

INDIVIDUAL OPINION BY JUDGE ALVAREZ.

[*Translation.*]

I.

I am in agreement with the answer given by the Court to the Request for an Advisory Opinion which was addressed to it. I find in the reasons given by the Court at any rate a partial application of the method and principles which, in my view, are most suitable having regard to the present state of international life and to the exercise of the power, which I recognize the Court as possessing, to develop international law and to contribute to its creation in face of new situations. The Court has rightly considered that the situation which was submitted to it, with a request that it should declare the law concerning it, was a new situation. While recognizing that the United Nations has the capacity to bring an international claim in the case in point and for the purposes set forth in the Request for the Opinion, the Court has proclaimed a new precept of international law. To say that, in so doing, it has developed that law, or that it has created a new precept, is a mere matter of words, for in many cases it is quite impossible to say where the development of law ends and where its creation begins.

In thus declaring its opinion on this new subject, the Court has taken into account the nature and aims of the United Nations, and it has availed itself of the right which it now possesses under Resolution 171 of the General Assembly of the United Nations in 1947 to develop international law.

The decision which the Court has arrived at appears to me to be in accordance with the general principles of the new international law, the legal conscience of the peoples and the exigencies of contemporary international life—three essential factors which have to be taken into account in the development of international law.

I therefore consider that the answer to the first question stated in the Request for an Opinion should be that the United Nations possesses an international juristic personality and is entitled to bring international claims against States which have caused the damage in question.

The United Nations could not attain the objects which it has before it if it did not possess that right. It would be strange indeed if an institution which has such extensive powers for the maintenance of peace did not possess the capacity which has been referred to.

II.

My answers to the questions put to the Court in the Request for an Advisory Opinion are as follows :

“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 ?”

I consider, as I have just said, that the United Nations has the capacity to bring such a claim with a view to obtaining reparation for damage caused either to itself or to its agents or persons entitled through them.

“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 ?”

In my opinion, having regard to the above-mentioned capacity, which the United Nations must be recognized as possessing, it is not necessary that the latter should act in agreement with the State of which the victim is a national. It might happen, for instance, that the victim was a stateless person, or that the State in question might neglect to submit a claim, or might be unwilling to do so for political or other reasons; or again, the victim might have the nationality of the respondent State. In any case the United Nations Organization is entitled, by itself, to claim reparation for the damage caused to its agents or to those entitled through them; but if it neglects to bring a claim, the State of which the victim is a national may do so.

The United Nations must be able to bring the claim either against a State Member of the United Nations or against a non-member State, irrespective of whether the State did or did not agree to the despatch of the agent to its territory. The nature of the Organization and the general interest make this necessary so that there should not be an inferiority—so to speak—of the former kind of States in relation to the latter. (See No. 6 of Art. 2 of the Charter.)

The fact of recognizing the United Nations as possessing the right to bring international claims constitutes a derogation from the precepts of the international law now in force, for that law only attributes this right to the States; but the latter will consent to this right being also attributed to the highest international institution.

Finally, it should be observed that the United Nations is an institution possessing a political character, and that this character may influence its attitude. It is therefore desirable that an organism and a procedure should be established for dealing with this matter.

(Signed) ALEJANDRO ALVAREZ.