not state here which of these two categories of protection should have priority and in the case of Member States it stresses their duty to render every assistance provided by Article 2 of the Charter. It adds that the risk of competition between the Organization and the national State can be reduced or eliminated either by a general convention or by agreements entered into in each particular case, and it refers further to cases that have already arisen in which a practical solution has already been found.

Finally, the Court examines the case in which the agent bears the nationality of the defendant State. Since the claim brought by the Organization is not based upon the nationality of the victim but rather upon his status as an agent of the Organization, it does not matter whether or not the State to which the claim is addressed regards him as its own national. The legal situation is not modified thereby.