

INDIVIDUAL OPINION BY JUDGE AZEVEDO.

[*Translation.*]

I agree with the findings and, in general, with the reasons on which they are based, and merely wish to add a few remarks which are, in my opinion, a necessary development of the reply to the second question.

I think another criterion must be supplied for the settlement of differences that may arise: the drawing of a distinction between the main claim and a subsidiary claim, which must certainly not be neglected. The deliberate use of the word "agent" in the Request for an Opinion gives rise to this suggestion.

It is to be observed that the working of the United Nations presupposes the action of two forces: one which directs the thought and the particular purposes of Members towards the deliberative organs, which thereupon adopt the solutions required by the general interests of peace and justice; and one devoted to the carrying out of the decisions taken.

These different duties are carried out by distinct physical persons: the representatives of States Members and the officials of the Organization, although it is often necessary to use the same individuals in different circumstances, as has already been stated by Professor BASTID, née SUZANNE BASDEVANT (*Les Fonctionnaires internationaux*, Paris, 1938, p. 8). The example of the new Organization of American Nations would be the most striking, with its distinction between the deliberative organs set up at Bogota in 1948, and the former Pan-American Union retained permanently as General Secretariat.

It may also be noted that officials are included in the notion of "agent", but representatives of Members are not, although the Organization may be interested in supporting a proposed claim for injuries suffered by such representatives in the performance of their duties, e.g., in places where organs to which they belong are sitting.

On the other hand, to carry out the decisions of its organs, the Organization cannot always appoint officials, and must sometimes choose persons from outside its normal staff.

The different kinds of duties that are performed in the interest of the Organization are not fully set out in Article 100 of the San Francisco Charter, nor yet in Article 105, which mentions both officials and representatives of Members. This insufficiency was expressly recognized in the Convention of February 13th, 1946, on Privileges and Immunities, and in certain arrangements

and agreements concluded with States or Specialized Agencies.

These acts show that there exists a third class—that of experts, other than officials, who perform duties on behalf of the Organization. On this subject, it is interesting to note that the Statute of the International Court of Justice added to the provisions relating to the Permanent Court a concession of privileges and immunities to agents, counsel and advocates of the parties (Article 42 (3)), who are assimilated to representatives of Members of the Organization; whilst witnesses and experts were, by the Court itself, with the approval of the General Assembly, included in the third class mentioned above. (I.C.J., *Acts and Documents concerning the Organization of the Court*, No. 1, second edition, 1947, pp. 85, 86 and 89.)

This third class gives rise to difficulties and uncertainty, as happens in all classifications; but it may be included under the general heading of "agents" more easily than under representatives of the Members. But a further distinction must be made: to perform duties exceptionally entrusted to those classified as experts in the conventions and arrangements, persons must be chosen who belong to delegations of the Members, or other suitable persons appointed either directly by the Organization, or by the Members from amongst their nationals.

Then another distinction must be made, according to the manner in which the choice is effected, whether on purely personal grounds, or on the contrary by the nationality of the experts, account being taken of political, geographical, etc., considerations, but in any case, having regard to the technical knowledge of candidates.

For instance, in the appointment of Members of the International Court of Justice or of the new International Law Commission, much more attention is paid to personal qualities than to nationality, the influence of which is rather negative, when an exaggerated predominance of one State is to be avoided. Thus, it is not the nature of the duties that is important, but the method of selection, which may consequently vary in the same case.

No doubt, a person who, owing to his own merits, is entrusted with a mission, assumes in principle a duty of greater devotion towards the Organization than does one who is appointed by his country, or even by third parties, to a task entrusted to him, having regard to his nationality. While admitting that, in both cases, the duties will be performed with independence and in a spirit of devoted co-operation, it must be observed that the ties of national

will, in the second case, be harder to throw off and to replace by attachment to the performance of international duties.

In conclusion :

In the case of officials or experts appointed directly by the Organization, regardless of nationality, the Organization will have a priority and may make a claim without having to put forward a denial of justice, or even to show that domestic remedies have been exhausted.

On the other hand, in the case of representatives of States Members, or even of experts appointed having regard to their countries—especially if the appointment is made by these countries—the main claim will conform to the principle of nationality.

(Signed) PHILADELPHO AZEVEDO.
