

No. 54/46/UN9/23 AWARDS OF COMPENSATION BY THE
UNITED NATIONS ADMINISTRATIVE
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Texts of statements on December 6 and December 17, 1954, by Mr. S.D. Hemsley, Canadian Representative at the ninth session of the United Nations General Assembly, New York, in the Fifth Committee and in a plenary session of the General Assembly respectively, on agenda item 48 - Awards of compensation made by the United Nations Administrative Tribunal: advisory opinion of the International Court of Justice.

Note: The texts of resolution adopted by the Committee and by the General Assembly and the results of the voting are included at the end of the statements.

Statement of December 6, 1954

It seems to the Canadian Delegation that the debate which has taken place so far on this item of our agenda has shown quite clearly that two separate and distinct questions are before the Committee. The first question is the awards of compensation made by the Administrative Tribunal in 1953, the payment of which was disputed at the eighth session of the General Assembly. The second question is the desirability of amending the Statute of the Administrative Tribunal. The second question quite properly arises out of the first one. My delegation believes that the payment of the disputed awards must be given priority and I shall therefore discuss that question first.

I do not think it is proper to go over again the ground covered in the debates in this Committee last year on the awards made by the Tribunal but as a preface to explaining the Canadian Delegation's present views I should like to recall certain aspects of the position taken by my delegation at the eighth session of the General Assembly. It was felt then by a number of delegations that the 1953 awards were excessive and that, I believe, was the crux of the matter. The Canadian Delegation also had misgivings about the size of the awards and we stated so in this Committee. We did not believe, however, and we still do not, that the General Assembly had any alternative but to pay the awards in full. On the other hand, we recognized that important legal questions had been raised in the course of debate on the awards and in the interests of obtaining for the General Assembly the most authoritative guidance available on legal matters we co-sponsored with the delegations of the United Kingdom and Colombia a resolution asking the International Court of Justice for an advisory opinion on

the matter. The resolution was passed by the General Assembly by a large majority and as a consequence we now have before us the advisory opinion of the Court.

As other delegates have already pointed out, the opinion of the International Court is an unequivocal endorsement of the view that the General Assembly has not the right to refuse to pay the awards in question. My delegation is therefore convinced that there should be no delay whatsoever in making arrangements to pay them. We have no strong views on the particular method of payment and we would support the setting up of a Special Indemnity Fund for this purpose, as suggested by the Secretary-General, if the Advisory Committee finds that proposal acceptable.

Before I go on to the second question before us I should like to express my delegation's appreciation for the attitude taken by the United States on the advisory opinion of the International Court of Justice. The distinguished representative of the United States explained succinctly to the Committee the other day the reasons why his Government must firmly dissent from the Court's opinion but he also indicated that the United States respects the authority and competence of the Court. We believe the United States Government deserves the tributes of all members of this Committee for placing respect for the authority of the International Court above its own strongly and sincerely held views.

To go on to the next question, the distinguished representative of the United States has taken the initiative in this Committee in suggesting that further amendments to the Status of the Administrative Tribunal are necessary as a consequence of the advisory opinion of the Court. In particular he has proposed that there should be a specific provision for judicial review of the decisions of the Administrative Tribunal. My delegation has noted the references in the Court's opinion to the fact that there is no such provision in the Statute and although the Court did not make any positive recommendation on this point my delegation is of the opinion that the Statute of the Administrative Tribunal might be amended to provide some machinery for judicial review.

The important thing is that any review must be truly judicial. In our statement before this Committee on December 5, 1953, my delegation stated its opinion that any review or revision of the awards of the Administrative Tribunal should, if made, be made by a competent judicial body since each judgment of the Tribunal was in every sense a judicial determination. Now the highest judicial body in the United Nations system of international organization is the International Court of Justice and we naturally turn to it as a possible organ of review. Article 26 of the Statute of the Court makes provision for chambers of the Court to hear particular categories of cases; for example labour cases, and it has occurred to my delegation that it might be possible to have such a chamber review decisions of the Administrative Tribunal. This is

only a tentative suggestion on our part but we think it well worth consideration. I must stress again that in our opinion any review procedure should be truly judicial and that would have to be taken into consideration in determining the machinery by which the Court would undertake the task of reviewing decisions of the Administrative Tribunal. It is essential to guard against the General Assembly or any of its committees being called upon to adjudicate upon questions of law or fact. We believe this view is fully supported by the comments of the International Court at page 56 of its advisory opinion.

I have deliberately refrained from discussing the draft resolution sponsored by the United States and Argentina because I wished to confine myself at this stage to stating in general terms the views of my delegation. I must say most sincerely, however, that we are very grateful to the sponsors of the resolution for putting detailed proposals before the Committee. Their proposals are obviously the result of very careful study and I am sure the delegations of Argentina and the United States will understand if my delegation, like others, begs time to give the draft resolution equally careful study before commenting on its detailed provisions. I must reserve my delegation's position on the details for the time being and I wonder if it might not be in the best interests of the Organization if the working out of the details of the necessary amendments to the Statute of the Administrative Tribunal were held over until the next session of the General Assembly. I might add that it has occurred to my delegation that the Sixth Committee is perhaps better equipped than this Committee to examine what is essentially a legal matter. If we were to postpone further consideration of amendments to the Statute of the Tribunal it might be better to assign the question to the Sixth Committee at the next session.

I wish to make it clear that while we would like more time to consider the machinery that might be adopted for judicial review of the Administrative Tribunal's decisions we are fully prepared to see the General Assembly decide now, at this session, that in principle there should be provision for such review. And if the decision of principle is taken now it would seem reasonable to provide that any awards that the Tribunal makes between now and the actual setting up of the review machinery should be open to review by some appropriate procedure.

In conclusion may I recapitulate the main points of my delegation's views on the item before us. Firstly, we believe that in accordance with the advisory opinion of the International Court of Justice, the 1953 awards of the Administrative Tribunal must be paid without further delay and we have no objection to setting up a Special Indemnity Fund for this purpose if that proposal is acceptable to the Committee. Secondly, we agree that the General Assembly should make provision for judicial review of

decisions of the Administrative Tribunal. Thirdly, we believe that any such review must be of a truly judicial character and that it might be desirable to explore the possibility of having a chamber of the International Court of Justice perform this function. Fourthly, we feel that amendments to the Statute of the Administrative Tribunal require very careful consideration and we therefore reserve our position on the details of the amendments proposed by the United States and Argentina until we have had an opportunity to give them the study they deserve.

Voting

Results

Following is the text of a resolution (U.N. Doc. A/2883) adopted by the Fifth Committee on December 9 by a roll-call vote of 26 in favour, 3 against and 27 abstentions (including Canada):

Text of Resolution

The General Assembly,

Having considered, the Advisory Opinion of the International Court of Justice of 13 July 1954 regarding the Effect of Awards of Compensation made by the United Nations Administrative Tribunal, the Report by the Secretary-General on Budgetary Arrangements for Payment of Indemnities (A/C.5/607, 26 November 1954) and the Report of the Advisory Committee on Administrative and Budgetary Questions (A/2837, 6 December 1954);

Considering that under Article 11 of the Statute of the Administrative Tribunal, the General Assembly can amend that Statute;

Believing that the establishment of procedure for appeal against the judgments of the Administrative Tribunal requires careful examination;

A

Decides to take note of the Advisory Opinion;

Requests Member States to communicate to the Secretary-General, before 1 July 1955 their views on the possible establishment of procedure for appeal against the judgments of the Administrative Tribunal and to submit any suggestions which they may consider useful;

Invites the Secretary-General to consult on this matter with the specialized agencies concerned;

Establishes a Special Committee composed of Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, France, India, Iraq, Israel, Pakistan, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to meet at a time to be fixed in consultation with the Secretary-General to study the question of the establishment of such a procedure in all its aspects and to report to the General Assembly at its tenth session;

Requests the Secretary-General to notify all Member States of the date on which the Special Committee shall meet.

Decides that:

As from 1 January 1955 there shall be established a Special Indemnity Fund;

Notwithstanding the provisions of Article 7 of General Assembly resolution 359(IV) of 10 December 1949 and the provisions of financial regulations 6.1 and 7.1, the Secretary-General is authorized to transfer to the Fund from the income from staff assessment, as a first charge against such income, on 1 January 1955, an amount of \$250,000 and on 1 January 1956 such amount as will, when added to the balance remaining in the Fund on that date, bring the credit in the Fund up to an amount of \$250,000;

The Secretary-General is authorized to charge against the Fund all payments to staff members of the United Nations arising out of awards of compensation made in accordance with its Statute by the Administrative Tribunal.

Statement of December 17, 1954

It gives me great pleasure to introduce to the Assembly an amendment to the draft resolution which has been recommended by the Fifth Committee on the awards of compensation of the Administrative Tribunal. This amendment is before you in document A/L 192 co-sponsored by 15 member states.

To my delegation and the other sponsors of this amendment, it seemed apparent that many member states were not entirely satisfied with either of the alternative wordings of the resolution which was before them in the Fifth Committee. A slightly different version would, it appeared, have been more widely accepted and the wishes of the majority of member states would have been much more clearly expressed. The co-sponsors of the original resolution, therefore, consulted with other member states in an attempt to devise an amendment which would be acceptable to the great majority of delegations. We are hopeful that the amendment which is now before us achieves this end.

All delegations are aware that in the course of discussion of this item in the Fifth Committee, there was a continuous process of compromise. The first draft resolution on this subject, proposed by Argentina and the United States, was withdrawn in favour of a greatly modified resolution with wider sponsorship. Certain amendments to this resolution were subsequently suggested and accepted by the sponsors. Other amendments did not prove acceptable to the sponsors of the resolution but were approved

by the Fifth Committee by a narrow majority. Canada and the other member states whose names appear on the amendment which is before us have tried to carry the process of compromise one step further and achieve a resolution of much wider acceptance.

Paragraph 1 of the amendment proposes to substitute the words "review of" instead of "appeal against" in the last paragraph of the preamble of the resolution. Members are aware that "review" was a term employed by the International Court of Justice when it referred to this matter in its advisory opinion. I wish to emphasize that in the view of the co-sponsors of the amendment the word "review" is a broader term which would include appeals and other judicial procedures. The object of this change, therefore, and the similar amendment in Part (b)ii of the second paragraph of the amendment before us is not to limit the Special Committee to consider only one specific form of judicial review.

The second paragraph of our amendment seeks to insert in the first paragraph of Part B of the resolution a provision by which the General Assembly accepts in principle judicial review of judgments of the United Nations Administrative Tribunal. Members will recall that this provision was included in Part B of the original draft resolution and was never voted upon. It is our belief that this paragraph might have found acceptance with the Committee and it is for this reason that the co-sponsors seek to place it before members at this time.

In conclusion may I repeat that this amendment is offered in a spirit of compromise and in the conviction that the resolution will represent the greatest possible measure of agreement if the amendment is accepted. We therefore earnestly commend it to the Assembly.

Voting Results

Following is the text of a resolution (U.N. Doc. A/RESOLUTION/295) adopted by the General Assembly in a plenary meeting on December 17 by a vote of 52 in favour (including Canada) to 5 against, with no abstentions:

Text of Resolution

The General Assembly,

Having considered the advisory opinion of the International Court of Justice of 13 July 1954 regarding the effect of awards of compensation made

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The proposed amendment to delete the word "possible" would then bring the present first paragraph of Section B into harmony with this additional paragraph

by the United Nations Administrative Tribunal, the report by the Secretary-General on budgetary arrangements for payment of indemnities (A/C.5/607) and the report of the Advisory Committee on Administrative and Budgetary Questions (A/2837),

Considering that under article 11 of the Statute of the Administrative Tribunal, the General Assembly can amend that Statute,

Believing that the establishment of procedure for review of the judgments of the Administrative Tribunal requires careful examination,

A

1. Decides to take note of the advisory opinion;

B

2. Accepts in principle judicial review of the United Nations Administrative Tribunal;
3. Requests Member States to communicate to the Secretary-General before 1 July 1955, their views on the establishment of procedure to provide for review of the judgments of the Administrative Tribunal and to submit any suggestions which they may consider useful;
4. Invites the Secretary-General to consult on this matter with the specialized agencies concerned;
5. Establishes a Special Committee composed of Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, El Salvador, France, India, Iraq, Israel, Norway, Pakistan, Syria, the Union of Soviet Socialist Republics, The United Kingdom of Great Britain and Northern Ireland and the United States of America, to meet at a time to be fixed in consultation with the Secretary-General to study the question of the establishment of such a procedure in all its aspects and to report to the General Assembly at its tenth session;
6. Requests the Secretary-General to notify all Member States of the date on which the Special Committee shall meet;

C

7. Decides that:
 - (a) As from 1 January 1955 there shall be established a Special Indemnity Fund;
 - (b) Notwithstanding the provisions of article 7 of General Assembly resolution 359 (IV) of 10 December 1949 and the provisions of financial regulations 6.1 and 7.1, the Secretary-General is authorized to transfer

to the Special Indemnity Fund from the income from staff assessment, as a first charge against such income, on 1 January 1955, an amount of \$250,000 and, on 1 January 1956, such amount as will, when added to the balance remaining in the Fund on that date, bring the credit to the Fund up to an amount of \$250,000;

(c) The Secretary-General is authorized to charge against the Fund all payments to staff members of the United Nations arising out of awards of compensation made in accordance with its Statute by the Administrative Tribunal.

1. Decides to take note of the advisory opinion;

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2. Requests the Secretary-General to review of the United States and the United States

3. Requests Member States to communicate to the Secretary-General before 1 July 1955, their views on the establishment of procedure to provide for review of the judgments of the Administrative Tribunal and to submit any suggestions which they may consider useful;

4. Invites the Secretary-General to consult on this matter with the specialized agencies concerned;

5. Establishes a Special Committee composed of Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, El Salvador, France, India, Iraq, Israel, Norway, Pakistan, Syria, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to meet at a time to be fixed in consultation with the Secretary-General to study the question of the establishment of such a procedure in all its aspects and to report to the General Assembly at its tenth session;

6. Requests the Secretary-General to notify all Member States of the date on which the Special Committee shall meet;

C

7. Decides that:

(a) As from 1 January 1955 there shall be established a Special Indemnity Fund;

(b) Notwithstanding the provisions of article 7 of general assembly resolution 359 (IV) of 10 December 1950 and the provisions of financial regulations 6.1 and 7.1, the Secretary-General is authorized to transfer