DISSENTING OPINION OF JUDGE CÓRDOVA

The Executive Board of the United Nations Educational, Scientific and Cultural Organization, relying on Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation, has requested an Advisory Opinion of the Court with regard to the competence of that Tribunal to hear the complaints introduced by Messrs. Duberg and Leff and Mrs. Wilcox and Mrs. Bernstein.

Had I not been firmly convinced that the Court should have refused to comply with the Request of Unesco because of its lack of competence to render an advisory opinion in circumstances such as those underlying the present case, I would certainly have concurred in the Opinion of the Court on the merits, and would have expressed my opinion in favour of the competence of the Administrative Tribunal to hear and adjudicate upon the complaints referred to above.

The decision of the Court with regard to its competence in this case will have far-reaching consequences. For the first time the Court has had occasion to define its own legal position in connexion with the attempt to transform it into a Court of Appeal in cases tried by the Administrative Tribunal of the International Labour Organisation and by that of the United Nations. Although the present case relates only to decisions of the first of these Tribunals, the two situations, save for slight differences, are very similar.

The General Assembly, in Resolution 957 (X) of November 8th of last year, adopted an amendment to the Statute of the United Nations Administrative Tribunal introducing a new Article 11 which sets forth grounds for review by the International Court of Justice of the decisions of the said Tribunal which reproduce those set forth in Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation.

Both Articles, 11 and XII respectively, confer jurisdiction on the Court to review the Administrative Tribunal's decisions by means of Advisory Opinions, in cases in which the jurisdiction of the Tribunal is challenged, or when it is alleged that the Tribunal has made a fundamental fault in the procedure followed. With regard to those two grounds the two Statutes are almost identical. The new Article 11 of the Statute of the United Nations Tribunal also includes, as an additional ground for the intervention of this Court, an error committed by the Administrative Tribunal on a question of law relating to the provisions of the Charter. There is a further difference which is worth noting: Article XII of the Statute of the International Labour Organisation's Tribunal does not give to the individuals the

right to appeal to the Court, while Article 11 of the United Nations Tribunal expressly mentions the "person concerned" as a possible applicant for an Advisory Opinion. We find the greatest deviation from the wording of Article XII of the Statute of the International Labour Organisation's Tribunal in Article 11 of the Statute of the United Nations Tribunal where it introduces two special innovations: first, the creation of a Special Committee to act as a screen for applications by individual members of the staff, Member States or the Secretary-General asking that the Court should be requested to review a decision of the Administrative Tribunal; second, the provision that the Advisory Opinion of the Court is not binding on the United Nations Administrative Tribunal, although it will be binding on the parties if the Tribunal so decides. These main differences and other minor ones are not, I think, of such a nature as to change the issue which both Statutes put before the Court.

The legal and practical problem which both amendments tried to resolve was the possibility for the International Court of Justice of becoming a judicial body reviewing the decisions of the two Administrative Tribunals in certain and specified cases. In giving its opinion in this case the Court has also, to a certain extent, given its views on its own jurisdiction as an appellate Court with regard to decisions of the Administrative Tribunal of the United Nations.

There are several arguments which have convinced me that the Court lacks jurisdiction to act in such a capacity in cases in which the parties are an international organization on the one hand (Unesco in the present case) and staff members on the other. These arguments relate to two different sets of ideas. Firstly, the jurisdiction of the Court derives entirely and exclusively from its Statute, and no other international instrument, including the Statutes of Administrative Tribunals or the resolutions of any Organ of the United Nations, can introduce any modification with regard to the jurisdiction of the Court; they cannot, in particular, either enlarge or diminish the competence of the Court, as defined by the Statute, with regard to its two legal activities, the judicial and the advisory functions. Secondly, the present Request for an Advisory Opinion, in fact, is designed to bring before the Court, in second instance, a contentious case between Unesco and several of its officials, a situation which falls, I believe, outside the competence of the Court.

It might serve a useful purpose to remember at this point the circumstances in which the present Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation and Article 11 of the United Nations Tribunal were introduced.

At its last Session, the Assembly of the League of Nations decided not to comply with certain judgments of the Administrative Tribunal rendered in 1946. It was then thought that it would be wise to introduce in the Statute the possibility to "re-consider" the decisions of the Administrative Tribunal, denying them the automatic binding effect which they had, and setting up a "*Court of Appeal*" to pass final judgments. "*Court of Appeal*" : those were the very words used by the Chairman of the Governing Body of the International Labour Organisation in referring to the possibility for the International Court of playing the rôle of a second instance tribunal (Memorandum submitted by the International Labour Organisation to the International Court of Justice, I.C.J., *Pleadings, United Nations Administrative Tribunal*, p. 71). In a parallel manner, only last year, the United Nations set up a Special Committee on the "Judicial Review of the Judgments of the Administrative Tribunal of the United Nations", in accordance with a previous Resolution of the General Assembly (888 (IX) of December 17th, 1954). The work of this Special Committee led to the introduction of the present Article 11 in the Statute of the Administrative Tribunal of the United Nations.

The framers of the two amendments could not fail to recognize that the cases tried by the Administrative Tribunals were true litigations which had been brought before these judicial bodies to be decided by them, and that their decisions would be binding on the parties concerned ; they also realized that before the Administrative Tribunals, the Parties were, on the one hand, the international organizations and, on the other, the private individuals, members of the staffs ; and they must also have been conscious that Article 34 of the Statute of the Court—the very first Article of Chapter II dealing with the "Competence of the Court"—expressly lays down that "*Only States may be parties in cases before the Court*". In their desire, nevertheless, to enlist the services of the highest judicial authority of the United Nations to act as a Court of Appeal, the authors of both amendments resorted to the procedure of Advisory Opinions, thinking that, by introducing in their respective Statutes the provision that the Advisory Opinion should be binding upon the parties, they could avoid the difficulty of Article 34 of the Statute of the Court.

This historical background, the plain words used, and the spirit of the amendments are enough to show that their authors decided, by themselves and for themselves, that, in certain instances, the International Court of Justice should act as Court of Appeal. It is hardly necessary to comment upon the capacity or the right of the International Labour Organisation—or as far as that is concerned, of the Assembly of the United Nations—to impose upon the International Court of Justice obligations and new functions which are not provided for in its Statute or in the Charter.

The International Court of Justice is incompetent, both *ratione personae* and *ratione materiae*, to play the rôle of a Court of Appeal with regard to cases tried in first instance by the Administrative Tribunals.

In order to achieve their aims, the framers of Articles XII of the Statute of the International Labour Organisation's Tribunal and 11 of that of the Tribunal of the United Nations made a confusion between the two main functions of this Court.

None of the Articles of the Statute expressly states that the Court has two functions. Article 68 is the only one which, though in an incidental way, distinguishes between the judicial functions and the advisory functions of the Court as being different in nature. It reads :

> "In the exercise of its *advisory functions*, the Court shall further be guided by the provisions of the present Statute which apply in *contentious cases...* "

Of all the other articles of the Statute, some refer to the judicial and some to the advisory functions of the Court, but without drawing a precise distinction. It is not difficult, nevertheless, to detect the different juridical nature of the two main activities of the Court. The Statute of the Permanent Court of International Justice, upon which the present Statute is based, whenever it used the word "case", meant a contentious dispute ; advisory opinions were requested upon "legal questions". The present Statute kept this terminology and thus we see that all articles dealing with the competence and compulsory jurisdiction of the Court, from Article 34 to Article 38, refer only to "cases" without any other qualification, but they all refer to contentious disputes exclusively. The Rules of both the Permanent Court and this Court likewise refer only to "cases" in all the articles included under "Heading II : Contentious Proceedings".

The judicial activity of the Court deals only with contentious disputes between parties. These are the "contentious cases" to which Article 68 refers. The resolution of the Court in cases, contentious in their nature, is a decision, a judgment establishing the rights of the parties with binding force. The resolution, the decision or, properly stated, the judgment rendered by the Court in such cases is binding upon the parties. A very different situation appears with regard to the advisory function of the Court. This is only discharged when there is no contention for the Court to decide ; where there are no parties in the proper juridical sense of the word. The Organ or the Specialized Agency seeking an opinion of this kind does not wish, in principle, to be bound by

it. They are merely seeking juridical advice from the Court on a legal question.

The difference between the judicial and the advisory functions of the Court lies in the fact that, in the first of these, there are two or more parties which submit a dispute to the Court, to its authority to impose upon them the law, while in the second, there is no dispute, no parties, and no compulsory jurisdiction to decide upon rights and duties in conflict, even though the body seeking the advisory opinion may be willing to accept and be guided by it.

There is also a very important difference as regards the parties which may appear before the Court in each of the two aforementioned functions. The Statute makes a very clear distinction between those entitled to come before the Court seeking a judgment and those allowed to request advice. This great difference should be borne in mind in order to understand why the present Request for an Advisory Opinion should have been declined.

Article 65 of the Statute provides that the Court may give an Advisory Opinion at the request of "whatever body may be authorized by or in accordance with the Charter of the United Nations". In turn, Article 96 of the Charter directly provides that the General Assembly and the Security Council may request such Advisory Opinions and, indirectly, if so authorized by the General Assembly, that "other organs of the United Nations and the Specialized Agencies" may also request such Advisory Opinions. Therefore, according to the Statute, only the General Assembly, the Security Council, other organs of the United Nations and the Specialized Agencies may request Advisory Opinions. States and individuals are not allowed to request them. Unesco, being a Specialized Agency and having been granted authorization by the Assembly, may therefore legally ask for an Advisory Opinion, that is to say, for a decision of this Court, as defined above.

Neither the General Assembly, the Security Council, other organs, Specialized Agencies, nor individuals may ask the Court to render a decision in contentious cases. Articles 34, 35, 36 and 37 of the Statute, which govern the judicial competence of the Court, exclude the legal possibility of their becoming parties in contentious cases before the Court. That is the only way in which the rule laid down by Article 34, paragraph 1, can be understood. It says plainly and clearly:

"*Only States* may be parties in cases before the Court."

In its three paragraphs, Article 35 only makes reference to States which may either be or not be parties to the Statute, but they must

be States for the Court to be open to them in contentious cases. Article 36, in dealing with the compulsory jurisdiction of the Court, refers to "States parties to the present Statute".

In a word, the contentious jurisdiction, the true judicial function of the Court, covers contentious disputes between States, *only and exclusively*.

In debarring individuals from coming before the Court as parties to "a case", that is, to a contentious litigation, the Statute adopted the theory that individuals are not subjects of international law.

Attention should be called here to a precedent which seems to be of importance. *The possibility for the International Court of Justice of becoming a Court of Appeal with regard to cases tried by Administrative Tribunals was considered and not accepted by the framers of the Statute.*. The Delegates to the United Nations Conference on International Organization at San Francisco had before them a proposal, drafted in almost identical terms and inspired by the same ideas as the amendments contained in Articles XII and II of the respective Statutes of the Administrative Tribunals of the International Labour Organisation and of the United Nations.

At San Francisco the Delegation of Venezuela proposed the insertion of the following paragraphs in Article 34 of the Statute :

> "Article 34.—(1) *With the exception of the provisions in paragraph 2 of this Article,* only States or Members of the United Nations may be parties in cases before the Court.
>
> (2) *As a Court of Appeal, the Court will have jurisdiction to take cognizance over such cases as are tried under original jurisdiction by international administrative tribunals dependent upon the United Nations when the appeal would be provided in the Statute of such Tribunals.*" (United Nations Conference on International Organization, Documents, Vol. 13, p. 482.)

Therefore, exactly the same situation as the one which is now envisaged by the Statutes of the Administrative Tribunals was under consideration by the Delegates to the San Francisco Conference. The Venezuelan amendment even refers to the possibility of the Statutes of those Administrative Tribunals providing that the International Court of Justice should have the new function as a Court of Appeal. If the Delegates had wished the International Court to act as the Statute of the Administrative Tribunal now requires, they certainly had the occasion to introduce into the Statute a provision to that effect ; but, on the contrary, the amendment to Article 34 proposed by the Delegation of Venezuela was not incorporated in the Statute, thus excluding that legal possibility.

It is interesting to note that the Delegation of Venezuela, as well as all other Delegations, never thought that such an amend-

ment dealing with the possible jurisdiction of the Court as a Tribunal of Appeal, could have any other place than in the chapter on the contentious competence of the Court and never in connexion with its advisory function.

When the San Francisco Conference, which drafted and approved the Statute, did not adopt this amendment, it also, in fact, rejected the possibility for individuals or for bodies other than States to become parties in "cases" before the Court. The failure of the Venezuelan amendment is sufficient evidence, in my opinion, to show that the Statute completely rejects the possibility for the Court to play the part of a Court of Appeal in precisely the same terms in which Unesco has requested the Court to do so in this case. To my mind, this failure of the Venezuelan amendment amounts to an advanced denial and clear rejection of all Requests for Advisory Opinions having the effect of an appeal, presented on the basis of Articles XII and 11 of the respective Statutes of the two Administrative Tribunals.

After Article 34 and the Venezuelan amendment had been discussed in Committee 4 of the San Francisco Conference, the Chairman, Mr. Gallagher from Peru, summarizing the discussion, stated :

> "The principle involved in Article 34 was that States, *but not private individuals or international organizations*, might be parties to cases." (United Nations Conference on International Organization, Vol. 14, p. 141.)

From the foregoing, which I believe is the correct and only possible interpretation of the Statute of the Court as a whole, I feel justified in concluding that Unesco could have asked for an Advisory Opinion on an abstract question of law, only if it were seeking advice, an opinion without legal binding force. An Advisory Opinion could never have been asked from this Court in accordance with Articles 34 and 66 of the Statute when, as in the present instance, the case brought before the Court is a contentious legal difference between two or more parties, and when the Organization brings it before the Court with the intention that it will render—in the guise of an advisory opinion or advice—a true judgment, a real decision binding those parties.

The confusion made by Articles XII and 11 of the Statute of both Administrative Tribunals between the judicial and advisory functions of the Court in order to transform an Advisory Opinion into a Judgment is an absolute legal impossibility according to the only applicable law : the Statute.

Nobody questions that what Unesco is trying to obtain from the Court is not an opinion or advice but a binding decision, a judgment. The very words of the Statute of the Administrative Tribunal of

the International Labour Organisation are the best evidence that what Unesco is seeking is revision, a second instance decision, a final judgment.

The decision of the Court seems to be predicated on the assumption that Article XII of the Administrative Tribunal's Statute is *res inter alios acta* for the Court, meaning that the Advisory Opinion has nothing to do with the rule laid down by the said Article XII. With regard to the binding force upon the parties before the said Tribunal, this rule, directed solely to the Organization and to the staff members, had nothing to do with the Court itself.

It should be remembered that the Request itself refers to the Executive Board of Unesco as acting within the framework of Article XII of the Statute in asking for the Advisory Opinion. That is, the Executive Board found the source of its faculty to ask for an Advisory Opinion with binding force with regard to the decision of the Administrative Tribunal precisely in Article XII of the Statute of that judicial body. If the Executive Board had relied only on the authorisation of the General Assembly to ask for such an Advisory Opinion, and had not relied on Article XII of the Statute of the Administrative Tribunal, it could not claim that the Advisory Opinion given by the Court would be binding on the staff members who were parties to the dispute before the Administrative Tribunal. The Advisory Opinion thus obtained by Unesco would be a real Advisory Opinion without binding force. But, by relying on, and purporting to act within, the framework of the Statute, Unesco considers itself justified in imposing the Advisory Opinion on its officials because they accepted the Statute of the Tribunal in signing their contracts of employment. Article XII is the only and the indispensable link between an Advisory Opinion pure and simple and the Advisory Opinion with a supposed effect of a judgment.

The closest that a Request for an Advisory Opinion may come to a contentious case, without nevertheless changing its nature, may be found in Article 82, paragraph 1, and Article 83 of the Rules of Court.

> "*Article 82, para. 1.*—In proceedings in regard to advisory opinions, the Court shall, in addition to the provisions of Article 96 of the Charter and Chapter IV of the Statute, apply the provisions of the Articles which follow. It shall also be guided by the provisions of these Rules which apply in contentious cases to the extent to which it recognizes them to be applicable ; for this purpose it shall *above all consider whether the request for the advisory opinion relates to a legal question actually pending between two or more States.*"
>
> "*Article 83.*—If the advisory opinion is requested upon a legal question actually pending between two or more States, Article 31 of the Statute shall apply, as also the provisions of these Rules concerning the application of that Article."

In the circumstances envisaged by these Articles, since the States have not themselves submitted the case to the jurisdiction of the

Court, the question is only potentially a contentious case. Nevertheless Article 83 makes it possible for those States to appoint *ad hoc* Judges in compliance with Article 31 of the Statute just as if the question were actually a contentious dispute ; *but even then, the Advisory Opinion will not be binding either on the requesting body or on the interested States.*

The view has also been expressed that Article 34 of the Statute, which deals only with contentious disputes, has nothing to do with the present case, because the Court is not here concerned with a contentious dispute but only with a Request for an Advisory Opinion ; that the Court is not concerned with "parties" in the juridical sense of the word, Unesco being the only one appearing before the Court and that this Court is not obliged and should not try to ascertain what the real purpose of Unesco is in seeking such an Advisory Opinion.

With this interpretation of the facts and of the legal position of Unesco I cannot agree. I believe that the first obligation of the Court—as of any other judicial body—is to ascertain its own competence and, in order to do that, it has first to determine what is the nature of the case which is brought before it. The present Request, by definition and application of Article XII of the Administrative Tribunal, will be binding on both the Organization and the private individuals, its officials; it may not be considered therefore as anything different from a contentious case. It is impossible to get away from the fact that the officials were necessarily parties in the first instance and they should be so considered in the second instance as well. One cannot think of this case as being of two different natures, a contentious case before the Administrative Tribunal and not a contentious one when it comes before the Court. When and why should it lose its initial nature ? When it comes to the second instance before the Court and just because it is improperly introduced as an Advisory Opinion ? The decision of this Court is not only connected with, but absolutely restricted to, the contentious dispute decided by the Administrative Tribunal between the two parties, the Organization and the individuals.

In the Court's Advisory Opinion of July 13th, 1954, on the "Effect of Awards of Compensation made by the United Nations Administrative Tribunal", we find the following passage :

> "If he terminates (the Secretary-General) the contract of service without the assent of the staff member and this action results in a dispute which is referred to the Administrative Tribunal, *the parties to this dispute* before the Tribunal, *the staff member concerned and the United Nations Organization,* represented by the Secretary-General, will become bound by the judgment of the Tribunal."

Therefore the parties in a dispute decided by an Administrative Tribunal are the Organization itself and the staff member who

brought the action before the Tribunal. This, of course, necessarily means that, should there be a second instance, the parties must be the same before the reviewing tribunal, in our case, before the Court. That is the essence of an appeal, the essence of a second instance, the essence of a revision of a decision of a lower court. The decision of the International Court of Justice to which I have just referred was given in a case where the Statute of the Administrative Tribunal of the United Nations did not provide for an appeal to the Court but laid down that its Judgments should "be final and without appeal". But when the Statute provides for the possibility of an appeal, may the Court say that the parties in this appeal do not exist or are not the same as the ones which argued the case in first instance before the Administrative Tribunal ? There is no way out : the parties remain the same, they have to be the same or the decision of the Court would not and could not be binding upon them.

Article XII of the Statute, the application of which Unesco is seeking, states : "2. The Opinion given by the Court shall be binding." Upon whom ? Upon the Organization only ? That is not the intention of the framers of Article XII. What is wanted is to have the Advisory Opinion of the Court binding upon both the Organization and the staff member. This effect can never be juridically attained unless the staff member is considered as a party in the second instance. Since the Statute prevents individuals and international organizations, that is to say, Unesco and its officials, from bringing their disputes before the Court and since the present case is undoubtedly a contentious one, the inescapable legal conclusion follows that the Court has no competence *ratione personae* to entertain and give a decision in the present case.

Neither has the Court competence *ratione materiae* to deal with this kind of dispute.

This other aspect of the incompetence of the Court also flows from the Statute. It relates to the nature of the litigation and of the law which the Court has been called upon to apply.

Article 14 of the Covenant of the League of Nations, which was the origin of the Permanent Court of International Justice and therefore of this International Court of Justice, stated :

> "The Court shall be competent to hear and determine any *dispute of an international character* which the parties thereto submit to it."

These words are the basis of all judicial activities of the Permanent Court of International Justice and therefore of the International Court of Justice. I do not think that anybody can contend that a dispute between an international organization and a member of its staff, though a contentious case, is an international dispute, in the sense that the Covenant of the League of Nations and the Statutes

of the Permanent Court of International Justice and of the present Court (Article 34 in both Statutes), refer to international disputes as "cases".

Article 38 of the Statute is thus worded :

> "The Court, *whose function is to decide in accordance with international law* such disputes as are submitted to it..."

This provision, if correctly interpreted, means that the Court was set up to apply inter-State law only, because only States may submit disputes to the Court.

There are times when an Arbitration Tribunal or this Court have to deal with municipal law, or any other kind of law and even with private contracts, when they have to take judicial notice of its existence, and perhaps even of its correct interpretation. Such a case was, for instance, the Nottebohm case, and there are many others, especially those involving the wrongful acts of Governments against foreigners, denial of justice, direct or indirect responsibility and the like ; but even then, neither this Court nor the Arbitration Tribunals apply municipal law ; they only have to judge such cases according to inter-State law. Municipal law, administrative laws and private contracts only concern them incidentally, in the same way as they have to concern themselves with the facts of the case submitted to them.

Charters of international organizations being, in fact, conventions between States form part, as such, of inter-State law. The Statutes of Administrative Tribunals and the Staff Regulations, all dealing with legal relations between the Organization and private individuals may perhaps be classified as administrative international law ; but Article 38 of the Statute, quoted above, does not give to the Court the possibility of applying in contentious cases such administrative international law, because in this kind of judicial controversy brought before the Court, the parties being States, the only international law applicable has to be perforce, inter-State law. International administrative law would have as much reason to be applied by the Court, under Article 38 of its Statute, as international criminal law, that is to say the Statute and the Principles of the Nuremberg Tribunal. International administrative law and international criminal law may form part of a wider concept of the law of nations, but they certainly concern the relations between a State and individuals and therefore they have no room within the interpretation of the words "international law" as used in Article 38 of the Statute of the Court. Once having decided to comply with the Request, the Court had to apply the Statute of the Administrative Tribunal, the Staff Regulations and the contract between the parties, Unesco and the individual officials concerned, that is to

say, it had to apply "International Administrative Law".

The incompetence of the Court *ratione materiae*, I believe, is thus also well established.

What have been the extraordinary practical and juridical consequences of the confusion between the judicial and the advisory activities of the Court ?

Being parties, Unesco and the officials were entitled to equal treatment in the administration of justice. They obtained it in the first instance before the Administrative Tribunal, but were they able to enjoy it before the Court as was their right ? The inequality of the parties in the present case is evident, owing to the impossibility under the Statute for individuals to come before the Court and therefore the impossibility for the Court to respect one of the most fundamental and time-honoured principles which requires equality of the parties before the law and in the exercise of their rights before tribunals. In an effort to minimize such an inequality, the Court, on March 16th of this year, decided to depart from the normal procedure and dispense with the hearings in this case. This decision was in harmony with last year's Recommendation of the General Assembly in the sense that, in order to maintain the equality between the parties as much as possible, the international organizations, the States and the Secretary-General, when seeking a revision of a decision of the United Nations Tribunal, should not make oral statements.

With the same idea in mind the Court accepted the very unusual procedure that one of the parties, Unesco, would lay before the Court both, its own arguments and those of the other parties, its opponents, the Unesco officials. Of course, this abnormal procedure, in the sense that it is not in conformity with the norms, only makes more flagrant the existence of such inequality between the parties. Even with regard to the written arguments, the mere fact that the plaintiffs before the Administrative Tribunal in the procedure before the Court had to depend upon the goodwill of their opponents to act as an intermediary for the presentation of their views having regard to the unavoidable obstacle of the Statute, the Court, the highest judicial organ of the United Nations, was not in a position to administer justice, in cases like the present one, on the basis of strict equality between the parties.

It has been said that in this case the inequality of the parties is only apparent because the officials were able to present their views to the Court. This means, in effect, that although there was a recognized legal inequality between the parties, in the sense that they could not both appear on the same footing before the Court, this legal inequality, in fact, did not represent a practical disadvantage for the staff members.

Even from the practical point of view the inequality existed. The officials could not and may not call upon the Court—as the Organization was entitled to do—to adjudicate in second instance on a decision taken against them ; nor were they able to appear to argue the case in oral proceedings before the Court. But even granting, for the sake of argument, that, from the practical viewpoint, there would have been equality between Unesco and the staff members, the fact that the latter are legally precluded from asserting their own rights themselves constitutes a juridical inequality which makes it impossible for the Court to administer justice in strict compliance with the basic principles of justice.

That the Statute requires legal as well as practical conditions of equality of the parties for the Court to act legally is made abundantly clear from the wording of Article 35, paragraph 2, of its Statute, which provides that the Court shall be open to other States on conditions laid down by the Security Council, provided that *"in no case shall such conditions place the parties in a position of inequality before the Court"*.

If the Security Council must not place the parties in a position of inequality before the Court, even when the Council itself is not one of these parties, can a Specialized Agency, such as the International Labour Organisation or Unesco, create conditions placing a party, its own opponents, in a position of inequality before the Court ?

There are, of course, instances in which, even in the absence of one of the parties, the Court, or any other tribunal, can render a legal decision. That is the situation envisaged by Article 53 of the Statute, when one of the parties does not appear or fails to defend its case. But this article deals with a case of a judgment by default, with the voluntary absence of one of the parties, and has nothing to do with the legal impossibility to be present and to defend its own cause, a situation with which the Court was confronted in this case.

Some of the Judges also shared the view that the Court should have declined to give the Advisory Opinion in this case, on the sole ground that the Court cannot administer justice in accordance with the well-established principle of equality of the parties in any judicial procedure. They do not go so far as to say that this inequality, being exclusively derived from the Statute, constitutes in fact and in law the incompetence *ratione personae* of the Court. They are reluctant to admit the incompetence of the Court but, nevertheless, they have to rely on the fact that the present Request brings before the Court a contentious case in which the parties, a Specialized Agency and private individuals, are both precluded by the Statute from appearing in a contentious dispute. The inequality of the parties appears both in the first instance as well as in the procedure before the Court. In the first instance,

the individual is not entitled to appeal against a decision of the Administrative Tribunal while the other party, Unesco, is entitled to do so. In the second instance, while Unesco may present written and oral arguments, the individual has no such legal possibilities. The source of both inequalities is to be found in the Statute alone. The framers of Article XII knew perfectly well that the staff member could never be entitled to ask for an Advisory Opinion or for a decision from the Court, and so they did not even try to give such a right to the staff members. For individuals and international organizations to be parties in a contentious procedure it would be absolutely necessary to change the Statute, the only means of securing equality for them before the Court. This fact necessarily means that the Court, according to the present terms of the Statute, cannot legally act in compliance with the equality principle, which is the same thing as to say that the Court is incompetent or has not the legal possibility in this case to discharge its functions.

(Signed) R. CÓRDOVA.