SEPARATE OPINION OF JUDGE LACHS

The Court, having analysed the different views on the subject, turns away from the Agreement between the World Health Organization and Egypt of 25 March 1951 and the applicability of a specific provision (Section 37), or rather part of it, in the event of the WHO or Egypt wishing to have the Regional Office now situated at Alexandria transferred from Egypt.

In my view, this Agreement is, as its title indicates, an "Agreement for the purpose of determining the privileges, immunities and facilities to be granted in Egypt by the Government to the Organization, to the representatives of its members and to its experts and officials" and, as the preamble adds, "in particular with regard to its arrangements in the Eastern Mediterranean Region", which include a Regional Office in Alexandria. It belongs to the family of those instruments which have grown in number in recent years with the birth and development of international organizations, concluded between them and States on whose territories their offices are located. But even a cursory perusal of these many agreements leads to the conclusion that they are a very heterogeneous collection. Whatever analogies may be drawn, therefore, they should not be allowed to obscure the fact that the 1951 Agreement does not enshrine any decision concerning the establishment of the office at Alexandria. It differs from many other instruments which proclaim the establishment and location of the seat as their purpose, e.g., the Agreement between the United States of America and the United Nations concluded "to establish the seat of the United Nations in the City of New York and to regulate questions arising as a result thereof" (Preamble, and cf. Art. 2). More thorough analysis discloses that very many of its provisions are identical with those of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, which Egypt was not to ratify until 1954. Moreover, it is clear from the merely matter-of-fact mention of the Regional Office in the 1951 Agreement that the presence of the Office in Alexandria is regarded as an accomplished fact – which it merely confirms by implication – and its establishment as a matter of the past. It follows that the instrument had no bearing upon that establishment.

This view is reinforced by the historical background, which shows how the establishment of the EMRO at Alexandria originated in 1946 with an Egyptian Government invitation. This was pursued in various organs of

the WHO, more particularly on the basis of a report by the Regional Committee for the Eastern Mediterranean, and the process was accomplished when the Office eventually began operating on 1 July 1949. In this way, through a series of acts by the WHO and Egypt since 1946, the WHO had inherited an existing office by its integration when it became part of a regional organization in 1949. Given the self-sufficient legal consequences of these acts on the part of competent authorities, there is no need to speak of an inchoate agreement crying out for completion, or of a *de facto* situation requiring legalization. One may thus regard the 1951 Agreement as a finishing touch from the standpoint of the operational facilities at the disposal of the WHO in Egypt, without viewing it as an indispensable element in the establishment of the Regional Office. However much it oils the wheels, it is not a constitutive act upon which the operation of that Office in Alexandria depends.

It is a corollary of the foregoing that the 1951 Agreement does not have any bearing on the event of terminating the operations of the Alexandria office, whether by transfer of the functions elsewhere or otherwise. As it is thus inapplicable as a whole to such event, its separate parts, including Section 37, are equally inapplicable to it. It must be said, however, that Section 37 represents the Agreement's nearest approach to the problem of termination, though the termination there contemplated in the word "denounced" is not that of the operations of the Regional Office, but – in practice – that of the special provisions for the privileges, immunities and facilities enjoyed by the WHO in Egypt beyond what the 1947 Convention guarantees. One must accordingly suppose that the Court was invited, by the request for advisory opinion, to ascertain whether the transfer of the Regional Office would involve the constructive termination of the 1951 Agreement and, if so, whether that would bring Section 37 into play.

These are reasonable queries, quite irrespective of the question whether the 1951 Agreement governs the conditions of such transfer, for, as I have suggested, the termination of that Agreement would not be an inextricable consequence of the cessation of the operations of the office in Alexandria. Those few of its provisions that would then lack object are heavily outnumbered by those that could still be applied.

It is perhaps due to the much-investigated compromise out of which the formula of Section 37 was born that its purport has given rise to differences of view. Yet its analysis presents no serious difficulties. Its text is admittedly elliptic in the way in which "consultation" about "modifications" develops into "negotiations" in the next sentence. This change of terminology suggests that the second sentence of Section 37, which is part of a whole, contemplates harmonious discussions of ways and means whereas the third provides for a second phase, overshadowed by the risk of failure to reach an understanding, which it is possible to conclude by denunciation on two years' notice.

However, the question put to the Court relates only to the negotiations

and notice provisions, and it might therefore be inferred that the requirement of consultation is not at issue. But to detach this final sentence from the first is to distort the whole Section, which is intended primarily with a view to consultation about possible modifications of the Agreement, implicitly coupled with the intention of maintaining it in force. It is important, moreover, not to discard the "consultation" sentence, because it specifies the "event" which brings the Section into play. This "event" is the circumstance of one or the other party requesting a revision of the Agreement of 25 March 1951. Even if the term "revision" – as suggested by some – is to be given a very wide meaning (bordering on "review" of the Agreement) it is here amply qualified by the reference to "modifications", for this is a term which can only allude to alterations of particular provisions.

In sum, the last sentence of Section 37 is not severable and may not be treated as embodying "negotiation and notice" provisions independent of a request for revision by way of modification as opposed to a warning of denunciation or an act of constructive termination. This seems an undeniable conclusion resulting from the ordinary meaning of the words, their context and the text as a whole. To impose any other reading would be to challenge grammar, logic and good sense.

I have dwelt on the interpretation of Section 37 because the Advisory Opinion does not, in my view, lay sufficient emphasis on the elementary point that, for any part of Section 37 to be applicable in the "event" of a "wish" to transfer the EMRO from Egypt, it must be possible to equate *(a)* the expression of such a desire with *(b)* a request for "revision" by way of "modification" of the Agreement.

In my judgment, as I hope my analysis has made clear, this possibility does not exist, so that, had the first question been left in its original form, my reply thereto would have been negative.

The Court, however, as I said at the beginning, has chosen to turn away from the 1951 Agreement and all its parts. It addresses itself to a wider issue, concerning which I wish to add certain observations.

What has been faced in the present proceedings is the desire of the majority of the States within a regional organization of the WHO to have the seat of that organization's administrative organ transferred to another country, and this is a matter on which there is no further room for negotiation, given the reasons advanced in favour of such an action. These are obviously political and reflect a deep cleavage between the host State and others of the region which has been stressed both in the councils of the WHO and in the present proceedings. However, it must be made clear that the Court's opinion was not sought on the merits, legal or otherwise, of the transfer proposal, nor on whether a transfer is possible or desirable ; at most, it could only be with its conditions and modalities that the Court had to deal. It was in accordance with this understanding that the Court, having turned away from the 1951 Agreement, defined its task thus : the exam-

ination of the legal principles and rules applicable in the case of such a transfer. These the Court has sought to formulate on both a wider and a more concrete basis, namely with reference to the relationship between the WHO and Egypt in the past.

It is a truism that an inter-governmental organization, as a new subject of international law created by States, acquires a special status vis-à-vis those States. While it remains under their control, inasmuch as it both represents and is subject to their collective will, its decisions may, and frequently do, conflict with the will of its individual members. Since its headquarters and other offices are usually located not on no-man's land but on State territory, relationships are thereby created which are bound to reflect mutual agreements or, sometimes, disagreements. When determining – eventually in consultation with potential hosts – the conditions under which the headquarters or a regional office may be established in a particular locality, or transferred from one country to another, and in taking the corresponding decisions, the organization is simply implementing the collective will of its members. It is then to be viewed as having to act, not under any tutelage, but only in accordance with the law : where there is an agreement establishing the seat, in compliance with that ; if there is none applicable, in compliance with the principles of law which have evolved as the result of this new institution, the international organization, and its relationship with States. A considerable number of agreements now in force, though differing in detail, make it clear that an organization is entitled to decide upon a change of seat (whether headquarters or regional office). Such seat is thus not immobilized, and of this host States should be aware.

In the present case, the World Health Organization is faced with the wish of 19 members of the Eastern Mediterranean regional organization to have the office of that organization transferred to another country. In the event of this recommendation being accepted by the World Health Assembly, the Organization should follow a reasonable path of action. In particular, any agreements concerning the separation of members of the staff must be kept in view. The same applies to all local agreements concerning office accommodation, leases and similar arrangements. The World Health Organization, while retaining its full independence in the adoption of the basic decision, should consult with Egypt on these modalities and technical aspects of such a transfer. On the other hand, the host country should facilitate the implementation of such a decision, since as a member of the Organization it shares in the collective interest of minimizing any disruption of services involved in the transfer once decided. Considering that such a decision would represent the collective will of the Organization, I doubt whether there is an obligation of, or even call for, negotiations with the host State. To maintain the contrary is not in my view consonant with the status of member States within an organization. What is actually

requisite in principle is a consultation with a view to the orderly termination of activities, so as to enable them to be speedily resumed in the new seat.

It is to be recalled that the request for an advisory opinion of the Court was made while the matter was under consideration in several organs of the WHO. On 12 May 1979 Sub-Committee A of the Mediterranean Region was convened at Geneva to respond to a request made by a number of governments on the subject ; the matter was already on the agendas of the WHO Executive Board and of a working group set up by it to carry out a study of all aspects involved. The group's report was submitted to the latest World Health Assembly, and the above-mentioned Sub-Committee A, having reviewed the information provided therein, adopted a resolution to transfer the Regional Office to Amman. It is to be noted that this resolution, submitted to the Assembly, speaks of a transfer "as soon as possible", which obviously connotes its implementation under reasonable conditions.

Thus it is clear that, a regional committee of the WHO having expressed the wish to transfer the seat of its administrative organ, the matter is now to be considered and decided by the World Health Assembly in accordance with the provisions of its Constitution and rules of procedure. Should the Assembly decide upon the transfer, the executive organs of the WHO should proceed to carry it out in an orderly manner, bringing the operations at the Alexandria Office to an end within a reasonable period, which, taking into account the time that has elapsed since the proposal was first made, should to my way of thinking be a matter of months.

It is with this understanding that I have felt able to concur in the Court's reply to the first question. I do not propose to deal with the second, which is redundant and has in my view resulted in the over-emphasis of certain conclusions, more particularly of those contained in paragraph 49 of the Advisory Opinion.

Finally a more general comment, related only indirectly to the case : analysis confirms, as I suggested at an early stage of my considerations, that this new type of relationship between host States and international organizations, dealt with by a new category of treaties known as headquarters agreements, includes very heterogeneous elements. Scores of such agreements have been concluded, and they represent an important chapter in the catalogue of contemporary treaties ; they show striking discrepancies, some well founded on the peculiarities of the specific cases, others evidently due to lack of adequate attention from the lawyer's eye. There can be little doubt that this is not conducive to the proper operation of international organizations and may constitute a source of misunderstanding, misconstruction or even conflict, and not only in cases of proposed transfer. Greater precision and comprehensiveness, closer attention to legal formulations, and the introduction of uniformity wherever desirable, will be in the interest of proper relationships between host States and

international organizations, the proper functioning of the latter, and the effectiveness of the law.

(Signed) Manfred LACHS.