Völkerrecht was terminated. All the great German periodicals of international law were continued through the first years of the war, but sooner or later came to an end. This was the case of *Niemeyer's Zeitschrift für Internationales Recht,* and of the *Zeitschrift für Völkerrecht.*[48] The very important *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* came to an end in 1939.[49] None of these great German periodicals has been revived up to now. Immediately after Germany's total defeat and during 1946 and even 1947 there were no periodical publications of international law. Studies on international law appeared during this period in small articles in the daily newspapers licensed by the different occupying states, and small, mimeographed *Opinions* by official authorities or private scholars. During and after the latter part of 1946 new German general legal periodicals were started [50] which often also contained articles on international law. This also holds true today.[51] Since 1948 a certain revival of periodical publications primarily devoted to international law can be seen in Germany. Two new and important periodical publications were started during that year. The first one is the *Jahrbuch für internationales und ausländisches öffentliches Recht.*[52] The first volume for 1948 concentrates nearly exclusively on the problem of the legal status of Germany under the occupation. Different in character, devoted to general international law, to international organization, the United Nations and Pan America, although by no means neglecting the very special problems of occupied Germany, is the *Archiv des Völkerrechts.*[53]

JOSEF L. KUNZ

THE JURAL PERSONALITY OF THE UNITED NATIONS

In an editorial comment in this Journal on "Responsibility for Injuries to United Nations Officials," written in connection with the assassination of Count Bernadotte, the present writer concluded "The United Nations would seem justified in making demands upon the Israeli Government" in accordance with the principles there developed. That discussion dealt with the principles under which the Israeli Government would be responsible, and

[48] Vol. XXIII (1939). No volume in 1940; but Vols. XXIV and XXV were published in 1941. No. 1 of Vol. XXVI appeared in 1942; Nos. 2 and 3 of that volume were published in 1944.

[49] Berlin, 1939. Vol. VIII (1938).

[50] The most important ones are: *Deutsche Rechtszeitschrift,* Vol. I (1946); *Monatszeitschrift für Deutsches Recht,* Vol. I (1947); *Neue Juristische Wochenschrift,* Vol. I (1947); *Neue Justiz,* Vol. I (1947); *Süddeutsche Juristenzeitung,* Vol. I (1946).

[51] See the *Archiv des öffentlichen Rechts* (Tübingen, 1948), Vol. 74.

[52] Hamburg. Edited by Rudolf Laun and H. von Mangoldt. Vol. I (1948, pp. 280).

[53] Edited by W. Schätzel (Mainz), H. Wehberg (Geneva) and H. J. Schlochauer (Cologne). Of Vol. I the first three numbers were published in 1948; the last one has just appeared.

the writer assumed that, if that government was responsible, the United Nations had jural competence to make the demands.[1] The International Court of Justice has now affirmed this competence in its Advisory Opinion of April 11, 1949,[2] given in response to a request of the General Assembly on December 3, 1948. The General Assembly asked:

> 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? [3]

The Court unanimously answered question I (a) in the affirmative, saying:

> In the opinion of the Court, the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.[4]

The Court, however, in recognizing the United Nations as "an international person" said it was not a "state" or a "super-state."

The problem of whether the League of Nations was a corporate personality, a partnership, or a mere mechanism of interstate relations was much debated and never authoritatively settled, although most jurists held that the League had some corporate capacity, and it did supervise mandated and other territories, make agreements with Switzerland in whose territory it

[1] This JOURNAL, Vol. 43 (Jan. 1949), p. 103. The two questions are not identical. International law might hold that a state has a special responsibility in case an agent of an international organization is injured in its territory, but that the claim must be made by the state of the agent's nationality or by a state member of the organization, rather than by the organization itself. In the summary made by Judge Badawi Pasha (Egypt) of the arguments submitted in support of the United Nations claim under I (b), some of the arguments (especially 3 and 5) concerned directly the existence of responsibility and the measurement of reparation, and only indirectly the capacity of the United Nations. I.C.J. Reports, 1949, p. 209.

[2] I.C.J. Reports, 1949, p. 174; this JOURNAL, p. 589.

[3] I.C.J. Reports, 1949, p. 175.

[4] *Ibid.*, p. 179.

had its seat, and administer property and make contracts as a corporate body.[5]

The Charter gives more definite indication that the United Nations is a jural personality by attributing legal powers and responsibilities to it (Articles 24, 26, 41, 42), by authorizing it to make agreements with its Members and with specialized international agencies (Articles 43, 63), and by explicitly asserting that "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes" (Article 104).[6]

In its Advisory Opinion, the Court went beyond these articles in holding that the United Nations has jural personality and is entitled to bring claims in respect to injuries it has suffered, not only against its Members but against any government, *de jure* or *de facto* which may be responsible for the injury.

> On this point, the Court's opinion is that fifty States, representing the vast majority of the members of the international community, have the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims.[7]

The opinion also provides a broad definition of the term "agent" as

> any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions —in short, any person through whom it acts.[8]

Judge Krylov (Soviet Union) thought this definition too broad,[9] and Judge Azevedo (Brazil) thought "agents" in this broad sense should be divided into "officials or experts appointed directly by the Organization" who, if injured, might justify a claim by the Organization prior to that of the state of the individual's nationality and "representatives of States Members, or even of experts appointed having regard to their countries—especially if the appointment is made by these countries," in which case "the main claim will conform to the principle of nationality."[10]

On point I (b) concerning reparation due to the individual who had been injured, the Court also gave an affirmative answer, but with Judges

[5] Q. Wright, Mandates under the League of Nations (Chicago, 1930), pp. 364 ff.

[6] L. W. Goodrich and E. Hambro, Charter of the United Nations, Commentary and Documents (2nd ed., Boston, 1949), pp. 519 ff.; Commission to Study the Organization of Peace, Fifth Report, Security and Disarmament under the United Nations (1947), pp. 13 ff.

[7] I.C.J. Reports, 1949, p. 185.

[8] *Ibid.*, p. 177.

[9] *Ibid.*, p. 218.

[10] *Ibid.*, p. 195.

Hackworth (United States), Badawi Pasha (Egypt), Krylov (Soviet Union), and Winiarski (Poland) dissenting. The Court recognized that:

> It is not possible, by a strained use of the concept of allegiance, to assimilate the legal bond which exists, under Article 100 of the Charter, between the Organization on the one hand, and the Secretary-General and the staff on the other, to the bond of nationality existing between a State and its nationals.[11]

Nevertheless, the Court recognized that there was an important bond between the United Nations and its agents, permitting the former in certain circumstances to demand reparation in respect to damage suffered by its agents.

> Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. . . .
>
> Having regard to its purposes and functions already referred to, the Organization may find it necessary, and has in fact found it necessary, to entrust its agents with important missions to be performed in disturbed parts of the world. Many missions, from their very nature, involve the agents in unusual dangers to which ordinary persons are not exposed. For the same reason, the injuries suffered by its agents in these circumstances will sometimes have occurred in such a manner that their national State would not be justified in bringing a claim for reparation on the ground of diplomatic protection, or, at any rate, would not feel disposed to do so. . . .
>
> In order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and, consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter. And lastly, it is essential that —whether the agent belongs to a powerful or to a weak State; to one more affected or less affected by the complications of international life; to one in sympathy or not in sympathy with the mission of the agent—he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless.[12]

The dissenting judges took the position that the right to claim damages caused "to the victim or to persons entitled through him" belonged only to the state of which the individual was a national or was in an analogous position. According to Judge Hackworth:

[11] *Ibid.*, p. 182.
[12] *Ibid.*, pp. 182–184.

> Nationality is a *sine qua non* to the espousal of a diplomatic claim on behalf of a private claimant. Aside from the special situation of protected persons under certain treaties and that of seamen and aliens serving in the armed forces, all of whom are assimilated to the status of nationals, it is well settled that the right to protect is confined to nationals of the protecting State. If the private claimant is not a national of the State whose assistance is sought, the government of that State cannot properly sponsor the claim, nor is the respondent government under any legal duty to entertain it.[13]

The dissenting judges also stressed the inconvenience of having the United Nations and the specialized agencies, as well as states, making claims in behalf of individuals who have suffered injuries for which a state is responsible.[14]

It appears to the present writer that the form of the question asked the Court led to unnecessary difficulties. The issue did not concern the right of the United Nations to represent the interests of the victim or of persons entitled through him, but rather the scope of its own interests. The question should not have distinguished between damages (a) to the United Nations and (b) to the victim or to persons entitled through him, but between (a) direct damages to the United Nations through injury to its dignity, its property, its functioning, or its liabilities and (b) indirect damages to the United Nations through anxiety or insecurity of its agents resulting from inadequate protection or divided loyalties.

The Court recognized that the various agreements entered into by the United Nations concerning the rights of its agents were undertaken "not in the interest of the agents, but in that of the Organization," and made "clear that the capacity of the Organization to exercise a measure of functional protection of its agents arises by necessary intendment out of the Charter."

> When it claims redress for a breach of these obligations, the Organization is invoking its own right, the right that the obligations due to it should be respected. . . . In claiming reparation based on the injury suffered by its agent, the Organization does not represent the agent, but is asserting its own right, the right to secure respect for undertakings entered into towards the Organization.

Consequently:

> . . . in the case of a breach of these obligations, the Organization has the capacity to claim adequate reparation, and . . . in assessing this reparation it is authorized to include the damage suffered by the victim or by persons entitled through him.[15]

[13] *Ibid.*, pp. 202–203.

[14] *Ibid.*, pp. 200, 210.

[15] *Ibid.*, p. 184. The Court seems to have considered that the legal interest of the United Nations which was clearly established by obligations in respect to its agents undertaken by states in specific agreements, was also implied in respect to such obligations arising from general international law.

It has always been recognized that states do not in principle present claims as representatives of their nationals who have been injured abroad, even though the reparation, if received, has in fact usually been given to the national, but because of the injury they themselves have suffered through the injury to the national.

> The wrongful act or omission on the part of a respondent state against a claimant state may consist of a direct injury to the public property of the latter state, to its public officials, or to the state's honor or dignity, or of an indirect injury to the state through an injury to its national. . . . The theory of international law is that injuries either to private persons or to their property, committed contrary to international law, are injuries against the state whose national the individual is.[16]

Because of the closeness of the bond of nationality, international law permits a state to say it is injured whenever its national is injured and, if the injury was due to the delinquency of another state, to demand reparation from that state.

The Court recognized that the agent of the United Nations is not bound to that Organization by a tie as close as that of nationality. Consequently, the United Nations is not permitted to say that it is injured merely because one of its agents is injured, and it cannot in all cases claim reparation if such an injury results from the delinquency of a state. The agent is, however, bound to the United Nations by an important tie, and the Court held that whenever the agent "in the course of the performance of his duties" suffers injury in circumstances involving the responsibility of a state, then the damage to the United Nations includes not only the losses resulting from "the reimbursement of any reasonable compensation which the Organization had to pay to its agent or to persons entitled through him" or the "very considerable expenditure in replacing him" if he died or was disabled while on a distant mission,[17] but also all the damage caused the victim or those entitled through him which the United Nations must secure if it is to be certain that its agents will give it the wholehearted service necessary for carrying out its functions satisfactorily. "Both to ensure the efficient and independent performance of these missions," said the Court, "and to afford effective support to its agents, the Organization must provide them with adequate protection."[18] Viewed this way there is no question of legal principle distinguishing points I (a) and I (b), but only the question of properly determining both the direct and the indirect damages suffered by the United Nations through the injury to its agent.

The Court's answer to the second question confirmed this interpretation. It said by a vote of 10 to 5:

[16] Marjorie Whiteman, Damages in International Law (Washington, 1937), Vol. 1, p. 80.

[17] I.C.J. Reports, 1949, p. 181.

[18] *Ibid.*, p. 183.

> When the United Nations as an Organization is bringing a claim for reparation of 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, and thus bring about a reconciliation between their claims; moreover, this reconciliation must depend upon considerations applicable to each particular case, and upon agreements to be made between the Organization and individual States, either generally or in each case.[19]

The Court drew attention to Article 2, paragraph 5 of the Charter requiring the members to render "every assistance" to the action of the United Nations, and assumed that any conflict of claims between the state of the agent's nationality and the United Nations would "find solutions inspired by good will and common sense," at least when the state of nationality was a Member. The Court recognized that the defendant state could not be compelled to pay reparation twice for the same incident and it also pointed out that the United Nations could claim in respect to injuries to its agent even if the agent was a national of the defendant state.[20]

Fundamentally, the Court and the dissenting judges differed in the liberality with which they were willing to construe international instruments and international law. The Court held that powers of the United Nations could be implied from necessity and convenience in carrying out the purposes stated in the Charter; that the agents and interests of, and injuries to, the United Nations should be liberally construed; and generally that analogy, general principles of law, the legal conscience of the peoples, and the exigencies of contemporary international life must be considered in determining rights and powers under international law.[21]

The Court manifested the tendency, displayed by Chief Justice Marshall in dealing with the American Constitution [22] and by the Permanent Court

[19] *Ibid.*, p. 188.

[20] *Ibid.*, p. 186. Judge Badawi Pasha, dissenting, said Art. 2, par. 5 of the Charter created "a definitely political obligation" and could not, if that obligation were infringed, serve to found a right to make a claim for reparation due to the victim. *Ibid.*, p. 211. Judge Krylov (Soviet Union), also dissenting, said Art. 2, par. 6, which extends the principles of the article to non-members, did so only "so far as may be necessary for the maintenance of international peace and security," and this has "very little connexion with the right of the United Nations to bring an international claim with a view to obtaining reparation for damage." *Ibid.*, p. 218.

[21] In a concurring opinion Judge Alvarez (Chile) held that the Court was utilizing its competence to "develop international law" in giving its opinion "in accordance with the general principles of the new international law, the legal conscience of the peoples and the exigencies of contemporary international life." *Ibid.*, p. 190. On the other hand Judge Krylov (Soviet Union), dissenting, said "we must found the right of the Organization . . . on the express consent of States. . . . The Court can only interpret and develop the international law in force; it can only adjudicate in conformity with international law." *Ibid.*, p. 219.

[22] McCulloch *v.* Maryland, 4 Wheat. 316; Gibbons *v.* Ogden, 9 Wheat. 1, 187.

of International Justice in dealing with the League of Nations Covenant,[23] to construe the rights and powers of the Organization with which the Court was connected broadly enough to permit that Organization to function and to achieve its purposes. International lawyers who recognize that, if stability is to be restored, international law and international institutions must be continually adapted to the changing conditions of the world and the changing aspirations of its people will welcome this tendency of the Court. In a world, shrinking but inadequately regulated, interdependent but imperfectly aware of its condition, it is probably safer to treat the claims of the international society liberally, even if such treatment, restricting the traditional sovereignty of states, involves some danger of stimulating revolt by the states least aware of the situation.

QUINCY WRIGHT

[23] H. Lauterpacht (The Development of International Law by the Permanent Court of International Justice (London, 1934), p. 89), after reviewing the actual results of the Court's decisions and opinions, concludes: "The work of the Court can to a large extent be conceived in terms of a restrictive interpretation of the claims of State sovereignty," and, reciprocally, a liberal interpretation of the competence of international bodies, although in words the Court usually made "courteous obeisance to the tradition of State sovereignty." See M. O. Hudson, The Permanent Court of International Justice, 1920–1942 (New York, 1943), p. 660.