SOME OBSERVATIONS ON THE QUESTION OF REPARATION FOR INJURIES SUFFERED IN THE SERVICE OF THE UNITED NATIONS

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On April 11, 1949, the International Court of Justice gave an advisory opinion, the content and scope of which will keep international lawyers busy for a long time to come. This opinion relates to some of the most complex and controversial issues in present day international law and it goes a long way toward their final solution.

The purpose of this paper is to examine some of the main points of the decision. It would be well-nigh impossible, in the limited space of an article, to undertake an exhaustive study on all legal issues raised by this decision.

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The origin of the present case is to be found in the tragic events which occurred in Palestine, culminating in the violent death of Count Bernadotte, Mediator of the United Nations. In its third session which took place in Paris in 1948 the General Assembly, at the request of the Secretary General, examined the question of injuries suffered by the agents of the United Nations and decided to request an advisory opinion of the International Court of Justice. The text of the request was drafted 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?

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?«

This is not the place to consider the scope or the procedure of advisory opinions before the International Court. The usual communications were sent to the States; several of them submitted writ-
Public hearings were held from the 7th to the 9th of March 1949 and the opinion was delivered on April 11.

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International legal personality of the United Nations.

The first question which the Court was called upon to consider in its opinion is that of the international personality of the United Nations, as an Organization. The »capacity to bring an international claim«, as referred to in the question put to the Court, means the »capacity to resort to the customary methods recognized by international law for the establishment, the presentation and the settlement of claims «. States are naturally endowed with this capacity. The question is whether the Organization is also endowed with it. This is tantamount to asking whether the Organization possesses international personality.

The method followed by the Court in reaching an affirmative conclusion is an interesting one. As happened in most cases dealt with by the Permanent Court, the question boils down, to a large extent, to an interpretation of an international treaty — in the present instance, the Charter itself. The Court had to enquire »whether the Charter has given the Organization such a position that it possesses, in regard to its Members« rights which it is entitled to ask them to respect «. In this connection, the Court did not deem it necessary to dwell upon the distinction between the domestic and the international personality of the Organization. The distinction was probably too obvious to be stressed and, furthermore, Article 104 of the Charter was clear evidence that the Organization possessed domestic personality. In the written and oral statements presented to the Court may be found an exhaustive survey on the subject of the international personality of the United Nations. On this matter the Court had no difficulty in simplifying the terms of the question considerably and in reaching unanimously the conclusion that the Organization is a »subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims «. It is true that the wealth of arguments pointing to that conclusion was so overwhelming that not a single State, participating in the proceedings before the Court, took exception to that contention. Quite the contrary: everybody concerned was anxious to demonstrate that the United Nations was endowed with international legal personality.

In the matter of interpretation of treaties, international practice