

No. 53/60

UNITED NATIONS PERSONNEL POLICY
(Awards of the Administrative Tribunal)

Text of a statement delivered on December 5, 1953, by the Vice-Chairman of the Canadian Delegation, Mr. Alcide Côté, in the Fifth Committee of the eighth session of the United Nations General Assembly (Agenda Item 38).

Note: The resolution adopted and the results of the voting are included at the end of the statement.

In this debate on the supplementary estimates for 1953, I shall confine my remarks to the particular question whether the Assembly should appropriate the funds requested by the Secretary-General for the purpose of giving effect to the awards of compensation made by the United Nations Administrative Tribunal to staff members whose appointments have been terminated.

The time left at the disposal of the Committee is very limited. The Canadian Delegation, therefore, does not wish to take up an undue amount of the Committee's time by going into every detail of this very important and complex issue.

Mr. Chairman, as every member of the Committee will agree, the United Nations Administrative Tribunal was created by the General Assembly for the protection of the staff. With this intention the Assembly vested the Tribunal with certain powers. The resolution by which it was established and the record of the proceedings and debates leading up to its establishment confirm beyond all reasonable doubt the clear and definite intention of the General Assembly to be bound by the decisions of the Tribunal. This record is clearly borne out by the text of the documents actually establishing the Tribunal and under which it operates at the present time.

Certain delegations have claimed that the Tribunal exceeded its jurisdiction in the cases before us. We are in agreement that the Secretary-General must be able to control his staff in disciplinary matters and that his actions in such cases should not be subject to review in a manner which would permit the Tribunal to substitute its view for his. On the other hand, there must be an area within which, for the protection of the staff, the Tribunal can review. There must be a minimum standard of proper staff conduct which it is the responsibility of the Secretary-General to ensure and in respect of which his decision cannot be challenged. However, if the Secretary-General seeks to impose arbitrary standards the Administrative Tribunal is clearly competent to act, and under these circumstances it cannot be argued that if the Tribunal reverses the Secretary-General's decision this is a substitution of its discretion for his.

The amendments to the Staff Regulations which we have now approved will narrow the areas of possible disagreement between the Secretary-General and the Administrative

Tribunal insofar as the future is concerned. However, insofar as the past is concerned, we are not convinced that under the Staff Regulations in effect it can properly be said that the Tribunal exceeded its competence. A very careful study of the individual judgments would be required before an authoritative opinion could be produced. This study would involve consideration of complex questions of law which could not appropriately be decided by the Fifth Committee or the General Assembly.

Moreover, the Statute provides in Article 2.3 that "in the event of dispute as to whether the Tribunal is competent, the matter shall be settled by the decision of the Tribunal".

Further, in the cases under discussion the question of competence did not arise. The applications were submitted, with the agreement of the Secretary-General, directly to the Administrative Tribunal. If the Secretary-General felt that his exclusive jurisdiction was being encroached upon it was surely for the Secretary-General to raise the question.

Some delegations have also questioned the quantum of the awards, contending that in making them the Tribunal departed from recognized principles, and moreover, adopted varying criteria resulting in inconsistent and unreasonable awards. The Canadian Delegation itself has misgivings about the size of some of the awards. However, any review or revision of these awards should, if made, be made by a competent judicial body, since each judgment of the Tribunal was in every sense a judicial determination. Neither the General Assembly nor any of its committees is competent to conduct a judicial investigation of the kind necessary to adjudicate upon questions of law and fact.

It may be argued that the General Assembly as a sovereign legislative body has the "right" to legislate upon the judgments of the Tribunal. Even if this argument is accepted, to exercise that right would be to run in the face of recognized principles governing the separation of the legislature from the judiciary.

Moreover, an important question of principle is involved - namely that the right of the Secretariat as an international civil service should be protected by legal process. We do not think that it is proper to substitute for legal process a review of decided cases by vote in the Assembly.

I shall not take up the time of the Committee by repeating what other delegations have said here about the Tribunal's judgments being final and without appeal, and about the obligation of the Assembly, expressed in the Statute, to pay the awards fixed by the Tribunal. I think I have said enough to make it clear that the Canadian Delegation is convinced that the arguments in favour of paying the awards are very strong.

However, other delegations think otherwise, and we do not pretend to have a monopoly of legal wisdom. We would, therefore, be prepared to do what is usually done when such disputes arise - that is, to refer the questions raised to a court of higher jurisdiction. We do not wish to put forward a specific proposal at this time; but we feel that since legal arguments have been advanced both for paying the awards

and for not paying them, the course of wisdom would be to have these legal questions answered by reference to a higher court for advice - rather than to take the arbitrary and non-legal way of settling a legal argument by a show of hands. Any differences of views among delegations around this table notwithstanding, I think that it is clear that our objectives are the same. We would hope that this proposal would lead to a solution acceptable to all.

Mr. Chairman, we have just completed a debate on amendments to the Staff Regulations designed to make those regulations more definite so as to lessen the chances of conflict between the Secretary-General and the Tribunal. We believe that the regulations as now drafted will ensure a fully competent and loyal international staff; that, on the one hand those who are unsuitable may be dismissed by proper legal process, and that on the other hand the staff as a whole will not be deprived of the full protection to which it is entitled. Having done so, we would hope that the Fifth Committee would not now take any arbitrary legislative action on the past awards either by reducing them or by refusing to pay them in full, which would undermine the position of the Tribunal as an independent organ for staff protection and by so doing strike a blow to the morale and confidence of the staff. We feel that to refuse to pay the awards of the Tribunal which this Assembly set up would strike such a blow, and that if there are doubts as to their legality they should be reviewed by a high judicial body. If this Committee is not in accord as to the necessity of such a review, the Canadian Delegation is of the opinion that there is no alternative, having regard to previous decisions of this Assembly, but to appropriate the funds required to pay the awards in full.

In the light of these considerations we reserve the right to intervene in the debate at a later stage when the views of other delegations have been made known.

Results of Voting

The following is the text of the resolution on agenda item 38 adopted in a plenary meeting of the General Assembly on December 9, 1953. The resolution, which Canada co-sponsored in company with the United Kingdom and Colombia, was approved by 42 votes in favour (including Canada), 5 against (Soviet bloc), with 13 abstentions (Australia, China, Costa Rica, Ethiopia, Guatemala, Indonesia, Mexico, Nicaragua, Paraguay, Sweden, Turkey, United States, Yugoslavia).

Text of Resolution
(Doc. A/2624)

The General Assembly,

Considering the request for a supplementary appropriation of \$179,420, made by the Secretary-General in his report (A/2534) for the purpose of covering the awards made by the United Nations Administrative Tribunal in eleven cases numbered 26, and 37 to 46 inclusive,

Considering the concurrence in that appropriation by the Advisory Committee on Administrative and Budgetary Questions contained in its twenty-fourth report to the eighth session of the General Assembly (A/2580),

Considering, nevertheless, that important legal questions have been raised in the course of debate in the Fifth Committee with respect to that appropriation,

Decides To submit the following legal questions to the International Court of Justice for an advisory opinion:

"(i) Having regard to the Statute of the United Nations Administrative Tribunal and to any other relevant instruments and to the relevant records, has the General Assembly the right on any grounds to refuse to give effect to an award of compensation made by that Tribunal in favour of a staff member of the United Nations whose contract of service has been terminated without his assent?

"(ii) If the answer given by the Court to question (i) is in the affirmative, what are the principal grounds upon which the General Assembly could lawfully exercise such a right?"

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