

## DISSENTING OPINION BY JUDGE KRYLOV.

[*Translation.*]

I agree with the Court's Opinion to the effect that the United Nations Organization has the right to bring an international claim with a view to obtaining reparation for damage caused to the Organization itself; i.e., I reply in the affirmative to Question I (a) put to the Court by the General Assembly. It is beyond doubt that the Organization is entitled to defend its patrimony; in particular, to claim compensation for direct damage caused to itself, including disbursements in cases where an official of the Organization has suffered injury in the performance of his duties: for example, funeral expenses, medical expenses, insurance premiums, etc. In my opinion an affirmative reply to Question I (a) fully meets the practical requirements referred to by the Secretary-General of the United Nations.

I agree in a large measure with the arguments used in the dissenting opinions of Judges Hackworth and Badawi Pasha, and I believe that the United Nations Organization is not entitled, according to the international law in force, to claim compensation for injuries suffered by its agents.

The majority of the Court has founded this right to bring a claim on the right of functional protection exercised by the Organization in regard to its officials and—more generally—its agents.

I entirely associate myself with the desire unanimously expressed by the General Assembly of the United Nations in the recital clauses of its Resolution of December 3rd, 1948, of "ensuring to its agents the fullest measure of protection....".

But I consider that this aim should be attained *proprio modo*, i.e., by the elaboration and conclusion of a general convention. I think that the problem should be approached in the same way as in the Convention concerning the Privileges and Immunities of the Organization, of representatives of governments and of the officials of the Organization.

To affirm, in the Court's Opinion, a right of the Organization to afford international protection to its agents as an already existing right, would be to introduce a new rule into international law and—what is more—a rule which would be concurrent with that of diplomatic protection which appertains to every State vis-à-vis its nationals.

The alleged new rule of functional protection will give rise to conflicts or collisions with the international law in force. The Court is not entitled to create a right of functional protection which is unknown in existing international law.

The Court itself states that it is confronted with a "new situation", but it considers itself authorized to reason—if I may so express it—*de lege ferenda*.

I am also unable to associate myself with the following affirmations of the majority of the Court. The Court considers that it may understand the term "agent" in the very widest sense. I think that the term "agent" must be interpreted restrictively. The representatives of the governments accredited to the Organization and the members of the different delegations are not agents of the Organization. Nor are the representatives of the governments in the different commissions of the United Nations agents of that Organization.

The conflict between the existing rules of international law (diplomatic protection of nationals) and the rules declared by the Court to be in existence—i.e., the rules of functional protection—is still further intensified by the fact that the majority of the Court even declares that the protection afforded by the United Nations Organization to its agent may be exercised against the State of which the agent is a national. We are thus far outside the limits of the international law in force.

I have not lost sight of the fact that the protection afforded by the United Nations is only functional, i.e., it is only asserted in cases where the agent of the organization is "performing his duties", but the conflict between the two methods of protection—that of the United Nations Organization and that of the State—nevertheless subsists.

It should also be observed that the relations between a State and its nationals are matters which belong essentially to the national competence of the State. The functional protection proclaimed by the Court is in contradiction with that well-established rule.

I therefore feel justified in asserting that the protection by the United Nations Organization of its agents could not be well founded from the standpoint of the international law in force, even if we are considering the relations between the United Nations and its Members.

Still less is it possible to assert this right of the United Nations Organization vis-à-vis non-member States. It is true that paragraph 6 of Article 2 of the Charter lays down that States which are not members of the United Nations should act in accordance with the Principles of the Organization (Chapter I of the Charter) "so far as may be necessary for the maintenance of international peace and security". But this paragraph has very little connexion with the right of the United Nations to bring an international claim with a view to obtaining reparation for damage.

It is true that the non-member States cannot fail to recognize the existence of the United Nations as an objective fact. But, in order that they may be bound by a legal obligation to the

Organization, it is necessary that the latter should conclude a special agreement with these States.

I associate myself with the concern of the majority of the Court to find appropriate legal means whereby the United Nations may attain its objects—i.e., in the present case, protect its agents. But, as I have already said, we must found the right of the Organization to bring an international claim in order to protect its agent on the express consent of the States, either by the preparation and conclusion of a general convention, or by agreements concluded between the Organization and the respective States in each individual case.

In my view, the Court cannot sanction by its Opinion the creation of a new rule of international law, particularly in the present case, where the new rule might entail a number of complications.

The majority of the Court has in view the functional protection of an agent of the United Nations Organization, even as against the national State of the agent. But it has not borne in mind, for example, the opposite—and possible—situation in which the said State may find it desirable and necessary to protect the agent against the acts of the Organization itself.

The Court can only interpret and develop the international law in force ; it can only adjudicate in conformity with international law. In the present case, the Court cannot found an affirmative reply to Question I (*b*) either on the existing international convention or on international custom (as evidence of a general practice), or again, on any general principle of law (recognized by the nations).

Such are the reasons for my negative answer to Question I (*b*) put by the General Assembly, and they render it unnecessary for me to give an answer to Question II.

(Signed) S. KRYLOV.